EMPLOYMENT TRIBUNALS

Claimant:	Jon Cook
Respondent:	(1) Q Underwriting Services Ltd (formerly PIB Ltd) (2) PIB (Group Services) Ltd
Heard at:	Nottingham
On:	19 and 20 February 2020 Deliberations on 27 March 2020
Before:	Employment Judge Jeram (sitting alone)

Representatives

Claimant:	Mr A Johnston (Counsel)
Respondent:	Ms A McColgan (Counsel)

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is as follows:

1. The claim against the first respondent is dismissed on withdrawal by the claimant.

2. The claim against the second respondent is not well founded and is dismissed.

REASONS

Introduction and Issues

1. By a claim form filed on 6 March 2019 the claimant presented a claim against the respondent for unfair dismissal.

2. By a response filed on 7 June 2019 the first and second respondent denied all liability to the claimant. At the outset of the hearing, the claim against first respondent withdrawn at the outset of the hearing: the reference to 'the respondent' below therefore relates to the remaining respondent, PIB (Group Services) Ltd.

Issues

1. Can the respondent establish that the reason, or if more than one, the principal reason, was a potentially fair one?
    a. The Respondent avers that the Claimant was dismissed by reason of redundancy. In the alternative the Respondent avers that the Claimant was dismissed for some other substantial reason of a kind such as to justify the dismissal of the Claimant, namely a business re-organisation carried out in the interests of efficiency;
    b. The Claimant alleges that his role was not genuinely redundant in accordance with section 139 ERA 1996: it was a sham.

2. If the reason for dismissal was potentially fair, was the actual decision to dismiss fair within the range of reasonable responses available to the Respondent so as to be fair under section 98(4) ERA? In particular, did the Respondent:
    a. warn and consult the Claimant about the proposed redundancy?
    b. adopt a fair basis upon which to select for redundancy? In particular, was it within the range of responses open to a reasonable employer to treat his role as unique?
    c. consider suitable alternative employment? The Claimant says that he should have been offered the role of Operations Manager;
    d. adopt a fair procedure?

3. By agreement between the parties, any issue in relation to remedies, including any factual issues arising in relation to the discreet Polkey matter arising in this case i.e. whether and if so when, the claimant would have been dismissed by reason of capability, was deferred to another hearing, if appropriate.

The Hearing

3. I had regard to two bundles of documents consisting of, in relation to liability only, 489 pages.

4. I heard from the following witnesses:

    - Claimant
    - Philip Edwards: Managing Director of QPI Legal
    - Nigel Salisbury: CEO of Specialty and Retail Division of the respondent
    - Andrew Baxter: Group HR Business Partner
    - Fiona Andrews: Chief People Officer

5. I make the following observations about the credibility of particular witnesses:
    - The claimant – Whilst I considered that the claimant had a sympathetic demeanour, I found him to be an inherently unreliable witness. His evidence, both written and oral, was prone to hyperbole; he appeared to be unable distinguish subjective perception (including that of others, where it suited his narrative) from that held by others, or from objective fact. Where there is a conflict in the evidence of the Claimant and that of the Respondent's witnesses, I preferred the evidence of the latter.
    - Phil Edwards – was affable, agreeable and certainly genuine, but imprecise in his evidence.
    - Nigel Salisbury – I considered that NS gave his evidence with a distinct air of caution and his answers were on occasions lengthy and indirect. It appeared to me that his nature and character was to diametrically at odds to that of the claimant in that he was even tempered and understated and furthermore, he did not seek to expand upon or capitalise on points which might have served him well (for example, the circumstances in which the claimant's name appeared in his own notes and the proposal for restructure). I concluded that, general discomfort aside, NS was not being evasive; he is simply reserved by nature.

FINDINGS OF FACT

6. The claimant was one of the first employees and a shareholder in a company called PIB Limited that was founded in March 2014 and which was subsequently renamed Q Underwriting Services Ltd (the First Respondent, as was). It carried out business as an insurance broker in the professional indemnity market, including that relating to solicitors' professional indemnity insurance. The claimant was employed in a senior role at Birmingham. The professional indemnity business was not generating a profit.

7. That business was acquired by the respondent and, on 1 November 2016, the claimant began employment with the respondent.

8. The respondent is a group of insurance advisory businesses. Brendan McManus ('BMcM') is the CEO. It is an acquisitive business. It is backed by private equity and grows by acquiring businesses with activities which complement those in its own portfolio. Its business model, or a significant element of it at least, is to acquire businesses and achieve or improve profitability by reducing unnecessary duplication of costs as between its own operations and those of acquired businesses.

9. That business model gives rise to varied – and over time, increasingly complex - logistical challenges, from how to reduce any duplication of costs to how best to integrate the businesses.

10. Insurance business that the respondent has acquired over the years includes a wide range of areas, such as property, technology, care, leisure and charities.

11. One of the several brands in the group of businesses operated by the respondent was PIB Insurance Brokers ('PIB'). For the most part of the timeline applicable in this case, the managing director of PIB was Nigel Salisbury ('NS'). PIB carried on the business of insurance brokerage and was at the time divided into various divisions including sales, corporate, property and commercial. Two other divisions were those in Preston and Scotland. One such division was 'Professions' (internally known as 'ProFin') which dealt with professional indemnity insurance. A significant element of the Professions business related to solicitors indemnity insurance, although it also included other types of professional indemnity insurance including for independent financial advisors and for surveyors. The personnel working in the Professions division operated out of offices in Birmingham, Northampton, Liverpool, Leeds, London and until 2018 also Bristol and Manchester.

12. The Claimant was at all material times employed at PIB insurance brokers as 'Head of Professions'. He was therefore responsible for a team that was based nationwide as well as for the financial performance of that division.

13. In October 2016 the respondent purchased a company by the name of QPI Legal Ltd. The company was a specialised insurance broker and risk management consultancy dealing primarily with professional indemnity insurance for solicitors in England and Wales, but also included work relating to surveyors, accountants and other professions. The managing director was Phil Edwards ('PE'); the company was generating a profit. On purchase of the company, PE remained in employment, and was obliged to do so for 2 years thereafter, with an option to extend his employment beyond that date.

14. NS attempted to integrate the work done by QPI with that of the Professions division, although those attempts were abandoned in or around April/May 2018. The profit generated by QPI was part of the overall financial responsibility of the Claimant as Head of the Professions division.

15. The respondent's financial year is a calendar year. By the end of 2017, and notwithstanding the profits generated by QPI, the Professions division overall remained, for a fourth year in a row, unprofitable.

16. NS was the claimant's line manager from 1 May 2017. Together with the claimant, he worked on plans, to address the problem in relation to its financial performance; those plans included for example closing the Bristol office and moving the team to Gloucester as well as closing the Manchester office in its entirety.

17. Nine months into his management of the claimant on 2 February 2018 NS wrote the claimant's year-end review for 2017:

> *"while the ProFin numbers were behind target, they showed growth of 32% on 2016 and it was good to see progress Leeds, Manchester and Bristol. In addition, Jon has led some significant "right – sizing" activity during the year to address areas and individuals that were not performing as expected. Strategically ProFin is well placed with excellent high – level plans and team in place and shall continue and diversified growth in 2018. Jon is a strong business leader and provides good support in the in respect of the wider business. It's a successful 2018!".*

18. In response to a question put to NS by Mr Johnston for the Claimant, NS agreed that the impression he gave was one of a good leader but explained what he was conveying was *"you can be a strong leader without running a successful business, I suppose".*

19. Insofar as it is necessary to do so, I find that the division was making a consistent loss, and that that was not an illusory, or as the claimant maintains, an 'apparent loss'. I reject the claimant's contention that the 'apparent loss' was due to an unjust attribution to his division of central overhead costs by NS: I find that his division was treated in the same vein as others; nor do I accept that £100,00 had been *"taken away from him"* by the National Broking Director: I accept that the amount reappeared in year-end figures. I reject the claimant's very serious and wholly unparticularised claim that any such steps had been taken whether in 2018 or in any other year for that matter *"deliberately to influence and negatively affect the financial performance of my business",* which if true would give rise to any number of other liabilities.

20. In summary, I find that the division was in deficit, that the Claimant knew it was, and that as a matter of common sense, as well as in light of the Respondent's established business

model, he was acutely aware of the expectation upon him to deliver positive financial results.

21. A budget was set for 2018. It envisaged aggressive growth, with further expense reduction, in order to achieve what NS described as *"a modest amount of profit".*

22. In the meantime, I accept NS's evidence that the Claimant's explanation for the continuing deficit was attributable to *"timing issues"* which could be put right with a re-forecast of the budget (page 84, page 207) and that this was the message that he was reporting to the Executive Board, on a monthly and quarterly basis.

23. By March 2018, the deficit was a relatively modest £80,000; on 11 July 2018 the Claimant reported figures to NS that indicated a year end deficit of £500,000.

24. The claimant claims that it was *"always the plan"* (by which I understand him to mean on a construction of his own witness statement, a plan since September 2017) between himself and NS that PE would acquire the claimant's role of Head of Professions, allowing the Claimant to *"step up"* into an unspecified role. I reject the Claimant's contention that NS's failure to respond in the negative to his email of 4 April 2018 (in which he speaks of PE taking *"centre stage",* as well as other matters) supports his claim that there existed such a plan: first, NS did respond to another, operational, matter in the same email; second, his failure to respond to everything in that email is entirely consistent with NS's economic style of writing, and thirdly, because he did, subsequently set out his position when the claimant emailed him, explicitly setting out what he describes as having 'always been the plan'. To that email, NS responded:

> *"I don't know what you mean re Phil taking over from you - we discussed a role for Phil which was sales development and marketing reporting to you as Head of Professions. you remain responsible for Professions as far as I am concerned and I'm not aware we have ever discussed otherwise. Or am I missing something?"*

25. The claimant did not reply. In light of the fact that the Claimant was acutely aware of the expectation upon him to deliver financial results in the Professions division, I find that the alleged plan was borne of hope on his part rather than any assurance given to him by NS. I accept that the claimant may well have shared this plan with PE: if effected, it would be a neat solution whereby PE, who was undoubtedly performing well with the QPI work, would acquire the Head of Professions role whilst allowing the claimant to sidestep –on his case, be promoted away from – the ever-apparent financial responsibility that came with the division. There was no such plan.

