



# EMPLOYMENT TRIBUNALS

**Claimant:** Susan Hewitt

**Respondent:** Academies Enterprise Trust

**Heard at** Bristol

**On:** 9 February 2018

25 May and 3 July 2018 (tribunal only)

**Before** Employment Judge Cooksey

## Representation

Claimant: Mr Brown, friend

Respondent: Ms Motraghi, counsel

# JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim of unfair dismissal is dismissed on withdrawal.
2. The claimant is not entitled to a redundancy payment. The claim for a redundancy payment is dismissed.

# REASONS

## The claim and resistance

1. By a claim form presented on 30 August 2017 the claimant brought claims of unfair dismissal and for a redundancy payment. The respondent resisted both claims.

## The issues

2. A list of issues was prepared by the respondent which ran to 7 paragraphs and dealt with both complaints brought by the claimant.
3. At the outset of the hearing I was told by the representatives that they had discussed the issues list. Mr Brown indicated that the claimant no longer wished to pursue her complaint of unfair dismissal. The claimant confirmed that this was the case. The claimant did wish to pursue her claim for a redundancy payment.
4. Mr Brown had a clear understanding of the facts of the case and applicable law, as reflected by the grounds of complaint. I was satisfied that it was the claimant's own informed decision to withdraw the claim for unfair dismissal. That claim was dismissed on withdrawal.
5. It was agreed that the claimant was dismissed by reason of redundancy. The parties agreed that the remaining issues to be determined were as recorded at paragraphs 6 and 7 of the list of issues, namely:
  - a. The claimant contends that although it was "seemingly offering an alternative suitable employment post" the respondent "failed to consider the Claimant's subjective points of view for refusal of the new role on offer". (para.26, ET1, p.17)
  - b. The claimant contends that the respondent "failed to consider the claimant's raised concerns and issues". (para.27, ET1, p.17).
  - c. The claimant contends that the respondent failed to produce a clear job description for the new role denying the claimant the opportunity to compare her existing and future roles. (para.29, ET1, pp.17-18).
  - d. The claimant contends that the respondent failed to address the claimant's personal safety concerns with any conviction or purpose or make any adjustment for the claimant's issues. (para.30, ET1, p.18).
  - e. The claimant contends that the respondent failed to take reasonable steps to address her concerns. (para.31, ET1, p.18).
6. Judged objectively, was the offer of alternative employment as Resource Co-ordinator suitable within the meaning of s.141(3)(b) ERA and s.141(4)(c) ERA1996? The claimant relied on the following matters (which the respondent did not accept as matters of fact or law):
  - a. The claimant contends that although it was "seemingly offering an alternative suitable employment post" the respondent "failed to consider the Claimant's subjective points of view for refusal of the new role on offer". (para.26, ET1, p.17)
  - b. The claimant contends that the respondent "failed to consider the claimant's raised concerns and issues". (para.27, ET1, p.17).
  - c. The claimant contends that the respondent failed to produce a clear job description for the new role denying the claimant the opportunity to compare her existing and future roles. (para.29, ET1, pp.17-18).
  - d. The claimant contends that the respondent failed to address the claimant's personal safety concerns with any conviction or purpose or make any adjustment for the claimant's issues. (para.30, ET1, p.18).
  - e. The claimant contends that the respondent failed to take reasonable steps to address her concerns. (para.31, ET1, p.18).
7. Was the claimant's refusal of the offer unreasonable within the meaning of s.141(2) and s.141(4)(d) ERA 1996, having regard to factors personal to her?

8. The key aspect of the claim related to what were described as health and safety issues, which referred to risks of being subjected to or witnessing incidents of verbal or physical aggression committed by pupils or visitors to Millbrook Academy, particularly in the reception and library areas. Whether or not the claimant genuinely held such concerns was in issue.

**The evidence**

9. The claimant gave evidence on her own behalf and called no other witnesses. On behalf of the respondent I heard evidence from Astrid Broderstad and Patricia Briggs. The evidence of all witnesses was taken as read, and all witnesses were cross examined.
10. A bundle of documents for use at the hearing had been agreed by the parties and ran to 102 pages plus additional inserts.
11. Before hearing evidence I had read forms ET1, ET3, the grounds of complaint and resistance, the witness statements of all witnesses and the majority of the documentation referred to in those statements. The parties were informed that I had not had the opportunity to consider some of the documents in the bundle in detail, particularly certain job descriptions and evidence from the police, and that they should draw my attention to these documents through cross examination and submissions. I informed the parties that I would not proactively read all the documents within the bundle but would consider the material I was referred to.
12. The hearing concluded at 5pm and judgment was reserved. I indicated to the parties that the reserved judgment would not be provided until mid-March at the earliest due to other professional commitments. Unfortunately there has been a delay in the provision of the reserved judgment. This is due to ill health on my own part and a critical health issue on the part of a close family member. I apologise to the parties for the delay that these issues have caused and any resulting distress. I assure the parties that my decision was reached on full consideration of the written and oral evidence and the submissions made on behalf of the parties.

**The facts**

13. The respondent is a multi-academy trust responsible for a number of publicly funded but independently run education institutions, or “academies”.
14. Millbrook Academy (“the Academy”) is part of the respondent’s group of academies. The respondent employs or engages the staff working at the Academy.
15. The claimant commenced employment at the Academy on 6 June 2005. At all material times the claimant was employed in the role of Administrator (Cover, Reports and Work Experience). Her role was referred to as “Cover Manager” or “Cover Coordinator” for short. She worked 37 hours per week in term time only and her annual gross salary was £17,870. Her employment terminated on 30 April 2017 by reason of redundancy.
16. Ms Broderstad worked as the Business Manager at the Academy on a part-time seconded basis. She had been the business manager at another Academy until around June 2015, when she then supported the new business manager at Millbrook Academy

to help her understand her new role. That new business manager left the Academy in February 2016 and from April 2016 Ms Broderstad attended Millbrook Academy for one to two days a week on a secondment basis to offer finance support. Ms Broderstad was the claimant's direct line manager during this time. Ms Broderstad was employed by the respondent until April 2017.

17. Ms Briggs was the executive Principal at the Academy between December 2016 and January 2018.

The claimant's role

18. The claimant's role was administrative in nature. It involved dealing with cover arrangements for absent staff, recording absences and arranging cover for absent teachers. She also co-ordinated the Academy's work experience program and organised the annual school photographs.
19. Over time the claimant's role evolved and she undertook additional duties. She came to work in the library and also provided cover for the reception area.
20. When the claimant started employment in 2005 she was based in the sixth form block away from the main Academy building. That remained the case for around four or five years. Initially her role was as assistant to the deputy head's personal assistant, and cover managing reports and work experience. In around 2011 she moved from the sixth form block into the reception area. She later moved into the bottom end of the library in a separate office. In around 2015 the claimant moved back to the reception area.

Reception and library areas

21. A plan of the reception area was produced by the respondent and identified as document R1. The plan was agreed by the claimant. The hearing took place in court room 11, the dimensions of which were used as a guide to understand the layout of the reception area.
22. The reception area is accessed via secure glass doors. A release button needs to be pressed by the receptionist to allow visitors to enter. By reference to the court room that secure door was located behind where the Employment Judge sat. In the reception one can see through the secure glass door, and see the visitor before they are allowed access. In order to reach this point a visitor first has to be let through secure gates to access the Academy. Reception staff operate those secure gates, so that it is known who is being allowed access before they reach the secure doors to reception. In practice visitors ring the buzzer outside the main gates, reception clarify the visitor's identity using the intercom and make a decision whether or not to allow them access. There was no CCTV covering the secure gate.
23. I heard evidence that the claimant's office in the reception was a few meters from the secure doors. There was a glass door and wall between the reception area and the claimant's office. Most of the time that door would be left open. The claimant would be able to see a person approaching the secure glass door to reception from her office. Her office was "L" shaped and open plan.

24. Another door from the reception area lead to the head teacher's office and the office of the PA to the head teacher. These were a few meters from the secure access doors. The PA's door tended to be left open.
25. The Academy used radios to communicate. Staff in reception always had radios, and so did the Head Teacher, Behaviour Lead and other staff. The radios could be used if it was thought that a visitor might be agitated or cause difficulties so that assistance could be obtained from others. Radios were kept behind the reception desk.
26. Ms Briggs gave evidence that students could not access the reception area unless allowed access by reception. She also gave evidence that if someone had already been allowed access to reception and then became aggressive then in terms of support staff would radio for assistance. The head teacher and PA would be able to hear raised voices and would also come from their offices to assist. Ms Briggs said that if a visitor entered reception and became threatening then they could block the route from the reception desk to the secure door exit, but that the receptionist could go to the glass partition room off reception to find safety. There were no panic alarms in place.
27. Access to the library from reception was gained by going through the secure reception doors and the door to the library was on the left-hand side. Staff on duty in the library would then have to allow access. There was another door to the library which was not secure and which staff tended to access. Ms Briggs gave evidence that if someone was on site then they could access the library by that route.
28. The Academy operated an online incident report form which all staff had access to. Issues could otherwise be raised by staff with their line manager.
29. In cross examination the claimant accepted that if there was an aggressive visitor to reception, she would be just as likely to feel insecure whether she was sat at the reception desk or behind the glass partition to her office. These locations were two to three meters apart.

#### The claimant's job description 2011

30. A job description for the post of Cover Manager dated 2011 (pp.42-43) provided that the job purpose was:
  - (1) To co-ordinate all aspects of the school's cover system
  - (2) To manage all aspects of the school's reporting cycle
  - (3) To co-ordinate the work experience programme for KS4
  - (4) Co-ordinate annual school photographs
31. The person specification provided that the post holder should be interested in working alongside young people, work well as a team member and to have sensitivity and tact in dealing with a wide range of people.
32. Since approximately 2015 the claimant worked in the library on Thursdays and Fridays to cover the days when the librarian did not work. She also provided support in the library when required from Monday to Wednesday.

#### Restructuring at the Academy

33. During 2015 it became clear that the Academy needed to make significant savings in order to address its then budget deficit. The then Business Manager and Principal Ms Moule discussed this, and that a restructure was one possible way of addressing the budget deficit. Further action was not taken in this regard at the time due to the departure of Ms Moule.
34. The financial difficulties of the Academy continued into 2016.
35. In early July 2016 Ms Broderstad conducted a group meeting with the Academy's Support Staff team which included the claimant. The attendees were told that a formal deficit recovery plan was to be implemented to avoid further financial losses at the Academy. The attendees were told that it was likely the Academy would go through a period of restructure when staff returned after the summer holiday period in September 2016. Ms Broderstad gave evidence that this pre-consultation meeting was intended to give staff time to consider their positions or look for alternative employment elsewhere.

