



EMPLOYMENT TRIBUNALS

Claimants:

- (1) Mr K Lawson
- (2) Mr R Hollingsworth

Respondent:

Huntingdonshire County Council

Heard at : Cambridge **On:** 25—27 February 2019

Before: Employment Judge Brown

Appearances

For the claimants: Ms B Venkata, counsel

For the respondent: Ms J Coyne, counsel

REASONS

Introduction

1. The respondent, Huntingdonshire District Council ('the Council'), is a district council in the county of Cambridgeshire, providing public services and discharging public functions at a district level.
2. The claimants were employed by the Council until they were dismissed in 2017.
3. Mr Lawson was employed by the Council from 9 December 1985 to 19 September 2017—more than 31 years—latterly in the role of Commercial Team Leader within the Council's Community division.
4. Mr Hollingsworth was employed from 14 July 2004 until 18 September 2017—more than 13 years—latterly in the role of Neighbourhood Interventions Team Leader within the same division.

5. Following early conciliation, the claimants presented claims to the Employment Tribunals on 21 January 2018, complaining of unfair dismissal. In responses dated 28 February 2018, the Council resisted those complaints.
6. The claims were due to be heard in July 2018, but they were postponed. They came back on for hearing from 25 February 2018.

Issues

7. I had a *List of Issues*, which was agreed except for one point, paragraph 11A, which was reformulated by counsel to read: Did the Respondent reasonably try to secure alternative employment for the claimants? The Council's position was that this issue had not been properly pleaded in the claims. The claimants' position was that this issue was expressly pleaded in each claim at para 13 by the words: 'The consultation process didn't identify any other posts that could be considered suitable alternative employment.'
8. Although I considered that the (professionally-pleaded) claims could have been expressed more clearly, in line with the issue to which they were said to give rise, I decided that this was properly an issue for me to consider, in particular in light of the Employment Appeal Tribunal's decision in *Langston and Cranfield University* [1998] IRLR 172, which is authority for the proposition that, where a claimant complains of unfair dismissal by reason of redundancy, it is implicit in that claim, in the absence of agreement to the contrary between the parties, that the unfairness complained about incorporates unfair selection, lack of consultation, and failure to seek alternative employment on the part of the employer. Since there was no onus on either party to establish the reasonableness or unreasonableness of the dismissal under the Employment Rights Act 1996 s.98(4) it is for a tribunal to determine those questions neutrally. Accordingly, it is incumbent on a tribunal to consider each of the three main issues concerning the unfairness of a redundancy dismissal. Therefore, even though the issue was not unambiguously pleaded by the claimants, I concluded that it was properly an issue before me: I must consider it. The Council accepted that it was in a position to address that issue, and since it was legally represented, it could not have claimed reasonable ignorance of an authority as important as *Langston* in any event.
9. Therefore, I treated agreed the List of Issues as a framework for my decision-making and will refer to it in my conclusions.

Materials

10. In deciding the claims, I had, in addition to tribunal files, copies of:

- 10.1. a hearing bundle of about 1922 pages, although pages 1139 to 1635 were not referred to because, I was told, they were duplicates of other pages in the bundle;
- 10.2. witness statements for each claimant;
- 10.3. witness statements, on behalf of the Council, for:
 - 10.3.1. Christopher Stopford - Head of Community
 - 10.3.2. Nigel McCurdy, Corporate Director (Delivery)
 - 10.3.3. Oliver Morley, Corporate Director (Services)
 - 10.3.4. Jayne Wisely, Head of Leisure and Health.

11. Each witness gave oral evidence, but Ms Wisely was not cross-examined.

12. I also had detailed written closing submissions from counsel, which were sent to me, by agreement between counsel as to a time convenient to them, at 7am on the morning of 27 February 2019, and which I had read before the hearing started that day. Counsel for the respondent provided a bundle of the authorities referred to in her submissions, and counsel for the claimant handed up copies of selected authorities.

Timetabling

13. The hearing had been listed for three days, to include all evidence and submissions on liability and remedy, with time for me to reach and give a decision. At the start of the hearing, I therefore invited counsel to formulate a timetable which would enable closing submissions to take place on the morning of day 3 of the hearing, so that evidence would be completed in days 1 and 2, and so that there would be sufficient time for the stages of the hearing to be completed. Counsel agreed a timetable, under which the Council's case would close by noon on day 2 and the claimants' case would close by the end of day 2. Counsel for the claimant was able to complete the cross-examination of the Council's first two witnesses by 15:50 on day 1 (and the hearing then adjourned for the day, at counsel's request), and with all of the Council's witnesses by 11:15 on day 2 (therefore, ahead of the agreed timetable), and the claimant's evidence completed shortly after 5pm on day 2 (somewhat later than timetabled), with shorter breaks for lunch each day, and with an earlier start on day two. Regrettably, counsel took substantially longer than timetabled to make their closing oral submissions, despite having produced detailed written submissions, and notwithstanding some questions from me. Closing submissions did not conclude until 12:30 on day three, and, having started to consider my decision, I concluded at 14:00 that I would not be in a position to deliver detailed oral reasons by a sensible time on day three, and so I reserved my decision. I appreciated counsel's efforts in concluding the oral evidence without too much deviation from the agreed timetable, but the degree by which closing oral submissions overran when so much had been said in writing was regrettable. It is vital that professional representatives think about a hearing timetable

in good time, so that they can prepare accordingly, and if the allocated time is too short, either adjust their preparation proportionately or ask for more time.

14. A remedy hearing was provisionally listed for 25 March 2019, but was cancelled because I had decided by that time that the claimants' claims were not well-founded. I issued a judgment to that effect, with reasons to follow. I considered this to be the most proportionate and fair way to manage the claim, and I had reached my findings of fact and formulated my reasoning by that stage and needed only to finalise the expression of my reasons.

Facts

Burden of proof

15. The burden is on the Council to prove on the balance of probabilities a potentially fair reason for dismissal. If it does so, the burden on questions of fairness is neutral, and I applied the general rule in civil litigation in respect of discrete issues of fact that the party who asserts a fact must prove it to the civil standard.

The witnesses

16. In my judgment, all of the witnesses were, on the whole, reliable. I was especially impressed by the care taken in evidence by Mr Lawson, who answered questions in a focussed way, did not shrink from giving answers which appeared to undermine his case, and did not try to use cross-examination as a vehicle to achieve his own ends. Mr Morley was also a careful witness.
17. I was satisfied that Mr Stopford, Mr McCurdy, and Mr Hollingsworth were truthful, but each of them, to some extent, was tempted to provide information which they saw as helpful to their respective cases, whether it related to questions asked or not, so much so, that, Mr McCurdy and Mr Hollingsworth on at least one occasion each had to ask counsel what was the question they were purportedly answering, after spending some sentences purporting to answer it.
18. In cross-examination of the claimants, counsel for the respondent raised an issue about similarities between parts of their witness statements. I am satisfied that there are similarities between the claimants' witness statements which are more than coincidental and can, on the evidence I have seen and heard, only be explained on the basis that one person drafted common text for both statements. It is likely that the draftsman of this text was a legal advisor, rather than one of the claimants, and I do not think that this involved collusion between the claimants, though it is better for witness statements to avoid this practice, and to be written in the words of a witness, rather than adopted by a witness, not knowing that they are the same as those of another witness. I would observe, though, that this practice is also seen in the Council's

statements in places: para 55 of Mr Stopford's statement and para 11 of Mr McCurdy's statement are materially identical. Para 56 of Mr Stopford's statement and para 12 of Mr McCurdy's statement make the same mistake in the same words in saying that the scoring for a successful candidate had been unanimous, when they corrected their evidence orally to say that it had not been. I find it likely that this too was because a single person drafted these passages in each statement which the witnesses then did not check with sufficient care before signing. The minor changes in language do not detract from the level of similarity between these paragraphs and it cannot plausibly be explained as coincidence. So the criticism made of the claimants by counsel for the respondent could equally be made of some of her own witnesses. Again, it would have been better if the witnesses had used their own words, not least because the words attributed to them here were wrong and had to be corrected.

Findings of fact

Background

19. The Council's Community division included environmental health, community strategy, and licensing functions, several of which were statutory functions. The claimants each managed teams of Environmental Health/Protection Officers.
20. The claimants' roles were the subject of a job evaluation in 2014. They were graded at grade H within the Council's corporate grading structure.
21. At this time, those immediately line managed by the claimants were also employed at grade H - a situation referred to by the claimants as 'H manages H'. The claimants saw this as anomalous (it is not clear whether others did), and their position was that any re-grading should result in their upwards re-grading to I, rather than in downwards grading of those they managed to grade G.
22. The claimants appealed the grading decision, which resulted in a re-grading from near the top of grade H to, in the claimants' words, the very top. The claimants said in evidence that they did not know about this 'near miss' at this stage, but the evidence appears to show that they did know this on 6 October 2014. Their state of knowledge does not really matter for my decision. and I did not consider that it materially affected their credibility as witnesses.
23. In 2014 a Health Protection Manager post was made redundant and the duties of that role were absorbed into three team leaders roles, including those of the claimants. Then, in 2015, an Environmental Protection Team Leader post was vacated and its functions were incorporated into Mr Hollingsworth's post. Neither of these changes resulted in a change in the re-grading of the claimants' roles. The claimant do not seem to have pressed for re-grading, and they did not raise grievances. The claimants considered that,

since they had assumed additional responsibilities, and given the 'H manages H' anomaly, any re-grading would necessarily be to grade I.

24. Under the Council's job evaluation policy and procedure, job evaluation was done by completion of a job evaluation questionnaire in accordance with the job description. These documents were then subject to evaluation and moderation by separate panels considering the Council's broader structures as relevant. Where a job evaluation taken place outside the context of a restructuring exercise, a job holder would ratify the job evaluation questionnaire as well as confirming accuracy of the job description. But where a job evaluation took place as part of a restructuring exercise, the Council's policy was that the employee did not ratify the job evaluation questionnaire; Mr Hollingsworth accepted in oral evidence that this was the Council's policy.
25. As is well known, local authorities, like central government, have been affected by an economic policy which has come to be known as austerity and which has seen, among other things, substantial cuts in central government grants to local government. Austerity has placed real pressure on the delivery of public services, and on the funding available to deliver them. The Council was not immune to these pressures and had in the years leading up to 2017 embarked on a programme of review and change. This had included a review of the Council's senior management team. In 2016, Mr Stopford began to develop a new structure for the community division which he led. The initial stage of this process involved informal consultation with Mr Stopford's immediate reports, including the claimants, and their respective teams.
26. The structure before 2017 was set out diagrammatically at page 89 of the bundle: seven posts (including the claimants') reported directly into the Head of Community, of which three were at grade H, one was at grade I (Community Health Manager) and one was at each of grades E (Administration Officer), F (Health, Safety and Resilience Officer) and G (Quality, Systems Facilities and Safety Manager). Six Environmental Health Officers, all at grade H, reported into Mr Lawson. Seven posts—six Environmental Health and Environmental Health Protection Officers, all at grade H, and one Environmental Protection Support Officer at grade D—reported into Mr Hollingsworth. Five licensing officers and assistants, at grades F and D reported into the Licensing Manager (Grade H; another of the Head of Community's direct reports). Eight posts reported into Community Health Manager. Five administration assistants reported into the Administration Officer post.

