



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs J M Hockenhull

**Respondent:** The David Lewis Centre

**HELD AT:** Manchester

**ON:** 24 and 25 January 2018

**BEFORE:** Employment Judge Whittaker  
Ms J K Williamson  
Ms J A Beards

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr J Martin, Solicitor

**JUDGMENT** having been sent to the parties on 13 February 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

1. The claimant appeared in person and gave evidence on oath by reference to a written witness statement of 13 paragraphs. The claimant also submitted a written witness statement of Christine Bowes. Mrs Bowes attended the Tribunal with the intention of giving evidence. However, when it came to giving her evidence the claimant agreed with the Tribunal that the content of her evidence was not relevant to the claims and issues to be determined by the Tribunal and was more concerned with her own individual circumstances relating to her employment by the respondent and the grievance which she personally raised in connection with her own employment.

2. The respondent presented three witnesses, but the main witness relating to the essential findings of fact which were made by the Tribunal was the Head of Day Services, Darren Brodrick. He dismissed the claimant. He gave evidence on oath by reference to his written witness statement and was cross examined. The respondent also called Rachel Clare who gave evidence on oath by reference to a written witness statement. She dealt with the appeal of the claimant against the decision to dismiss her. The respondent also had a witness statement from Danny Rushton. Mr

Rushton was the HR Manager of the respondent company but his evidence simply provided background to the evidence of Mr Brodrick. Mr Rushton was not involved in the decision to dismiss the claimant. The Tribunal accepted and considered the written witness statement of Mr Rushton which he had signed on 16 January 2018.

3. At a Preliminary Hearing held on 21 August 2017 the issues to be determined by the Tribunal were identified and carefully noted by Employment Judge Franey. The Tribunal relied upon Annex A and Annex B to the Case Management Orders which were made at that Preliminary Hearing.

4. The claims of the claimant were a claim of direct age discrimination and a claim of unfair dismissal.

5. The reason for the dismissal of the claimant relied upon by the respondent was redundancy, and this was not disputed and was in fact agreed by the claimant as being the reason for her dismissal.

6. The Tribunal was presented with a bundle of 121 pages. Where those documents are relevant to the findings of fact and the Judgment of the Tribunal the relevant pages are referred to in these Reasons.

### **Findings of Fact**

7. After considering the evidence given by the witnesses and considering the content of the relevant documents the Tribunal made the following findings of fact:-

7.1 The Tribunal accepted as accurate background facts the content of paragraphs 1, 2, 3 and 4 of the Response of the respondent. These facts were not disputed by the parties.

7.2 On 8 February 2016 the claimant took part in her Annual Performance Review. A copy of this document was presented to the Tribunal at pages 100-103. In his witness statement Mr Brodrick indicated (paragraph 5) that "in particular" Mr Brodrick felt that there could be more variety in the work experience offered to service users. The emphasis placed by Mr Brodrick by use of the words "in particular" was not in the opinion of the Tribunal justified. It is fair and reasonable for Mr Brodrick to point out that was one of the issues which was raised, but there is no indication in the language of the Review which indicates that that was a particular priority for the claimant going forward. Even in the concluding paragraphs at page 103 there is equal reference to a need for there to be more stock on the shelves and for there to be more variety of items being sold. It is fair to say that there is equally reference to the fact that there should be a greater variety of work experience offered to service users. In the opinion of the Tribunal the objective of achieving more variety in the work experience offered to service users was nothing more than one of a number of issues which were raised and highlighted by Mr Brodrick. That was not, however, given prominence or priority in the manner suggested by Mr Brodrick in paragraph 5 of his witness statement.

