EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Miss C Dyer		University of London

Heard at: London Central **On**: 23, 24, 28, 29, 30 November 2022 and (in chambers) on 2 December 2022

Before: Employment Judge Stout (sitting alone)

Representations
For the claimant: In person
For the respondent: Ms A Ahmad

JUDGMENT

The judgment of the Tribunal is that the Claimant's claim of constructive unfair dismissal under Part X of the Employment Rights Act 1996 is not well-founded and is dismissed.

REASONS

1. Ms Dyer (the Claimant) was employed by the University of London (the Respondent) from 28 July 2015 until 18 September 2020 when her employment terminated in circumstances that she contends amounts to constructive unfair dismissal. The Claimant presented her claim to the Tribunal on 15 December 2020, following a period of Early Conciliation between 2 October 2020 and 16 November 2020. The Claimant's claim form included a number of other claims (including claims of direct discrimination, harassment, victimisation, breach of contract and failure properly to deal with a statutory request for flexible working under Employment Rights Act 1996 (ERA 1996), ss 80F-H) which were dismissed upon withdrawal by Employment Judge Joffe by judgment sent to the parties on 15 December 2021. The sole claim to be considered at this Final Hearing was therefore the Claimant's claim of constructive unfair dismissal under Part X of the ERA 1996.

The type of hearing

2. This was an in-person public hearing.

Recusal application

3. The hearing began on 23 November 2022 with the Claimant raising concerns about whether I should be dealing with the case as she had made a complaint about me to Regional Employment Judge (REJ) Freer which had not been answered. I knew nothing about the complaint, but explained to the Claimant that unless she was applying for me to recuse myself on grounds of apparent bias, and I upheld her application applying the proper legal principles, I was bound to continue to hear the case. The Claimant did not wish to make a recusal application at that point, but was unhappy and requested a short adjournment in order to contact REJ Freer to ask whether it was appropriate for the hearing to continue. I allowed this. I was informed that REJ Freer then emailed the Claimant apologising for not having dealt with her previous complaint and explaining that the usual practice is for judges the subject of complaints to continue with the case, subject to any recusal application. The hearing then resumed at about 11.15am and the Claimant then confirmed that she was content to proceed with the hearing.

4. I had arranged during the short adjournment for the Claimant to be provided with a copy of *Ansar v Lloyds TSB Bank plc and ors* [2006] ICR 1565, and after she had confirmed that she was content to proceed with the hearing I said that I was glad and I explained that I had provided the copy of *Ansar* to give some reassurance about my approach. I outlined the facts of that case, and the decision of the EAT, by way of illustration of the legal principle that I could not recuse myself just because she was unhappy with some case

management decisions I had made and had an outstanding complaint in relation to them.

5. After that we spent about 1.5 hours discussing the Timetable, List of Issues, reading lists, documents etc and then I adjourned the hearing at about 1pm in order for me to complete my reading, with the hearing due to resume at 12 noon the following day with cross-examination by the Claimant of Ms Attwater (a witness for the Respondent who was unavailable after 24 November 2022 and so it had been agreed her evidence would be given first). I explained to the parties that the reason why we could not start before 12 noon on Day 2 was not only because I needed time to read the documents, but also because I had a medical appointment in the morning.

6. At 14.50 on 23 November 2022 the Claimant emailed the Tribunal as follows:-

> Dear Employment Tribunal
>
> URGENT - FAO Employment Judge Stout
>
> copy Respondent
>
> Having just read an email from Employment Judge Freer and seeking advice, I am writing to you directly to apply for your recusal on my case on the basis of apparent bias. The reason is that it is not possible to hold a fair hearing based on the following:
>
> i) as you did not reply to my correspondence around July-Sept 2022 my case was almost struck out - I had to disclose one week early all of the contents of my dropbox files
> ii) you added a further variation that all the documents must remain in the bundle - creating a bundle of almost 5000 documents which was unusable.
> iii) you set an exercise on the list of issues, although undated it was stated that I had failed to comply with the CMO
> iv) I received no reply to my email complaints on Disclosure and List of Issues
> v) I received no reply on how to make a complaint during proceedings until within a few days ago
> vi) there is an inferred conflict of interest that Employment Judge Burns served on The University of London Board of Trustees. After a period of months without reply, to Tribunal and the Respondent, I received your question this week, should EJ Burns not be involved on the case, and if not why not. I replied that there are no known concerns on the case - the reason that I wrote this is *because I have never received a reply* - the matter has never been settled one way or another.
> vii) I raised a complaint against you because during the CMO 30 June 2022 attendees of the Respondent involved in allegations joined the closed PHCM when I was unrepresented. You asked personal questions which benefited the Respondent
> viii) I applied for a witness order in July and after a number of follow ups I received this on 3 November 2022, the day before due to exchange witness statements.
> viii) Regional Judge Freer has failed to respond to my complaints as above since 30 September 2022.
>
> For the above reasons and as I am currently unrepresented, I am unable to except that current instructions relayed to me in the hearing are impartial.
>
> There is apparent bias at Employment Tribunal Central on my case.

7. This was followed by a further email at 14.59 as follows:-

> I am writing to apply for a Stay on my case, relating to my application today for Employment Judge Stout to recluse from my case.
>
> This is because there is apparent bias at Employment Tribunal Holborn regarding my case, given my number of complaints to Employment Judge Stout, that I have received no response from Regional Judge Freer since 30 September 2022 who is responsible to answer the complaints regarding Employment Judge Stout, and given that there is an inferred conflict of interest between Employment Judge Burns and the Respondent, which is left unanswered after a number of months.
>
> I seek an impartial hearing at an alternative Tribunal.

8. I gave a direction that this application would be dealt with at the start of Day 2 on 24 November 2022. The Respondent resisted the application. The Claimant made further oral submissions to supplement her written application. I gave judgment orally, but indicated that written reasons would be provided and they follow.

9. The legal principles I have to apply to a recusal application of this sort are to be found neatly encapsulated in the EAT's decision in *Ansar v Lloyds TSB Bank plc and ors* [2006] ICR 1565. In that case, a judge had heard and dismissed one claim by a claimant following a lengthy hearing, and the claimant appealed that decision to the EAT on the basis of apparent bias by the judge. The same judge was then listed to deal with a preliminary hearing in a second claim that the claimant had brought. The claimant complained. The REJ refused to remove the judge from the case and the judge refused to recuse himself. The claimant appealed to the EAT again.

10. Burton J in the EAT held that the decision on whether or not to recuse had to be judged on the basis of the facts known at the time, specifically that allegations of apparent bias had been made against the judge but not yet determined by the EAT. The key allegations of bias made in that case are set out in [7] as follows:

> 7. The claimant had also written a letter dated 5 July 2005 to the regional chairman of the Southampton employment tribunal, of which it is accepted the chairman had notice. Apart from drawing attention to the earlier refusal of witness orders, the letter in terms recited:
>
> > "Throughout the full hearing, chairman Kolanko overlooked numerous instances of serious misconduct on the part of the respondent which included the breaching of several tribunal orders, ignoring disclosure requirements, making dishonest representations to the tribunal about them and pressurising and victimisation of claimant witnesses (to which they offered direct evidence). These are only a few examples of the respondent's misconduct that were raised in open tribunal…
> >
> > "In addition to procedural issues, the chairman treated claimant witnesses badly, potentially discriminating against the claimant's only ethnic minority witnesses by first having their statements almost entirely struck out and secondly reprimanding them when they attended as observers-when respondent witnesses attended as observers and acted in a disruptive manner no comment was made towards them. Witnesses to proceedings

> have commented about the unfair and harsh treatment of the claimant throughout the 64 day hearing [sic]…
>
> "Having procured an utterly perverse decision with errors in both the application of the law and findings of fact, chairman Kolanko is now involved in the hearing of the second action 3104051/2004 intending to sit alone on 3 August 2005 in a pre-hearing review. The claimant is fearful that the chairman's apparent bias and previous errors will unfairly prejudice this new action…
>
> "The paramount concern is that having not only unfairly prejudiced the outcome of the first action, chairman Kolanko's insistence in still being involved with these proceedings will cause a similar outcome with the second."

11. Burton J held that even if those allegations of bias were subsequently upheld by the EAT, it would not follow that it was wrong for the judge to have refused to recuse himself from hearing the second claim ([10]). As it was, Burton J held that the principles to be applied to such applications were ([13]):

> "1. The test to be applied as stated by Lord Hope in *Porter v Magill [2002] 2 AC 357* , para 103 and recited by Pill LJ in *Lodwick v Southwark London Borough Council [2004] ICR 884* , 890, para 18, in determining bias is: whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.
> "2. If an *objection* of bias is then made, it will be the duty of the chairman to consider the objection and exercise his judgment upon it. He would be as wrong to yield to a tenuous or frivolous objection as he would to ignore an objection of substance: *Locabail (UK) Ltd v Bayfield Properties Ltd [2000] QB 451* , 479, para 21.
> "3. Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that, by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour: *In re JRL, Ex p CJL (1986) 161 CLR 342, 352, per Mason J, High Court of Australia* , recited in *Locabail* at para 22.
> "4. It is the duty of a judicial officer to hear and determine the cases allocated to him or her by their head of jurisdiction. Subject to certain limited exceptions, a judge should not accede to an unfounded disqualification application: *Clenae Pty Ltd v Australia & New Zealand Banking Group Ltd [1999] VSCA 35* , recited in *Locabail* at para 24.
> "5. The appeal tribunal should test the employment tribunal's decision as to recusal and also consider the proceedings before the tribunal as a whole and decide whether a perception of bias had arisen: Pill LJ in *Lodwick [2004] ICR 884* , 890, para 18.
> "6. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without something more found a sustainable objection: *Locabail [2000] QB 451* , 480, para 25.
> "7. Parties cannot assume or expect that findings adverse to a party in one case entitle that party to a different judge or tribunal in a later case. Something more must be shown: Pill LJ in *Lodwick v Southwark London Borough Council [2004] ICR 884* , 891, para 21, recited by Cox J in *Breeze Benton Solicitors (A Partnership) v Weddell (unreported) 18 May 2004* , para 41.
> "8. Courts and tribunals need to have broad backs, especially in a time when some litigants and their representatives are well aware that to provoke actual or ostensible bias against themselves can achieve what an application for

> adjournment (or stay) cannot: Sedley LJ in *Bennett v Southwark London Borough Council [2002] ICR 881* , 889, para 19.
> "9. There should be no underestimation of the value, both in the formal English judicial system as well as in the more informal employment tribunal hearings, of the dialogue which frequently takes place between the judge or tribunal and a party or representative. No doubt should be cast on the right of the tribunal, as master of its own procedure, to seek to control prolixity and irrelevancies: Peter Gibson J in *Peter Simper & Co Ltd v Cooke [1986] IRLR 619* , para 17.
> "10. In any case where there is real ground for doubt, that doubt should be resolved in favour of recusal: *Locabail [2000] QB 451* , 480, para 25.
> "11. Whilst recognising that each case must be carefully considered on its own facts, a real danger of bias might well be thought to arise (*Locabail* , para 25) if: (a) there were personal friendship or animosity between the judge and any member of the public involved in the case; or (b) the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or, (c) in a case where the credibility of any individual were an issue to be decided by the judge, the judge had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or, (d) on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on their ability to try the issue with an objective judicial mind; or, (e) for any other reason, there were real grounds for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues."

12. At para 22:

> as a matter of policy, courts should not yield too easily to applications for recusal, because of the inevitable knock-on effect which Chadwick LJ described. Even if it is appropriate for one judge to recuse himself because of the particular nature of the complaint made, it must not and cannot become a principle that every judge must recuse himself simply because a complaint is made. We shall return to this aspect below. Secondly, we do not accept that there is a distinction between a case where the complaint is that a judge or tribunal has acted perversely in reaching an earlier decision hostile to the party making the application for recusal, and one where the complaint is of bias or misconduct in so doing. If the objection is, as it is, based upon whether the "fair minded and informed observer [would] conclude that there is a real possibility that the tribunal will not bring an open mind and objective judgment to bear" then there must be something of substance to cause that observer to reach that conclusion. In our judgment, it is not necessarily more likely that a judge will be concluded to have a closed mind if he is accused by the party in front of him of having previously been biased, than if he is accused by that party of having made a decision which is so stupid that no reasonable person could possibly have arrived at it.

13. The EAT in *Ansar* then concluded that the judge had not been obliged to recuse himself because he had found against the claimant in the previous claim, or because allegations of bias had been made against him. The EAT's conclusion was expressed as follows:-

> 27. In this case, we must, as we stated in para 10 above, look at what the position was when this application for recusal was made. There was an outstanding complaint (in the two letters, as in Breeze Benton , both to the regional chairman and to the Department of Constitutional Affairs), and in the notice of appeal, of bias and/or misconduct against Mr Kolanko as chairman of the very recent 36-day hearing. Those allegations had not been, and could not be, until the hearing of the

> appeal which has only now taken place, resolved. What was necessary was to look at the nature of those allegations, and to see whether their making rendered it inappropriate for the case to proceed within the confines of the authorities to which we have referred. The nature of the allegations may, on occasion, be decisive, although it does not follow that, even if an allegation of wholly outrageous conduct, such as the taking of a bribe, were made, that that would necessarily qualify as a ground for recusal, if it was manifestly fanciful or unfounded. But the allegations in this case were in any event not of that kind. We have analysed them in detail in our first judgment, and found that they are without substance, but even at a time when they had not yet been adjudicated, it could be seen that they fell into the three categories which we have described in para 31 of that judgment: criticism of the allegedly one-sided approach of the chairman to the making of directions or orders, the conduct of the hearing and the control over leading questions and cross-examination, the exemplars being given amounting to a smattering of alleged occasions over a 36-day hearing, with "one of the clearest examples of apparent bias" being said to be that on one occasion, while counsel for the respondent was on his feet and it was intended to take a mid-morning break, it was at that counsel that the chairman nodded to indicate a suitable time to rise.
> 28. We have no doubt whatever that the regional chairman was correct not to respond to the claimant's application, prior to the hearing, to alter the chairman, and to direct the chairman to sit, and that the chairman was correct to form his own conclusion that he was not obliged to recuse himself. The claimant pointed out that two of the matters mentioned by Cox J in Breeze Benton were satisfied, namely the factual connection between the two hearings was similar, and the fact that little time had passed. However Amec Capital Projects Ltd v Whitefriars City Estates Ltd [2005] 1 All ER 723 makes clear that it may well make no difference, even if the factual matrix of the two hearings is identical, and as for the passage of time, this is not a case, as in Lodwick , where any issue relating to the passage of time would be relevant. In our judgment, the existence of the complaints, and the nature of those complaints, did not render it necessary or appropriate that the chairman should stand down or decline to hear the case; and there was nothing more (to import the Locabail and Lodwick inquiry).

14. Applying the principles in *Ansar* to this case, and considering the matter initially by way of overview, it seems to me that if it would have been an error of law for the judge in that case to recuse himself in the face of allegations of bias that are in nature significantly more serious than the complaints the Claimant makes about me in these proceedings, it would undoubtedly be an error of law for me to recuse myself in this case.

15. However, I have nonetheless considered carefully each of the Claimant's specific concerns as follows to consider in relation to each whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that I was biased as a result of the matter about which she complains:-

i) as you did not reply to my correspondence around July-Sept 2022 my case was almost struck out - I had to disclose one week early all of the contents of my dropbox files

16. This is a complaint about administrative arrangements. It was explained to the Claimant in my order sent 7 September 2022 (436) that I had been on annual leave since July 2022 and I apologised for the delay in response. The Claimant's case was not 'almost struck out'. I am not aware there was any application to that effect, and I did not deal with it; nor did I contemplate it of my own motion. I pointed out in my order of 7 September that as the Respondent was not objecting to the Claimant delaying disclosure, the

extension the Claimant wanted could have been agreed within the terms of my original order without intervention from me. There is nothing in this first item that could possibly give a reasonable bystander cause to think that I am biased.

ii) you added a further variation that all the documents must remain in the bundle - creating a bundle of almost 5000 documents which was unusable.

17. This was a case management order made because the parties' failure to agree the contents of the bundle meant that one had not been prepared, with the bundle deadline and hearing looming. The Respondent's position was that the Claimant, who had disclosed 10,000 pages of documents, wanted to include in the bundle documents it considered irrelevant to the case. As it would not have been proportionate (or a sensible use of Tribunal time or the parties' costs) to have a hearing to decide what should be in the bundle and what not, I made an order requiring the Respondent to include in the bundle all the documents on which both parties wished to rely. It was not the order the Claimant wanted as she wanted to prepare her own bundle, but that had been the Claimant's position at the previous case management hearing and I had already determined the Respondent should prepare the bundle. There were no grounds for revisiting that decision. My decision in relation to the bundle was a case management decision reached in the usual way, with reasons given. The bundle for this hearing is very large (albeit 4,461 pages not 10,000 as it might have been), but it seems to me to be usable as the Respondent was able to produce a word-searchable index to aid navigation of the bundle. If the Claimant is having difficulty locating a document, she can be assisted by me or the Respondent. There is nothing in this second item that could possibly give a reasonable bystander cause to think that I would approach this case on anything other than an impartial basis.

iii) you set an exercise on the list of issues, although undated it was stated that I had failed to comply with the CMO

18. The order that went to the parties on 7 September states that <u>both</u> parties had failed to comply with my previous CMO. I could not possibly have been more even-handed. I did not single out the Claimant, nor did I take any action other than requiring the parties now to comply with my order. This cannot give rise to an appearance of bias.

iv) I received no reply to my email complaints on Disclosure and List of Issues

19. I have not received complaints from the Claimant about this. Complaints are dealt with by the REJ and I have not seen any complaints. My previous orders indicated that any further issues about disclosure should be dealt with at this hearing. The absence of a reply from the REJ to the Claimant's complaint does not reasonably give rise to an appearance of bias on my part. We are independent judicial officers, as the reasonable bystander must be taken to understand.

v) I received no reply on how to make a complaint during proceedings until within a few days ago

20. It was I who included in an order (more than a few days ago) details of how the Claimant could make a complaint if she wished to. I included that in an order as soon as I saw the Claimant make reference to wishing to make a complaint. She may have made earlier reference to wishing to make a complaint, but as any reasonable bystander would know, judges do not see all the emails that are sent to the Tribunal, only those that are referred to them. I also apologised on Day 1 of the hearing on behalf of the Employment Tribunal Service that her complaints have not been dealt with as yet. A reasonable bystander would not consider that this gave rise to an appearance of bias on my part.

vi) there is an inferred conflict of interest that Employment Judge Burns served on The University of London Board of Trustees. After a period of months without reply, to Tribunal and the Respondent, I received your question this week, should EJ Burns not be involved on the case, and if not why not. I replied that there are no known concerns on the case - the reason that I wrote this is because I have never received a reply - the matter has never been settled one way or another.

21. I have no idea about EJ Burns' circumstances, but I am not EJ Burns, so this is not relevant. I have explained to the Claimant that I am an independent judicial office holder who has sworn an oath to do right by all manner of people without fear or favour, affection or ill will, and I have made clear that I will do so in this case in the same way as any other. Whatever the circumstances of EJ Burns, they cannot reasonably give rise to an appearance of bias on my part.

vii) I raised a complaint against you because during the CMO 30 June 2022 attendees of the Respondent involved in allegations joined the closed PHCM when I was unrepresented. You asked personal questions which benefited the Respondent

22. It was my decision to permit members of the Respondent's HR department to attend that case management hearing. A 'private hearing' just means that members of the public are excluded. Members of the Respondent's HR department were not members of the public, but were in attendance to provide instructions to the Respondent's legal representative. I explained to the Claimant at the hearing why I was allowing them to attend in accordance with usual practice. This decision is therefore just a case management decision like any other and although the Claimant considers it benefitted the Respondent in some way, I cannot see what that benefit was. The case management hearing was entirely routine. In any event, my case management decision cannot reasonably give rise to an appearance of bias.

viii) I applied for a witness order in July and after a number of follow ups I received this on 3 November 2022, the day before due to exchange witness statements.

23. As is clear from the orders that I made in September and October 2022, although I could see from the Claimant's correspondence that she thought she had applied for a witness order, it had not reached me. I requested an inbox search be made but still nothing was sent to me by the administration. I explained in my orders that she needed to re-send the application, which she eventually did and I issued the requested witness order the following day. Even without knowing about my efforts to locate her application, the reasonably informed bystander (i.e. one who understands that emails go to

the central administration and not straight to judges) could not possibly consider that delay in dealing with an application for a witness order indicated bias on my part.

viii) Regional Judge Freer has failed to respond to my complaints as above since 30 September 2022.

24. I am not REJ Freer, but an independent judicial office holder. I understand he has apologised to the Claimant for the delay. This cannot give rise to an appearance of bias on my part.

