THE EMPLOYMENT TRIBUNALS

Claimant: **Mrs L V Chapman**

Respondent: **T & G Allan Holdings Limited**

Heard at: **North Shields** **On: 26, 27 and 30 April 2018**

Before: **Employment Judge Martin**

Representation:

Claimant: **Mrs J Callan of Counsel**
Respondent: **Mr A Webster of Counsel**

REASONS

1 The claimant gave evidence on her own behalf. Mr Colin McClymont, Chief Executive of the respondent company and Mrs Deborah Judd, an Independent HR Consultant, gave evidence on behalf of the respondent.

The law

2 The law which the Tribunal considered was as follows:-

Section 139(1) of the Employment Rights Act 1996 –

> "(1) An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the reason is wholly or mainly attributable to –
>
> (b) the fact that the requirements of that business –
>
> (i) for employees to carry out work of a particular kind or for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish".

Section 98(1) of the Employment Rights Act 1996 –

> "(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair it is for the employer to show –
>
> (a) the reason for the dismissal.

(2) A reason falls within this subsection if it is –

(c) that the employee was redundant.

(4) The determination of the question whether the dismissal is fair or unfair having regard to the reason shown by the employer –

(a) depends on whether in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

(b) shall be determined in accordance with equity and the substantial merits of the case".

Section 123 of the Employment Rights Act 1996 –

"The amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer".

3 The Tribunal also considered the following cases:-

3.1 The well-known case of **Williams & Others v Compare Maxim Limited** set out a number of steps that should be taken in looking at cases of redundancy, in particular that the employee should be given as much warning as possible of redundancies, that the employee should be consulted about any redundancy, selection criteria should be agreed and should be fairly applied and employers should consider whether alternative employment could be offered.

3.2 The Tribunal were also referred to the case of **Rowell v Hubbard Group Services Limited [1995] IRLR 195** where the EAT held:-

"Consultation with an employee in the context of dismissal for redundancy must be fair and genuine and so far as possible should be conducted in the way suggested by Glydewell LJ in **R v British Coal Corporation & Secretary of State for Trade and Industry ex parte Price and Others** by giving those consulted a fair and proper opportunity to understand fully the matters about which they are being consulted and to express their views on those subjects and thereafter consider those views properly and genuinely. The obligation to consult is separate from the obligation to warn".

3.3 The Tribunal were also referred to the case of **The Post Office v Foley** which sets out the band of reasonable responses that should be considered. It highlights that the proper function of the Employment Tribunal is to determine whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. It goes on to say that the process must always be conducted by reference to the objective standards of the hypothetical reasonable employer which are imported by the statutory references to reasonably or unreasonably and not by reference to their own subjective

views of what they in fact would have done as an employer in the same circumstances.

3.4 The Tribunal were also referred to the case of **Sainsbury Supermarkets Limited v Hitt [2003] IRLR 23** where the Court of Appeal held that objective standards of the reasonable employer must be applied to all aspects of the issue about whether an employee was fairly and reasonably dismissed.

3.5 The Tribunal were also referred to the case of **James W Cook & Co (Wivenhoe) Limited (in liquidation) v Tipper & Others** and in particular paragraph 49 thereof, which makes it clear that it is not open to the court to investigate the commercial and economic reasons which prompted the closure.

3.6 The Tribunal were also referred to the case of **Mugford v Midland Bank Plc [1997] IRLR 208** and in particular paragraph 41 thereof, which held that where no consultation about redundancy has taken place with either the trade union or the employee the dismissal will not normally be unfair as the industrial tribunal finds that a reasonable employer would have concluded that consultation would be an utterly futile exercise in the particular circumstances of the case. It goes on to deal with it being a question of fact and degree for the Tribunal to consider whether consultation with the individual was so inadequate as to render the dismissal unfair. A lack of consultation in any particular respect will not automatically lead to that result. The overall picture must be viewed by the Tribunal up to the date of termination to ascertain whether the employer has or has not acted reasonably in dismissing the employee on the grounds of redundancy.

