



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Kainth

Respondent: Royal Bank of Scotland plc

Heard at: Leicester

On: 23 - 26 January 2017

Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: In person

Respondent: Mr S Purnell of Counsel

JUDGMENT

The judgment of the tribunal is that the Claimant's complaint of constructive unfair dismissal is dismissed

REASONS

1. By a Claim Form presented to the tribunal on 20 May 2016, Mrs Sealdah Kainth (born 23 December 1972) brings a complaint of constructive unfair dismissal.
2. Mrs Kainth was employed by the Respondent, latterly as a Portfolio Manager, from 30 July 2001 to 8 January 2016, the latter date being the effective date of termination. Mrs Kainth resigned in circumstances in which she claims that she was constructively and unfairly dismissed.
3. In coming to my decision, I have taken into consideration the evidence of the Claimant, Ms Rachel Roe, formerly a Corporate and Commercial Portfolio Manager; Miss Nisha Pattani, formerly Portfolio Management Team Leader; Miss Rachel Long, formerly a Portfolio Team Leader and Mr Christopher Stride, formerly Regional Head of Portfolio Management. I have also taken into account the contents of their witness statements, the documents in the agreed bundle and the oral submissions made by both Mrs Kainth and Mr Purnell. Mrs Kainth has throughout these proceedings represented herself. The Respondent have been legally represented throughout and were represented by Mr Purnell of Counsel at this three day hearing, the first day being spent in reading the witness statements and the key documents in a bundle extending to some three lever arch files. All of the Respondent's witnesses have since the events of this case left the Respondent by reason of redundancy. They have all attended without witness orders.

4. At an earlier telephone preliminary hearing, it was confirmed that the Claimant's complaint of constructive dismissal was based upon an alleged breach of the implied term of mutual trust and confidence. The Claimant does not rely upon a breach of any express terms of her contract of employment.

5. Although there are some minor disputes of fact, they are largely insignificant with the exception of one very important factual dispute which relates to an alleged meeting on 4 November 2015.

6. Mrs Kainth began her employment with the Respondent on 30 July 2001. Her role was 'Portfolio Manager' which involves being responsible for credit stewardship, credit delivery and the credit fulfilment of the Bank's customers. Portfolio Managers work closely with 'Relationship Managers' when for example a new credit facility such as a loan, card or overdraft is put in place. The Portfolio Manager takes on responsibility for supporting the bank lending, ensuring that adequate security is in place and that loan deadlines are monitored. Annual reviews are undertaken for existing facilities to ensure that they are appropriate. Portfolio Managers are responsible for and report on a daily basis in respect of excesses where for example a customer has gone over their overdraft limit or gone overdrawn to investigate matters and to report appropriately to Relationship Managers. They also work closely with the customers directly where necessary.

7. Although denied, I am satisfied that the Claimant had a poor performance record for some considerable time before the events leading to the termination of her employment. In March 2011, she met her then line manager Miss Elaine Poynter to discuss various performance issues. Later that month, the Respondent entered into what was then called an 'Action Contract' (now a 'Performance Improvement Plan', or PIP) which is designed to improve work performance.

8. In May 2011, the Claimant was called to a disciplinary meeting in relation to poor performance issues. She was subsequently issued with a written warning for failing to meet acceptable standards. The written warning was to stand for a period of 12 months. The Claimant was placed on an Action Contract for 8 weeks. The Claimant subsequently appealed unsuccessfully against the warning.

9. In March 2014, the Claimant was once again placed into a PIP, which appears to have lasted until the end of that month. There was thereafter continuing concern as to the Claimant's performance and she was placed on a further PIP on 17 April 2015 for two months. The Claimant was off sick for approximately 5 weeks and the PIP period was extended to take account of that absence.

10. In July 2015 following a final review of a PIP, the Claimant was invited to a disciplinary meeting to discuss alleged failures of meeting acceptable standards of performance. The meeting took place on 12 August 2015 when the Claimant was issued with a first written warning by Miss Rachel Long, the previous warnings having expired. This new warning was to remain on the Claimant's record for 12 months and a new PIP was put in place for 6 - 8 weeks. A further PIP was issued on 24 August 2015. The Claimant appealed but once again the appeal was unsuccessful.

11. On 20 October 2015, following a final review of the Claimant's PIP, the Claimant was assessed as 'falling below standards'. She was invited to a disciplinary meeting which took place on 29 October 2015. The meeting was chaired by Miss Rachel Long, supported by Miss Nisha Pattani. The Claimant was issued with a final written warning for poor performance and the warning was to remain on file for 24 months.