25. Finally, I stand back to consider each of the above matters 'in the round'. I have to consider whether a fair-minded and informed observer, having considered those factual matters, would conclude that there was a real possibility that I am biased. In my judgment, there is no such possibility. The points about the conduct of REJ Freer and EJ Burns are nothing to do with me and the fair-minded and informed observer would understand that as independent judicial office holders the conduct of other judges is not in the ordinary run of things (and this is very much the ordinary run) relevant to the impartiality of another judge. The complaints that the Claimant has made about me personally concern very ordinary matters of case management. It is clear from the decision of the EAT in *Anwar* that complaints of this sort do not give rise to an appearance of bias. I cannot therefore recuse myself and the application for a stay must also be refused.

The issues

26. At the start of the hearing it was apparent that, despite prior case management orders by me, the parties were still not in agreement as to the List of Issues for the hearing. My Order of 30 June 2022 had, however, determined the List of Issues. All that had remained was for the parties to carry that into effect by means of a 'cut-and-paste' exercise for which I gave directions. What the Claimant called her 'Singular List of Issues' came closest to fulfilling this order and I therefore directed that we should treat that as the List of Issues for this hearing. It is attached as Annex 1 to this Decision. As I explained at the hearing, this was a pragmatic decision by me to enable the hearing to proceed. I made clear, however, that the Singular List of Issues could not be regarded as a List of Issues in the usual sense in that it does not set out only the matters that the Claimant maintains amounted, individually or cumulatively, to breaches of her contract of employment entitling her to resign and claim constructive unfair dismissal. Rather, it contains in large part lists of facts which belong in a witness statement as evidence, but not in a List of Issues. I was prepared to allow the hearing to proceed on this basis, however, as the Claimant has been unable from the outset of these proceedings to identify with any precision the matters that she says prompted and justified her resignation and it is not for me as the judge to decide what the Claimant's case is. Nor was it proportionate for time to be spent in advance of hearing evidence in deciding which of the matters that

the Claimant wished to include in the List of Issues were capable of supporting the constructive unfair dismissal claim that she makes so as to produce a shorter List of Issues. In this case, justice requires that the Claimant's case is considered on the basis that she advances it in the Singular List of Issues.

27. The sole legal claim before me is therefore whether the Claimant was unfairly constructively dismissed. The Claimant relies on the implied term of mutual trust and confidence. In the light of the legal principles, which I set out further below, I have to decide:

    a. Whether the Respondent did the things alleged by the Claimant;
    b. If so, whether the Respondent acted, without reasonable and proper cause, in a manner calculated or likely to destroy the relationship of trust and confidence between employer and employee;
    c. If so, whether the Claimant waived any such breach and/or affirmed the contract;
    d. If not, whether the Claimant resigned in response to the breach so as to be constructively dismissed;
    e. If so, what was the reason for the dismissal (the Respondent says it was 'some other substantial reason');
    f. Was dismissal fair in all the circumstances having regard to the size and administrative resources of the Respondent?

28. In addition, it was agreed that I would consider at this hearing the following issues as to liability:
    a. Contributory fault;
    b. *Polkey*.

29. As to contributory fault and/or *Polkey*, the Respondent it was identified at the start of the hearing that the Respondent relies on the following arguments:
    a. That the Claimant would have resigned in any event to pursue part-time study;
    b. The Claimant's actions in accessing Ms Dodd's *"Confidential GV"* email on 2 September 2020;
    c. The Claimant's obtaining copies of confidential emails to which she was not a party and submitting them as part of the grievance process;
    d. The Claimant's e-mail on 18 September 2020 regarding her personal grievance to a group email *"Anti-racism discussion"* email thread.

30. Other issues in relation to remedy (including the Claimant's request for reinstatement/re-engagement) are to be considered at a further hearing in the event that I find in the Claimant's favour on liability.

The Evidence and Hearing

31. I explained to the parties at the outset that I would only read the pages in the bundle to which I was referred in the parties' statements and submissions

and questioning in the course of the hearing. I also took into account documents submitted by the Claimant in two Zip files entitled "Claimant Supp Bundle 22 Nov 2022" and "2207658-20 Reading Claimant" as well as a further document "8 Sept 2020 – transcript call with MA with highlights".

32. I explained my reasons for various case management decisions carefully as I went along. Those in respect of which written reasons were requested or in respect of which I indicated written reasons would be given are set out below.

33. I received witness statements and heard oral evidence from the Claimant and, for the Respondent, from Ms Attwater (Strategic Projects Manager, TCG), Ms Daubney (since October 2020 Director of TCG), Ms Traynor (Head of Private Housing and Advice Services until March 2021), Ms Oliver (HR Business Partner until June 2019, then employed in other roles with the Respondent before leaving in May 2021) and Ms Bernard (Assistant HR Business Partner from 2019 to November 2020, since April 2021 HR Business Partner for the Careers Group).

34. Two individuals who feature in the facts of this case, Mr Gilworth (Director of TCG until July 2020) and Ms Dodd (Interim Director July 2020 to September 2020), were not called by the Respondent as witnesses. The Respondent did not provide any explanation of this other than that, in Mr Gilworth's case, he had left the Respondent two months before the Claimant did and had not been asked to participate in the grievance process for reasons that were explained to the Claimant in the outcome letter, while Ms Dodd had also left shortly after the Claimant and had not wished to participate in the grievance process (other than by providing a written statement). In closing submissions, the Respondent submitted that it did not need to call these two individuals because 'the documents speak for themselves' in relation to their involvement. The Respondent also reminded me that the burden is on the Claimant to prove her case. That is true of course, but the effect of not calling these two witnesses is that, in some respects, I have received no direct evidence to challenge some of the Claimant's allegations. When deciding what happened in relation to each of those allegations, I have therefore taken the approach that unchallenged evidence from the Claimant should be accepted, unless there is a cogent reason for not accepting it such as a contradictory document or other reason why the Claimant's evidence on that point appears to me to be unreliable. I have also borne in mind that as those two individuals are not parties to the proceedings and have not been present to answer the Claimant's allegations, fairness to them as individuals requires me to be especially careful about not making findings about their conduct that are not strictly necessary to the determination of this case.

Adjustments

35. The Claimant considers herself to be a vulnerable person as a result of what she perceives to be her vulnerability to bullying. She is also a litigant in person who has found the litigation process difficult. She does not, however, claim

to be suffering from any particular medical condition or to have any particular neurodiverse condition for which adjustments are required.

36. At the start of the hearing, she requested to be provided with a stenographer. I understand she had made this request previously, but it had not been brought to my attention. I explained that this was not a service that the Tribunal offers. She then organised her own professional notetakers to attend from Day 3 of the hearing (28 November 2022) and, with assistance from the parties, I re-arranged the room to make space for them. The Claimant requested to be able to view on a laptop while being cross-examined the notes that were being taken by the notetakers (as the notetakers had the facility to do this), but I refused this request because I considered it would distract her from listening to the questions. She was able to make her own handwritten notes while being cross-examined, however, and once we had got started the Claimant appeared to answer questions without difficulty in this way.

37. The Claimant did not otherwise seek any specific adjustments to the hearing, but in view of her difficulties with the litigation process, I made adjustments for her in terms of allowing her to continue beyond agreed times in questioning witnesses and making submissions and in permitting her to rely on multiple documents that were not in the bundle. I also provided the Claimant with guidance on the law and questions to ask witnesses. The Claimant had significant difficulty navigating the bundle. She felt that it was not an agreed bundle, but (as noted above) my order prior to the hearing had been for the Respondent to include in the bundle all the documents on which both parties relied (as the Respondent had at one point been seeking to resist including in the bundle documents on which it understood the Claimant wished to rely but which it regarded as irrelevant). The Claimant at the hearing protested that she did not want all the documents that the Respondent had included in the bundle, so it is possible there had been a misunderstanding. However, taking a pragmatic approach, we were able to proceed effectively with the bundle as it was, despite its large size for a hearing of this sort (4,461 pages) and the fact that chronological ordering breaks down part way through. With assistance at times from the Respondent's representatives, I was able to help the Claimant to locate the pages to which she wished to refer. She personally continued to refer to electronic files that she had stored on her laptop and, with the assistance of the Respondent's representatives, I then located them in the bundle for her.

38. I emphasise, as I did at the end of the hearing, that none of the above is intended as a criticism of the Claimant who was clearly doing her best to present her case and, with assistance, appeared to me in the end to have presented it effectively.

Other preliminary matters / requests for written reasons

39. The Claimant by email of 24 November 2022 at 10.00 requested written reasons for the following matters. Not all of these matters are judicial

decisions and there is no requirement for me to give reasons for things that are not judicial decisions, but on this occasion I indicated I would give reasons for all the matters requested and they are as follows:-

1) The Respondent Witness Statements need to be signed and dated, please can you advise.

40. I explained to the Claimant at the hearing that witness statements do not need to be signed and dated in order to stand as evidence as long as the witness confirms the truth of them in the Tribunal, which all of the witnesses did.

2) We will meet at 12 noon today due to Employment Judge Stout's medical appointment.
3) Tomorrow is cancelled, could you give a reason and state if we are meeting on 3rd December for the replacement day. I need to know this for my schedule.

41. As I explained at the start of the hearing, when hearing allocations were done on 22 November 2022 there were more cases in the list than judges available to hear them. A decision was made by REJ Freer to prioritise this case because of its age, but even then there was only me available to hear it and I was not available for the whole of the original hearing dates. By sitting late on Day 2 (and, as it turned out, also on Days 3, 4 and 5) and allowing the parties to use for evidence and submissions a day previously allocated to Tribunal deliberations, we were able to ensure that the parties still had the hearing time they were expecting.

4) Can we clarify on proceedings: The Trial was delayed yesterday, starting around 10.30am, I was informed that the bundles were being organised. Around that time, the Respondent came into the Claimant room to ask questions about documents and if I had Counsel arriving tomorrow etc. Please confirm, is this permitted?

42. Day 1 is principally a Reading Day for the Tribunal. The parties are allowed to talk to each other outside the hearing room, including by visiting each other in their respective waiting rooms.

5) For clarity on procedure, is it permissible to discuss details of the case with Observers, including outside of the hearing?

43. As explained during the hearing, it is permissible to discuss details of the case with Observers, but not while in the middle of giving evidence.

6) A comment yesterday about the files, led me to understand that they may have been incorrectly placed on the Judges desk, as a hardship to me. I note that I had to carry the large files back to the Claimant desk in front of a large group on the Respondent side, which made me feel humiliated. Please can you comment.

44. The files were placed on my desk by the clerk believing them to be additional bundles that the Claimant had prepared for me. On questioning the parties, it turned out they were the Claimant's bundles and the Respondent's solicitor assisted in arranging the bundles into boxes for her. I am sorry if it upset the Claimant. Later in the hearing, I personally got up to move tables around to make space for her note-takers. These are the sorts of things that sometimes happen.

    7) Are Case Management Orders sent in writing to clarify what is expected to be complied with each day?

45. I explained to the Claimant that there was not time to do this during the hearing, but that all the written reasons she requested would be set out in this Liability Judgment.

    8) Evidence: eg. SOSR. I am not sure that I understood. It seemed to be suggested that the Claimant is encouraged to rely on evidence up until 19th August 2022 (resignation) whilst the Respondent may rely on evidence any time until 18th September 2020.

46. As explained to the Claimant at the hearing, as a matter of law her constructive unfair dismissal claim must be founded on things that happened prior to her tendering her resignation. It does not follow that things that happen after resignation are not relevant evidence, however, insofar as they cast light on what happened before.

47. Finally, in the course of the hearing the Claimant made one application for specific disclosure of documents relating to the Respondent's decision to advertise for, and then abandon, recruitment of someone to 'Job Share' the Claimant's role in October 2017. The Claimant wanted further documentation because she considered it might 'shed light' on the Respondent's thinking with regard to her role. I refused the application because I considered the disclosure sought would not be necessary for the fair disposal of the proceedings. In particular:-

    a. What happened around the October 2017 Job Share is not one of the matters the Claimant has listed in her Singular List of Issues as being part of her constructive unfair dismissal claim;
    b. The Claimant is seeking documents of which she had no knowledge at the time so the content of them cannot have prompted her resignation;
    c. October 2017 pre-dates the matters on which the Claimant does rely by six months and is nearly three years before she resigned, so it is highly unlikely that anything will be found of material relevance to the Claimant's decision to resign; and,
    d. There is already ample evidence about the Claimant's role and the Respondent's view of it.

The law

48. Normally, I set out the law and my conclusions at the end of a judgment, but in this case it is convenient to set out the law first because of the nature of the Claimant's Singular List of Issues. I then apply the legal principles below to the facts as I find them to be, addressing in the course of my findings of fact the matters that the Claimant relies on in the Singular List of Issues as founding her constructive dismissal claim.

Constructive unfair dismissal

49. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is taken to be dismissed by her employer if "the employee terminates the contract under which [she] is employed (with or without notice) in circumstances in which [she] is entitled to terminate it without notice by reason of the employer's conduct".

50. It is well established that: (i) conduct giving rise to a constructive dismissal must involve a fundamental breach of contract by the employer; (ii) the breach must be an effective cause of the employee's resignation; and (ii) the employee must not, by his or her conduct, have affirmed the contract before resigning.

51. Not every breach of contract is a fundamental breach: the conduct of the employer relied upon must be *"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"*: *Western Excavating (ECC) Ltd v Sharp* [1978] QB 761. The assessment of the employer's intention is an objective one, to be judged from the point of view of a reasonable person in the position of the claimant. The employer's actual (subjective) motive or intention is only relevant if *"it is something or it reflects something of which the innocent party was, or a reasonable person in his or her position would have been aware and throws light on the way the alleged repudiatory act would be viewed by such a reasonable person"*: *Tullett Prebon v BGC Brokers LLP and ors* [2011] EWCA Civ 131, [2011] IRLR 420 at para 24 per Maurice Kay LJ, following Etherton LJ in *Eminence Property Development Ltd v Heaney* [2010] EWCA Civ 1168, [2011] 2 All ER (Comm) 223, at para 63.

52. In this case, the Claimant claims breach of the implied term recognised in *Malik v Bank of Credit and Commerce International* [1998] AC 20 that the employer should not, without reasonable and proper cause, conduct itself in a way that is calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence that exists between an employee and her employer. Both limbs of that test are important: conduct which destroys trust and confidence is not in breach of contract if there is reasonable and proper cause. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract because the essence of the breach of the implied term is that it is (without justification) calculated or likely to destroy or seriously damage the relationship: see, for example,

per Browne-Wilkinson J in *Woods v WM Car Services (Peterborough) Ltd* [1981] ICR 666, 672A and *Morrow v Safeway Stores* [2002] IRLR 9.

53. In *Kaur v Leeds Teaching Hospital NHS Trust* [2018] EWCA Civ 978 [2019] ICR 1 the Court of Appeal held (at [55] per Underhill LJ, with whom Singh LJ agreed) that, in the normal case where an employee claims to have been constructively dismissed as a result of a breach of the implied term of trust and confidence 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 of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the implied term of mutual trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation because the final act revives the employee's right to resign in response to the prior breach.)
(5) Did the employee resign in response (or partly in response) to that breach?

54. In determining whether a course of conduct comprising several acts and omissions amounts to a breach of the implied term of trust and confidence, the approach in *Omilaju v Waltham Forest LBC* [2004] EWCA Civ 1493, [2005] ICR 481 is to be applied: see *Kaur* at [41]. The approach in *Omilaju* is that a breach of the implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so, and the 'final straw' may be relatively insignificant, but must not be utterly trivial. Where prior conduct has constituted a repudiatory breach, however, the claim will succeed provided that the employee resigns at least in part in response to that breach, even if their resignation is also partly prompted by a 'final straw' which is in itself utterly insignificant (provided always there has been no affirmation of the breach): *Williams v The Governing Body of Alderman Davie Church in Wales Primary School* (UKEAT/0108/19/LA) at [32]-[34] *per* Auerbach J.

55. If a fundamental breach is established, the next issue is whether the breach was an effective cause of the resignation, or to put it another way, whether the breach played a part in the dismissal. In *United First Partners Research v Carreras* [2018] EWCA Civ 323 the Court of Appeal said that where an employee has mixed reasons for resigning, the resignation would constitute a constructive dismissal if the repudiatory breach relied on was at least a substantial part of those reasons. It is not necessary, as a matter of law, that the employee should have told the employer that he is leaving because of the employer's repudiatory conduct: see *Weathersfield Ltd (t/a Van & Truck Rentals) v Sargent* [1999] ICR 425, at 431 per Pill LJ.

56. Although the Court of Appeal's decision in *Kaur* limits the role for the question of 'affirmation' in a constructive dismissal case, it remains the case that, in accordance with ordinary contractual principles, an employee who affirms the contract in response to a fundamental breach (or series of incidents amounting to a fundamental breach) loses the right to resign and claim unfair dismissal. The general principles set out by the EAT in *WE Cox Turner (International) Ltd v Crook* [1981] ICR 823 remain good law: "*Mere delay by itself (unaccompanied by any express or implied affirmation of the contract) does not constitute affirmation of the contract; but if it is prolonged may be evidence of an implied affirmation... Affirmation of the contract can be implied. Thus,* if *the innocent party calls on the guilty party for further performance of the contract, he will normally be taken to affirm the contract since his conduct is only consistent with the continued existence of the contractual obligation. Moreover, if the innocent party himself does acts which are only consistent with the continued existence of the contract, such acts will normally show affirmation of the contract."* However, in the employment context an employee will not necessarily affirm a contract by remaining in post and not resigning immediately. As the EAT stated in *Quigley v University of St Andrews* UKEATS/0025/05/RN at paragraph 37:

> "…in the case of an employment contract, every day that passes after the repudiatory conduct will involve, if the employee does not resign, him acting in a way that looks very much like him accepting that the contract is and is to be an ongoing one: if he carries on working and accepts his salary and any other benefits, it will get harder and harder for him to say, convincingly, that he actually regarded the employer as having repudiated and accepted the repudiation. The risk of his conduct being, as a matter of evidence, interpreted as affirmatory will get greater and greater. Thus, if he does stay on for a period after what he regards as repudiation has occurred he would be well advised to make it quite clear that that is how he regards the conduct and that he is staying on only under protest for some defined purpose such as to allow the employer a chance to put things right. It needs also, however, to be recognised that even that might not work if it goes on too long; it is all a matter of assessing the evidence."

57. Finally, if the employee establishes that the resignation was in law a dismissal, then it is for the employer to show a reason for the dismissal, which can feel like an artificial exercise in the context of a constructive dismissal case. The Court of Appeal addressed this problem in *Berriman v Delabole Slate Limited* [1985] ICR 546 where the Court said that, in the case of a constructive dismissal, the reason for the dismissal is the reason for the employer's breach of contract that caused the employee to resign. This is determined by analysis of the employer's reasons for so acting, not the employee's perception (*Wyeth v Salisbury NHS Foundation Trust UK* EAT/061/15 at [30] *per* Eady J). If the employer establishes a potentially fair reason, the Tribunal must then consider whether dismissal was fair in all the circumstances within s 98(4) ERA 1996.

Contributory fault

58. Section 122(2) ERA 1996 provides that:

> Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

59. Section 123(1) ERA 1996 provides that, subject to the provisions of that section (and sections 124, 124A and 126):

> the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

60. Section 123(6) further provides:

> Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

61. It should be noted that while s 123(6) requires an element of causation before a deduction can be made under that section, there is no such requirement in relation to a reduction of the basic award under s 122(2). Nor is there any such limitation on the Tribunal's 'just and equitable' discretion under s 123(1) as to what compensation, overall, is appropriate. Reductions can, therefore, be made for conduct which did not causally contribute to the dismissal, such as may be the case where misconduct occurring prior to the dismissal is discovered after dismissal: see *W Devis and Sons Ltd v Atkins* [1977] ICR 662 and cf *Soros v Davison* [1994] ICR 590. However, in cases where the conduct is known about prior to dismissal, the Tribunal must generally be satisfied that the conduct caused or contributed to the dismissal to some extent: see *Nelson v British Broadcasting Corporation* (No. 2) [1980] ICR 110 per Brandon LJ at p 122 and *Frith Accountants Ltd v Law* [2014] ICR 805 at [4].

62. Further, in every case, it must be established that there has been culpable or blameworthy conduct on the part of the employee: *Nelson v British Broadcasting Corporation* (No. 2) [1980] ICR 110 per Brandon LJ at pp 121-122. The Tribunal must be satisfied on the balance of probabilities that the employee's conduct was culpable or blameworthy in the sense that it was foolish or perverse or unreasonable in the circumstances (if not a breach of contract): *Frith Accountants v Law* [2014] IRLR 510. Conduct may be blameworthy even if it is inadvertent, although the nature and extent of the conduct will be relevant to the Tribunal's decision as to the degree of reduction that is just and equitable: *Sanha v Facilicom Cleaning Services Ltd* (UKEAT/0250/18/VP) at [37] per Auerbach J.