3.7 The Tribunal were also referred to the case of **Samuels v University of Creative Arts [2002] EWCA Civ 15** and in particular paragraph 31 thereof which deals with the issue of bumping. It makes it clear that it is not compulsory for an employer to consider whether he should bump an employee.

3.8 The Tribunal were also referred to the case of **British United Shoe Machinery Company Limited v Clark [1977] IRLR page 297** and in particular paragraph 5 thereof where the EAT held that it is perhaps worth stressing that in determining whether the employee has discharged his obligation with regard to consultation the standard to be applied is that of the reasonable employer. It went on to indicate that, in a case in which the industrial tribunal has found that there was a lack of consultation or a failure to make reasonable efforts to find the employee other employment it is still necessary to consider what would have been the likely result had that been done which ought to have been done.

3.9 The Tribunal also considered the case of **Wrexham Golf Club Company Limited v Ingham UKEAT/0190/12** and in particular paragraphs 21-25 thereof which looks at the issue regarding the pool identified.

3.10 The Tribunal were also referred to the case of **Lloyd v Taylor Woodrow Construction [1999] IRLR page 782** and in particular paragraphs 24 and 25 thereof. At paragraph 24 it is stated that a right of appeal is not a

necessary part of a redundancy procedure. It goes on to state at paragraph 25 that breaches can be cured by a proper appeal hearing and says that the same we think may also be true of failure to consult in the context of a redundancy dismissal.

3.11 The Tribunal were also referred to and considered the well known case of **Polkey v A E Dayton Services Limited [1987] ICR page 503**. The House of Lords considered the position regarding what would happen if there had been procedural irregularities and considered in summary what a reasonable employer should do in a redundancy situation, referring in particular to the matters raised in the case of **Williams** about warning and consulting employees. It went on to look at what steps may be reasonable to take to avoid or minimise redundancy by redeployment. It also stated that a Tribunal had to consider whether an employee would have still have been dismissed if a fair procedure had been followed. It held that there was no need for an all or nothing decision. The Tribunal had to consider whether that situation could be reflected in terms of any time period when it considered that a reasonable employer might have fairly dismissed that employee or be represented by a percentage chance of that happening.

The Issues

4 The issues which the Tribunal had to consider related solely to the claim of unfair dismissal. The claimant had withdrawn her claim for breach of contract previously. In relation to the complaint of unfair dismissal the Tribunal had to consider whether there was a redundancy situation; whether the respondent had warned the claimant about the redundancy situation; whether there was proper consultation with the claimant; whether there was a fair selection criteria, whether it was fairly and reasonably applied and whether the respondent had considered alternative employment. The Tribunal also had to consider whether a fair procedure had been followed. The Tribunal also had to consider whether the claimant might have been fairly dismissed in any event and if so what was the chance of that happening and/or when might it have occurred.

5 The issues seemed to have been narrowed further to the issue about the consultation process and whether the question of alternative employment had been properly considered, as well as whether the claimant might have been fairly dismissed in any event.

Findings of Fact

6 The respondent is part of a group of companies within a holding company called The Fountain Group. There are a number of subsidiary companies. The claimant worked for one of those subsidiary companies. I will deal further with the issue of which company is the correct respondent in this case.

7 Mr McClymont and his wife are the directors of the various companies within the group of companies. They are also majority shareholders. The respondent in whatever guise is a retailer of quality pens and associated gifts. It operates a

number of shops throughout the country. It also has a number of concessions in department stores, as well as having an e-commerce commercial website.