12. Pausing there, it is perhaps relevant to consider the issues which surrounded the Claimant's poor performance. These are dealt with largely in the witness statements of Mrs Roe and Miss Pattani. Miss Pattani had taken over the Claimant's line management following the transfer of the Claimant to the Leicester location in June 2015. Miss Pattani was relatively new to the team leader role and Mrs Roe supported and assisted Miss Pattani in the early stages.

13. The Claimant's two line managers prior to Miss Pattani had also expressed concerns about the Claimant's poor performance. A number of areas had been identified. In particular, there were issues about the Claimant's need to prioritise workloads, re-organise her activities, to work to her full capacity and productivity and to minimise external distractions. At the point of the August 2015 PIP, there were a number of concerns as to the Claimant's retention and application of technical knowledge which was not deemed to be at the required standard. It was identified that appropriate processes were not always being followed and there were a number of basic errors. Although there are several PIPs over the years, the most recent and relevant of these is the PIP which began on 24 August 2015 and ended on 20 October 2015. All of the PIPs are very thoroughly documented and set out in considerable detail. It is unnecessary to go through all of the entries but I note the following remarks as to the Claimant's performance:

"Sealdah ... had not actioned the requisitioning of the new guarantee. She could not offer any explanation as to why she had not done so."

"This clearly is a further credit stewardship breach which Sealdah accepted but could offer no explanation as to why she had carried out the action she had. It was explained to Sealdah in detail the importance of ensuring that we hold a current and signed facility agreement for all loans and overdrafts extended to customers and what impact this could have on the Bank in terms of our capital allowance and our ability to recall up any debt if the need arose. This is not a new process and with the experience that Sealdah has in commercial banking (10 years plus) these types of breaches should not occur and are not acceptable."

"Current productivity is well below acceptable levels. 11 tasks were allocated, of which 6 are still being worked on and 4 have not been started. Sealdah is not even averaging one task per day. The types of tasks she is allocated are simple and straightforward and nothing more than the core requirements of the role. For these types of tasks the expectation would be that a member of staff would undertake and complete a minimum of 4 to 5 tasks per day given the number of excess reports and MI trackers that Sealdah is responsible for."

"Sealdah could offer no explanation as to why she had carried out these duties in the way that she had. She confirmed that she is happy with what her responsibilities are in terms of completing the renewal process, MI trackers, increases in facilities and excesses."

"Initial discussions with Sealdah around the areas highlighted in this PIP. Sealdah confirmed her understanding of the requirements upon her to fulfil her role to the required level and accepted that improvements are needed."

"Productivity levels are well below what is expected of a PM and SK is lagging behind and not keeping pace with her peers. In the period 24 - 28 August (5 working days) 12 tasks were allocated averaging 2.4 pieces of work per day of which only 5 were completed, this is just one piece of work over day."

"During this discussion RR offered an observation date to SK on three separate occasions to see if there were any obvious time savings that could be made - SK rejected all of the offers made stating that she was OK at this stage but would bear it in mind for the future."

"RR went on to ask SK that as she had been reporting an unsatisfactory performance for many years why did she feel that did not need any more training/coaching. SK explained that she put her performance issues down to the many managers that the Bank has been going through over the last 5 years and that in some circumstances she was not even made aware of her performance throughout the year until she was awarded a level 2 at the year end."

"There are no deals or more detailed renewals being handed over at all at present which are

an integral part of our role in support but due to the timing issues that SK's portraying in the completion of the more basic tasks we can ill afford to pass these over as the late/non-completion will ultimately have a detrimental affect on our customers."

14. Although the above extracts are taken from various performance review meetings (and not all at the same time), they demonstrate a state of affairs where the Claimant was ultimately not being given any new renewals because of concerns as to her ability to complete matters within the allotted timescale. In other words, the Claimant could not be trusted with being given new work because she was not seen as adequately reliable to undertake the tasks within the required timescales.

15. As a consequence of the most recent PIP which ended on 20 October 2015, the Claimant was invited to a disciplinary hearing on 29 October 2015. There are detailed notes of the meeting. I am satisfied that the notes are accurate. They are signed by the Claimant although it is the Claimant's contention that it is only the final page that is from the original (that is the page with the Claimant's signature) and the other pages in the notes have been added in subsequently. I shall return to that contention in due course but it is clear that the discussion was a long one where a number of issues as to the Claimant's competence and performance were discussed. At the end of the meeting Miss Long confirmed that the Claimant would be issued with a final written warning which, as already mentioned, would stay on the Claimant's record for 24 months.