The claimant's job description 2016

36. On return in September 2016 some staff had looked for and found alternative employment. The person previously employed as the receptionist at the Academy resigned to take up new employment. Her leaving date was in November 2016. This caused the Academy difficulties in terms of reception cover.
37. In September 2016 the then Interim Principal Mr Butler asked Ms Broderstad to inform him what each person on the administrative team did. As a result, Ms Broderstad asked each member of the staff support team to send her an updated description of their role.
38. The claimant produced an updated job description in October 2016 which set out the various tasks which the claimant did in her role (pp.44-47). In her covering email to Ms Broderstad of 17 October 2016 the claimant stated she believed that all her responsibilities were contained within that document (p.44).
39. Within the updated job description the claimant described herself as "Cover coordinator / admin". She stated that her responsibilities which were not included in her former job description were (1) work experience; (2) library; (3) reception. She referred to four other responsibilities which were included in her former job description but had since been allocated elsewhere. She worked 37 hours from Monday to Friday in term time only and inset days.
40. The claimant then set out a series of detailed numbered points which recorded her responsibilities in various respects. Points 1 to 11 dealt with unplanned absence responsibilities, and points 12 to 13 dealt with planned absence responsibilities. Work experience responsibilities were set out at points 14 to 19.
41. The claimant recorded her library responsibilities at points 20 to 28. She said that she assisted with the running of the library from Monday to Wednesday, and worked in the library Thursday and Friday "all day". She detailed what this entailed, which included assisting students with queries and training student librarians.

42. The claimant recorded her reception responsibilities at points 29 to 36. She recorded that she would meet, greet and sign in visitors, and control who came on to the Academy's premises. Under the heading "other duties" the claimant recorded that she would assist with after school functions and provide general support for staff and students.

#### Rota changes

43. Ms Broderstad produced a rota in October 2016 which required members of the administrative staff to cover reception duties in the absence of the former receptionist. The claimant was included on the rota because she had previously covered reception (pp.49-50).
44. On 17 October 2016 Ms Broderstad sent two alternative rotas to affected staff by email as proposals to be discussed. All staff involved were asked to provide feedback on the proposed rotas. The claimant raised an issue about her ability to fit in reception duties with her other responsibilities to provide support in the library.
45. Ms Broderstad amended the proposed rotas in light of the feedback received. On 14 November 2016 she emailed affected staff with a final rota effective from 14 November 2016 (pp.51-52). In her email Ms Broderstad advised staff that if they need to leave reception for any reason then they should ask a colleague (Miriam) to cover if required. She also stated that staff should ensure that a radio was kept in the library to contact duty staff if required.
46. The rota was implemented on a trial basis. Staff were told that it was likely to be a temporary arrangement and only finalised after the restructure had been completed.
47. The reception rota set out that the claimant was to provide daily reception cover from 09.45 to 11am, and from 13.30 to 14.30 pm. Under the library rota the claimant was to provide support from 11 am to 11.25 am on Thursday and Friday.
48. The claimant did not object to being included on the rota or carrying out the tasks required of her.

#### Restructure and consultation

49. During the Autumn of 2016 the respondent's Board drafted proposals for a restructure. Once these were finalised a meeting was held with all staff on 28 February 2017 to announce the restructure proposals. Prior to that meeting, on 8 February 2017, the claimant emailed Ms Broderstad and told her that she would still like to be considered for voluntary redundancy (p.57).
50. At the group meeting on 28 February 2017 the staff were advised of the restructure proposals and provided with an information pack (pp.58-67 plus additional appendices). The letter inviting staff to the meeting (p.58) explained the reasons for the restructure and that there would be a reduction in support staff numbers. It was also explained that a new Resources Co-ordinator post and Finance and Administration Assistant would be ringfenced to the Learning Resources Centre Manager and Cover Manager / Administrator in the first instance.

51. The information pack included a copy of the proposed new structure and job descriptions for the new roles that had been created within it. The claimant's role as Cover Manager did not exist under the new structure because her duties were absorbed by other roles.
52. The information in the pack explained that where practicable employees would be offered posts which were directly comparable to their present posts without the need for interview or other selection process, which was referred to as "slotting". It was also explained that employees who did not wish to be slotted may, by not accepting the slotting, not be entitled to a redundancy payment if they have declined the opportunity of suitable alternative employment (p.62). The pack also explained that where it has not been possible to "slot" an employee into a post in the new structure then alternative employment may be offered with or without salary protection. Any employees who did not wish to accept alternative employment may not be entitled to a redundancy payment if they have declined the opportunity of suitable alternative employment. Interviews or other selection methods would be used if posts could not be filled by slotting or the offer of suitable alternative employment. Effective dates for the implementation of the structure were given, which in respect of education support staff was 1 May 2016 (p.63).
53. The pack contained information on salary protection (p.64). Educational support staff who were offered new roles at a lower grade than their existing post were entitled to salary protection in accordance with the respondent Group's Redeployment Policy for up to 18 months.
54. It was the stated intention of the Academy to avoid compulsory redundancies, and to that end the Academy / Group would consider requests for voluntary redundancy among other matters.
55. The claimant was provided with the job description for the new role of Resources Co-ordinator / Receptionist / Admin Assistant (pp.53-54) and person specification for the role (p.55-56). The hours for the role were 37 hours weekly.
56. The job description provided for a number of responsibilities on the part of the post holder. In respect of "Resources" the responsibilities included:
  - (1) Managing the Reprographics and Library areas
  - (2) Providing guidance to library users and promoting and assisting with independent learning and research skills
  - (3) Supervising students using the library area when teaching or duty staff are unavailable
57. Responsibilities in respect of "Reception / Administration" included:
  - (1) Word processing and administration support for the office functions of the academy, as directed by the PA to the Principal including external documents where accuracy is important
  - (2) Receptionist role as and when required being the first point of contact for all telephone calls and visitors to the Academy
  - (3) Ensure correct ID checks and signing in procedures are adhered to for all visitors when on reception



- (4) Assist with the development and implementation of appropriate administrative systems / procedures
- (5) To understand and apply school policies in relation to health, safety and welfare
58. The job description provided that the duties set out within it were not exclusive or exhaustive and that the post holder may be required by the Principal to carry out any other reasonable duties commensurate with the post.
59. Under the heading “other clauses” six further points were made. At point 1 it was stated that the job description does not direct the particular amount of time to be spent on carrying out duties. Point 2 was that the job description was not comprehensive, would be reviewed at least annually, and may be amended at any time after consultation with the post holder. Point 4 stated that it would on occasions be necessary for the post holder to cover other administrative roles within the academy or work with the administrative team during peaks and pressing issues.
60. The claimant was referred to the respondent Group’s Redeployment Policy in cross examination and accepted that she understood that there would be a four-week trial period for any new role following restructure, and that working this period would not affect her entitlement to a redundancy payment.
61. On 1 March 2017 Ms Briggs wrote to the claimant (p.68) inviting her to an individual consultation meeting on 8 March 2017. The claimant was informed that at the individual consultation meeting they would discuss the reasons for the proposed redundancies and whether there were steps which could be taken to avoid redundancies. Ms Briggs asked for any viable suggestions which the claimant had. There was also to be discussion of proposed selection criteria and alternative options such as redeployment. Ms Briggs wrote that the Academy would like as a first step to invite employees to consider whether they would like to apply for voluntary redundancy, and to contact Cathy Gasher in HR for financial terms. The claimant was advised of her right to be accompanied at the meeting, and to contact Ms Briggs in the event that she had any queries about the letter.
62. On 3 March 2017 Ms Briggs wrote to the claimant once more (p.69). Ms Briggs referred to the group meeting of 28 February 2017 when the claimant was advised that her role was at risk of redundancy, and that subject to a full proper consultation and process she may be dismissed by reason of redundancy by 7 April 2017. Ms Briggs stressed that the restructure was a proposal at that time. She stated that the consultation would continue until 16 March 2017, and that the claimant was invited to advance any comments, suggestions or questions on the proposals and avoiding redundancies. Ms Briggs wrote that any comments about the proposal should be sent to the Chair of the Management Board via the Academy office by 16 March 2017.
63. The post of Learning Resources Centre Manager occupied by a Ms Clarke was also at risk of redundancy at this time.
64. On 8 March the claimant’s individual consultation meeting with Ms Briggs took place. Jane Silverelle, Human Resources manager, was also present to assist Ms Briggs.
65. The claimant was not accompanied. There is no written record of the individual consultation meeting.

66. During the meeting there was discussion of the claimant's Cover Manager role being at risk of redundancy, and that the proposed new role of Resources Co-ordinator had been identified as possible suitable alternative employment for the claimant.
67. Ms Briggs gave unchallenged evidence that the claimant informed Ms Briggs that she did not believe the Resources Co-ordinator role was a match to her existing role, and that the claimant requested voluntary redundancy. It was explained to the claimant that she would not need to apply for the new role because it was to be ring fenced for her.
68. Ms Briggs asked the claimant to consider the job description for the Resources Co-ordinator role and provide any reasons why she did not consider that role suitable in comparison to her existing role. The claimant was given time to reflect on this and not required to provide her response during the consultation meeting.
69. On 13 March 2017 the claimant wrote to Ms Briggs by email. The claimant's email confirms that at the individual consultation meeting she was told that her existing role was at risk of redundancy, and that she should apply for alternative roles in the new structure which she may be re-deployed into if suitable, and if her existing position was confirmed as being redundant.
70. The claimant then referred in her email to Ms Briggs' request for reasons why the available posts in the new structure are unsuitable for the claimant. The claimant sought confirmation of certain points before responding to Ms Briggs' request. The points were as follows (matters in bold or italics reflect original emphasis):
- (1) Am I being offered a post within the new structure as *suitable alternative employment*?
  - (2) If so please confirm which posts I am being offered.
  - (3) If I am not being offered *suitable alternative employment*, please confirm which if any roles are being ring fenced for me.
  - (4) If I decline to apply for / accept a ring fenced role that is **not suitable alternative employment** (as detailed at 3 above), please confirm the consequence of this, in relation to my redundancy pay entitlement.
  - (5) What is happening to my current duties under the new structure i.e. where are they being distributed? Or are they ceasing to exist?
  - (6) How many other employees are being asked to apply for the new posts referred to at 1 and 3 above? Are these employees also being asked to provide reasons why the available posts in the new structure are unsuitable in comparison to their existing roles.
  - (7) The exact redundancy payment I would be entitled to receive should I be made redundant on 7 April and your calculations.
71. The claimant concluded her email by saying that until she had answers to these questions and understood the position fully then she would not be in a position to respond to Ms Briggs' request. She sought an extension of time to provide reasons why the available posts in the new structure were unsuitable for her.
72. In the afternoon of 14 March 2017 Jane Silverelle replied to the claimant with answers to the questions which the claimant had raised (p.72). Adopting the same numbering the replies were:

- (1) A suitable alternative role had been identified in the proposed new structure for the Cover Manager and Learning Resources Centre Manager posts
  - (2) The proposed new post was that of Resources Co-ordinator which would be appointed to by means of a skills audit of the existing post holders referred to in 1 above
  - (3) The proposed new role of Finance and Administration Assistant has been ringfenced to the lowest scoring individual following the skills audit referred to above
  - (4) The role of Finance and Administration Assistant is not considered a suitable alternative post. If the claimant could not be redeployed into a suitable alternative post then she would be dismissed on grounds of redundancy. This would have no impact on the amount the claimant would receive as redundancy pay.
  - (5) The duties are subsumed in the proposed new roles.
  - (6) As above the Resource Co-ordinator was to be appointed to by skills audit. If anyone has proposed that the new roles are not a suitable alternative they would have been asked to provide their rationale. The Management Board will be considering all responses before final proposals are drawn up and shared.
  - (7) Cathy (Gasher) can provide redundancy pay calculations.
73. The claimant was told that the consultation process could not be extended at that point and was advised that the Management Board were meeting on Thursday that week to consider any responses.
74. On 16 March 2017 the claimant wrote to Ms Briggs to explain why in her view the Resources Co-ordinator role was not suitable alternative employment (p.73-74).
75. Under the heading of the “nature of the role” the claimant wrote that the new role was “significantly different” to her existing role, having regard to the nature of the work and levels of knowledge and responsibility. She wrote that “In the new role I will principally be required to deal with members of the public, parents and supervising children. This is not true of my current role and I do not feel comfortable or capable in doing this as my primary task. When I have worked in this environment I have not felt capable of undertaking the responsibilities in this regard”. She added that only a very small amount of her existing role involves such responsibility, it was not reasonable to expect her to do it in the new role, and that the role was not suitable for her skill set.
76. In respect of “change of environment” the claimant wrote that she was in her existing role working in a small office which was quiet and away from pupils and other distractions. She stated:
- “I have occasionally worked in the reception area and library covering shortfalls, however this is on an extremely ad hoc basis and cannot be considered part of my current job role. When I have worked in these areas I have been subjected to abusive and irate pupils and witnessed acts of violence. I find this very distressing and emotionally upsetting and I have felt threatened and intimidated. I have been subjected to outrageous behaviour by both pupils and more disturbingly from visiting irate parents. These incidents leave me feeling stressed emotionally and physically and it is not the environment I enjoy working in and at times feel nervous working in these areas. The new position

may affect my health and wellbeing, and will be too stressful for me considering my inability to react well to confrontation which normally I avoid at all costs.”

77. In respect of “levels of knowledge and responsibility” the claimant stated that the new role was at a lower salary band and amounted to a demotion. She understood that her salary would be protected for 18 months but stated that in the long term she would suffer financial detriment which was not acceptable or reasonable. She considered that her existing role was more skilled and required a different skill set.
78. The claimant also made comments on “specific terms of employment” by reference to the proposed contract for the new role. The claimant was concerned that certain terms provided that she may be required to take on other duties and responsibilities, and that no particular amounts of time were allocated to specific tasks for the new role. The claimant wrote that this was not a term of her existing role.
79. In respect of “change of working hours” the claimant wrote that the new role would require her to work hours at a lower level for the same money, and probably less money in the future.
80. On 16 March 2017 at 08:43 Ms Briggs forwarded the claimant’s concerns to Jane Silverelle (p.75). Ms Silverelle replied at 09:18 and made a number of observations on the claimant’s concerns. Ms Silverelle told Ms Briggs that “the specific terms of employment point isn’t anything as that is in standard jobs”. Ms Silverelle also wrote that she did not understand the “change in working hours” point as it was her understanding that the hours were the same. She presumed that the claimant was referring to salary concerns.

Management Board meeting 16 March 2017

81. The Management Board convened on 16 March 2017 to consider the proposed restructure, any applications for voluntary redundancy, and any representations made by affected employees. Ms Briggs attended the meeting to provide information to the Management Board if required. Ms Briggs gave evidence that the Board considered the claimant’s representations.
82. The Management Board considered all applications for voluntary redundancy at the meeting. Where applications were made by employees in areas where savings needed to be made and there was no suitable alternative employment then the application was accepted. Mr De Sausmarez, Chair of the Management Board, recorded these decisions in an email to Jane Silverelle on 16 March 2017 (p.76).
83. The Learning Resources Centre Manager, Sharon Clarke, applied for voluntary redundancy. Her application was accepted. This was on the basis that she worked different hours to the new role, had a disability which the Board accepted prevented her from working on the reception area, and because Ms Clarke undertook less of the responsibilities of the new Resources Co-ordinator role than the claimant did.
84. The new Resources Co-ordinator and Finance and Administration Assistant roles had originally been ringfenced for the roles that Ms Clarke and the claimant held. Due to the decision to accept Ms Clarke’s application for voluntary redundancy the claimant

became the only candidate for the Resources Co-ordinator role and the intended selection process or skills audit was no longer required.

85. The claimant's application for voluntary redundancy was refused. She was the only candidate remaining for the new role. The Academy required a Resources Co-ordinator. The Board concluded that the new role was suitable alternative employment which the claimant had the skills to perform and wished to retain her services following restructure.
86. On 20 March 2017 Ms Briggs wrote to the claimant (p.79). Ms Briggs stated that the claimant's verbal and written representations were considered by the Board, which concluded that the Resources Co-ordinator post was a suitable alternative to her current role. The claimant was told that she would be slotted into the new role with effect from 1 May 2017, and that her current salary would be protected for a period of 18 months. Ms Briggs explained that the Academy could not accept the claimant's request for voluntary redundancy. The future needs of the Academy required the claimant's skills, the Academy wished to retain her services, and suitable alternative employment existed.
87. On 23 March 2017 the claimant wrote to Ms Briggs stating that she wished to appeal against the decision of the Management Board to slot her into the new Resources Co-ordinator role (p.81). She argued that the Board had failed to provide any detailed reasons as to why the Resource Co-ordinator role was suitable alternative employment and asked to be provided with that information. While awaiting a response the claimant advanced four grounds of appeal on an interim basis:
- (1) The Management Board failed to consider the claimant's expressed concerns regarding her safety in undertaking the new role.
  - (2) The Management Board failed to consider the skills required for the claimant's existing role and the new role, which she argued were different.
  - (3) The new role constitutes a demotion.
  - (4) Selection of the claimant for the new role was a foregone conclusion.
88. The claimant's correspondence was considered by Mr De Sausmarez. He replied to the claimant by letter of 29 March 2017 (p.85). The claimant was advised that there was no appeal process in her circumstances because she had not been selected for redundancy. He indicated that he was willing to meet with the claimant to discuss her concerns and responded to the claimant's issues. Adopting the same numbering as the claimant's letter of appeal Mr de Sausmarez replied that:
- (1) The Management Board did not accept that there was any increased risk to the claimant's safety in the new role. It is an administrative role very similar to the claimant's post of Cover Manager which involved working in the library and reception. He indicated that a risk assessment of the work areas could be arranged for additional reassurance.
  - (2) The Management Board did not accept that the claimant was insufficiently skilled to carry out the new role. She already carried out the majority of the tasks required for that role in her Cover Manager post and met the essential criteria for the new post.

- (3) It was accepted that the new role was evaluated at a grade lower than the claimant's existing role. There would however be pay protection for a period of 18 months.
- (4) It was not accepted that the outcome was a foregone conclusion. The Management Board met to review all responses received including requests for voluntary redundancy. There was no longer any requirement to conduct a selection process for the Resource Co-ordinator role and the claimant was assimilated into that role.
89. The Management Board confirmed its view that the new role was suitable alternative employment for the claimant. The claimant was offered to opportunity to meet Mr De Sausmarez to discuss matters further.
90. On 31 March 2017 the claimant replied to Mr De Sausmarez (p.86). She thanked him for clarifying some of the points in her letter of appeal. The claimant maintained that the Board had failed to address any of her concerns or issues with dealing with irate parents and students. She stated that the Board failed to take into consideration that she had been working in the library and reception areas since November 2016 under duress as a short-term measure due to staff shortages. She considered that the Board failed to acknowledge how the new role might affect her wellbeing and health in the future. She stated that the senior management team appear to have assumed that her past cooperation and flexibility though under duress would continue. She did not wish to be employed on a permanent basis where she was potentially to be subjected to any type of confrontational situation. The claimant concluded by asking the Board to reconsider her request for voluntary redundancy.
91. On 31 March 2017 the claimant and Ms Briggs discussed the claimant's position at the school. Based on HR advice Ms Briggs understood the position to be that the claimant was resigning from her employment because she had not accepted the alternative new post offered. The claimant emailed Ms Briggs (p.87) later that day stating there was no need for her to resign as her post would no longer exist from 1 May 2017. The claimant confirmed that she would not be accepting the Resource Co-ordinator role.
92. On 3 April 2017 Ms Briggs wrote to the claimant to thank her for her resignation dated 31 March 2017 and advise that the claimant would be paid up to her resignation date of 30 April 2017 (p.89). The claimant replied on 5 April 2017 (p.90) stating that she had not resigned but had declined to take the new post which she considered was unsuitable for her. The claimant sought confirmation that she had been dismissed by reason of redundancy and not resigned. On 6 April 2017 Mr De Sausmarez replied to the claimant stating that the Academy would consider that the claimant had resigned because she had not accepted suitable alternative employment.
93. The claimant continued to work at the Academy until her last day on 28 April 2017. On 30 April 2017 the claimant's employment terminated.
94. On 1 May 2017 the new structure was implemented in respect of education support staff.
95. The claimant presented her form ET1 and grounds of complaint on 30 August 2017. The respondent's ET3 and grounds of resistance were presented on 29 September 2017.