Informal consultation

27. On 19 May 2016, Mr Stopford sent informal consultation documents to the Community team, including the claimants.
28. At this stage, it was not suggested that the claimants' roles would change or be deleted from structure. However, the consultation document informed employees that

everyone was within scope, and that the structures would 'need to evolve through this informal and further formal consultation processes and changes may not be immediately obvious at this stage'. Mr Stopford set out five restructuring principles: effective and efficient services; management resilience; collaborative and lean processes; a structure to best fit the span of functional changes; and embracing the direction of travel for the Council.

29. Comments were invited by 10 June 2016.
30. The team engaged with the consultation process.
31. On 25 May 2016, Mr Stopford answered some of the initial questions raised as a result of the informal consultation.
32. On 27 May 2016, Mr Stopford wrote to Mr Lawson, with job profiles for the roles of Mr Lawson and his team, inviting comments on any changes. There is no evidence that Mr Lawson advised Mr Stopford of any changes that were necessary to the job profiles. Mr Lawson did not know if he had done so.
33. On the same day Mr Stopford wrote to Mr Hollingsworth in similar terms, attaching job profiles for Mr Hollingsworth's team.
34. Also on 27 May 2016 Mr Stopford provided further responses to questions raised as part of the informal consultation.
35. On 6 June 2016 Mr Hollingsworth wrote to Mr Stopford with feedback for from the Interventions and Environmental Protection Team on the informal restructure consultation. His response observed that:

The team is aware that there is a desire to resolve the H manages H issue. Given the absence of any material change in the roles, the team has concerns about the equity and robustness of the proposal and fear that the process will be manufactured to resolve the perceived problem and achieve budgetary savings.
36. Five minutes later on 6 June 2016, Mr Hollingsworth wrote to Mr Stopford with a personal response, saying that, in responding to the information consultation, he had become aware of the outcome scores of the team leader positions following the 2014 restructure (he did not say how), and that his role had scored 321, one point below an I grade. He referred to the assimilation into his role of the Health Protection Manager and Environmental Protection team functions. Given the outcome score of the original job evaluation and the material changes that had taken place, it appeared inconceivable to Mr Hollingsworth that the application of the Job Evaluation Policy to the team leader positions would not resolve the H manages H issue which the restructure appeared to Mr Hollingsworth to address.

37. On 10 June 2016, Mr Hollingsworth responded to Mr Stopford's email about the new job profile for his team leader job, saying that he would look to draft a new job profile (although the deadline of 6 June 2016 which Mr Stopford had set had, by then, passed).
38. On 13 June 2016, Mr Stopford produced a new job description and person specification for Mr Hollingsworth's role, called Environmental Protection Team Leader (and Team Manager in the covering email). Mr Stopford invited comments by 15 June 2016.
39. On 16 June 2016, again, after the deadline had passed, Mr Hollingsworth responded to the draft job description with proposed amendments. I find that these amendments reflected Mr Hollingsworth's view of the role, because he had free rein to amend the job description as he considered appropriate, and I am satisfied that he felt able to put his views across to Mr Stopford as he saw fit, and that he felt able to be frank in his dealings with Mr Stopford. Mr Stopford appears to have signed off the job description and personal specification with Mr Hollingsworth's amendments; it was not suggested in evidence that he had not.
40. In July 2016, Mr Stopford completed a request for an evaluation of the Environmental Protection Team Leader post, by completing a job evaluation questionnaire. Mr Stopford was not challenged on the content of that questionnaire and it was not suggested to him that he had misrepresented the role in the questionnaire. In those circumstances, I do not feel able to find that the job evaluation questionnaire materially mischaracterised the role. I am satisfied that Mr Hollingsworth had an opportunity to engage with the detail of the job evaluation questionnaire during the tribunal hearing and take issue with any part of its description if he wished. His criticism was a procedural criticism—that he had not signed the questionnaire off at the time that it was submitted, but that is not a criticism of the substance.
41. For Mr Lawson's role as Commercial Team Leader, again, Mr Stopford signed the job description in July 2016, and requested an evaluation of that post by completing a job evaluation questionnaire. Mr Stopford was not cross-examined on the content of the job evaluation questionnaire for Mr Lawson's role, and I am unable to conclude that the job evaluation questionnaire was materially inaccurate in its description of Mr Lawson's role.
42. On 20 July 2016, following moderation that day, Lisa Morris, Senior HR Adviser, confirmed that the claimants' posts had been evaluated as grade H. I did not have evidence from anyone who had been involved in the re-evaluation of the claimants' roles. Mr Stopford and Mr Morley speculated to some extent in evidence about why it was that the claimants' roles had remained at grade H despite the admitted assimilation of other parts of other jobs into theirs. The claimants' cases were that, since their roles had previously been one point below grade I when last evaluated, and they had assumed additional work since then, their posts must logically now have reached grade I. There

is some deficit in evidence on both sides: the Council has done a poor job of explaining why the claimants' roles remained at grade H, but I do not think that the claimants' argument necessarily succeeds. I do not think that I am in a position, on the basis of the evidence before me, to conclude that the claimants' roles probably had reached grade I in 2016, or that they should have been so re-evaluated, or that in not so re-evaluating them, the decision-makers were acting in bad faith or unreasonably, or that their decision was objectively wrong. I do not have the evidence to reach such a conclusion on the balance of probabilities. I have the job descriptions and job evaluation questionnaires, the substance of which was not challenged, and I also note that the grade H posts which reported into the claimants' posts were themselves re-evaluated downwards to grade G, a move which would make the re-evaluation of the claimants' posts at grade H more plausible than if those whom the claimants managed had themselves remained at grade H. I accept also that there is force in Mr Stopford's and Mr Morley's evidence that someone doing the same job may see a change in evaluation as the context in which they do their work changes: as others assume (in practice) certain responsibilities, or technology assumes a different role, or the behaviour of the public changes, so may the content of a job change. And so, I do not think that the situation in 2014 means of necessity that the claimants' roles must by 2016 have reached grade I. While there is logic in the claimants' argument, considering all of the evidence and the circumstances, I am not satisfied that it is more likely than not that, viewed objectively, the claimants' roles were by July 2016 grade I roles. I conclude as a fact therefore that the re-evaluation of the claimants' posts at grade H in 2016 was neither objectionable, unreasonable, or suspicious.

43. On 25 July 2016, some days after the re-evaluation, Mr Lawson wrote to Mr Stopford, recalling a discussion at a recent team meeting about the informal consultation process, and concerns that the claimants had raised about a lack of response to their teams' observations. Mr Lawson attached an attempted map of questions and comments, and said that there appeared to be several questions and comments to which Mr Stopford had yet to respond.
44. On 8 August 2016, Mr Lawson wrote a substantial email to Mr Stopford, saying that the restructure process was having an adverse impact on staff morale and eroding trust in operational structures. He reiterated a central concern that posts which had not changed were earmarked for re-evaluation, and implied that the resolution to the 'H manages H' anomaly lay in re-grading the team leader posts to grade I (the alternative being the re-grading downwards of the team members' roles). Mr Lawson expressed concerns at the absence of a substantive response to the team's comments since June 2016. Mr Lawson's email was assertive and direct, but professional, polite and quite proper (as Mr Lawson and Mr Stopford accepted in oral evidence).
45. Mr Lawson escalated his concerns about a lack of response to Mr McCurdy. I find that Mr Hollingsworth was supportive of that approach, but Mr Hollingsworth did not escalate concerns himself and was not considered by Mr Stopford or Mr McCurdy to

have been someone who had escalated concerns. Mr McCurdy met the Environmental Heath teams on 21 September 2016, following which he asked Mr Stopford to reply to the teams' questions.

46. On 27 September 2016, Mr Stopford provided responses in writing to questions 'further to the Community Division meeting last week,' attaching an 8-page document addressing 35 questions which had been raised. Mr Stopford was not challenged in evidence about the adequacy of his replies.
47. On 21 October 2016, Mr Stopford submitted job evaluation questionnaires for the new roles of Operational Manager (Business) and Operational Manager (People). He indicated that the 'ideal outcomes' for each post were grade I. It is unclear why grade I would be *ideal*, and Mr Stopford was not asked about this in evidence.
48. The Job Evaluation Questionnaire for the Operational Manager (People) role said that a core purpose was to contribute to the transformation change required within the service to meet the demands of the Council's transformation objectives, arising from the reduction in public sector funding. I accept the Council's submission that this was a new job purpose, when compared to the Team Leader post then held by Mr Hollingsworth; it was a *strategic* management function which Mr Hollingsworth's team leader post lacked.
49. The scope of the Operational Manager (People) role was statutory nuisance, air quality, contaminated land, private sector housing, community safety, community development and emergency planning. I find that this was broader in scope than Mr Hollingsworth's role because community safety, community development and emergency planning were new functions. The July 2016 job description made clear that community safety and community resilience were not part of the Environmental Protection Team Leader role because the team leader was responsible for deputising in respect of those for the Head of Community in the absence of the relevant team manager. In other words, what had previously been an *ad hoc*, reactive, deputising function was to become a substantive aspect of the new post. I reject Mr Hollingsworth's case that the reference in the July 2016 job description for the team leader post (para 32) to responding to circumstances where emergency or urgent action is found to be required, equated to the emergency planning function: *responding* to emergencies and *planning* for emergencies were not the same thing at all.
50. The job evaluation questionnaire for the Operational Manager (Business) post had the same strategic management function which, I find, was not a part of the Commercial Team Leader post held by Mr Lawson. The Operational Manager post covered licensing, which was not part of the Commercial Team Leader role (although the Team Leader role required the post holder to undertake specialist duties as assigned from topic areas including licensing should the need arise—but again, this is very different to having

general functional management for licensing, as, I find, Mr Lawson accepted, albeit he believed that he could carry out the Operational Manager (Business) role.

51. On 31 October 2016, Mr Hollingsworth wrote to Mr Stopford (Mr Hollingsworth did not then know the state that job evaluation had reached), saying that irrespective of the outcome of the formal restructure, he considered his email of 6 June 2016 to be a formal request for the re-evaluation of his post. Mr Lawson wrote in similar terms later the same afternoon, referring to Mr Hollingsworth's email.
52. The claimants accepted - and I find - that their responses to Mr Stopford as part of informal consultation had been polite, professional, and appropriate, and had properly raised issues of concern to them and their team. There is no evidence that they were taken in any other way by Mr Stopford, and Mr Stopford could not reasonably have imagined that his proposals would not be met with some degree of interrogation and challenge, and perhaps even reasonable suspicion, since people's jobs, and their terms and conditions, were at risk.

Formal consultation

53. On 1 November 2016, a meeting took place to confirm the start of the formal consultation process.
54. A formal consultation document for the Community division was published to employees including the claimants, alongside that formal consultation launch meeting. A month-long period of consultation began. The consultation document set out the background and 'drivers for change', saying that the overall objective was to continue to deliver services. Significant savings were necessary, but the focus was on service delivery. The consultation document said that the proposed structure (among other things) clarified management roles, responsibilities and accountabilities, avoiding duplication and providing opportunities for collaborative working. The aim was to join up a range of functions in the Community Section and provide a more flexible and agile workforce. The proposal was to reduce the size of the Community management team and increase operational capacity.
55. The consultation paper proposed (among others) the two new Operational Manager posts, at grade I; a new Community Resilience Manager post at grade H; and new Environmental Health Officers at grade G. Several posts were assimilated, including several of the Environmental Health Officer posts, which lost management responsibility, and were regraded from H to G. The claimants were not assimilated to the Operational Manager posts, and their posts were proposed for deletion, alongside that of the Licensing Manager (also at grade H). Section 7 of the consultation addressed the procedure to be followed. It included provision for ring fencing: the claimants were ring-fenced to new posts at grades H and G. The proposed selection process for employees with redeployee status was application by way of abbreviated application,

followed by interview: candidates would be offered an interview if they demonstrated that they met the essential criteria for the role in their application form. The selection process would further assess the essential criteria and redeployees would only be turned down for a post if after the selection process there was evidence to suggest that they did not meet the essential criteria or there was a more suitable redeployee. Section 8 addressed suitable alternative employment, and provided for pay protection, for employees accepting employment at one grade below their current grade, of full protection for 6 months and half-rate protection for a further 6 months.

56. Appendix 2 to the consultation paper showed the existing structure, in which seven posts (including those held by the claimants), one at grade I, three at grade H, and one each at grades E, F and G reported directly to the Head of Community.
57. Appendix 3 set out the proposed structure, in which three roles (two of which were the Operational Manager posts) directly reported to the Head of Community, with, for the Operational Manager (Business) post, 13 direct reports, and, for the Operational Manager (People), seven direct reports (including the new grade H Community Resilience Manager post and several Environmental Health Officers), three second-line reports, and six third-line reports.
58. Previously, Mr Lawson's role had six direct reports, all at grade H, and Mr Hollingsworth's post had seven direct reports, all but one of whom were at grade H. The structural changes were, in my judgment, substantial.
59. At the meeting on 1 November 2016, an HR advisor who was supporting Mr Stopford told those present that all posts would be restricted to internal candidates, using external recruitment if a suitable internal candidate was not found. Mr Stopford corrected that advisor then and there, saying that the Operational Manager posts would be subject to concurrent internal and external recruitment. This was, I find, allowed by the Council's recruitment and selection policy. I accept that Mr Stopford's decision to do this was to save time, and to ensure recruitment of the best possible candidates.
60. The claimants allege that Mr Stopford had decided to delete their roles in this structure and replace their roles because of the nature of their contributions during the informal consultation. I am satisfied that this was not the reason or principal reason for the deletion of the claimants' posts. The claimants identify the issue as their conduct during the consultation because, before the formal consultation, their roles were retained and this proposal changed.
61. Mr Stopford might have decided to remove the claimants' roles at the informal stage if he did not want them to remain, but he did not, and so I am satisfied that he was not motivated by any general antipathy towards the claimants - in any event that is not the claimants' case.

62. Implicit in the claimants' argument is the premise that the structure that Mr Stopford proposed in the formal consultation was a sham, or at least not the structure that he genuinely believed was best for the organisation, but was to achieve the ulterior purpose of the claimants' removal. I am satisfied that it is unlikely that Mr Stopford would have put in place a structure which he considered wrong for the organisation, because it would reflect poorly on him if it was not best for the organisation, it would be a profound dereliction of his duties as a public servant, and it would be less easy to justify it cogently.
63. The fact that Mr Stopford enabled the claimants to apply for the new grade I posts is a factor to which I give little weight for or against the Council's case because if, Mr Stopford had (improperly) set himself against the continued employment of the claimants in managerial roles, not even *allowing* Mr Lawson to apply for the grade I role would have been to pick a battle that Mr Stopford did not need to have when he could just decide not to appoint. In any event, on Mr Lawson's case, Mr Stopford's position, which I will consider below, could be described as rather a grudging one. I therefore consider that this factor does not really take things further either way.
64. Similarly, the claimants' use of Mr Stopford as their referee for other jobs is a factor to which I give no real weight, because the claimants probably had no choice except to nominate their most recent manager, and, again, if Mr Stopford's objective had been to remove the claimants from their managerial posts, a good way to do that was to facilitate alternative employment; the phenomenon of managers promoting 'problem' employees and supporting external upwards moves to remove them is far from unknown.
65. I give no weight to the suggestion that the claimants' position would mean that an employer could not change the structure in respect of posts where post holders had presented a challenge; in every case a question of fact, rather than principle, what has motivated the managerial decisions in question. If a manager had in fact principally acted in retaliation, rather than in good faith, that would be likely to make any resulting dismissal unfair. Here, I conclude, as a matter of fact that Mr Stopford in no way acted in retaliation.
66. The claimants did not raise such a ground of complaint on appeal, and in my judgment, by this stage, if they believed that there was such an issue, they probably would have raised it.
67. The Council has satisfied me that Mr Stopford's decision at time of the formal consultation proposal was mainly influenced by consultation comments which suggested the need to retain operational capacity in the front-line teams, and to reduce the size of the management structure, and to reduce Mr Stopford's direct reports. This, I find, not the claimant's behaviour during the informal consultation, explains the change between the proposed structure at informal and formal stages and the decision to

remove the posts held by the claimants. I am satisfied that Mr Stopford's proposal was made in good faith and for business reasons and not because of any personal ill-feeling towards the claimants, of which I am satisfied there was none.

68. I had some concern about Mr Stopford's reference to the *ideal* grading of the Operational Manager posts at grade I, but that had not been challenged in evidence and there was no adequate evidential basis for me to start speculating about this; it could have equally been explained as a way to resolve the 'H manages H' issue, or to have a post of sufficient seniority to attract a certain class of candidate, which would be innocent explanations, and I cannot safely draw any inference from it, nor can I speculate.
69. This must have been a stressful and unsettling time for the claimants, given that their jobs were at risk after very long service within Council, and after the preservation of their roles at the information stage.

Applicable policies and procedures

70. It is convenient here to deal with the Council's applicable policies and procedures.
71. There was a Redundancy Policy, which as material had last been updated on 10 June 2016.
72. That policy provided at para 1.2 that the Council would provide so far as possible security of employment to avoid the need for compulsory redundancies through careful forward planning. However, it was recognised that the needs of the business might change from time to time and there might be circumstances that affected security of employment, and this might result in redundancies.
73. Section 10 of the policy governed suitable alternative employment. By clause 10.2, where the Council had identified redundancies that might arise from a restructure within a service, roles in the reviewed structure might be considered as, in the first instance, ring fenced to employees at risk or under notice of redundancy according to the particular circumstances.
74. By clause 10.3, whether alternative employment was suitable would depend on a range of considerations including duties, qualifications, salary, location, and hours of work.
75. By section 11, employees would receive redeployee status when they were at risk of redundancy. By clause 11.3, applications from redeployees would be considered and shortlisted alongside all other applications i.e., those from other internal or external applicants.

76. By clause 11.4 candidates who were at risk of redundancy and had redeployee status would be offered an interview if they demonstrated that they had met the majority of the essential criteria for the role in their application form. The selection process would further assess the essential criteria, and redeployees would only be turned down for the job if after the selection process there was evidence to suggest that they did not meet the essential criteria, or if there was a more suitable redeployee.
77. The policy proposed that the selection procedure would be based on:
- 77.1. the contents of an abbreviated application form;
 - 77.2. an opportunity for employees to demonstrate their suitability for the role at interview and or during assessment tests; and
 - 77.3. knowledge, skills, and capability, assessed by both the application form and an interview.
78. Section 12 made provision for trial periods.
79. Section 13 made provision for selection for redundancy. By clause 13.1, where job roles changed, the Council applied an 80-20 rule. Minor or insignificant changes (less than 20%) to a job role, meant that the job role was substantially the same. Significant changes (more than 20%) to a job role meant that the job role had substantially changed so that the original job disappeared, i.e. was redundant, and a new different job role was created.
80. By clause 13.2, where a service was restructured, the service manager would first design the new structure, identifying the types of posts that were required. Any roles in the current structure that had changed by less than 20% would not be redundant, and the current post holders would be assimilated into the new roles.
81. By clause 13.3, if an employee's post had changed by more than 20% they would be put at risk of redundancy and given redeployee status. Employees who did not secure a post in the new structure would be issued notice of redundancy.
82. By clause 19.2, an employee would receive redeployee status when s/he was at risk or under notice of redundancy. An employee would receive redeployee the status for jobs that were on the same grade or one grade lower and where the job had similar duties and/or responsibilities where the employee met all of the essential criteria for the role following a full assessment.
83. Rules such as the Council's 80-20 rule are somewhat abstract and potentially arbitrary and can be difficult to apply in practice. Should the focus be on similarities in effort? The amount of work? The degree of responsibility? Or some combination of these factors, and if so, how combined? Or on other factors? How is the employer to decide if the difference is 19% or 21%?

84. The interpretation of the policy was primarily a matter for the employer. In my judgment, the focus is on whether change to a role was minor or insignificant
85. Different reasonable employers may have different approaches to assimilation and different priorities where assimilation may arise there may be 51% rule, or a 60% rule, or 75% rule, or some other rule focussing on whether there is enough a similarity between old and new jobs, but, in practice, the assessment will usually be broader brush than whether the change is just on one side of the line or the other.
86. In my judgment, Mr Stopford was reasonably entitled to conclude that the differences between the claimants' grade H roles and the Operational Manager roles were more than minor or insignificant (and genuinely held such a belief).
87. The Council had a Recruitment and Selection Policy, dated November 2014. It was common ground that this policy applied to the claimants' applications for the Operational Manager posts.
88. The aim of the policy was to help appoint the best person for a job, and ensure that the Council recruited a diverse workforce.
89. By section 6.e, all selection decisions should be taken by at least two panel members and it was recommended, to ensure consistency, that at least one panel member was involved throughout the selection process. The policy provided that it was good practice to try to ensure appropriate representation of underrepresented groups on recruitment panels. Mixed panels could help candidates, who may be members of protected characteristic or underrepresented groups [*sic*], feel at ease during the selection process.
90. By section 7.a of the policy, the Council affirmed its commitment to minimising compulsory redundancies and redeploying employees who were no longer able to fulfil their current role. One way of achieving this was to redeploy employees who were at risk to other jobs within the Council.
91. By section 7.b, some vacancies would be ring fenced to specific redeploy ease.
92. By section 8.a, recruiting managers could advertise internally or externally, unless there were specific instructions by the Council not to do so. The section continued:
93. The Council supports the progression of existing employees, but recognises that effective development opportunities, supported by performance appraisal is a more effective way of developing employees' experience and skills, thereby supporting internal candidates who wish to apply for other jobs within the Council, rather than applying a blanket requirement for all jobs to appear as an internal advert before an external advert appears. Similarly the requirement for all jobs to be advertised

internally is not always an effective source of applicants for all jobs, particularly for specialist job[s] or jobs where experience suggests that internal applicants do not apply. Therefore it is the recruiting manager's decision as to whether to advertise internally first, or to advertise concurrently internally and externally.

The claimants are put at risk

94. The claimants received at risk letters on 3 November 2016, and they met with Mr Stopford that day.
95. On 8 November 2016, Mr Hollingsworth asked by email for the grading outcome for his post (which, I infer he had also requested at the meeting on 3 November 2016).
96. It appears that the job evaluation panel and moderation panel were due to meet on 2 and 4 November 2016. On 9 November 2016, Mr Stopford confirmed that the Operational Manager posts had been graded at level I. The evaluation questionnaires for those two roles were made available on SharePoint. Mr Stopford informed the claimants of all this by email that day.
97. On 10 November 2016, after chasing again, Mr Stopford sent Mr Hollingsworth the job evaluation grade for his post, with a copy of the job evaluation questionnaire. On the same day, Mr Stopford sent to Mr Lawson the equivalent information for his post
98. On 28 November 2016 Mr Stopford sent to the claimants (and others) details of two grade E manager vacancies. These were substantially junior to the claimants' posts, and would not have had pay protection.
99. On 30 November 2016, Mr Hollingsworth made an individual response to the consultation, and the claimants made a joint response. The claimants addressed (quite permissibly) more than the restructure as if affected their own roles. Mr Hollingsworth suggested (among other things) that the Community Resilience Manager post should report directly to the Head of Community.
100. The claimants asserted that it was custom and practice for the Council to undertake internal recruitment where there was a likelihood of compulsory redundancies. The claimants included these words in a section of their response which appeared to be a quotation from the Council's redundancy policy, but I was taken to no such words in the copy of the policy I had, and I was not satisfied that it was custom and practice (in the legal sense of those words, meaning a contractual term implied by custom and practice) to restrict posts to internal advertisement, nor that the Council's policy was to do so; indeed, the policy I have referred to above says the opposite. Later in their response, the claimants said that this was 'implicit' in the policy, but I was not shown anywhere where this was said to be implicit, and I reject the suggestion that this was

implicit; the Council expressly reserved to itself the power to recruit externally where appropriate.

101. The claimants raised their concern about the reduction in points allocated to their posts (from 321 to 299) in the job re-evaluation exercise, and said that this was an inconsistency as part of a process that lacked transparency which had caused staff to lose trust and confidence in the Council's ability to operate the job evaluation process in a consistent, transparent, equitable manner. The claimants did not take issue with any details of the job evaluation questionnaires for their posts which Mr Stopford had sent them 20 days earlier.
102. The claimants proposed a job mapping exercise in response to their criticisms of the process, and that all new posts should first only be advertised internally. The claimants proposed that the Operational Manager (Business) post should not be expected to fulfil the role of licensing authority and responsible authority, because, they said, this would entail a conflict of interest, so they proposed an additional leadership role within the licensing section.
103. Mr Lawson provided an individual response to the consultation on 30 November 2016. He raised, among other things, the question of the role of the Lead Food Officer, and said that the absence of a Lead Food Officer would prejudice the Council's ability to satisfy the requirements of the Framework Agreement and fulfil its role as a competent authority. He reiterated the Council's policy of avoiding compulsory redundancies and said that embarking on external recruitment was not consistent with the redundancy policy. Mr Lawson asked fifteen questions and made several alternative suggestions, including reiterating the suggestion of a job-mapping exercise.
104. Mr Lawson provided a joint response with team members, also on 30 November 2016. There was a substantial degree of overlap between this response and the other responses to which Mr Lawson had contributed (that is no criticism of it). Comment 15 addressed a lack of clarity around aspects of the structure of the Commercial Team. Comment 18 addressed a possible conflict of interest if the Operational Manager assumed certain statutory functions. The respondents (to the consultation, not to this claim) asked a series of questions and made a series of suggestions. At question 15, the response queried the content of the Operational Manager (Business) role.
105. The claimants did not challenge (during the consultation) decisions not to assimilate their roles to new Operational Manager roles under the 80-20 rule. Nor did the claimants challenge the re-grading of their substantive posts at grade H which meant that they did not have re-deployee status for the new Operational Manager roles.
106. The claimants had previously appealed against a re-grading decision in 2014, and I am satisfied that they knew that there was an appeal process. They were clearly dissatisfied about the re-grading, but they did not take particular issue with the substance of the job

evaluation questionnaires for the grade I Operational Manager roles, and suggest that these were the same or insignificantly different from their roles.

Consultation outcome

107. On 4 January 2017, Mr Stopford published the outcome of the formal consultation. The claimants' posts remained proposed for deletion.
108. The consultation document was a detailed one. Mr Stopford responded to 83 issues. He responded at response 72 to the claimants' contention that the two team leader positions had changed since their evaluation in 2014. He also responded to the claimants' suggestion that there could be a conflict of interests within the licensing function unless functions were separated out, by introducing a new role of licensing manager. The outcome of the consultation process therefore saw a finalised structure in which the two Operational Manager posts reported into the Head of Community, beneath which were, in respect of the Operational Manager (Business) post eight direct reports and five indirect reports and, in respect of the Operational Manager (People) post nine direct reports and eight indirect reports. In each case, one direct report was at grade H, with remaining direct reports at lower grades. The claimants' posts were therefore deleted, and in respect of the Operational Manager posts, the claimants were not assimilated, nor did they have redeployee status. The timetable provided for external advertising for the Operational Manager posts in January 2017.
109. The claimants did not challenge (after the consultation) this decision that their posts were not to be assimilated to the Operational Manager posts.
110. On 5 January 2017, Mr Stopford sent to employees, including the claimants, details of vacant positions to which applications could be made. The posts which Mr Stopford published were at grades E and F, and were therefore substantially less senior than the claimants' posts. In his witness statement (para 46), Mr Stopford said that a grade H Community Resilience Manager post had been released for application on 5 January 2017, and a page reference was given to the bundle, but this bundle reference did not include such a post; it only included the grade E and F posts referred to earlier in this paragraph. However, counsel for the claimants did not challenge Mr Stopford's evidence that a grade H post had been released for application, and so I accept it as probable; it is referred to as a new, vacant, ring-fenced post in the outcomes report. The claimants did not explain in evidence why they had not applied for this post, for which they would have had redeployee status. Their sights were no doubt (and quite understandably) set on the Operational Manager posts, but applying for this grade H post would have been a prudent fallback for at least one of them (though it might, therefore, have created some conflict between them).

Vacancies for Operational Manager

111. The Operational Manager posts were duly advertised, externally, with a closing date of 30 January 2017. On 11 January 2017, Mr Stopford emailed the claimants notifying them that the posts had been advertised.
112. On 16 January 2017, Mr Lawson email Mr Stopford noting that he did not have a level 5 management qualification which was said to be an essential criterion for the Operational Manager (Business) post. Mr Stopford replied the same day, saying:

With regards to your decision as to whether to apply for the grade I role, clearly in line with our recruitment policies the applications that are submitted will be shortlisted based on essential and desirable criteria, at this stage I have no indication at the level of interest in this role, let alone the level of interest of candidates who meet the essential criteria, or some but not all of the essential criteria. It was for this reason that I said that I would not discourage your application for the grade I role if you felt that this was an opportunity you wanted to explore further. You have information in the formal consultation report, and the outcomes report which outlines the direction that I'm looking to take the service and clearly you are able to consider whether this is something that you feel you want to be a leader in as the grade I manager for the service.

113. While Mr Stopford in this email did 'not discourage' Mr Lawson from applying for the grade I Post, in my judgement this was not an especially enthusiastic or encouraging email from Mr Stopford, and it could not be described as any real endorsement or welcome of an application from Mr Lawson. I do not consider that this is positive evidence of support by Mr Stopford of Mr Lawson. A shrewd manager who hoped that a redundancy process would not see an employee promoted could well write an email of the sort which Mr Stopford wrote, but, Mr Stopford did not prevent Mr Lawson from applying.
114. The claimants duly applied for the Operational Manager posts most relevant to each of them; in Mr Lawson's case the Business role and in Mr Hollingsworth's case the People role.

Shortlisting for Operational Manager

115. The applicants for each of the Operational Manager roles were shortlisted by Mr Stopford and Mr McCurdy.
116. Mr Hollingsworth scored 84 and was shortlisted. He scored two marks higher than the ultimate appointee for the People role. The ultimate appointee scored nil marks for the sensitivity and confidentiality, and level 5 management qualification criteria. Three other candidates were invited to interview, two of whom scored more highly (85 and 89) in shortlisting than Mr Hollingsworth and the ultimate appointee.

117. Mr Lawson scored 85 in the shortlisting process. He was given a notional score of 2 for the Level 5 management qualification, which he did not in fact have, and so his mark was artificially higher than it otherwise would have been. The ultimately successful candidate scored 91, as did another candidate. Other candidates who were shortlisted scored 80, 86 and 91.
118. The shortlisted candidates underwent psychometric testing (in Mr Lawson's case on 13 February 2017; in Mr Hollingsworth's on 22 February 2017), but this scoring was not of itself a way in which candidates were assessed. The Council's evidence (which I accept) was that it informed the questions asked in interview. In evidence, Mr Hollingsworth referred to a disclaimer in the summary report about him which said that test results should not be used in isolation, and they reflected behavioural preferences rather than ability. I was not taken to the 60-page psychometric reports for the claimants, or for those who were offered the Operational Manager posts in detail, and it is not in any event my role to form my own view of the merits of the candidates. Psychometric testing of candidates for posts is not uncommon, and in my judgment, it was reasonably open to the Council to seek to understand psychometric considerations about candidates.

Interviews

119. Mr Hollingsworth asserted in evidence that essential criteria were relevant only to shortlisting. I reject that contention; it makes no sense, and does not reflect the Council's statements of policy. An employer will want at interview to satisfy itself as to how candidates meet essential and desirable criteria. A candidate who has satisfied an employer on paper that s/he meets the essential criteria may nonetheless at interview not satisfy the employer that s/he meets those criteria, or meets them as well as another candidate. The Council was entitled to assess essential criteria at interview, and the fact that the claimants had met essential criteria on paper did not mean that they met them as well as other candidates at interview.
120. For interview, candidates were required to produce a written briefing paper for senior elected members and prepare a 10-minute presentation relating to a briefing paper on a subject where they had managed the delivery of a project focussed on cultural change and service improvement.
121. The interviews were carried out some time in March 2017 by Mr Stopford (as the prospective appointees' immediate line manager), and his line manager, Mr McCurdy. The Council's recruitment policy noted that it was good practice to try to ensure appropriate representation of under-represented groups on recruitment panels, but no consideration seems to have been given at least to having a mixed-gender panel for posts for which there were female candidates. In the context of an appointment process which involved candidates—the claimants—well known to Mr Stopford and because of the risk of bias (conscious or unconscious), the Council's own good practice ought, in

my judgment to have been heeded. This need not have meant that Mr Stopford and Mr McCurdy would not be on the panel, but that they would be joined by a third interviewer, who could increase diversity and bring a more independent viewpoint to bear.

122. The interview marking forms which were completed by Mr Stopford and Mr McCurdy included columns for who would ask the question, the competency being assessed, the question, 'Ideal answer' and score. The maximum available score for any question is not indicated. And in fact, the forms contained no ideal answer; this space was used by the interviewers to make their notes. Those notes are often difficult to read, and it is not possible to reconstruct from them the answer that the candidates gave, nor how that answer led to the mark that was given. However, this was not the subject of any detailed cross-examination because the claimants' case was that the interviewers had been biased against them, and that, having been treated as meeting the essential criteria at the shortlisting stage, they should have been appointed to the posts without interview.
123. At interview, Mr Hollingsworth was scored 11 out of a possible maximum of 36 by each of Mr Stopford and Mr McCurdy.
124. Mr Hollingsworth scored nil marks for a question on management of others: tell me about a time when you were the leader of a team where you knew little and the team had all of the expertise. How did you deal with the situation? How did you establish your credibility with the team? The interviewers' notes are not entirely easy to read, and were not explained in their witness statements, and they were not asked detailed questions in oral evidence about what they had written, but Mr Stopford's notes say 'no example' and Mr McCurdy's, which are less illegible, note Mr Hollingsworth distinguishing credibility from technical expertise, acting as a sounding board for people, being there for people, setting out expectations. Mr McCurdy noted: Weak, no shape... getting to know - just be there.'
125. Mr Hollingsworth was given nil marks by Mr McCurdy for a question intended to test competency in commercial awareness, about making savings and including the customer in decision-making. His notes of Mr Hollingsworth's answer say (so far as is legible): ... to multi-disciplinary team reduced by 4 FTE / standards maintained / new move to charging for enforcement.' Mr McCurdy's note adds 'Not creative'. Mr Stopford gave him 1 mark for this question.
126. In more general comments on his mark sheet, Mr McCurdy noted, among other things: 'Poor on why he wants it or shape it ...'. 'Something not congruent'. 'No HOC journey'. 'Can't see the fire/desire'. These are unreasoned observations and might be considered to be highly subjective. There is no explicit acknowledgment of the difficult circumstances in which Mr Hollingsworth was a candidate for this post: he was not

volunteering for promotion, but seeking a role having been displaced from the role he had held.

127. The successful candidate for the Operational Manager (People) role, for which Mr Hollingsworth had applied was scored 32 and 28. I am satisfied on the balance of probabilities that this candidate did, objectively, perform more effectively at interview than Mr Hollingsworth, and that Mr Lawson and Mr McCurdy selected the candidate who best demonstrated at interview the competencies for the role.
128. Mr Stopford and Mr McCurdy scored Mr Lawson 12 and 14 respectively out of a possible maximum of 39.
129. Mr McCurdy gave Mr Lawson nil marks for the first two introductory questions about what had attracted Mr Lawson to the role and what excited him about it. He wrote on the form 'No conviction', 'no drive'. Again, these were subjective observations which are unreasoned and essentially impossible to assess and they ignore the context in which Mr Lawson was a candidate for the post.
130. For the commercial awareness question (already referred to above), Mr Lawson was scored nil by Mr McCurdy. For a question about delegation, Mr McCurdy wrote that Mr Lawson had given no example. So did Mr Stopford. That question required candidates to give an example of when they had *not* provided enough instruction or guidance for an assignment or task they had delegated and how they had rectified the situation. It is unclear how a candidate who was consistently competent at providing sufficient instruction or guidance could sensibly answer it, but this question may have been in response to the results of psychometric testing or some other factor; counsel for Mr Lawson did not ask about it.
131. The successful candidate for the Operational Manager (Business) role was scored 27 and 29 respectively by the interviewers. Again, I am satisfied that the panel decided to appoint the best of the candidates.

Application for alternative employment

132. On 15 March 2017, Mr Stopford notified the claimants of vacancies for Environmental Health Officers ((Business) and (People)) at grade G. On 16 March 2017, Mr Hollingsworth asked if these were considered suitable alternative employment. On 20 March 2017, Mr Stopford replied to the claimants, saying that the posts were not considered to be suitable alternative employment, partly because of the loss of management responsibility.
133. Mr Lawson applied for the Environmental Health Officer (Business) post on 22 March 2017. On the same day, Mr Hollingsworth wrote at length to Mr Stopford, suggesting that his team leader role should be retained, but in a separate email 11 minutes later

expressing an interest in the Environmental Health Officer role. A few minutes later, Mr Stopford (in my judgment quite reasonably) dismissed Mr Hollingsworth's attempt to re-open the restructuring.

134. On 24 March 2017—technically after the deadline for applications—Mr Hollingsworth submitted an abbreviated application form for the Environmental Health Officer (People) and (Business) roles. The application was accepted as valid. This is some evidence that Mr Lawson did not rely on technical barriers to disadvantage one of the claimants (at least in relation to a non-managerial role).
135. On 4 May 2017, Mr Lawson sent a letter dated 3 May 2017 to Mr Stopford on behalf of himself and Mr Hollingsworth. The letter describes itself as a Formal Response to Community Division Restructure. The letter alleged (among other things) that there had been material changes to the claimants' jobs which had not resulted in a job re-evaluation before 2016. The letter alleged that the job evaluation questionnaires had not been signed by the post holders, and that they were significantly different from the job evaluation questionnaires that had been submitted in October 2012. The letter said that there were several differences including information in support of factors 1A, 1B, 2A, 3A, 4A, 4B, 6A, 6B and 'the omission of an unambiguous question about budget control responsibilities'. The differences in respect of these factors are not spelled out in the 3 May 2017 letter, and it is not immediately apparent what point the claimants were making about budgetary responsibilities, since the job evaluation questionnaire (and the 2016 job descriptions for the claimants' roles) said in terms that the claimants had budgetary responsibilities. The letter also alleged several failures to comply with the redundancy policy. It did not indicate a practical outcome sought by the claimants and it came long after the consultation process had ended.
136. The matters alleged in the claimants' 3 May 2017 letter as to the relationship between the 2016 job evaluation questionnaires and the role that the claimants were performing in 2016, or the relationship between the 2016 and 2012 job evaluation questionnaires, were not put to Mr Stopford in cross-examination, and there was no analysis of the alleged differences in information in support of the job evaluation factors to which the claimants had referred. In the absence of such challenge or analysis, I cannot be clear what the claimants' cases were, and I am not satisfied that it is more likely than not that Mr Stopford's analysis of the roles, as reflected by the job evaluation questionnaires, was deficient, as the 3 May 2017 letter alleged.
137. On 9 May 2017, Mr Stopford acknowledged the claimants' letter. He said that he would endeavour to respond formally by 19 May 2017.

Offer of alternative employment

138. On Friday 19 May 2017, Mr Stopford wrote to Mr Lawson offering Mr Lawson employment in the role of Environmental Health Officer (Business), and attaching a

Staff Amendment Form. The Staff Amendment Form provided that the new employment would take effect from Monday 22 May 2017. This was the date on which the Operational Manager (Business) was due to take up their post. Mr Stopford's letter confirmed that Mr Lawson would have salary protection for six months at full pay followed by a further six months at half pay, after which his pay would drop to point 31, the top of grade G.

139. On 23 May 2017, Mr Lawson asked Lisa Morris, Senior HR Adviser for her 'professional opinion about the implications of [Mr Stopford's] decision and your advice about how I should proceed'. Ms Morris replied within 90 minutes that this was not offered as a suitable alternative role (i.e., a role which, if refused would result in no redundancy payment), and noted that Mr Lawson had applied for the role.

140. On 25 May 2017, Mr Lawson wrote to Mr Stopford, saying that he was reluctant to accept the revised terms at that stage:

There are several reasons for my reluctance not the least of which is the fact that I'm still carrying out many team leader functions. For example I'm still working with Sandra to refine the data recording and reporting arrangements in preparation for next year's annual returns and I'm gradually handing over functions and tasks to Susan [the new Operational Manager]. I'm seeking advice from HR and from my union representatives and I'm considering raising my concerns with one of my local Councillors. I'm sure that it won't take long before I've finally relinquished all my team leader functions at which point perhaps that might be a more appropriate date for the commencement of any protected salary arrangements.

141. On 26 May 2017, Mr Stopford wrote to the claimants saying:

Despite best endeavours I have been unable to complete my response to your [3 May] letter in advance of my annual leave. I have produced a draft letter on which a review has been undertaken, with suggestions being received were an independent review suggested that I have now fully addressed your questions and concerns.

142. On 6 June 2017, Mr Stopford wrote to Mr Lawson asking if there was an update to Mr Lawson's 25 May 2017 email. Mr Stopford said that he needed to get a completed set of Staff Amendment Forms to human resources as soon as possible. He concluded: I am happy to discuss, and seek solutions to move this matter forward.

143. Mr Lawson replied to that email on 12 June 2017, but his focus was entirely on the process of handover and he said nothing about if and when he might sign the Staff Amendment Form.

144. On 12 June 2017, Mr Stopford wrote separately to the claimants in response to their 3 May 2017 letter. He said that the job evaluation process had been carried out properly;

so, he said, had the redundancy process, and he expressed his pleasure that the claimants had been successful in their applications for the environmental health officer roles. Mr Stopford's letter was substantially shorter than the claimants' letter, and it did not deal with their allegations one by one; it was a fairly high-level summary response, but the claimants' letter was not part of a recognisable formal procedure, did not ask for a particular practical outcome, and Mr Stopford's reply to it, in that context, was an unexceptional attempt to shut down a challenge which could not reasonably be expected to be taken further by him at that time.

145. Also on 12 June 2017, Mr Stopford wrote to Mr Hollingsworth in terms materially identical to those in which he had written to Mr Lawson on 19 May 2017, enclosing an appointment letter for the Environmental Health Officer (People) role and a Staff Amendment Form dated 12 June 2017, which provided for changes to Mr Hollingsworth's employment to take effect from 22 May 2017, three weeks previously.
146. On 15 June 2017, Mr Hollingsworth emailed Mr Stopford, saying that further to discussions between them that morning, Mr Hollingsworth was not in a position to accept the environmental health officer role because, the post did not constitute suitable alternative employment, the Council had not taken all reasonable steps to support Mr Hollingsworth in seeking suitable alternative employment, and the dates specified in the amendment form were not consistent with Mr Hollingsworth's contract of employment or his current duties.
147. Mr Stopford booked a meeting with Mr Hollingsworth on 23 June 2017 to progress the consideration of alternative employment and understand the parties' respective positions. He booked a similar meeting with Mr Lawson for 24 June 2017. Mr Lawson proposed that the claimants meet with Mr Stopford together, but Mr Stopford stood by his position that the meetings should be separate. Mr Hollingsworth gave no evidence about what had happened at his meeting with Mr Stopford, but Mr Lawson said merely that he had been asked again to sign the Staff Amendment Form. Mr Stopford's evidence was that he had discussed with Mr Lawson the offer of employment, and Mr Lawson was advised that if he did not accept the role the redundancy process would continue. Mr Lawson said that he wished to accept the role under protest. Laura Gammons, of human resources, said that the Council was not prepared to accept that position, and the role had to be accepted unconditionally or rejected. On that basis, Mr Lawson declined the offer.
148. Of the meeting with Mr Hollingsworth, Mr Stopford said in evidence that Mr Hollingsworth asked for the environmental health officer post to be kept open for him during his redundancy notice, so that he was free to seek alternative employment or accept the environmental health officer role or take redundancy. That proposal was declined (in my judgment, reasonably) because of the needs of the service and to progress the restructure. As a result, Mr Hollingsworth declined the offer of employment with the Council.

Notice of dismissal

149. On 27 June 2017, Mr Stopford wrote to Mr Hollingsworth, giving him 12 weeks' notice of his dismissal. Mr Stopford informed Mr Hollingsworth of his right to appeal his dismissal.
150. Mr Hollingsworth wrote a substantial email on 27 June 2017 to Mr Stopford. He said among other things that his preference was for the Council to offer him suitable alternative employment but that Mr Stopford had said that no such role existed within the Council. Mr Hollingsworth asserted that such a role did exist, but he did not identify it, and he seemed to be saying that a role could be created, rather than that one existed. He said that it had been agreed that he had a statutory right to undertake any role he was successful in obtaining on a four week trial basis.
151. On 28 June 2017, Mr Stopford sent Mr Hollingsworth details of vacancies external to the Council. I am satisfied that this was intended to be a genuinely supportive step. Mr Stopford also said that he was looking at opportunities to support Mr Hollingsworth in increasing his food hygiene competencies.
152. On 28 June 2017, Mr Stopford wrote to Mr Lawson, giving him 12 weeks' notice of dismissal and informing him of his right to appeal against his dismissal.

Staff amendment forms

153. On 30 June 2017, Mr Lawson sent the signed Staff Amendment Form to Mr Stopford. He wrote in his covering email that he had signed the form under protest and asked for confirmation that the form would be accepted as submitted or, if not, the reasons for its rejection. He said that he understood that colleagues elsewhere in the division had signed their Staff Amendment Forms under protest and that those forms had been accepted.
154. On 3 July 2017, Mr Stopford replied to Mr Lawson's email of 30 June 2017, saying that he was unable to accept the Staff Amendment Form as submitted. He continued:

The Staff Amendment Form is not seeking to unilaterally impose a change of terms and conditions, where signing under protest may indicate a position from which further negotiation can commence. ACAS advice [is] that it is good practice for employers to iron out any possible ambiguity and lack of agreement in circumstances where employees are unwilling to sign the amendments to the contract of employment. In your particular circumstance, the Staff Amendment Form is issued to enable confirmation of your appointment to the role of Environmental Health Officer (Business), a new job offer resulting from the restructure of Community. Further, this is the result of your application to the role, and effectively removes you from the at-risk

position following the deletion of your previous role of commercial team leader. In situations where an under protest signature is offered the Council would seek to resolve this dispute, and therefore in line with the ACAS guidance on those points within the Staff Amendment Form to which you have disagreement. Please respond before 18 July 2017.

155. On the same day, Mr Stopford emailed Mr Lawson with details of external vacancies, as he had done on 28 June 2017 with Mr Hollingsworth.
156. By 7 July 2017, Mr Hollingsworth had been offered a team leader position at Bedford Borough Council. Mr Hollingsworth put Mr Stopford down as his referee. I am satisfied that Mr Hollingsworth is unlikely to have had any real choice about nominating Mr Stopford, given that Mr Stopford was his line manager. Therefore, I do not think that this is strong evidence Mr Hollingsworth saw Mr Stopford as supportive.
157. Mr Hollingsworth's success in finding alternative employment outside the Council put an end to any further consideration of the grade G role at the Council. I am satisfied that, even if Mr Stopford had allowed Mr Hollingsworth to sign under protest, it is likely that Mr Hollingsworth would nonetheless have taken up the offer of employment at Bedford Borough Council because, if Mr Hollingsworth had preferred to remain employed at Huntingdonshire District Council at grade G, he could, and I find would, have pressed this point, rather than focus on the job at Bedford, and he did not. I think it would have been different if Mr Hollingsworth's appeal had been allowed, and he had been appointed to one of the Operational Manager posts at the Council; I think that in those circumstances, it is likely that he would have stayed at Huntingdonshire, because that is a point that he pressed by pursuing his appeal and a promotion would have been beneficial. It is notable that he did not include in his appeal any criticism that he had not been allowed to accept the grade G role under protest. Mr Hollingsworth's failure to apply for the grade H Community Resilience Manager post reinforces my conclusion because it suggests a less tenacious approach to alternative employment at the Council than might have been the case. This is not a judgment on the reasonableness of Mr Hollingsworth's approach—it was objectively quite reasonable to take up employment at Bedford—but it is a relevant finding for the issues in the claim.

The claimants appeal

158. On 17 July 2017, six minutes apart, Mr Lawson and Mr Hollingsworth submitted written appeals against the notice of redundancy of 27 June 2017. There was substantial common text in the claimants' written appeal grounds, and it is clear that they had worked together on their grounds of appeal (that is no criticism of them at all, since much of their position was common, and it would have been obvious to anyone that they had done so). Their grounds of appeal were in summary that the Council had failed properly to apply its job evaluation policy; had failed properly to apply its redundancy policy; had failed properly to consult, had failed to find suitable alternative

employment, had advertised externally when it should not have done so, had failed properly to apply its recruitment and selection policy, and had failed to provide necessary support. The appeals attached copies of the 3 May 2017 letter, but did not themselves reiterate the 'several differences' alleged on 3 May 2017 between the 2016 and 2012 job evaluation questionnaires, and did not expand on those. Instead, the claimants focussed on the assumption of budgetary responsibility as an enhancement to their roles which ought (they said) to have led to an upgrading.

Alternative employment: Environmental Health Officer roles

159. Also on 17 July 2017, Mr Lawson responded to Mr Stopford's email of 3 July 2017 about the reasons for his protest at the terms of the Staff Amendment Form. Mr Lawson said that the basis of his protest was covered in the letter of 3 May 2017. That letter raised complaints about the job evaluation and redundancy processes, but the letter pre-dated by several weeks the issuing of the Staff Amendment Form and therefore had not engaged with the terms of the offer of alternative employment. It was not helpful to expect to Mr Stopford to work out from the 3 May 2017 letter the particular nature of Mr Lawson's protest at the terms that were being offered to him in the Staff Amendment Form and it is likely that Mr Stopford was concerned that a straightforward question was not met with a straightforward answer: Mr Stopford had already provided his response to the 3 May 2017 letter; referring back to it would not take things forward.
160. Unlike Mr Hollingsworth, Mr Lawson did refer to the initial rejection of his Staff Amendment Form, signed under protest, at para 6.4 of his appeal, but his chronology, inexplicably, stopped at 28 June 2017. He did not refer to Mr Stopford's email of 3 July 2017 to which he responded four hours after submitting his appeal. If Mr Lawson had really seen the grade G role as the way forward, and Mr Stopford's refusal to accept a form signed under protest as the barrier, it is inconceivable that he would not have addressed it in his appeal.
161. For these reasons, I am satisfied that Mr Lawson did not want to work at the Council in a grade G role. Had he wished to, I am satisfied that he would have identified (as Mr Stopford had invited him to) the reasons that he felt able only to sign under protest, rather than (two weeks after Mr Stopford's 3 July 2017 email) referring back to the 3 May 2017 letter which took things no further and in effect evading the question. As with Mr Hollingsworth, Mr Lawson had not applied for the grade H Community Resilience Manager post which also suggests a less tenacious approach to alternative employment than might have been the case. As with Mr Hollingsworth, had Mr Lawson's appeal been allowed, I am satisfied that he would have wished to remain at the Council in an Operational Manager role, and this was his real, and understandable focus, but his failure to engage with Mr Stopford's attempt to explore the grounds for his protest, or pursue an appeal on that basis, tend to suggest that he did not see the grade G role as a worthwhile alternative. That is no criticism of him, but, in my

judgment, Mr Stopford cannot be criticised for seeking to understand and address the concerns behind Mr Lawson's desire to sign under protest suggested, rather than accepting that situation without more where it might well give rise to a range of difficulties in the future, if not at least understood and managed if possible.

162. There were criticisms that the claimants might have advanced about the way in which alternative employment had been offered to them formally, without much notice in Mr Lawson's case, and in Mr Hollingsworth's case, with retrospective effect, but the claimants did not advance these criticisms, as they could have done, and Mr Lawson's focus (so far as he clearly articulated it) was on his belief that he was continuing to carry out a grade H role and should therefore continue on his terms and conditions. Since the Council was seeking the claimants' agreement to a change in terms and conditions, I am satisfied that they were not bound to provide that the changes would take effect in 12 weeks' time, but it would have been better as a matter of good industrial practice for the Council to have given a reasonable future period before the changes were to take effect, and seeking to apply them retrospectively in Mr Hollingsworth's case was poor industrial practice. Further, I am satisfied that it was reasonable for the Council to prefer to address the claimants' concerns, rather than to unquestioningly accept forms signed under protest.
163. On 25 July 2017, Lisa Morris, senior HR adviser, wrote to the claimants, inviting them to appeal meetings on 14 and 16 August 2017 respectively. She said that the appeal panel would comprise Oliver Morley and Jane Wisely. The documents formally put before the appeal panel were, in addition to the invitation to the appeal hearing, copies of the Council's redundancy policy, appeals against dismissal policy, the claimant's appeals and supporting documents, the consultation document dated 1 November 2016, the at-risk letters, and at risk meeting pro forma of 3 November 2016, the claimant's responses to the consultation, the outcome to the consultation document of January 2017, and the letters by which the claimants had been given notice of dismissal.

Appeal hearings

Mr Lawson

164. In fact, the appeal hearing for Mr Lawson appears to have taken place on 10 August 2017. He was represented by a trade union representative. Mr Stopford presented the management case. The notes of the appeal hearing are relatively extensive, and there was no challenge to their accuracy. I find that they are a reasonably accurate record of the meeting and therefore will not summarise them here.
165. In oral evidence, I was taken to several specific passages from the meeting, although I have taken the minutes (and the witnesses' accounts) of the appeal meeting into account as a whole):

166. Mr Stopford said that he had been advised by human resources that Mr Lawson's Staff Amendment Form, signed under protest, should not be accepted.
167. Mr Lawson alleged that the re-evaluation process had not been conducted in accordance with the job re-evaluation policy that was in place at the time because the job evaluation questionnaires had not been signed by the post-holder and it was significantly different from those submitted in 2012 and 2014 on which the post had been evaluated at grade H in April 2014. He referred to the letter dated 3 May 2017 as setting out the differences. He said that the post in 2014 had warranted 321 points, but only 299 points in 2016, notwithstanding additional responsibilities transferred to his post since 2014. He said that his post would not have been selected for redundancy if the Council had properly followed its own policies. He contended that its failure to do so had resulted in an unnecessarily prolonged dispute situation between the Council and himself.
168. The appeal panel put to Mr Lawson that the new grade I role was quite different to Mr Lawson's role and had responsibility for licensing. Mr Lawson appeared to accept that the roles were different but said that this did not mean that he could not deliver the new role (I find that this accurately reflects what Mr Lawson in fact thought about the situation).
169. Mr Morley asked Mr Lawson what he would want out of the restructure process that he had not had. Mr Lawson said that there was an absence of rationale to delete the two team leader posts.
170. Mr Morley observed that the formal consultation document appeared weighty. He asked what was missing. Mr Lawson said that an explanation of why the skills and experience of the post holders would not assist in delivery of the service was missing. On the informal consultation, one of the posts was there and this post was not there in the formal consultation document. There was insufficient material in the formal document to explain why.
171. Mr Morley observed that the issue was about roles not people and asked how Mr Lawson would respond to that. Mr Lawson said that he would ask people to look at the re-evaluated job description for the role. The job evaluation questionnaire for the commercial team leader role had some information omitted on 21 July 2016. Mr Lawson said that Mr Stopford had advised him that the 2016 job evaluation questionnaire was different to that submitted in 2014. Jane Wisely asked Mr Lawson to explain his involvement in the job evaluation process in the summer of 2016. Mr Lawson said that his input was a matter of record. He said that he had engaged with the process as an individual and as a member of the commercial team. They commented on what was in front of them but proposed options for delivery.

172. Mr Lawson said that he had sent a couple of emails to the recruiting manager on 28 April 2017, raising dissatisfaction about the recruitment process, and that he had received a response but it had not been satisfactory. He said that he was dissatisfied with the objectivity of the recruitment process. He wanted to see the evidence on which the decision had been made.
173. Mr Morley asked Mr Lawson to outline his background in licensing. Mr Lawson replied that his fear was that trying to outline what he did know would come across as a lack of knowledge, awareness and understanding in this format and he felt he would not do himself justice.
174. Mr Lawson was asked about the support which he alleged he had not received in 2016. He said that if he had had a performance development review meeting in spring 2016 this would have identified operational targets and stretch targets and would have identified training needs. He said that when he explored the possibility of Level 5 management training Mr Stopford acknowledged his interest. He could not remember what had happened after that.

Mr Hollingsworth

175. The appeal hearing for Mr Hollingsworth took place on 16 August 2017. Mr Hollingsworth was accompanied by Mr Lawson. Again, the notes of the meeting are extensive, there was no challenge to their accuracy in oral evidence, and I am satisfied that they are a reasonably accurate record of the meeting. Again, I have taken into account all the notes, but refer only to salient points.
176. Mr Stopford again presented the management case. He said:
- 177. The post of Neighbourhoods Intervention Team Leader [Mr Hollingsworth's post] was identified within the restructure as being deleted from the establishment, it was considered against the post of Operational Manager (People) but was a grade below this post, and the changes represented more than 20% with the additional functions of the Operational Manager around community safety, community development, strategic voluntary sector grants, and emergency planning; and therefore this was dismissed as an assimilation position.*
178. Mr Hollingsworth asked Mr Stopford: Did I meet the essential criteria for the Operational Manager (People) role? Mr Stopford answered: I would have to check but I think yes.
179. Mr Morley asked Mr Stopford: Was your decision to go straight to external advert influenced by concerns raised by [Mr Hollingsworth] about failing to respond to questions in the informal consultation? Mr Stopford replied: No, restructures are about the role and not the person and I had no reference to staff or personal issues.

180. Mr Morley asked Mr Stopford: Did you shortlist for the Operation[al] Manager post against the essential and desirable criteria? Mr Stopford replied: Yes, I scored both and then added the scores up and went with the top essential scores first then the desirable schools second, this was sufficient enough not to use the desirable.
181. Mr Morley asked: Did [Mr Hollingsworth] meet the essential criteria? Mr Stopford replied: Yes he did. Mr Morley asked: When you wrote the interview questions for Operation[al] Manager, how did you take into account accountabilities in the job description and person specification? Mr Stopford replied: The questions tested the essential criteria and desirable criteria. We also used some psychometric testing which was not used as a pass fail metric, but rather to identify potential further questions to ask in an interview. This was used on all candidates.
182. In his opening statement, Mr Hollingsworth said that in relation to his post, no redundancy situation existed. He said: the Council has not ceased to exist, nor has the business for which post OP015 is employed, ceased or diminished. There is also no significant change in the requirements of the business; a role that line managed seven frontline environmental health staff has been replaced by a role that line managers seven frontline environmental health staff and the manager of a technically self-sufficient team of officers. Mr Hollingsworth put to Mr Stopford that earlier in the hearing it had been said that he unequivocally met all criteria. Mr Morley replied that this was only at the shortlisting stage, not at the interview stage; the stages were separate.
183. Mr Morley asked Mr Hollingsworth whether he had challenged the assimilation decision, since the formal consultation document at section 5.5 included an opportunity to challenge the decision's assimilation results. Mr Hollingsworth said that he accepted the post he held and the Operational Manager post were not sufficiently close to be assimilated. His argument was not that he should have been assimilated into that role.

Appeal outcome

184. On 19 August 2017, Mr Morley sent Mr Lawson an outcome letter, dismissing Mr Lawson's appeal against his dismissal. On 22 August 2017, Mr Morley wrote to the claimant's with an outcome in Mr Hollingsworth's appeal. That appeal was also dismissed. I am satisfied that Mr Morley engaged with the claimants' grounds of appeal, and answered them in a reasonably careful and comprehensive way. The claimants on appeal appeared to accept that the Operational Manager posts were more senior posts, but said that they could have done them. In those circumstances, Mr Morley was not reasonably required to investigate whether in fact the roles were the same where the claimants accepted that they were different. Nor, in my judgment, was Mr Morley required as a matter of reasonableness to investigate in detail the substance of the job evaluation process where the claimants' real criticism about evaluation appeared to be a

procedural one (and not a good criticism in light of the Council's policy), and where the claimants accepted that the Operational Manager posts were materially different to their posts.

185. On 30 August 2017, Mr Stopford approved time off for job searching for Mr Lawson.
186. In September 2017, the claimants' employment with the Council came to an end. Mr Hollingsworth duly took up new employment in October 2017 with Bedford Borough Council. Mr Lawson took up new work in October 2017 with Corby Borough Council.

Submissions

187. Counsel for the parties made detailed closing written submissions. No materially different points were made in closing oral submissions, and counsel's submissions should be treated as incorporated into these reasons by reference.

Applicable Law

188. A qualifying employee has the right not to be unfairly dismissed: s. 94, Employment Rights Act 1996 ('ERA').
189. The employer must show a potentially fair reason for dismissal: s. 98(1), ERA. Redundancy is a potentially fair reason: s. 98(2)(c), ERA.
190. Where the employer has shown a potentially fair reason, fairness or unfairness (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case: s. 98(4), ERA.
191. 'Redundancy' for these purposes is defined by s. 139 ERA, as material, as follows:

139 (1) [...] an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

[...]

*(b) the fact that the requirements of that business—
for employees to carry out work of a particular kind, [...] or*

have ceased or diminished or are expected to cease or diminish

192. The focus is not on the need for work, but on the need for employees to do the work.

193. In *Murray v Foyle Meats* [2000] 1 AC 51, the House of Lords decided that whether the requirements of a business for employees to carry out work of a particular kind had diminished is a question of fact for a tribunal, and whether the dismissal of an employee was wholly or mainly attributable to that state of affairs was a question of causation and of fact for the tribunal and did not depend on the terms of the employee's contract or the function that he performed.
194. Fair industrial practice ordinarily requires an employer to give the maximum warning of impending redundancies, to consult on to the criteria to be applied when selecting employees for redundancy, to use criteria which are objective rather than subjective, and to offer employees alternative employment before dismissing them: *Williams v Compair Maxam* [1982] ICR 156; *Langston v Cranfield University* [1998] IRLR 172, above.
195. In *Morgan v Welsh Rugby Union* [2011] IRLR 376, the EAT decided that the only correct approach for a tribunal in a case where employees have been displaced from their jobs and required to apply for other posts within a re-organised workplace is to apply the unvarnished test in s 98(4) (reasonableness, equity and substantial merits) to any eventual redundancy dismissal. The EAT said that an employer is not always bound by its own rules and that an appointment procedure is more forward-looking and subjective than a straight redundancy selection. The question is heavily one of fact for a tribunal as to whether a selection process was acceptable.
196. In *Samsung Electronics (UK) Ltd v Monte-d'Cruz* UKEAT/0039/11 (1 March 2012, unreported), the EAT applied the reasoning in *Morgan*, deciding that a significant element of subjectivity will always be involved in selection, and should not be castigated too readily. Lawyers should not be too dismissive of HR terminology often used in such cases and while there is much that an employer can do by way of good practice in a re-selection exercise, that does not necessarily translate into enforceable legal obligations. The EAT said that a tribunal might easily fall into the 'vice of substitution' (by deciding that they would have given the post to a claimant) and held at §39 that 'Good faith assessments of an employee's qualities are not normally liable to be second-guessed by an employment tribunal'.
197. In *Barot v London Borough of Barnet* (UKEAT/0539/11) (17 January 2013), the EAT was concerned with a case in which there had been a restructuring of the local authority's Children and Young Families Directorate. The employee was working in the Corporate Finance Department. The proposal was to reduce lower-level tasks and provide for increased capacity for more senior and strategic tasks. However, the tasks of the finance team still needed to be done. The claimant was not slotted into the proposed replacement post, because there was only a 38% overlap between them and a 70% match was needed for a person to be slotted in. The Employment Tribunal concluded that there was a redundancy situation. Almost all the work in the department would

continue to be done, although it might be done slightly differently, and there was to be no reduction in people. However, there was to be new work introduced, of a higher level, and there was a need for more strategic work and for a grade of employee within the department who could carry out strategic work, recognised by the higher salary grade offered. Employees at the claimant's level were those employees for whom the respondent had a diminished need for their work, of a particular kind. This amounted to a redundancy situation, there being a clear business need based on rational and reasonable grounds, that those employees at that grade and carrying out that particular kind of work were needed less within the new team structure. The EAT concluded that this was a permissible approach: §97.

Alternative Employment

198. The duty on an employer is to take reasonable steps, not to take every conceivable step possible to find an employee alternative employment: *Quinton Hazell Ltd v Earl* [1976] ICR 296.
199. Even if an employee has unreasonably refused an employer's offer of alternative employment, that does not in law mean that their dismissal must have been fair. There may be a degree of factual coincidence, but there is no legal coincidence: *Dunne v Colin & Avril Ltd* UKEAT/0293/16 (8 March 2017, unreported).

Conclusions

Reason for dismissal: issues 2—5

200. I am satisfied that there was a redundancy situation: the claimants' grade H posts were deleted from the corporate structure and two grade I posts were introduced. These were higher-grade posts. Those roles were more strategic. They managed a greater number of employees, directly and indirectly. While the claimants' work was included in the content of those posts, it was joined by new responsibilities, and the Council needed employees who could perform the whole of the higher-grade role to that standard which it required. The Council no longer required two team leaders at grade H; those posts were gone. The Council has satisfied me that the creation of two Operational Manager posts at grade I nonetheless involved a cessation in the need for team leaders at grade H. The fact that the Operational Managers would (with additional responsibilities) do the work that the claimants did, and that two posts were being deleted and two posts were being created does not, in my judgment, undermine the existence of a redundancy situation in the factual circumstances of the claimants' cases.
201. I am satisfied that this part of the re-organisation of the Community Division was genuine. Notably, the claimants' posts had not been proposed for deletion initially, and this happened in response to feedback between the informal and formal stages. The changes were supported by a cogent rationale. They reduced the number of people

reporting directly into Mr Stopford's post. They were part of a larger re-grading of posts which resulted in cost savings. They resolved the H manages H issue (albeit in a way that would have been unlikely to satisfy the claimants or those whom the claimants managed).

202. As part of this process, in my judgment, the Council re-evaluated the posts held by the claimants and evaluated the proposed replacement posts. Since these evaluations were part of a proposed restructuring, the claimants were not, under the Council's re-evaluation policy, required to sign the job evaluation questionnaires. But the process adopted by Mr Stopford was a permissible one, in accordance with the applicable policy. The fact that there had not been an earlier job evaluation, when the claimants assumed new responsibilities, in my judgment, does not in this case affect the question whether objectively there was a redundancy situation.
203. In considering the reason for dismissal—and whether there was a potentially fair reason—the question is whether the Council has proved that there was, in fact, a redundancy situation. However, the claimants suggest (issue 4) that the way that Mr Stopford had carried out the process which ultimately led to the decision to make redundant the claimants' posts is relevant to the question whether objectively there was a redundancy situation at all. I am far from sure that this conflation of the reason for dismissal and questions of reasonableness is correct, but, in case I am adopting too rigid an approach, I will consider what the claimants say about this.
204. The claimants' procedural criticisms of the Council for not having undertaken a re-evaluation of their posts earlier do not, in my judgment, affect the objective existence of a redundancy situation. Those criticisms are not joined with a substantive attack on the re-evaluation of their posts that took place in 2016, or the evaluation of the new Operational Manager posts. The claimants' attack is limited to an assertion that, since their posts had previously been evaluated at the very top of grade H, and thereafter they took on new responsibilities, the only permissible re-evaluation was upwards, to grade I. I cannot accept that argument in all the factual circumstances: the posts which the claimants managed were down-graded to grade G as part of the same restructuring and re-evaluation exercise; there has been no attack on the substance of the job evaluation questionnaires that were completed in respect of the claimants' posts, and there is no suggestion that the evaluation panels did not reach their decisions about all the posts in good faith on the basis of those questionnaires. In my judgment, the argument on which the claimants rely does not go far enough to show that the re-evaluation of their posts at grade H, and the evaluation of the Operational Manager posts at grade I—so that the claimants did not have protected status in relation to the Operational Manager posts—was impermissible or not genuine. In my judgment, the claimants' posts and the Operational Manager posts were different and, for the reasons which I have set out above, this gave rise to a redundancy situation.

205. I therefore conclude that the situation which I described above, in which two grade H posts were deleted and two different grade I posts were created reflects the reality of what happened and it is not undermined by the claimants' criticisms of the respondent's decision-making, because those criticisms are not well-founded.
206. The Council has satisfied me as a matter of fact that it did not dismiss the claimants because of a perception that they were trouble-makers (issue 5) or a perception that they had made trouble in the context of the consultation process. Mr Stopford and Mr McCurdy disavowed any such opinion, and the claimants asserted that they had done nothing which would have reasonably entitled Mr Stopford or Mr McCurdy to hold such a view. It would be an extraordinary dereliction of public duty for a manager such as Mr Stopford to delete posts which he genuinely considered were organisationally necessary, and to introduce two additional posts at increased cost in order to remove two very long-standing employees from their posts on the basis of their entirely proper engagement in the consultation process which he marshalled. The fact that there was a rationale for the revised structure weighs against the argument that Mr Stopford was influenced by impermissible considerations, but this alone would not be enough. However, the absence of any other evidence which establishes an ulterior motive or bad faith satisfies me that the Council has proved that this was not the reason or principal reason for the claimant's dismissals. There was a genuine redundancy situation and therefore a potentially fair reason for the claimants' dismissals.
207. For the avoidance of any doubt, I am satisfied that the claimants' eventual dismissals were attributable to the fact of the redundancy situation, since it was this situation which displaced them from their substantive posts and ultimately led to the service of notice on them. In my judgment, this conclusion is not displaced by virtue of the subsequent consideration of alternative employment.

Fairness

Job evaluation: issues 6—8

208. Having concluded that there was a potentially fair reason for dismissal, I must now consider whether it was in fact fair. As is well known, in doing so, I may not substitute my view for that of a reasonable employer and must ask myself whether no reasonable employer could have responded to an aspect of the situation in the way that the Council did.
209. The claimants' first ground of criticism (issue 6) is that the Council failed adequately to evaluate the claimants' roles before the formal consultation. Although the list of issues suggests that there was no evaluation at all, this is wrong. The claimants' real criticism is that the timing of the re-evaluation meant that they did not have standing to sign the job evaluation questionnaire and so the process happened without their input. However, the claimants' roles were not initially deleted in Mr Stopford's proposed new

structure, and so their re-evaluation at that stage was not required. Mr Stopford considered the claimants' roles in response to feedback at the informal stage, and, by that stage, I am satisfied that a reasonable employer could decide that the claimants' input was not in accordance with the job evaluation policy or in any event appropriate. That in my judgment resolves the procedural criticism. So far as the substantive criticism is concerned, the claimants were invited to provide input into up-to-date job descriptions, they did not attack the substance of the job evaluation questionnaires which were produced based on those job descriptions, and the extent of their attack now is to refer to their previous grading at the very top of grade H and the new responsibilities which they had assumed since then. I am satisfied that, as part of a holistic evaluation of job roles, a reasonable employer could have concluded that the claimants' roles should remain at grade H; there was an insufficiently cogent attack on the evaluation process for me to conclude that no reasonable employer could have maintained the claimants' posts at grade H. Therefore, I am satisfied (issue 7) that the claimants' posts should not have been re-evaluated at grade I.

210. Had the claimants' posts been re-graded at I, they would have had redeployee status, but this issue does not arise in light of my earlier conclusions.

Consultation: issue 9

211. The claimants complain (issue 9) about a failure properly to consult. I am satisfied that the Council's consultation process was fair and reasonable. The commencement of an informal process in which the claimants' posts were not redundant preceding a formal process in which they were was, in my judgment, in no way unreasonable. For the claimants personally it must have been deeply disappointing, but there could be no legitimate criticism of Mr Stopford seeking wide feedback before committing to a proposal.
212. The formal consultation report provided a more than reasonable rationale for the proposed new structure, and in particular in the rationale for the deletion of the claimants' posts and the introduction of new grade I posts. The claimants plainly disagreed with aspects of it, and their representations were taken into account during the formal consultation process in revising the structure, but the failure to provide an explanation which the claimants wholly accepted, or could accept, did not, in my judgment, involve a failure to provide an explanation. The opportunities for input, for asking questions in writing, and for face-to-face consultation were extensive and, in my judgment, reasonable in all the circumstances.
213. Therefore, I conclude that the respondent acted reasonably in the arrangements it made for consulting employees including the claimants.

Recruitment process: issue 10

214. I am not satisfied that the claimants had a contractual right for a post to be advertised only internally. The initial restriction to internal recruitment in a Leisure Division restructure is not, in my judgment, sufficient to demonstrate a term implied by custom and practice that any vacancy in any recruitment process arising in the context of restructure or redundancy would be restricted to internal competition. There were sound reasons for Mr Stopford to conclude that a concurrent internal and external competition was appropriate, so that the recruiting managers could understand the full field of competition and make an informed decision about who should be appointed: these were senior appointments in a part of the Council that was seeing a substantial reorganisation in financially straightened times and which needed to provide as effective a service as possible with real limits on its resources. The Council was reasonably entitled to seek best candidates for the new Operational Manager posts. Some employers may well have acted differently, especially having regard to the claimants' very long service, but I do not consider that no reasonable employer could have gone straight to external recruitment, alongside consideration of internal candidates. After all, if the claimants' performance was the best—and perhaps even if it was not the best but was good enough—the Council could decide to appoint them.
215. In my judgment the recruitment process in which the claimants participated was objectively reasonable, notwithstanding my critical observations about it above. I reject the submission that the recruitment process should have been limited to a paper-based selection exercise on the grounds that this would have been more objective. It was reasonable to interview the claimants among shortlisted candidates. A reasonable employer could conclude, as this employer did, that a paper-based exercise for posts of this seniority would not be sufficiently robust. The approach taken by the interviewers to the claimants left something to be desired: in my judgment, the references to 'fire', 'desire' and 'drive' were somewhat misplaced in the context of an interview process in which the claimants were probably nervous and were competing for roles in the knowledge that their existing posts had been deleted—it would be natural to be nervous, but I do not consider that the overall approach to assessing the claimants as candidates for a job which was senior to theirs was so unreasonable that no employer could have acted in that way, and nor am I satisfied that the assessment of the claimants was in bad faith. The claimants did not perform in interview to the standard required for the Operational Manager roles, and they were not the best candidates (nor close to being the best), and a reasonable employer could have decided to appoint the best candidates, even if this left the claimants out of a role, and even allowing for the claimants' very long service. It would, in my judgment, have been better to have a third interviewer, firstly to bring diversity to the panel of two white men, but also to ensure that there was someone who had not worked closely with the claimants and who would not therefore risk bringing knowledge of them (and any biases) to the interview, and who could challenge any opinions expressed by those who knew the claimants who might have been affected by biases about them, for better or worse. But, in my judgment, these deficiencies in the process were not so significant as to take the Council's recruitment process outside the range of responses open to a reasonable

employer in the circumstances: the process considered overall was operated in good faith and it was reasonably fair and robust.

Alternative jobs: issue 11A

216. I am satisfied that the Council did all that could reasonably have been expected of it in relation to finding alternative employment for the claimants. Neither applied for the grade H Community Resilience Manager post to which they were ring fenced. Each expressed an interest in a grade G environmental health officer role, and each was offered such a role. I expressed some provisional concerns at the hearing about the way in which those posts were offered to the claimants, given that they had a contractual rights in their grade H roles (including a right to notice), and in neither case were they offered that alternative employment on proper notice from the roles from which they were being made redundant, but I have concluded above that the Council's approach was reasonable. Further, I am satisfied that this is not what led to the claimants declining the roles, and I am satisfied that Mr Stopford acted reasonably in seeking to engage with the claimants to understand and resolve the concerns that the claimants expressed, and in seeking to understand Mr Lawson's execution of the Staff Amendment Form under protest. In Mr Hollingsworth's case, his decision not to take the grade G role was because he found alternative employment outside the Council, and, because it was another local authority appears to have had the option to maintain his continuity of employment. Mr Lawson ceased to engage with Mr Stopford's reasonable attempts to address Mr Lawson's concerns about the Staff Amendment Form and the claimants did not actively pursue any challenge about these circumstances on appeal. I am satisfied that Mr Lawson had no real appetite to accept the new role. At the final hearing, the claimants sought to maintain a general criticism of the Council for not making more effort to find them alternative employment, but other than the grade H job for which they were ring-fenced and the grade G roles that they were offered, the claimants identified no other alternative employment they say they should have been offered, and I have been satisfied that the attempts to find the claimants alternative employment were reasonable in the circumstances. No alternative role has been identified which was not offered to the claimants (or brought to their attention) which they say should have been: a criticism about suitable alternative employment could not succeed in the abstract. There was no obligation on the Council in the circumstances to create a structure which maintained grade H roles for the claimants.
217. The claimants had, and exercised, a right of appeal against the redundancy process, and I am satisfied that their appeals were considered reasonably carefully and conscientiously, that their grounds of appeal were properly considered, and that the decision in each case to dismiss their appeals was one open to a reasonable employer.
218. Having considered the issues on an individual basis, I have then considered them in the round, and asked myself whether the individual criticisms which I have identified, whilst not in any individual part sufficient to take the dismissals outside the range of

reasonable responses, taken together make the dismissals unfair, having regard to all my findings of fact and all the circumstances, including the Council's size and administrative resources, the claimants' very long service, and the Council's stated commitment to avoiding compulsory redundancy, among its many statements of policy. I have concluded that the circumstances overall do not make the claimants' dismissals unfair: the redundancy and selection processes were operated in good faith, were overall fair and reasonable; they allowed the claimants extensive opportunities to make representations about the decisions that were being considered, at several stages, those observations were properly considered in good faith and reasonably, and the claimants had several opportunities to be considered for a range of posts at different grades. When they were unsuccessful in their applications for their preferred Operational Manager posts, they were offered alternative employment in which they each expressed an interest, but which they each rejected in circumstances where the Council was seeking to engage with the claimants' concerns. In my judgment, the Council is not expected to act perfectly, and it acted within the range of responses open to a reasonable employer at each step of the process and overall.

219. I therefore conclude that the Council acted reasonably in all the circumstances in treating the redundancy situation as a sufficient reason to dismiss the claimants from their employment.

220. I therefore decided to dismiss the claimants' claims.

Employment Judge Brown

Date: 19 April 2019

Sent to the parties on:

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For the Tribunal:

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