Polkey

63. If the Tribunal concludes that the dismissal was unfair but is satisfied that if a fair procedure had been followed (or that as a result of some subsequent event such as later misconduct or redundancies) the employee could or might have been fairly dismissed at some point, the Tribunal must determine when

that fair dismissal would have taken place or, alternatively, what was the percentage chance of a fair dismissal taking place at that point. This is the *Polkey* principle as explained in *Contract Bottling Ltd v Cave* [2015] ICR 46. The Tribunal must determine what would have happened if there had been no unlawfulness on a percentage chance (not balance of probabilities) basis: see *Shittu v South London and Maudsley NHS Foundation Trust* [2022] EAT 18, especially at [65]-[75] and at [80]-[102]. The burden is on the employer to satisfy the Tribunal of the chances of a future or hypothetical event happening: ibid at [55]. In a constructive unfair dismissal case, the Polkey exercise requires an assessment of the chance that the employee would have resigned (or their employment otherwise terminated) in circumstances that did not amount to constructive unfair dismissal (or an otherwise unlawful dismissal): cf ibid at [78]-[79].

The facts and my conclusions

64. I have considered all the oral evidence and the documentary evidence in the bundle and other documents to which I was referred. The facts that I have found to be material to my conclusions are as follows. If I do not mention a particular fact in this judgment, it does not mean I have not taken it into account. In particular, I have not included in my judgment all of the matters that the Claimant included in her Singular List of Issues as it became apparent in the course of the hearing that not all of those matters are core to the Claimant's case. I have, however, taken them into account in the same way as I have taken account of other facts that ultimately have not proved to be material to the decision I have to make. All my findings of fact are made on the balance of probabilities.

65. As noted above, I also deal as part of my factual findings with my conclusions on the legal issues relevant to the Claimant's unfair constructive dismissal claim. Although these conclusions are for convenience included within the findings of fact, I have reached them only at the end of the process, having considered all the evidence. My overall conclusion is then set out at the end of the judgment.

Background

66. The Claimant was employed by the Respondent as an Executive Assistant (EA) from 28 July 2015. She began on a temporary contract having been supplied by an agency, and the Respondent at the start of these proceedings initially disputed that she was an 'employee' for the purposes of the ERA 1996. However, by email of 24 February 2022, the Respondent conceded (by email of 24 February 2022 that she was from the start of her employment an employee for the purposes of the claim raised in these proceedings.

67. The Claimant's previous employment experience was 20 years' in temporary roles as a personal assistant and immediately before joining the Respondent she was unemployed. She also used to be a dancer.

68. The Claimant's contract of employment provided that she was employed as EA to the Director, The Careers Group, University of London. The Director was Bob Gilworth. The Claimant was paid an hourly rate and her contracted hours were 35 hours per week and her job was Grade 6, Spinal Point 25. During her employment she received annual increments in line with all University staff.

69. The University is a federation of 17 independent member institutions and 3 academic bodies, consisting of 20 self-governing member institutions, all of which are separate legal entities. The University's Careers Group (TCG) provides careers services to the University and a number of its member institutions depending on the individual service agreements in place between the University and each member institution. Whilst the University works with member institutions to provide certain services, each member institution operates on an autonomous independent basis and the University has no control over other member institutions' operations, finance, or recruitment. The University has several employees who are based in member institutions, and provide careers services solely for that member institution, but they remain employed by the University. This arrangement is only in place in circumstances where the relevant member institution wants, and has funding to support, resource from the University. It is a commercial arrangement.

70. The Group Strategic Leadership Team (GSLT) for the Careers Group comprised at the time the Claimant's employment terminated: Philippa Hewett (SOAS), Abi Gaston/Lindsay Shirah (Queen Mary, University of London), Karen Barnard (UCL), Katy Gordon (Goldsmiths), Kate Daubney (King's College London, KCL), Vanessa Freeman (City, mat cover), Caroline Tolond (Pearson) (Head of Education Consultancy); Senior Managers/GSLT members based in the Central Team: Magdalen Attwater (Strategic Projects Manager) and David Winter (Head of Research and Organisational Development) and Kate Dodd (Interim Director). Until July 2020, Mr Gilworth was the Director and member of GSLT and, from October 2020 (after the Claimant's employment terminated), Ms Daubney was the Director.

71. The Claimant has been very concerned during the grievance process and this hearing to maintain that her claim is 'against GSLT'. She pointed to apparent acknowledgment of that by Mr Cain to whom she raised her grievance following resignation (2521), but that email is just him attempting to identify who the Claimant has raised a grievance about and thus who her grievance needs to be sent to. I appreciate that the Claimant feels that GSLT as a Committee ought to have recognised what the Claimant describes as her *"distress"* about her job over her last three years of employment, and taken action about it. However, as a matter of law her claim of unfair constructive dismissal is, of necessity, against the Respondent university entity as her 'employer' as a claim of unfair dismissal can under Part X ERA 1996 only be against her employer. Further, as Ms Daubney explained in evidence (and I accept), GSLT does not as a committee have responsibility for the line management of any employees. Some members of GSLT are not even employed by the Respondent university but by the member institutions.

Moreover, while GSLT may be consulted if a restructure affecting TCG employees is proposed, it remains the case that the decision-makers in relation to individual employees, their job descriptions and contractual arrangements are line managers. Line managers in turn can seek advice from the Respondent's Human Resources (HR) department. The Respondent institution is responsible in law for all the acts of its employees and agents (provided those acts are carried out in the course of employment – as to which no issue arises in these proceedings).

The Claimant's role and working relationship with Mr Gilworth

72. The Claimant was based in the Central University at Senate House, Bloomsbury. The Claimant had her own office and Mr Gilworth's office was along the corridor. The Claimant believes she is generally a very conscientious person.

73. At the start of her employment the Claimant had an informal and friendly relationship with Mr Gilworth and, so far as the Claimant was concerned at the time, that continued until Mr Gilworth left in July 2020. They were, as the Claimant put it in evidence, so far as she was concerned, *"two peas in a pod"*.

74. The Claimant's role at the outset of employment, as she saw it, involved her producing Mr Gilworth's itineraries, scheduling meetings, gate-keeping the telephone, printing papers for the Association of Graduate Careers Advisory Services (AGCAS) Board, organising Mr Gilworth's lunch, cups of tea and working lunches; booking cars, processing expenses, meeting and greeting visitors and booking trains from Mr Gilworth's preferred station. The Claimant considers that these duties were in line with the University of Central London (UCL) MI Grade 6 profile for an EA/PA. UCL is a different organisation for which the Respondent has no responsibility and which was not responsible for setting terms and conditions of employment for the Claimant, but the Claimant regards UCL's approach as setting an 'industry norm'. This is not accepted by the Respondent and, as I shall explain, the content of the UCL profile does not assist me in this case in determining what her job was, or its terms and conditions. In fact, it is agreed between the parties that there was a Job Description in place for the predecessor in the Claimant's role when she arrived. I have not been shown that Job Description, but the Claimant used that Job Description as a basis for drafting her own Job Description in 2018 in circumstances which I describe later.

75. The Claimant was included in the GSLT (Heads of College Careers Services) email group and was supposed to attend all GSLT Exec Board meetings in order to take notes of the meeting, including in relation to some confidential matters. She was not, however, a member of GSLT.

76. It is of relevance to matters I come to later to note that I accept the Claimant's evidence that Mr Gilworth and other members of the GSLT sometimes used the Claimant's personal gmail address for work purposes.

77. The Claimant had full delegate access to each of Bob Gilworth's email folders, including Inbox, Outbox, Sent Items, Deleted Items, Drafts and a large number of Archive folders. She did not, however, have access to all emails. Emails marked "Confidential" or "private" were subject to an Outlook 'filter' and went to a separate confidential folder that the Claimant could not see (1489). The Claimant felt, however, that she was 'much trusted and depended on by Mr Gilworth and his family'.

78. On 21 January 2016 the Claimant's temporary contract was extended as Mr Gilworth was happy with her work.

79. In December 2016 the Claimant was awarded a bonus (referred to at the Respondent as an 'honorarium') of around £100. Temporary employees were not usually eligible for an honorarium, but Mr Gilworth arranged it for the Claimant with Human Resources (HR). The Claimant has sought during the hearing to place weight on this possible 'breach' of the Respondent's rules by Mr Gilworth. However, it does not assist her claim: rather, it is an example of Mr Gilworth being a supportive and generous line manager and seeking to demonstrate his appreciation of the Claimant's work by arranging additional financial reward where he could.

The Claimant's caring responsibilities

80. From August 2017 the Claimant had caring responsibilities for her elderly parents, especially her father. She worked for about six weeks remotely at her parents' house.

81. On her return to the office, the Claimant alleges that Mr Gilworth 'intensely embraced' her and she has also made further allegations about Mr Gilworth's conduct towards her thereafter. The Claimant was anxious that I should take these allegations into account, although they are not in her Singular List of Issues and are not relied on by her as part of her reasons for resigning. The Claimant was very clear when she first raised her grievance on 18 September 2020 that the bullying and harassment that she alleges the Respondent subjected her to started *after* Mr Gilworth left in July 2020. She is not alleging his conduct amounted to harassment. After careful consideration, I have decided not to give any weight to these allegations. First, because as they did not form any part of her reasons for resigning, they are not relevant to the issues I have to decide. Secondly, because it would not be fair to make any findings or take any view on the truth of these allegations in the absence of evidence from Mr Gilworth. The Respondent has chosen not to call him as a witness, but if these allegations had been included by the Claimant in the Singular List of Issues and the Respondent had still not called him as a witness, I would have made a witness order requiring him to attend so he could answer the allegations. It is not fair to make any findings about them without hearing evidence from him. I do, however, make one observation about what the Claimant alleges happened on her return to the office, and it is this: although great care should be taken to avoid unwanted physical contact in an office environment, many friendly people who have worked

together for a time will give each other a hug if the occasion seems appropriate, and a return to the office after a period of absence during a difficult time is in principle an appropriate occasion – provided, of course, the other person has not made clear their objection to physical contact.

82. The Claimant then in September 2017 made a verbal request to Mr Gilworth for reduced hours due to her caring responsibilities.

83. The Claimant says that Mr Gilworth responded by seeking to recruit someone to a Job Share arrangement, but that this was abandoned without consultation with the Claimant and she felt under pressure to return to work full time. The documents in the bundle relating to this (1315-1328) show that what was proposed was a temporary three-month role as Assistant to the Director's Office, working 5 days per week part-time, commencing in October 2017 *"to cover the current EA who is working reduced hours and remotely for the current term"* (1322). The job was graded as a Level 4 (1318) by reference to the Respondent's Korn Ferry Hay Job Evaluation Scheme (JES) (which is agreed with the Respondent's recognised trades unions). Some candidates applied for the role and the Claimant has referred to and relied on feedback that was given to those candidates (1327) as indicating that her own role did not include some of the things that the Respondent in these proceedings says it did. However, this feedback cannot be relied on for this purpose as the Claimant has not shown that the job for which those candidates were interviewed was the same as hers. The documentary evidence indicates that it was not her role, but a different role that was graded two grades below hers.

84. This Assistant role was not proceeded with. The Claimant now complains about this in general terms, although she did not include it in her Singular List of Issues as one of the reasons why she resigned, so I do not need to make any further findings about it. The same goes for the Claimant's allegation that in 2017 the GSLT decided to change the structure of the TCG Central Team and a number of colleagues received promotion or Job Description changes. I cannot in any event see what bearing these events of 2017 had on the Claimant's decision to resign in August 2020. They are clearly not matters in themselves that seriously damaged her working relationship with the Respondent or even made a material contribution to her resignation as if they were, she would not have continued in employment for a further three years, and would at least have included them in her Singular List of Issues.

85. What did happen was that in early 2018 it was agreed that the Claimant could reduce her working hours to four days per week (i.e. a 0.8 Full-Time Equivalent (FTE) contract). In substance, this was the granting by the Respondent of an informal flexible working request by the Claimant, but neither party described it in these terms at the time.

86. The Claimant felt that after she had disclosed her caring responsibilities to the Respondent, she received unwanted casual questions about her parents' health and also about changing her job. I have considered the Claimant's evidence about these incidents insofar as they are mentioned in her Singular List of Issues and witness statement. In relation to each of them, even if the

Claimant's account is correct, they all appear to be perfectly ordinary enquiries by colleagues about the Claimant's welfare and home life of the sort that is reasonably to be expected in the workplace. They are not conduct that could reasonably be regarded as even contributing to a breach of the implied term of trust and confidence.

The Respondent's flexible working policy

87. The Claimant was not consciously aware at this point (or at any point until shortly prior to her resignation) that there was a statutory right to make a flexible working request, or that the Respondent had a formal policy on handling flexible working requests, although the policy is referred to in the Terms and Conditions that were appended to the permanent contract she agrees she was issued with in October 2018 so she had in fact been notified of its existence. The policy is in the bundle at 1182. However, it was not well publicised within the Respondent. Nobody referred to it at any point prior to the Claimant's resignation despite her various requests for flexible working and Ms Oliver (who advised Mr Gilworth in relation to what was in substance a flexible working request the Claimant made in 2019) had not even seen it, despite having worked in the Respondent's HR department for 2.5 years, including latterly as a Senior HR Business Partner. I observe that it is wholly unsatisfactory that members of the Respondent's HR Department have so little familiarity with the Respondent's policies. However, the essence of the policy simply reflects the reality of the legal position, i.e. that an informal request can be made in any form (oral or written) to the line manager, while a formal request is also made to the line manager and may be made at any time (even if an informal request has been refused), but in order to count as a formal request for the purposes of s 80F of the ERA 1996 a request must (among other things) fulfil the requirements of s 80F(2), i.e. state that it is a statutory request for flexible working (contract variation), specify the change applied for and the date on which it is proposed the change should become effective and explain what effect, if any, the employee thinks making the change applied for would have on his employer and how, in the employee's opinion, any such effect might be dealt with. The ACAS Guidance, available online, also makes this clear.

88. The Claimant complains that no one pointed her to this policy until after she had resigned, and this aspect of her grievance was upheld. I do not, however, consider that the failure to draw her attention to the policy could reasonably be regarded as conduct calculated or likely to destroy or seriously damage the relationship between employer and employee. There is no evidence that the failure was deliberate: indeed, I find it to have been inadvertent as a result of the lack of publicity for the policy within the Respondent, despite the reference to in at least the Claimant's contract. A further reason, I infer, why the policy was not drawn to her attention in 2019 is because she never 'pushed the point' regarding her request for reduced hours: as I find below, having not got a response within a timeframe she was happy with, the Claimant came up with her own solution of using her annual leave to achieve a reduction in hours. Had she pressed on in 2019 and complained to HR, I

see no reason why a point would not have been reached where she was referred to the policy, but that did not happen. Likewise, in 2020, what happened when Ms Dodd refused the Claimant's informal request for reduced hours on 18 August 2020 was that she resigned, rather than first complaining to HR. As a result, it was only in her next conversation with Ms Dodd about withdrawing her resignation that she then learned about the Flexible Working Policy. I also do not consider that not having the policy could reasonably have been regarded by the Claimant as a detriment as under the policy informal requests fall to be dealt with in essentially the way the Respondent did deal with the Claimant's requests (albeit that the 2019 request ought to have been dealt with more quickly), and if the Claimant had made a formal complaint rather than coming up with her own solution in 2019 or resigning in 2020 that would in my judgment have achieved much the same effect as a formal request under the policy (or would at least have resulted in her being given the policy). In short, I do not consider that the Claimant could reasonably regard the Respondent's failure to draw her attention to the flexible working policy earlier as contributing to (or constituting) a breach of the implied term of trust and confidence.

Job Description and permanent role 2018

89. In February 2018 the Claimant prepared a job description for herself (1352). This was in the context of it having been proposed that she should transfer to a permanent contract as she had by that time been on a temporary contract for nearly three years. The job description (JD) the Claimant drafted was based on what she described in her witness statement (paragraph 1.16) as *"The Job Description from my predecessor"*. It is unclear to me why the Claimant considers that the JD for her predecessor in post was not simply 'her' JD from the outset of her role as would normally be the case as JDs are normally generic rather than person-specific, but I do not need to resolve that point in order to determine the Claimant's claim in these proceedings. The JD the Claimant drafted described her job purpose as:

> "To provide high-level executive support to the Director of the Careers Group in carrying out responsibilities as Director of a UoL Department, line managing nine Heads of Service located across London and in expert roles with associated external Boards including the role of AGCAS President. The EA will help the Director to make efficient use of their time as demands increase for their expertise at national and international public forums, requiring a proficient and responsible individual to offer a dedicated professional point of contact. The role includes the planning and servicing of SMT Committee meetings and regular organisation of large scale Events."

90. And it included the following specific items by way of "Job Content":-

> *"4. Organise all UK/International travel, visits from international delegations, speaker schedules, conference bookings, producing travel itineraries and programmes"*;
>
> *"10. Organise staff conferences, events and celebrations, including the Summer Party, SMT Christmas luncheon, TCG All Staff Conference and TCG Manager's Forum and*

partners meetings. Research venues and costs, arrange invitations and RSVPs, organise and distribute materials, arrange AV requirements, arrange refreshments and entertainment, organise gifts etc.";

"12. Supporting student events, such as entrepreneurial and engagement events in collaboration with TCG institutions and UoLs's Development team."

"13. … Gather HoS achievements for Annual Services Statement, proofread TCG Yearbook and organise mailshot"

"14. Financial Administration of all Director's activities and events, including processing Director's expenses and speaker fee payments, track and monitor RBS credit card transactions, raise POs and organise payment of Event money prizes using BusinessWorld."

"22. Any other duties consistent with both the grade and scope of the post"

"23. Any other duties reasonably required of the postholder by the reporting manager."

91. In accordance with the Respondent's usual procedure, Mr Gilworth as the Claimant's line manager referred her draft JD to HR for it to be graded by reference to the JES. On 26 April 2018 (1373), HR apologised for the delay in getting back to Mr Gilworth and confirmed that having *"made a few further tweaks"* to the Claimant's draft, it had been graded as a Level 6 *"on the understanding that [the Claimant] has sole responsibility for organising logistics for the large scale events (eg. TCG all staff conference)"*. Mr Gilworth was asked to clarify if that was the case and if he was happy with the JD. He replied (1372): *"Yes All Staff Conferences for sure, plus other events involving high profile partners and visitors. Gradventure and a joint event in June, with the Institute of Student Employers would be good examples. Happy with the JD as it is now."* Mr Gilworth conveyed orally to the Claimant that HR had graded her role as Grade 6 on the basis that she took sole responsibility for organising events. The grading, job description and permanent appointment for the Claimant were then approved by a more senior member of the HR department (1383). At that point, it was envisaged that the Claimant would transfer to a permanent contract on 1 June 2018, but in the end it was not until October 2018 that this was arranged. There does not appear to have been any reason for this delay other than general delay in the handling of matters by the Respondent's HR department.

92. The Claimant's case is that her role was never evaluated because she was not 'consulted' about the role grading. However, this is a misunderstanding of the Respondent's grading process, which appears to me to be in line with normal practice. It is done by reference to the JD against a scoring system. It is plain from the emails in the bundle that the grading happened. The Claimant did not need to be 'consulted' on this to make it valid. The grading process is relatively technical and is not normally a matter for agreement with the employee concerned. The Claimant was in any event involved in the process because she produced the draft JD and that was actually accepted and agreed by Mr Gilworth and HR without any substantive changes. The Claimant knew it had been accepted and agreed because on her own evidence Mr Gilworth communicated that to her when he told her that HR had graded it as a 6 on the basis that she would take sole responsibility for

organising events. The Claimant did not dissent from this and so there was at this point, objectively speaking, agreement between the parties as to the content of the Claimant's JD and its grade, an agreement encapsulated in writing in the JD she drafted.

93. The Claimant's case is that as she produced this draft JD before she had taken on the GradVenture project, and some other tasks and projects I deal with below, these were not, and could not, have fallen within the scope of the JD she drafted in February 2018. Even if the Claimant were right about the chronology in this respect (which, for reasons I set out below, I find she is not), it is a misconception to suggest that any activity started subsequent to the drafting of a JD was not included in that original JD. A JD is not normally intended to specify every task that someone may carry out in a job. It is intended to be generic. The Respondent's JDs are no exception. Some of the job activities, or categories of job activities, are specified and then (as is made explicit in the Claimant's draft JD) any other duties consistent with both the grade and scope of the post, as well as any other duties reasonably required by the postholder's line manager, also fall within the scope of the JD. The question of what a job comprises from a contractual perspective must be determined objectively in the same way as any other terms of the contract between the parties. Even if, as the Claimant maintains now, she did not believe that this JD was relevant to her after the point at which she drafted it in February 2018, objectively speaking this was what the 'reasonable bystander' would regard as the Claimant's job content, agreed between the parties through the process set out above.

