



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4113155/2018 Hearing at Edinburgh on 22 and 23 October 2019

Employment Judge: M A Macleod

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Mrs B Garden

Claimant  
Represented by  
Mr B McLaughlin  
Solicitor

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Scottish Borders Council

Respondent  
Represented by  
Mr I Davidson  
Solicitor

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The Judgment of the Employment Tribunal is that the claimant did not unreasonably refuse an offer of suitable alternative employment on redundancy, and accordingly that the respondent is ordered to pay to the claimant the sum of **Five Thousand Seven Hundred and Ninety Nine Pounds (£5,799)** by way of a redundancy payment.

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### **REASONS**

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1. The claimant presented a claim to the Employment Tribunal on 8 August 2018 in which she complained that she had been unfairly dismissed by the respondent, discriminated against by them on the grounds of age, and unlawfully deprived of a redundancy payment on termination of her employment.

2. The respondent submitted an ET3 in which they resisted all of the claimant's claims.
3. A hearing was fixed to take place on 22 and 23 October 2019.
4. The claimant attended and was represented by her solicitor, Mr B McLaughlin. The respondent was represented by their solicitor, Mr I Davidson.
5. Each party presented a bundle of documents, to which reference was made in the course of the hearing. Reference to those documents in this Judgment will bear the prefix "C" where referring to the claimant's bundle, and "R" where referring to the respondent's bundle.
6. The claim of discrimination on the grounds of age was withdrawn by the claimant and dismissed by the Tribunal by Judgment dated 24 October 2018.
7. On 11 October 2019, the claimant's solicitor wrote to the Tribunal to advise that the claimant's claim of unfair dismissal was being withdrawn, and a Judgment was issued by the Tribunal dismissing that claim on 15 October 2019.
8. The remaining claim to be determined in this hearing, therefore, was that the claimant was unlawfully deprived of a redundancy payment by the respondent. The parties agreed, at the outset of the hearing, that the redundancy payment, if payable, amounts to £5,799.
9. The claimant gave evidence on her own account.
10. The respondent called two witnesses: Elizabeth Turner, now Head of Finance Business Partner for NHS Education for Scotland, but formerly Finance Business Partner for the respondent; and Mark Williamson, Human Resources Advisor.
11. Based on the evidence led and the information provided, the Tribunal was able to find the following facts admitted or proved.

**Findings in Fact**

12. The claimant, whose date of birth is 15 September 1961 (and not 1 January 1962 as set out in the ET1)(C1), commenced employment with the respondent on 30 July 2007. Her employment ended on 19 March 2018, and her job title on termination of employment was Finance Technician, at Grade 7 within the respondent's structure.

13. In September 2017, the respondent advised staff in the Finance Department that it intended to make changes to the structure of the department. In an email to staff on 19 September 2017 (R4), the respondent's Chief Executive, Tracey Logan, confirmed that they were committed to minimising compulsory redundancies, operating a voluntary severance/early retirement programme to give staff the option to apply to leave if they wished.

14. The respondent operates a Redundancy Procedure (C43) which sets out the process to be followed in the event that redundancies within the respondent's organisation were required.

15. At paragraph 6 of the procedure, there appears a section headed "Retention and Redeployment", and at paragraph 6.1, the respondent sets out the basis upon which it will seek suitable alternative employment in relation to staff affected by a redundancy process:

*"Suitable alternative employment is regarded as posts arising of the same or similar grade to that already held by the employee and shall include posts in alternative employee categories, of a commensurate salary and status including posts occurring in alternative Council locations where these locations are considered to be reasonable in respect of the employee.*

*Some suggestions for defining 'suitable alternative':*

*A 'suitable alternative' post is one which is similar to the employee's current post, taking into account:*

- the similarity of responsibilities between the current post and the alternative post*

- *the employee's training, qualifications, skills, experience and capabilities and their suitability for the alternative post*
- *the grade of the current post*
- *the hours of work*
- 5      • *travel requirements of the job*
- *travel between home and base*
- *personal circumstances.*

*Although the aim is for a 'suitable alternative' post to be similar to the current post, there is no guarantee that an exact match will be available.*

10      *A suitable alternative will sometimes include a post at a slightly higher grade but does include lower graded posts. In considering options, the preferences and aspirations of employees will also be taken into consideration. After consultation, the individual will be expected to accept an offer of a post that is considered to be a suitable alternative.*

15      *In redundancy situations employees must be aware that if they unreasonably refuse an offer which the employer believes to be suitable, they may lose any entitlement to redundancy pay.*

20      *Unreasonable refusal may arise where the differences between the new and old jobs are negligible or where the employee assumes rather than investigates the changes that a new job might involve in, for example, travelling time or working conditions. Refusal may be reasonable if the new job would cause domestic upheaval, for example if there was a considerable change in working hours or a need to move house.*

25      *In deciding whether to accept an offer of alternative employment, whatever the circumstances, it will be sensible for employees to bear in mind the availability of other employment should they refuse the offer. It may mean that the alternative to accepting a new position on different terms and*

*conditions is dismissal if no better suited alternatives are available within the redeployment period.”*

- 5 16. On 25 October 2017, Mark Williamson, an HR Advisor, sent an email to all the affected Finance department staff, following a meeting the previous day with them, including the claimant (R5). The email was headed “Grade 7 – Deployment”. Mr Williamson explained that deployment is the informal stage, prior to the redeployment stage, to try to prevent any job losses but trying to establish if staff wish to remove themselves from the process by accepting alternative employment. Staff are not placed under pressure to accept any such deployment, but are offered the opportunity to consider the matter. While there may be some overlap between the deployment and redeployment processes, Mr Williamson’s evidence made it clear that the respondent regards it as a separate process, which is voluntary for the staff involved.
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- 15 17. In that email, Mr Williamson set out the list of available opportunities for the staff, with links to job descriptions and principal duties; the deployment form and instructions on how to complete it; ERVS guidance (that is, guidance on the process for seeking early retirement or voluntary severance); and interview skills e-learning which was made available.
- 20 18. The list of available opportunities was laid out in a table as follows:

<b>Role</b>	<b>Grade</b>	<b>Service</b>	<b>Contact</b>
Financial Analyst	8	Finance	Suzy Douglas
Internal Auditor	7	Audit & Risk	Sue Holmes
Business Services Co-ordinator	7	Policy, Planning & Performance	Sarah Watters
Homelessness Case Officer	7	Customer Advice & Support	Jordan Manning

19. It was also confirmed that the interview for the Financial Analyst position was likely to be held on 2 November 2017.

20. The claimant responded to this email (R6) on 25 October 2017 by asking Mr Williamson: *"Please could you let me know what my potential ERVS package would be?"*

21. Mr Williamson replied on 27 October (C8), confirming that he had, anonymously, asked about obtaining ERVS figures prior to the claimant submitting the forms but said that *"...due to fairness, consistency and the complexity of calculating the figures, we would not be in a position to provide you with the figures. We can't treat any employee differently and we must follow the process that has been set out for staff in regards to ERVS."*

22. The claimant then submitted a form noting her interest in ERVS, but not a deployment form. Mr Williamson emailed her on 30 October to say (R8):

*"I only received your ERVS form and not the deployment form. Can I assume that you don't want to note your interest in any of the available posts?"*

*I met with Jill and Sue regarding the Internal Audit post and they mentioned that you were potentially interested? I can still include you in the pool of staff for this job if you would like? This won't affect your request for ERVS figures."*

23. The claimant emailed Mr Williamson on 1 November 2017 (R8) to ask if the potential ERVS figures were available as yet. Mr Williamson replied the following morning (R9) to say that no ERVS figures had been received at that point. He went on: *"You would've noticed the email regarding the Technician interviews – we will try (as per Councils intentions) to deploy people as a priority. If anyone who falls out the interview process has noted interest in ERVS, we would consider this at the same time as other deployment opportunities."*

24. The claimant replied within a short time to express her disappointment that figures could not be provided earlier but to confirm that she would attend the interview for the Finance Technician post.
25. On 7 November 2017, the respondent wrote to the claimant (R10) to advise her of the estimate of the figures to which she would be entitled on voluntary severance. In response the claimant submitted a form (R12) in which she confirmed that she would like to accept the offer of Voluntary Severance/Early Retirement. This was noted on the form to be subject to the final approval of the Council.
26. The reduction in the number of Grade 7 Finance Technician posts meant that 3 postholders would be left without a job following the restructure.
27. The process to be followed in relation to the Finance Technician posts was that the candidates were to be interviewed and sit a test in order to assess their suitability for the role in a competitive setting, in order that the respondent may select a number of the candidates to fill the remaining Financial Technician roles.
28. The claimant attended the interview and sat the test, and was unsuccessful in her application. The interviews were conducted by Lizzie Turner and Lisa Anderson, both of the Finance Department.
29. On 15 November 2017, the claimant emailed Lizzie Turner (R13) to say that she had now been told that ERVS was no longer a grade 7 deployment option, and asking when that decision had been made, who had made it and how it had been communicated to staff. She also asked for written feedback, together with her scoring for the Finance Technician interview and test, and to be advised what other criteria, if any, were taken into account when making the decision to appoint to that post.
30. Ms Turner responded, firstly, to say that the decision regarding ERVS was made by Finance Management, and communicated to her by Ms Turner at their meeting; and then to say that she was happy to provide feedback with

interview notes, but had been advised to go through them with her to put some context on them and ensure that the feedback is meaningful.

31. The claimant responded by repeating her request for feedback, and saying that she would be happy to have a meeting afterwards.

5 32. Ms Turner then emailed her on 16 November 2017 (R13) to say:

*“Hi Bev,*

*As requested please find some written feedback.*

- 10 • *Some responses scored well and demonstrated a good understanding of the issues and processes we were looking for and gave a good relevant example eg improvement of processes and working practises (sic).*
- 15 • *This was not reflected in all answers and there was a lack of consistency in the depth of answers eg budget setting and prioritisation. Here I would have expected a more comprehensive response covering an understanding of the topic and the issues which may impact on it and then a relevant example which demonstrated specific skills and experience.*
- *General lack of enthusiasm for the role was evident during the selection process*
- 20 • *Performance in test demonstrated the required level of understanding in budget monitoring.*
- *It was a highly competitive interview process with a high calibre of well prepared candidates.*

25 *If you would like to discuss I will keep the 3pm time slot free unless I hear otherwise from you.*

*Thanks,*

*Lizzie”*



33. Ms Turner formed the view that the claimant was not enthusiastic about this interview or the test, and was not particularly well prepared. She maintained that the claimant had turned up for the test at the start time without a calculator, and had had to go and retrieve one from her room; and had also told Ms Turner that she was “hungover”. The claimant denied both of these assertions.

34. Having been unsuccessful in securing one of the Finance Technician posts, the claimant was then required to consider redeployment options. Mr Williamson invited the claimant to attend a meeting with him about her deployment options and the next steps to be followed. Following that meeting, on 21 November, Mr Williamson sent an email to the claimant in these terms:

*“Good morning Bev,*

*Thank you for coming in this morning to informally discuss your deployment options and next steps.*

*The Homelessness case officer post has been identified as a deployment option at this stage as it’s a vacant post which is the same grade as yours. There are currently no vacant posts at your grade within the Finance structure and no other available Grade 7 jobs throughout SBC.*

*You have raised your concerns regarding this post in terms of suitability. It’s been explained to you that SBC’s approach to a suitable alternative post would mean that we would deem this a suitable position. Our main aim is to keep people in employment at the same level as currently operating at.*

*You have a visit to the Homelessness department tomorrow and Jordan Manning is aware that you are coming. The department should be able to provide you with an overview of the section, the role, location and the proposal in terms of training.*

*We require you to come back to us by the end of the week (Friday) to inform us of whether or not you accept the Homelessness Case Officer post as a deployment opportunity.*

*If you do with process with the role at this stage, we will start discussions with David Kemp/Les Grant re transfer to the service.*

5 *If you don't accept the post under deployment, we will start the formal 3 stage redundancy/redeployment procedure detailed in the Redundancy procedure. You may be formally offered the Homelessness Case Officer post (or other suitable posts) at this time, if it were still available. It would be at the first meeting that we would offer this redeployment post – not the third as previously discussed. This meeting is likely to be held w/c 27<sup>th</sup> November.*

10 *We have discussed that as per the policy, in redundancy situations, employees must be aware that if they unreasonably refuse an offer which SBC believes to be appropriate, they may lose any entitlement to redundancy pay.*

*I look forward to hearing from you on Friday.*

15 *Kind regards,*

*Mark”*

20 35. On 7 December, Suzanne Douglas, Financial Services Manager, wrote to the claimant to invite her to a meeting on 13 December 2017 (C135), to discuss her post being at risk following the outcome of the Finance, Procurement and ICT Service review. The purpose of the meeting was said to be *“to begin consulting with you on the situation and how your role is affected.”*

25 36. The meeting took place on 13 December 2017. The claimant attended with her trade union representative, David Bell. Ms Turner and Mr Williamson were also in attendance.

37. Following that meeting, the respondent wrote to the claimant on 13 December (R17), and in that letter said to her:

*“The reason for the meeting today was to officially inform you that your job as Finance Technician is at risk following an unsuccessful interview to this post which you matched to in the new Finance, ICT & Procurement Service.*

5 *As explained, the Redundancy Policies and Procedures follow a 3 step process. Today’s meeting is the first stage, and a follow up meeting (2<sup>nd</sup> stage) has been scheduled for any updates and feedback. The final meeting (3<sup>rd</sup> stage) will be when you are officially provided with your notice...*

10 *At the meeting you were provided with Redeployment forms (R1) and you were asked to complete these as soon as possible. This will result in you being placed on the redeployment register, which will enable us to seek any potential vacancy opportunities for you with both SBCares and Scottish Borders Council during your notice period.”*

15 38. In addition, Mr Williamson emailed the claimant on 13 December (R18) to confirm his understanding of her views of the different roles available in redeployment. He said:

*“Hi Bev,*

*Following on from our meeting this morning, I would like you to confirm the following to help us assist you going forward.*

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- You have confirmed that you are not interested in any of the following suitable grade 6 jobs:*

*Development Assistant*

*Housing Management Officer*

*Financial Inclusion Supervisor*

25 *Housing Support Officer*

- You have not yet ruled out the Procurement (Commercial Performance & Compliance Officer) role. I have since sent you the role profile for this job.*

- *Although initially rejected as a suitable alternative by you, you are now interested in the Homelessness Case Officer Grade 7 role subject to clarification on trial periods and confirmation on available training.*
- 5 • *We have agreed that the Stage 2 meeting will be held on Tuesday 19<sup>th</sup> December at 9.30am (appointment will follow)*
- *We have agreed that the Stage 3 meeting will be held on Tuesday 9<sup>th</sup> January at 11am (appointment will follow)*
- 10 • *You have been asked to complete the redeployment forms and return by our next meeting.*

*Please can you confirm that this is accurate.*

*Kind regards,*

*Mark”*

39. The claimant replied the following day (R18) to say:

15 *“Thank you for your email. I agree with your points. However, I still feel that the Homelessness Case Officer post is still not a suitable alternative but as all the others mean a reduction in salary then I am prepared to investigate the Homeless post on a trial basis.*

20 *I have completed the deployment form as requested and forwarded it under a separate email.”*

40. On 14 December 2017, the claimant completed the redeployment form sent to her (C162). She confirmed that her working hours were part time, and that she commenced at 6.15am on Tuesday, Wednesday, Thursday and Friday each week. She also recorded that *“I currently work from Duns on a*  
25 *Friday to fit in with the school finishing times.”*

41. The claimant confirmed that she was prepared to travel to Berwickshire, Kelso (though not Jedburgh), Galashiels (though not Selkirk), and Lauder/Earlston.

42. She identified that her specialist activities were budget preparation and negotiation skills. Her skills and experience in customer service were, she said, providing guidance and advice on matters in her own area of expertise to customers, internally, and members of multi-disciplinary groups and working parties, together with rent and council tax recovery.

43. Her skills and experience in people management she identified as supervisory experience and support to colleagues.

44. On 18 December 2017, Mr Williamson wrote again to the claimant. He thanked the claimant for confirming that she was not interested in the Development Assistant, Housing Management Officer, Financial Inclusion Supervisor and Housing Support Officer. He said that the Stage 2 meeting, fixed for the following day, would be based on discussing the next steps available to her without those "suitable alternative roles" being considered. He went on: *"You have clearly indicated that you do not think that the Homelessness Case Officer post is a suitable alternative post. Based on the concerns that you have given, we have investigated the post further with the relevant managers responsible for this post and there is also concern regarding the suitability of this role from their perspective. Having considered all the information and the recent discussions that we have had, we are now withdrawing this post as a suitable alternative for either party.*

*We will now be looking to clarify whether or not you are interested in the Grade 6 Commercial Performance & Compliance Officer role having had the time to review the Role Profile that I sent you. in light of the above information, if you wish to reconsider the posts that have not yet been filled, we can discuss this tomorrow."*

45. The Stage 2 meeting took place, as scheduled, on 19 December 2017. Ms Turner and Mr Williamson met with the claimant and Mr Bell, following which Mr Williamson sent an email to confirm the terms of the discussion

(R19) on 20 December. He reminded the claimant that following recent discussions the respondent had now withdrawn the Homelessness Case Officer post as a suitable alternative offer for the claimant. He confirmed that the claimant could reconsider the posts which she had initially turned  
5 down (namely the Housing Management Officer, Financial Inclusion Supervisor and Housing Support Officer), and that the Development Assistant post had now been filled and was therefore no longer available. The next meeting, Stage 3, was scheduled for 9 January 2018.

10 46. The decision to withdraw the Homelessness Case Officer post from consideration was taken by Mr Williamson and his manager in the HR department, on the basis that both the claimant and the service management had expressed some misgivings about the suitability of the post for the claimant, and the claimant for the post.

15 47. A letter dated 10 January 2018 was sent to the claimant (R21) confirming the terms of the discussion at the meeting of 19 December 2017, and referring back to the terms of the email of 20 December 2017.

48. On 9 January 2018, the respondent wrote to the claimant to give her notice of termination by reason of redundancy (R22).

49. The letter commenced:

20 *"I write further to the meetings on 13<sup>th</sup> and 19<sup>th</sup> of December 2017 to confirm that as a consequence of the outcome of the Finance, ICT and Procurement Service review, following a competitive interview process, you have not secured a post within the new structure and therefore you are at possible risk of redundancy.*

25 *This letter serves to give you formal notice of termination of employment due to redundancy. In accordance with your contract of employment you are entitled to 10 weeks' notice. If no alternative employment is found within this period your last day in service will be 19<sup>th</sup> March 2018.*

30 *Every effort has been made, and will continue to be made to find you alternative employment and should a suitable post become available with*

*Scottish Borders Council during your period of notice, your notice may be withdrawn and you could be re-deployed...*

5 *Ordinarily when an employee loses their employment as a result of redundancy, they are entitled to receive a redundancy payment based on their age and length of service.*

*However this does not apply if the employee has unreasonably refused an offer of suitable alternative employment.*

10 *As you are aware, four alternative posts have been offered and previously refused. The Council considers these posts to be suitable alternative posts and that you have unreasonably refused them.*

*Although we will continue to look for further suitable alternative posts during the notice period, if no posts are identified, or you refuse those deemed as suitable alternatives, your employment will end without any redundancy payment being made..."*

15 50. The claimant was given the right to appeal against the decision to terminate her employment on the grounds of redundancy.

51. On 12 January 2018, the claimant wrote to Mr Williamson by email (C152):

20 *"With regard to the post of Commercial Performance and Compliance Officer, I would like to reject that as a suitable offer due to the fact that the salary is not commensurate with my current salary. In addition, having spoken to the manager, there would be no room for progression as the immediate post above this is a grade 9. The grade 8 posts require a qualification in procurement. My concern is that I would therefore be disadvantaged in respect of both current salary and future pension. My*  
25 *worry also is that as this post does not require accountancy skills that it would be de-skilling me for any future posts in this field."*

52. The claimant then wrote to Ms Turner by email dated 19 January 2018 (C155):

*"Hi Lizzie*

*I would like you to consider the context in which these posts were discussed at my consultation meetings as I feel that I am being unfairly penalised for turning these down.*

5 *At my stage 1 meeting on 13<sup>th</sup> December a total of 5 grade 6 posts were highlighted to me as being possible suitable alternatives as well as the grade 7 Homelessness Case Officer post. I was being pushed to make a decision on a suitable one due to the fact that the departments were desperate to fill the vacancies. However, as all the grade 6 posts would mean a reduction in pay and status for me and therefore in my opinion,*  
10 *unsuitable alternatives for me then I agreed to accept the grade 7 post for a trial period.*

*At my stage 2 meeting you withdrew the option of a trial period for this grade 7 post and indeed the post itself.*

15 *At this point I was advised that the Development Assistant post was now filled but that the other 4 grade 6 posts were available. Again, I was being pushed to make a decision on which one I may wish to consider. The one post I felt may be an alternative was the Commercial Performance and Compliance Officer. The reason for this is that both myself and David Bell felt that this new post could have been graded wrongly. This was due to the*  
20 *responsibilities and essential criteria required. SBC have since made it clear that the post has been graded correctly at a grade 6.*

*I did investigate this post with Kathryn Dickson who advised me that there were would be no opportunity to progress in the department as the next post above the grade 6 was a grade 9 and that all the other procurement*  
25 *posts were a grade 8 and a procurement qualification was required. As you are aware my qualification is in Accountancy.*

*Please could you look again at your decision to not pay any redundancy payment which ultimately has a knock on effect on my pension and long term future of myself and my family.”*



53. Ms Turner replied on 24 January 2018 to confirm that having taken advice from HR and considered the process followed, the respondent remained of the view that the alternative roles which the claimant was offered were suitable redeployment opportunities and therefore she had foregone her right to a redundancy payment based on her refusal of the offers.

54. On 19 March 2018, the respondent wrote to the claimant (R23) to confirm that her employment with the respondent ended on that date.

55. The claimant was not paid a redundancy payment by the respondent.

56. It is appropriate to consider the posts which the parties discussed, and over whose suitability they disagree in these proceedings, according to the terms of the job profiles and descriptions.

#### ***Homelessness Case Officer***

57. The job description for this post (C75ff0) confirmed that the post was a Grade 7 post, full time at 35 hours. It was in the Customer and Communities – Customer Advice and Support department.

58. The purpose of the job was said to be:

- *“To provide a comprehensive housing options interview and provide advice, help and support to enable individuals and households tackle, alleviate and prevent themselves from becoming homelessness (sic).*
- *To carry out homelessness Statutory Assessments under the terms of the Housing (Scotland) Act 1987 as amended by the Housing (Scotland) Act 2001 and the Homelessness etc (Scotland) Act 2003.*
- *To provide or enable access to alternative appropriate settled accommodation in accordance with the ethos of the Housing (Scotland) Act 1987 as amended by the Housing (Scotland) Act 2001 and the Homelessness etc (Scotland) Act 2003.”*

59. The role was one which involved direct contact with individuals and households affected or threatened by homelessness, and included participating in the emergency duty cover rota to provide an out of hours service when required.

5 60. In the person specification attached to the job description (C80ff), the qualifications listed confirmed that it was essential to be educated to HND level in a relevant subject or with significant equivalent relevant work experience. Under experience, it was said to be essential to have significant knowledge of housing legislation, coupled with experience of  
10 working with people with complex social, psychological and medical health needs, experience in analysis/implementation of policy and procedure associated with homelessness and experience in dialogue with, and the advocacy of, service users.

15 61. This was the post which, following consideration by both sides, was withdrawn by the respondent as being suitable alternative employment, on the basis of the concerns expressed both by the claimant and by management in the department after the claimant spent some time there.

20 62. Accordingly, it is not necessary for the Tribunal to reach a specific conclusion on whether or not this amounted to an offer of suitable alternative employment, it being conceded, eventually, that it was not.

### ***Development Assistant***

63. The job description for this post (C87ff) confirmed that it was a full time (35 hours) Grade 6 post, based in the Customer and Communities – Customer Advice and Support Service.

25 64. The purpose of the role was said to be:

*“As part of a team responsible for the ongoing business development of the Customer Advice and Support Service, the post holder will assist with the development of strategies, policies, procedures, guidelines and training. The post holder will also provide staff with operational assistance, advice and training on Customer Advice and Support Service business areas. The*

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*post holder will have responsibility for designated small projects or project elements determined by existing and future Customer Services development priorities.”*

5 65. The principal duties and responsibilities of the role were to include evaluating training packages for new and existing staff, assisting in the maintenance of a training database and schedule and other duties.

66. The person specification (C90ff) defined as essential the following qualifications:

- 10 • *“An appropriate level of Customer Services, qualification or SVQ Level 3 or*
- *IRRV Technician Grade or*
- *A minimum of 5 SCE standard grades at level 3 or above (or equivalent) including English, Mathematics or Arithmetic or*
- *Demonstrable suitable relevant experience.”*

15 67. The claimant considered that this was not an offer of suitable alternative employment. The job had nothing itself to do with accountancy, and as a result, she was concerned that she would not be using her accountancy skills, which would thereby diminish. She considered that it was a completely different job to the one she had, and the reduction in grade from  
20 7 to 6 would have the financial impact of a 13% drop in her salary with immediate effect. The respondent did not offer any period of protection (that is, maintenance of salary at her previous level for a period of time following a restructure within the respondent’s organisation), and having recently bought a new house, with an increased mortgage, it would have  
25 had, in her view, a considerable impact on her finances.

68. The respondent’s position was that this role differed from her previous role but that it had a lot of similarities. Her previous role involved analysis, customer service, supporting people, all of which were required in this role. The respondent considered the two roles comparable, and did not believe

that moving from grade 7 to grade 6 amounted to a decrease in her status, in that her previous role had also been a support role which did not involve the management of staff.

### ***Housing Management Officer***

5 69. The job description for this post (C97ff) confirmed that it was a full time (35 hours) grade 6 post in the Customer and Communities department.

70. The purpose of the role was:

- 10 • *“To assist in the provision on a customer focused housing management service to individuals and households accommodated by the Council in temporary accommodation and ensure the provision of support and guidance on welfare, rent and tenancy management issues including anti-social behaviour*
- 15 • *To assist in the initiation of the repairs process (diagnosing, raising and chasing) and liaising with Property Service staff to ensure they arrange and complete repairs quickly and to an appropriate satisfactory outcome.*
- 20 • *As part of a multi-disciplinary team help to ensure that acceptable standards in regards the provisioning, maintaining and the ordinary cleaning of temporary accommodation provided in terms of the Housing (Scotland) Act 1987 as amended by the Housing (Scotland) Act 2001 and the Homelessness etc (Scotland) Act 2003.”*

71. The duties and responsibilities set out in the job description included supporting individuals by providing financial inclusion advice to assist them in mitigating a housing crisis, applying the respondent’s rent arrears policy and procedure, providing advice to individuals to manage rental payments etc and carrying out regular visits to households in appropriate ways.

72. The experience defined as essential in the person specification for this post (C102) was:

- *“significant knowledge of social work, health and housing legislation*
- *experience of working with people with complex social, psychological and medical health needs*
- *Information Management Skills*
- 5       • *Formulation and/or analysis/implementation of policy and procedure associated with tenancy management and Supporting People.”*

73. The claimant considered this not to be suitable alternative employment because her role was a “back office” role, as Financial Technician, whereas this role was a frontline position in housing. Although she worked with the  
10       Housing Department, she never left the physical area of the Finance Department. It did not match, she said, with the Financial Technician role, and had a “completely different skillset”.

74. She was also concerned that she lacked the experience set out as essential in the person specification for the post, and that the training to be provided  
15       only amounted to short courses. She was concerned that immediately after leaving the Finance Department she could be required to attend a frontline housing issue without proper training or experience.

75. Again, the claimant was unhappy that this was a grade 6 role, which would involve a significant reduction in her salary at a time of pressure upon her  
20       personal finances; and that she would lose her accounting skills by moving to an entirely different post within the Council.

### ***Financial Inclusion Supervisor***

76. The job description for this post (C109ff) confirms that it was a full time (35  
25       hours) post at Grade 6 within the Customer and Communities – Customer Advice and Support Service department. The purpose of the job was:

*“The post holder will form part of a small team responsible for assessing claims for discretionary funding streams and advising on other areas of potential support available both within and out with the Council. Specific*

5 *funding streams currently included are Discretionary Housing Payment and Scottish Welfare Fund. They will also have a responsibility to support and assist Customer Advice and Support Advisers and Benefit Assessors across a number of localities and will support the Locality Team Leaders in achieving the services objectives. The post-holder will also deal with referred and escalated enquiries from other service staff.*

*The post holder will be responsible for carrying out periodic quality checks on claims processed by the team and will train and mentor staff and provide assistance or advice where required.*

10 *The post holder will make decisions on Discretionary Housing Payments and more complex SWF cases.*

15 *The postholder will support the Financial Support and Inclusion Manager to manage workloads, computer based systems and ensure staff resources are being directed to timeously administer assessments and administrative work including dealing with referred frontline telephone calls and face to face enquiries in the absence of other Supervisors and Team Leaders.”*

77. The person specification (C112ff) delineated as essential qualifications:

- *“An appropriate level of Customer Services, qualification or SVQ Level 3 or*
- 20 *• IRRV Technician Grade or*
- *A minimum of 5 SCE standard grades at level 3 or above (or equivalent) including English, Mathematics or Arithmetic or*
- *Demonstrable suitable relevant experience.”*

25 78. Essential experience was said to be experience of working in a high volume, office based customer focused environment, of decision making in an income based assessment area, of working on own initiative and as part of a team and of dealing positively with the public face to face and by telephone.

79. The claimant was concerned that if she accepted this post she would suffer a reduction of grade from 7 to 6, with a significant drop in her salary and status as a result. She was also unhappy that this would not involve using her accounting skills and the grade and responsibility were lower than her current grade. For example, an SVQ Level 3, one of the essential qualifications for this post, is, as the claimant put it, lower than an HND, which she had. She had not previously been employed in a customer focused environment, and she considered that she did not have relevant experience in an income based assessment area. This role did not appeal to the claimant.

80. The respondent took the opposite view. They considered that the role of Financial Inclusion Supervisor was very suitable to the skills and experience of the claimant. The duties and responsibilities, the skills and experience required, were linked to Finance. Some areas of her experience were a perfect match for the claimant, according to Mr Williamson, and others had to identify training for her to be able to carry out the role. They did not consider it to be a perfect match, but that it was “suitable enough” when they assessed the job description.

81. The respondent was of the view that the only reason which the claimant gave at the time for rejecting any of the Grade 6 posts was that the reduction in pay was too great, and was unacceptable to her.

### ***Housing Support Officer***

82. The job description for this role (C119) confirmed that it was a full time (35 hours) Grade 6 post within the Customer and Communities – Customer Advice and Support Service department.

83. The purpose of the post was:

- *“To provide high quality housing support to individuals and households threatened with or experiencing homelessness in accordance with the Council’s Housing Support Duty to those Found to be Homeless or Threatened with Homelessness – Amendment to*

*Housing (Scotland) Act 1987 (inserted by Housing (Scotland) Act 2010, and, delivered in accordance with Best Value principles, Scottish Social Housing Charter and the Scottish Housing Regulator, SSSC and Care Inspectorate requirements.*

- 5
- *As part of a multi disciplinary team to plan coordinate and deliver on 'short term' Housing Support Plans that are designed to enable independent living in a culture of safety, security and sustainability."*

84. In the person specification for the post (C123ff), essential qualifications were:

- 10
- *"Applicants must be educated to HNC or*
  - *Applicant must have 3 years relevant work experience and*
  - *Must be educated to a higher standard in English and possess reasonable numerical skills.*
  - *Applicants must meet SSSC registration requirements for Workers in*
- 15 *a housing support service."*

85. The essential experience required extensive knowledge of social work, health and housing legislation, experience of working with people with complex social, psychological and medical health needs, Information Management skills and formulation and/or analysis/implementation of policy and procedure associated with Housing Support and Supporting People.

20

86. The claimant did not consider this post to amount to suitable alternative employment because it was a frontline homelessness post, very similar to the Homelessness Case Officer post, requiring no accountancy skills and involving the support of vulnerable people. Although she had worked with the Housing Department before, she had never worked in that department and had only worked with the managers as required. The reduction in grade from 7 to 6 also rendered the offer an unsuitable one on the basis that the claimant did not think she would be able to afford the reduction in salary which that would bring.

25



87. The claimant said that she was very proud of her Grade 7 post, and did not want to go back “all those years”, as she put it, to being a Grade 6 again. She did not have the necessary qualifications nor the relevant experience to carry out this post. She would not have the skills to do the job, and given  
5 the amount of stress in that role, and the lack of training being offered, she did not consider this to be suitable alternative employment. In any event, she said the post was not something she was interested in, as her interest was in accountancy.

88. The respondent took the view that this was suitable alternative employment,  
10 on the basis that while the claimant did not have an HNC, the requirement was for an HNC or 3 years’ relevant work experience, which the claimant, in their view, did possess.

89. On 1 February 2018, the claimant sent an email to Erick Ullrich, HR  
15 Manager (C158) attaching a spreadsheet “*showing my reasons for not being interested in a grade 6 post due to the reduction in pay (as well as a reduction in status and responsibilities).*”

90. She went on:

20 *“As you can see from the spreadsheet, a move from the top of a grade 7 post to the top of a grade 6 post would mean an immediate reduction in salary of 13%. Assuming an annual pay award of 1.5%, it would take over 10 years before I would be back at the same salary (bearing in mind that I am currently 56 years of age, I would be at retirement age before reaching that point). I therefore feel that a grade 6 post is not a suitable alternative for me as a reduction of 13% would cause me severe financial hardship.*

25 *I have also read within interest your updated Retention and Redeployment Policy and Procedure and I question myself as to why Scottish Borders Council will not look a grade above in order to retain staff. If the only barrier to the higher grade is ‘relevant’ experience then why can’t a ‘probationary’ period be allowed (possibly up to a year) where the employee is paid their current lower salary until they obtain the relevant experience and training.*  
30 *My feeling is that this would open up more options to staff (bearing in mind*

*not all employees wish to be considered for higher grade posts anyway) and in the long run safe (sic) money on recruitment and possibly retaining much happier staff.”*

91. No reply was received to that message.

5 92. The respondent did not pay to the claimant a redundancy payment on the basis that they considered that she had unreasonably refused an offer of suitable alternative employment.

### **Submissions**

10 93. For the respondent, Mr Davidson made an oral submission, which is summarised briefly below.

94. He identified the two issues for the Tribunal to address as being:

- Whether the respondent made to the claimant an offer of suitable alternative employment; and if so,
  - Whether the claimant unreasonably refused that offer of suitable alternative employment.
- 15

95. It is for the Tribunal, he said, to make an objective assessment of the suitability of the offer to the claimant. The claimant was offered 5 posts, all of which the respondent submits were suitable for this claimant.

20 96. There is no getting away from the drop in salary between Grade 7 and Grade 6, but Mr Davidson argued that all of the roles were support, advice and report roles. They involved different people and services, but the core skills were the same. The claimant accepted that certain accountancy skills were relevant to the posts offered. As a matter of day-to-day practice, there was no obvious difference between the roles at Grade 7 and Grade 6.

25 97. Mr Davidson referred to some cases in which there may have been a drop in pay but that was not considered to be the defining factor in itself. He submitted that in this case, the claimant's status would have been unchanged, leaving aside the question of pay.

98. He then submitted that the claimant's motivation in refusing the offer of suitable alternative employment was clear, even including the period before the formal redeployment process commenced. The claimant expressed an interest in ERVS but not in the redeployment opportunities offered. Much was made of the claimant's concern about de-skilling, but this was not a significant feature. The claimant unreasonably refused the offer of suitable alternative employment because she wished to leave the employment of the Council.

99. Mr Davidson invited the Tribunal to refuse the claimant's claim.

100. For the claimant, Mr McLaughlin similarly made a short oral submission, which is summarised here.

101. He commenced by saying that the respondent has not provided any authority to support the assertion that an offer of suitable alternative employment can include a reduction in pay, status, responsibilities, and cause severe financial hardship and de-skilling for the recipient of that offer. These factors are in play in this case. On its own, he said, the 13% reduction in pay could mean that the offer of a post was not suitable alternative employment, especially when coupled with demotion. If it were proposed outwith a redundancy situation, that would be a clear repudiatory breach of the claimant's contract of employment.

102. The claimant gave her evidence, he submitted, in a credible, reliable manner, in a calm and measured way. Prior to this process starting, the claimant's career trajectory was to remain as a dedicated Financial Technician. Portraying the claimant as simply seeking a payment was wholly unfair. She was caught up in a process not of her own making. There are different ways in which an employer may mitigate redundancy, and to criticise the employee for exploring one such possibility is wholly unfair to her.

103. She fed into the process up to the end of it. She set out twice in writing what her priorities were.

104. At no point in the process did the respondent ever engage with the question of whether the job they were offering was appropriate to her aptitude and experience, and was therefore suitable alternative employment for this particular employee. The claimant took years to qualify and acquire  
5 experience for the role of accountancy, and she continues in that role now.

105. None of the offered roles were suitable alternative employment, in Mr McLaughlin's submission. The reasons she gave were never taken from her perspective. The claimant gave clear evidence that she had given sound and justifiable reasons for turning down the offers.

106. The claimant set out all of her reasons to her employer. Mr McLaughlin asked the Tribunal to take all factors into account and in particular the claimant's perception and belief about what taking those job offers would mean financially or for her career. He maintained that her reasons were sound and justifiable reasons.

107. Mr McLaughlin invited the Tribunal to find in favour of the claimant and award her the redundancy payment to which she was entitled.

### **The Relevant Law**

108. Section 141 of the Employment Rights Act 1996 provides:

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

*a) to renew his contract of employment, or*

*b) to re-engage him under a new contract of employment,*

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

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

(3) *This subsection is satisfied where –*

a) *The provisions of the contract as renewed, or of the new contract, as to –*

i. *the capacity and place in which the employee would be employed, and*

ii. *the other terms and conditions of his employment,*

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

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

109. Parties referred the Tribunal to relevant cases.

110. In **Dunne v Colin & Avril Ltd t/a Card Outlet UKEAT/0293/16/DA**

sought to explain the meaning of an unreasonable refusal of an offer of suitable alternative employment. At paragraph 10, the EAT stated:

*“The question is whether the employer has shown that the refusal was unreasonable. The mere fact that the reason later relied on by the Claimant in her form ET1, witness statement and oral evidence was not raised prior to dismissal does not mean that it can be wholly disregarded in deciding the unreasonable refusal question.”*

111. In **Bird v Stoke-on-Trent Primary Care Trust UKEAT/0074/11/DM**,

another EAT decision, the court made reference to the summary helpfully set out in *Harvey on Industrial Relations and Employment Law, Vol 1, Division E, Issue 204, para. 1489*, which states:

*“Under ‘suitability’ you must consider the nature of the employment offered. It is for the tribunal to make an objective assessment of the job offered (Carron Co v Robertson (1967) 2 ITR, Ct of Session). It is not, however, an*

*entirely objective test, in that the question is not whether the employment is suitable in relation to that sort of employee, but whether it is suitable in relation to that particular employee. It comes really to asking whether the job matches the person: does it suit his skills, aptitudes and experience?*

5 *The whole of the job must be considered, not only the tasks to be performed, but the terms of employment, especially wages and hours, and the responsibility and status involved. The location may also be relevant, because ‘commuting is not generally regarded as a joy’ (Laing v Thistle Hotels Plc [2003] SLT 37, Ct of Sess, per Lord Ordinary Eassie). No single*

10 *factor is decisive; all must be considered as a package. Was it, in all the circumstances, a reasonable offer for that employer to suggest that job to that employee? And the sole criterion by which that is to be judged is ‘suitability’.*”

112. In **Readman v Devon Primary Care Trust** UKEAT/0116/11/ZT, a

15 different quotation from Harvey is relied upon, in addition to the previous paragraph (or at least part of it), namely at paragraph 1552, as follows:

*“The question is not whether a reasonable employee would have accepted the employer’s offer, but whether that particular employee, taking into account his personal circumstances, was being reasonable in refusing the offer: did he have sound and justifiable reasons for turning down the offer?”*

20

113. The EAT went on to say, in paragraph 17 of its Judgment, that

*“There is, therefore, nothing inconsistent with an employee reasonably refusing an offer for reasons personal to him, based upon his perception of what the job offer amounts to, even though the Tribunal may conclude that the offer was, in fact, a suitable offer for that particular employee.”*

25

114. At paragraph 30, they address the point in that case in particular:

*“In our judgment, this Tribunal erred fundamentally in failing to address the core reason for the Appellant refusing the offer which, they had rightly concluded, was a suitable offer. They failed to consider, whatever may have been the circumstances of the offer and however easily it may have been for her to re-familiarise herself with certain of the mundane aspects of*

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*hospital life, whether her basic decision – that she had no desire to work again in a hospital setting, where she had not done so for more than 23 years of her career – constituted a sound and justifiable reason for turning down the offer.”*

5 115. A useful decision in this area, highlighting the need for the Tribunal to be alert to the distinction between the two aspects of the matter before me – put shortly, suitability of offer and reasonableness of refusal – is **Cambridge and District Co-operative Society Ltd v Ruse 1993 IRLR 156, EAT**. In that case, the claimant was the manager of a butcher’s shop, which was  
10 closed down. He was offered the position of a butchery department manager in a supermarket. The claimant did not like the new position, feeling that he had suffered a loss of status. He was to some extent under the store manager’s control, did not have his own key, and no longer had responsibility for banking money. The tribunal held that the post constituted  
15 suitable alternative employment but the claimant’s perceived loss of status made it reasonable for him to refuse that offer. The EAT considered that there was nothing in section 141 of ERA which restricted a claimant’s reasons to factors unconnected with the employment itself, and it was reasonable for an employee to refuse a suitable alternative offer of  
20 employment on the ground of his or her personal perception of the job.

### **Discussion and Decision**

116. In this case, the claimant was offered more than one position on being told that her position was redundant, none of which she regarded as suitable. She refused all offers and was not paid a redundancy payment on  
25 the basis that that refusal was unreasonable.

117. The Tribunal must address two questions:

- were the posts, or any of them, which the claimant was offered suitable alternative employment? If so,
- Did the claimant unreasonably refuse those offers?

118. Firstly, then, were the posts, or any of them, which the claimant was offered, suitable alternative employment?

119. The claimant was employed as a Finance Technician, on Grade 7, by the respondent, when the redundancy process commenced. It is  
5 necessary, in considering whether any of the posts offered amounted to suitable alternative employment, to consider, as Harvey puts it, “...*not whether the employment is suitable in relation to that sort of employee, but whether it is suitable in relation to that particular employee. It comes really to asking whether the job matches the person: does it suit his skills, aptitudes and experience? The whole of the job must be considered, not*  
10 *only the tasks to be performed, but the terms of employment, especially wages and hours, and the responsibility and status involved. The location may also be relevant, because ‘commuting is not generally regarded as a joy’ (Laing v Thistle Hotels Plc [2003] SLT 37, Ct of Sess, per Lord Ordinary Eassie). No single factor is decisive; all must be considered as a package. Was it, in all the circumstances, a reasonable offer for that employer to suggest that job to that employee?”*

120. The claimant was interviewed initially for the position of Finance Technician, which she already held, but was unsuccessful at interview and  
20 at the test. The Tribunal heard some evidence about this process, including allegations that the claimant was not seeking to take the test or interview as seriously as it warranted, on the basis that the respondent considered that the claimant had no intention, from the start, of accepting alternative employment as she was keen to seek a financial payoff from the  
25 respondent.

121. On the question of suitability of posts, this particular suggestion has no bearing.

122. The Financial Technician post was not, therefore, offered to the claimant. Her failure to secure one of the posts left after restructure meant  
30 that her redundancy was confirmed, following interview on 2 November 2017.



123. The first post to be the subject of serious discussion between the parties was that of Homelessness Case Officer, which was also a Grade 7 post (at the same grade as she then occupied). The claimant visited the Homelessness Department to gain an understanding of the post, and its needs, and to assess its suitability. Initially she rejected the post, but reconsidered and by 13 December she had told the respondent that she was in fact interested in it. However, the following day, she advised them that she no longer regarded it as a suitable alternative post, and on 18 December 2017, that post was withdrawn from consideration as potentially suitable alternative employment.
124. Accordingly, the Homelessness Case Officer post was not offered to the claimant at any stage, and neither party, before me, regarded it or sought to submit it as suitable alternative employment for the claimant.
125. The respondent presented the claimant with a request for expression of interest in any of the remaining grade 6 posts, namely, the Development Assistant, Housing Management Officer, Financial Inclusion Supervisor, and Housing Support Officer. Further, there was a post of a Procurement (Commercial Performance & Compliance Officer) role, another grade 6 post.
126. As time passed, by 19 December 2017j, the Development Assistant post was filled as part of the redeployment process continuing more generally, and was therefore no longer available. That post was not offered to the claimant.
127. On 12 January 2018, the claimant rejected the Procurement post as suitable alternative employment as it was not commensurate with her current salary, and required a qualification in Procurement. She took the view that the post was not suitable, in addition, because it would not allow her to continue to exercise the accounting skills which she had built up, and would therefore lead to her becoming “de-skilled” in this area, which she did not wish to allow to happen for her career.

128. On 19 January, the claimant made it clear that her reason for rejecting all of the grade 6 posts was that it would mean a “reduction in pay and status” for her.

129. Reference was made to the respondent’s own Redundancy Procedure, and in particular to paragraph 6.1 which states:

*“Suitable alternative employment is regarded as posts arising of the same or similar grade to that already held by the employee and shall include posts in alternative employee categories, of a commensurate salary and status including posts occurring in alternative Council locations where these locations are considered to be reasonable in respect of the employee.”*

130. There was considerable discussion before me about the meaning of “same or similar grade” and “of a commensurate salary”. In my judgment, neither restricts an offer of suitable alternative employment to the same grade or exactly the same salary as that which the claimant has previously been paid. There requires to be some flexibility in order to allow an employer to place before a redundant employee a post which may not precisely match that which the employee already holds but which may be attractive to the employee as an alternative to dismissal.

131. However, that is not precisely the issue here. It is necessary to decide whether or not the posts offered to the claimant (or at the very least placed before her for consideration) amount to suitable alternative employment. I discount from these considerations the Homelessness Case Officer and Development Assistant posts, one of which was recognised by the respondent not to be suitable, and the other of which was filled while the claimant was considering her options.

132. The Housing Management Officer post was a “customer-focused” post, providing a housing management service to individuals and households accommodated by the respondent in temporary accommodation. The post was a grade below the claimant’s grade, and was, in my judgment, quite different to the post which she held in the Finance department. Had she accepted the post, that would have been

understandable, but in light of her qualifications and experience, the loss of salary (calculated by the claimant – and not challenged – to be 13%) and status and the need for the claimant to enter an entirely new field in which she would be expected not only to have significant knowledge of social work, health and housing legislation but also experience of working with people with complex social, psychological and medical health needs, it is my judgment that this offer, if that is what it was, did not amount to an offer of suitable alternative employment. The role was substantially different to that which the claimant had worked in, and would require very significant training as well as an entirely different working experience. Leaving aside whether or not it was reasonable for the claimant to have refused this offer, it is my judgment that it was not an offer of suitable alternative employment to the claimant.

133. I do not consider that the reduction in salary or status (which appeared to me more apparent than real) to be so significant as to take the post outwith the range of suitability for the claimant, particularly given the terms of the respondent's own Redundancy Policy, but taking the whole post into consideration, I am not persuaded that this was an offer of suitable alternative employment to this claimant.

134. The next post to be considered is that of Financial Inclusion Supervisor. The purpose of this job was to form part of a small team responsible for assessing claims for "discretionary funding streams" and advising on other areas of potential support available both within and outwith the respondent.

135. In my judgment, this was an offer of suitable alternative employment. The claimant was qualified and experienced in the area of finance, and while this was a job entailing different tasks to those to which she was accustomed, it would involve engaging her accounting skills and applying her financial analysis and management experience within the respondent's organisation to individual cases and circumstances.

136. The fact that the grade for the post was 6, and involved a reduction in pay and status, does not, in my judgment, render this not to be an offer of suitable alternative employment. Accordingly, it is my judgment that this was an offer of suitable alternative employment to the claimant.

5 137. The next post to be considered is the Housing Support Officer. Similar to the Housing Management Officer post, it is my judgment that this did not amount to an offer of suitable alternative employment to the claimant. The requirement, again, to have “extensive” knowledge of social work, health and housing legislation (and not just knowledge), as well as  
10 experience of working with people with complex social, psychological and medical health needs, meant that this was well outwith the claimant’s experience and knowledge base, and in my judgment, cannot be regarded as an offer of suitable alternative employment to her. She had no  
15 knowledge or experience of either of these areas, and while it was open to the respondent to test whether or not she wished to accept that offer as an alternative to redundancy, in this context it does not amount to an offer of suitable alternative employment to her.

138. Accordingly, it is my finding that one of the posts which the claimant was offered amounted to an offer of suitable alternative employment to her,  
20 namely that of the Financial Inclusion Supervisor.

139. The Tribunal must then consider whether or not the claimant’s refusal of this offer of suitable alternative employment was unreasonable, so as to justify depriving her of a redundancy payment.

140. This, as the authorities make clear, is a subjective test, and it is  
25 necessary to consider the claimant’s reasons for rejecting the offer.

141. In my judgment, the respondent’s assertion that the claimant, essentially, made no significant effort to address any of the offers made to her because she was motivated to seek some form of termination payment, or to obtain ERVS, is of little bearing here. It was clear that the claimant did  
30 address the offers which were made to her after she was informed that ERVS was not available to her, and from her evidence, which I found

credible and reliable, I have no reason to doubt her sincerity in explaining that she did not find that offer to be an offer which she could accept as suitable alternative to her post.

5 142. The question, as **Readman** made clear, is not whether a reasonable employee would have accepted the employer's offer but whether that particular employee, taking into account his personal circumstances, was being reasonable in refusing the offer.

10 143. In that case, the employee's reason for refusing an offer of suitable alternative employment was that she had determined that she did not wish to return, as a nurse, to hospital working, having been out of that environment for 23 years, and the EAT accepted that that was a sound and justifiable reason for turning down the offer. That was personal to her but it was entirely relevant to the consideration of whether or not her refusal was unreasonable.

15 144. In the circumstances of this case, the reason why the claimant said that she was not prepared to accept any grade 6 offer was that she was not able to accept the loss of salary and status which had come with the grade 7 post she had previously held, a post which she felt she had deserved after achieving promotion through hard work and commitment. The drop in salary was particularly unwelcome because it would cause her "severe financial hardship" in circumstances where she and her family had recently taken on a larger mortgage based on the salary which she expected to continue to receive at grade 7.

20 145. In addition, the claimant was concerned that accepting this post would mean a digression in the career path which she had chosen to follow, rather like the nurse in **Readman**. The choice which she made was to seek an accounting job elsewhere. The Financial Inclusion Supervisor job was one which, with her training and experience, she could have carried out, but at that stage in her career, and in her personal circumstances, it was not unreasonable, subjectively, for the claimant to have rejected it.

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146. The respondent sought to suggest that there was, in fact, no drop in status. This appeared to be because nobody else in the organisation would be aware of the fact that she would be on a lower grade. However, it is my judgment that the claimant's own reasoning was sound. She perceived that she would suffer a drop in status by moving from grade 7 to grade 6. That is not an unreasonable perception. It is not for the respondent to tell the claimant that her fears about a drop in status are unfounded when she feels very keenly that that is the reality: and in truth her status would change, from that of a grade 7 postholder to a grade 6. The respondent is a large and hierarchical organisation (based on the grading scheme), and will be well aware of the sensitivity of staff to the grade to which their job attaches. It was not justified in dismissing the claimant's concern about this. In any event, the Tribunal must consider whether or not this was a sound and justifiable reason for her rejecting the post. In my judgment, it was.

147. It is therefore my judgment that the claimant did not unreasonably refuse an offer of suitable alternative employment, and that she is entitled to a redundancy payment. The respondent is therefore ordered to pay to the claimant the redundancy payment which she is due.

**Employment Judge: M MacLeod**  
**Date of Judgement: 5<sup>th</sup> December 2019**  
**Entered in Register: 9<sup>th</sup> December 2019**  
**And Copied to Parties**