8 The claimant was offered employment by the respondent as a Brand Development Manager in October 2010. Her offer letter states that her employer is T & G Allen/The Pen Shop with a head office in Team Valley, Gateshead. The offer letter is at page 78-79 of the bundle. This was a senior position. The claimant's contract of employment is at page 80-86 of the bundle. It states that her employer will be T & G Allen Limited. The contract contained the Pen Shop logo. The claimant signed her contract of employment in October 2010. On 2 November 2010, T & G Allen Limited changed its name to The Pen Shop Limited. The change of name was lodged with Companies House in November 2010, as is noted at page 513 of the bundle. During her employment, the claimant appeared to be paid by T & G Holdings Limited. Her P60, which is at page 136 of the bundle, notes that her employer is T & G Holdings Limited, but it also refers to subsidiary companies. Mr McClymont said in evidence to the Tribunal that T & G Holdings Limited was the holding company of T & G Allen Limited and T & G Allen Morpeth. He also said in evidence that all employees were either employed by T & G Allen Limited, which then changed its name to The Pen Shop Limited, or by T & G Allen Morpeth.

9 The respondent is a small business despite the number of subsidiaries. When the claimant commenced employment, the respondent employed approximately 160 employees, but then the number reduced to approximately 100 employees. It had a small head office where the claimant worked. By the time of the claimant's dismissal, the number of employees at head office had reduced to approximately ten.

10 The respondent's handbook is in the bundle. At page 69 it sets out the process that would be followed on redundancy. It states that the aim of the company is to maintain and enhance the efficiency and performance of the company, to protect the current and future employment of its employees but it also acknowledges that there might be changes in workload or competitive conditions which may affect its staffing needs. It goes on to indicate that, in cases where staffing needs may be affected, the company in consultation, where appropriate, will consider measures that may avoid or minimise the effect of redundancy. It states that should a redundancy be necessary and there needs to be a selection from a group or groups of employees, the company will look at the retention of the workforce appropriate to its future needs and will propose selection for redundancy by assessment based on suitable criteria such as work performance and attendance record. It goes on to indicate that, if circumstances arise that affect the company's staffing needs, it has to ensure that all measures, including where necessary, redundancy are implemented in ways that are consistent with its business requirements, but that nothing prevents the company from terminating an employee's contract by reason of redundancy.

11 The respondent, like many businesses recently, has experienced some difficult financial market conditions. The respondent restructured its business during 2016 to focus on its e-commerce websites. During that time Mr McClymont and his wife invested substantial monies in the respondent group of companies and launched a new website. Prior to that in September 2015, Mr Dave Titterton, the Operations Manager, left the business. The claimant took on part of Mr

Titterton's role and became more involved generally, particularly in relation to the higher end of brands of pen which that the respondent sold like Mont Blanc.

12 The claimant's job description when she was employed in 2010 is at pages 76-77 of the bundle. Her job description essentially indicates that she was principally engaged in the development and branding of the Kingsley range of pens and gifts. Mr McClymont says that he, some years previously, actually developed the Kingsley brand.

13 The claimant said in evidence to the Tribunal that her job, even at the outset, was wider than just the Kingsley range. In evidence to the Tribunal she indicated that she had been involved in other brands. She said she had been involved in costing, resourcing, sourcing and marketing of other brands. She thought that before Mr Titterton's departure, she had been involved in the Kingsley range, but thought the other brands consisted of about 35% of her work in other areas. When Mr Titterton left, the claimant's job expanded as she took on part of his role. She became more involved in the other more high level brands of pens.

14 The respondent acknowledged that the claimant's role did expand when Mr Titterton left and that she took on part of his role. She became involved in sourcing, costing and some marketing in that role, including for some of the more high level brands. In particular, she became involved in two lower level brands of the Mont Blanc range.

15 In his evidence Mr McClymont suggested that the claimant's role was still about 65% for the Kingsley range and 35% for other brands. The claimant suggested that after she took on Mr Titterton's role it was more like 50% for each role.

16 The claimant has, as has been acknowledged throughout these proceedings, been considered a loyal, dedicated and hardworking employee who was good at her job.