Freedom of Information Act evidence

96. In October 2017 the claimant requested information from Gloucestershire Constabulary in respect of the number of police attendances at the Academy from January 2015 to October 2017. Information was sought in respect of alleged assaults, threatening and abusive behaviour by pupils towards other pupils or staff, by parents or visitors on staff or pupils, and criminal damage. The claimant sought details in respect of any incidents.
97. Gloucestershire Constabulary responded (pp.99-101) that it may hold some relevant information but there was no central register for all of this information, and no way to retrieve it by way of electronic searches. The claimant's request was refused on the grounds that making enquiries with the relevant officers dealing would exceed the 18 hours prescribed by the Freedom of Information Act 2000.
98. Some information was retrieved however. Incidents were extracted from the Constabulary's Incident Recording System where the incident address contained Millbrook Academy. This was provided in tabular form as below.

<b>Year</b>	<b>Opening Classification</b>
2015	Violence against the person
2015	Anti-social behaviour
2015	Assault
2015	Anti-social behaviour
2016	Violence against the person
2016	Anti-social behaviour
2016	Anti-social behaviour
2017	Anti-social behaviour
2017	Anti-social behaviour
2017	Violence against the person
2017	Anti-social behaviour

99. The response from the Disclosure Officer at Gloucestershire Constabulary stated that crimes of violence against the person between the period 1 January 2015 and 30 September 2017 had been identified where the crime location was Millbrook Academy. There were 7 crimes in this period with an offence description of assault occasioning actual bodily harm. Of those, 6 had no further action taken due to evidential difficulties and one was dealt with under the Academy's protocol.
100. The claimant made a similar Freedom of Information Act request of the respondent relating to the same period of time, which was responded to on 23 January 2018 (pp.101A to D). The response states that 11 incidents of threatening, abusive or anti-social behaviour were reported by the Academy to the police since January 2015. Not all of these incidents occurred on the Academy site. It was not known whether any incidents occurred in the library or reception areas. Police attended the Academy in respect of 11 incidents.
101. The response also stated that there was CCTV in operation in the reception and library areas at the Academy. The reception CCTV overlooks the desk, visitor waiting area

and entrance doors. The library CCTV overlooks the desk and surrounding area and a blind spot that could not be easily seen from the library desk.

102. In her evidence Ms Briggs stated that she had reviewed the Academy's systems and that seven of the eleven recorded police attendances related to events taking place outside the academy. Examples given included cyber bullying, students sending inappropriate messages to other students, and anti-social or aggressive behaviour. Ms Briggs gave evidence that there were three incidents in 2015 where it was not known whether they occurred within the Academy or not. One incident related to missing iPads, another related to a student taking the phone of another student, and one was a threat of violence by a student. In 2016 there was one incident at the academy where two students were involved in an altercation in a classroom.
103. Ms Briggs gave evidence that to her knowledge there were not any incidents in the library or reception area during her time at the Academy. Students were not routinely in the reception area and did not pass it to go for lunch. They could not get into reception from school because the door between reception and school was locked. Ms Briggs gave evidence that the only way in to the reception was the main entrance, which students were not allowed to walk past during breaks or lunchtimes.
104. Ms Briggs gave evidence that during her time at the Academy the claimant at no stage told her that she was scared or that matters of safety needed to be addressed, nor did the claimant raise such issues with the senior management team at the Academy.
105. Ms Briggs' evidence in respect of police interventions at the Academy was not challenged.

#### Oral evidence relating to health and safety concerns

##### Ms Briggs

106. In cross examination Ms Briggs stated that reception staff would need to make a judgment call whether to allow a visitor through the secure gate onto the Academy premises and would obviously not do so if they were aggressive over the intercom. If someone was calm at the secure gate and allowed in, then became aggressive, that could be seen through the secure glass door to reception. There were people who attended the school who were visibly upset by issues such as pupil exclusion but there was no pattern to this.
107. Ms Briggs could not recall any instance of visitors being allowed through the secure gates but then not allowed into reception. She said that nobody raised this as a security concern.
108. In cross examination Ms Briggs said that there were occasions when staff left the Academy building to meet visitors, for example if it was known that a parent would be attending. She said that the Head of Inclusion would sometimes meet the parent and help escort them off site. If it was known that someone would be attending who was not happy or could be difficult then someone would meet them before they reached reception. If a pupil was excluded then it would not be the time for a rational conversation when the parent arrived to collect the pupil. She said that excluded pupils would frequently go home alone.



109. Ms Briggs was asked in cross examination what protection was in place for the receptionist once someone had accessed reception. She said that staff had radios, access to a phone, and had access to the head teacher and PA. There was no CCTV in the reception area. This is at odds with what is stated in the Freedom of Information Act response (paragraph 101 above) but having heard Ms Briggs I prefer her evidence. Ms Briggs assumed that all staff were aware of the online reporting system because when they log in to the Academy's systems there was a home page which listed all the systems they could access. She assumed but did not know whether staff were trained in use of the online reporting system.
110. Ms Briggs had limited recollection of the Management Board meeting of 16 March 2017 in the absence of notes. She said it was a difficult meeting because people's jobs were going to be affected. She could not recall the details of what was discussed. She said that the Board considered the claimant's representations at pp.70 and 73. Ms Briggs could not recall what investigation took place of the claimant's concerns stated on p.73. The claimant's points were considered by the Board as a whole, not just by Ms Briggs. Ms Briggs could not recall whether the decisions of the Board were unanimous. She had limited recollection now because of the number of meetings she attends and the passage of time. Ms Briggs gave evidence that matters were carefully considered by the Board at the time.
111. Ms Briggs was cross examined on the job description for the Resource Coordinator role. She agreed that it did not specify the number of hours that the post holder would work in reception, and that the hours could change depending on organisational need.
112. Ms Briggs accepted that there would be parents coming to the Academy who were frustrated or angry but said that this was not a daily or weekly occurrence. She said that if the claimant accepted the role then there would have been further discussion of the job description and the times that the claimant would be working in different locations. If the claimant still had concerns relating to safety they could then be addressed.
113. The Employment Judge asked Ms Briggs if the claimant had to accept the new role before any safety concerns were addressed. Ms Briggs said that the claimant had not previously raised concerns with her. By the time that the claimant's employment ended no-one had discussed with the claimant what supportive measures would have made her feel safe. Ms Briggs had no explanation for that.
114. In cross examination Ms Briggs said that it was clear from the new job description where the claimant would be working, but no specific times were given. She said that during consultation it was made clear to all affected employees that they could contact Jane Silverelle for more information.
115. Ms Briggs said that there was nothing unreasonable about the claimant's requests for information. In response to a question from the Employment Judge Ms Briggs stated that she did not believe that the claimant's stated concerns about safety were genuine because the claimant had not mentioned them previously during her employment. That was her view from the point that the claimant first raised concerns during consultation. She said that this view did not impact on how the claimant was dealt with.

116. In re-examination Ms Briggs said that those who visitors would most frequently come to the Academy to meet were herself, members of the Senor Leadership Team, and the SEN coordinator. The SEN coordinator was visited most frequently and meetings would involve family members and professionals such as doctors or occupational therapists. She said that if a visitor was upset by a decision then the visitor would tend to challenge the decision maker and not the receptionist. The receptionist may overhear some of the discussion. Ms Briggs was of the view that the level of risk posed to staff from an angry visitor was the same whichever part of the reception area the staff member occupied.

Ms Broderstad

117. Ms Broderstad stated she was only aware of one incident of raised voices by a parent in the reception area during her time at the Academy. She and others left their offices to see what was happening and the incident was brought under control. This was in the period September to October 2016.

118. Ms Broderstad gave evidence that the reception area was not isolated, and that there were two offices adjacent to reception which were staffed most of the time so that any altercation could be heard by others and support would be forthcoming. Reception could determine who could come on to the Academy premises due to CCTV and controlled access through gates and doors. There was CCTV and secure access on the school gates and reception door.

119. Ms Broderstad gave evidence that the claimant raised several issues with her during her employment. She considered that the claimant was open with her. The main issue was in early 2016 when some of the claimant's responsibilities were taken from her and allocated to the Data Manager who had been employed in 2015. The claimant was quite upset by that as she enjoyed performing those tasks.

120. Ms Broderstad gave evidence that when the rotas were discussed around October 2016 the claimant's concern was how she could fit additional hours in reception around her library duties. Some staff were not pleased with having to work this rota but the claimant did not express any particular concern in that respect.

121. Ms Broderstad stated that the claimant only asked to meet her once that she could recall. This was following the pre-consultation meeting in July 2016 and before the start of the next academic year. She said that the claimant wanted to meet to discuss voluntary redundancy and to get a calculation for any redundancy payment.

122. Ms Broderstad gave evidence that the claimant did not raise with her any issues or concerns about working in the library or reception constituting a health or safety risk, or risks of aggression or violence towards her.

123. There was limited cross examination of Ms Broderstad. She conformed that she line managed the claimant one or two days a week when she was physically present at the Academy. She explained her involvement in the analysis of staff roles in 2015 due to the financial difficulties at the Academy. She had discussions about staff roles with the then business manager and Cathy Gasher of HR, to see whether roles could be combined to address the Academy's financial difficulties. Cathy Gasher was not present for all discussions because her own role was one which was at risk.

124. Ms Broderstad said that Cathy Gasher never conveyed to her that the claimant had concerns about working in reception.