94. The Claimant eventually commenced formally on a permanent contract from 15 October 2018 (945). Her job title was "Part-Time Executive Assistant (Grade Level 06)" and her salary was £25,278.20 (pro rata from the FTE of £31,599). Her hours of work were stated to be 28 hours per week, 9.30am-3.30pm Monday to Thursday and 9am-3.30pm on Friday. Objectively, the JD the Claimant had drafted formed the basis of this new permanent contract.

95. Regarding confidential information, the contract provided:

Confidentiality

The part of the central University in which you will be employed may handle material of a confidential nature (**"Confidential Material"**). You therefore agree that you shall not (except in the proper course of your duties), either during your employment or at any time after its termination (howsoever arising) use or disclose to any person, company or other organisation whatsoever any Confidential Material. Confidential Material shall include but not be limited to all confidential information relating to the affairs, management, finances, personnel or administration of the central University or any of its contracts or affiliates. Failure to comply with this term may render you subject to disciplinary action up to and including dismissal.

96. The contract incorporated by reference the Terms and Conditions of Employment for Clerical, Technical and Support Staff (949). So far as relevant to these proceedings, these Terms and Conditions make reference (as already noted) to the Respondent's flexible working policy (955). They also contain a 'garden leave' clause (clause 12.3) which permits the Respondent to require an employee to cease performing his/her job for such

period or periods of employment as the Respondent shall determine, and requiring the employee to *"immediately"* deliver up any property of the Respondent in his or her control. Employees are required to conform to the Respondent's Financial Regulations and Procedures (clause 13.1). Employees must be given access to the Respondent's IT systems, which must be used in accordance with the Respondent's IT Policies and Codes of Conducts (including the JANET policy: 960), breach of any of which may lead to disciplinary action up to and including dismissal (clause 14). The JES was referred to and the process for requesting a review of grade (clause 20). Likewise, the Grievance, Disciplinary and Dismissal Procedures were referred to, and stated to be available on the Respondent's website (clause 21).

97. It is convenient to record here that in July 2018 Ms Attwater (who before commencing employment with the Respondent was Head of Careers at one of the federation institutions, St Mary's University of London) replaced Laura MacKenzie (with whom the Claimant felt she got on well) as Strategic Projects Manager and GSLT member. Ms Attwater reported to Mr Gilworth and also gave work to the Claimant. Ms Attwater was hired at Grade 8 and had a 6-month probationary period at the end of which it was agreed that if the role worked it would be re-graded as a Grade 9. Two years later, this still had not happened and Ms Attwater was still chasing this as at 2 September 2020 (2403) and it eventually happened on 10 September 2020. I observe that the delay in dealing with Ms Attwater's re-grading is another example of unexplained delay by the Respondent's line managers and HR. However, it's relevance to this case is as follows: as the Claimant was aware by the time her employment terminated of the lengthy delay that had happened in Ms Attwater's case, she ought reasonably to have realised that, insofar as there was a delay in dealing with her own role regrading request in June 2020, she was not being singled out. In my judgment, the period of a few months' delay in the Claimant's case was not such as could reasonably have been regarded by her as contributing to a breach of the implied term of trust and confidence. I return to this point later.

<u>Project management responsibilities 2018 onwards</u>

98. The Claimant's case is that, between around March 2018 and 18 September 2020, the Respondent imposed project management responsibilities on her, which fell outside of the role for which she thought she was employed, and for which she felt she had no experience, skills or training. Although some of the incidents relied on in relation to this part of the Claimant's case happened later in the chronology, I try to deal with all aspects of this part of the Claimant's case in this section of the judgment.

Yearbook / Annual Review

99. Between March 2018 and September 2018 the Claimant says that she had sole responsibility for production of The Careers Group Yearbook (2274), that

she *"researched and wrote all copy including Highlights (p9), National and International representation, Awards etc (p40-p43) working with Heads of Careers for their areas and central team unit copy. The job involved research, editing, proofreading, picture sourcing/copyright, design with external company BML-Creative)*". The project took her 7 months (4 months full time and 3 months part time). She said that: *"In writing the sections, I researched each individual fact, each member of staff who I could ask for information, a photo or for statistics. I didn't like trying to get people to do things, like I was a manager"*. She wasted the first 6 weeks of her time because she did not know the Respondent had its own branding rules. She felt that this task was beyond the scope of her skills and experience and job description.

100. I accept most, but not all, of the Claimant's evidence about the work she did on the 2017/2018 Yearbook. I do not accept that she wrote 'all' the copy for it. Apart from the specific pages that she identifies herself as having written, most of the book comprises text that could only have been supplied by those responsible for that area (eg Mr Gilworth, the Education Consultancy and the various individual College Careers' Services) and Ms Daubney gave evidence that she recognised in the text for those sections hallmarks of the style of the individuals responsible. To the extent that the Claimant adopted an approach to production of the Yearbook of writing material herself rather than asking others to supply it, this appears to be one of those respects in which the Claimant tended to what is sometimes called 'silo working' (i.e. working in her own bubble without liaising sufficiently with colleagues). Asking people to provide text for a Yearbook cannot reasonably be described as a 'management' task – it is an administrative process of collation in order to produce an annual document for the department. To the extent that the Claimant spent unnecessary time working with an external company (or on her own) to produce a book because she was unaware the Respondent had its own branding rules, this is unfortunate. The Claimant may wish now to blame this on a lack of direction by Mr Gilworth, but in my judgment any reasonable employee in the Claimant's position would have asked what the Respondent's standard process was for producing such documents before commencing on the task. Even a recent recruit would reasonably have known that a university has its own branding and style for documents, and the Claimant was not a new recruit. It was clear from Ms Daubney's evidence that the Respondent has a Communications / Marketing Team that is responsible for working with departments to type-set and produce such documents. If the Claimant took this work upon herself rather than liaising with that team, it was again a product of 'silo working' on her part. While I accept her evidence that it took her 7 months to produce what is only a 57-page document with a lot of pictures in it, it seems to me that it is reasonable for Ms Daubney to regard that as being an *"awful long time"*.

101. Ultimately, despite the difficulties, the Yearbook appears to be a wholly professional document and so far as I can see no one at the Respondent has ever criticised the final product. If, and to the extent that the Claimant's approach to producing the Yearbook is indicative that she was struggling in the role, the problem was the Respondent's, not the Claimant's. As long as the Respondent was willing to tolerate her approaching the job in the way

that she did (and it was – it is not the Respondent's case that it was even considering performance management processes in relation to her), then there was nothing wrong with that state of affairs. This is a point I return to below.

102. Finally, I find that the work the Claimant did on the Yearbook fell squarely within the terms of her JD (as quoted in full earlier in this judgment), specifically point 13 ("*Gather HoS achievements for Annual Services Statement, proofread TCG Yearbook"*) together with points 22 and 23 (insofar as the Claimant's activities went beyond gathering achievements and proofreading). That all of the Claimant's activities on the Yearbook fell within the scope of the JD and were regarded by the parties as reasonable at the time is in my judgment clear from the fact that at the time there was no complaint by the Claimant about being asked to do this work and, to the extent that it meant she was unable to fulfil other parts of her role for a long period, the Respondent accepted that.

103. Around May 2019 in a Central Team meeting the Claimant was asked in front of everyone whether she would be doing the Annual Review again (2119) (Annual Review being the name for what was previously called the Yearbook). She was reluctant, so Mr Gilworth took it out of the meeting and (in her view) again 'imposed' this on her. However, as she had done this work previously, it still formed part of her job and cannot reasonably have come as a surprise to her. Again, whatever the Claimant's private feelings, she made no complaint in writing at the time, but got on with the job and, at the time of her resignation referred with pride to her work on the Annual Review as a 'legacy project'.

104. There is nothing about what happened with the Annual Review that is capable of constituting or contributing to a breach of the implied term.

Global Programme Project

105. Between July and November 2018 the Claimant worked on a 'Global Programme Project', a schedule of world travel to a number of Australian Universities including a complex Malaysian tour for Mr Gilworth and his wife. The Claimant found this stressful as Mr Gilworth's wife had a nut allergy which required her to make special arrangements. This was, however, also squarely within her JD: see point 4. There is nothing about this project that in my judgment amounted or contributed to a breach of the implied term.

AGCAS President

106. In August 2018 Mr Gilworth took on the additional two-year post as President of the Association of Graduate Careers Advisory Services (AGCAS) and the Claimant considered that her workload increased accordingly. I note, however, that the AGCAS role was specifically anticipated in the Claimant's JD, being referenced in the 'Purpose' section and thus also fell within the

scope of her existing job. There is nothing about this responsibility that caused or contributed to a breach of the implied term.

GradVenture

107. GradVenture was an entrepreneurship competition that TCG ran for the first time in 2017/2018, with the final taking place on 6 February 2018 (1447). It is referred to in the 2017/2018 Yearbook as a *"successful pilot"* (2282). It ran for the second time beginning late in the autumn term of 2019, with the final due to take place in spring 2020, but it was postponed due to the Covid pandemic and at the time the 2019/20 Annual Review was published the final was expected to take place online in September 2020 (see the 2019/20 Annual Review at 2134).

108. The Claimant's case in these proceedings has been that when this project was run for the second time it was 'imposed' on her by Mr Gilworth in around December 2018 when he asked the Claimant to see Ms Obeng (Enterprise Manager) at Queen Mary who 'handed her' GradVenture. The Claimant says she was distressed by this and did not feel it was part of her job. She considered it was previously part of Ms Obeng's job who is more senior, management level and paid considerably more than the Claimant.

109. The Claimant was not given a project brief or a project budget, but the expenditure was ultimately £28k-£33k. She felt ill-experienced and ill-qualified to do this work. During the project, she managed around 65 students/graduates in teams from the Member Institutions. In 2019 the Claimant was asked by Mr Gilworth to make a short film on GradVenture to present to the All Staff meeting. The Claimant had to find an editor to work on it free of charge which she found difficult.

110. Although it has been the Claimant's case in these proceedings that GradVenture was first 'imposed' on her in December 2018, she has also disclosed and relied on 'Timeline' documents she produced after taking on the role of co-ordinating GradVenture (drafts of which appear at 1444 and 2265). She prepared this Timeline at the end of October 2019 (as is apparent from her email at 3787-3788) as part of preparations for the second GradVenture, which took place in 2019/20. It is the Claimant's Timeline documents that make clear that the final of the first GradVenture took place on 6 February 2018 (1447). These documents both contain sections headed "2018 committee members and roles" in which the Claimant has made notes to the effect that she took over from Ms Obeng during the course of the 2017/2018 event, once the project had reached what she describes as the 'VentureHack point' (see 2265) which as a preliminary round took place some time before the final in February 2018. When setting out a timeline for the 2019/20 GradVenture the Claimant notes (1445): *"I was not involved in the VentureHack element last year. Check with Mona – How were applications made and processed?"*.

111. It therefore appears to me that the Claimant had taken over the organisation of GradVenture from Ms Obeng in 2017/2018 (i.e. at the end of 2017 rather than in December 2018 as she maintained in these proceedings and thus that, contrary to her repeated assertions during the hearing, she had been involved in GradVenture before she drafted her JD). That this is the correct chronology is also consistent with Mr Gilworth's reference in his email of April 2018 to HR (1372) when discussing the grading of her JD that one of the projects that she was 'solely responsible' for organising was GradVenture. On the Claimant's case, she was not given that responsibility until December 2018, but if she is right about that, then Mr Gilworth's email in April 2018 is inexplicable. Mr Gilworth's email here must reflect the Claimant's involvement with GradVenture in 2017/18 as recorded in her own documents.

112. In any event, whatever the timing of the Claimant taking over this project, the issue for me is the same: did it form part of her job or not? In my judgment, it clearly did. Supporting such entrepreneurial events is specifically covered by item 12 of the JD; managing the finances for such events is specifically covered by item 14; and, insofar as the Claimant's role in relation to GradVenture exceeded 'supporting' such events, in my judgment it fell within items 22 and 23 of the JD. That sole responsibility for organising such a large-scale event was regarded as within the scope of a Grade 6 role by the Respondent is clear from what HR said (and what was conveyed to her) when her JD was graded in April 2018. This is so even though initially GradVenture may have been organised by a more senior person and a wider committee. Judging by the Claimant's own documents (illuminated by Ms Daubney's and Ms Attwater's evidence) the committee's role even in the first year was more one of liaison and consultation than of fulfilling any particular administrative tasks. That GradVenture was reasonably regarded by both parties as falling within the scope of the Claimant's role and a reasonable task to require her to do is also demonstrated by the fact that the Claimant did not at any point during her employment make any form of written complaint about being asked to do GradVenture. Indeed, quite the contrary, whatever her personal reservations, the objective evidence suggests that she threw herself into organising it with verve and enthusiasm and was proud of the work that she had done on it. She even added to her email footer at times that she was the 'GradVenture Co-ordinator' as well as EA to the Director. This was not specifically authorised by the Respondent and she should not have done that without asking as no one had changed her job title and Ms Daubney was clear that it was not up to her to do that unilaterally. I understand that she did it because in her mind GradVenture was not part of 'her' EA role, but in my judgment it also reflects her willingness to take 'ownership' of that project and thus confirms the reasonableness (objectively) of the Respondent asking her to do it.

113. Finally, I observe that it seems to be agreed that the Claimant did a good job of organising GradVenture prior to mid 2020. In October 2019 Mr Gilworth described her efforts in relation to the 2017/18 GradVenture as *"heroic"* (3786) and specifically praised her work on that when she applied (successfully) for a Self-Honorarium in December 2019 off the back of this and other projects (see further below).

114. I also record here, however, that the Claimant earlier in May 2019 had felt that she had been 'overlooked' by Mr Gilworth when the Vice Chancellor praised GradVenture and asked who had delivered it, and Mr Gilworth arranged a meeting with the Vice Chancellor excluding the Claimant. If this incident happened factually, in my judgment it is an example of the Claimant being over-sensitive, similar to other such incidents I identify later in this judgment. Overall, I do not consider that anything happened in relation to GradVenture that the Claimant could reasonably have regarded as causing or contributing to a breach of the implied term. It was a challenging project, that was part of the Claimant's job, which she did well and for which she was recognised by the Respondent through the Self-Honorarium.

Directors Office Budget Re-Forecast

115. The Claimant complains that between October and December 2019 she started to receive *"aggressive"* emails from colleagues in finance making *"demands for financial information as though I was the budget holder"*. She said she was distressed by these, but Mr Gilworth said nothing about the emails although he had seen them come in. On 20 November, her evidence is that she *"buckled under pressure"* and started trying to deliver the budget reforecast for the organisation, as a result of which she felt that she did not do 'core' EA duties for one to two months. The Claimant's email of 20 November 2019 (1656) sets out the Claimant's understanding that Ms Attwater has required her to *"manage the CAZ Directors Office budget, so that I track all expense and meet the budget, to keep within budget and that I will be able to run reports"*. She explained that she considered this to be an *"additional responsibility and pressure"*, but that she was *"willing to change [her] role to fit but wish for transparency"*. She asked for training on this; Ms Attwater directed her to a colleague in Finance and the Claimant's email indicates that she was going to meet with that individual.

116. Ms Attwater did not regard what she was asking the Claimant to do as being either out of the ordinary or outside her role, and I agree. It fell squarely within point 14 of the JD. In any event, even if it did not, the Claimant's email of 20 November 2019 makes it clear that she is willing, despite her misgivings, to take on the work, and there is no dispute that she did subsequently receive assistance from a Finance Colleague with producing the requested reports. Nothing about this issue could reasonably be regarded as causing or contributing to a breach of the implied term.

Other tasks

117. Around April 2019 the Claimant says another project was 'imposed' on her to migrate the Director's Office and Central Team's digital files to a shared system SharePoint. She found this technically difficult and it took her almost

12 months to complete, but in my judgment this sort of administrative task was very much within her JD (points 22 and 23 if not elsewhere).

118. In mid 2019 the Claimant felt that Ms Attwater 'overloaded' her with work on the institutional subscriptions so that she could not time off in lieu (TOIL) that the Claimant says Ms Attwater knew she had planned to take to complete her father's application for attendance allowance. When questioned by the Claimant about this in oral evidence, Ms Attwater accepted that she asked the Claimant to work on subscriptions, but emphasised that the Claimant's working hours were a matter for her to agree with her line manager, Mr Gilworth. Earlier in the year (see eg 1485, 1505) the Claimant had copied Ms Attwater in on correspondence where she informed Mr Gilworth and HR of arrangements she was making for taking TOIL. In the circumstances, I find that any pressure the Claimant felt in mid 2019 not to take TOIL to complete her father's application for attendance allowance, was pressure of her own making rather than Ms Attwater's, since Ms Attwater was not her line manager and the evidence is that the Claimant made her own decisions about TOIL without objection from Mr Gilworth or HR.

Hours, annual leave, TOIL and responsibilities

119. The Claimant felt that all of what she has presented in these proceedings (and which I have dealt with above) as 'additional responsibilities' required her regularly to work above her contractual hours and she did over the period accumulate large amounts of 'time off in lieu' (TOIL) which the Respondent never queried and always honoured. In this respect, it is relevant to note that from April 2019 (in circumstances described below) the Claimant decided (and was permitted) to reduce her working week to a three day week by taking annual leave 1 day each week. No analysis of the Claimant's TOIL or annual leave has been produced for the purposes of this case (and it did not need to be), but I observe that an arrangement whereby someone who is employed to do a 4-day per week job in fact only works 3 days per week is liable to produce a situation in which more TOIL is accrued than would be the case if the individual took the full four days per week in order to do the job and then took blocks of holiday in the usual way (and normally in quieter periods such as out of term time). Likewise, accrual and taking of TOIL can result in something of a vicious cycle because, where work cannot wait, if TOIL is taken, more TOIL is likely to be accrued because the individual will not have been at work for the 'normal' contractual hours in that week as a result of having taken TOIL accrued in previously. None of this is to level any criticism at the Claimant because although the situation that arose was at least in some measure of her own making, it is the responsibility of the employer to ensure that matters such as TOIL and annual leave are managed in a way that both enables the contracted work to be done and the employee to have their statutory/contractual rest. In this case, a *laissez-faire* attitude by Mr Gilworth by which the Claimant was essentially permitted to do what she liked in terms of both annual leave and TOIL seems to have led to a situation that was not particularly desirable for either party. However, it cannot reasonably be said to amount to conduct likely to damage the employment

relationship because what was happening was that the Claimant was being allowed to do essentially as she wished in terms of hours and TOIL.

120. The Claimant's evidence in these proceedings was that, for long periods of time, she undertook only project work and did not fulfil what she regarded as her 'core EA role'. I accept the Claimant's evidence that as a matter of fact she did stop doing what she regarded as her core EA role for substantial periods (to the extent of putting on her 'out of office' in order to protect time working on projects). I further find that this was agreed, or (at least), tolerated by Mr Gilworth, because there is no evidence that he took any action to control her working patterns. The corollary of this state of affairs is that from what might be termed the 'external' perspective of Ms Daubney there appeared in general terms to be 'performance concerns' about the Claimant from about 2019 onwards as a result of her not visibly doing the EA role, not turning up to GSLT Committee Meetings without apparent explanation, and so on.

121. I do note that when the Claimant applied for her Self-Honorarium in December 2019 she wrote: *"During 2018/19 I have successfully balanced senior level work with my EA role (which includes management of annual MI subscription agreements, major events – TCG All Staff Conference including dry hires – Governance (creating Agenda/minutes at monthly SMT); producing mailshots, Directors Office administration/financial processes alongside traditional Personal Assistant expected activity). Responsibilities remain the same in my part-time role as when the role was full-time."* The picture that the Claimant painted in her Honorarium application is thus quite different to the picture that she has painted in these proceedings, but I take it that in the Honorarium application she was (understandably) seeking to paint herself in a positive light and that the picture she has painted in these proceedings to be closer to reality.

122. Again, however, the fact that the Claimant was for long periods not doing her 'core' EA role as a result of taking on project work was Mr Gilworth's, or the Respondent's, problem rather than hers. If the Respondent was prepared to tolerate it (as it was and did), there is no reason why that state of affairs could not continue indefinitely. It is only if the Respondent was not happy with it, that action needed to be taken either to review the Claimant's performance or her job content. As it is, nothing about the Respondent's conduct towards the Claimant in this regard could reasonably be regarded as constituting or contributing towards a breach of the implied term.

<u>January 2019 – injury and informal part-time working request</u>

123. On 30 December 2018 the Claimant suffered an injury at home. She returned to work on 3 or 4 January 2019. Her GP recommended reduced hours for a period while she recovered. It seems to me that the best evidence of what happened in January 2019 is the Claimant's email of 18 January 2019 to Mr Gilworth (1485). In this she notes that she has taken two weeks annual leave up to this point to cover the reduced hours as she did not feel well enough to

type for a full day, that the GP had (on 17 January 2019) recommended reduced hours for a further four weeks and she informed Mr Gilworth, copying in Ms Attwater and HR (Ms Kalman), that she proposed to take the four weeks recommended as sick leave to recoup. Mr Gilworth replied that this sounded sensible and informed her that Ms Oliver could *"advise on exactly how this works"*.

