

Removal of senior employee's core responsibilities and plan to change her job role without consultation justified constructive dismissal

In a recent case, the High Court decided that a CEO's decision to reassign a senior employee's core responsibilities to others with the intention of moving her into a new role in future amounted to repudiatory breaches of contract entitling the employee to constructively dismiss herself.

What happened in this case?

Dr McCormack was employed by Medivet Group Ltd (**Medivet**) as its Director of Clinical Operations. She reported to directly to the Chief Executive Officer (**CEO**) and maintained responsibility for day-to-day operations and a number of central functions including pricing, procurement, laboratory, practice development and property. Dr McCormack's service agreement provided that Medivet was entitled, through its board of directors, to appoint other persons to act jointly with her or change her executive office or responsibilities.

In October 2021, Medivet was acquired by CVC Advisers Ltd who removed the CEO and appointed a Mr Cools as the company's new CEO. Mr Cools was unimpressed with Dr McCormack, quickly

concluding that her role was too broad, she was poorly organised, and that she could not stay on top of the areas for which she had responsibility.

At a meeting on 6 April 2022, Mr Cools advised Dr McCormack that he intended to re-organise Medivet's management structure and showed her a new organisational chart. Under the new structure, she was to be appointed as Chief Clinical Officer (**CCO**). This was quite different to her existing role and would involve the reallocation of her operational responsibilities to other employees. The process of reallocating those responsibilities began straight away.

Dr McCormack was unhappy about the proposed CCO role. She felt that her existing role was more closely aligned to the role of Chief Operating Officer (**COO**), a role which would be created under the new structure. Moreover, she believed that she was not properly qualified to take on the CCO role given that she had not been involved in frontline veterinary practice for a long time. On 16 June 2022, Dr McCormack raised a grievance arguing that she was being forced out of her role and the restructuring was a sham.

The new organisational structure came into force on 1 July 2022, although the CCO was never formally allocated to Dr McCormack, given that she went off sick. On 8 July 2022, she gave notice terminating her employment with immediate effect. She issued a breach of contract claim in the High Court, seeking damages for loss of salary and benefits.

What was decided?

The critical questions for the Court were whether Medivet was in repudiatory breach of contract and, if so, whether Dr McCormack had accepted the breach and terminated her employment in response.

The Court acknowledged that Medivet had expressly reserved rights to vary Dr McCormack's role and responsibilities. However, these reserved rights were not without limit. It was implicit that Medivet would exercise such powers honestly, rationally and for the purpose for which they were conferred (namely, good management). Here, rationality imported a requirement of good faith, a requirement that there should be some logical connection between the evidence and the reasons for the decision and an absence of arbitrariness, capriciousness or perversity.

The Court held that the decision to reallocate some of Dr McCormack's responsibilities with immediate effect exceeded these limitations. The decision was taken on an *ad hoc* basis and had not been properly canvassed with Dr McCormack in advance. No interim solutions were explored with Dr McCormack before the decision was made and no good management reason could be discerned for making the decision at that stage. Mr Cools had only had a limited opportunity to evaluate Dr McCormack's contribution by that point and his assessment of her was based, primarily, on his view of her during their discussions.

Further, the decision to allocate the CCO role to Dr McCormack at an unspecified future date also exceeded these limitations. She was told that the role would be allocated to her, but, in fact, the board's specific decision-making powers could not have been engaged since the role was not allocated or scheduled to be allocated to her before the termination of

her employment.

Therefore, the decisions amounted to breaches of contract. The next question was whether they were repudiatory in nature. The Court held that they were. By taking away and transferring core responsibilities to other employees, Medivet had eroded the essential nature of her role. Although the CCO role was never formally allocated to her, the CEO intended to allocate that role to her in future come what may and there was no room for her to resume her original responsibilities since these had already been taken away. Therefore, once it had been communicated that she was to be placed in the CCO role, she was entitled to treat that as an anticipatory breach of contract.

The Court also held that Medivet's conduct overall was likely to destroy or seriously damage the relationship of trust and confidence. This included the failure to consult with her about the proposals prior to the meeting on 6 April 2022, taking away her responsibilities with immediate effect, the way in which the CCO role had been communicated to her and the failure to assess and accommodate her views in the period leading up to termination, including the failure to deal with her grievance. Accordingly, there had also been a breach of the implied term of trust and confidence, which was repudiatory.

Finally, it was held that Dr McCormack accepted these repudiatory breaches and terminated her employment in response. Therefore, she was entitled to damages for breach of contract, which are yet to be determined.

What does this mean for employers?

This decision illustrates the limitations of contractual clauses which purport to give employers flexibility to change an employee's role. Such clauses are subject to a requirement to exercise them honestly, rationally, for the purposes for which they were conferred and not in an arbitrary or capricious way.

To limit the risk of breaching the contract, employers wishing to rely on flexibility clauses to vary an employee's role should consider the evidence for making the change, for example, the employee's performance over time and the needs of the business under the proposed new structure. Further, an employer should conduct meaningful consultation with the employee in advance of the proposed change and consider any responses before making any final decision.

[McCormack v Medivet Group Ltd](#)

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