- 7.3 As already indicated, the performance review took place on 8 February 2016. In the witness statement of Mr Brodrick at paragraph 5 he refers to the performance review which took place with the claimant on 8 February 2016. It was, however, in the opinion of the Tribunal, noticeable that Mr Brodrick included no evidence whatsoever between then and September 2016 to illustrate any ways in which he had discussed the outcome of that performance review with the claimant or to suggest that in any way any of the issues discussed at that performance review had been prioritised. In paragraph 5 of his witness statement witness Mr Brodrick includes various thoughts and personal observations but he did not provide the Tribunal with any evidence of ways in which he had allegedly supported or encouraged or even obliged the claimant to make any changes in the shop which increased the opportunity for work experience by the residents. Mr Brodrick told the Tribunal that the reason why the respondent wanted more service users to be engaged in the shop was to provide those service users with more real life experiences. However, the claimant told the Tribunal that she had significant problems in identifying jobs for the service users to do and that she was “struggling” to do that. She complained, however, that she was not given any help and as the Tribunal has indicated the witness statement of Mr Brodrick did not contain any evidence that he had approached or discussed this issue with the claimant between her review in February and his own review in September 2016, some eight months later.
- 7.4 Mr Brodrick then at paragraph 7 of his witness statement confirmed that he received an email expressing concerns from Mrs Bowes on 26 October 2016. In his witness statement he describes that email as being the “trigger” for him to consider the role of the shop generally and how it should be operated for the benefit of the service users. In his oral evidence to the Tribunal he described the receipt of that email as the “catalyst to make change”.
- 7.5 In paragraph 7 of his witness statement Mr Brodrick uses the words “so I took the decision to restructure the shop and change how it operated to benefit the service users”. Mr Brodrick by then had made some changes to the role of the second employee other than the claimant who worked in the shop, but no change had been made to her job description and that was something which the other shop assistant (Mrs Bowes) was complaining about. He told the Tribunal that he recognised that the job description of Mrs Bowes needed to be formalised and he told the Tribunal that “now was the time to change the role/title of both people (including the claimant) and do it formally”. Although in the concluding sentence of paragraph 7 of his witness statement Mr Brodrick indicated that he had been attempting to “increase service user access”, Mr Brodrick was not able to give any concrete or proper examples as to how those attempts had been made or what discussions he had had with the claimant to make suggestions about how that increased service user experience might actually materialise.

- 7.6 In paragraph 9 of his witness statement Mr Brodrick (top of page 3) says that he “explained” to the claimant that he “intended” to introduce a new role to be based in the shop. However, the evidence of Mr Brodrick was extremely confusing and in the unanimous opinion of the Tribunal was unsatisfactory on this point. Going on in paragraph 8 Mr Brodrick says that he “proposed” some changes, but he then towards the end of that same paragraph concludes “therefore, I informed” Janice there would no longer be a need for a shop manager and that her position was at risk of redundancy.
- 7.7 Prior to that interview Mr Brodrick had already prepared a detailed job description for the new position in the shop which was to replace the post which the claimant held. In a letter (page 82 of the bundle) Mr Brodrick wrote to the claimant on 21 November referring to the meeting on 17 November. He confirmed to the claimant that “there is no longer a requirement” for the role of shop manager. There was no question of Mr Brodrick saying in that letter that this was a proposal which he was open to discussing with the claimant. In the opinion of the Tribunal the claimant was being told that this change was being put into effect, and in the opinion of the Tribunal that was consistent with the language of Mr Brodrick in paragraph 7 of his statement where he indicated that he “took the decision” to restructure the shop. In the opinion of the Tribunal, this was not something that Mr Brodrick was consulting with the claimant about. It was something which was going to happen whether she liked it or not. It was a decision which had been taken. That is equally reflected by the language used by Mr Brodrick in paragraph 8 of his statement when he talks about informing the claimant that there would no longer be a need for a shop manager. In the unanimous opinion of the Tribunal it was a decision which Mr Brodrick took prior to the first meeting on 17 November. It was not something which was being proposed or suggested. It was a decision which had been taken by Mr Brodrick, and as far as he was concerned it was happening. The question of whether or not the claimant was going to be dismissed as redundant relied on whether or not the claimant was interested in applying for and being considered for the alternative post which Mr Brodrick, prior to the first meeting on 17 November, was committed to introducing.
- 7.8 In the opinion of the Tribunal the tone of the first meeting with the claimant on 17 November was reflected by the words used by Mr Brodrick at the very beginning of that meeting which were (page 88) “I wanted to catch up with you”. There was no mention that this was a meeting to discuss potential redundancies or that Mr Brodrick had in mind some changes that he wanted the claimant to think about and comment upon. In the opinion of the Tribunal Mr Brodrick had already decided what was going to happen and the purpose of that meeting was to inform the claimant what was going to happen and to discuss with her whether she was interested in the new post which Mr Brodrick had already decided to implement.