124. This email exchange shows that it was the Claimant who decided when and how she wished to work and what leave she wished to take following this accident. The Claimant argues that Mr Gilworth placed her under pressure to work during this period, and that she was back at work with her arm in a sling with the GradVenture semi-finals coming up, but this email exchange in my judgment undermines her claim in that regard. The Claimant also asserts that Ms Attwater suggested getting a temp to cover her absence, which Mr Gilworth refused to do, but Ms Attwater does not recall making any such suggestion, and again I do not accept the Claimant's assertion in this respect which is contradicted by the documentary record that she managed her injury, subsequent return to work and working hours as she wished without objection from the Respondent. If she felt pressure to work at this point, it was in my judgment out of a sense of personal responsibility for the GradVenture project rather than because of anything the Respondent did. There was no conduct by the Respondent that could reasonably be regarded as causing or contributing to a breach of the implied term.

125. I note that the sick note from her GP of 17 January 2019 (3681) recommended altered hours *"reduced as per patient preference"* until 14 February 2019, rather than no work at all as the Claimant suggested in her email. The GP also recommended referral to Occupational Health (OH). The Claimant in her email of 18 January 2019 referred to this and stated she would forward her GP note to Ms Oliver and organise an OH meeting with the potential for Dragon software if recommended by OH.

126. By email of 25 January 2019 (1488) to Ms Attwater and Mr Gilworth the Claimant asked to be considered *"for a part time role at 2 days per week in the central team … to make some much needed time for myself and in the first couple of months to get completely better"*. She asked for a response in two weeks. Ms Attwater responded, in an email intended to be confidential to Mr Gilworth, but which was in fact read by the Claimant: *"I think we might need a managers meeting to work this one out. I presume that Catherine means that she no longer wants to do the EA work for TCG? If that is the case then I imagine you will require a replacement for her full time role"* or alternatively *"having a split staffed EA role with her and ANOther I guess? What are your thoughts?".* The Claimant has complained about this email in these proceedings, but her complaint is unreasonable: the email was not intended to be read by her and as an email to Mr Gilworth setting out her understanding of the Claimant's requests and the options open to the Respondent, Ms Attwater's email is reasonable. Mr Gilworth in response explained how to ensure that confidential emails were seen only by him and not the Claimant and then explained (1489) that his understanding was that the Claimant was raising the possibility of a part-time role 'due to a

combination of factors', including care for her parents and their dog, plans for a PhD and the injury.

127. On 13 February 2019 the Claimant met with OH, who provided a report dated 18 February 2019. Although the OH meeting was within the four week period that the Claimant had said she would be taking as sick leave, it appears from the OH report that she had been doing some work (indeed, had taken on what she described as 'extra work') and had told OH that she had already agreed with the Respondent a further period of six weeks part-time working. OH indicated that this would be helpful for the Claimant's rehabilitation, but did not recommend any further specific adjustments, save to advise a documented assessment of any computer workstation and possible consideration of Dragon software and a stress risk assessment.

128. During this period the Claimant received treatment from an osteopath in connection with the injury sustained. A letter from the osteopath of 12 December 2020 indicates that as at 25 February 2019, the Claimant was still struggling at work and felt that she had not been given the opportunity to rest as he had previously advised following the injury and *"was still being asked to work and type for long hours, up to 60 hours a week"*. To the extent that the contents of the osteopath's letter contradicts the OH report, I prefer the OH report as it is contemporaneous. Although I accept that the Claimant did keep working during this period, particularly on GradVenture, the contemporaneous documentary evidence indicates that it was she who decided how much to work and if she had really been working 60 hours per week during this period, I consider that she would have told OH. There is no suggestion in the OH report that the Claimant had been 'overworked' and I find that she was not.

129. By email of 20 February 2019 (1505) the Claimant informed Ms Oliver and Mr Gilworth that she had received the OH report and that OH would forward it to Ms Oliver and she authorised her to provide a copy to Mr Gilworth too. She stated that she had requested two extra laptops so that she would not need to carry a laptop between the three places where she worked, and that she was now taking TOIL and accrued annual leave so that she would be working slightly under three hours per day for the next six weeks. By 26 February 2019 the Claimant had received the extra laptops (1505).

130. On 8 March 2019 (1502) the Claimant forwarded a copy of her OH report to Ms Oliver and Mr Gilworth as so far as she was aware they had not been sent it directly by OH contrary to her expectation. She updated them on progress, stating that it was 'probably not worth' getting the Dragon Software now, although she stated she 'might be interested in a typing arm rest'. She referred again to her request to reduce her part-time hours which she considered would also be help with recuperation from the injury.

131. By email of 12 March 2019 Ms Oliver replied, apologising for the delay and saying that she and Mr Gilworth would discuss the report. She confirmed that the Claimant was still working part-time and the Claimant said she was and was improving (1505). I observe that as the Claimant was still working part-

time at this point, the failure to respond substantively to her request to reduce her hours had as yet had no impact on her.

132. On 19 March 2019 Ms Oliver and Mr Gilworth met to discuss the Claimant's OH report and other matters. Ms Oliver's evidence is that at this meeting Mr Gilworth was willing to agree that the Claimant could reduce her hours on a permanent basis, but that, given his workload, he would need to find someone to support him for the remaining hours. It was agreed to explore filling the remaining hours with resource from another department (3606).

133. On 25 March 2019 there was a meeting between the Claimant and Ms Oliver. There is a dispute between them as to what was said at this meeting. Mr Gilworth was expected to be at the meeting and the Claimant recalls him being there but not participating. Ms Oliver does not recall him being present in what was a small HR room and her handwritten notes which she found and typed up later during the grievance process on 11 December 2020 (3606) indicate that she had spoken with Mr Gilworth separately on 19 March and again on 1 April. In my judgment in particular the follow-up conversation that Ms Oliver had with Mr Gilworth on 1 April would appear to be unnecessary if he had been present at the meeting on 25 March 2019, so on balance I prefer Ms Oliver's evidence that Mr Gilworth was not present at that meeting, despite it being in his diary.

134. The Claimant's case is that the meeting began amicably with Ms Oliver saying words to the effect that she could not believe Mr Gilworth had let her work while she was injured. The Claimant says that she responded that it happened because Mr Gilworth put pressure on her by saying 'how are we going to get this done' and 'being silent' and that Ms Attwater 'would put pressure on too'. The Claimant says that Ms Oliver then moved on to the Claimant's request to reduce hours and asked her how she would manage, what she would do for money, that she said the hours would not work for the business and that the Claimant would therefore have to be redeployed.

135. Ms Oliver's recollection of the conversation is quite different. Consistent with her handwritten notes that she subsequently typed up (3606), she states that they discussed the Claimant's injury and how she was still not able to work full time, that she told the Claimant Mr Gilworth was exploring whether it would be possible to cover the Claimant's request to reduce hours permanently and that the Claimant offered to resign if it was not possible to reduce her hours. She does not recall discussing redeployment, but says that she would be likely to have mentioned this as a possibility in response to the Claimant indicating that she would resign if her part-time working request could not be agreed. She did not understand the part-time working request to be connected to the OH report, or that the OH report was discussed in any detail.

136. On 1 April 2019, Ms Oliver then had a further conversation with Mr Gilworth, confirmed by way of email on 2 April 2019 (1524), from which it is apparent that Mr Gilworth was willing to consider reducing the Claimant's hours on a

trial basis, but not permanently and he asked Ms Oliver if there could be a trial period, to which she does not appear to have responded.

137. To the extent that their recollections of the meeting on 25 March 2019 differ, I prefer Ms Oliver's evidence to that of the Claimant because it is consistent with the notes she took contemporaneously and subsequently typed up, and the emails between her and Mr Gilworth. The Claimant's recollection of the conversation also includes the implausible element that Ms Oliver 'threatened' her with redeployment. There is no reason why Ms Oliver would have 'threatened' her with redeployment. In the context of the Claimant having made a part-time working request that Mr Gilworth did not feel he was in a position simply to grant, it is clear that if redeployment came up, it would have come up as an option to consider if the part-time working request could not be granted rather than as a 'threat'.

138. In oral evidence, Ms Oliver said she thought she and the Claimant had a further meeting during this period, but this is not consistent with her witness evidence or documentation and I reject her evidence in this regard. I infer that she overlooked Mr Gilworth's request in his email to her of 5 April 2019 (1524) querying whether a reduction in hours could be agreed on a part-time basis, and that he did not chase for a response because in subsequent discussion with the Claimant (confirmed by email of 17 April 2019) the Claimant came up with her own solution to her part-time working request and so the issue fell away.

139. In her email of 17 April 2019 (1534), the Claimant suggested to Ms Attwater and Mr Gilworth that she should keep her current contract and take one annual leave day per week until August, and then that she would reduce her hours further in Autumn because *"the next round of part time PhD applications are due in the new year so I could spend a term focusing on getting a proposal together"*. The Claimant indicated that unless they told her there were any problems, she would book to take annual leave off as regular slots. No objections were raised, so this is what the Claimant did. The Claimant's position is that she only took this action because she had not had any response to her previous request. It is not quite correct to say that she had had 'no response' to the request as she had had a meeting with Ms Oliver and (her email of 17 April indicates) had discussed the request again with Mr Gilworth after that. Nonetheless, it is the case that, two and a half months after she first made the informal request of 25 January, it had not been agreed and I am satisfied that it was the lack of action by Mr Gilworth that led to her suggesting using her annual leave to achieve a three day week. That was, however, her choice. She could have raised a grievance or made a formal complaint at this point. The Claimant suggested in oral evidence that she was not aware that she could do these things, or that she did not want to approach Ms Oliver after her interactions with her, but I do not accept her suggestions in this respect. It is apparent from the grievance she raised to Mr Cain in September 2020 that she knew about, or could readily have found out about, the process for raising a grievance and that there were employees more senior to Ms Oliver in HR to whom she could take a grievance. Had she done any of these things, I am sure the point would have been reached where she

would have received a formal response to her flexible working request. As it was, she chose a different course by coming up with her own bespoke solution of using her annual leave to achieve a reduction in working hours. Mr Gilworth could have refused her request to use annual leave like that as most employers would have considered it unreasonable to use annual leave like that, but Mr Gilworth did not object so the Claimant got what she asked for. Her request included (1534) that she wanted to 'keep her current contract' (and, it follows, level of pay).

140. The effect of the Claimant's proposal in her email of 17 April 2019 was thus to withdraw her informal flexible working request and there can be no criticism of Mr Gilworth or the Respondent for not taking any further action in relation to that request after this point. I further find that although there had been delay in responding to the Claimant's request to reduce her hours, and a failure to alert her to the existence of the Flexible Working Policy, which is conduct that is in my judgment damaging to an employment relationship and thus capable of contributing to a breach of the implied term, it was not of itself serious enough to constitute a breach of the implied term, and the Claimant waived or affirmed the breach when she abandoned her request to reduce her hours in favour of her bespoke annual leave solution and did not raise the issue again for over a year.

141. In May 2019 the Claimant suffered from a Gastro-oesophageal reflux which she considered was due to stress. She did not inform the Respondent.

142. In June 2019 Ms Oliver moved roles and was no longer responsible for the Claimant.

<u>June 2019 conversation</u>

143. On 12 June 2019 the Claimant, Mr Gilworth and Ms Attwater had a discussion about the Claimant's changes to hours and expectations of the job. The Claimant felt distressed in this call, asking (she says), *"what is my job, I have no idea what is expected of me?"*. The Claimant says that Ms Attwater responded, *"What projects shall we give [the Claimant] now"*. Ms Attwater has no recollection of making this comment. She did recall the Claimant expressing that she was confused about her role, but Ms Attwater considered that that was a matter for the Claimant to resolve with Mr Gilworth as her line manager. The Claimant presented Ms Attwater's making of this comment as being as being detrimental to her, as if Ms Attwater was 'poking fun' at her and deliberately looking for ways to 'overwork' her, but in my judgment even if this comment was made, it is clear from the subsequent email exchanges (below) that it was not in context an objectionable comment, but one that was made in the context of a general discussion about the Claimant's role and what her tasks should be going forward.

144. The Claimant emailed after the meeting thanking them for the discussion, stating that she *"lost clarity as to what to expect of myself in the job"* and that she was aware that *"after the current publication we considered what I will*

work on next" and that she would, *"welcome any guidance as to what is coming up, what my role encompasses and what is expected in terms of support"* for them and whether she needed more training (1552). They replied (3319) affirming what a good job they felt she was doing and that they would give the questions she had asked 'the time and attention that they and you deserve'. The next week the Claimant thanked Ms Attwater for her time in terms that indicated she was feeling better about it (1559). Ms Attwater had said she would get clarity on what was needed going forward 'so that you are in the loop' but the Claimant did not hear further about this.

145. In the absence of any contradictory evidence, I accept the Claimant's evidence that Mr Gilworth never provided the Claimant with the clarity that she was seeking about her role. However, even if Mr Gilworth never had that conversation with her, I do not consider that it was reasonable for the Claimant to be confused about the scope of her role. The scope of her role was clear from the JD that she had drafted and Mr Gilworth and HR agreed. The confusion that the Claimant was experiencing was of her own making because in her head she wanted to do what she regarded as a 'pure' EA (secretarial-style) role, but that was not the job she was employed to do. The problem with the role so far as she was concerned was exacerbated by her decision (albeit sanctioned by Mr Gilworth) to work only 3 days per week on what was a 4-day-per-week job. However, none of this amounts to conduct by the Respondent that constitutes or contributes to a breach of the implied term.

Treatment by Mr Cobb

146. In July 2019 the Claimant felt that she had been admonished in the open plan office by Mr Cobb asking her about a purchase she had made on Mr Gilworth's University card when it was his birthday gift for Heads. The Claimant felt that after this Mr Cobb 'looked at her coldly'. I accept the Claimant's evidence as to her perceptions of this incident and Mr Cobb's subsequent treatment of her, but as the Claimant worked predominantly remotely and had little contact with Mr Cobb, her perception of his attitude towards her cannot have had any material effect on her working relationships at the Respondent generally. The Claimant in any event only makes one further complaint about Mr Cobb's conduct towards her and that concerns an online meeting on 7 July 2020 when the Claimant says that Mr Cobb *"criticised"* her *"in front of a large group of senior staff"* saying *"this is a funny time of day to have it (or similar)"*. In the absence of contradictory evidence, I accept the Claimant's account of this incident, but on its face both these incidents with Mr Cobb are illustrative of the Claimant being overly-sensitive. The conduct of Mr Cobb about which the Claimant complains in these proceedings cannot be described as anything out of the ordinary. As Mr Cobb's line manager he was entitled to query the purchase of a birthday gift on university funds, and likewise there is nothing reasonably objectionable about someone making a comment regarding the timing of an online event (whatever the timing was). Neither incident caused or contributed to a breach of the implied term.

‘Restructure’ of roles

147. In October 2019 the Careers Group was preparing to advertise a permanent vacancy for a Taster Courses Role and there was discussion of a ‘mini restructure’ in the department (3683, 1607 and 1598). The thinking concerned administrator roles in the department, affecting a proposed second administrator for the Taster Courses and Education Consultancy units, the PDU administrator role that had been regraded and advertised and changes to the Claimant’s role. The Claimant saw the email from Ms Attwater referring to possible changes to her role and was upset by it, but in my judgment it was not reasonable for her to react like this. Although she had withdrawn her request for part-time working, Mr Gilworth and Ms Attwater were aware from her decision to use annual leave to work a 3-day week and the discussion in June 2019 that she was not happy with the role and that accordingly if there was an opportunity for a restructure, this ought to include consideration of the Claimant’s role. The Claimant ought reasonably to have welcomed this as an opportunity to have her part-time working request considered again, rather than taking offence at it. It is clear from Mr Gilworth’s response to Ms Attwater’s email (which the Claimant probably did not see at the time as he used the word ‘confidential’ in the title) that there was no adverse intent towards her. He emphasised (1607), *“we have a complex mix of staff personal circumstances and business needs and, of course, consultation is absolutely crucial”*. However, it was ultimately decided, for reasons unconnected with the Claimant, not to pursue a restructure (1598). There is nothing in this episode that causes or contributes to a breach of the implied term.

Honorarium 2019

148. In or around October 2019 the Claimant and Ms Attwater discussed honorariums (bonuses). Mr Winter took the administrative job of handling honorariums that year, whereas the Claimant usually did it.

149. The Claimant decided to apply for a self-honorarium. The Claimant alleges that Ms Attwater discouraged her from applying saying that they did not have the budget for it. The Claimant protested that she thought the money came from another budget. Ms Attwater says that she was merely expressing concerns about honorariums in general as she was the keeper of the department budget and did not think there were sufficient funds for them, and also that the process was not transparent enough. I accept Ms Attwater’s evidence that her comments were directed at the process in general rather than at the Claimant as Ms Attwater’s role included financial control and it is plausible that she raised the concerns about the process as a whole (and I infer those concerns were regarded as justified by others as this was the last year in which honorariums were dealt with like this). Given Ms Attwater’s generally kindly demeanour toward the Claimant as demonstrated by the emails I have seen in these proceedings, her oral evidence and her long

telephone conversation with her on 8 September 2020 (which the Claimant secretly recorded), I also find it implausible that she would have sought to discourage the Claimant personally from applying.

150. In the Claimant's application form (1616) (which she sent to Mr Gilworth and Ms Attwater and Mr Winter) she described what she considered to be *"the projects imposed and the barriers posed in my job relating to: (i) my injuries (ii) 50+ hours TOIL (iii) detrimental effect long term on my injuries 'not fully recovered today' (iv) no guidance (v) job was outside my scope (vi) I take 1 day Annual Leave per week so I can 'devote to care-giving to my parents"*. She also stated, *"During 2018/19 I have successfully balanced senior level work with my EA role (which includes management of annual MI subscription agreements, major events – TCG All Staff Conference including dry hires – Governance (creating Agenda/minutes at monthly SMT); producing mailshots, Directors Office administration/financial processes alongside traditional Personal Assistant expected activity). Responsibilities remain the same in my part-time role as when the role was full-time."*

151. The process is for applications to be the subject of comment by line managers. Mr Gilworth supported her application but commented: *"Gradventure project exceptional but did let go of some other responsibilities. Been difficult to manage – potential behavioural concerns"* (1624). The Claimant did not see this comment at the time. When it was shown to her in oral evidence she said that it was *"fabricated"*, but in my judgment it is a genuine document. Details of other candidates and comments on the document have been redacted, but it is to be expected that a document such as this would exist and there are details on the document (such as the extraneous comment at the bottom) which would not have been included on a fabrication. It is also plausible that Mr Gilworth would comment in these terms on the Claimant's application as it is evident from the history of his working relationship with the Claimant that I have had to consider in these proceedings that he was a generally supportive manager, but that the Claimant was difficult to manage because of her tendency to silo working, sensitivity to criticism, her difficulty understanding her role despite it being clear from the JD and the way she managed her working hours. In any event, there is no reason why the Respondent would 'fabricate' this document as it does not assist its case. I infer that the reason the Claimant suggested it was 'fabricated' is because she is particularly sensitive to criticism and did not like seeing what Mr Gilworth wrote here.

152. The Claimant received an email from Ms Oliver on 5 December 2019 informing her that she had been awarded an Honorarium of around £1,200 net, which was paid that month (1660), and congratulating her on the award.

153. The Claimant has placed a lot of weight on the award of this Honorarium. She referred to it repeatedly during the course of the hearing. She appeared to consider that because she had been awarded an Honorarium off the back of her application, the Respondent was to be taken to admit the truth of everything she included in her application form for the purposes of these proceedings. That is not, of course, the way evidence works either as a

matter of law or fact. The Honorarium process provided no opportunity for detailed comment by anyone else at the Respondent, the only comment we do have from Mr Gilworth suggests that although he was supportive he did not wholly endorse what she said in her application, and in any event, such an awards process is not concerned with consideration of the detail of the Claimant's work in the way that I have had to consider it for the purposes of these proceedings. The Claimant moreover referred to the guidance issued to staff about Honorariums at 3783-4 and suggested that it supported her case that projects such as GradVenture were outside the scope of her role. The Claimant's argument was based on the fact that the guidance indicates that Excellent or Outstanding work for which an Honorarium may be awarded includes the following (emphasis added):-

> For guidance, the following examples of potentially Excellent or Outstanding work have been provided:
> Quality of work and service which is **significantly beyond the requirements of the role**
> Consistently achieving exceptionally high levels of customer satisfaction (internal and external)
> Exceptional teamwork and interpersonal skills
> Identifying and implementing new approaches to the role that significantly enhance service delivery, efficiency or effectiveness **beyond what would normally be expected of the role**
> Consistently overcoming significant obstacles (exceptional and beyond the normal expectations of the role) to ensure deadlines are met
> Outstanding contribution to the department, university or sector **beyond the call of the role** (e.g. by playing a significant role in cross-functional working groups and other projects)
> Exceptional leadership of staff and or a large scale project

154. However, again, this guidance does not bear the weight the Claimant seeks to put on it. First, whatever the reasons for which the committee decided to make her an award (and there is no record of the reasons as the process does not require the committee to give reasons), that could not impact on the contractual position as to the Claimant's role content, which was very clear from the JD and contractual documents as I have set out above. Secondly, the guidance is only a list of examples and it is plain from just reading of them that awards may be made for a variety of reasons, including reasons which, on the face of the guidance, just involve someone having done their own job very well, which seems to have been what happened in the Claimant's case.