The claimant

125. At the outset of the hearing and prior to hearing evidence Mr Brown told me that there was a factual error in the job description at p.46 point 20. He said that it should read that the claimant assisted with the library from Monday to Wednesday on an ad hoc basis when required and there were no set hours, and that Thursday and Friday hours were not “all day” but only to cover break and diner times. It was accepted that this was not corrected while the claimant was employed, nor raised during consultation.
126. In cross examination the claimant accepted that she was asked to produce the job description at p.45 so that Ms Broderstad could fully understand her role, and that she had freedom as to what she included in the document which she drafted. The claimant agreed that after sending the updated job description to Ms Broderstad she did not at any point revisit it. She realised that it was an important document because it was being sent to her line manager, she had already had a pre-consultation meeting and understood that due to the Academy’s difficult financial position a restructure was being considered. She said that it showcased what she was capable of. The claimant said that the error only occurred to her on 8 February 2018, the day before the hearing.
127. In cross examination the claimant accepted that the library tasks set out at points 20 to 28 on p.46 were the same as what was expected of her under the new job description. She agreed that there was no indication from this document that she was performing library duties under duress, and that the documented suggested she was undertaking these tasks a lot of the time.
128. It was put to the claimant that if she feared for her safety due to certain tasks she undertook it would be important to include that in the job description. The claimant did not accept that and gave evidence that she thought it was a document setting out what she did, not how she felt about it. The claimant did accept that if part of her role frightened her then it was important to let her line manager Ms Broderstad know that through other means. The claimant accepted that she had never raised any concern with Ms Broderstad about being fearful of working in the library.
129. The claimant gave supplemental evidence in chief that she had told Cathy Gasher in Human Resources that she was not happy with confrontation at the Academy and that this left her intimidated and frightened. Her evidence was that Cathy Gasher did not give advice, and she raised this with her on a number of occasions. Ms Motraghi objected to that evidence being introduced at that stage (which was 2.45pm), there being no mention of this in the claimant’s witness statement, and after the respondent had called its witnesses. Mr Brown conceded that he and the claimant did understand while preparing for the case that it was the respondent’s case that the claimant had not raised any concerns relating to her health and safety prior to consultation.
130. In cross examination the claimant repeated that she had raised her concerns with Cathy Gasher. She said that she did not raise it with Ms Broderstad because she was not aware that working in the library would be included in any new proposed role for her following restructure. The claimant gave evidence that she did not feel there was

much support to be able to raise the issue. The claimant agreed that she had raised other matters with Ms Broderstad such as her interest in voluntary redundancy and how much it would be. Ms Broderstad was accessible enough to raise that sort of concern she said. Other matters which the claimant agreed raising with Ms Broderstad included issues relating to risk assessments for children going on work experience, and also about the loss of data work which the claimant had previously undertaken but came to be allocated to another employee. She also contacted Ms Broderstad to ask for help when dealing with supply agency issues.

131. The claimant agreed that she was comfortable raising issues that concerned her with Ms Broderstad. It was put to the claimant that if she genuinely had concerns that she was at risk working in the library or reception areas then she would have raised them with Ms Broderstad at some point from 2015 to 2017. The claimant replied that she should have done so, but that she went to HR instead.
132. Ms Broderstad gave evidence that HR would inform her of any staff concerns, and no health and safety concerns on the claimant's part were ever brought to Ms Broderstad's attention. In cross examination the claimant was asked if she had any explanation for this. The claimant repeated that she told Cathy Gasher how she felt at the time.
133. The claimant accepted that she did not put any such concern in writing save for during the consultation process.
134. In respect of Ms Briggs' evidence as to police attendances at the school the claimant agreed that there was no indication of any incident occurring in the library or reception areas. She agreed there was no evidence in the hearing bundle of any such incidents irrespective of police involvement. She agreed there was no evidence that a member of staff had been afraid, no evidence of incidents being reported, no grievances relating to incidents of aggression or violence, and no evidence of requests for training after any such episode.
135. The claimant disagreed that the risks in issue in this case were the same as in any other workplace. She did agree that the risks were comparable to other potentially stressful environments such as hospital or a courtroom.
136. The claimant denied that she raised issues of perceived risk because she understood that an offer of suitable alternative employment meant that there would be no redundancy payment. It was put to the claimant that this would explain her not raising any such concerns until near the end of the consultation process. The claimant replied that she was not desperate for redundancy.
137. The claimant agreed that she could have raised issues relating to safety at her individual consultation meeting on 8 March 2017 but did not. Her explanation was that she had been carrying out duties in reception and the library on a temporary basis. Ms Motraghi put that what was being discussed was not a temporary arrangement and that the claimant had been provided with a job description for the new role by 1 March 2017. The head teacher and a HR representative were present, and the claimant elected to say nothing regarding safety issues. The claimant agreed that anyone who had the slightest concern in respect of safety would have raised that issue by the 8 March 2017 and said that that she should have done so.

138. The claimant was cross examined in respect of her use of language in the document at p.70, particularly the phrase “suitable alternative employment”. The claimant accepted that what she was driving at was that there would be no redundancy payment if such employment was declined by her. She accepted that she had been asked to articulate reasons why the new role was not suitable alternative employment and had not made any reference to risk assessments or health and safety. She denied that this was because such matters were not in reality a concern. She agreed that she had had ample time to express such concerns.
139. The claimant agreed that on her case it was obvious from the job description for the new role that she would have to work in an unsafe environment, and that if she genuinely had such concerns she would raise them immediately.
140. In cross examination the claimant agreed that all her questions recorded on p.70 were answered the following day in the response on p.72. She agreed that only then, when she was aware that the Academy considered the new role to be suitable alternative employment, did she raise any concerns in respect of the safety of the role.
141. During cross examination the claimant accepted that her role as described by the job description she drafted, and the new role of Resources Co-ordinator were very similar. When taken to her comments on p.73 that the roles were “significantly different” the claimant said that she was only doing a limited amount of work in the library.
142. When questioned on p.73 the claimant accepted that the supervision of children was not a key element of the new role. The lunch break was 45 minutes and the new role required her to supervise children in the library for that period each day.
143. When questioned on her comments on “change of environment” on p.73 the claimant agreed that the office where she normally worked was part of reception. She agreed that she had been working in the library since 2015, but maintained that she did so on an ad hoc basis before the rota at p.52 was produced. She agreed that her responsibilities in reception and the library were not ad hoc after the rota came into existence, and that she did not mention in her letter at p.73 that she was on a rota sharing responsibilities with others. She also agreed that she did not mention any contact with Cathy Gasher in the document at p.73.
144. The claimant agreed that she did not ask for training on conflict management when questioned about her stated inability to react well to confrontation on p.73.
145. The claimant described herself as “hypersensitive about parents coming in”. her case was that others would have no difficulty working in this environment, but she did because of her hypersensitivity.
146. The claimant agreed that she at no point asked to be taken off the rotas for library or reception. She said that doing so would let other people down.
147. The claimant agreed that her level of knowledge was not a bar to her taking the new role.

**Law and submissions**Law

148. Section 135(1) Employment Rights Act 1996 (“ERA”) provides for the right to a redundancy payment if the employee is dismissed by the employer by reason of redundancy. Section 135(2) ERA provides that the right has effect subject to further provisions of Part XI ERA, including sections 140 to 144.

149. Section 139 ERA makes provision for when an employee who is dismissed shall be taken to be dismissed by reason of redundancy.

150. Section 141 ERA is entitled “renewal of contract or re-engagement” and provides as follows:

“(1) This section applies where an offer (whether in writing or not) is made to an employee before the end of his employment-

- (a) to renew his contract of employment, or
- (b) to re-engage him under a new contract of employment,

with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.

(2) Where subsection (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer.

(3) This subsection is satisfied where--

- (a) the provisions of the contract as renewed, or of the new contract, as to-
  - (i) the capacity and place in which the employee would be employed, and
  - (ii) the other terms and conditions of his employment,

would not differ from the corresponding provisions of the previous contract, or

- (b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.

(4) The employee is not entitled to a redundancy payment if--

- (a) his contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of the offer,
- (b) the provisions of the contract as renewed or new contract as to the capacity or place in which he is employed or the other terms and conditions of his employment differ (wholly or in part) from the corresponding provisions of the previous contract,
- (c) the employment is suitable in relation to him, and
- (d) during the trial period he unreasonably terminates the contract, or unreasonably gives notice to terminate it and it is in consequence terminated.”

151. "Suitable employment" means employment in a similar kind of employment. It will not be enough that the salary remains the same if the work is totally different and not suitable for the employee.
152. The question is whether, on an objective assessment, the employment is suitable in relation to the particular employee. This involves asking whether the job matches the person: does it suit her skills, aptitudes and experience. The whole of the job must be considered, not only the tasks to be performed, but the terms of employment, especially wages and hours, and the responsibility and status involved. No one single factor is decisive; all must be considered as a package. Was it, in all the circumstances, a reasonable offer for that employer to suggest that job to that employee? The sole criterion by which that is to be judged is "suitability".
153. The issue of refusal is to be considered separately from that of suitability although in practice there may be factors common to both.
154. I remind myself that I must look at the facts at the time, looked at from the employee's point of view, and not apply a "range of reasonable responses" test. I must not substitute my own view about the reasonableness of the reasons for refusal, but instead consider whether someone in the employee's particular circumstances could reasonably have taken the view of the alternative post that she did.
155. It is for the respondent to show that the employment offered was suitable for this particular employee, and that the refusal was unreasonable.

#### Submissions

156. Mr Brown made submissions on behalf of the claimant as follows. The claimant accepted that the new role was not objectively different to her existing role, but it was not ideal. Her personal view was that if she took on the new role she could be subjected to aggression, threats or abuse from visitors. The claimant does not deal well with such people. This was described as the claimant's primary issue.
157. The claimant's case on the suitability of the new role was based on health and safety concerns, and that the new role involved demotion and a reduction in pay. All communication was by email.
158. Mr Brown said that the claimant had made an error in the job description which she had drafted, as set out above, and that this had not been identified until recently.
159. Mr Brown stated that objectively the roles were similar. It was never about the skill sets he said. Rather, the issue was about the claimant's skills in dealing individuals and confrontation which she does not deal with very well. She thought "why should I put myself in that position when the school is not protecting me or addressing my issues."
160. The claimant felt that the respondent dismissed her views. She accepted that she should have raised her concerns in respect of safety issues previously. Mr Brown said that the claimant had raised concerns with Cathy Gasher, which were not conveyed to higher management. It became an issue for the claimant when it became obvious what her position was to be following the restructure.