16. There is then a significant and substantial dispute as to whether a meeting took place on 4 November 2015 between the Claimant, Mrs Roe and Miss Pattani. It is the Claimant's case that there was no such meeting. It is the Respondent's case, through both Mrs Roe and Miss Pattani, that a meeting *did* indeed take place and that a number of matters were discussed which ultimately proved to be of critical significance in the lead up to the Claimant's resignation.

17. Mrs Roe's evidence that following the issue of the final written warning it was brought to her attention that Mrs Kainth had committed two further credit stewardship breaches. Credit stewardship breaches are treated very seriously by the Bank. The first was brought to Mrs Roe's attention by Miss Moate, a Portfolio Manager based in Lincoln. Miss Moate had spotted that on one transaction undertaken by the Claimant there was no up to date facility document signed by the customer. On investigation it transpired that short term renewal facilities had been granted for a 2 month extension to 30 October. The facility document for an overdraft facility of £2.5m which had been relied on by the Claimant had expired on 30 August. In other words, the Claimant had failed to obtain the customer's signature on new facility documents when renewing the overdraft facility.

18. The second breach was in respect of an account where the Claimant had, without authorisation placed or had earmarked a nil limit on the customer. This would have left the customer in a position where there was no overdraft facility on his account which would not only result in accrued charges but also the risk of payments and cash withdrawals by the customer being declined.

19. Mrs Roe's evidence was that when these matters came to her attention she discussed them with Miss Pattani and both of them decided to meet up with the Claimant on Wednesday 4 November when Miss Roe was due to be in the Leicester office. The purpose of the meeting was to bring the two credit stewardship breaches to the attention of the Claimant and to set in motion the next PIP which, given the extant final written warning, was most likely to result in the termination of the claimant's employment.

20. It is Mrs Roe's evidence that when these matters were discussed Mrs Kainth

said that she did not think that the final PIP would be signed off and asked Mrs Roe what would happen if she resigned instead. In particular, Mrs Kainth wanted to know what type of reference she would receive if she resigned or if she went through the final PIP and ended up being dismissed. Mrs Roe said that she would speak to HR to obtain some advice. Mrs Roe said that she would not accept a resignation from the Claimant until Mrs Kainth had had time to think about it and discuss it with her family. It was agreed, according to Mrs Roe, that the claimant would consider carefully what she wanted to do and they would all meet the following week to discuss the situation again. Mrs Roe accepts that there was a discussion about the Claimant appealing the final written warning. Mrs Roe says that Mrs Kainth said she did not think it was worth appealing the final written warning because she had admitted three credit stewardship breaches. She asked for Mrs Roe's opinion. Mrs Roe told her that it was entirely the Claimant's decision if she wished to appeal but she would need to set out her grounds. Mrs Roe denies offering any advice or making any suggestion that the Claimant should not appeal or to deter her from doing so.

21. Miss Pattani largely confirms the evidence of Mrs Roe but adds that after Mrs Roe had explained the two credit stewardship breaches with the relevant documentation there was no detailed discussion of the circumstances. Miss Pattani confirms that Mrs Roe urged Mrs Kainth not to make any hasty decision about resigning but instead to discuss the matter with family and friends first.

22. There is no dispute that a meeting took place between the Claimant, Mrs Roe and Miss Pattani on 10 November, although there is a considerable dispute as to what was discussed and when. It is the Claimant's case that the meeting on 10 November, took place between 11 am to 1 pm on the day. Mrs Roe applied pressure on the Claimant to resign and also told her that she could not appeal against the final written warning. It is also the Claimant's case that she was advised that the best option was for her to resign and to do so that day. The claimant alleges that she was told that if she resigned from her role she could still apply for another position at the Bank and that she would receive support to secure an alternative role from Mrs Roe.

23. The Claimant's resignation letter given on 10 November was as follows:

"Dear Nisha,

Please accept this letter as notice of my resignation from the position of Portfolio Manager at National Westminster Bank plc.

I have enjoyed being part of the team and I am thankful for the opportunities you have given me for my time here.

I hope that I can rely on you for a positive reference in the future."

24. Mrs Roe's account and that of Miss Pattani of the meeting on 10 November is very different. Mrs Roe says that at the start of a meeting, which took place at around 10.00 am, Mrs Kainth began by handing in her resignation letter. Mrs Kainth said that she had thought about it and was sure that was what she wanted to do. According to Mrs Roe, Mrs Kainth said that she was looking for other roles at the Bank during the notice period. Mrs Roe's account is that the meeting was amicable and as the notice was handed over, Mrs Roe said that she would not be looking to put in place a PIP during the notice period and instead would agree to extend her notice period beyond the 4 weeks so that the Claimant had the best chance of securing alternative employment with the Bank. Having accepted the Claimant's resignation, she then went on to advertise the Claimant's role. Mrs Roe denies placing the Claimant under any pressure to resign.

25. Miss Pattani largely confirms the account given by Mrs Roe. She confirms that there was no discussion about any pressure having been applied nor does she believe that any pressure was applied. Miss Pattani sent an email later in the day to confirm that the resignation had been accepted and extending the notice period.

26. What occurred after 10 November is of course not relevant to the issue of why the Claimant resigned but I will set it out briefly for the sake of completeness. Mrs Kainth was obliged to give 4 weeks' notice of termination. That meant the Claimant could not stay beyond 8 December 2015 unless it was by agreement. Mrs Roe had been prepared to extend this period to 8 January 2016 which was confirmed in Miss Pattani's email on the afternoon of 10 November sent at 2:29pm. The timing of that email is also relevant to the issue of when the resignation letter was given which I will deal with in more detail below.

27. Mrs Kainth subsequently applied for internal roles. She was invited to an interview for one such role on 12 January 2016 which unfortunately happened to fall outside the termination of her employment and when she would be viewed as an external candidate.

28. On 16 December 2015, knowing that the date of the interview fell outside her notice period, the Claimant attempted to retract her resignation. The request was dealt with by Mr Neil Harris, a Portfolio Director. Mr Harris refused to accept the retraction. Mrs Kainth then asked if the exit date could be reviewed to accommodate the interview which she had secured which Mr Harris also refused.

29. On 4 January 2016, Mrs Kainth raised an internal grievance. Although the Claimant deals with the grievance at some length in her witness statement as I explained at the outset (and reiterate here again) it is not relevant to the issue of why the Claimant resigned as the decision to resign was not influenced by the subsequent grievance.

30. The Claimant appealed against the dismissal of the grievance and whilst the appeal itself is not relevant there is an important fact that arises out of it. Mr Stride, a Regional Head of Portfolio Management, who dealt with the appeal and who gave evidence at this hearing, investigated a suggestion by the Claimant that there was no meeting on 4 November. He asked HR if there had been any query raised by Mrs Roe on 4 November. He was given details of an email sent by Mr Andy Chalmers of HR confirming a discussion with Mrs Roe on 4 November.

31. On 20 May 2016, the Claimant presented her claim to the tribunal.

THE LAW

32. Section 95 (1) of the Employment Rights Act 1996 ("ERA 1996") states:

"For the purposes of this Part an employee is dismissed by his employer if (and subject to subsection (2) and Section 96, only if)-

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(b) he is employed under a contract for a fixed term and term expires without being renewed under the same contract, or

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct"

33. Section 95(1)(c) deals with a situation which is commonly referred to as constructive dismissal.

34. In accordance with the principles established in **Western Excavating v Sharp** [1978] IRLR 27, for an employee to succeed in demonstrating that she has been constructively dismissed, the Tribunal must be satisfied that the employer has either broken a principal term or terms of the contract or has evinced an intention to be no longer bound by one or more of those terms. The breach must be of such seriousness as to strike at the very root of the contract and the employee must leave promptly in response to the breach.

35. In this case, as set out earlier, the Claimant relies on a breach of an implied term rather than any express term of the contract. In **Malik v BCCI** [1997] ICR 606, Lord Steyn in the House of Lords set out the definition of the implied term of trust and confidence, which is that the employer must not:-

“... without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust between employer and employee.”

THE ALLEGATIONS

36. The allegations of fact which are relied upon by the Claimant to establish a breach of the implied term of trust and confidence are as follows:

36.1 That the Claimant was not as a matter of fact under-performing and that the documents and content of the PIP reviews have been fraudulently prepared and presented without the Claimant's knowledge or approval;

36.2 That the decision to begin performance procedures was not only procedurally defective but objectively unjustified;

36.3 That the Respondent (through Mrs Roe) applied pressure on the Claimant to resign;

36.4 That the Claimant was incorrectly advised by Mrs Roe that she could not appeal her final written warning;

36.5 That the Claimant was not permitted to retract her resignation.

37. I should add that for reasons already given I have not made any reference to the allegations which post- date the resignation.

38. I begin with the disputed meeting on 4 November 2016 which is important to my overall findings on the allegations.

39. Having considered the matter carefully, I am satisfied that the meeting *did* indeed take place. I prefer the Respondent's account and I do so for the following reasons:

39.1 Both Mrs Roe and Miss Pattani gave detailed oral evidence in respect of the meeting. Their evidence corroborates each other's. The accounts are broadly similar but different enough not to have been falsely constructed or fabricated.

39.2 Mrs Roe's evidence is supported by independent documentary evidence. Mrs Roe says that she had a conversation with HR following her

discussion with the Claimant on 4 November. That discussion is corroborated by Mr Chalmers of HR who confirmed that a discussion with Mrs Roe did indeed take place on 4 November. There is no reason for Mr Chalmers to lie, even if there was a reason for Mrs Roe and Miss Pattani to do so. The email of Mr Chalmers confirms Mrs Roe's account that there was a discussion on 4 November with HR. There was no other reason for Mrs Roe to speak to HR about Mrs Kainth on that date other than the issues concerning her resignation.

39.3 The fact of the meeting taking place is entirely consistent with the Claimant's conduct afterwards. Following the discussion on 4 November the Claimant began to consider making internal applications for other roles. Had there been no discussion about resignation on 4 November there would have been no need for the Claimant to consider making any internal applications.

39.4 The level of detail given as to the meeting by both Mrs Roe and Miss Pattani is compelling. Both are able to say what the purpose of the meeting was, where it took place, what they did in preparation, what documents they photocopied in advance for the meeting, the nature of the discussions and what the Claimant was told. They go on to explain how they told the Claimant to discuss resignation with her family first and not to make any hasty decisions. I find it highly unlikely that such detail has been manufactured by both these witnesses, neither of whom continues to be employed by the Bank and who have no personal interest in the case.

39.5 The Claimant's argument that a meeting could not have taken place on that day because 4 November was a Wednesday and Mrs Roe did not work at the Leicester office except on Tuesdays and Thursdays holds little weight. I am satisfied that there would have to be, of necessity, a degree of flexibility for any manager who had to attend meetings at another location on days other than the norm rather than these things being set in stone. Whilst the Outlook diary for Mrs Roe does not confirm any meeting with the Claimant in the morning there is a perfectly acceptable explanation for that namely that Mrs Roe did not enter into her Outlook diary anything which could be sensitive and viewed by others. Mrs Roe did not enter details of any performance management meetings by naming the individual. Mrs Roe's electronic diary does record an entry as to an HR case discussion between 4.00 - 4.30 pm on 4 November which is consistent with Mr Chalmers' email. Noting an HR discussion in the diary would not necessarily breach confidentiality as it did not identify the individual. The diary does note that Mrs Kainth was due to attend a meeting in Lincoln between 9.00 and 10.00 am which the Claimant puts forward as evidence that Mrs Roe was not in Leicester that day. However, I accept Mrs Roe's evidence that she did not always attend these pre-arranged meetings in Lincoln and only did so every 4 or 6 weeks when required.

40. I conclude that on a balance of probabilities there was a meeting on 4 November and that a discussion took place along the lines set out by Mrs Roe and Miss Pattani. It was a discussion in which the Claimant wanted to know what her options were following the discovery of two further credit stewardship breaches. It is both logical and plausible that the Claimant wanted to know what her options would be before the Respondent took her down a route which would almost certainly lead to dismissal. I find the evidence of the Respondent on this issue to be entirely consistent whereas the evidence of the Claimant that she began to look for alternative employment when there was no reason to do is improbable. Mrs Kainth accepts that whilst there was a discussion of the two credit stewardship breaches this was sometime in late October and not on 4 November. She also goes on to say that

whilst the breaches were mentioned there was no further discussion and it was not seen to be of any great importance. I find it difficult to accept that two credit stewardship breaches were simply mentioned and left in the air without any follow up given how seriously such breaches are treated by the Bank.

41. Furthermore, although the dates of Mrs Roe's annual leave are not clear, it appears that she was on holiday in late October 2016 and could not therefore have had any discussion with the Claimant about the credit stewardship breaches. More importantly perhaps, I am satisfied that the moment Mrs Roe would have discovered the stewardship breaches, she would have not hesitated or delayed in discussing them with the Claimant.

42. The 4th November meeting is to my mind highly significant. It was the trigger for the Claimant choosing to resign rather than face almost certain dismissal. The Claimant chose to resign because dismissal was almost inevitable. Mr Purnell suggests, rather charitably I think, that the Claimant may have forgotten about this important meeting. I find it difficult to see how the Claimant could have forgotten about a meeting which triggered the resignation because it was after this that the Claimant began to consider alternative employment within the Bank.

43. I have gone on to find that the Claimant chose to resign voluntarily on 10 November and she did so by handing in a letter at the commencement of the discussions on that day. Her resignation letter makes no reference to any pressure being applied. It is consistent with the Respondent's version rather than the Claimant's. The fact of the letter being given in the early part of the morning supports the version of events of the Respondent because Miss Pattanti's email sent that afternoon refers to a discussion 'this morning'. Again, there is no reference to any discussion about pressure in the email and whilst I appreciate that the Respondent was unlikely to make any reference to pressure in their emails, the fact that the Respondent voluntarily extended the Claimant's notice period is consistent with the discussions being amicable and friendly.

44. Dealing specifically with the five allegations of a breach of the implied term of trust and confidence, my findings on those allegations are as follows:

That the Claimant was not underperforming as a matter of fact and that the documents and content of the PIP reviews have been fraudulently prepared as presented to the tribunal and amended without the Claimant's knowledge or approval.

45. The performance management processes against the Claimant were on the facts entirely justified. The Claimant had been under-performing for some time. She was placed at Level 2 in 4 out of the 5 preceding years. Level 2 is performance below acceptable standards.

46. There is a long history of poor performance on the part of Mrs Kainth. The Claimant had been in and out of Actions Plans since 2011. There is a wealth of material in the bundle, which is unnecessary to set out in full, of performance concerns concerning the Claimant. Mrs Kainth acknowledges that she had been placed into the Performance Improvement Plans on several occasions in the two years prior to the termination of her employment. She acknowledges that she was responsible for at least two credit stewardship breaches in October 2015 although she does not admit all of them. She unsuccessfully appealed two earlier written warnings and did not appeal the October 2015 final written warning for reasons which in my view had nothing to do with being dissuaded from doing so by Mrs Roe.

That the decision to begin performance procedures was not only procedurally defective but objectively unjustified.

47. This is largely a repetition of the previous allegation. I am satisfied that the performance improvement measures instituted against the Claimant were justified. In the latter stages the Claimant could not be trusted with anything which was deemed urgent or time-sensitive. There was no breach of procedure that the Claimant has been able to identify and even if there was that was not the reason why the Claimant resigned.

That the Respondent applied pressure on the Claimant to resign.

48. I do not accept the allegation that the Claimant was pressurised into resigning for the following reasons:

48.1 I am satisfied that the resignation letter was given by the Claimant to Mrs Roe and Miss Pattani before any substantive discussion took place on 10 November. That is supported by Miss Pattani's email as to a discussion that 'morning'. If the Claimant's account was to be believed, Miss Pattani would have gone on to write the email either immediately or fairly shortly after the resignation letter was handed in. That would have left very little time for any discussions with HR.

48.2 The Claimant makes no reference to any pressure being applied in her resignation letter. Given that any pressure would have been very fresh and recent, it is inexplicable as to why the Claimant made no reference to it in her resignation letter.

48.3 There was no logical reason for the Claimant to yield to any pressure from Mrs Roe. Mrs Kainth had access to advice from her trade union and was at various times in receipt of such advice. It is difficult to see why the Claimant would have accepted at face value any pressure to resign without discussing the matter with her trade union or taking time to consider her position. In any event, there was no reason for Mrs Roe to apply any pressure. If she wanted the Claimant's employment to end she would simply need to place the Claimant on a further PIP which would inevitably have resulted in the Claimant's dismissal given the Claimant's recent final written warning.

That the Claimant was incorrectly advised that she could not appeal her final written warning.

49. The allegation is both unrealistic and improbable. The Claimant was in receipt of advice from her trade union who would no doubt have checked the position as to whether or not the Claimant could appeal against a final written warning. The Claimant was no stranger to internal appeals having appealed a written warning earlier in the year and also having appealed a written warning in June 2011. She was not entirely unfamiliar with the internal appeal processes. There was no reason for the Claimant to believe, or to be misled into believing, that she could not appeal her final written warning. It is unlikely the Claimant would have relied upon the advice of someone whom she felt was responsible for placing her into performance measures in the first place.

50. I infer that the Claimant chose not to appeal because there she knew there was no basis for an appeal. The disciplinary hearing had been thorough and detailed. The Claimant had accepted the majority of the allegations of poor performance.

That the Claimant was not permitted to retract her resignation

51. There is no breach of contract in refusing to allow an employee to retract a resignation.

52. For the reasons given, I am satisfied that the Claimant has failed to establish any facts on which a breach of the implied term of trust and confidence applying the **Malik** test can succeed. There are no facts on which there can be any finding that the Respondent's employees conducted themselves in a manner which was calculated or likely to destroy or seriously damage trust and confidence. It is not necessary for me to speculate on what the Claimant's reasons for resignation were but if it was necessary to do so, it was that the Claimant could see that following two credit stewardship breaches after a final written warning dismissal was almost inevitable. She was then seeking to secure the best possible alternative outcome. When the Claimant was unable to secure an alternate role in the Bank she sought to retract her resignation. When that was refused she followed the route of the present proceedings.

53. At the conclusion of Mr Purnell's closing submissions on behalf of the Respondent and after the Claimant had delivered what I had believed were her closing submissions - which admittedly were rather short but then closing submissions from litigants in person are often short - I retired to consider my decision having told the parties that was what I was about to do. When I concluded my deliberations and the parties returned approximately an hour and a quarter later, Mrs Kainth asked when it would be her turn to make her closing submissions. When I pointed out to her that she had already done so, Mrs Kainth replied that she was merely rebutting the points made by Mr Purnell but did not understand that she was to make all submissions. This was despite the fact that I had made it clear that I was retiring to deliberate. Bearing in mind that the Claimant had misunderstood the position I went on to hear her further closing submissions and retired to consider the additional points made.

54. My original decision was however not ultimately affected by the claimant's closing submissions but it is perhaps appropriate for me to deal with the arguments put forward:

54.1. The Claimant argues that the Respondent failed to take into account the supporting information for the PIP hearings. As a consequence, the Claimant believes that she was not treated fairly in the performance management processes.

I am satisfied that the supporting documentation was taken into consideration. There was an issue about one of her emails not capable of being opened by the Respondent but I am satisfied that all of the information which the Claimant gave at the meetings orally, in addition to the very long and detailed weekly performance discussions, did not put the Claimant at any disadvantage. In any event, that is not the reason the Claimant relies on for a breach of the implied term of trust and confidence.

54.2 The Claimant argues that the Bank's internal policies were not followed, that the decision to commence formal procedures was unfair and inconsistent and that the final written warning was not justified.

None of these were alleged reasons why the Claimant resigned and so have no bearing on the complaint of constructive dismissal.

54.3 The Claimant argues that there are no minutes of the meeting on 4 November and that the relevant breaches had only been mentioned in brief terms before then.

For the reasons set out above, this does not alter my earlier view.

54.4 The Claimant argues that she has never been provided with the original PIP form which she believes was not signed by her.

I do not accept that the documents which are in the bundle have been created or manufactured by the Bank after the event nor do I accept, insofar as it is an allegation, that any of the documents have been forged and created for these proceedings. There is absolutely no evidence in support of that allegation.

54.5 The Claimant reiterated once again a number of contentious matters in relation to the grievance decision and appeal but they have nothing whatsoever to do with the reasons why the Claimant resigned.

55. Following the announcement of the decision, the Respondent made an application for costs. That will of course require a detailed costs schedule which is not available today, details and evidence of the Claimant's financial means and ability to pay, further submissions on the costs application and any legal argument. The Claimant may wish to have the benefit of independent legal advice on the costs application as it is no doubt likely to be substantial. The Respondent shall confirm to the tribunal within 14 days from the receipt of these written reasons if it wishes to proceed with the application for costs and if so further directions shall be given thereafter for a costs hearing, if necessary.

Employment Judge Ahmed

Date: 15 February 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

.....20 February 2017.....

FOR THE TRIBUNAL OFFICE