Appraisals

155. The Claimant in her Singular List of Issues includes a complaint (at paragraph 2.4.7) that *"in November 2019 and June 2020, the Respondent failed to conduct appraisals with the Claimant"*. Her own witness statement, however does not provide the evidence to support this allegation. Rather it is clear from the paragraph numbered 16 (including sub-paragraphs) that her complaint is about the way in which Mr Gilworth conducted appraisals in November 2019 and June 2020. I have considered the Claimant's evidence carefully and the emails in the bundle relating to appraisals (in particular 1643 and 2068) and even taking the Claimant's complaints about Mr Gilworth's

conduct of her appraisals at their highest, they are very minor issues about process. There is nothing in this capable of contributing to a breach of the implied term of trust and confidence. Indeed, on the contrary, in her email of 17 June 2020 to Ms Bernard, the Claimant described her appraisal meeting with Mr Gilworth as *"very helpful in terms of synthesising my personal development along with likely TCG Development in the medium to long term"*.

Job grade review

156. By email of 27 May 2020 (1757) the Claimant asked Mr Gilworth (copying Ms Attwater) whether it would be possible for her job role grade to be reviewed before he left and explaining that she would like to become more part-time if the grading was adjusted. She wrote that she felt Mr Gilworth *"would be the best placed person to understand how my role developed from a through support role to yourself as a one:one – to a wider role with managerial/sole responsibility in areas that represent TCG"*.

157. On 16 June 2020 the Claimant emailed Mr Gilworth and Ms Bernard attaching what she described as a 'draft current Job Description' and Appraisal form (for her appraisal the next day) and asked if Ms Bernard could look at them to check whether she was on the right Grade and Spinal Point as she felt her role had developed significantly since she joined in July 2015 (2083, with attachment at 2062). What she described as her 'draft current Job Description' (2062) in fact reads more like a combination of a personal CV and a 'to do' list. Even to the uninitiated eye, it does not read as a JD and I accept Ms Bernard's evidence to the Tribunal that the Claimant's new draft job description did not reflect what the Respondent would class as a job description and could not be graded as it stood. Ms Bernard did not communicate this view to the Claimant at the time. At the time, Ms Bernard explained that in order for the Claimant's role to be reviewed that would have to go through Mr Gilworth and it would only be if he thought the role required a review that he would put a business case forward to HR (2082). The Claimant then replied (2082) that she understood that Mr Gilworth would not have time before he left and that she did not want to burden colleagues at the moment, *"but I think its possible I'm providing a greater skillset which has not been renumerated (sic)".* She said that she would therefore hold off for now and wait until Mr Gilworth had left and the GradVenture competition was complete. In other words, in her email of 19 June 2020, the Claimant withdrew her request for a role review and decided not to pursue it at this point, although by email of 6 July 2020, Mr Gilworth did email Ms Bernard expressing support for an update/review to the Claimant's JD as he acknowledged that her duties had changed and developed over time (2153).

158. The Claimant in oral evidence said that she was not asking for a regrading in the foregoing email correspondence, but objectively that is what she wrote in her emails and at paragraph 2.4.8 of her Singular List of Issues she complains that the Respondent failed *"properly to consider"* her *"request for her role to be revaluated"*. It was not clear to me why the Claimant denied this element of her complaint in oral evidence, but it was one of a number of

respects in which in oral evidence during the hearing it became apparent to me that the Claimant's recall of emails and other documents she had authored was not reliable. In any event, there is nothing in what happened about the role review request at this point that could contribute to a breach of the implied term.

Mr Gilworth's departure and the Claimant's request for part-time working

159. Mr Gilworth in the first week of July 2020 and Ms Dodd became Interim Director following his departure, commencing on 15 July 2020.

160. By email of 9 July 2020 (2109) the Claimant emailed Ms Attwater, Mr Winter and Ms Tolond with a request to work two days per week from the end September (by which time she envisaged that year's GradVenture would be complete). She explained that her request related to her desire to pursue part-time postgraduate study, noting *"we are allowed to work 2 days a week if in receipt of a study award"* and that the *"additional time would mean I can have more time for my own interests besides helping to care for my parents (and special needs dog)"*. The Claimant during the later grievance process, and when questioning Ms Traynor at this hearing, took the position that the reason for her part-time working request had never been to pursue a course of study, but it is clear from her own emails that this was at least originally and ostensibly the reason for her request. This is therefore another example of the Claimant's unreliability.

161. Ms Attwater responded that she understood the Claimant's request and that she personally had been aware for some time of the Claimant's interest in reducing her hours, but stated that she felt it was a *"question we three would struggle to answer without a director in role given the fact that your role largely is designed to support that individual!"*. She added, however, that the question could be pursued on the Claimant's behalf once the new director was appointed. Ms Tolond agreed with Ms Attwater that it would all need to be negotiated with the new director, but asked for more details of the hours the Claimant was wanting to work.

162. The Claimant replied (2107, 2108) indicating that she was flexible, but 14 hours per week across 4 days was what would work best for her. She indicated that she understood their concerns about her being in post to support the new director when they started, but explained that she intended to apply for an AHRC Award (Techne) and felt that she would need 12 weeks to work up the proposal and that as the deadline was 7 January 2021 she would need to start working on that from 29 September, or the week later. She acknowledged that this might be problematic if the new director was not in post until the end of October and would *"need a bit of settling in time before being in a position to look at my role"*. She therefore stated that she would take annual leave *"for the time that I need Sept – Dec, so that I will be working 2 days a week for 10 weeks"*. Just as she had done the previous year, accordingly, on meeting resistance to her request to reduce her hours, the Claimant took matters into her own hands by announcing that she would use

her annual leave to achieve the requested reduction in working hours and, as with the previous year, no one objected, although in my judgment many employers would have objected for the reasons I have given previously. It goes without saying that there is nothing in what happened about the Claimant's request to reduce her hours up to this point that contributes to a breach of the implied term.

163. In the meantime, the Claimant had also been building up TOIL again (2112-13) and on 14 July 2020 (following the email exchange about reducing her hours) she emailed Ms Attwater, Ms Tolond and Mr Winter informing them (2111) that she was due to be taking TOIL, but owing to support required by Ms Dodd as interim director, she was not taking it yet but would aim to use it *"when I book the regular A/L slots starting Sep"*. The Claimant noted in this email that as Ms Dodd's contract was for three months it was likely that she would be working two days a week by the time the new director was in post. Ms Attwater in response urged the Claimant to 'flag' her desired reduction in hours to Ms Dodd as soon as possible.

164. The Claimant in oral evidence characterised this as Ms Attwater 'misadvising' her to take her part-time working request to Ms Dodd. The Claimant's position appeared to be that Ms Attwater ought to have known that Ms Dodd as Interim Director would not be able to deal with her part-time working request and that she should not therefore have advised her to raise it with her. However, the Claimant's interpretation of Ms Attwater's advice in this way is in my judgment unreasonable. It ought to have been obvious to the Claimant that what she proposed to do with annual leave and TOIL for the October to December period amounted to her granting her own part-time working request without reference to any line manager. Although Ms Dodd was her line manager at that point (on an interim basis), and the person she was principally employed to support, the Claimant had up until this stage excluded her from correspondence on her flexible working request, with a view (as it appears on an objective reading) of achieving a *fait accompli* that by the time the new director arrived in post she would be working two days per week rather than her contracted four days on the basis of what would appear to the incoming director to be pre-booked annual leave and accrued TOIL. I infer that Ms Attwater recognised that the Claimant was trying to by-pass Ms Dodd and this is why she urged the Claimant to speak to her. The Claimant for her part, however, regarded this as bad advice because it resulted in her being refused the reduction in hours that she had been hoping to achieve by the means outlined in her email.

165. The Claimant in her email of 14 July 2020 to Ms Attwater, Ms Tolond and Mr Winter indicated that she would raise her part-time working request with Ms Dodd, that she would be 'putting on her GradVenture hat' from next week and that as previously she would 'put a hold on other areas of her role' and pick them up afterwards so that there was likely to be more TOIL during August which she would have to take at some point unless her hours reduced (2111). The Claimant then raised her request with Ms Dodd in Notes sent to her on 14 July 2020 (2113, 2164). In these Notes, the Claimant explained again that

her request to work two days per week was to enable her to make an application for part-time postgraduate research.

166. In an email exchange of 23 July 2020 (2173) Ms Dodd sought assistance from Ms Attwater and Mr Winter explaining that the Claimant had told her that she had agreed with Mr Gilworth that she could prioritise GradVenture between now and when it happens and thus was not available to provide Ms Dodd with EA support, which Ms Dodd found was making it difficult for her to get started in the role, especially as she was working remotely.

167. By email of 27 July 2020, the Claimant emailed Ms Dodd, Ms Attwater, Mr Winter and Ms Tolond setting out her weekly work schedule, which included her providing some administrative support for Ms Dodd as well as work on GradVenture. She explained that she would be working 21 hours per week (just over 4 hours per day, Monday to Friday, rather than her usual hours of 9.30-3.30pm) on the basis that she was using 1 day of annual leave or TOIL per week. She stated that she proposed to seek the reduction to two days from the end of October (2175). She noted that a role review was planned for August 2020, reflecting an offer that she had understood had been made to her by Ms Dodd.

GradVenture 2020

168. From June 2020 the Claimant began work on a digital platform for the GradVenture final, which could not take place in person because of Covid restrictions. She worked full-time for six weeks on a 'tender' with a company called AV Remote Solutions for a professional bespoke digital platform for this. By email of 7 August 2020, the Claimant notified finalists that the final would now take place on 28 October 2020 and informed them of the proposal to use the bespoke digital platform for a 'live broadcast' (2177).

169. On the morning of 12 August 2020 there was a central team meeting. The meeting was over by 12.55, as Ms Attwater's email of 12 August shows (2386). The Claimant was present with Ms Dodd, Mr Winter, Ms Kemp (information manager) and other members of the central Careers Group team. At the meeting, team members updated each other with progress on projects. The Claimant complains that during the meeting she was 'publicly humiliated' and 'verbally attacked' by Ms Kemp. At the meeting the Claimant gave an update on GradVenture including her plans to purchase new bespoke software to deliver the competition. The Claimant alleges that Ms Kemp said words to the effect: *"Why are you doing this? We don't have the budget for it. And the Member Institutions have never heard of it anyway"*. She alleges that Ms Attwater (who was chairing the meeting) allowed this to continue for 5 to 10 minutes until she *"showed clear distress"*, at which point Ms Attwater brought the meeting to a close. Ms Kemp's version of events was obtained as part of the grievance investigation (2826). She explains that her concern was about the cost of the proposal and whether the Respondent had the money for it, but she accepts that her *"manner wasn't polite as the*

conversation went on (though it was in the beginning) because I was worried, and she [the Claimant] wasn't providing answers to mitigate that".

170. Ms Attwater's personal view was that there was no particular funding available for GradVenture as she had repeatedly asked the question but had no confirmation in writing that funding was available. Mr Gilworth had been under the impression that funding was available, but Ms Attwater was not satisfied that it was. Ms Attwater in a subsequent private conversation with the Claimant on 8 September (which the Claimant covertly recorded: 2466) described Ms Kemp's behaviour in the meeting as being 'full of vitriol'. To Ms Traynor who investigated the grievance, Ms Attwater accepted that Ms Kemp's behaviour *"might be perceived as bullying or attacking".* Ms Attwater was concerned for the Claimant's feelings as she knew how attached she was to GradVenture and had previously noticed the Claimant did not like being questioned about financial matters. She therefore stopped the conversation in the meeting. In her witness statement and oral evidence to the Tribunal, Ms Attwater said that in her phonecall with the Claimant she was trying to be supportive of her and she overstated the position; in truth, she considered that Ms Kemp had gone too far, but not to the extent that it amounted to bullying or harassment.

171. In my judgment, on the basis of the available evidence (which does not include direct evidence from Ms Kemp), I accept that Ms Kemp's conduct at the meeting toward the Claimant was reasonably perceived by the Claimant as overstepping the mark in terms of the standards of behaviour toward colleagues normally expected at the Respondent. Had her conduct gone unchecked by Ms Attwater, or had Ms Attwater failed subsequently to express solidarity with the Claimant, Ms Kemp's conduct would in my judgment have materially contributed to a breach of the implied term. However, as Ms Attwater did take care of the Claimant, I do not consider that Ms Kemp's behaviour could reasonably be regarded as even contributing to a breach of the implied term. That is because the implied term is concerned with the trust and confidence that should exist between an individual and their employer, not between and individual and other individual colleagues, especially not with other individual colleagues who are not in the line management chain above the employee.

172. In messages after the meeting (2186) Ms Dodd proposed evaluating this year's event before deciding what to do going forward. The Claimant then at 12.46 emailed Ms Attwater and Ms Dodd explaining that the quote she had obtained was based on three events (Grand Final 2020 + Semi Final 2021 + Final 2021) and that she did not believe it was affordable for only one event (2180). Ms Attwater raised further concerns that funding for the event had not been secured at all, although in the absence of anticipated sponsorship funding, Mr Gilworth in an email of 2 July 2020 had indicated to the Claimant that he was *"happy to recommend that we make provision in the 20/21 budget (within our 'investment pot')"* but that he could not *"sign off" expenditure in advance, nor … accurately predict the health of the investment pot"* though he hoped it would be *"okay"* (2179). It was agreed to have a discussion later that day. The Claimant in her witness statement suggests that at this meeting

Ms Dodd and Ms Attwater *"aborted"* her solution to the project, but it is apparent from the subsequent emails (2199-2203) that discussion continued over the following days and weeks, with the Claimant supplying more information and Ms Dodd in the course of that (2201) raised the possibility that purchasing the three events from the digital platform may take the contract over the threshold for the Respondent's procurement processes. The Claimant was unaware of the procurement policy, and Ms Attwater sent it to her, noting that for contracts over £10k at least three written quotes were required. By 2 September 2020 (2410) (i.e. weeks after she had resigned) the Claimant was in the process of obtaining alternative quotes for GradVenture and Ms Dodd actually put together an application for funding to the Investment Pot which she shared with the Claimant (2399), so even by that point the Claimant's solution had not been *"aborted"*, it was just that alternative quotes were being sought. The Claimant felt that she had been 'set up to fail' by Mr Gilworth not having mentioned the procurement previously, but there is no evidence that he deliberately failed to mention it to the Claimant, and there can be no reasonable criticism of the way the point was raised by Ms Dodd and Ms Attwater with the Claimant. They simply draw her attention to the issue and provide her with further information in a tactful way. This is all 'business as usual' stuff. None of this even contributed to a breach of the implied term.

Resignation

173. On or around 13 August 2020 (2187) the Claimant enquired about joining an MA Acting course from September. This would have been for one evening per week and she was informed that a place was available. The Claimant explained orally at this hearing that she did not intend to do this course (or did not need to work part-time in order to it as she had always done part-time classes alongside her work), but thought she would use this to hurry up consideration of her request for part-time working. There is thus a degree of duplicity in the Claimant's approach to this request which was unreasonable in my judgment.

174. On 14 August 2020, the Claimant emailed Ms Dodd informing her she had received notice of an audition for a part-time MA programme that would start 'in a couple of weeks'. She suggested that she might transfer over to a freelance capacity for two days' work per week *"to give the new Director flexibility on considering me and my role"* (2199). The same day Ms Dodd (2193) informed Mr Winter, Ms Errington and Ms Attwater about the request she had received from the Claimant to transfer to freelance in order to work two days per week. Ms Dodd stated that she was supportive of her request, but had told the Claimant that she would ask HR for advice.

175. Later that night (2198), the Claimant emailed Ms Dodd saying that she had had second thoughts as she was not ready to go freelance as that would involve sorting out her own taxes. She suggested a compromise of a fixed term contract (FTC) for 6 months at 2.5 days per week from late September, which she could then reduce to 2 days through use of annual leave. She

indicated that this would leave the position 'flexible' for the new director to 'weigh up' her role. The Claimant in oral evidence stated that she viewed this as an 'email of desperation'. She complained that Ms Dodd then tried to rush this option through as she did put it to HR and was 'only interested' in this one which gave the Claimant no security. I observe that, given that the Claimant had asked about this option, she cannot reasonably complain that Ms Dodd sought to investigate it for her. If it would work for both parties, it might have been a good solution.

176. Following the GSLT Summer Meeting of 11 August 2020, the Claimant by email of 18 August 2020 circulated notes of the actions and decisions made and Ms Attwater replied (3901) asking if she was okay and saying *"It looks like you are making headway with the role change. Sorry to have to stand back but it is ultimately the Directors brief"*.

177. By email of 16 August 2020, 22.43, to Ms Attwater and Ms Dodd, the Claimant informed them that she had calculated her TOIL and annual leave since her last email summary on 14 June. She stated that she had 112.5 hours Business World Annual Leave to take before the end of January 2021, excluding Bank Holidays and that she had built up 45.25 hours TOIL since June. She wrote that if it was decided to *"update"* her contract to an FTC, she would still like to ask if the accrued but untaken annual leave as a permanent employee could be taken as payment, as *"otherwise I have quite a lot of hours to take which wouldn't be compatible with the 2 days per week upcoming"*. She acknowledged in this email that it had not been possible to do her original role on her part-time hours so that reduced duties would need to be agreed if she switched to 2 days per week.

178. Ms Dodd replied by email of 19 August 2020, 09.19 indicating confusion about the Claimant's intentions (2226). The Claimant replied (2225) setting out what her *"ideal updated job situation"* would be. This was for a new permanent contract on 2.5 days per week and a backdated responsibility allowance for what she considered to the additional duties she had done since March 2018 (i.e. the argument that the Claimant has developed further in these proceedings, which I have rejected, about having been doing duties that in her view fell outside her job description). Ms Attwater replied to Ms Dodd and the Claimant clarifying that the Director role line manages the Claimant and that she thought the Claimant had historically copied her in because her work schedule might affect Ms Attwater's activities.

179. The same day, the Claimant and Ms Dodd had a conversation. The Claimant alleges in her witness statement that in this conversation Ms Dodd 'lashed' out at her, with a long list of criticisms, including *"Why have you sent me so many attachments for your role review" "I only work 3 days a week" "How can you expect me to read it if you copy me"*. The Claimant alleges that she was 'hostile, intimidating and offensive' and that at the end she said *"what else is on your list"*. The Claimant alleges in her witness statement that Ms Dodd refused to consider reviewing her role *"without explanation"*. The Claimant says that she then said *"there is nothing I can do, I will have to leave then"* and Ms Dodd said she would accept her resignation. I have not heard

evidence from Ms Dodd, but she provided an account of this meeting as part of the later grievance investigation (3512). As Ms Dodd's account tallies better with the emails that follow this meeting, I see no reason not to accept what Ms Dodd says about this meeting in the grievance. It does not follow that she did not also in the course of the meeting express some frustration at the Claimant's handling of matters as the Claimant alleges as those allegations have the 'ring of truth' about them too, but I do not accept that Ms Dodd's conduct towards the Claimant in this meeting was in any way inappropriate. The Claimant had sent her a lot of material, and was pressing for her to deal with a flexible working request which as an interim director it should have been clear it was inappropriate for Ms Dodd to deal with. Ms Dodd may also reasonably have been somewhat critical of the Claimant's handling of matters up to this point as she reasonably found the lack of EA assistance from the Claimant to be frustrating given that was in principle the main part of the Claimant's job, which she had not been performing because of her historic arrangement with Mr Gilworth about GradVenture. I do not, however, accept that Ms Dodd levelled 'a long list of criticisms' at the Claimant as I find that implausible given the context of the conversation and the emails that precede and follow it which show Ms Dodd to be a careful and tactful communicator. I have also found the Claimant on a number of occasions to have been overly-sensitive to others, and I find this was another such instance.