161. Mr Brown said that the claimant asked for support and for issues to be addressed, but the respondent considered that her issues were either not truthful or genuine and did not address them.
162. It was the claimant's case that from 16 March 2017 when she submitted her issues for consideration the respondent did not at any point return and say they understood that she had a problem. It was argued that the respondent forced through change for its own ends because it meant that there would be no need to make a redundancy payment. The respondent did not wish to consider the claimant's concerns.
163. The claimant disputed that she had been untruthful when articulating safety concerns. Her concerns were genuine. The respondent took no responsibility in respect of health and safety concerns which was the claimant's main issue and why she did not consider the new role to be suitable alternative employment. The respondent was dismissive during consultation.
164. The claimant's case on refusal of the offer of the new role rested on health and safety concerns only. The role did not suit her and the way she reacted to incidents of aggression. This was her personal perspective. She had no training on how to deal with volatile situations. There was no risk assessment and no CCTV on entry through the secure gate. The claimant felt at risk and this was not an environment in which she wished to work.
165. I asked Mr Brown to address me on why the claimant did not raise anything in writing in respect of her health and safety concerns until the latter stages of consultation. Mr Brown stated that this only became an issue when it became evident that the claimant would have to work in the reception area, and potentially to do so for more hours than had previously been the case. The job description was unclear, and no explanation was provided to the claimant to allow her to make a judgment on the role that she was going to be taking. There was no indication that the claimant's concern would be addressed. The respondent preconceived that there was not a safety issue. Ms Briggs was only at the Academy for a matter of months and was not able to judge the atmosphere and what previously went on at the Academy. No risk assessment was made. The onus was put on the claimant in that regard.
166. Ms Motraghi made submissions on behalf of the respondent. She argued that the claimant made a number of concessions during cross examination which were proper, but fatal for her case.
167. On the issue of suitability Ms Motraghi referred me to the claimant's evidence that there was no greater risk posed to her in reception whether she sat behind the glass partition in her Cover Manager role, or at the reception desk in the new role. The claimant had not raised safety concerns in her normal role.
168. Further, the claimant was reluctant to accept that the risks posed to her were hypothetical but eventually did. There is a risk of irate or abusive individuals in any workplace, but that does not mean that the risk will materialise. I was referred to the evidence of Ms Briggs and Ms Broderstad that such an occurrence at the Academy was very rare.



169. In respect of the evidence of police attendances and Ms Briggs' analysis of incidents there was no evidence of any incidents happening in the library or reception area. The claimant accepted that there was no evidence in the hearing bundle which indicates any incidents were reported by the claimant or others.
170. Ms Motraghi emphasised that the claimant accepted that the two roles in question were essentially similar. They involved the performance of administrative duties, and the claimant had extensive experience of undertaking library and reception duties. When the claimant drafted her own job description in 2016 half of that document detailed responsibilities in the library and reception. The claimant did not raise any issues relating to safety at that point and did not do so at all until the later stages of consultation. There was no real or substantial difference between the two roles and the claimant accepted that in cross examination.
171. Ms Motraghi asserted that it was unreasonable for the claimant to introduce evidence relating to Cathy Gasher at the late stage which she did.
172. Ms Motraghi referred me to the matters which the claimant raised with Ms Broderstad during her employment, and that the claimant was comfortable raising issues with her. I was asked to consider why, if the claimant genuinely thought she was in danger, she did not raise this with Ms Broderstad at the first available opportunity. Ms Motraghi argued that the claimant was aware of the restructure proposals and indicated that she wanted voluntary redundancy before any alternative role was put forward to her. The claimant came to close her mind to any role put forward.
173. The claimant's questions after the individual consultation meeting were entirely silent on safety. Her concern was whether a new role was "suitable alternative employment" and how that affected her redundancy payment. Once it was confirmed that the new role was suitable alternative employment in the respondent's view then the claimant provided a whole list of information and concerns on p.73. Ms Motraghi referred me to aspects of the claimant's oral evidence when questioned on the content of p.73, which she said showed deliberate minimisation of the type of work which the claimant was doing in the library and reception. The claimant could not have forgotten about working a rota for months when she wrote that she worked on an extremely ad hoc basis in the library and reception. The claimant's portrayal of genuine fear could not in context have been accurate.
174. On the issue of unreasonable refusal there was overlap with the matters above. There was a tension between Mr Brown's submissions and the claimant's evidence. The claimant did not have justifiable reasons to decline the new role, the risks were the same in the new role as the old role in reception. The claimant had never had to use an incident report form. The Head and PA were close to the claimant's desk in reception. Phones and radios could be used for assistance. There was a secure entry system and CCTV. The receptionist had control over who could enter.
175. Ms Motraghi continued that there was no increased risk posed by the new role. When the claimant was told that a risk assessment could be undertaken for additional reassurance (p.85) the claimant showed no interest in this and said that she would not accept the post (pp.86-87). The claimant did not ask for relevant training, nor say she would work less hours. The claimant was unprepared to accept the new post because she wanted a redundancy payment.

176. Ms Motraghi argued that there was a real issue with the credibility of the claimant's evidence. That the claimant wished to revise that she worked "all day" in the library on Thursdays and Fridays to a lesser unclear period of time was not credible. Any error would have been identified when drafting form ET1, or at the latest when preparing witness statements.

## **Conclusions**

### Generally

177. There is no dispute that the claimant was dismissed by reason of redundancy. The claimant's entitlement to a redundancy payment depends upon whether the role of Resources Co-ordinator was an objective assessment suitable alternative employment for the claimant, and if so whether having regard to factors personal to her the refusal of that role was reasonable.
178. The key issue in this case is whether the claimant's stated health and safety concerns were genuinely held. It is not the only factor to be considered in respect of suitability and I have borne this in mind. The health and safety concerns are the sole factor relied upon in respect of the claimant's refusal of the new role.
179. The claimant gave clear evidence that she was hypersensitive to incidents of verbal or physical aggression, but that others who were not hypersensitive would have no difficulty working in the environment she was or would be required to work in.
180. In his submissions Mr Brown relied upon the claimant's evidence of hypersensitivity in respect of both the issues of suitability and refusal. The issue of hypersensitivity or health and safety concerns clearly relates to the issue of refusal and whether this is a factor personal to the claimant.
181. Given the way in which the claimant's case was put I have also considered whether the claimant had such hypersensitivity when reaching my conclusions on the issue of suitability, and whether the new role was suitable to this particular employee. Whether hypersensitivity is considered at the stage of suitability or not my conclusions remain the same.

### Suitability

#### Skillset

182. By the conclusion of cross examination the claimant had agreed that her existing role and the role of Resources Co-ordinator were very similar. Mr Brown conceded that the roles were not objectively different.
183. That concession is inconsistent with the way in which the claimant portrayed matters during the consultation process (p.73) and in her witness statement. This did have an impact upon my assessment of the credibility of the claimant.
184. Leaving aside any issue of hypersensitivity the claimant agreed in evidence that she had the necessary professional skills and experience to perform the new role. Both

roles were administrative in nature. The claimant had considerable experience of working in the reception and library areas and performing the tasks that would be required of her in the new role.

Objective risks to health and safety

185. On objective assessment there was no significant health and safety risk to someone holding the claimant's existing role or the new role. The claimant's evidence that an employee who was not hypersensitive would have no difficulty performing either role was clear evidence in this respect.
186. Irrespective of the claimant's admission I find that objectively assessed the new role was not one which exposed the post holder to significant risks of verbal or physical aggression. I reach the same conclusion in respect of the claimant's existing role. Both roles comprised the same or very similar responsibilities in respect of the reception and library areas.
187. I refer to my findings of fact in respect of the Academy environment at paragraphs 21-29 above. Visitors to the Academy did not have unfettered access to the reception or library areas. Visitors had first to pass the secure gates to the Academy site. The identity of the visitor and purpose of the visit would be ascertained by the receptionist operating the secure gates. The use of the intercom also meant that the receptionist could detect whether any visitor was in an agitated state. This gave an opportunity to assess the risk posed by any visitor.
188. The receptionist had a further opportunity to assess the situation due to the presence of a secure glass door used to access reception. The demeanour of any visitor could be assessed at that stage, and a decision taken whether to allow the visitor access, seek support from colleagues before allowing access, or deny access to the visitor.
189. In the event of concerns radios were present which allowed the receptionist to communicate with other colleagues and obtain support. This could be done before allowing access to any visitor. There were telephones present which served the same purpose.
190. The receptionist also had other staff nearby and on hand if there was an agitated visitor attending or a situation was escalating. The offices of the head teacher and personal assistant were a matter of meters away and tended to be occupied during the day. Colleagues were on hand to assist with any agitated visitor and to help diffuse any difficult situation.
191. Ms Briggs gave evidence which I accept as to which employees were more frequently visited, and the nature of the visitors themselves (paragraph 116 above). Many visitors were professionals. It was not suggested that doctors or occupational therapists posed any risk to health and safety.
192. I accept Ms Briggs' evidence that there would be parents coming to the Academy who were frustrated or angry (paragraphs 106 and 112 above). The example referred to at the hearing related to the parents or carers of excluded pupils.

193. I accept that there was no pattern to when pupils would be excluded and that that would depend on individual circumstances. I also accept Ms Briggs evidence that there was no pattern to whether a parent or carer would attend school in respect of the excluded pupil and be angry or frustrated, whether that be to collect the pupil or discuss the circumstances of exclusion. I find, as Ms Briggs said, that this was not a daily or weekly occurrence.
194. I also accept that in practice staff tended to meet agitated parents on the school premises before they reached the reception area (para.108). The Head of Inclusion for example would make contact with the visitor and as such the receptionist did not have to deal with the situation.
195. Mr Brown cross examined Ms Briggs on the basis that a visitor could conceal their agitation, gain access to the reception area, and then become aggressive or violent. I accept that this is a theoretical possibility. However, Ms Briggs could recall no occasion when this had happened (paragraph 107 above). The claimant accepted that there were no documented incidents of verbal or physical aggression in the reception or library areas in the hearing bundle. The high point in this regard emerged from the evidence of Ms Broderstad (para.117 above) that a visitor was allowed access to reception and was communicating with a raised voice. This happened on one occasion during her time at the Academy. She and other staff attended the incident, the visitor was placated, and matters brought under control.
196. Ms Broderstad gave unchallenged evidence which I accept that in her experience a receptionist is very rarely at the apex of confrontation from an agitated visitor. It had happened two or three times in her experience and she had worked in education support and business management for 18 years. Such visitors generally wish to challenge the decision makers and not the receptionist.
197. If an agitated visitor did conceal their agitation in order to gain access to the reception area, then they could block the receptionist's route from the reception area to the secure doors. I accept the oral evidence of Ms Briggs that there was no CCTV in the reception area. However, the receptionist could access other rooms nearby to find safety and use radios or telephone to obtain assistance. On the material before me it is likely that a colleague would hear raised voices and attend quickly. Ms Briggs gave unchallenged evidence that in all the schools she had worked at none of them had CCTV in the reception area.
198. Having regard to the means of access, layout of the premises and presence of colleagues I conclude that the absence of CCTV in the reception area does not result in the receptionist facing a significant risk to health and safety. The matters referred to above appropriately manage the risks in question.
199. The claimant accepted that if there was an aggressive visitor to reception, she would be just as likely to feel insecure whether she was sat at the reception desk or behind the glass partition to her office. These locations were two to three meters apart (para.29). The claimant had performed reception duties for a considerable period in her existing role. The claimant had made no complaint to her line manager or the principal in respect of health and safety issues during her employment until the latter stages of consultation. This reinforces my judgment in respect of the absence of risks

to health and safety in the proposed new role. The risks in the new role were no different.

