EMPLOYMENT TRIBUNALS

Claimant: **Mr S Thornton**

Respondent: **University of Leicester**

Heard at: **Leicester** **On:** **Tuesday 29 August 2017**

Before: **Employment Judge Macmillan (sitting alone)**

Representatives

Claimant: **In Person**
Respondent: **Mr Edwards of Counsel**

JUDGMENT

The complaint of unfair dismissal fails and is dismissed.

REASONS

Background and issues

1. This is a complaint by Mr Thornton that he was unfairly dismissed from his employment as Senior Experimental Officer in the Condensed Matter Physics Group which sits in the Department of Physics and Astronomy at the University of Leicester on 27 February 2017.

2. He had been employed by the University since 10 January 1985. The University admits the dismissal and gives as the reason that Mr Thornton was redundant as the result of a decision to close the Condensed Matter Physics Group (CMPG) completely.

3. Mr Thornton, who was represented throughout the redundancy process by the Universities and Colleges Union, has represented himself before this Tribunal. In addition to his evidence I have heard evidence from Dr Klaus von Haeftan, the academic lead in CMPG who is also claiming unfair dismissal against the university. Mr Edwards, who is not instructed in Dr von Haeftan's case (which was listed before a different Employment Judge tomorrow but which at the end of this hearing I directed should come out of the list to enable these reasons to be fully digested by all parties) is unable to offer any assistance on the very obvious question why the two claims have not been consolidated as, apart from the personal differences between Mr Thornton, who was a member of academic support staff, and Dr von Haeftan, who was a member of the academic staff, the essential facts of the two claims appear to be identical. In case the point

becomes of relevance at a subsequent hearing, I should perhaps add that Dr von Haeftan has sat through the whole of this hearing and has heard all of the evidence. The Respondents have been represented by Mr Edwards of Counsel and I have heard evidence from Professor O'Brien who was Head of the Department of Physics and Astronomy and from Professor Paul Monks who is the Head of the College of Science and Engineering in which that department sits.

4. For a long serving and dedicated employee redundancy is always an exceedingly painful process, which can lead to lasting loss of self-esteem and protracted periods of unemployment, especially where the employee has loyally served his employer in a narrow and very specialist area. I fear that Mr Thornton's obvious and understandable sense of grievance may well have been exacerbated by the feeling that he has had a less than satisfactory hearing before this Tribunal because I have had to rule that much of the case that he wished to advance to show that his dismissal was unfair was one which the Tribunal could not properly consider. His primary line of attack was intended to be against the business case to close CMPG. But, as Mr Edwards has rightly submitted, there is old and well established authority which prevents an Employment Tribunal from going behind the decision to declare redundancies. The starting point is ***Moon and Others v. Homeworthy Furniture (Northern) Limited*** [1976] ICR 117 EAT. In that case the Industrial Tribunal (as this Tribunal was then styled) had held that the employees were not entitled to challenge the declaration of redundancy on its merits and that since there was a cessation of work within section 12 of the Redundancy Payments Act 1965 the dismissals were not unfair. That decision was upheld on appeal. In the later case of ***James W Cook & Co (Wivenhoe) Limited v. Tipper*** [1990] ICR 717 CA where the employer had closed a small shipyard, the Court of Appeal held that it was not open to the Court or to the Tribunal to investigate the commercial and economic reasons which had prompted the closure. Because it was precisely the University's commercial and economic reasons for deciding to close CMPG that Mr Thornton wished to challenge I had to truncate much of the case that he wished to put. This Tribunal's enquiry into whether the employer has acted fairly or unfairly in dismissing Mr Thornton is confined to the implementation of that decision.

5. What is left of his complaint of unfair dismissal is a challenge to the very basis of the decision to dismiss, which he says was taken in breach of the University's statutes by people who had no authority to take it. He further complains that the University is in breach of its own Redundancy Ordinances and Policy by failing to keep a proper record of various meetings and discussions and by failing to engage in meaningful consultation. He has raised two further issues neither are which are pursued with any vigour, the first being the failure by the University to find him alternative employment for a period of 2 months under a funding arrangement with a business called Mantis. The second, which he did not dealt with in evidence at all but did raise in his claim form, was the refusal to allow him to have an appeal.

The law

6. The right not to be unfairly dismissed is enshrined in sec 94 of the Employment Rights Act 1996. Section 98 deals with the test of fairness. At sub-section (1) it provides that in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason or if more than one the principle reason for the dismissal which, in order to be fair must be one of the

reasons set out in sub-section (2) or some other substantial reason. Amongst the reasons which are potentially fair reasons for dismissal is that the employee was redundant.

7. The all important test of reasonableness is at subsection (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 reasons 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."

8. In cases where the employees are represented by a recognised trade union, as here, the Tribunal's approach to that question was established in ***Williams v. Compare Maxim Limited*** [1982] ICR in which the Employment Appeal Tribunal said this:

"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."

9. A little later in the judgment the Judge set out basic steps which an employer might be expected to follow:

"Although it would be impossible to lay down detailed procedures which all reasonable employers would follow in all the circumstances, in the experience of the Lay Members of the Appeal Tribunal in the present case 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:

1. 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.

2. 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."

10. Much of the rest of that passage is directed to the question of the selection of employees for redundancy, a process which applies where only some but not all of the employees within a pool for selection are to be made redundant. The concept of selection has been a source of some confusion for Mr Thornton who assumed that there is an obligation on the University to demonstrate that the CMPG has been selected for closure against established, objective, criteria. But that takes us straight back to his wish to challenge the whole of the business

case to close CMPG which this Tribunal cannot consider.

11. Finally, as it is not entirely clear that Mr Thornton accepts that there was a redundancy situation, I need to briefly mention the definition of redundancy. This is to be found in section 139(1) of the Act and so far as material provides:

> *"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) that the requirements of [his employer's] business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish."*

The facts

12. I now turn to the facts. The University has recently faced very challenging economic times. A voluntary severance scheme was introduced in April 2016 following a report to the University's Council by the University's Leadership Team (ULT). Mr Thornton's first challenge is to the extent to which decisions appertaining to redundancy may be lawfully delegated by Council. The relevant provision is to be found in paragraph 2(h) of Section 5 of the University's statutes:

> *"Subject to the charter and these statutes, the Council shall have the right to reserve unto itself or to delegate such powers as it thinks fit except that the Council shall not delegate the following powers*
>
> *…*
>
> *(h) to reach a decision regarding the desirability of a reduction in the staff of the University by way of redundancy."*

13. At its meeting on 17 March 2016 the Council endorsed the report put to it by ULT in the following terms:

> *"Council endorsed the full range of actions being taken by management to address the financial challenges facing the University and formally approved:-*
>
> *(a) the immediate launch of a new voluntary severance scheme;*
>
> *(b) a scheme to facilitate compulsory redundancies if required arising from ongoing discussions regarding the future size and shape of the University."*

14. Mr Thornton does not take exception to that decision. What he takes exception to is the lack of any subsequent decision by Council with regard to his personal redundancy or the closure of CMPG, in particular that there was no feedback to Council about whether it was appropriate to close CMPG and whether he as an individual should be made redundant which, he contends, was outwith the University's statues, those decisions being non-delegable by Council.

15. I find as a fact that the University is not in breach of its statutes. The wording of 2(h) in section 5 is clear. That which is not delegable is a decision regarding the *desirability* [my emphasis] of a reduction of the staff of the University by way of redundancy. That is precisely the decision which was taken

on 17 March. Because there is no express prohibition in the statues against the delegation of any of the decisions which necessarily flow from that first decision, then it must follow that those subsequent decisions are delegable.

16. Unsurprisingly, Council delegated those decisions to the ULT and it was they who in due course produced the business case for the closure of the CMPG which in turn led to the dismissal of Mr Thornton by reason of redundancy. In making those decisions the ULT (and in consequence the University itself) was acting lawfully within the University's code of governance.

17. Once the ULT, of which Professor Monks was a member but of which Professor O'Brien was not, had come to the conclusion that the CMPG should go, the process was started by a letter in early July to all members of CMPG from Professor O'Brien as Head of Department calling them to a meeting. This was not however the first notification that members of the University's staff had had that all might not be well as all had received a letter from the Vice-Chancellor's office shortly after the Council meeting of March 2016 announcing the new voluntary severance scheme. Mr Thornton has made much of the fact that Prof O'Brien's letter stressed the importance of all CMPG members meeting together and that the date initially proposed for the meeting had to be vacated because of the unavailability of some members on holiday. The revised date of 26 August also coincided with the holiday of one member the group, Dr Baker, who was unable to attend but the meeting went ahead without him. Mr Thornton contends that this was unfair even though he attended the meeting and he has been unable to articulate any unfairness to him flowing from Dr Baker's absence other than the fact that until Dr Baker had been individually consulted about a week later the group could not begin to formulate its response to the business case for closure. During the meeting a detailed PowerPoint presentation of the business case for closing the group was given Prof Monks and a document pack repeating the business case was handed out. No minutes were taken of that meeting which marked the start of the statutory 90 day consultation period.

18. Also on 26 August Mr Thornton was given a letter confirming that he was at risk of redundancy. His first individual consultation meeting took place on 2 September and was again not minuted. It was however followed up with a letter on 16 September confirming the substance of the discussion and Mr Thornton does not claim that the letter is inaccurate.

19. There was then a further collective meeting on 29 September which, because of the law relating to the handling of collective redundancies, was categorised as an informal meeting when a further presentation was made. The members of CMPG produced the first draft of their counter proposal which had been largely authored by Dr von Haeftan. The counter proposal in this and its subsequent iterations was directed to saving CMPG as a whole rather than saving the jobs of individual members of the group. Again there were no minutes taken by the University side.

20. On 11 October Professor O'Brien e-mailed the ULT's response to the counter proposal rejecting it. A further counter proposal was drafted on or about 10 and 11 November and on 14 November it was considered by the ULT and rejected. That meeting was minuted. The third consultative meeting, being the second formal consultation, took place on 17 November and led to the submission of a third counter proposal again focussing exclusively on how the CMPG might be saved. On 24 November Mr Thornton had his second individual

consultation meeting at which he was told that he would be made redundant.

21. On 28 November the final counter proposal was rejected by the ULT. It was felt to be too reliant on optimistic projections about take up of a proposed new MSc course and the winning of grants, an area in which the CMPG had been less than successful in the past. Also on that date Mr Thornton was given 3 months' notice of intention to terminate his contract by reason of redundancy. The letter spelled out quite clearly that under the Redundancy Ordinances he had ten working days in which to lodge an appeal and the grounds on which an appeal could be lodged were explained. He took no action. He appears to have taken no action because he adhered to the view of Dr Von Haeften that it was better not to rock the boat to see if matters could be resolved informally. This places Mr Thornton in a very awkward position because he cannot have his cake and eat it too. If the University are to be criticised and held to account for not complying with the Redundancy Ordinances as Mr Thornton contends, that applies, mutatis mutandis, to Mr Thornton. He therefore has no grounds for legitimate complaint that the University rejected his attempt to appeal which he finally signalled to them as late as 23 January 2017.

22. During the notice period he was placed on the at risk register and he accepts that no suitable alternative posts became available. However in addition to the role which he undertook within CMPG he was party to a grant from a company called Mantis but the grant, so far as it named him, was for £10,000 of fees to enable him to study for a doctorate. It is clear from the documents in the bundle that the University gave consideration to translating it, and took at least the initial steps towards having it translated, into two months' salary, two months being the remaining life of the grant. But I accept the evidence of the University that this was not in their gift. They had to obtain written confirmation from Mantis that the grant could be translated into two months of salary.

23. The e-mail stream in the bundle suggests that preparatory soundings were made of Mantis which appeared to be encouraging. But then things petered out. Even the gentleman dealing with it at Mantis in his final e-mail was very equivocal. He had no recollection of making any kind of written promise that the fees could be translated into salary although he may have done so orally. What is unarguable is that the requisite written confirmation from Mantis was never received. For the first time since these proceedings commenced, in his evidence yesterday Mr Thornton claimed that it was the University's HR department that had intervened and stopped the process by saying that he would not be insured for lab work which had thwarted attempts to get Mantis to change the terms of the grant. He only claims to have heard that that is the case from various sources but has called no witnesses to that effect. No documentary evidence is available to back him up and I am concerned that the claim was made extremely late in the day without prior notice to the University. I am not satisfied that the University have in any sense thwarted this possible source of alternative employment for Mr Thornton which would in any event have been of very short duration. The University did fund an external training course for him to help him widen his horizons, and in consequence his employment prospects, somewhat.

24. That the consultation process was not a sham but entirely genuine emerges from a number of different directions. Within CMPG Dr Baker submitted a personal counter proposal that he surrender his teaching and research contract for a full teaching contract. That was accepted and he was not made redundant. Dr Howes of CMPG was slotted in during the notice period as cover for a

colleague elsewhere in the department who was on maternity leave. In the Maths department a formal counter proposal was accepted in full and no redundancies took place.

Conclusion and Discussion

25. It is the case that the University failed to take minutes of some meetings. Their Redundancy Ordinance at 4.8 requires them to maintain accurate and up to date records of all redundancy activity. Mr Thornton also relies on para 21.1 of the Redundancy Policy which says that all formal documentation relating to the Ordinance will be written sensitively by line managers, treated as confidential and forwarded to HR for filing on the staff member's personal file. Those are the Ordinances and Policies which are said to have been broken although it is clear that para 21.1 does not create a requirement to take minutes.

26. It is arguable that there is a technical breach of para 4.8 of the Ordinance as a number of meetings were not minuted, although the requirement is only to maintain accurate records, minutes being but one possible means of doing so. But in any event, Mr Thornton is quite unable to point to anything of consequence – indeed anything at all material to the issue of fairness - which flows from such a breach. He, and no doubt other members of CMPG, took their own notes and he has relied on his notes which are in the bundle during his cross examination of the University's witnesses. Many of the meetings were based on pre-prepared documents which were circulated and all that appears to be missing is a note of any oral response made to the presentations which were given by the ULT. In the context of whether this dismissal was unfair, I can find nothing of substance from the University's failure to minute a small number of meetings.

27. I am entirely satisfied that the consultation process was full, open and genuine. That is clear from the number of proposed redundancies that in the end did not materialise, including two from within CMPG. The University's statutes were not breached and those taking the decisions of which Mr Thornton complains had the authority to do so.

28. In short there is nothing in the facts of this case from which I could possibly conclude that the University's decision to dismiss Mr Thornton, deeply regrettable though it no doubt was, was in any sense one which fell outside the range of responses of the reasonable employer to the circumstances which faced the Respondents at that time. In particular I must emphasise, because it is a principle plank of Mr Thornton's case, that he is clearly and unarguably mistaken in his belief that the University's Council could not delegate to the University's Leadership Team all the decisions necessary to implement the original decision of Council approving the need, if necessary, to make redundancies. The complaint of unfair dismissal therefore fails and is dismissed.

_____

Employment Judge Macmillan

Date: 10th September 2017

JUDGMENT SENT TO THE PARTIES ON

.....

.....

FOR THE TRIBUNAL OFFICE

EMPLOYMENT TRIBUNALS

Claimant: **Mr S Thornton**

Respondent: **University of Leicester**

Heard at: **Leicester** **On:** **Tuesday 29 August 2017**

Before: **Employment Judge Macmillan (sitting alone)**

Representatives

Claimant: **In Person**
Respondent: **Mr Edwards of Counsel**

JUDGMENT

The complaint of unfair dismissal fails and is dismissed.

REASONS

Background and issues

1. This is a complaint by Mr Thornton that he was unfairly dismissed from his employment as Senior Experimental Officer in the Condensed Matter Physics Group which sits in the Department of Physics and Astronomy at the University of Leicester on 27 February 2017.

2. He had been employed by the University since 10 January 1985. The University admits the dismissal and gives as the reason that Mr Thornton was redundant as the result of a decision to close the Condensed Matter Physics Group (CMPG) completely.

3. Mr Thornton, who was represented throughout the redundancy process by the Universities and Colleges Union, has represented himself before this Tribunal. In addition to his evidence I have heard evidence from Dr Klaus von Haeftan, the academic lead in CMPG who is also claiming unfair dismissal against the university. Mr Edwards, who is not instructed in Dr von Haeftan's case (which was listed before a different Employment Judge tomorrow but which at the end of this hearing I directed should come out of the list to enable these reasons to be fully digested by all parties) is unable to offer any assistance on the very obvious question why the two claims have not been consolidated as, apart from the personal differences between Mr Thornton, who was a member of academic support staff, and Dr von Haeftan, who was a member of the academic staff, the essential facts of the two claims appear to be identical. In case the point

becomes of relevance at a subsequent hearing, I should perhaps add that Dr von Haeftan has sat through the whole of this hearing and has heard all of the evidence. The Respondents have been represented by Mr Edwards of Counsel and I have heard evidence from Professor O'Brien who was Head of the Department of Physics and Astronomy and from Professor Paul Monks who is the Head of the College of Science and Engineering in which that department sits.

4. For a long serving and dedicated employee redundancy is always an exceedingly painful process, which can lead to lasting loss of self-esteem and protracted periods of unemployment, especially where the employee has loyally served his employer in a narrow and very specialist area. I fear that Mr Thornton's obvious and understandable sense of grievance may well have been exacerbated by the feeling that he has had a less than satisfactory hearing before this Tribunal because I have had to rule that much of the case that he wished to advance to show that his dismissal was unfair was one which the Tribunal could not properly consider. His primary line of attack was intended to be against the business case to close CMPG. But, as Mr Edwards has rightly submitted, there is old and well established authority which prevents an Employment Tribunal from going behind the decision to declare redundancies. The starting point is ***Moon and Others v. Homeworthy Furniture (Northern) Limited*** [1976] ICR 117 EAT. In that case the Industrial Tribunal (as this Tribunal was then styled) had held that the employees were not entitled to challenge the declaration of redundancy on its merits and that since there was a cessation of work within section 12 of the Redundancy Payments Act 1965 the dismissals were not unfair. That decision was upheld on appeal. In the later case of ***James W Cook & Co (Wivenhoe) Limited v. Tipper*** [1990] ICR 717 CA where the employer had closed a small shipyard, the Court of Appeal held that it was not open to the Court or to the Tribunal to investigate the commercial and economic reasons which had prompted the closure. Because it was precisely the University's commercial and economic reasons for deciding to close CMPG that Mr Thornton wished to challenge I had to truncate much of the case that he wished to put. This Tribunal's enquiry into whether the employer has acted fairly or unfairly in dismissing Mr Thornton is confined to the implementation of that decision.

5. What is left of his complaint of unfair dismissal is a challenge to the very basis of the decision to dismiss, which he says was taken in breach of the University's statutes by people who had no authority to take it. He further complains that the University is in breach of its own Redundancy Ordinances and Policy by failing to keep a proper record of various meetings and discussions and by failing to engage in meaningful consultation. He has raised two further issues neither are which are pursued with any vigour, the first being the failure by the University to find him alternative employment for a period of 2 months under a funding arrangement with a business called Mantis. The second, which he did not dealt with in evidence at all but did raise in his claim form, was the refusal to allow him to have an appeal.

The law

6. The right not to be unfairly dismissed is enshrined in sec 94 of the Employment Rights Act 1996. Section 98 deals with the test of fairness. At sub-section (1) it provides that in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason or if more than one the principle reason for the dismissal which, in order to be fair must be one of the

reasons set out in sub-section (2) or some other substantial reason. Amongst the reasons which are potentially fair reasons for dismissal is that the employee was redundant.

7. The all important test of reasonableness is at subsection (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 reasons 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."

8. In cases where the employees are represented by a recognised trade union, as here, the Tribunal's approach to that question was established in ***Williams v. Compare Maxim Limited*** [1982] ICR in which the Employment Appeal Tribunal said this:

"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."

9. A little later in the judgment the Judge set out basic steps which an employer might be expected to follow:

"Although it would be impossible to lay down detailed procedures which all reasonable employers would follow in all the circumstances, in the experience of the Lay Members of the Appeal Tribunal in the present case 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:

1. 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.

2. 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."

10. Much of the rest of that passage is directed to the question of the selection of employees for redundancy, a process which applies where only some but not all of the employees within a pool for selection are to be made redundant. The concept of selection has been a source of some confusion for Mr Thornton who assumed that there is an obligation on the University to demonstrate that the CMPG has been selected for closure against established, objective, criteria. But that takes us straight back to his wish to challenge the whole of the business

case to close CMPG which this Tribunal cannot consider.

11. Finally, as it is not entirely clear that Mr Thornton accepts that there was a redundancy situation, I need to briefly mention the definition of redundancy. This is to be found in section 139(1) of the Act and so far as material provides:

> *"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) that the requirements of [his employer's] business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish."*

The facts

12. I now turn to the facts. The University has recently faced very challenging economic times. A voluntary severance scheme was introduced in April 2016 following a report to the University's Council by the University's Leadership Team (ULT). Mr Thornton's first challenge is to the extent to which decisions appertaining to redundancy may be lawfully delegated by Council. The relevant provision is to be found in paragraph 2(h) of Section 5 of the University's statutes:

> *"Subject to the charter and these statutes, the Council shall have the right to reserve unto itself or to delegate such powers as it thinks fit except that the Council shall not delegate the following powers*
>
> *…*
>
> *(h) to reach a decision regarding the desirability of a reduction in the staff of the University by way of redundancy."*

13. At its meeting on 17 March 2016 the Council endorsed the report put to it by ULT in the following terms:

> *"Council endorsed the full range of actions being taken by management to address the financial challenges facing the University and formally approved:-*
>
> *(a) the immediate launch of a new voluntary severance scheme;*
>
> *(b) a scheme to facilitate compulsory redundancies if required arising from ongoing discussions regarding the future size and shape of the University."*

14. Mr Thornton does not take exception to that decision. What he takes exception to is the lack of any subsequent decision by Council with regard to his personal redundancy or the closure of CMPG, in particular that there was no feedback to Council about whether it was appropriate to close CMPG and whether he as an individual should be made redundant which, he contends, was outwith the University's statues, those decisions being non-delegable by Council.

15. I find as a fact that the University is not in breach of its statutes. The wording of 2(h) in section 5 is clear. That which is not delegable is a decision regarding the *desirability* [my emphasis] of a reduction of the staff of the University by way of redundancy. That is precisely the decision which was taken

on 17 March. Because there is no express prohibition in the statues against the delegation of any of the decisions which necessarily flow from that first decision, then it must follow that those subsequent decisions are delegable.

16. Unsurprisingly, Council delegated those decisions to the ULT and it was they who in due course produced the business case for the closure of the CMPG which in turn led to the dismissal of Mr Thornton by reason of redundancy. In making those decisions the ULT (and in consequence the University itself) was acting lawfully within the University's code of governance.

17. Once the ULT, of which Professor Monks was a member but of which Professor O'Brien was not, had come to the conclusion that the CMPG should go, the process was started by a letter in early July to all members of CMPG from Professor O'Brien as Head of Department calling them to a meeting. This was not however the first notification that members of the University's staff had had that all might not be well as all had received a letter from the Vice-Chancellor's office shortly after the Council meeting of March 2016 announcing the new voluntary severance scheme. Mr Thornton has made much of the fact that Prof O'Brien's letter stressed the importance of all CMPG members meeting together and that the date initially proposed for the meeting had to be vacated because of the unavailability of some members on holiday. The revised date of 26 August also coincided with the holiday of one member the group, Dr Baker, who was unable to attend but the meeting went ahead without him. Mr Thornton contends that this was unfair even though he attended the meeting and he has been unable to articulate any unfairness to him flowing from Dr Baker's absence other than the fact that until Dr Baker had been individually consulted about a week later the group could not begin to formulate its response to the business case for closure. During the meeting a detailed PowerPoint presentation of the business case for closing the group was given Prof Monks and a document pack repeating the business case was handed out. No minutes were taken of that meeting which marked the start of the statutory 90 day consultation period.

18. Also on 26 August Mr Thornton was given a letter confirming that he was at risk of redundancy. His first individual consultation meeting took place on 2 September and was again not minuted. It was however followed up with a letter on 16 September confirming the substance of the discussion and Mr Thornton does not claim that the letter is inaccurate.

19. There was then a further collective meeting on 29 September which, because of the law relating to the handling of collective redundancies, was categorised as an informal meeting when a further presentation was made. The members of CMPG produced the first draft of their counter proposal which had been largely authored by Dr von Haeftan. The counter proposal in this and its subsequent iterations was directed to saving CMPG as a whole rather than saving the jobs of individual members of the group. Again there were no minutes taken by the University side.

20. On 11 October Professor O'Brien e-mailed the ULT's response to the counter proposal rejecting it. A further counter proposal was drafted on or about 10 and 11 November and on 14 November it was considered by the ULT and rejected. That meeting was minuted. The third consultative meeting, being the second formal consultation, took place on 17 November and led to the submission of a third counter proposal again focussing exclusively on how the CMPG might be saved. On 24 November Mr Thornton had his second individual

consultation meeting at which he was told that he would be made redundant.

21. On 28 November the final counter proposal was rejected by the ULT. It was felt to be too reliant on optimistic projections about take up of a proposed new MSc course and the winning of grants, an area in which the CMPG had been less than successful in the past. Also on that date Mr Thornton was given 3 months' notice of intention to terminate his contract by reason of redundancy. The letter spelled out quite clearly that under the Redundancy Ordinances he had ten working days in which to lodge an appeal and the grounds on which an appeal could be lodged were explained. He took no action. He appears to have taken no action because he adhered to the view of Dr Von Haeften that it was better not to rock the boat to see if matters could be resolved informally. This places Mr Thornton in a very awkward position because he cannot have his cake and eat it too. If the University are to be criticised and held to account for not complying with the Redundancy Ordinances as Mr Thornton contends, that applies, mutatis mutandis, to Mr Thornton. He therefore has no grounds for legitimate complaint that the University rejected his attempt to appeal which he finally signalled to them as late as 23 January 2017.

22. During the notice period he was placed on the at risk register and he accepts that no suitable alternative posts became available. However in addition to the role which he undertook within CMPG he was party to a grant from a company called Mantis but the grant, so far as it named him, was for £10,000 of fees to enable him to study for a doctorate. It is clear from the documents in the bundle that the University gave consideration to translating it, and took at least the initial steps towards having it translated, into two months' salary, two months being the remaining life of the grant. But I accept the evidence of the University that this was not in their gift. They had to obtain written confirmation from Mantis that the grant could be translated into two months of salary.

23. The e-mail stream in the bundle suggests that preparatory soundings were made of Mantis which appeared to be encouraging. But then things petered out. Even the gentleman dealing with it at Mantis in his final e-mail was very equivocal. He had no recollection of making any kind of written promise that the fees could be translated into salary although he may have done so orally. What is unarguable is that the requisite written confirmation from Mantis was never received. For the first time since these proceedings commenced, in his evidence yesterday Mr Thornton claimed that it was the University's HR department that had intervened and stopped the process by saying that he would not be insured for lab work which had thwarted attempts to get Mantis to change the terms of the grant. He only claims to have heard that that is the case from various sources but has called no witnesses to that effect. No documentary evidence is available to back him up and I am concerned that the claim was made extremely late in the day without prior notice to the University. I am not satisfied that the University have in any sense thwarted this possible source of alternative employment for Mr Thornton which would in any event have been of very short duration. The University did fund an external training course for him to help him widen his horizons, and in consequence his employment prospects, somewhat.

24. That the consultation process was not a sham but entirely genuine emerges from a number of different directions. Within CMPG Dr Baker submitted a personal counter proposal that he surrender his teaching and research contract for a full teaching contract. That was accepted and he was not made redundant. Dr Howes of CMPG was slotted in during the notice period as cover for a

colleague elsewhere in the department who was on maternity leave. In the Maths department a formal counter proposal was accepted in full and no redundancies took place.

Conclusion and Discussion

25. It is the case that the University failed to take minutes of some meetings. Their Redundancy Ordinance at 4.8 requires them to maintain accurate and up to date records of all redundancy activity. Mr Thornton also relies on para 21.1 of the Redundancy Policy which says that all formal documentation relating to the Ordinance will be written sensitively by line managers, treated as confidential and forwarded to HR for filing on the staff member's personal file. Those are the Ordinances and Policies which are said to have been broken although it is clear that para 21.1 does not create a requirement to take minutes.

26. It is arguable that there is a technical breach of para 4.8 of the Ordinance as a number of meetings were not minuted, although the requirement is only to maintain accurate records, minutes being but one possible means of doing so. But in any event, Mr Thornton is quite unable to point to anything of consequence – indeed anything at all material to the issue of fairness - which flows from such a breach. He, and no doubt other members of CMPG, took their own notes and he has relied on his notes which are in the bundle during his cross examination of the University's witnesses. Many of the meetings were based on pre-prepared documents which were circulated and all that appears to be missing is a note of any oral response made to the presentations which were given by the ULT. In the context of whether this dismissal was unfair, I can find nothing of substance from the University's failure to minute a small number of meetings.

27. I am entirely satisfied that the consultation process was full, open and genuine. That is clear from the number of proposed redundancies that in the end did not materialise, including two from within CMPG. The University's statutes were not breached and those taking the decisions of which Mr Thornton complains had the authority to do so.

28. In short there is nothing in the facts of this case from which I could possibly conclude that the University's decision to dismiss Mr Thornton, deeply regrettable though it no doubt was, was in any sense one which fell outside the range of responses of the reasonable employer to the circumstances which faced the Respondents at that time. In particular I must emphasise, because it is a principle plank of Mr Thornton's case, that he is clearly and unarguably mistaken in his belief that the University's Council could not delegate to the University's Leadership Team all the decisions necessary to implement the original decision of Council approving the need, if necessary, to make redundancies. The complaint of unfair dismissal therefore fails and is dismissed.

_____

Employment Judge Macmillan

Date: 10th September 2017

JUDGMENT SENT TO THE PARTIES ON

.....

.....

FOR THE TRIBUNAL OFFICE