180. By email of 19 August 2020 (2224), the Claimant emailed Ms Attwater, Ms Dodd and others as follows: *"Just following my call with [Ms Dodd], we have agreed that I will hand in notice of my role as of today, as [Ms Dodd] is unable to approve my 2.5 days per week request* ***during her contract term****."* Although the Claimant has maintained otherwise in these proceedings, it is clear from the terms of her own email that at the point of deciding to resign she understood that Ms Dodd's position was that as interim director she could not approve the Claimant's request to reduce her hours, and that her request would have to be considered by the incoming director. The Claimant went on to note that Ms Dodd had agreed to assist with pursuing a responsibility payment for her (thus indicating that she understood Ms Dodd was trying to help her where she felt she could). She stated that she would take TOIL and annual leave for part of her notice period which would end on 16 September. She indicated she would check with her union for advice. She said that she would send her resignation letter to HR.

181. Ms Dodd replied (2223) saying she was sad to be accepting the Claimant's resignation, but respected her reasons and apologising for not being able to approve the Claimant's request for 2.5 days *"in my short time here as interim"*. She thanked the Claimant for her work. She stated her understanding that the Claimant was in agreement that the EA role needed to be more than 0.5 FTE. The Claimant maintains that in so stating Ms Dodd was 'lying' about what she the Claimant had said. Again, I have not heard evidence from Ms Dodd, but I am not prepared to find that she was 'lying' because the Claimant's own email of 16 August 2020, 22.43 had accepted that the original job could not be done in 2.5 days per week, so I find that the Claimant said something to that effect to Ms Dodd and Ms Dodd was not 'lying'.

182. The Claimant by email of 19 August 2020, however, responded to clarify that was not what she had said and her belief was that *"2.5 days would be perfect for the JD as the job should be. However since March 2018 I have increasingly worked less and less on my EA duties in favour of the Comms and GradVenture projects. I have never said that my EA job role needs to be more than 0.5 FTE"*. The Claimant's point here was thus the one she has sought to make all along, namely that in her head the EA role was something much smaller than the role that she set out in her own Job Description. I reject that case for the reasons set out above. I add that I see no inconsistency between Ms Dodd's emails here and what she stated as part of the grievance, specifically that the Claimant had agreed that the Director's office needed an EA at an FTE of at least 0.8FTE (3512). I have no doubt that they did agreed something like that because the Claimant working the equivalent of 0.6 FTE (i.e. 0.8FTE but using annual leave to reduce her working days) had been unable to fit the EA job as the Respondent believed it to be (and as I find as a fact it was) into 3 days per week.

183. Ms Attwater also replied to the Claimant's resignation email (2332-3) saying she was sorry to hear this and letting the Claimant know that she had also been pursuing *"a similar tac"* regarding a responsibility payment since February 2019, but HR had said they could not award backpay. She had also been awaiting regrading since that point.

184. The Claimant did hand in her resignation letter by email on 19 August 2020 at 14.59 to Ms Bernard (2219) and raised the question of a responsibility payment. She then emailed a wider circle of colleagues to let them know that she was leaving (2220). It was a positive message, and some of them responded with expressions of surprise and regret. By email of 19 August 2020, 17.39, the Claimant then forwarded to Ms Bernard (HR) documentation regarding her request for a responsibility payment (2225). Later that night the Claimant set out a plan for her final days at work to Ms Dodd, Ms Attwater, Mr Winter and Ms Tolond (2346), and a further email about returning computers (2348).

185. This is the point at which the Claimant's legal cause of action is in principle complete. She has at this point resigned on notice. In my judgment she has done so because she was unhappy that Ms Dodd was unwilling to agree to her reducing her hours immediately. I do not accept that any of the lengthy prior history of the Claimant's employment that she has brought up in these proceedings in fact contributed to her decision to resign at this point. It does not feature in her emails, and she has of course continued in employment months and years beyond all the foregoing matters about which she complained in these proceedings without making any complaint at all to anyone at the Respondent. I find that her resignation was solely over the issue of the refusal to grant her request to reduce her working hours immediately prior to the arrival of the new director. I do not consider that Ms Dodd's conduct in refusing that request was capable of even contributing to a breach of the implied term. In my judgment, Ms Dodd had just cause for the position she took in relation to the Claimant's request to reduce her part-time

hours. She knew she was only going to be interim director for a short time, the EA role existed principally to support the director and it was reasonable for her not to permit the Claimant to make a permanent reduction to her working hours that might cause difficulties for the incoming director. That is especially so given that, as was obvious from the history of the Claimant's employment, and accepted by the Claimant on the face of her own emails, the EA role could not be done on a 0.5 FTE basis. Jobshare had not been expressly considered at this point, but in my judgment the failure to consider that was also reasonable because jobshare is not straightforward and again that would impact on the incoming director. In my judgment, it was reasonable for Ms Dodd to take the position that the whole issue needed to be considered by the new director rather than her. This is so even though so far as Ms Dodd was concerned, the Claimant's request was purportedly to enable her to undertake part-time study. As is now apparent, the Claimant had no intention of engaging in part-time study (or not in a way that required a reduction in hours), but even on the basis of what she had told Ms Dodd at the time, the Claimant herself had come up with a solution for the autumn term of using TOIL and annual leave. There was therefore no urgency and the Claimant ought reasonably to have waited and put her request to the incoming director. It follows that the Claimant did not resign in response to a fundamental breach of contract by the Respondent and was not constructively dismissed. The fact that, as I set out below, the Claimant subsequently wanted her job back (and, indeed, seeks reinstatement/re-engagement in these proceedings) underscores my conclusion that there was nothing the Respondent had done up to this point that in fact caused her to lose trust and confidence in the Respondent as an employer.

<u>The Claimant's second thoughts</u>

186. At 09.16 on 20 August the Claimant emailed Ms Bernard [2335] asking for a meeting. The email is written on the basis that she had resigned, but she set out her view on how a part-time role could work. She wrote that she had 'lost so much' by resigning and asked whether *"all the steps have been taken by UoL to protect my role?"*. Ms Bernard did not reply to the Claimant as she did not have an opportunity to do so before the Claimant's email later that day seeking to withdraw her resignation.

187. On the same day, the Claimant spoke to a trade union representative who (according to the Claimant) advised her to *"save all the evidence you can find"* and urged her to withdraw her resignation within 24 hours so that she could help her. She advised her just to say that she had 'just overreacted or something'. The Claimant relied on this conversation in order to explain why she had later collected a lot of evidence by accessing Ms Dodd's inbox and taking pictures of it, but she accepted when challenged that although the trade union representative had advised her to keep evidence, she had not advised her how to go about that, so it does not excuse or explain her subsequent accessing of confidential emails. In view of my findings as to the unreliability of the Claimant's evidence generally, I am not prepared to accept what the Claimant says about the contents of the advice she received from

the trade union representative. In particular, I find it implausible that even if the Claimant was not a trade union member, that the trade union would have advised that she could only be given assistance if she withdrew her resignation. She was after all still in her notice period and thus still an employee so even if there was a requirement to be a current employee, the Claimant met that. I reject the Claimant's evidence that this was the advice she received. I note it is inconsistent with what she herself told the union she had been advised in an email 29 November 2020 (2550). I find that she has fabricated this element of her evidence in order to manufacture a response to the Respondent's argument that her attempt to withdraw her resignation undermines her claim for constructive dismissal.

188. The Claimant by email of 20 August 2020 at 11.30 to Ms Dodd, Ms Attwater, Mr Winter and Ms Tolond wrote that she had had a 'change of heart' and would like to withdraw her resignation. She said she would be continuing in her role (2358). The Claimant said that this was written from a place of desperation, 'as a lowered person' and was making clear that her requested reasonable adjustment had not been granted.

189. Ms Dodd replied (2357) that she was prepared to consider her request to withdraw but wanted to have a conversation first as she needed to understand her rationale for resigning and then withdrawing the resignation. She said she wanted to feel confident that the Claimant could commit unequivocally to the role going forward, including the 28 hour week commitment that the role was designed to be. She made clear that she would not be able to discuss the Claimant's desired role review with her, that would have to be a conversation with the incoming Director *"once they and the management team have judged what they need from an EA going forward"*. She suggested meeting the next Wednesday.

190. By email of 21 August 2020 it was announced to the whole department that Ms Daubney would be taking over as director of The Careers Group in October (2356).

191. The Claimant then spoke to Ms Dodd on 24 August 2020 and subsequently emailed everyone confirming that she did in fact wish to resign as she required more flexibility that the Respondent was not able to offer (2357). In this email she stated that she now realised there was a formal Flexible Working Request policy that she could have followed, but *"the reduced hours have been declined anyway"*. She acknowledged that *"given that the Heads and Managers Team may all benefit from a full time EA (rather than job share, or to divide the duties between two staff), it makes sense that I would step down"*. She referred to the fact that it had been for the last two years her wish to reduce to 0.5FTE when she took up part-time postgrad study. She also indicated that she was concerned about doing GradVenture virtually for the first time and about the lack of 'real technical expertise' in-house to deliver it. She expressed the hope that she had left a little 'legacy' in the Annual Review and GradVenture. In oral evidence, the Claimant said that she felt that by mentioning the possibility of a job share, she was highlighting the unreasonable conduct of the Respondent, but I observe that is not the

meaning that would be conveyed to the reasonable reader. On the contrary, she phrases the reference in terms that suggest she understands the Respondent's position and is not asking for anything else to be done differently. I have also already found that it was reasonable for the Respondent to defer consideration of the Claimant's request for reduced hours until the arrival of the new director.

192. Ms Daubney emailed on 25 August 2020 (2367) to say how sorry she was, that it had been a pleasure to work with the Claimant and she hoped that she would flourish in her studies.

193. On 26 August 2020 Ms Bernard called the Claimant. The Claimant's case is that Ms Bernard encouraged her to ask Ms Dodd if she could extend her 'handover' (by which I understand the Claimant to mean notice period), that the Claimant did not feel able to agree to this and that it was only at the end that Ms Bernard mentioned she was calling to check on the Claimant's wellbeing, which the Claimant felt was *"so 'added on'"* that she *"didn't trust her"*. Ms Bernard's recollection, however, is that the conversation was positive, that the Claimant seemed happy she had resigned and would be starting a new chapter. Ms Bernard denies asking the Claimant about extending her handover or notice period and I accept Ms Bernard's evidence as this was clearly suggested by the Claimant for the first time in her email the following day. Had Ms Bernard raised the issue, the Claimant's email of 27 August would have been written in very different terms. Otherwise, I observe that there is nothing in the Claimant's own evidence about the call that could reasonably suggest that Ms Bernard acted inappropriately. To the extent that their recollections differ, I prefer Ms Bernard's evidence because I have not found the Claimant to be a reliable witness.

194. By email of 26 August 2020 (2400) the Claimant updated Ms Dodd on GradVenture costs and also wrote *"Thank you so much for our chat this morning, very helpful and I much appreciate"*.

195. By email 27 August 2020 to Ms Dodd, Ms Attwater, Mr Winter and Ms Tolond (2375) the Claimant said she had had a chat with Ms Bernard about things the previous day *"and my last day etc"* (which would be 18th September) and offered to extend her notice period for a couple of weeks as she had not yet found alternative employment. She said that she was also happy to offer freelance work after that if there was a gap before the new EA was appointed. She asked if her access to Outlook could be extended by 30 days which could be authorised on the leaver's form.

196. Ms Dodd replied the same day that she would look into extending her Outlook access, and would discuss with Mr Winter and Ms Attwater the following week 'the other matters' the Claimant had raised (2375).

<u>September 2020</u>

197. By email of 2 September 2020 at 13.05, Ms Dodd thanked the Claimant for her briefs on GradVenture (2399) and asked her to check the paper she had prepared for seeking funding from the Investment Pot for the video platform. At 14.05 the Claimant provided comments and raised various concerns about how the project may be delivered, costs and organisation-wise and asked them to bear with her while she took TOIL (2398).

198. On 2 September 2020, at 15.07 Ms Dodd emailed Mr Winter and Ms Attwater, copying Ms Daubney marked "confidential GV" (2410) expressing concerns about GradVenture and the Claimant's handling of the project, writing *"I do think that Catherine is struggling to manage what she has to do to deliver this for us. It doesn't play to her strengths"*. She noted that the Claimant was looking for alternative quotes for Gradventure video platforms, but she was not convinced she had read the procurement guidance and as she would have a lot to do tidying up files, she felt it was more important for her to focus on that. Ms Attwater responded that she shared Ms Dodd's concerns. As this email was marked *"confidential"* according to the filters that Mr Gilworth had set up on emails before he left, these emails with the subject heading *"confidential"* should have gone to a separate inbox and not been seen by the Claimant, and I find that she did not see it during the day.

199. At 15.35, Ms Dodd emailed the Claimant in response to her comments (2397). In her email she was mildly critical of the Claimant commenting that she was 'not sure she had read the document correctly'. The Claimant replied at 16.29 writing, *"I am really disappointed. I feel bullied over GradVenture now and I don't deserve to feel this way. … I have worked very hard in my part time role … The task of GradVenture at the moment is really at the limits of my experience"* (2397). Ms Dodd replied at 16.44 (2396) *"I'm really sorry that you feel this way. I hope you are reading this when you are back at work and no longer on TOIL but am sending it as soon as possible in case you aren't"* … *Let's catch up properly when you are back and talk this through. In the meantime I'll work … on how we support you for now and plan for the handover of this important task"*.

200. Around this time, having received advice from her TU representative to 'collect evidence', the Claimant made a search of Mr Gilworth's inbox deleted items folder for emails with the word "confidential" and then took screenshots of them, such as appear at 1489. The Claimant accepted in oral evidence she had done this. I do not know whether this was how the Claimant came to read Ms Dodd's *"confidential GV"* email of 15.07 on 2 September 2020 later that night. It does not matter, however, as there is no doubt that she did read the *"confidential GV"* email that evening and at 22.23 'replied all' using her *"[Ms] Dyer on behalf of [Ms] Dodd"* email address (2409). The Claimant wrote: *"I messaged today to say I felt bulled [sic]. I feel that this is continuing. I ask please that this stop. I wish for me and my work to be reflected positively which is accurate".* She defended her record on GradVenture. She said she was on leave and it could not be expected that she deliver a procurement process while she was not at work. She wrote, *"I am extremely disappointed with TCG and with close colleagues, especially since [Mr Gilworth's] departure. I have lost trust in colleagues. I am speaking up for myself and for*

the future of TCG, and I hope TCG will one day really wish to be open, understanding and be a safe place. On a personal note, I would like to mention that I do not wish for a farewell gathering or any gesture for my leaving."

201. Ms Dodd by email direct to the Claimant at 10.36 on 3 September 2020 (2415) expressed concern about the Claimant's misuse of Ms Dodd's email address to respond to an email chain marked confidential that was not addressed to her. She said it was not appropriate and informed her that she was removing delegated access although the Claimant would retain access to calendar, tasks, contacts and notes. She expressed concern about the Claimant dealing with emails late and reminded her to take time away from work. Regarding the Claimant's end date, she said that she was happy to extend that to 2 October if that worked for the Claimant.

202. The Claimant responded (2415) that she had a job offer for a 0.5 day per week job and would like her last day to be 18 September.

203. The Claimant also read at this point a private email between Ms Dodd and Ms Daubney in which she said, regarding the incident of the Claimant misusing Ms Dodd's personal email: *"Just a note to say I imagine that the first hour of today was quite stressful, particularly finding Catherine's email in your inbox. Please give me a shout if you would like a few minutes decompressing that with me"*. This email was quoted in the Claimant's witness statement but was not in the bundle. The Claimant in her witness statement said that, after a few days reflection on this, she realised that Ms Daubney did not want her as her EA. I observe that to the extent the Claimant relies on this to suggest that it was Ms Daubney guiding the previous refusal of her flexible working request in order to 'push' the Claimant to resign, I reject her argument. Ms Daubney denied it in oral evidence and the email provides no evidence whatsoever as to Ms Daubney's views on the Claimant prior to this point. After the Claimant had reacted so over-sensitively to mild criticism and concern about her handling of GradVenture (which was particularly unreasonable given that she had resigned and would be leaving before it was taking place so that a handover was necessary in any event), and then inappropriately accessed confidential emails late at night and replied to them, anyone might reasonably have doubts about her suitability for an EA role. Prior to this point, there is no evidence that Ms Daubney held any such view at all.

204. Despite this incident, by emails of 4 September 2020 the Claimant and Ms Dodd emailed on a 'business as usual basis' about tasks outstanding (2472), which included handover of GradVenture and reforecasting the Director's budget *"as you are the only person who has the necessary insight into previous years' spend"*.

205. On 8 September 2020 the Claimant had a two-hour long telephone call with Ms Attwater that the Claimant covertly recorded (2451). She provided a copy of the transcript of the call to an employment law adviser on 21 October 2020 (2692). It is in this conversation that the Claimant alleges Ms Attwater said

that it was important to reward people for performance but not those who are *"a bit feral"*, meaning the Claimant. In fact the word *"feral"* appears in the transcript in the following context: *"you need to be able to reward people for good performance but also you need to therefore control the people (who) are perhaps undermining the good culture of an org(a)n(isation) and if those things aren't in place then people just go a bit ferrel (feral) [sic]"*. Ms Attwater denied she was referring to the Claimant when she said this and I accept her evidence. Ms Attwater was in the conversation being sympathetic to the Claimant and, if anything, I infer the *"feral"* reference was to Ms Kemp who Ms Attwater had elsewhere referred to having difficulties managing. Ms Attwater in this meeting did say (2466) words to the effect that Ms Kemp on 12 August 2020 had overstepped the mark.

206. Ms Attwater got the feeling that the Claimant was trying to record their conversation and let Ms Dodd and Ms Daubney know that by email immediately afterwards (3332), to which Ms Dodd replied the next day observing, *"I have been alert to the possibility her seeking to take some action regarding her resignation and departure. She has been in touch with her union and is regularly in touch with …. HR – as am I. I've been careful to consult with [HR] on how to respond to her requests etc and am keeping [HR] briefed. I do get the feeling that she has a lot to process and that leaving TCG is an emotional experience for her and I'm trying to do as best we can to ease that journey while also protect the organisation"*.

207. In the afternoon of 10 September 2020 the Claimant discussed her situation on the phone with another trade union representative (Mr Hall). The Claimant was still not a member of the trade union, but Mr Hall advised on the basis that she would become a member of the union (which she did on 16 September 2020: 2530; but left again on 22 September: 2549). The Claimant's oral evidence was that Mr Hall also advised her to withdraw her resignation and that unless she became an employee he could not advise her. Again, I do not accept the Claimant's evidence in this regard for the same reasons I do not accept she received advice to this effect previously.

208. The Claimant asked Mr Hall to speak to Ms Bernard, she believed with a view to arranging the withdrawal of her resignation. Mr Hall then did speak with Ms Bernard. He did not, however, convey to her that the Claimant wished to withdraw her resignation (I accept Ms Bernard's evidence on this point), he just asked Ms Bernard to 'check in' with the Claimant. Ms Dyer emailed Ms Bernard at 11.10 on 11 September asking if they could speak between 11.30 and 12. Ms Bernard replied that she was busy from 11.30 (3578) and unless the Claimant had 5 minutes immediately it would have to wait until she was back from annual leave the following Thursday. The Claimant was evidently out on her errand at the point Ms Bernard emailed so they missed each other and by the time Ms Bernard was back from annual leave the Claimant had raised a grievance so Ms Bernard let that take its course.

209. On 10 September 2020 Ms Attwater was informed that, following a recommendation from the Director of TCG and completion of a Job Evaluation exercise, she had been promoted to Level 9 with effect from 1 July

2020. Ms Dodd emailed Ms Attwater at 11.31 on 11 September to say that this was well deserved and she was sorry that it had taken so long and required so many follow up messages and she was unsure where to file it. She wrote that she was *"loathe to suggest that Catherine does this on my behalf"* (3334). This review and promotion were in fact what it had been agreed would have been done at the end of Ms Attwater's six month probationary period two years earlier. Despite chasing by Ms Attwater, it had taken two years to resolve. The Claimant read the email from Ms Dodd to Ms Attwater, even though: (i) it was marked "ADDRESSEES ONLY" and was not sent to her; (ii) Ms Dodd had informed her that she was stopping her delegated access to her inbox (which had not, it seems, worked); and (iii) in order to view the email she had to look in Ms Dodd's Sent Items. The Claimant was offended by the email and forwarded it to Mr Hall for advice. In my judgment, it was not reasonable for the Claimant to be offended by Ms Dodd's use of the word *"loathe"* in this email, both because it was not intended for the Claimant's eyes and because on an objective reading it is obvious why Ms Dodd uses that word and it is an appropriate word in context, conveying the awkwardness Ms Dodd felt about asking the Claimant for help given: (i) she was on her notice period and not working much as she was taking TOIL and annual leave; (ii) the souring of relations as a result of the 2 September emails; (iii) Ms Dodd's concerns that the Claimant may be going to take some legal action in relation to her resignation; and (iv) Ms Dodd was aware that the Claimant had been asking for a role review and might be upset to hear that Ms Attwater's had (finally) happened.