200. I have considered the Freedom of Information Act evidence from Gloucestershire Constabulary. This did not show that any incidents had taken place in the reception or library areas. The evidence indicates that police attended the Academy site, but not that incidents took place at the Academy. There were 11 incidents in total. Seven incidents had a description of assault occasioning actual bodily harm. Six were not proceeded with due to evidential difficulties.
201. I have considered the Freedom of Information Act evidence from the respondent and Ms Briggs' unchallenged evidence in this respect. I have no reason to disbelieve Ms Briggs evidence and accept it. Of the eleven police attendances at the Academy between 2015 and 2017 I find that seven attendances related to events taking place outside of the Academy. They do not reflect circumstances where the receptionist or librarian are put at risk. Of the remaining four incidents it was not known where three of them took place. One of these three incidents was expressly of violent conduct, another (the taking of a phone) could involve violence but that was not recorded. There was only one incident which clearly took place at the Academy which it was known involved violent behaviour, and that was an altercation between two pupils. There was no suggestion that staff were also subjected to violence or threats in this incident. It took place in a classroom and could not affect the receptionist or librarian.
202. I accept that over time there are likely to be incidents between pupils which require intervention. I am not persuaded that the Freedom of Information Act evidence shows that reception or library duties exposed the post holder to significant risks of verbal or physical aggression. Pupils could not get access to the reception areas unless allowed in by the receptionist. The majority of incidents occurred off site and could not pose health and safety risks. The clearest evidence of an altercation on site also took place in a classroom rather than reception or the library. Teaching staff would have been required to intervene, but the receptionist or librarian would not. The evidence tended to show that incidents of verbal or physical aggression did not take place in the reception or library areas.
203. There were no concerns as to the layout of the library itself. I did hear evidence that there was an insecure door which allowed access to the library, so that if an agitated visitor was on site then they could gain access to the library. There was no evidence before me that this had ever occurred at the Academy.
204. It is also notable that the claimant did not raise any concerns relating to health and safety in carrying out her reception and library duties with her line manager Ms Broderstad and did not articulate any concerns in that respect until the latter stages of consultation despite knowing she would be working in these areas in the new role. If performing the duties did expose the claimant to risks to her health and safety, then she would have raised her concerns and sought to have them dealt with.
205. Viewing matters in the round I find that on objective assessment there was no significant health and safety risk to someone holding the Cover Manager or Resource Co-ordinator roles. The Resource Co-ordinator role was not unsuitable on that basis.

Genuine health and safety concerns?

206. On the evidence before me the claimant's conduct during her employment was inconsistent with her genuinely being hypersensitive or having genuine health and safety concerns. Put broadly the claimant made no real contemporaneous complaint in this respect during her employment despite having ample time and opportunity to do so. The claimant accepted that if her complaints were genuine she should have raised them on a number of occasions. The explanations given for the failure to raise such matters lacked credibility in my judgment. When the concerns were raised this was shortly before the conclusion of the consultation process and the claimant's arguments (p.73) were at odds with the evidence which she gave to the Tribunal.
207. By the time of the proposed restructure the claimant had been working in the library and reception areas for a considerable period and without complaint. The claimant had worked in the library area since 2015 (paragraph 32 above). As of October / November 2016 the claimant had been working consistently in both the library and reception areas, and subsequently came to do so subject to a defined rota (paragraphs 38, 41-42 above).
208. The claimant considered Ms Broderstad to be accessible. That Ms Broderstad only worked at the Academy for one or two days per week is no credible explanation for the claimant failing to raise health and safety concerns with her.
209. It is agreed that the claimant raised a number of other issues with Ms Broderstad without difficulty. One of those issues related to risk assessments for pupils because the claimant did not understand the process of doing so. Given that the discussion related to risk assessments it is even more difficult to understand why the claimant would not articulate concerns relating to her own health and safety if she genuinely felt at risk.
210. Whether or not Ms Broderstad was physically present at the academy had no bearing on the claimant's ability to raise issues with her. The claimant did communicate with Ms Broderstad by email. She did so in respect of rota changes in 2016 and also to request consideration for voluntary redundancy. Even if Ms Broderstad was not present at the academy for a few days, the claimant could have raised these issues in person the following week.
211. When the claimant drafted her job description in October 2016 she did so making express reference to her responsibilities in the reception and library areas. I accept that the job description may not be the perfect vehicle for the claimant to express safety concerns. However, the discussion generally of roles and responsibilities among education support staff at this time did afford some opportunity for the claimant to raise any concerns. She did not do so. None of the detailed points set out by the claimant refer to conflict management or similar issues when dealing with the reception and library areas.
212. There is a dispute between the parties as to whether the job description drafted by the claimant in 2016 is an accurate reflection of her responsibilities. The claimant's case is that she wrongly recorded that she worked in the library all day each Thursday and Friday. I was told that this error had only recently been identified.

213. I find that the job description accurately recorded her duties at the time. The document itself is detailed and clearly the product of much consideration by the claimant. The claimant understood the importance of the document in light of the contemplated restructure at the time that she wrote it. It was needed so that the roles of staff at the Academy were properly understood. The language used by the claimant in her covering email also indicate that the claimant has considered what she had drafted, and whether it was a comprehensive summary of her responsibilities. The claimant accepted having freedom as to what she wrote, and that this document showcased her abilities. At no stage during her employment did the claimant indicate that the job description was incorrect in any material way. The claimant considered this job description during the consultation process to contrast it with the Resource Co-ordinator role and did not at that stage contend that it was in some way inaccurate. Given that the claimant was at that point seeking to argue that the new role was not suitable employment it is highly likely that any error would have been identified and explained at that stage.
214. I do bear in mind that the claimant is not professionally represented however this has no bearing on the claimant's ability to recognise whether the content of the job description which she drafted was inaccurate in respect of the hours she worked in the library.
215. The claimant also failed to raise any health and safety concern when the library and reception rota was amended in October / November 2016. The claimant was willing to articulate a different concern to Ms Broderstad, namely whether she could accommodate additional hours in reception given her pre-existing responsibilities in the library. This was another clear opportunity for any health and safety concern to be raised at a time when the claimant's role in reception was being considered and discussed. The claimant did not do so.
216. The claimant's explanations for not raising any health and safety concerns (para.135-139) lack credibility in my judgment. I reject the contention that she did not feel there was sufficient support to raise the issue. The claimant accepted that Ms Broderstad was accessible and that she raised a number of issues with her over time. There had been no lack of support by Ms Broderstad, so that the claimant was not inhibited in what she raised with her.
217. I do not accept that the claimant failed to raise any safety issues with Ms Broderstad because she did not know that her library or reception duties would be included in any proposed new role for the claimant. The claimant has portrayed the impact of health and safety concerns upon her as being significant, intimidating, distressing and having the potential to affect her wellbeing generally. Whether or not the new role would encompass reception or library duties would have no bearing on how an employee with genuine safety concerns would feel when working the rota from October / November 2016. The claimant was rostered to work in reception for two and a quarter hours daily, and in the library for twenty five minutes daily (p.52). She worked that rota for a period of months without complaint to Ms Broderstad. If the claimant's concerns were genuine then she would have articulated them at the time.
218. The claimant's evidence also fails to explain why the claimant did not raise any such issue in her individual consultation meeting.

219. The claimant accepted that if these concerns were genuine then she should have raised them. She also accepted that she did not put any such concern in writing save for during the consultation period. The claimant did express her interest for voluntary redundancy in writing. I am satisfied that if the claimant genuinely held such concerns then she would have articulated them in writing, particularly if any concerns raised with HR had not been addressed.
220. The other explanation which the claimant gave for not raising health and concerns with Ms Broderstad was that she had done so via Cathy Gasher of HR.
221. The claimant's case in respect of Cathy Gasher was not foreshadowed in her claim form nor in her witness statement. It emerged in supplemental evidence in chief. The respondent objected to that evidence being introduced and cross examined the claimant on it.
222. It was unfortunate that this evidence emerged at the late stage that it did. I do bear in mind that the claimant was not professionally represented. However, her claim form and witness statement were thorough and engaged with the issues which I was to determine. The claimant and Mr Brown understood that the respondent's case was that the claimant had not raised any health and safety concerns. Given the thorough approach taken by and on behalf of the claimant it is not easy to see how such a significant matter could have been overlooked in the claimant's witness statement.
223. During the consultation process the claimant did not refer to having reported concerns to Cathy Gasher. The claimant first articulated safety concerns on 16 March 2017, the final day for representations to the Management Board (p.73). She referred to distressing incidents. There was no reference to having reported them or that her concerns had not been acted upon or addressed.
224. Cathy Gasher's name arose for other reasons during the consultation process. Ms Briggs advised the claimant to contact Ms Gasher for voluntary redundancy terms on 1 March 2017 (p.68). This did not prompt the claimant to refer to any discussion with Ms Gasher during the individual consultation meeting or thereafter, even when raising issues relating to health and safety.
225. I find that if Cathy Gasher gave no advice or took no meaningful steps to address the claimant's concerns then the claimant would on balance have continued to raise these concerns with others. The cause to speak to others such as Ms Broderstad in this respect would be even stronger. The claimant did not do so.
226. I accept the evidence of Ms Broderstad that Cathy Gasher did not communicate to her any health and safety concerns on the claimant's part. There was limited cross examination of Ms Broderstad and no reason to doubt her evidence.
227. Considering the evidence before me, the late stage at which it is introduced, and that the claimant understood the significance of this evidence in the proceedings, on balance I conclude that the claimant did not raise issues with Cathy Gasher.
228. Even if the claimant had raised concerns with Cathy Gasher that in my judgment does not explain the failure of the claimant to mention or pursue such concerns with Ms



Broderstad or others during her employment and / or at an earlier stage of the consultation process.

