



EMPLOYMENT TRIBUNALS

Claimant: Mrs C McGuire

Respondent: South Liverpool Homes Ltd

Heard at: Liverpool

On: 19 October 2020 and 23
November 2020 and (in the
absence of the parties) 26
November 2020

Before: Employment Judge Horne

REPRESENTATION:

Claimant: Mr R Wyn Jones, counsel
Respondents: Ms K Skeaping, solicitor

RESERVED JUDGMENT

1. The claimant was unfairly dismissed.
2. Any compensatory award for unfair dismissal will be assessed on the basis that, had the respondent acted fairly, the claimant's employment would inevitably have terminated four weeks later than it actually did.

CASE MANAGEMENT ORDER

Within 14 days of the date on which this judgment and order and sent to the parties, they must inform the tribunal:

- (a) Whether or not any further hearing is required to determine the claimant's remedy; and
- (b) If so, their estimate of hearing length, any dates to avoid, and any proposed case management orders for the remedy hearing.

REASONS

Introduction

1. The heading to this judgment is marked, "Code V". This simply means that the hearing took place on a remote video platform. Neither party objected to the format of the hearing. All parties and representatives cooperated well to grapple with the technical challenges involved.

Complaints and Issues

2. By a claim form presented on 23 December 2019, the claimant raised a single complaint of unfair dismissal, contrary to section 94 of the Employment Rights Act 1996 ("ERA"). The dismissal was said to be unfair within the meaning of section 98.
3. The issues were clarified and agreed at the start of the hearing.
4. There is no dispute that the claimant was dismissed. I have to determine whether the dismissal was fair or unfair.
5. The respondent's case was that the sole or principal reason for dismissal was that the requirements of the respondent's business for an employee to do the work of Head of Community Services and New Initiatives had ceased. If that was the sole or main reason, it would be the same as saying that the claimant was redundant. Alternatively, the respondent contended that the sole or principal reason was some other substantial reason, namely a business reorganisation.
6. I must therefore decide:
 - 6.1. whether or not the respondent can prove that the sole or principal reason for dismissal was either of the reasons stated above; and
 - 6.2. if so, whether the respondent acted reasonably or unreasonably in treating that reason as sufficient to dismiss the claimant.
7. If the dismissal is found to be unfair, I must go on to consider whether the claimant's compensatory award should be reduced on the ground that, had the respondent acted fairly, the claimant would or might have been dismissed in any event.

Evidence and submissions

8. I considered documents that came to me in a variety of formats. Most of them were contained in a 254-page electronic bundle. I did not read every page of that bundle. I concentrated on those pages to which the parties drew my attention in witness statements, written submissions and orally during the course of the

hearing. Additionally, I considered the following documents which the parties submitted separately by e-mail:

- 8.1. C1 – photograph of meeting notes dated 3 May 2018
 - 8.2. C2 – a table prepared by the claimant headed, “Table to Illustrate key ‘New Initiatives’...”
 - 8.3. C3 – an organisation chart
 - 8.4. R1 – an organisation chart
 - 8.5. R2 – EMT meeting notes from February 2018
 - 8.6. R3 – e-mail thread on 21-22 November 2018
9. The respondent called Claire Ryan, Julie Fadden and Julie Marsh to give oral evidence. The claimant gave evidence on her own behalf and called Mr McGuire as a witness. All five witnesses confirmed the truth of their written statements and answered questions.
10. I did not accept everything that each witness told me. By way of example, I thought it unlikely that the claimant’s account of the meeting on 9 June 2017 was accurate. My impression was, however, that all witnesses were trying honestly to tell me their version of events as they saw them.
11. At the conclusion of the evidence the parties’ representatives agreed to present their closing submissions in writing. This they did with impressive speed over the next two days. The respondent’s solicitor agreed to provide her submissions to the claimant one day before the claimant’s submissions were due, giving the claimant an opportunity to comment on the respondent’s submissions. In a further act of cooperation, the respondent’s solicitor agreed to forego any right of reply to the claimant’s submissions.

Facts

Parties

12. The respondent is a housing association responsible for approximately 3,700 homes in South Liverpool. At the time with which we are concerned it had about 90 employees.
13. The claimant was employed by the respondent in various management roles from 6 March 2012 until 21 July 2019.

Governance

14. The background to this claim is one of frequent management changes. To make sense of it all, some understanding is needed of respondent’s governance structure. At all relevant times, the Chief Executive Officer was Julie Fadden. Reporting to her were a number of Executive Directors. For much of the time in which the claimant was employed, the Executive Directors line-managed a further layer of senior management roles, whose titles began with “Head of...” Team managers reported into the Head. From 2017, the Head roles were gradually removed from the structure. There is now only one such role.
15. The respondent had two strategic decision-making bodies. One was the Board, which consisted of non-executive members. The other was the Executive

Management Team (EMT). Broadly speaking, the EMT consisted of all roles equal to and more senior than the Head roles.

Head of Community Services

16. Prior to 2017, the claimant's role was Supported Housing Services Manager. For some time she had reported to the Head of Neighbourhood Management, Ms Julie Marsh. In turn, Ms Marsh reported to the Executive Director of Operations. Besides line-managing the claimant, Ms Marsh was directly responsible for the Community Safety Team and had been for about 6 years.
17. On 1 February 2017, the claimant was promoted to the role of Head of Community Services. The decision was supported by Mrs Fadden and approved by the EMT. As Head of Community Services, the claimant was responsible for the following teams:
 - 17.1. Tenancy Sustainability and Welfare Benefits
 - 17.2. Customer Service (for example, answering incoming telephone calls from customers) and
 - 17.3. A project called "Think South Liverpool" ("TSL")

(The phrase, "Tenancy Sustainability", was often used interchangeably with "Tenancy Support". I could not find any direct evidence that the two phrases had identical meaning, but I inferred that this was so. Miss Ryan's respondent's witness statement referred to Tenancy Sustainability when a contemporaneous document making the same point mentioned Tenancy Support. The claimant's performance objectives, which related to Tenancy Support, appeared to correspond to objectives for Tenancy Sustainability in her job description. When asking questions about the claimant's later role, counsel for the claimant put to Miss Ryan that the role consisted of "Tenancy Support, Welfare Benefits and New Initiatives". Miss Ryan agreed. The role description actually referred to Tenancy Sustainability and not Tenancy Support.)
18. The claimant's job description also stated that the post-holder was responsible for the Community Safety Team. Community safety involved, amongst other things, tackling anti-social behaviour and taking enforcement action where necessary. The respondent's policy was to use enforcement measures as a last resort. This was because it was part of the respondent's ethos to support tenants to live in their homes wherever possible. Nevertheless, there were occasions when action would need to be taken to remove a tenant.
19. At the time the claimant was appointed to the role, it was envisaged by the claimant and Ms Marsh that community safety would become part of her role from about April 2017. In fact, the claimant did not take on this responsibility. By about February 2017, Ms Marsh had formed the view that it would be better for the organisation if she remained personally in charge of community safety. The claimant, who did not feel confident with this new aspect of her role, agreed with a feeling of some relief.
20. In her new role, the claimant now shared a line manager with Ms Marsh. They both reported into the Executive Director of Operations. From February to May 2017 they were managed by Mr Wayne Gales and then by Mr Paul Smith until

August 2017. From August 2017 the claimant and Ms Marsh had separate line managers: Ms Marsh continued to report to Mr Smith and the claimant started reporting to Miss Claire Ryan who remained her line manager for the rest of her employment. At the time of becoming the claimant's manager, Miss Ryan's role was Director of Business Assurance. (Some time in 2018, Miss Ryan's role changed to Director of Investment and Assurance.)

Relationships with management colleagues

21. The claimant had good working relationships with Ms Marsh, Miss Ryan and Mr Smith. Her relationship with Mrs Fadden was more complicated. They exchanged many friendly and supportive text messages throughout 2017. The claimant says that she was merely trying to "curry favour", but I am satisfied from the text messages that their relationship was warmer than that. I also find, however, that two incidents in 2017 affected the claimant badly and caused her to be more wary of Mrs Fadden.

Missing iPad

22. The first incident concerned a missing iPad. In May 2017, one of the respondent's iPads disappeared from the Customer Services Team and was never recovered. The claimant investigated and asked for CCTV footage to be viewed, but it had been erased. Mrs Fadden's role took her out of the office for much of the time and she did not learn of the missing iPad until her return to the office in June. On 9 June 2017, Mrs Fadden confronted the claimant and told her that she should have carried out a formal investigation. I am satisfied that Mrs Fadden spoke sharply to the claimant, who was taken aback. Her feeling of humiliation was compounded by the fact that the conversation was overheard by colleagues. There is a dispute about a particular comment that Mrs Fadden is alleged to have made during this exchange. The remark is alleged to have been about Ms Cathy Bennett who, at that time, was a consultant working for the respondent. According to the claimant, Mrs Fadden said, out of the blue, "Cathy Bennett is going nowhere!" I think it unlikely that this is how the conversation unfolded. It would have been a bizarre thing for Mrs Fadden to say spontaneously. If she made the remark at all, something must have been said to prompt her.

23. About two days later, the claimant was admitted to hospital. I do not need to make a public record of the medical reason for her admission. For present purposes it is sufficient to state that it was a physical condition that might possibly have been aggravated by stress. Undoubtedly the claimant believed that the iPad incident had contributed.

24. By 19 June 2017, the claimant was back at work. She had a monthly meeting with Mr Smith. She mentioned the conversation about the missing iPad, but not the alleged remark about Ms Bennett.

25. The claimant went back to hospital on 24 July 2017. She took sick leave until early August 2017 and then took a further two weeks' annual leave to recuperate.

Unlawful eviction

26. The second incident can be traced back to early 2017. A tenant, Mr F, was unlawfully evicted from what had been his home. At the time, Mr F was in residential care, but his daughter wanted the tenancy to continue. The member of the Community Services Team responsible for the property was Ms M, who reported directly to the claimant. After discussions with Mr F's daughter had broken down, Ms M gave an instruction to clear Mr F's belongings from the property. Unfortunately for all concerned, the required legal procedures were not completed before this step was taken. As a result, the respondent had to pay compensation to Mr F and spend thousands of pounds in legal fees. Ms Marsh carried out an investigation, which included speaking to the claimant. In due course Ms M was invited to a disciplinary meeting where she was given a written warning. Following the meeting, Ms M went on sick leave. During a subsequent welfare visit in the summer of 2017, Ms M's husband complained that his wife had been "thrown under a bus". According to Ms M, she had discussed the proposed eviction with the claimant, who had authorised it. This was something that the claimant had not mentioned when first interviewed by Ms Marsh. Mrs Fadden decided that the matter should be re-investigated. The investigation included listening to an audio-recording of Ms M's original conversation with the claimant. Having heard it, Mrs Fadden decided that the claimant should be interviewed again. She arranged the interview for 21 August 2017, the claimant's first day back in work.
27. The claimant somehow caught wind that the investigation had been re-opened and took legal advice. She cannot have been entirely surprised to be interviewed. Nevertheless, from the claimant's point of view, the timing of the interview could not have been worse. On 21 August 2017 she returned to work from her sick leave and annual leave and was immediately invited into a "catch-up" meeting with Mrs Fadden and Mr Smith. On seeing that a note-taker from Human Resources was also present, she quickly realised that she had been misled as to the purpose of the meeting. She immediately went on the attack, accusing Mrs Fadden of acting unfairly. She refused to listen to the audio recording. The tone of the conversation improved once the claimant was reassured that no disciplinary action was being considered. Mrs Fadden explained her own point of view, which was that Ms M was motivated by personal dislike and had manipulated the claimant into authorising the eviction. The claimant explained some of the wider causes of her unhappiness. These included the iPad incident, a "toxic" blame culture, Mrs Fadden's absences from the office and her own workload. Gradually the air cleared. It was agreed that, moving forward, the claimant would be line managed by Miss Ryan.
28. Two days later, the claimant told Mr Smith how she had felt during the meeting. She said that she had been shocked at the way she had been brought into the meeting, but felt better for having raised her concerns and reassured by Mrs Fadden's "dialogue".

Customer Service outsourcing

29. One of the projects on which the claimant worked in 2017 related to the future delivery of the customer service function. By the summer of 2017, this work was well underway. In her monthly meeting with Mr Smith on 19 June 2017 (referred to above), the claimant agreed to produce final costings and structure for the new

customer services team. It was not clear at that stage whether or not the team would sit inside the organisation or be transferred out to an external provider. In July 2017 she e-mailed her report, which recommended outsourcing as one of a number of options, with the final decision being one for the EMT to take. In her final monthly meeting with Mr Smith, the claimant expressed her continued willingness to see through the proposed changes to customer services.

30. In January 2018, the claimant and Miss Ryan discussed the proposals, which had got as far as changing the signage. In February or March 2018, the EMT formally decided that the Customer Services Team should be outsourced. The team transferred out to the new provider in May 2018.
31. One consequence of the outsourcing exercise was that a number of roles were made redundant. The claimant's line management responsibilities reduced from about 15 to about 6 direct reports.
32. The evidence is not clear as to what work was done on the various options between August 2017 and January 2018. Nor is it clear at what point it became clear to the various EMT members that outsourcing was the preferred option. What is clear is that, by November 2017, it must have been obvious to Miss Ryan that outsourcing was an option awaiting a decision.
33. Following the meeting on 21 August 2017, Miss Ryan and Mrs Fadden discussed how the claimant's workload could be eased. They decided that responsibility for TSL could be removed from her, allowing her to concentrate on the other aspects of her role. When this proposal was later put to the claimant, she did not object.

New role – Head of Community Services and New Initiatives

34. On 17 November 2017, the claimant signed a new job description and, by doing so, agreed to take on the new role of Head of Community Services and New Initiatives. The role still included responsibility for Tenancy Sustainability and Welfare Benefits and Customer Service, but it differed from the claimant's previous role, in that:
 - 34.1. It no longer carried responsibility for TSL; and
 - 34.2. It now included responsibility for "the development of new products and services that not only enhance the SLH offer to customers but also earn additional income for the Group."
35. The new job description also reflected the reality that the claimant had never actually been responsible for the Community Safety Team.
36. The claimant believed that the new role would be viable. Otherwise, she would not have signed the new job description. That leaves the question of whether or not Miss Ryan and Mrs Fadden thought that the role would be viable. This question is controversial and I return to it later. (In passing it is worth noting that the claimant's written submissions to the tribunal suggest that the respondent's motive may no longer be in issue. The claimant does, however, still conclude that the redundancy was a "sham" and still relies heavily on the changes to the claimant's role in November 2017 in order to develop that argument.)

Ms Bennett's new role

37. In late 2017, Ms Marsh persuaded her line manager, Mr Smith, to split the role of Neighbourhood Manager into two new roles. One of the new roles was Neighbourhood and Community Safety Manager. Ms Marsh gave the existing Neighbourhood Manager first refusal on both roles and she chose the other one. This created a vacancy for the Neighbourhood and Community Safety Manager. Ms Bennett was the only applicant for the role. Following a successful interview on 20 November 2017, Ms Bennett was appointed in January 2018. From that time onwards, Ms Bennett, who, it will be remembered, had been working as a consultant, now became an employee.
38. This development coincided, possibly intentionally, with a personal promotion for Ms Marsh in December 2017. Ms Marsh's new role was Executive Director of Neighbourhood Management. She continued to oversee Community Safety.
39. In her new role as Neighbourhood and Community Safety Manager, Ms Bennett acquired responsibility not only for community safety, but also for TSL. The claimant and Ms Bennett collaborated well to manage the transition, which was complete from about February 2018.

GUVH

40. One of the claimant's more significant New Initiatives projects involved the possibility of taking over Garston Urban Village Hall (GUVH) and running community facilities there. The project was led by Miss Ryan, with considerable support from the claimant.
41. Part of the budget for the proposal included an element of the claimant's salary cost.
42. The claimant and Miss Ryan had discussed GUVH in October 2017. Miss Ryan had noted at that Liverpool City Council were looking to grant a 10-year lease. They returned to the topic in January 2018, at which point the negotiations were ongoing. On 3 May 2018 the claimant and Miss Ryan had a documented discussion of the claimant's performance targets. One of them was to "Deliver year one of GUVH". The claimant and Miss Ryan discussed the GUVH project again on 5 and 22 May 2018 and at further meetings in August, September and October 2018.

New Initiatives

43. I accept the broad thrust of the claimant's evidence that she was fully occupied during 2018. Indeed, I did not understand that proposition to be in dispute. There is some dispute over the claimant's breakdown of the time she spent on various elements the role. I could not take her breakdown at face value, not least because the claimant did not attribute time percentages to all the tasks in her breakdown, and those percentages which she did estimate added up to 115%. Nor did I try to resolve every point of difference. I was, however, able to make the following findings:
- 43.1. The claimant spent about 20% of her time on tasks that any senior manager in the organisation would be expected to do, and which would disappear if the role disappeared. Examples given by Miss Ryan was updating risk assessments and attending meetings. Such tasks were described by Miss Ryan as "business as usual". I took this description to

correspond broadly to what the claimant described as “general day-to-day”. Even if the claimant was getting at something else by the use of this phrase, it did seem likely to me that the “business as usual” tasks would account for something in the order of a day per week.

43.2. Other work (estimated by the claimant at 30% of her time) was strategic within Tenancy Support such as the creation of three new roles in the Tenancy Support team, which the EMT approved. Tenancy Support fell under the heading of Community Services rather than New Initiatives.

43.3. Some of the claimant’s areas of responsibility in New Initiatives were supervisory, with the time-consuming work being done by a dedicated manager reporting to the claimant. An example of this was the Smoke-Free Liverpool project.

43.4. The claimant carried out a review of services for the Scrutiny Panel. I did not make a finding about the precise proportion of her time that this took, but the claimant’s estimate of 15% suggests that it was significant.

43.5. The claimant spent at least 15% of her overall time on the GUVH project. This percentage is the claimant’s own estimate (albeit against a total of 115%). When one takes away the time spent on business as usual and on the Community Services aspect of her role, this 15% represented a significant portion of her time spent on all New Initiatives. This finding is consistent with the claimant having to deal with what in her view was an overwhelming amount of information (see below).

Secondment

44. Over the summer of 2018, Miss Ryan explored opportunities for the claimant to be seconded to a role in the Liverpool City Region. The proposed role would have involved working on the Region’s homelessness project, Housing First. Ultimately, the secondment opportunity did not materialise.

GUVH proposal rejected

45. At a meeting on 29 October 2018, the Board decided not to invest in the GUVH project. This was not Mrs Fadden’s decision: as Chief Executive, she did not have voting rights on the Board. Miss Ryan and the claimant were both disappointed, not least because of the amount of effort they had put into their proposal.

Decision to delete the claimant’s role

46. On 6 November 2018, Miss Ryan and Mrs Fadden discussed the aborted GUVH project and the future of the claimant’s role. Mrs Fadden’s notes of that conversation are sparse. They refer to GUVH and to the claimant’s potential secondment. There was no note of any discussion about deleting her substantive role. Nevertheless, I am satisfied that Miss Ryan did express her concern about the viability of the role, which is why they discussed exploring a secondment. I am also satisfied the discussion about viability was prompted by the recent GUVH setback.

47. What Miss Ryan had in mind, and discussed on 6 November 2018, was:

- 47.1. That the Welfare Benefits Team could be run independently by its existing manager;
 - 47.2. That Tenancy Sustainability could merge with Community Safety and be managed by the Neighbourhood and Community Services Manager, who at that time, was still Ms Bennett;
 - 47.3. That the remaining New Initiatives could be discontinued or absorbed by other managers; and
 - 47.4. That if these steps were taken there would no longer be a need for a Head of Community Services and New Initiatives.
48. On 14 November 2018, the claimant and Miss Ryan met for a 6-month review of the claimant's performance objectives. They discussed the now-defunct GUVH project. Miss Ryan fed back that the EMT report had not been sufficiently concise and that the Board had required further work to be done. For her part, the claimant admitted to having felt overwhelmed by the volume of information. Despite the fact that, 9 days previously, she had discussed with Mrs Fadden the possibility of deleting the claimant's role altogether, Miss Ryan did not tell the claimant about any possibility of her role being put at risk.
49. An EMT meeting took place on 15 November 2018. At the meeting, Mrs Fadden made a comment along the lines that she did not want non-productive people in her organisation. I am satisfied that this is what she said, because the claimant told her husband about the remark when she got home. The claimant felt that Mrs Fadden was referring to her. I think that is unlikely. Had Mrs Fadden been pursuing a secret agenda to manage the claimant out of the business for poor performance, I do not think she would have advertised it at an EMT meeting with the claimant present.

Redundancy consultation

50. On 3 December 2018, Miss Marsh met with the claimant and told her that her role was at risk of redundancy. She gave the claimant a letter bearing the same date. The letter purported to explain the reason why her role was considered to be at risk:
- “You will be aware that the business has undergone significant changes to our approach to customer service. This resulted in a restructuring exercise which led to a substantial decrease in responsibility attached to the Head of Community Services & New Initiatives post. In addition to this, as part of a wider review of operational services it is proposed that the Tenancy Support service merges with another front-line service therefore reducing management requirement.”
51. There was no mention in the letter of any reduction in the need for work on New Initiatives and no mention of GUVH.
52. The claimant had feared that something like this would happen. She was perplexed, however, by the reasoning in the letter. She could not understand why, if the reason for deleting her role was the outsourcing of customer service,

the role had been created for her in the first place at a time when a decision on potential outsourcing of the role was imminent.

53. The claimant was invited to a further meeting which took place on 5 December 2018. By this time, the claimant had taken legal advice. Miss Ryan gave what she said was the business rationale for deleting the claimant's role. She did so by reading from a prepared script. Essentially the rationale was the same as in the 3 December 2018 letter, but with one further piece of information:

“...a decrease in responsibility with TSL moving to Neighbourhoods”.

54. Miss Ryan also gave further detail about how the responsibilities of the claimant's role would be absorbed. The proposal was, she said, “that the Tenancy Sustainability Team merge with the Community Safety Team”.

55. The claimant told Miss Ryan that she could not take in what she was saying. She asked for various written policies and procedures. Miss Ryan could tell that the claimant was upset. Little more was discussed. Nobody mentioned any downturn in New Initiatives or the impact of GUVH being discontinued.

56. Following this meeting, the claimant obtained a fit note from her general practitioner and went on sick leave. She never returned to work.

57. On 10 December 2018, Miss Ryan wrote to the claimant, attaching the notes of the meeting and restating the scripted reason for placing the claimant's role at risk. The letter invited the claimant to a further consultation meeting scheduled for 18 December 2018.

58. Reflecting on the respondent's latest explanation, the claimant was left even more bewildered as to why she was being put at risk of redundancy. The transfer of TSL to Neighbourhoods had been part of the reason for the *creation* of her role. It could not explain its proposed deletion.

59. The claimant replied on 11 December 2018, making some corrections to the meeting notes. She stated that she would not be able to participate in redundancy consultation until after she had next seen her GP, which would be after 21 December 2018. She did not engage with the respondent's explanation for putting her role at risk. Miss Ryan quickly replied, offering the claimant the opportunity of making written submissions as an alternative to attending consultation meetings. She wrote again on 17 December 2018, agreeing to postpone the consultation meeting to 3 January 2019 and repeating the offer to consider written submissions. The letter warned the claimant that, if she did not attend the meeting, it would proceed in her absence. In reply, the claimant stated that she would not be well enough to attend on 3 January 2019, and, as she had no alternative, she would provide written submissions ahead of the meeting.

60. The claimant's written submissions were e-mailed on 3 January 2019 to Miss Ryan and Mr Gibson of Human Resources. The essence of her written argument was:

60.1. That she was being targeted because she had raised concerns about the “toxic leadership environment”;

- 60.2. That the redundancy exercise was Mrs Fadden's way of removing underperforming individuals, as betrayed by her remarks on 15 November 2018;
- 60.3. That the reasons given to her for the proposed redundancy did not stand up to scrutiny. (I have already set out how the claimant dissected Miss Marsh's rationale in her own mind – the claimant's letter made essentially the same points.)
- 60.4. That 12 months previously, Ms Bennett taken on new responsibilities, which included the Community Safety Team and TSL. These responsibilities could be passed to the claimant to shore up her role. In those circumstances, the respondent should make Ms Bennett redundant or, at least, consider the claimant together with Ms Bennett together in a "pool" for selection. Her letter went on, however, to observe that Mrs Fadden would not take this course because Ms Bennett was her friend. The claimant accused Mrs Fadden of "nepotism".
61. Miss Ryan replied by letter dated 10 January 2019. Her letter sought to dispel the claimant's suggestion of a campaign to get rid of her. It set out further information about the business rationale for deleting her role. It started by stating, "the business rationale which has triggered the redundancy consultation process has already been explained to you." By way of further explanation, the letter stated:
- "To further clarify, we consider the responsibilities of the Head of Community Services role have vastly diminished over the past year or so. When this role was first created it assumed the responsibility for:
1. Tenancy Support;
 2. Welfare Benefits;
 3. Customer Service ... and
 4. ...TSL.

As you will be aware the TSL team was moved to the Neighbourhood Services Team in early 2018 and in May 2018 the [Customer Service] team was partly outsourced with the rest of the contacts subsumed within existing teams. As a result, in the current structure the Head of Community Services role has responsibility for the Tenancy Support and Welfare Benefits departments only and is supported by the Welfare Benefits Manager in doing this. We do not consider there is a need for two separate roles to carry out these functions and our proposals are to remove the role of Head of Community Services in its entirety and for the Welfare Benefits Manager to absorb full responsibility for Tenancy Support and Welfare Benefits..."

62. There was no mention in this letter of any downturn in New Initiatives. Far from clarifying the position, the letter caused more confusion. It focused on the claimant's previous role of Head of Community Services and the responsibilities that had disappeared from that role. It did not explain why the respondent was thinking of deleting the claimant's current role, which had never included TSL,

and which was created in contemplation of the Community Services element being shortly outsourced.

63. The claimant also noticed that the nature of the proposed restructure had changed. Instead of merging Tenancy Support with Community Safety, it was now being suggested that Tenancy Support should merge with Welfare Benefits. This would mean that the claimant's responsibilities would be absorbed by the Welfare Benefits Manager and not by Ms Bennett. The letter did not acknowledge that Miss Ryan's plans had changed, let alone give any reason for it.
64. The claimant's suspicions, already highly aroused, were heightened still further. She did not believe that the respondent had any genuine operational reason for changing the proposed restructure. She thought that Mrs Fadden had realised that she had been caught out trying to advance Ms Bennett's career at the claimant's expense, and was now rapidly backtracking.
65. I can understand why the claimant thought that this was the case. Her theory filled the void left by the absence of any explanation for the change and her justified rejection of the business rationales that were being served up to her. But I am satisfied that Miss Ryan was not actually trying to cover up nepotism. There was a more innocent explanation. Miss Marsh had not been consulted about the proposal to merge Community Safety with Tenancy Support. When she discovered that this had been suggested, she asked for it to be changed. Her concern was that, if Tenancy Support and Community Safety were managed by the same person, there might be a conflict of interests. In some cases, the same manager might be responsible, at the same time, for trying to keep a tenant in their home and trying to get them out. Mr McGuire, who has very considerable experience of directing a large social housing group, told me that it is possible for one manager to oversee both responsibilities, provided that the right procedures are in place. Mr McGuire's evidence did not persuade me that Miss Marsh was necessarily wrong. It struck me that this was an area of legitimate business disagreement. The rights or wrongs of the argument might depend, for example, on the extent to which the jointly-responsible manager had hands-on involvement in operational decisions. I did not doubt that Miss Marsh genuinely took the view that she did.
66. Miss Ryan's letter went on to give the claimant a further opportunity to make written submissions, which she did. She questioned the change of proposed structure. This time she acknowledged that she would be placed in a "pool of one".

Decision to dismiss

67. Having received the claimant's written submissions, Miss Ryan decided to dismiss the claimant for redundancy. She remained of the view that there was no longer a business need for the Head of Community Services and New Initiatives role. There were no suitable alternative vacancies and no possibility of a secondment. Rather than require the claimant to work her notice, she decided to place the claimant on "garden leave" for the duration of her notice period. Despite what appeared to be a rather unimpressive first answer when questioned about this, I accept that she did not believe that the claimant would work

productively during her notice period. The New Initiatives element of her job had shrunk and the claimant had been on sick leave since the first consultation meeting.

68. Miss Ryan communicated her decision to the claimant by letter dated 21 January 2019. The letter did not offer any further information about why her role had been deleted. It offered her the right to appeal to Mrs Fadden.

Appeal

69. The claimant appealed against the decision to dismiss her. She did not ask for Mrs Fadden to step down from hearing the appeal. Her grounds of appeal essentially repeated her grounds for exposing the illogicality of Miss Ryan's rationale for deleting her role. The analysis demonstrated, she said, that the whole redundancy process was a sham and had only been attempted because Mrs Fadden had not succeeded in her original plan to manage the claimant out by overworking her. In her appeal grounds, the claimant speculated on Mrs Fadden's motives for wanting to remove the claimant from the business. She mentioned the errors that had led to the meeting on 21 August 2017 (a reference to Mr F's unlawful eviction), and an alleged desire or Mrs Fadden's part to reinforce Ms Bennett's role.
70. Miss Ryan presented the management response to the appeal in a written statement dated 19 February 2020. In her statement, she gave a brief history of the proposal to absorb the elements of the claimant's role. She acknowledged that the nature of the proposed merger had changed: Tenancy Support, instead of merging with Community Safety, would now merge with Welfare Benefits. According to Miss Ryan, the decision to change the proposed restructure had been taken by the EMT.
71. In her management response, Miss Ryan made clear that the claimant had not complained to her about being overworked and that she had no criticisms of the claimant's performance. She recognised that TSL was removed from the claimant's role at the time of the November 2017 job description, but impliedly continued to rely on it as part of the justification for deleting her role. Her words were that the claimant's "workload had decreased following the loss of two services". This can only have been a reference to TSL and the Customer Service Team.
72. Mrs Fadden considered the appeal and Miss Ryan's response to it. She decided that the redundancy dismissal should stand. Her decision was communicated to the claimant in a letter dated 27 February 2019.
73. Chief Executives rarely agree that they have engineered sham redundancies or engaged in nepotism, and Mrs Fadden did not do so either. She rejected the claimant's suggestion and saw no need for the matter to be investigated by the Board or any external adjudicating body. Since the claimant had raised the meeting of 21 August 2017, she offered a counter-narrative, reminding the claimant of her disappointment that the claimant had not disclosed that she had authorised Mr F's eviction.

74. She gave a further explanation for deleting the claimant's role. The explanation centred around the outsourcing of the Customer Services Team, but also added a further rationale that had never previously been mentioned:

“I am also aware that Claire Ryan tried hard to pursue other potential projects to help sustain or expand your role but understand that such opportunities were not successful and was a contributory factor to the redundancy proposal.”

75. This was the first time that anyone had suggested to the claimant that the lack of success in New Initiatives had influenced the decision to make her role redundant. Here, at last, was a reason that could explain why her role was considered necessary in November 2017 but not in December 2018.

76. The claimant served out the remainder of her notice on garden leave and her employment came to an end on 21 July 2019.

The claimant's responsibilities redistributed

77. Once the claimant had left, her role ceased to exist. The Welfare Benefits Manager took on the claimant's former responsibility for Tenancy Support. Work on the New Initiatives such as Smoke-Free Liverpool was carried on by individuals who had worked on them previously, but under different supervision. Work that the claimant had previously done on the Scrutiny Panel was handed to the Community Investment Manager. Some smaller New Initiatives (such as the Volunteer Academy, the Own Our World Campaign and the Business Innovation Group) were discontinued altogether.

Was the redundancy a sham?

78. Earlier in these reasons, when describing the creation of the role of Head of Community Services and New Initiatives, I left one factual question unresolved. That was whether, at the time, Miss Ryan and Mrs Fadden thought that the role would be viable. I now return to that question. It is important, because if Miss Ryan thought in November 2017 that the role was needed, and decided in December 2018 that it was not needed, then that would be a natural explanation for the decision to delete the role. The question is also controversial. The claimant's theory is that Mrs Fadden, either because of the two incidents in 2017, or because of her desire to advance Ms Bennett's career, decided that she no longer wanted the claimant in the business and waited patiently for a pretext to manage her out. As part of that long-term plan, she agreed with Miss Ryan in November 2017 to offer the claimant a superfluous role in the knowledge that significant parts of it would disappear. The claimant could then be dismissed and the termination be dressed up to look like a redundancy.

79. In support of this theory, the claimant relies on the misleading and nonsensical explanations given to her as to why her role was deleted. For the reasons I have given, it is not surprising that the claimant rejected the respondent's explanations and allowed her own theory to fill the vacuum. Nevertheless, my finding is that Miss Ryan and Mrs Fadden did genuinely believe, in November 2017, that the claimant's new role was necessary and viable. Here are my reasons:

79.1. First, if the claimant's theory is correct, Mrs Fadden took the deliberate decision to pay the claimant's salary for an extra year, in return for doing a

job that she did not need the claimant to do. That would be an expensive way of securing the claimant's removal from the business. Cheaper and more obvious alternatives presented themselves during late 2017 and early 2018. For example, the claimant's role could have been deleted with relative ease at the time the TSL function was moved or when the Customer Service Team was outsourced and other staff made redundant.

79.2. Second, the missing iPad and the unlawful eviction would not, in my view, have been likely to cause Mrs Fadden to turn against the claimant. The claimant was never suspected of having stolen the iPad herself and the cost of it was negligible compared to the cost of making the claimant redundant. In my view, the claimant has overstated the importance of the unlawful eviction in Mrs Fadden's thinking. Mrs Fadden only brought up the subject of the unlawful eviction in her appeal outcome because the claimant had raised it in her grounds of appeal. It is common ground that, at the meeting on 21 August 2017, Mrs Fadden reassured the claimant that there would be no disciplinary action and that she thought that the claimant had been manipulated by Ms M. Both the claimant and Mrs Fadden found the meeting difficult, but Mrs Fadden believed that the air had been cleared and the claimant had felt reassured.

79.3. Third, I do not think that the decision to terminate the claimant's employment was motivated by nepotism. Mrs Fadden did not have a secret agenda to advance Ms Bennett's career. Ms Bennett's appointment came about on the initiative of Ms Marsh and not Mrs Fadden. Even if Mrs Fadden wanted to ring-fence a role for Ms Bennett in 2018, I do not see why she would have needed to dismiss the claimant in order to achieve that outcome. There is no evidence of any diminution in the requirements for employees to manage Community Safety. Ms Bennett would have been safe in her role whatever happened to the claimant.

79.4. Fourth, if Mrs Fadden had hatched the plan attributed to her by the claimant, she could not have hoped to see it through without the knowing connivance of Miss Ryan. If the claimant's new role was not viable, Miss Ryan would have been the most likely to know. Yet Miss Ryan made genuine efforts in the summer of 2018 to secure the claimant's longer-term future in the business by trying to arrange a secondment.

80. The simple truth, as I find it, was that everyone was hoping in November 2017 that the claimant would make a success of her new role. Miss Ryan knew that it was a possibility that the Customer Service element of the claimant's role might disappear if the EMT decided to outsource the function, but she did not know for sure whether that would happen or not. She believed, at that time, that if the claimant were to lose Customer Service responsibility, the New Initiatives, including GUVH, would expand to fill the gap. The cancellation of GUVH made Miss Ryan realise that this hope had not materialised and that the new role was not needed after all.

Relevant law

81. Section 98 of ERA provides, so far as is relevant:

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-
- (a) the reason (or, if more than one, the principal reason) for the dismissal and
 - (b) that is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it:
- ...
- (c) is that the employee was redundant
- ...
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
 - (b) shall be determined in accordance with equity and the substantial merits of the case.

82. The reason for dismissal is the set of facts known to the employer, or the set of beliefs held by him, that causes him to dismiss the employee: *Abernethy v, Mott, Hay and Anderson* [1974] ICR 323, CA.

83. Section 139 of ERA defines redundancy. It reads, relevantly:

- (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to-

...(b) the fact that the requirements of that business...(i) for employees to carry out work of a particular kind.... have ceased or diminished or are expected to cease or diminish.

84. "That business" means the business for the purposes of which the employee was employed by the employer: s139(1)(a).

85. Section 139 describes a number of economic states of affairs, sometimes called "redundancy situations". The employer's motive is irrelevant to whether or not a redundancy situation exists. Nevertheless, the motive may be relevant to the reason for dismissal. For example, where the employer uses a redundancy situation as a pretext to dismiss an employee whom the employer wants to dismiss for another reason, the reason for dismissal is the other reason and not the redundancy: see *Berkeley Catering Ltd v. Jackson* UKEAT 0074/20 at paras 21-22.

86. Where the reason for dismissal is redundancy, the tribunal must consider whether the employer acted reasonably or unreasonably in treating redundancy as a sufficient reason to dismiss. In *Williams v Compair Maxam Ltd* [1982] IRLR

83, the EAT set out the standards which should guide tribunals in determining whether a dismissal for redundancy is fair under s 98(4). Browne-Wilkinson J, giving judgment for the tribunal, expressed the position as follows:

"... there is a generally accepted view in industrial relations that, in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:

- The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.
- The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.
- Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.
- The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.
- The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.

The lay members stress that not all these factors are present in every case since circumstances may prevent one or more of them being given effect to. But the lay members would expect these principles to be departed from only where some good reason is shown to justify such departure. The basic approach is that, in the unfortunate circumstances that necessarily attend redundancies, as much as is reasonably possible should be done to mitigate the impact on the work force and to satisfy them that the selection has been made fairly and not on the basis of personal whim."

87. It is not for the tribunal to substitute its view for that of the respondent. The tribunal can intervene only where the respondent has acted so unreasonably that no reasonable employer could have acted in that way.

88. An employer dismissing for redundancy must act reasonably in deciding on which employee or employees should be “pooled” for selection. In *Capita Hartshead Ltd v Byard* [2012] IRLR 814, Silber J summarised the relevant legal principles in this way:

"Pulling the threads together, the applicable principles where the issue in an unfair dismissal claim is whether an employer has selected a correct pool of candidates who are candidates for redundancy are that

- (a) “It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted” (per Browne-Wilkinson J in *Williams v Compair Maxam Limited...*)
- (b) “...the courts were recognising that the reasonable response test was applicable to the selection of the pool from which the redundancies were to be drawn” (per Judge Reid QC in *Hendy Banks City Print Limited v Fairbrother and Others (UKEAT/0691/04/TM)*);
- (c) “There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem” (per Mummery J in *Taymech v Ryan* EAT/663/94);
- (d) the Employment Tribunal is entitled, if not obliged, to consider with care and scrutinise carefully the reasoning of the employer to determine if he has “*genuinely applied*” his mind to the issue of who should be in the pool for consideration for redundancy; and that
- (e) even if the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it.”

89. An employer will not usually dismiss fairly for redundancy unless it makes reasonable efforts to consult its employees. In *R v British Coal Corporation and Secretary of State for Trade and Industry ex parte Price and Others* [1994] IRLR 72, Glidewell LJ said this:

"24. It is axiomatic that the process of consultation is not one in which the consultor is obliged to adopt any or all of the views expressed by the person or body whom he is consulting. I would respectfully adopt the tests proposed by Hodgson J in *R v Gwent County Council ex parte Bryant*, reported, as far as I know, only at [1988] Crown Office Digest p19, when he said:

'Fair consultation means:

- (a) consultation when the proposals are still at a formative stage;
- (b) adequate information on which to respond;

(c) adequate time in which to respond;

(d) conscientious consideration by an authority of the response to consultation.”

90. Where the employee appeals against dismissal, the tribunal must examine the fairness of the procedure as a whole, including the appeal: *Taylor v. OCS Group Ltd* [2006] EWCA Civ 702.

91. In applying the test of reasonableness, the tribunal must not substitute its own view for that of the employer. It is only where the employer’s decision is so unreasonable as to fall outside the range of reasonable responses that the tribunal can interfere. This proposition is just as true when it comes to examining the employer’s investigation as it is for the assessment of the decision itself: *J Sainsbury plc v. Hitt* [2003] ICR 111.

92. Where an employer has failed to follow procedures, one question the tribunal must *not* ask itself in determining fairness is what would have happened if a fair procedure had been carried out. However, that question is relevant in determining any compensatory award under section 123(1) of ERA: *Polkey v. A E Dayton Services Ltd* [1988] ICR 142. The tribunal is required to speculate as to what would, or might, have happened had the employer acted fairly, unless the evidence in this regard is so scant it can effectively be disregarded: *Software 2000 Ltd v. Andrews* [2007] IRLR 568.

Conclusions

Reason for dismissal

93. I am persuaded that the claimant’s dismissal was wholly attributable to the belief held by Miss Ryan, and confirmed by Mrs Fadden, that the requirements of the respondent’s business had ceased for an employee to do the work of Head of Community Services and New Initiatives. She was dismissed because her role was deleted. As I have found, the claimant was not offered a superfluous role just so that the respondent could later pretend that it was no longer required. When the claimant was dismissed, the remaining responsibilities of the role fragmented and absorbed in other parts of the business.

94. Translating this conclusion into the language of section 98, the respondent has proved that that the reason for dismissal was that the claimant was redundant.

95. One of the issues I have to determine is whether or not, if redundancy was not the reason for dismissal, the dismissal was for some other substantial reason, namely business reorganisation. I did not find it necessary to reach any conclusion on that issue. This was plainly a redundancy dismissal.

Reasonableness

96. I must therefore decide whether the respondent acted reasonably or unreasonably in treating redundancy as sufficient to dismiss the claimant.

97. My assessment of reasonableness must take into account the respondent’s size. The respondent was a fairly large employer that could have been expected to

devote considerable resources to ensuring fair consultation and to exploring alternatives to redundancy.

Pool for selection

98. In my view, it was reasonably open to Miss Ryan to treat the claimant as being in a “pool of one”, that is to say, to identify the claimant as the only employee put at risk of dismissal by the proposal to delete the claimant’s role.
99. The need to act reasonably did not require the respondent to bring Community Safety and TSL into the role of Head of Community Services and New Initiatives, just so that role could be preserved for the claimant or to create a pool with Ms Bennett. It was for the respondent to decide which roles it needed and did not need. Adopting the claimant’s proposal would have taken Community Safety away from Miss Marsh’s remit and would have led to the same conflict of interests between Tenancy Support and Community Safety that caused Miss Marsh to raise her concern at the EMT.
100. For the same reasons, the respondent was entitled to decide that the Tenancy Support element of the claimant’s role should be merged with Welfare Benefits and not with Community Safety. Once that decision was taken, Ms Bennett’s role would be unaffected by the deletion of the claimant’s role, and it would make little sense for them to be pooled together.
101. The respondent might have considered this to be a suitable case for “bumping”. Ms Bennett could have been dismissed and the claimant slotted into her role. Ms Bennett did not have two years’ continuous employment and no statutory protection against unfair dismissal. But I cannot criticise the respondent for not resorting to bumping in this case. The role of Neighbourhood and Community Safety Manager was a lower-grade role. Although the claimant initially argued that she should have been pooled with Ms Bennett, she appeared to drop that argument once the decision was taken merge Tenancy Support with Welfare Benefits. Her second written submission to Miss Ryan, whilst expressing deep suspicion of the respondent’s motives, appeared to accept the reality that she was uniquely affected by the deletion of her role.

Consultation - general

102. At first glance, the respondent appeared to go through a reasonable consultation process. There was an “at risk” meeting, a consultation meeting and two further occasions when the claimant was given the chance to make written representations. There was then an appeal with a further opportunity for the claimant to put her case in writing. All of this took about 3 months.
103. The claimant makes a number of criticisms of the consultation. In my view, some criticisms are stronger than others. I deal with the weaker ones first.

Predetermination

104. I do not accept the claimant’s argument that the consultation process was a sham from start to finish. This argument appears to me to be tied up with her theory that the decision to dismiss her had been predetermined in 2017. That theory is dispelled by my findings at paragraph 79. Dismissal was still under consideration until Miss Ryan made her decision shortly before 21 January 2019.

Mrs Fadden's involvement in the appeal

105. In my view, it was open to Mrs Fadden to make the appeal decision herself. This was despite the personal criticisms of Mrs Fadden that had been put forward in the claimant's grounds of appeal. Mrs Fadden was the Chief Executive. The only decision-making body more senior to her was the Board. It would be unusual for a board of non-executive directors to hear an appeal of this kind. I also take into account that the claimant addressed her appeal to Mrs Fadden and did not ask for anybody else to deal with it. The claimant had, by that time, indicated that she had taken legal advice. The respondent was reasonably entitled, in my view, to proceed on the footing that, if the claimant wanted Mrs Fadden to recuse herself from the appeal, she would have asked for it.

Continuing with consultation whilst the claimant on sick leave

106. Any reasonable employer would tread carefully when consulting about redundancy with an employee who is on sick leave. They must take reasonable steps to ensure that the employee's illness does not prevent them from being able to have their say. In my view, by giving the claimant two opportunities for written submissions, knowing that she was taking legal advice, the respondent did take sufficient steps. It was open to the respondent to decide not to wait for the claimant to get better before resuming consultation. There was no way of knowing when that would be. The event that appeared to have triggered the claimant's ill health was the start of the consultation process.

Consultation – inadequate information

107. The claimant's much stronger argument, in my opinion, is that the information provided to her was hopelessly inadequate. When proposing to delete a role, and consulting with the role-holder about making them redundant as a consequence, any reasonable employer of this size would provide the employee with two key pieces of information. The employee needs to know:

- 107.1. what the business rationale is behind the deletion of the role; and
- 107.2. what will happen to their work once their role is deleted.

108. These are not just box-ticking exercises. Employees at risk of redundancy need to know what the employer is really thinking. If they know the true business rationale, the employee can then seek to persuade the employer that that rationale can be met without deleting their role. If they know what will happen to their job responsibilities, they can more easily identify possible alternative employment, or role holders with whom they should be pooled for selection.

109. The rationale given by Miss Ryan to the claimant was illogical and misleading. The first reason for deleting her role was the outsourcing of the Customer Service Team. This could not explain the proposed role deletion on its own, because the outsourcing was contemplated as a real possibility at the time her role was created. The second reason, namely the transfer of TSL, was irrelevant to the deletion of the claimant's new role, because her new role had never had that responsibility. What any reasonable employer in the respondent's position would have done would have been to explain why the respondent had moved from a position of thinking in November 2017 that the claimant's new role would be viable without these two responsibilities, to a position where they considered that

the role was no longer needed. In short, Miss Ryan needed to say why she had changed her mind.

110. Miss Ryan had a simple enough explanation to give, had she chosen to give it. I have put it into my own words at paragraph 80. All Miss Ryan needed to say was that the New Initiatives had not produced as much work of value to the business as she had hoped. Instead, she made the position worse by repeating the same reasons even when the claimant pointed out how defective they were. Mrs Fadden got nearer to the mark – too late - in her appeal outcome letter, but she still did not mention the halt to GUVH as being the event that had prompted the decision to delete the claimant's role.
111. Miss Ryan did inform the claimant in broad terms what would happen to the responsibilities of her role after the redundancy. But then she changed the proposal without acknowledging the change or explaining any reason for it. Any reasonable employer would have provided the claimant with that information.
112. In the language of *Price*, the claimant did not have adequate information on which to respond to the respondent's proposals and consultation was therefore unfair.
113. The failure to provide adequate information meant that the claimant was deprived of the opportunity to make more effective representations. It affected the quality of her written submission in three ways.
- 113.1. First, the claimant could not engage with what Miss Ryan was actually thinking about the reason for deleting her role. Had Miss Ryan told the claimant that there was not enough productive work in New Initiatives, she could have highlighted the projects on which she was working, and made an argument as to why progression of those projects would justify the retention of her role.
- 113.2. Second, even if the claimant's role had to be deleted, it was harder for her to make a persuasive case for being retained in a different role. This was because she did not know why the Tenancy Support function was being merged with Welfare Benefits, as a sudden change from the initial proposal to merge it with Community Safety.
- 113.3. There was another way in which the inadequate information adversely affected the consultation process. It contributed to the claimant's deep sense of suspicion and made her engagement in the process less constructive than it otherwise might have been.
114. My criticisms of the consultation process cast Miss Ryan in an unfavourable light. That is a necessary consequence of my reaching conclusions on the issues that the law requires me to consider. I do not want readers of this judgment to think that I have any doubt about Miss Ryan's integrity. It is just that in this particular consultation, possibly acting on advice, she got her communication badly wrong.

Reasonableness

115. Finally I have stepped back and asked myself again whether the respondent acted reasonably or unreasonably in treating redundancy as a sufficient reason to

dismiss the claimant. Because of the lack of adequate information given to the claimant, I have come to the conclusion that the respondent acted unreasonably. The dismissal is therefore unfair.

Causation of loss – would the claimant have been dismissed in any event?

116. What I must now do is try to construct an imaginary world in which the consultation process had been fair. In particular, I must try to speculate about what would have happened if the claimant had been given adequate information.
117. In my view, it is likely that the claimant would have engaged more constructively with the consultation process. She would still have believed that the redundancy was a sham, but she would have made her written submissions more focused. Less of her energy would have been spent on picking apart the respondent's defective rationale and probing the unacknowledged and unexplained change in the restructure proposal. She would have known to concentrate her effort on making a case for the need to continue with the New Initiatives. Her document C2, prepared for this hearing, demonstrates that she was able to break down her job role into its constituent activities and set out her work and achievements in each activity. Had she known that the lack of progress in New Initiatives was key to the decision to delete her role, I speculate that she would have produced something similar to C2 and given it to Miss Ryan. She would have done so in order to explain why the continuation of her role was justified and why it should survive the GUVH setback.
118. I also think that, had the claimant been given an explanation for the change in the proposed restructure, she would have put forward a case (as she did to this tribunal) that there was no business reason why Tenancy Support and Community Safety could not sit within the same team. This would not have been an academic argument. The claimant would have pressed her case that she should be pooled alongside Ms Bennett. I do not think she actually wanted Ms Bennett's job, which was not a Head role, but she would have maintained the "pool" argument in order to expose what she believed as nepotism. It would have been quite reasonable of the respondent to reject the allegation of nepotism, but they would have had to take the pool argument seriously. They would have had to reflect on why it was now considered necessary to separate Tenancy Support and Community Safety, not least, because that had been precisely what was envisaged when the claimant was first promoted to the role of Head of Community Services in early 2017.
119. I speculate that, order to give conscientious consideration to these improved representations, the respondent would inevitably have needed to continue the consultation process for about 4 more weeks before giving the claimant notice of termination. Ms Marsh would have had to be approached for her comments on the proposed new structure and pooling. The EMT, which decided upon the new structure, would have been asked whether it should reconsider in the light of the claimant's written submissions. Miss Ryan would have needed to engage with the claimant's job role breakdown and think about what would happen to all its constituent parts.
120. I now consider what would have happened once an extended period of consultation had run its course. My view is that the eventual outcome would

have been exactly the same. Even if the claimant had put forward her best and most constructive case, Miss Ryan would still have decided to dismiss the claimant for redundancy. I reach this conclusion for the following reasons:

120.1. The claimant's role would inevitably have been deleted from the structure. Once GUVH had stalled, Miss Ryan was quite clear in her mind that she did not need a Head of Community Services and New Initiatives. She was prepared to retire some of the New Initiatives if it meant saving the cost of a senior management role. The Welfare Benefits Manager, who took on the Tenancy Support Function, was known to Miss Ryan and separated by only one layer of management. Miss Ryan trusted the new manager to be able to take on the new function. There was also a general strategic trend to remove Head roles from the senior management structure.

120.2. The claimant would not have ended up in any alternative role. During the consultation process that actually took place, she never asked to be pooled alongside the Welfare Benefits manager. The respondent would not have allowed her to compete for the role of Neighbourhood and Community Safety Manager. The respondent would not have seen any business reason to create a pool including Ms Bennett. Ms Marsh would have remained unshaken in her view about the undesirability of merging Community Safety and Tenancy Support. I have found that that was a reasonable position for a manager to take. Even if the respondent had offered the role to the claimant at Ms Bennett's expense, I do not think that the claimant would have taken it. Her purpose in arguing for a pool was to expose perceived nepotism, not because she seriously wanted Ms Bennett's job. I bear in mind here that the claimant would still have mistrusted Mrs Fadden even if she had been fairly consulted. Before being placed at risk, she thought she was going to be targeted. By the time of the first consultation meeting (and before TSL was first wrongly mentioned as a rationale) the claimant had already taken legal advice. I think it highly unlikely that, in that atmosphere, the claimant would have taken any alternative role.

121. My conclusion is, therefore, that, had the respondent acted fairly:

121.1. the claimant's employment would have terminated 4 weeks later than it actually did, but

121.2. there is no significant chance that the claimant would have remained in employment after that further period of 4 weeks.

Employment Judge Horne

30 November 2020

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

3 December 2020

FOR THE TRIBUNAL OFFICE

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