- 7.9 The Tribunal recognised (bottom of page 89) that the notes of the meeting indicated that the position of shop manager was “at risk of redundancy” and that there was a suggestion that the new role was being “proposed”. The Tribunal did not accept that that accurately reflected the state of affairs at that meeting. The Tribunal equally recognised (further up page 89) that Mr Brodrick indicated during that meeting that he was “proposing to change the role”.
- 7.10 The claimant, however, clearly indicated that her impression of that meeting, which she was not told was going to be a redundancy consultation meeting, was that the changes were to be implemented and that she was at risk of redundancy unless she secured alternative employment. The Tribunal accepted that that was the tone of the meeting which was conducted by Mr Brodrick, particularly in view of the fact that he did not warn the claimant that she was being required to participate in a redundancy consultation meeting, and neither did the language which he used in his witness statement or the impression which the claimant told the Tribunal that she had of that meeting persuade the Tribunal that Mr Brodrick genuinely went into that meeting with a proposal to discuss. In the unanimous opinion of the Tribunal Mr Brodrick had decided what needed to be done and the focus of the discussions with the claimant was about the effect which those changes would have.
- 7.11 The Tribunal also carefully considered the performance review which Mr Brodrick himself had had in September 2016 with the Chief Executive of the respondent. This appeared at pages 96-99. On page 98 it is clear that the discussion between Mr Waters and the claimant was stark so far as the shop was concerned. One of the options was that the shop would close altogether. The notes made on page 98 make it clear that there are only two real options. Either the use of the shop is extended to increase service user access together with wider stock and a variety of things to be sold, or alternatively the shop would be closed altogether and the staff would be redeployed. In the third box there is a further reference to the fact that one of the decisions which was definitely being considered was shutting the shop altogether. In the opinion of the Tribunal these stark comments included in his personal review and then the email received from Mrs Bowes from 26 October persuaded Mr Brodrick that change had to be implemented, and it was on that basis that Mr Brodrick made the decision to implement changes in advance of the meeting with the claimant on 17 November.
- 7.12 At the top of page 90 Mr Brodrick confirmed that he was already able to supply the claimant with a job description for the new post which he had decided to create. He confirms that he has done a job description for the new role and that he would send it to the claimant. That job description appeared at pages 84-86 inclusive. It was sent by the HR Manager, Jane Halliday, to the claimant the following day, on 18 November, by email (page 83). There was no mention in the email on

page 83 that the implementation of this new role was a proposal or suggestion on the part of the respondent company.

- 7.13 Mr Brodrick then wrote to the claimant on 21 November (page 82). Again in that letter he is very clear by indicating that the reason for redundancy is that “there is no longer a requirement for the role of shop manager”. There is no mention of the fact that this is a proposal or suggestion. It is a decision which has been made. That reflects the language used by Mr Brodrick in his witness statement, and in the opinion of the Tribunal it reflected the reality of the situation. Any further meetings, in the opinion of the Tribunal, were about any potential interest which the claimant had in the alternative post which had been created. It was only in the absence of the claimant expressing an interest in that post or being successful in securing that post that the claimant would avoid redundancy.
- 7.14 The second meeting to discuss the changes which Mr Brodrick was implementing took place on 23 November. Notes of that meeting appeared at pages 79-81. In the opinion of the Tribunal the focus and tone of that meeting was on how things were going to change to reflect the new focus of the shop and the new job role. There was no suggestion made by Mr Brodrick that the claimant could keep her existing job title and position, but that she would need to implement some changes. In the unanimous opinion of the Tribunal the focus of Mr Brodrick was on implementing a new structure with new job responsibilities. That was the focus of the meeting on 23 November. At the top of page 81 Mr Brodrick comments to the claimant that she needs to have a think about whether the role is of interest. At no stage does Mr Brodrick tell the claimant that she needs to think about whether or not the changes which would abolish her role and introduce a new role are changes which were either necessary or sensible. In the opinion of the Tribunal this reflected the decision made by Mr Brodrick to implement these changes. What he was focussing on, and as confirmed in those notes, is whether or not the claimant had any interest in the new role which Mr Brodrick had by then decided to create. Indeed the claimant by then had that very clear impression in the opinion of the Tribunal and that is reflected by her response when she says that her “initial thoughts are to go with the new role”.
- 7.15 Towards the foot of page 81 Mr Brodrick tells the claimant that she has two options. One is to leave; the second is to stay with the new role. He makes no mention whatsoever of the possibility that the claimant may be able to persuade the respondent company that the status quo should remain, albeit with some changes. That is not an option which Mr Brodrick describes because it is not an option which he took into the meetings or discussions with the claimant in the opinion of the Tribunal. Mr Brodrick then supplies, as promised, confirmation that the new role will attract a slightly higher salary (page 78).
- 7.16 In a letter dated 25 November (page 76) Mr Brodrick again confirms that the claimant’s position is at risk of redundancy, but he says that

that is due to a restructure of day services. Again there is no suggestion that this is a proposed restructure. It is a restructure which is going ahead and which will have obvious consequences for the claimant, namely that she will either be made redundant or alternatively she will successfully be appointed to the alternative role which is being created.