229. The claimant also failed to articulate any health and safety concern during the majority of consultation process. The claimant only did so on 16 March 2017 (p.73) which was the final day for representations to the Management Board.
230. There was no credible explanation before me for the claimant's failure to mention the issue at an earlier stage of the consultation process. The claimant had been given an information pack which made clear that the claimant's then role was at risk of redundancy and that an alternative role had been identified. A job description was provided for that alternative role. It was clear from that job description that the claimant would be required to work in the library and reception areas. The claimant accepted this proposition in evidence. If the claimant was hypersensitive and her health and safety concerns were genuine then the claimant had all the information she required to articulate her concerns.
231. The claimant made no mention of any concerns of this nature in her individual consultation meeting on 8<sup>th</sup> March 2017. The claimant could give no credible explanation for this in her evidence.
232. The claimant was given further time to articulate her concerns in writing. The claimant did correspond in writing on 13 March 2017 (p.70), having had five days to consider her position on why the new role was unsuitable for her. The claimant did not raise any health and safety issue at that time. I recognise that the claimant at that stage chose to ask a number of questions which she said she required answers to in order to express her view on whether the role was unsuitable. However, none of those questions related to health and safety concerns expressly, and the claimant would have been perfectly able to express any safety concerns at that time in the absence of replies from the respondent.
233. The claimant received a response to her questions from Jane Silverelle (p.72). That information indicated that the new role was considered to be suitable alternative employment. The claimant fully understood at this point that there would be no redundancy payment if suitable alternative employment was offered and unreasonably refused.

Page 73

234. The claimant's portrayal of her concerns at p.73 is emphatic and conveys that she has felt threatened and intimidated in the past by certain events. The claimant would have been able to express these concerns fully prior to the reply from Ms Silverelle.
235. There is inconsistency between the claimant's concerns as stated on p.73 and her evidence to the Tribunal.
236. At p.73 the claimant argued that her existing role and the new role were "significantly different". In cross examination the claimant accepted that the roles were very similar. In submissions the claimant accepted that the roles were not significantly different.

237. At p.73 the claimant argued that she would principally be required to supervise children but conceded this was not accurate in cross examination. It would form a small part of her working week.
238. At p.73 the claimant argued that reception duties and supervision of children (in the library) formed only a small part of her role. The claimant herself recorded, and I find, that she previously worked all day in the library on Thursdays and Fridays. It is not disputed that the claimant worked for over two hours daily on reception from November 2016. These duties formed a significant part of her role.
239. At p.73 the claimant argued that she had only worked in the reception and library areas on an extremely ad hoc basis. She omitted to mention that she had been working on the basis of a settled rota for a period of months. The picture portrayed at p.73 was very different to the reality of the claimant's working pattern.
240. It is difficult to see how the claimant could have overlooked these matters or recorded them wrongly but innocently when her complaint was drafted. That document is the product of considerable thought and the claimant took time to produce it.
241. That there are other complaints which are not accurate reinforces my conclusion on whether the claimant genuinely was hypersensitive. I conclude that the claimant was not hypersensitive to such incidents.
242. Ms Montraghi contends that the claimant's stated concerns were not genuine and designed to secure a redundancy payment. She argues that the claimant understood that the new role was considered suitable alternative employment and in the absence of a good reason to refuse it the claimant articulated concerns which were not accurate or genuinely held.
243. On the material before me I am persuaded by Ms Montraghi's submissions. The claimant would have articulated health and safety concerns as soon as she was required to work in the library or reception areas if she genuinely held them, or very soon thereafter. There is no credible explanation for the failure to raise concerns prior to consultation or at any point prior to the final day of consultation. The claimant's own evidence was that the risks in the new and old roles were no different. That the complaints were raised when the claimant made the connection between suitable alternative employment and loss of redundancy payment supports the respondent's submissions. The claimant had long held an interest in voluntary redundancy and was willing to communicate with Ms Broderstad on that score.
244. The complaints at page 73 are inconsistent with the oral evidence which the claimant gave, and I prefer the claimant's oral evidence in respect of her role having had the opportunity to consider the various job descriptions before me. The complaints are not factually accurate. When the claimant wrote what she did in respect of her responsibilities in the reception and library she knew that the contents were not accurate. She knew that the roles were not significantly different, that she had the necessary skills and had been undertaking these tasks on a structured basis for a considerable period.

Handling of the claimant's concerns

245. The issues recorded at paragraphs 6 a, b, d and e relate to the handling of the claimant's concerns. The focus of these issues are the claimant's stated health and safety concerns and the respondent's handling of them.
246. The claimant accepted in evidence that her questions of 13 March 2017 (p.70) were fully answered by Ms Silverelle's reply the following day (p.72).
247. I find that the claimant did not genuinely hold health and safety concerns. Further, the claimant's questions on p.73 were in certain respects not genuine concerns but were designed to achieve the aim of persuading the respondent that she should be entitled to a redundancy payment. In my judgment the respondent's handling of concerns which the claimant did not hold has no bearing on the issue of suitability.
248. The respondent did raise the possibility of a risk assessment being conducted to address the claimant's health and safety concerns. I accept Ms Briggs evidence that the claimant would be required to accept the new post before the risk assessment was conducted. Nothing turns on that in my judgment because the concerns were not genuinely held. However, I also note that the claimant did not respond to the suggestion of a risk assessment being conducted.
249. I accept the evidence of Ms Briggs that the Management Board did consider the claimant's representations on 16 March 2017 (paragraphs 81, 86 above). This includes the claimant's representations in respect of pay and grading of the role. The Board did not accept the representations particularly in respect of safety concerns but in the circumstances of this case that does not render the role offered unsuitable.
250. The claimant articulated further concerns on 23 March 2017 (paragraph 87 above) which repeated those in the letter at p.73, together with an assertion that the Management Board failed to consider her issues at p.73. These were considered by Mr de Sausmarez. There was no failure to consider the claimant's concerns. The concerns were not accepted for reasons which were valid.
251. The claimant's further correspondence of 31 March 2017 (paragraph 90 above) centred on health and safety issues once more, and for the above reasons have no bearing on suitability. The claimant expressed that she had been working in the library and reception areas under duress. I do not accept that to be so. The claimant was willing to work in these areas and did so with no complaint, save for a concern as to how she could accommodate additional hours into her existing work pattern.
252. More generally when the claimant began to articulate concerns from 16 March 2017 onwards she did so with the aim of securing a redundancy payment. When those efforts were unsuccessful and the claimant's application for voluntary redundancy was not accepted the claimant indicated that she would not be accepting the new role (para.91 above). The claimant expressed no interest in a risk assessment being conducted or a trial period in the new role.
253. Given my conclusion that the concerns were not accurate or genuinely held, and the claimant's repeated interest in voluntary redundancy which she expressed over a considerable period I find that the handling of the claimant's concerns had no impact on the suitability of the new role and / or whether the claimant accepted it.

254. There was unfortunately some confusion on the respondent's part as to whether the claimant would be deemed to have resigned if she did not accept the new role (paragraphs 91-93 above). This arose after the claimant had clearly indicated that she would not accept the new role and had no bearing on whether she accepted it or the suitability of the role.

No clear job description

255. The claimant was able to compare her existing and the proposed role using the job description provided. The new job description did not provide specific times when the claimant would be working in reception and to that extent lacked detail. The nature of the roles could nevertheless be compared and contrasted using the job descriptions. The claimant's concession that the roles were essentially similar is based upon such a comparison.

256. The claimant continued with her concerns on 23 March 2017 (p.81). These included a complaint that the Board had failed to consider the comparative skillsets required for the roles. It was the claimant's position that on comparison the skillsets were different. The claimant was able to undertake that analysis. There was no complaint that she could not compare the roles due to a lack of clarity in the job description.

257. That the hours of work in reception and library were not specified in the new job description does not render it so unclear as to contribute to the question of suitability.

258. For completeness the claimant referred at p.73 to provisions in the job description which set out that the post may be subject to change depending on the needs of the organisation. At p.73 she argued that this was not a term of her current role and that the new role was not a suitable alternative for that reason.

259. This provision in the job description is not unusual. During her employment the claimant's role did change over time for organisational reasons. The claimant accepted those changes, for example in respect of rotas. Whether or not there was contractual provision for that evolution was not something which concerned the claimant at those times. The new role involved little if any change in respect of reception and library duties. The existence of this provision has no bearing on the question of suitability.

Demotion and pay

260. It is not disputed that the new role was at a lower salary band. In that sense the new role amounted to a demotion. In terms of role content this was essentially similar in terms of reception and library duties, tasks which the claimant had performed without complaint for some time. There was no difference in terms of status or the perception of others in that respect. The claimant was not being asked to undertake new menial tasks or tasks which involved significantly less skill than had previously been the case.

261. In her existing role the claimant's gross annual salary was £17,870, or £1,489 per month. The new post was less well remunerated. The gross monthly pay in the new role would be £53 less than the old role.

262. There was no evidence before me as to what impact this difference in pay would have upon the claimant's standard of living or ability to make financial ends meet. I note that

in the new role the claimant's salary would be reduced by approximately 3.5%. The reduction in pay is limited but not trivial.

- 263. However, in accordance with the respondent's redeployment policy the claimant was to benefit from pay protection for a period of 18 months. The claimant was aware of that aspect of the policy during consultation. There was no material before me to indicate that the period of pay protection was unreasonably short. That period of protection is significant and allowed the post holder time to contemplate how to accommodate the reduction in pay and if necessary budget accordingly.
- 264. Having regard to the nature of the new role, the period of pay protection and the extent of the reduction of pay thereafter on balance I find that the new employment was suitable.

Conclusion

- 265. Considering the matters above globally, when objectively assessed the Resource Co-ordinator role was suitable alternative employment.

Refusal of suitable alternative employment

- 266. The Claimant relied on her hypersensitivity to issues of verbal or physical aggression as a matter personal to her which I should take into account when considering the reasonableness of refusal.
- 267. I do not accept that the claimant was hypersensitive as claimed during the material period. I refer to but do not repeat my reasons for this as recorded above. Hypersensitivity was not a factor personal to the claimant which reasonably influenced her view of the new role. It was the claimant's own evidence that the role would be suitable for an employee who was not hypersensitive to such matters. Hypersensitivity was the only reason relied upon by the claimant in respect of the refusal. In the circumstances I find that the claimant unreasonably refused the offer of suitable alternative employment.
- 268. The respondent has discharged the burden of proving that the new role was suitable alternative employment and that the claimant unreasonably refused that offer. The claimant is not entitled to a redundancy payment. The claim for a redundancy payment is dismissed.

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Employment Judge Cooksey  
Date: 3 July 2018

RESERVED JUDGMENT AND REASONS  
SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE