Case Number: 2300909/2016

EMPLOYMENT TRIBUNALS

Claimant: **Ms F Balogun**

Respondent: **Thorlands Housing Management Society**

Heard at: London South On: 07, 10, & 11 April 2017

Before: Employment Judge Freer
Members: Ms D Fennell
Mr G Henderson
Representation
Claimant: In person
Respondent: Mr P Starcevic, Counsel

RESERVED JUDGMENT

UPON the Claimant withdrawing the claim of automatically unfair dismissal on the ground of pregnancy

IT IS the unanimous judgment of the Tribunal that the Claimant's claim of age harassment is successful and the claim of unfair dismissal is unsuccessful.

REASONS

1. By a claim form presented to the Tribunal on 15 May 2016 the Claimant claims unfair dismissal and age harassment.

2. The Respondent resists the claims.

3. The Claimant gave evidence on her own behalf together with Mr Olu Odubanjo, a former Housing Officer of the Respondent and Ms Hazel Benjamin, also former employee of the Respondent.

4. The Respondent gave evidence through Mr Stan Williams, Vice-Chair of the Thorland's Board; Ms Elaine Francis, Secretary for the Thorland's Board; and Mr Michael Anderson, Group Human Resources Manager for WATMOS Community Homes.

5. The Tribunal was provided with a bundle of documents comprising 330 pages plus additional documents produced at the hearing as agreed by the Tribunal.

The issues

6. The list of issues to be determined by the Tribunal were confirmed in a Preliminary Hearing before an Employment Judge Elliott on 15 July 2016 reproduced in the bundle at pages 42 to 44.

7. In discussion with the parties at the outset of the hearing, the Respondent confirmed it was not relying upon the statutory defence with regard to individuals named in the age harassment issues set out in the order.

8. There is an issue to be added of whether or not Ms Francis was an employee or an agent under the provisions of the Equality Act 2010 should any of the harassment claims relating to her be successful.

9. The Claimant also confirmed that she was withdrawing the claim of automatically unfair dismissal on the ground of her pregnancy.

A brief summary of the relevant law

10. Section 26 of the Equality Act 2010 provides:

> "(1) A person (A) harasses another (B) if—
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
> (b) the conduct has the purpose or effect of—
> (i) violating B's dignity, or
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and
(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
(b) the conduct has the purpose or effect referred to in subsection (1)(b), and
(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect".

11. A Tribunal should consider all the acts together in determining whether or not they might properly be regarded as harassment (**Driskel –v- Peninsular Business Services Ltd** [2000] IRLR 151, EAT and **Reed and Bull Information Systems Ltd –v- Stedman** [1999] IRLR 299, EAT).

12. The motive or intention on behalf of the alleged harasser is irrelevant (see **Driskel** above).

13. The Court of Appeal confirmed in **Land Registry –v- Grant (Equality and Human Rights Commission intervening)** [2011] ICR 1390 "when assessing the effect of a remark, the context in which it is given is always highly material".

14. In **Richmond Pharmacology –v- Dhaliwal** [2009] ICR 724 the EAT held that the Claimant must have felt or perceived his or her dignity to have been violated. The fact that a Claimant is slightly upset or mildly offended is not enough.

15. In a discrimination claim and employment tribunal can consider a claim presented out of time "if, in all the circumstances of the case, it considers that it is just and equitable to do so". This gives a tribunal a wide discretion and to take into account anything which it judges to be relevant. The discretion is broader than that given to tribunals above under the 'not reasonably practicable' formula.

16. Notwithstanding the breadth of the discretion, the exercise of discretion is the exception rather than the rule' (see **Robertson –v- Bexley Community Centre**

[2003] IRLR 434,). In **Chief Constable of Lincolnshire Police –v- Caston** [2010] IRLR 327, the Court of Appeal stated that whether a claimant succeeds in persuading a tribunal to grant an extension in any particular case "is not a question of either policy or law; it is a question of fact and judgment, to be answered case by case by the tribunal of first instance which is empowered to answer it"

17. The discretion to grant an extension of time under the 'just and equitable' formula has been held to be as wide as that given to the civil courts by s 33 of the Limitation Act 1980 to determine whether to extend time in personal injury actions (**British Coal Corpn –v- Keeble** above).

18. Under that section the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (*a*) the length of and reasons for the delay; (*b*) the extent to which the cogency of the evidence is likely to be affected by the delay; (*c*) the extent to which the party sued had co-operated with any requests for information; (*d*) the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

19. Although, these factors often serve as a useful checklist, there is no legal requirement on a tribunal to go through such a list in every case, provided no significant factor has been left out of account.

20. The well-established guidelines relating to redundancy dismissal are contained in **Williams -v- Compair Maxam** [1982] IRLR 83, EAT. The guidelines suggest that an employment tribunal must consider five issues of: warning; consultation; selection procedure; the application of the selection procedure; and alternative employment. These guidelines are not principles of law and may not be present in all cases. However, the EAT confirmed that:

> "The basic approach is that, in the unfortunate circumstances that necessarily attend redundancies, as much as possible is done to mitigate the impact on the workforce and to satisfy them that the selection has been made fairly and not on the basis of personal whim".

21. The guidelines were created primarily for use in circumstances where employees are represented by a recognised independent trade union. However, the importance of similar procedural safeguards applying at an individual and unrepresented level was endorsed by the House of Lords in **Polkey –v- A E Dayton Services Ltd** [1988] AC 344:

> ". . . in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair decision which to select for redundancy and takes such steps as may be reasonable to minimise a redundancy by redeployment within his own organisation".

22. The leading case relating to consultation is the well-established case of **Mugford -v- Midland Bank Plc** [1997] IRLR 210, where the EAT summarised

the authorities:

> "Where no consultation about redundancy has taken place with either the trade union or the employee the dismissal will normally be unfair, unless the tribunal finds that a reasonable employer would have concluded that consultation would be an utterly futile exercise in the particular circumstances of the case.

23. The principle of fair consultation is also well-established as meaning:

> "(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 in response to consultation."
> (**R –v- British Coal Corporation and Secretary of State for Trade and Industry, ex parte Price** [1994] IRLR 72, CA, per Glidewell LJ)

24. With regard to the selection criteria and process, the Court of Appeal in **British Aerospace plc –v- Green** [1995] ICR 1006 directs that a tribunal should not subject any marking system to "over-minute analysis", but confirms that:

> ". . . every system has to be examined for its own inherent fairness, judging the criteria employed and the methods of marking in conjunction with any factors relevant to its fair application, including the degree of consultation which accompanied it."

25. With regard to the pool for selection, the EAT held in **Capita Hartshead -v- Byard** [2012] IRLR 814 held:

> 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** [1982] IRLR 83 [18];
>
> (b) "*[9]...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** [1994] 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.

26. The Tribunal received written submissions from the parties in which other authorities were cited and taken into consideration by the Tribunal.

Findings of fact and associated conclusions

27. The Claimant commenced employment with the Respondent as an Estate Administrator on 17 October 2011.

28. The Respondent is a Tenant Management Organisation managing both tenants and leasehold properties. The Respondent is a separate legal entity but forms part of WATMOS Community Homes, a group of Tenant Management Organisations.

29. The Tribunal will address the age harassment claim in the first instance as this may inform the decision on unfair dismissal.

30. The Claimant's claims derive from the Claimant being involved in an altercation over a family dispute involving Ms Sonia Vidal and Ms Sharon Burnett, Ms Vidal's cousin.

31. Ms Vidal disliked the Claimant because she felt she did not support her in an argument with her cousin. That is corroborated by Mr Odubanjo. Mr Odubanjo also identified that the bullying started as a result of a family dispute between Ms Vidal and Ms Burnett in around July 2012.

32. In cross-examination and also in closing written submissions, the Claimant confirmed the general way in which her complaint of age discrimination was being argued: "I am also claiming age discrimination as I was unlawfully discriminated against by ES, SV and MN because of my friendship with Mr Hall, who they say was too old for me to be friends with as he was twice my age… To summarise, I am not claiming age discrimination because my colleagues bullied me because they were older than me. I am claiming age discrimination because they bullied and victimised me because of my friendship with an order member of staff".

33. The first allegation is described as: "In or around June 2013 during a conversation in the office Ms Vidal the estates officer said that the Claimant was overpaid and did not deserve her pay. This was in the presence of Mr Odubanjo, also an estates officer".

34. The Claimant did not complain about this matter in writing. The Claimant said in cross-examination that she complained verbally to Mr Alex Heslop, but there is no later corroborative material of any such conversation.

35. In his witness statement at paragraph 12, Mr Odubanjo supports the Claimant's contention in a general sense, but does not confirm any time or date.

36. The Tribunal was referred to page 318 which is a written complaint from the Claimant to Mr Heslop. There is no mention in that complaint relating to age.

37. Also, a letter from the Claimant to Mr Peter O'Connell at page 200 mentions an alleged comment in which Ms Francis refers to the Claimant as "a little girl" to which the Claimant queried "why do you treat me like shit?" plus a general complaint that Ms Francis ridiculed the Claimant in front of her colleagues and did not afford her the same courtesy as she did with other colleagues. There is no express complaint of age discrimination as argued in respect of this particular allegation.

38. The Tribunal has been referred to a report by Dr Nunn of South London & Maudsley NHS Foundation Trust dated 15 July 2014 which addresses the Claimant's 'presenting problems' and sets out circumstances relayed by the Claimant that the initial problems at work arose because she did not go through an interview process for her job.

39. When considering all the relevant evidence the Tribunal concludes that the comment was said by Ms Vidal as alleged. The Tribunal concludes that this was part of a conversation comparing salary in relation to when Ms Vidal started as an Estates Administrator, which is the position the Claimant held.

40. However, the Tribunal concludes that the conversation did not relate to the Claimant's relationship with Mr Hall. It was a comment made in a general conversation about respective starting salaries.

41. On the Claimant's own case she is not arguing age harassment on the basis of the Claimant and Ms Vidal/Ms Francis/Ms Neto being older/younger than each other, it is a claim made in respect to an alleged response to the Claimant's alleged relationship with Mr Hall.

42. The Tribunal concludes that the Claimant has not proved facts that show the unwanted conduct of the comment related to her age in the way argued by the Claimant. The Claimant has not shown that the comment over pay was said to her because of any of the circumstances relating to Mr Hall.

43. Allegation two is described as: "In about August 2013 Ms Sonia Vidal saying to the Claimant that she did not find her beautiful at all and did not see what men saw in her. Ms Madalena Neto and Mr Odubanjo were present. The claimant says Ms Vidal compared the Claimant to her children. She said her children were the most beautiful and to Ms Vidal the Claimant was not beautiful".

44. The Claimant's account was corroborated by Mr Odubanjo.

45. The Tribunal finds as fact from the evidence that the Claimant received criticisms and what appears to be a good degree of bullying from Ms Vidal and Ms Neto with regard to the Claimant's friendship with Mr Hall.

46. The Claimant had a working friendship with Mr Hall. The Claimant at that time was 24 and Mr Hall was 54. The Tribunal finds as fact that gossip was spread to the effect that the Claimant and Mr Hall were having an affair. This was a constant jibe put to the Claimant in various different modes of expression from they were “having an affair”, to Mr Hall “wanting to fuck" the Claimant.

47. The Tribunal also finds as fact that Ms Neto and Ms Vidal were the prime movers in those circumstances.

48. The Tribunal finds as fact that the comment as alleged was said to the Claimant by Ms Vidal. The Tribunal concludes that it amounts to unwanted conduct.

49. The rumours and gossip generally were clearly unwanted conduct and undoubtedly related to age and Mr Hall being twice the Claimant's age.

50. Although causation is not required in respect of whether unwanted conduct is ‘related to’ age, the Tribunal concludes that the principal and effective cause of the comment by Ms Vidal to the effect that she did not see what men saw in the Claimant was due to the Claimant's alleged relationship with Mr Hall. The Tribunal concludes that the unwanted conduct related to the Claimant’s age.

51. The Tribunal also concludes that, in context, the comment had the purpose of creating a prohibited environment. It was a comment meant to be humiliating and degrading and the Tribunal accepts that the Claimant found it to be so. The Tribunal also concludes that the unwanted conduct also had the effect of creating a prohibited environment, when taking into account the perception of the Claimant, the circumstances of the case and whether it was reasonable for the conduct to have that effect, again in particular with regard to the comment being humiliating and degrading. The Claimant did not make any written complaint at the time, but the Tribunal accepts her evidence that she did feel the comment to be humiliating and degrading.

52. The third allegation is described as: “In August 2014 finance officer Ms Madalena Neto writing in the card that Claimant was given when she was leaving to go on maternity leave “they say third time lucky. I hope this baby help you become a better person”. The Claimant said there was no respect for her because of her age”

53. The inscription on the card states: “I wish you and the baby all the very best and that he grows with health and happiness. They say the “third time lucky” and I do hope this little one will help you become a better person”.

54. Tribunal concludes that when placing this matter in the general context of the animosity towards the Claimant, the inscription was insulting and meant to be insulting.

55. The Tribunal concludes that it may be possible for the inscription to be read in a less pessimistic sense, but the Tribunal accepts the evidence of the Claimant that she asked Ms Neto why she wrote in the card the words about helping the Claimant to become a better person, to which Ms Neto had replied that "I meant it". Although the evidence of Ms Benjamin was that Ms Neto was asked why she had written what she had, the Tribunal considers on balance that that it is improbable that this question was asked out of general curiosity and favours the Claimant's account.

56. The Tribunal concludes from the evidence that the Claimant was visibly upset when she asked that question of Ms Neto and it would have been obvious that the Claimant was upset about the inscription. On the evidence there were no words of comfort from Ms Neto for the Claimant to the effect that she had misunderstood the meaning of what was written.

57. The Tribunal concludes that Ms Neto and Ms Vidal clearly did not like the Claimant. That much is obvious from the documentary evidence.

58. The Tribunal concludes that there were a number of factors that contributed to their dislike of the Claimant, but the Claimant's alleged relationship with Mr Hall was a material part of that animosity.

59. The Tribunal concludes on balance that the description of becoming "a better person" was related to the alleged relationship between the Claimant and Mr Hall.

60. It amounted to unwanted conduct relating to the Claimant's age that had the purpose of creating a prohibited environment. It was a comment meant to be humiliating, degrading and/or offensive. The Claimant considered it to be so. The Tribunal also concludes that the unwanted conduct also had the effect of creating such a prohibited environment, when taking into account the perception of the Claimant, the circumstances of the case and whether it was reasonable for the conduct to have that effect. As with the issue above, the Claimant did not make any written complaint at the time, but the Tribunal accepts theClaimant's evidence that she considered the matter to be offensive.

61. Issue four is described as: "In August 2015 the Claimant telephoned Ms Francis, the Secretary of the respondent, to discuss arrears of pay and Ms Francis deliberately hung up the phone and asked the Claimant never to contact her again".

62. The Tribunal finds on balance from the evidence that Ms Francis did hang up the phone on the Claimant as alleged and corroborated by the evidence of Mr Odubanjo. The Tribunal also concludes that Ms Francis did so because the Claimant was chasing Ms Francis for her rent arrears, the Claimant was not a Housing Officer and in the circumstances Ms Francis took exception to being called regarding her rent arrears by an Estate Administrator.

63. The Tribunal concludes that the treatment of the Claimant in this instance did not relate to her age.

64. The Claimant accepted in cross-examination that her claims against Mr Hall in issues five and six are were not matters of age harassment.

65. Issue seven is described as: “In December 2015 Ms Francis came to the office and referred to the Claimant as a “little girl”. Ms Vidal was present”

66. The Tribunal finds on balance the Mrs Francis did use the term “little girl” during a discussion with the Claimant and Ms Vidal on 10 December 2015.

67. This matter arose from Ms Francis inspecting a list of OAP’s in respect of an OAP Christmas lunch. Ms Francis, as a committee member, chose to oversee the organisation of the OAPs Christmas lunch to make sure no person was left off the list. It was in consequence of that conversation that the allegation arose.

68. Ms Francis accepted in her witness statement and overall evidence that she said her "calm your little self down". She denied using the term “girl”.

69. Ms Vidal in her email account of the event provided to Mr Molloy states that Ms Francis did use the word “girl” but not the word ‘little’: “Girl please don’t take me on because I haven’t done anything to you and I don’t know what you are talking about” to which she says the Claimant responded: “Don’t call me a girl I’m a big woman”.

70. Mr Molloy wrote an email soon afterwards in which he describes a conversation with the Claimant that occurred the day after the incident which records that the Claimant complained that she was called a ‘little girl’ by Ms Francis.

71. On balance the Tribunal concludes that that phrase was used and concludes that it amounts to unwanted conduct on the ground of age.

72. However, the Tribunal further concludes that this matter does not relate to the Claimant's age discrimination claim regarding her alleged relationship with Mr Hall. It is an unrelated complaint about Ms Francis and although clearly referable to age, it does not form part of the Claimant’s pursued case before this Tribunal as clarified by her.

73. The Tribunal has also carefully considered all these matters as a whole and concludes that its decisions as set out above are not altered.

74. With regard to time limit issues, the Claimant entered into ACAS mediation on 04 April 2016 (Day A) and a certificate was issued on 29 April 2016 (Day B). The Claimant's claim form was presented on 15 May 2016. The last act of harassment relied upon by the Claimant is that relating to Ms Francis in 10 December 2015. Accordingly, any time limit expired on 09 March 2016 before the Claimant entered into ACAS mediation on 29 April. Therefore, all the

harassment claims are on the face of it out of time and are not saved by the ACAS extension of time provisions.

75. The Tribunal has considered whether it is just and equitable to consider the Claimant's claims, despite them being presented out of time.

76. The Tribunal finds that the Claimant tried to resolve these matters through internal grievance procedures, the first complaint in writing being made on or around 12 July 2012. Matters were not pursued by the Claimant when Mr Heslop became manager in or around May 2013 in order to see whether new management may change matters. The Claimant also spoke to management regarding the working relationship issues throughout. Despite the difficult circumstances the Tribunal accepts the Claimant's evidence, who was generally a credible witness, that she enjoyed her job and did not wish to lose it. That is the principal reason, for example, why she went through the internal mediation mechanism with regard to the circumstances relating to Ms Francis. The Claimant also had a period away from work on maternity leave from August 2014 to May 2015. The Tribunal accepts the Claimant's evidence that with the range of other matters occupying her with regard to her working relationships with members of staff and the subsequent restructuring, there were more immediate matters that required her attention.

77. The Tribunal accepts that it was a difficult balance for the Claimant between undertaking her work and pursuing a career, addressing the significant staff relations issues, raising complaints, and preserving her employment. Only when her dismissal was effective after an appeal the Claimant contacted ACAS and presented a claim to the Employment Tribunal.

78. The Tribunal finds that the Claimant's comment during the internal processes that she may lodge a claim at the employment tribunal was with regard to a claim for unfair dismissal and not age discrimination. It was a reference to the restructuring. The Claimant was not represented by a trade union during the individual consultation meetings and was only accompanied by a trade union representative at her dismissal appeal hearing. Before that time the Claimant had assistance from Ms Ayoole an external staff representative (who was not a trade union representative). The Claimant acted reasonably promptly after receiving the minutes of the appeal and her employment being terminated. The initial complaint was one of unfair dismissal and it was not until the preliminary hearing that the Claimant, a litigant in person, was in a position to articulate the age discrimination issues. The last potential act of age discrimination was in December 2015, it related to age but as the Tribunal has now concluded it is not how the Claimant now argues her case, and it potentially could have formed conduct extending over a period.

79. The Respondent flagged up time limit issues generally at the case management preliminary hearing, but no further preliminary hearing was sought as to whether or not the Tribunal had jurisdiction to hear the age discrimination claims. The matter was also not raised as preliminary point at the full merits hearing. The Tribunal does not criticise the Respondent in this regard but as a consequence all the evidence was received and heard by the Tribunal by the

time this matter came to be considered as part of the list of issues. By that stage, of course, the Tribunal had received all the evidence produced by the Respondent. The Tribunal did not receive any evidence or explanation about why Ms Neto, Ms Vidal or Mr Molloy were not able to attend at the employment Tribunal. The Tribunal was informed that they were no longer in the Respondent's employment, but there was no further information as to why they could not have attended, even under witness order. Therefore, the effect of the delay on the cogency of the evidence the Tribunal concludes was limited.

80. Therefore weighing all the matters in the round and having regard to the length of and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the Respondent had co-operated with any requests for information; the promptness with which the claimant acted once she knew of the facts giving rise to the cause of action; the steps taken by the Claimant to obtain appropriate professional advice once she knew of the possibility of taking action; and all the relevant circumstances, the Tribunal concludes, that it is just and equitable to consider the claims even though they were presented out of time.

81. With regard to the unfair dismissal claim, the Claimant was dismissed in circumstances where the Respondent was undertaking a reorganisation.

82. Ms Julie Fulgence formulated the original proposal for a reorganisation within the Respondent's organisation and the Claimant did not raise any criticism of that in evidence.

83. The proposal deleted the Claimant’s position as Administrator but created potential suitable alternative employment of a post as Customer Service Officer on a salary reduced by £5,362.

84. The Claimant was sent a letter dated 14 September 2015 by Ms Fulgence which identified that her position was at risk of becoming redundant, subject to consultation and states “There are potential redeployment opportunities within the prosed new structure which will be ringfenced to particular staff as appropriate and we encourage you to express an interest in being considered for these vacancies. I have enclosed details of the possible vacancies and request that you let me know if you wish to be considered for a particular vacancy should restructuring proceed”. The Claimant was provided with a time and date for group and individual consultation.

85. The Tribunal concludes that there was no suggestion that the original reorganisation plan by Ms Fulgence was influenced by any of the alleged bullying or harassment issues as considered by the Tribunal.

86. Consultation was undertaken as a group exercise and as an individual one-to-one basis. In an email dated 07 October 2015 by Mr Anderson, Group HR Manager, it was confirmed that the Income and Finance Offier Post was 70% finance and 30% income collection and so would be ring-fenced only for Ms Neto and not the Claimant or Mr Odubanjo.

87. An alternative proposal was submitted by employees. That proposal was considered by a Management Committee meeting on 11 November 2015 and it was decided that the proposal failed to address a business objective. The Tribunal concludes from the evidence that the employees' proposal was reasonably considered by the Respondent's Management Committee and the rejection was based on genuine and reasonable grounds.

88. Mr Tony Molloy joined the organisation and took over from Ms Fulgence. He made his own proposal for re-organisation. The Claimant made an argument that Mr Molloy had only been there few days before he made his own proposal to reorganise. However, the Tribunal finds that this is not correct as fact and that Mr Molloy was engaged to join the Respondent in mid-October. He had undertaken a one-week handover with Ms Fulgence. This is confirmed in the minutes of a management committee meeting held on 13 October 2015.

89. Mr Molloy's proposal deleted the Claimant's administration position but also removed the potential suitable alternative employment of Customer Service Officer.

90. The Tribunal finds on balance that that new proposal was submitted by Mr Molloy because he was a very experienced Estate Officer and it was his view that his proposal was the best way for the organisation to be structured.

91. The Tribunal concludes on balance after considering the evidence that Mr Molloy's proposal was not influenced by the Management Committee or Ms Francis. Mr Molloy independently approached the Management Committee with his suggestions. That proposal was agreed by the Committee upon consideration.

92. The new proposal was agreed in principle by a committee of ten individuals on 09 December 2015.

93. By a letter dated 10 December 2015 from Mr Molloy, the Claimant was informed that the Respondent had changed its restructuring proposals and was provided with a copy of the revisions which had been agreed, subject to consultation, by the Respondent's Management Board. Alternative proposals were requested and an individual consultation date and time was provided. The individual consultation meeting occurred on 15 December 2015.

94. By a letter dated 16 December 2015 the Claimant raised a written grievance against Ms Francis in her capacity as Committee member. Mr O'Connell, Chair of the Respondent Committee wrote to the Claimant stating that Mr Leathers, the Claimant's new line manager would speak to the Claimant informally to see if the matter could be resolved.

95. On 06 January 2016 a Management Committee meeting reviewed the restructure and considered a written statement submitted by the Claimant. The Claimant's proposal was considered objectively and in relation to efficiency grounds. The proposal of Mr Molloy was agreed and it was recorded that a meeting would be arranged with the Claimant and if the decision remained to

proceed then Mr Leathers was given permission to give the Claimant confirmation of notice of termination of employment.

96. By a letter dated 08 January 2016 and further to the completion of the consultation process the Claimant was invited to a meeting to discuss the outcome of the process. The letter warned the Claimant that at the meeting potential redundancy termination of employment would be discussed and that following the meeting the Claimant could be dismissed.

97. By a letter dated 08 January 2016 Mr Leathers confirmed informal resolution of the Claimant's grievance.

98. A further Management Committee Meeting dated 14 January 2016. The minutes contain an inaccurate summary of the 06 January 2016 Management Committee meeting, in that the earlier meeting had not agreed to delete the Claimant's post as suggested but it was pending a final meeting with the Claimant. However, the 14 January meeting confirmed the minutes of the 06 January meeting.

99. A meeting with the Claimant occurred on 18 January 2016 conducted by Mr Leathers. It was explained to the Claimant that the Committee had proposed to delete the administrative post and this could result in a potential redundancy and a decision would be made following the meeting. That was an accurate account of the position. The meeting discussed the circumstances. The meeting with Mr Leathers was a concluding meeting and could not be construed as consultation. It was a meeting to discuss final matters such as the availability of suitable alternative employment and general vacancies and prospective final payments.

100. The Claimant was provided with a dismissal letter by Mr Leathers dated 21 January 2016 informing the Claimant that she was being made redundant with pay in lieu of notice, redundancy payment and other sums. The Claimant was given a right of appeal.

101. The Claimant appealed against the decision on the ground of inadequate consultation and unfair selection. An appeal meeting took place on 08 February 2016 conducted by Mr Stan Williams, a Committee Member and the decision was communicated to the Claimant by a letter dated 12 February 2016. The decision to dismiss was upheld.

102. Having considered all the evidence and surrounding facts the Tribunal unanimously concludes that the reorganisation proposal was genuine and made by the Respondent on genuine business grounds.

103. The original proposal by Ms Fulgence was not criticised in evidence by the Claimant. Mr Molloy later put his own input into the reorganisation proposals due to his experience as an Estate Officer and the new plan was adopted by the Respondent's Management Committee. There was no evidence of this process being a sham and for anything other than for genuine re-organisational reasons due to pressing financial considerations.

104. The original reorganisation proposal by Ms Fulgence could not have been to 'get rid' of the Claimant as the proposal kept her in employment through alternative employment. As far as that reason might apply to Mr Molloy the Tribunal finds that he was not influenced by Ms Francis or the Management Committee members. The documents confirm that it was his proposal that he put to the Committee which was ultimately ratified.

105. The Respondent had a significant budget deficit of around £50,000 and there had been introduced for all social housing landlords a requirement to achieve a 1% reduction in rent. It was also anticipated that moving forward and with a greater focus on benefit reform there would be no need for an Administrator or a Customer Service role and any such duties arising would be undertaken by Estate Officers on an *ad hoc* when required basis.

106. The Tribunal concludes that there was a dismissal by reason of redundancy in that the dismissal was wholly or mainly attributable the fact that the requirement of the Respondent's business for employees to carry out work of a particular kind had, or were expected to, cease or diminish. The work was expected to diminish and the amount of employees required to do it had reduced in number.

107. There was reasonable warning, information, and consultation by the Respondent. There was group and individual consultation over the proposal from Ms Fulgence and alternatives were genuinely considered by the Respondent. Further consultation was held on an individual basis upon the revision by Mr Molloy. The Claimant received details of the new proposal by Mr Molloy, had a further one-to-one meeting and the Claimant submitted a written statement to the Management Committee regarding the proposal, which the Tribunal finds was duly considered.

108. The Claimant was in a pool of one and therefore there was no need for the Respondent to produce a redundancy selection matrix. The Tribunal concludes that the Respondent had genuinely applied its mind to the problem of selection through its written Policy and in doing so on this occasion the reorganisation resulted in the Claimant being placed in a pool of one.

109. Further, the WATMOS Restructuring, Redeployment and Redundancy Policy was applicable to the Claimant and sets out in terms the principle of ring-fencing positions, which may occur where the scope of the duties, grade and salary of those whose jobs are at risk are largely unchanged (with duties being the deciding factor).

110. This is a process adopted by the Respondent in dealing with redundancies, rather than placing all employees at risk and everyone then applying for the resulting vacancies. The Tribunal concludes that the approach adopted by the Respondent is objectively reasonable. If the Respondent did not follow its own written policy it would have been at risk of Tribunal claims from any other individuals who were then made redundant. For example, the existing Finance Officer was ringfenced to the new Finance and Income Officer post and the existing Estate Officers were ringfenced to the new Estate Officer roles.

111. There was no suitable alternative employment available. The Claimant's position no longer existed and the new Estate Officer posts which the Claimant identified as being a possibility of suitable alternative employment for her were reasonably ring-fenced by the Respondent to the existing Estate Officers.

112. The Tribunal concludes that the overall process adopted by the Respondent fell within the range of reasonable responses. The Claimant had a reasonable opportunity to put her case during consultation and the appeal process.

113. The Tribunal concludes overall that the reason for dismissal was redundancy, the process adopted by the Respondent fell within the range of reasonable responses and the decision to dismiss was fair.

114. This matter will be listed to consider remedy in respect of the two successful age harassment claims, with any compensation seeming to be only in relation to injury to feelings, should the parties not be able to resolve the issue in the meantime.

Employment Judge Freer
Date: 30 August 2017