210. The Claimant complains that in a video call around this time Ms Dodd intimidated her. She alleges that Ms Dodd asked her to read the list of handover work and said "because I want to look at your face". I reject the Claimant's evidence in this regard because on video calls it is relatively common for someone to make a comment along the lines of not being able to, or wanting to, see someone's face as people do not always position themselves well in relation to their cameras. Further, the Claimant has for the reasons already identified proved to be an unreliable witness and over-sensitive to comments by others.

211. At the end of Friday 11 September the Claimant believed that her computers had been compromised (2528). This was investigated by the Respondent's IT department who considered it unlikely noting that multi-factor authentication (MFA) would have protected her account from a password change by someone else (2525, 2531-2, 2535-2546). I do not have to resolve what actually happened with this.

Grievance commences

212. On 14 September 2020 the Claimant raised a grievance by email to Mr Cain (2513). In the covering email she explained that she was in her notice period following resignation and had tried to withdraw her resignation on two occasions, once on 20 August and once on 11 September via her TU representative Mr Hall and Ms Bernard of HR. She wrote: *"On Friday, 11th*

Sept, I made a second attempt to withdraw my resignation. I believe [Mr] Hall (UCU) discussed with [Ms] Marks and [Ms] Bernard. HR promised to ring me Friday morning with a view to withdrawing my resignation. I have not heard since. I value my job security and pension, especially that I am in the last few years of working life. I would then look at redeployment options following a proper process from there and fully organise current work. I am a competent employee and there has never been any question relating to my performance."

213. In her grievance she stated that since Friday, 11 September her surface device had been closed down by the Respondent so that she was not able to work. She stated that her problem included, *"hostile behaviours from colleagues who seek to remove me from my role since the departure of Bob Gilworth, in July"*. She referred to her caring responsibilities as the reason why she had worked remotely for the past three years. She also referred to her desire since two years ago to seek a reduction in hours to 0.5 FTE. She identified that what prompted her to resign was *"criticisms and hostility"* since her request made in August to move to 0.5 FTE and, *"on 19 August 2020 intimidation and lack of options"*. She complained about the subsequent failure to react to her bullying complaint, and about colleagues withholding of *"key guidance"* such as how to make a Flexible Working Request. She referred to bullying and racism issues that had been shared across all staff emails in TCG in June. She also set out by way of further background in bullet points the issues that she has broadly raised in these proceedings.

214. Objectively, the Claimant's grievance email reads as if one of the principal matters about which she is concerned is that she was not allowed to withdraw her resignation and that she wants to be reinstated with the Respondent (albeit then to consider redeployment). When it was suggested to her at the hearing that she had in her grievance been asking to withdraw her resignation, she said that she was not asking for her job back because if she was *"that would undermine my whole case"*. It was at this point that she gave again the evidence I have rejected about it being her trade union who had advised her to do this because *"unless I became an employee again they could not help me"*.

215. The Claimant sent several follow up emails to Mr Cain including two emails on 16 September, three emails on 17 September, one email on 21 September and three more emails on 22 September (see pages 2528 to 2529, 3323 to 3326 and 3344 to 3352 of the Bundle). By email of 15 September 2020 (2520) the Claimant asked Mr Cain if he could find out if she had been dismissed as she was unable to work because of computer access issues. He replied that she had not been dismissed, but the Respondent had accepted her resignation. The Claimant then sent a further long email of 16 September 2020 (2528) stating that she had not willingly resigned at any time, but had no option but to remove herself from *"the toxic behaviours"*. She wrote that she had *"experienced constructive dismissal"*. She attached an amended resignation letter to *"clarify"* this. She wrote, *"My original email states that I had requested a reduction in hours and that because this was not granted, I had no option but to leave. Because I was in shock I failed to reveal the full*

truth, that I was leaving because of particularly malicious behaviours towards me aimed to injure me, my reputation and the goal of which was to encourage me to remove myself from my job". In these emails the Claimant was still asking about withdrawing her resignation (2528). She also asked how she could give some additional personal information discretely that might be relevant to her complaint. This was a reference to the allegation she wanted to make about Mr Gilworth 'embracing' her in the office in August 2017, but I infer that Mr Cain (understandably) missed this line in her email and so she did not make this allegation until later in the grievance process.

Last day of work

216. 18 September 2020 was the Claimant's last day of employment. At 4.53pm she retrieved an email chain from an exchange that had happened on the All College Staff email in June 2020 with the subject heading "Anti-racism discussion" and 'replied all' to that email from a gmail address she had set up specifically to use because she believed herself to be locked out of the Respondent's email system. The gmail address she set up was tcgdirectorsoffice@gmail.com. Her email (2003) began: *"I would like to join the discussion in our Anti-Racism and Equality issues. I am sorry that I did not join before, I did not fully understand the deeper lived experience then."* She continued, *"I have been harassed and bullied since Bob Gilworth left as Director some 8 weeks ago. … I had wished to discuss the possibility of reducing my hours to further part-time. … I have unfortunately not been treated fairly, especially since aiming to clarify my job role and hours. I try to bring things into the open yet the harassment and bullying becomes worse. … As an EA, and delegate, I was dismayed to read emails that make fun of me, are unkind and tell untruths. I read that my being bullied is thought of as ok, as the wish is for me to leave my job …"*. The email continued with further details, complaining that *"so far, TCG is not taking the opportunity to openly look at what has happened"*. She explained that the previous discussion on this email thread had inspired her to speak out and she provided a list of resources including the National Bullying Helpline and the Equality, Advisory and Support Service. She wished everyone success for the future.

217. The messages on the previous email exchange in June 2020 that the Claimant said had inspired her began on 8 June 2020 with an email (1769), written in the wake of the murder of George Floyd and reflecting his own experiences of racial discrimination with TCG, criticising the senior management team and sharing resources on supporting minority colleagues. Mr Gilworth initially responded on behalf of GSLT. Another colleague described by the parties in these proceedings as of "BAME ethnicity" who had resigned and was on his last day of employment then joined in attaching to his email a formal complaint of racism he had raised under the Respondent's whistleblowing procedure more than a year ago, which had concluded without informing him of the outcome. He asked for apologies from Mr Gilworth and Mr Winter. A large number of colleagues also of BAME ethnicity then joined in sharing their experiences. On 10 June 2020 Mr Winter (who is white ethnic) emailed seeking to *"set the record straight about my*

involvement in this situation and to address the increasing damage that is being done to my reputation across TCG". After setting the context as he saw it (and using terminology about himself which indicated that he had also found himself to be 'vilified, dehumanised and deprived of power' by what had happened), he concluded with apologising for his part in matters and thanking the original two complainants for bringing this matter out in the open. Mr Winter's response was itself regarded as inappropriate by some who did not consider that a member of white senior management should use such terminology, and Mr Winter subsequently sent a further email apologising and expressing commitment to tackling racism. The emails continued over the course of a few days. Accusations of institutional racism were raised. At this hearing, Ms Daubney frankly stated that her personal view is that the organisation is 'structurally racist' and that there were at that time bullying issues affecting BAME staff that had not been appropriately dealt with. This background was what meant that, for Ms Daubney, the Claimant's email of 18 September 2020 was 'wholly inappropriate', an example of what she called an 'abuse of White privilege' and that it risked adding to the Respondent's problems with racism, which the Respondent was attempting to address following the issues raised in the June 2020 email chain. Ms Daubney maintained that view notwithstanding that the Claimant did receive a number of messages of support from colleagues in response to her email, and some indicated that they had also experienced bullying.

218. At this hearing, Ms Daubney gave evidence that if this had not been the Claimant's last day at work, she would have commenced proceedings for gross misconduct in relation to this email of 18 September 2020. If it had been her decision, she would also have dealt with the Claimant's accessing of Ms Dodd's confidential emails on 2 September 2020 as gross misconduct too. Ms Bernard said that the accessing of Ms Dodd's confidential email was only not dealt with as a disciplinary matter as the Claimant was on notice and the Respondent believed it was an isolated incident that had been remedied by Ms Dodd withdrawing the Claimant's delegated access.

Grievance process

219. Ms Traynor was appointed to investigate the Claimant's grievance. The Claimant claims that she was not impartial because she alleges she had at one point had someone called Mr Cobb as her line manager and Mr Gilworth had also been line managed by Mr Cobb. Ms Traynor, who was employed in Housing Services, explained that this was a separate department to TCG at the time of the investigation. She had not to her knowledge ever shared line management with Mr Gilworth and had not had a close working relationship with TCG at any point. I accept her evidence and find that, even if she did at some point share a line manager with Mr Gilworth, that was an immaterial and historic connection, and she was an appropriately impartial person to hear the Claimant's grievance.

220. The preliminary grievance meeting was scheduled for 13 October 2020, but did not take place as Ms Traynor was told that the Claimant had not received

the emails giving notice of the meeting, so the meeting was rearranged for 20 October and then for 22 October 2020 at the Claimant's request. The meeting lasted over two hours. Ms Traynor found it difficult to understand what the Claimant wanted her to investigate. She provided lots of additional information and a statement of what she considered to be the terms of reference for her grievance. She raised concerns about Ms Traynor's impartiality which Ms Traynor addressed.

221. From 19 October 2020 Ms Daubney took over as the new director.

222. By email of 30 October 2020 (3647) the Claimant provided yet further information about her grievance and a list of 32 witnesses she suggested should be interviewed. At that point, the first grievance investigation meeting was scheduled for 2 November 2020, but by email of 1 November 2020 (3654) the Claimant requested to reschedule. Ms Traynor informed her that she would then be on annual leave, so the meeting was arranged for her return on 24 November 2020. The Claimant sent in very large quantities of further evidence and notes for consideration at that meeting. The Claimant also had a trade union representative involved at this point. There was further correspondence about the terms of reference. Ms Traynor found it difficult to agree the terms of reference with the Claimant as the Claimant did not provide direct answers to questions. In the end, Ms Traynor proceeded on the basis that the grievance concerned: (1) alleged victimisation, harassment and bullying from senior colleagues and peers in TCG; (2) direct discrimination in relation to refusal of her request to reduce her working hours; (3) alleged constructive unfair dismissal because of refusal to agree to reduce her working hours and criticism from manager and colleagues and her attempt to withdraw her resignation was not supported; (4) alleged breach of contract in terms of role description, responsibilities; (5) alleged inappropriate behaviour by Mr Gilworth.

223. On 16 November 2020 the Claimant contacted ACAS and in the course of correspondence about the grievance she informed Ms Traynor that she was commencing proceedings.

224. Ms Traynor did not consider that it would be proportionate to interview 32 witnesses. She decided to interview six University employees: Kate Daubney (new Director of the Careers Group), Magdalen Attwater (Strategic Projects Manager), David Winter (Head of Research and Organisational Development), Amber Bernard (HR Business Partner), Tasha Oliver (Senior HR Partner at the relevant time), Dawn Fernandez (IT Digital Partner) and Natasha Trunkfield (User Services Manager). She also considered a written statement from Kate Dodd (by this stage a former employee) and Rosalind Kemp (who remained employed as Information Manager). She did not seek to speak with Mr Gilworth as she felt it was not appropriate to contact him given that he had left months before the Claimant resigned and the Claimant's allegation against him of inappropriate behaviour had not been raised until three months into the grievance process (so far as Ms Traynor was concerned).

225. On 15 December 2020 the Claimant commenced this claim.

226. Ms Traynor found dealing with the Claimant's grievance to be 'an enormous piece of work', and I agree as Ms Traynor appears to have had documentation before her that included a very significant portion of what has ended up being the voluminous bundle for this hearing. The Claimant continued providing further information and emails in December 2020 and January 2021. The Claimant was provided with the outcome and grievance investigation report on 2 March 2021 (2860-5 and 3296-3317). In very brief summary, Ms Traynor rejected the Claimant's allegations of victimisation, bullying and harassment, giving detailed and careful reasons for her findings. Regarding the refusal of the Claimant's request to reduce her working hours in 2020, the Claimant had maintained in the course of the grievance that she had made this request because of her caring responsibilities and that the refusal of the request amounted to direct discrimination. Ms Traynor found, however, that the Claimant had at the time said that she was making the request to pursue part-time study, that efforts had been made to accommodate her request, but it could not be granted at that time because Ms Dodd needed more support from the EA, not less and also reasonably did not feel that she as interim director could make such a decision. The Claimant had not been constructively dismissed because she had a choice whether or not to resign: she could have stayed in post and made a flexible working request to the new director. The fact that she had sought to withdraw her resignation showed that she did have a choice, and genuine consideration had been given to her request to withdraw by Ms Dodd. She found that the Claimant's request for a role review or regrade in the summer of 2020 could have been dealt with more efficiently; her request for a responsibility payment had been under consideration rather than refused outright; the Claimant was not performing duties that fell outside the scope of her role and that she had not been required regularly work beyond her contracted hours as there was a lack of clarity over the hours she worked, and whether she managed her time effectively. She found that the Claimant's previous informal request in January-April 2019 to reduce her working hours had not been dealt with efficiently within a reasonable timeframe and it was reasonable for the Claimant to expect either Mr Gilworth or HR to have given her the Flexible Working Policy when she first asked about reducing her hours in 2019.

227. The outcome letter also raised with the Claimant two issues in relation to her own conduct, which the Respondent has relied on in these proceedings as constituting contributory fault and/or as a reason for a *Polkey* reduction in any compensation the Claimant may be awarded if she succeeds on liability. The first concerned the email that the Claimant sent on 18 September 2020 to the "Anti-racism discussion". The letter explained that this was not an appropriate forum in which to air her allegations about bullying, particularly given that she had just raised a confidential grievance. The second related to the Claimant's reading of private and confidential emails that were not addressed to her. It was explained that, had she remained in employment, action could have been taken against her for potential misconduct for breach of trust and confidence.

228. The letter dealt in more detail with the Respondent's reasons for not putting the allegation of inappropriate conduct to Mr Gilworth. The letter also noted that the Claimant had continued to engage in correspondence with Simon Cain and Ms Traynor throughout the investigation and including up until recent weeks, to the extent that could be regarded as harassment as the correspondence had continued despite the Claimant being advised that she should not contact Mr Cain. The letter concluded: *"In conclusion, you made serious, allegations about colleagues which have not been upheld and have caused distress and concern to those involved. A disproportionate amount of time has had to be given to this process and in light of the outcome, the University considers that this grievance was vexatious. You should be aware that had you remained in employment, this could have led to disciplinary action against you for potential misconduct".* The argument that pursuing the grievance itself should lead to a *Polkey* or contributory fault reduction has not been relied on by the Respondent at this hearing.

229. On 4 March 2021 the Claimant appealed (2874), by way of a 30 page appeal document, but the Respondent decided not to consider her appeal because it was felt that they did not fall within the grounds permitted in the Grievance Policy and also because the purpose of the process was to resolve workplace concerns and the Claimant had left.

230. On 17 March and 6 April 2021 the Claimant amended and updated her particulars of claim. On 21 May 2021 the Employment Tribunal sent notice of claim to the Respondent and on 18 June 2021 the Respondent filed its ET3 response.

Overall conclusion

Constructive unfair dismissal

231. In the course of my factual findings above, in particular at paragraph 185 but also throughout the chronology leading up to that point, I have set out my assessment of the facts as relied on by the Claimant in founding her constructive unfair dismissal claim. For the reasons there set out, I find that the Respondent did not at any point conduct itself, without just and proper cause, in a manner that was calculated or likely to destroy or seriously damage the relationship of trust and confidence that ought to exist between employer and employee or that, if it did, the Claimant waived or affirmed the contract by remaining in employment. The Respondent's conduct in response to which the Claimant resigned on notice on 19 August 2020 was in my judgment solely Ms Dodd's refusal to deal with her request to reduce her hours immediately in August 2020 in advance of the appointment of the new director. That conduct by the Respondent was reasonable and justified for the reasons I have set out above. Moreover, in my judgment, even the Claimant did not at the time regard it as seriously damaging the relationship of trust and confidence between employer and employee as she sought to retract her resignation almost immediately.

232. In my judgment, what soured the relationship, and led the Claimant to bring this claim, was the Respondent's failure immediately to allow her to retract her resignation, and then the mild criticism of the Claimant about GradVenture that she read on email thereafter – some of it in confidential emails that she should not have been reading. It goes without saying that the mild criticism after resignation cannot turn what was not a constructive dismissal into a constructive dismissal. Neither can the Respondent's failure immediately to allow her to retract her resignation. The Claimant had already given notice to terminate her contract and what happened afterwards cannot affect that. In any event, in my judgment, Ms Dodd's response to the Claimant's wish to retract her resignation was reasonable and does not in any way indicate that the Respondent had been trying to get the Claimant to resign by refusing to grant her request for reduced hours immediately in advance of the arrival of the new director. Ms Dodd was willing to discuss the Claimant retracting her resignation, but wanted to be sure that the Claimant was committed to the job, and ultimately, after conversation on 24 August 2020, it was the Claimant who decided to confirm her resignation (albeit that she subsequently sought to retract it again on 11 September 2020 and as part of her grievance).

233. The Claimant's claim for constructive unfair dismissal therefore fails and is dismissed.

Contributory fault / *Polkey*

234. As I have found that the Claimant was not constructively dismissed, I do not need to decide the issues on contributory fault and *Polkey* but as I have heard full evidence and argument, I express my views on those issues briefly as follows:-

235. First, I find that the Claimant would not have resigned in any event to pursue part-time study as she in fact had no intention of pursuing part-time study. She was only mentioning this as a ruse to try to get the Respondent to speed up dealing with her flexible working request.

236. Secondly, I consider that the Respondent could reasonably have regarded the Claimant's actions in accessing Ms Dodd's *"Confidential GV"* email on 2 September 2020, and obtaining copies of other confidential emails to which she was not a party and submitting them as part of the grievance process to constitute gross misconduct. The Claimant's actions were in clear breach of confidence and there was no just and proper cause for her actions. I understand the Claimant's motivation to be that she was 'collecting evidence' to 'mount a case' against the Respondent, but that does not provide a justification for breaching confidence and, moreover, she had resigned and the only evidence that could have any relevance to a constructive dismissal case was the evidence that she knew about at the time she resigned – not things that had been said in confidential emails not intended for her eyes.

237. Thirdly, I also accept that the Respondent could reasonably regard the Claimant's email of 18 September 2020 to the "Anti-racism discussion" email thread as misconduct (albeit not gross misconduct given that, as I understand it, none of those individuals who caused offence on that email chain in the summer of 2020 faced disciplinary proceedings for their actions). It ought to have been obvious to the Claimant, however, after what happened on that email thread in the summer that it would be inappropriate, and risk inflaming employee relations again, for her as a White person to make a complaint of 'discrimination' on that thread. I appreciate that the Respondent also considers that the Claimant's actions in using a private gmail address to email this group constituted misconduct, but I accept the Claimant's evidence that people did sometimes communicate using private email addresses (despite what it says in the IT policy) and in my judgment that is not the 'heart' of this particular issue.

238. Fourthly, I accept that although the Respondent did not take any action in response to the Claimant's accessing of the 2 September 2020 *"Confidential GV"* email at the time, that was because it appeared at that point to be an isolated incident that had been dealt with and the Claimant was on notice in any event. Once the other matters came to light, the picture would reasonably have appeared quite different. In the hypothetical situation that I am required to imagine for *Polkey* purposes that the Claimant had not resigned when she did, then in my judgment it is highly likely that the Respondent would have commenced disciplinary proceedings against her in relation to the *"Confidential GV"* email, the other confidential emails and the 18 September 2020 email and would in all likelihood have dismissed her – and dismissed her lawfully and summarily - for that conduct around about the time that her employment terminated in any event. The nature of the conduct, in particular the accessing of multiple confidential emails and taking screenshots of them, was plainly likely to destroy or serious damage the relationship of trust that should exist between employer and employee (especially an EA in a position of trust) and could reasonably have been treated by the Respondent as gross misconduct warranting summary dismissal. I would have put the chances of that being the outcome at 90%, i.e. I would have made a 90% *Polkey* reduction to any compensation the Claimant was awarded.

239. I would not also have made a reduction for contributory fault in respect of the matters relied on by the Respondent because they all post-date the resignation and did not contribute to it and it would be double-counting given that I would have made a *Polkey* reduction for those matters. I would, however, have wished to raise with the parties that in my judgment, if the Claimant's resignation had constituted a constructive unfair dismissal, she contributed to that situation by her conduct in failing to wait for the arrival of the new director for her request for reduced hours to be considered. Her conduct in that regard was unreasonable to a culpable degree given that she had no intention of pursuing part-time study and so did not have a genuine reason for urgency in relation to her request. I would have invited the parties' submissions on this point if the case had been proceeding to a remedy hearing, but provisionally my view is that the Claimant's conduct in this regard

would have warranted a finding of 50% contributory fault in addition to the *Polkey* reduction.

240. There will, however, be no remedy hearing in this matter because the Claimant's claim has not succeeded on liability.

_____

Employment Judge Stout

31 January 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

01/02/2023

FOR THE TRIBUNAL OFFICE