17 In August 2016 the claimant had a discussion with Mr McClymont. They discussed the claimant's expanded role. The claimant says that at that meeting she was given the title Group Head of Buying. Mr McClymont says that he cannot recall giving the claimant that title, but acknowledged that the claimant was doing a lot of buying of other brands, as well as the Kingsley range at that stage. The claimant's note of that discussion is at page 108 of the bundle. The claimant has set out in detail in her witness statement to the Tribunal, particularly at paragraph 1, what she says her role involved. She said that part of her role was more than a just buying role, but acknowledged that it was principally a buying role, but wider than just the Kingsley range. Mr McClymont said in evidence that he had key relationships with all of the major brands and the claimant had to obtain authority ultimately from him for any buying decision. She agreed that Mr McClymont had the ultimate decision on buying. Mr McClymont also said that the key higher end brands accounted for about 80% of the turnover of the business. The claimant agreed that they accounted for a substantial proportion of the business.

18 In March 2017, the new website was launched. However, it was not a success. The respondent's sales halved almost overnight. Mr McClymont said that he had to invest further substantial monies into the business and had to undertake a further restructuring of the business. The respondent's accounts are at page 126 of the bundle. They show a loss at January 2017 of over £400,000. Mr

McClymont said that the respondent decided to close a number of stores and concessions. He also looked at moving the respondent's headquarters to a cheaper location in Morpeth. He said that he also made a number of redundancies during the early-mid part of 2017. This was from March 2017 onwards. It included dismissing, by reason of redundancy, approximately seven employees, which included the IT Manager, Warehouse Manager, E-Commerce Manager and other administrative staff during the period March to July 2017. It did not include the claimant.

19 By then, Mr McClymont's wife had started working part time in the business, although she continued with her other role as Operations Manager and HR Director for Kurt Geiger. She subsequently left the latter organisation to join the respondents. Mr McClymont says that his wife was not paid any salary, but hoped that, at some stage in the future; they might get some return on their investment. He said that she joined the respondents to try and help the business, because they had invested such substantial amounts of their own money into it.

20 On 12 April 2017, Mr McClymont met the claimant and told her that her job as Head of Buying was redundant. He said that he would discuss her notice on his return. The claimant says that Mr McClymont told her that the reason she was being made redundant was because of financial problems in the company, in particular he referred to the failure of sales, from the e-commerce part of the business, which had substantially reduced. The claimant made a note of this discussion. That note is at page 138 of the bundle. The note refers to some discussion about the claimant asking if her job was safe and talking about Phil Warren's role and an assistant for him on a salary somewhere in the region of £14,000-£15,000. Mr McClymont says that he thought that he told the claimant that her role would be taken over by him and his wife. He said that they both had the skills and experience to pick up the claimant's role. He said that would be one way of reducing costs quickly. The claimant says that Mr McClymont did not tell her that he and his wife would be picking up her role. She did not believe that Mr McClymont understood what her role entailed. Mr McClymont says he was fully aware of what the claimant's role involved.

21 At this stage it may be helpful to comment on the evidence of both Mr McClymont and the claimant, who both came across as credible witnesses. However, Mr McClymont at times was a little confused and unclear, in particular regarding what was discussed at various meetings with the claimant. The claimant on the other hand came across as somewhat pedantic for example during an exchange on cross examination around whether she did or did not have a buying role in the business and then around the various comments on all the notes from the appeal hearing as referred to at paragraph 36 hereafter.

22 On 19 April 2017, the claimant was given a letter telling her that her role as Brand Development Manager was redundant. That letter is at page 139 of the bundle.

23 A further meeting took place between the claimant and Mr McClymont on 24 April 2017. The notes of that meeting are at page 140 of the bundle. At the meeting the respondent was intending to discuss the claimant's notice period, but the claimant raised concerns about the process followed by Mr McClymont regarding her redundancy. Mr McClymont apologised if he had been following the wrong

process. He also said, as is indicated in the notes of the meeting, he and his wife would be taking over the claimant's role and doing the buying. It seems that the process adopted by the respondents at the start of this process had an unfortunate effect on how things progressed. Mr Clymont sought to try to correct the error which he had made. However, it is not clear how much consultation the respondent undertook during the further consultation process, or how open they were to alternatives to redundancy. The claimant herself was also in the mindset of thinking that the respondent had effectively already made the decision and did not engage fully either.

24 The respondent wished to meet with the claimant on 26 April 2017 at their concession at St Pancras station, but the claimant did not want to have a further consultation meeting there and wanted some further time.

25 A further meeting took place between Mr McClymont and the claimant on 11 May 2017. Both of them agree that this was a long meeting, which lasted about two hours. At the outset of the meeting, Mr McClymont apologised about the first process. The claimant made notes of this meeting which are at pages 150-152 of the bundle. At this meeting, a discussion took place about the claimant undertaking part of Mr Titterton's role. The claimant questioned the lack of a pool and selection process. Mr McClymont said he told the claimant that she was effectively the only employee affected and therefore no pool was required. At this meeting Mr McClymont told the claimant about the restructuring process, which he was undergoing. He told her of the steps which he was taking to try and reduce costs, including the shops which he was proposing to close and the planned move for the head office. The claimant indicated that she felt that she was being picked on and was not able to fully understand how her position was being made redundant. She asked why others were not being considered for redundancy and why there was ongoing recruitment.

26 During this meeting there was a discussion about jobs which were being advertised by the respondent, including the role of an allocator and an assistant manager role at a concession outlet in Newcastle. The claimant said Mr McClymont was not clear if these jobs were going to go ahead. She said it was not clear what he knew or did not know about those positions or the recruitment for those roles at that meeting

27 The claimant says that, during the meeting, Mr McClymont indicated that going forward the focus was going to be on Kingsley. She said she told him that was her job. The claimant says that, although there was a discussion about the restructuring process and cost savings, there was no discussion during the meeting about ways to avoid her redundancy. She said that she felt her suggestions would not be considered because the decision had been already made about her position. She did not think that any alternatives to redundancy would be considered by the respondents..

28 The claimant was not invited to the subsequent consultation meeting with staff that took place about the move to Morpeth, so she felt that the decision had already been made about her job being made redundant.

29 A further short meeting took place on 18 May 2018 between the claimant and Mr McClymont. The claimant says that, although Mr McClymont said that there was a discussion about ways to avoid redundancy, she felt that this was futile because no discussion had properly taken place by that stage and she

considered any discussion to be futile because the decision had already been made. The notes of that meeting are at page 153 of the bundle. Mr McClymont asked the claimant at that meeting if she had applied for any of the advertised jobs. These jobs appeared to be the role of Finance Manager, Assistant Manager of the Concession in Newcastle and the allocator role. The claimant acknowledged in evidence to the Tribunal she could not do the finance role because she was not qualified to do so as she was not a qualified accountant. In relation to Assistant Manager role, Mr McClymont said it had been advertised in error and was a role for a sales assistant. As regards the allocator role, the claimant said that, at this meeting, she had indicated she thought that role was designed to free up Mr Warren who was doing the ordering so that he, Mr Warren, could do part of her role. Mr McClymont said that there had been no discussion of that nature at the meeting. He said the allocator role was not intended for that purpose. The allocator role was at a salary of £14,000-£15,000. The claimant was not given details of either of the sales assistant role or the allocator role at the meeting, as it was unclear if those roles were going ahead. She acknowledged that she did not apply for either of the roles. At the end of the meeting, Mr McClymont said that the consultation period was over. He told the claimant that she would be invited to a meeting on Monday to discuss her redundancy.

30 On 19 May 2017 the claimant was invited to a formal meeting to discuss her redundancy and told she could be accompanied. The meeting took place on 22 May. Mr McClymont said that, prior to the meeting, he had made brief notes which are at page 157 of the bundle. He also made some notes during the course of the meeting which are at pages 159-160 of the bundle. In his notes at page 157 he has made some handwritten comments referring to the dates of the consultation meetings; the vacancies which he refers to as the Head of Finance role and allocator role and which he notes the claimant had declined to apply for. The notes of the meeting suggest that he had discussed those alternative roles (namely the Finance Manager role, the assistant role at Newcastle and the allocator role) with the claimant.

31 The claimant and her companion, Gemma Kelly, also made notes of this meeting. The claimant's notes are at page 163-164 of the bundle. Ms Kelly's notes are at page 171-172 of the bundle. The claimant disputes that Mr McClymont asked her at that meeting whether she wanted to apply for those other positions. She says that her notes and those of Gemma Kelly indicate that there was no discussion about the alternative positions. At that meeting the claimant says that she was not given the opportunity to discuss her role or alternatives to redundancy, but was basically told that her role was redundant. Before the meeting she had made notes in advance, but did not go through those at the meeting because she felt that the respondent's decision had already been made.

32 At the end of the meeting the respondent confirmed that the claimant was dismissed on the grounds of redundancy. He provided her with details of her payments at that meeting - page 174 of the bundle.

33 Following the meeting on 25 May 2017, the respondent wrote to the claimant to confirm her redundancy. That letter is at page 173 of the bundle. It states that the claimant is being made redundant. It refers to a consultation process starting

on 12 April 2017 and goes on to indicate that there were no means of avoiding the redundancy or considering an alternative role for the claimant within the organisation. It states that her effective date of termination will be 11 August 2017. It also confirms that she has a right of appeal.

34 The claimant appealed against the decision. Her letter of appeal is at page 181-183 of the bundle. The detailed letter of appeal dated 2 June 2017 indicates that she objects to the redundancy. She states that her role is wider than that indicated. She also states that she believes her role still exists. She complains about the process followed, indicating that throughout there has been no proper consultation; no selection criteria; and expresses concern about the company advertising for alternative employees. She also asks in that letter for the appeal to be dealt with by an independent person.

35 Mr McClymont arranged through his solicitors to instruct an independent HR person to hear the appeal. Ms Judd, the independent appeal person, met with Mr McClymont on 8 June 2017 to discuss the appeal and obtain some background on the matter. Her notes on these discussions are at page 251-253 of the bundle. At that meeting Mr McClymont outlined the reasons for the redundancy; the process which he had followed with the claimant; and brief details of what he said had been discussed during those meetings.

36 The appeal hearing took place on 19 June 2017. Ms Judd heard the appeal. Mrs Susan Brown, an employee of the respondent, took notes on behalf of the respondents. The claimant was accompanied by Gemma Kelly, another employee, who also made notes of the meeting. There are various notes of this meeting upon which the claimant has commented. The final version of those notes, including all of the claimant's comments are at pages 285-306 of the bundle. The original version of the notes taken by Mrs Brown are at pages 218-229 of the bundle. Her handwritten notes, ie Mrs Brown's handwritten notes, are at pages 194-217 of the bundle.

37 The appeal meeting was also a long meeting. Ms Judd explained her role and asked the claimant to go through her grounds of appeal in detail. She tried to ascertain during the course of the hearing whether the claimant was interested in any of the other alternative positions. The claimant says that Ms Judd did not ask her if she would work part time. She said there was no reference to that in any of the notes apart from those typed notes from Mrs Brown's notes. She says that the comments in the typed notes about part time working are not referred to in Mrs Brown's handwritten notes. Ms Judd in evidence to the Tribunal indicated that she thought there had been a discussion to that effect, but she acknowledged that the notes did not reflect that discussion. The claimant indicated she thought that there should have been more discussion around alternatives to her redundancy, including considering part time working or whether there should have been recruitment or different options considered for the allocator role.

38 Mr McClymont acknowledged that the allocator role was subsequently recruited for at the end of May 2017. He said it was subsequently made redundant. Following the appeal hearing Ms Judd made some further enquiries with Mr McClymont regarding, in particular, the claimant's role. This was by way of a telephone conversation with Mr McClymont on 23 June. Notes of that discussion are at pages 253-255 of the bundle. Those notes indicate that there was further

discussion about what led to the redundancy situation and what steps had been taken to reduce costs including a reference to a number of posts that had been made redundant.

39 On 23 June 2017, following the appeal hearing, a further letter dated 25 May was issued to the claimant. In evidence to the Tribunal, the claimant admitted that she had been chasing about this letter because she had been given the incorrect date for her period of notice. She said that she was entitled to three months' notice, but she had only been given 12 weeks' notice. That letter which the claimant effectively requested from Mr McClymont is at page 175 of the bundle. It includes an updated redundancy statement.

40 Ms Judd issued her recommendations and findings on 11 July 2017, which was sent by way of a report to the respondents. The respondent adopted those recommendations. They sent the report on to the claimant on 11 July 2017. Ms Judd's report is at pages 311-326 of the bundle. It sets out her findings. It should be added that the report is detailed, because it also deals with another issue, which Ms Judd as part of the appeal process, was asked to investigate. That claim is not now being been pursued by the claimant in the Tribunal.

41 Ms Judd's conclusions are that the consultation process, starting with the first process on 12 April, and then the subsequent redundancy procedure was flawed, although she also concludes that, if a fair procedure been undertaken, it would still have resulted in the claimant's dismissal on the grounds of redundancy. She concludes that the Claimant's position was removed from the organisation and has not been replaced. She makes other recommendations and, in particular at page 325, recommends that the appeal is not upheld and that the dismissal on the grounds of redundancy stands. Mr McClymont accepted the recommendations and conclusions. He upheld the claimant's dismissal on the grounds of redundancy. He amended the letter which was sent to the claimant on 25 May again to effectively confirm the position. That amended letter states that the date of dismissal is 24 August 2017. The further amended letter is at page 177 of the bundle.

42 In evidence to the Tribunal, the claimant acknowledged that she would not have taken sales job in Newcastle or the allocator job. She said both jobs were effectively lower in status and she would not have taken them because of the reduction in salary. She said that she might have considered going part time because she might have been able to get other income to supplement that role.

Submissions

43 The claimant's representative submitted that the dismissal was unfair. She relied on the respondent's own appeal decision which had accepted Ms Judd's recommendations. The claimant's representative acknowledged that there was a redundancy situation. She did however argue that there had not been proper consultation and there had been no meaningful consultation on ways to avoid the claimant's redundancy. She also submitted that no proper consideration had been given, as part of that consultation process, to the alternative positions. She referred to the case of **Rowell**, **Foley** and **Sainsbury's v Hitt**. She said that the procedure was defective. She also submitted that she did not think that, although

there was a chance, the claimant might have been dismissed she thought that chance was somewhere in the region of about 50% or above 50%.

44 The respondent's representative submitted that the dismissal was fair. He acknowledged that, as has been recognised throughout the initial consultation process was flawed, but he submitted that the further consultation process was a proper consultation process. He referred to the long meeting on 11 May 2017. The respondent's representative also referred to a number of cases as is referred to at the beginning of this judgment. He argued that this was a redundancy situation and that consultation would have been futile and therefore the dismissal was fair. He said that there had been discussion about considering alternative employment and that no selection criteria was required because the claimant was in a pool of one, her position being unique. He also submitted, in the alternative, that if the dismissal was unfair and there had not been proper consultation any consultation period should be short and that the claimant would have been fairly dismissed in any event. He referred to the discussions which took place as part of Ms Judd's appeal and submitted that rectified any errors on consultation.

Conclusions

45 The Tribunal finds that the correct name of the respondent is the Pen Shop Limited. The claimant was initially employed by T & G Allen Limited. However, the name of her employer changed to the Pen Shop Limited shortly after her employment commenced.

46 The claimant's complaint of breach of contract is dismissed upon withdrawal. The claimant's complaint of unfair dismissal is well-founded and the claimant is awarded the sum of £2,517.35.

47 This Tribunal finds that there was a redundancy situation. The respondent was clearly in financial difficulties and had to make substantial cuts to its business, including looking at reducing certain posts. This included the claimant's position. The claimant's representative acknowledged that there was a redundancy situation. Accordingly, the respondent's requirement for the claimant's role had ceased and/or diminished as the respondent's owners intended to undertake that role as part of their own roles.

48 The claimant was dismissed by reason of redundancy. Redundancy is a fair reason for dismissal under section 98(2) of the Employment Rights Act 1996.

49 This Tribunal finds that the claimant's role was one principally of buying and was principally involved in the Kingsley range of pens and gifts, albeit that she had some additional related duties. Accordingly, her role was unique. She was the only person involved in buying. The only other person involved in buying in the business was Mr McClymont, who was the owner of the business. He along with his wife was going to take on the claimant's role going forwards. His wife was taking on the role with no salary. For that reason, there was no pool of employees to be identified from which the claimant could be selected and therefore no selection criterion was required.

48 The respondent however did not follow a fair consultation process. It commenced at the outset, as they have acknowledged, as a flawed process. It seems that

the process closed the minds of both the claimant and the respondent to a meaningful consultation. The claimant did not engage fully in the process having already decided that the respondents had already made up their minds about her redundancy. The respondents, although they discussed the reasons for the redundancy, did not undertake any meaningful discussion with the claimant about ways of avoiding the redundancy of the claimant. The claimant was a senior employee. The respondents did not consider, for example, whether the allocator role could be done in some other way or whether the claimant could work part time. That aspect was not fully considered at the appeal hearing either. There was certainly an attempt to explore issues, but there does not appear to have been a proper discussion of these aspects at the appeal hearing. In evidence to the Tribunal, Ms Judd acknowledged that the notes suggest the question of alternatives was not fully explored as noted from the notes of that discussion of the appeal hearing. Furthermore, Ms Judd did not in her follow up discussion with Mr McClymont raise any discussion about whether part working on the part of the claimant might be an option.

49 The Tribunal also consider that there was not a proper discussion about considering alternative positions which were available. In that regard, although there was clearly some discussion throughout the process about those other positions they were not fully explored. The claimant was not given details of the roles. However, it is clear that the claimant would not have applied for any of those roles.

50 This Tribunal finds that, due to the lack of meaningful consultation with the claimant about ways of avoiding her dismissal, the dismissal was unfair. However, the Tribunal consider that a proper consultation period, when all of these matters, particularly about ways of avoiding her redundancy, had taken place would still have resulted in the Claimant's dismissal for redundancy. The Tribunal considers that, bearing in mind, the serious financial situation the respondent found itself in and the steps it needed to take to reduce costs quickly. Since the owner of the business was going to undertake the claimant's role with his wife at no cost to the business, irrespective of any suggestion from the claimant to work part time or do another role, her job would still have been made redundant. However, the Tribunal considers that if the respondents had undertaken a meaningful consultation about alternatives / ways of avoiding redundancy, regarding in particular part time working or other options for the allocator role, it would have taken them a further 4 weeks to properly consider and weigh up options to avoid the claimant's redundancy. Nevertheless, the Tribunal considers that, for the reasons referred to above, the Claimant would still have been dismissed at the end of it anyway.

51 Accordingly, the claimant's complaint of unfair dismissal is well-founded and she is awarded compensation in the sum of 4 weeks' wages being £251.35 – £2517.35.

Employment Judge Martin
10 October 2018

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