- 7.17 It was suggested to the Tribunal within that letter at page 76 that Mr Brodrick also indicated that the claimant had a further opportunity on 1 November to “raise any potential alternatives you have identified to redundancy”. However, the claimant was not given any indication or suggestion by Mr Brodrick that one of those alternatives might be that the status quo would be retained with potentially some minor changes to meet the approval of both Mr Brodrick and the CEO, Mr Waters. That was not an option in the opinion of the Tribunal.
- 7.18 The meeting then took place on 1 December. Those notes appeared at pages 72-75. At the foot of page 74 again Mr Brodrick emphasises the need for the claimant to concentrate on the new role and whether or not the claimant believes that is a role which is suitable for her. It is at this stage (page 75) that the claimant for the first time is told that there may be a selection process. That has never ever been discussed with the claimant prior to some point towards the end of the meeting on 1 December. She is now being told that this is a promotion (because of the change in role and because of the increased salary) and that she is not going to be automatically slotted into it. This, therefore, indicates that there is a significant change between the role which was previously being performed by the claimant and the new role which had been created by Mr Brodrick and which he had decided to implement in place of the role which the claimant had previously held. The claimant was then pressurised to say whether or not she wanted to apply for the role. The claimant asks for clarification about whether or not there would be an interview, and she is told very clearly that the new role would be alternative employment.
- 7.19 The claimant then applies for the alternative role which has been created by Mr Brodrick and does so in a letter dated 1 December (page 68). The claimant is not successful, but it is not important to the reasoning of the Tribunal to say anything other than that the claimant performed poorly during the course of the interview. The claimant indicated to the Tribunal on many occasions during the course of the hearing that she believed that the new role was identical to the old one. It was very clear to the Tribunal that that was not the case. There was an essential and fundamental change of focus between effectively being a shop manager and instead being someone who is present in the shop with the primary focus being on the experiences enjoyed by the service users as opposed to running the shop as a retail outlet. The claimant told the Tribunal that she had previously run the shop as her own independent retail outlet and that it had then been taken “in house” by the respondent. In the opinion of the Tribunal, the answers which the claimant gave during the course of the interview process

reflected her focus and experience of retail management but failed to demonstrate the necessary and essential change of focus towards the needs of the service users away from retail management which would be needed in order to succeed in securing the alternative post which Mr Brodrick had created with the intention of substantially increasing the experiences enjoyed by the service users in the shop.

- 7.20 The claimant then participated in a further meeting on 27 January when the results of the interview were fed back to her. At the conclusion to that meeting the claimant was told that a further review meeting would be held and that now she was potentially at risk of being dismissed for reasons of redundancy. The claimant received a subsequent letter dated 30 January (pages 45/46) in which that was summarised. The claimant was then told at a meeting on 6 February (pages 41/42) that the decision had been taken that she should be made redundant, and this was confirmed in a letter to her dated 6 February (pages 39/40).
- 7.21 The claimant appealed against her dismissal. Her letter of appeal appeared at page 38. She did not include any details of the grounds or reasons for appeal.
- 7.22 The appeal was conducted by Rachel Clare. The Tribunal accepted as fact the first four paragraphs of her witness statement. The respondent did not implement the changes to the shop which Mr Brodrick had decided to implement whilst the appeal of the claimant was considered. The claimant, however, by now had been dismissed and so it was essential for the respondent to put someone in the shop to operate it pending the outcome of the claimant's appeal.
- 7.23 As part of the appeal process, as Ms Clare confirmed at paragraph 7 of her witness statement, she interviewed Mr Brodrick on 9 March 2017. The Tribunal accepted what Mr Brodrick said, which was that there was a need for more emphasis on the experience of the service users accessing the shop as opposed to a focus on it being a retail environment. The Tribunal accepted that the new role which had been created was a role which was much more focussed on providing care and support to the service users rather than it being a focus on a retail environment, with some limited focus on the experiences enjoyed by the service users. The focus of the appeal of the claimant was on the fact that she could, prior to the decision taken by Mr Brodrick to fundamentally change the role of the manager of the shop, have been better supported and encouraged by Mr Brodrick and indeed that she could have been given training. These issues were explored by Rachel Clare during the course of the appeal but she concluded, reasonably in the opinion of the Tribunal, that the claimant could herself have been more proactive in developing her skills. However, Rachel Clare concluded that there was no reason to believe that the claimant was the appropriate person to be appointed to the new role, that there were proper reasons for implementing the changes which Mr Brodrick had implemented and that the performance of the claimant at interview for the new role justified the decision which had been taken that she



should not be the successful applicant. The respondent therefore wrote to the claimant to confirm that her appeal had been unsuccessful. That was confirmed in a letter sent to the claimant dated 18 April 2017 (pages 3-5).

8. Having made the above findings of fact, the Tribunal considered whether or not the respondent had established a potentially fair reason for the dismissal of the claimant pursuant to section 98 of the Employment Rights Act 1996. The Tribunal was unanimously and readily persuaded that the respondent did have a fair reason for dismissal. The respondent had decided for proper and justified reasons, namely a significant increase in the experiences to be enjoyed by the service users, that the focus of the shop should be on the service users and not on a retail environment. In the opinion of the Tribunal this effectively changed the role of what was the shop manager from someone who was primarily responsible for running a shop to someone who had some social work experience and who could run the shop with a focus on maximising the experience of the service users. This was clear from the new job description which Mr Brodrick prepared. This appeared at pages 84-86 in the bundle.

9. The “job purpose” indicated very clearly that the purpose was in planning suitable employment and vocational based activities for service users and that it required an understanding of the needs of those service users and an ability to provide leadership to a small team of support workers. At page 85 (paragraph 6) under the heading “knowledge, skills and experience” it is stated by the respondent that the successful applicant would have “experience working with and organising group and individual activities for adults who have/may have complex needs”. There was also a requirement for the successful applicant to have experience leading a team. Under the heading “performance measures” the successful applicant would need to be able to provide leadership and supervision to a group of support workers. In the opinion of the Tribunal the tone and content of the job description demonstrated a substantial and significant change of focus. The claimant, however, remained adamant, right up to the end of her closing submissions to the Tribunal, that the new role was no different to the old role and that she could not understand why in effect she had not been handed the new role.

10. In the opinion of the Tribunal the respondent was therefore able to demonstrate that implementing these changes for the significant additional benefit of the service users, bearing in mind the purpose of the respondent charity, was a substantial and proper business reason to make changes to the staffing structure of the shop. The alternative, as clearly suggested by the Chief Executive in September 2016, was that the shop would close altogether. The respondent wanted the shop to be able to demonstrate that it benefitted the service users and not that it simply ran as a retail environment with some limited opportunities for experiences on the part of service users.

11. In the opinion of the Tribunal, therefore, the respondent was perfectly justified in putting that to the claimant as a proposal. The fundamental mistake, however, which in the unanimous opinion of the Tribunal the respondent made, was that Mr Brodrick did not approach discussion or consultation with the claimant on the basis that change was a proposal or suggestion. Mr Brodrick had, prior to the first meeting with the claimant, already decided that this change was going to be implemented

and the only way that the claimant was going to avoid redundancy and dismissal was if she was successful in securing either the alternative position or another alternative position within the respondent charity.

12. One of the fundamental aspects of a redundancy exercise is a proper, fair and reasonable consultation process between employer and employee. In the opinion of the Tribunal that was not present in the meetings which led to the dismissal of the claimant. Mr Brodrick had a closed mind even before the first meeting. He had in his own words decided that this change had to be implemented. It was not a proposal or suggestion. In order for a consultation to be fair and reasonable it is essential that the respondent approaches the changes which it believes are necessary with an open mind.

13. The Tribunal referred the respondent's representative to the case of **R v British Coal Corporation [1994] IRLR 72**. That established a four stage test for a fair consultation process. That emphasised that consultation had to take place when the changes were "at a formative stage". Furthermore, sufficient information has to be given during that consultation process to understand the person who is potentially going to be affected by the changes to "understand the issues". In the unanimous and clear opinion of the Tribunal those essential first stages simply did not happen. There was no question of the changes being at a formative stage. Mr Brodrick had already decided that the changes were going to be implemented. The only consultation with the claimant was about whether the claimant was an appropriate candidate for the new role and whether or not she wanted to apply for it. That was the focus of consultation. In order for the consultation process to be the consultation process of a fair and objective employer, Mr Brodrick had to approach the suggested changes to the role of shop manager with an open mind in order to see whether or not the claimant believed that changes could be made in an alternative way without her job being removed altogether, and a new role with essential qualities which the claimant was never going to be able to meet being imposed in its place.

14. The Tribunal was referred, very clearly, by Mr Martin to parts of the letters and notes of meetings which used the words "proposed/proposing". The Tribunal, however, unanimously believed that those words did not reflect the actual state of play. It was akin to describing somebody as being self employed when an examination of the true circumstances would indicate that in fact the person in question was an employee even though they were described as being self employed. In this case the reality of the true circumstances was that there had never been any consultation with the claimant about whether the proposed changes should be implemented. Mr Brodrick before any meetings with the claimant at all had decided that changes were going to be implemented and the discussions with the claimant were about what the effect of those changes would have on her, including potential dismissal.

15. In those circumstances the consultation process which took place with the claimant was fatally flawed from the outset and failed to meet the essential requirements of a fair and objective consultation process which would be adopted by a reasonable employer.

16. In those circumstances the unanimous conclusion of the Tribunal was that the claimant had been unfairly dismissed.

17. Mr Martin urged on the Tribunal that the appeal which had been conducted by Rachel Clare was comprehensive and that on that basis it cured the defect which had been identified by the Tribunal. The Tribunal rejected that as an argument which could succeed. Whilst it was accepted that Rachel Clare had indeed carried out a comprehensive review of the selection process, she had failed to identify that Mr Brodrick had a closed mind to the changes from the outset. If she had done so then different discussions ought to have taken place with the claimant during the course of the appeal process to see what views she had about whether or not the essential focus of the person who was running the shop should change in the way that Mr Brodrick had decided that it should change. She failed to identify that essential flaw in the process and on that basis the appeal process did not cure that essential defect and the Tribunal therefore concluded that even after the appeal the dismissal of the claimant was unfair as a result of a failure on the part of the respondent to adopt the fair and reasonable consultation process of a reasonable employer.

18. The Tribunal, however, unanimously concluded that if a fair and reasonable process of consultation had taken place with the claimant that the outcome would have been the same. There were, in the opinion of the Tribunal, extremely persuasive reasons for the focus of the shop being changed from one of a retail environment to one which focussed on the essential needs of the service users. Those were the sound business reasons of a reasonable employer. The Tribunal was also satisfied that even if the claimant had been consulted about that proposal that she would have maintained exactly the same view which she maintained right up to the end of the Tribunal hearing which was that the new role which was being introduced was in effect exactly the same as the old role which the claimant had held. In the opinion of the Tribunal the claimant failed to grasp the essential change of focus which in the justified opinion of the respondent demanded that change be made to focus on the service users. In the opinion of the Tribunal the claimant maintained the view that there had been no real change to her job right up to the conclusion of her Tribunal hearing, and in the view of the Tribunal if she had participated in a fair and reasonable consultation process that is the view which she would have adopted and maintained. The respondent would have been justified in rejecting that view of the claimant. The respondent would have been equally justified in implementing the changes and then following the selection process which they followed. There was no evidence to suggest that the claimant would not have performed as poorly in that interview process as indeed she did, particularly in view of the fact that she maintained steadfastly that her old job was exactly the same as the new job; whereas the Tribunal unanimously was of the view that there was an essential change of focus

19. In the view of the Tribunal, therefore, it was not just or equitable to award any compensation to the claimant because applying the **Polkey** principle a fair and reasonable consultation process would not have made any difference to the outcome and the Tribunal was unanimously satisfied to the extent of 100% that the claimant would have been dismissed.

20. The Tribunal was equally satisfied that the consultation process would not have taken any longer than it did. It would simply have had a different focus but exactly the same timetable. The Tribunal did not believe, therefore, that it was just or equitable to award compensation to the claimant for any extra time that the

consultation process would have taken. The Tribunal believed that a fair and reasonable consultation process would have taken exactly the same length of time.

21. On that basis the Tribunal did not consider it just or equitable to make any compensatory award in favour of the claimant on the basis that she would have been 100% likely to have been dismissed in any event by a fair and reasonable consultation process.

22. The claimant had been paid her statutory redundancy pay and this therefore exhausted the claimant's right to receive a basic award as a result of being unfairly dismissed.

23. The claimant was unable to provide any evidence of age discrimination other than the fact that the successful candidate for the new position created by Mr Brodrick was much younger than the claimant. However the tribunal found that it was the significant difference in skills and experience which enabled that candidate to succeed and that her age was irrelevant in any way. In the absence of any evidence that age was in any way a factor in any of the decisions taken by the claimant her claim of age discrimination was dismissed.

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Employment Judge Whittaker

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Date 12<sup>th</sup> March 2018