26. In March 2018 the respondent acquired Lorica Insurance Brokers Limited ('Lorica'). It was on any objective view, a significant acquisition: Lorica was also an insurance broker business, with a similar size to (if not slightly larger than) the respondent, with a similar geographic footprint (although Lorica did not operate in Scotland) and similar areas of specialism.

27. That said, Lorica was structured differently to the respondent, in that its business was divided into discreet geographical areas so that a local (regional/branch) manager would have responsibility (including personnel and financial responsibility) for all types of insurance business, whatever their nature, associated with their locality.

28. In line with the Respondent's overall business strategy, NS began working on a plan as to how best to integrate the businesses. He did so by conducting in late spring and early summer of 2018, meetings and discussions with a number of people including the claimant, Stefan Putnam (who was soon to become managing director of PBI and Lorica) as well as BMcM (the CEO). A plan to restructure the business would require the ultimate approval of the executive board. The executive board meeting was scheduled to take place on 24 July 2018.

29. On 1 May 2018 the claimant sent NS a four-page email setting out his concerns in relation to compliance issues arising in his division. I find NS was irked when he received that email, principally because the Claimant had not had given him any advance notice of his intention to send such a long and important email, and in the week leading up to a bank holiday weekend. The Claimant met with NS and another manager on 10 May 2018. The following day he made a note for his own use of that meeting in which he notes that NS agreed with some of the contents of that email and disagreed with other parts. He set out his own personal feelings of that meeting and described it as *"not going well"* to feeling *"under fire"* and feeling stressed and bullied. He comments *"it was obvious I was being positioned".* I find that this last comment expresses his own concerns about the future of his job, especially in light of the Lorica acquisition and discussions about restructure.

30. On 21 May 2018 the Claimant met with NS for dinner at a hotel in London. The claimant says that NS asked him whether he *"wanted his money out"* (a reference to his shareholding) in a manner that suggested that NS desired his exit from the business.

31. I am not satisfied that NS in fact use those words at all. NS sent to the claimant an email that same evening, thanking him for dining with him that evening. The claimant did not respond until 7 June 2018. Had NS used those words in the manner alleged, it is surprising that the claimant did not say as much in his response, given that the surprisingly direct tone which he conveyed palpable anger about the evening. His omission is somewhat surprising bearing in mind that the claimant begun, three weeks earlier, to make a record of events consistent with his view that there was a plan to *"position him".*

32. I have no hesitation preferring the evidence of NS on the matter, which is that, insofar as he may have used that expression at all, it was used in an effort to assist the Claimant by offering to speak to Brendan McManus about the value of his shareholding given that the Claimant was suggesting that he was unhappy. Had the tone of the exchange been tense (and I do not find that it was tense), that would suggest a direct exchange of views rather than anything approaching a conspiracy to manoeuvre him out of the business: given the tone of the claimant's email, a direct exchange of views is something that he is quite capable of engaging in.

33. Finally, if, contrary to my finding, the Claimant's interpretation of those words was correct, the contents of the Claimant's own email: *"the last thing that Brendan or I need right now is the him to feel that he has to spend an hour and a half telling me how great the businesses and how it is going to make me a millionaire whilst I struggle to get the seconds on what I might want to discuss. Please – get it taken out the diary"* suggest that the Claimant was of the view that any plan on the part of NS to facilitate the Claimant's exit would have been foiled by BMcM in any event.

34. NS did not do or say anything on the evening of 21 May 2018 that suggested he was intent to see the back of the Claimant.

35. On 1 June 2018 Stefan Putnam ('SP') acquired the role of Managing Director of the PIB and Lorica business and as a consequence became the claimant's direct line manager. NS, meanwhile, took up post as CEO of the Speciality and Retail division of the Respondent; one of his direct reports was SP. I accept that SP was significantly less tolerant of the Claimant's conduct and performance than NS had been.

36. On 24 June 2018 NS wrote in his notebook *'Stef 1. Me to write to Jon Cook'*. I accept NS's evidence that that note was likely to be about the fact that the Claimant had been creating difficulties for the business by speculating to colleagues about what was going to happen with the business, which conduct was creating disruption (for example, page 263). In the event, NS did not write to the Claimant about his behaviour.

37. On 19 July 2018 NS made a diary note as follows: *'✓Jon Cook MD?'*. This, he said, suggests that there remained a real possibility that a new role could be constructed for the claimant. It was not explained to me what that role might have been, nor was it explained to me the rationale for subsequently abandoning the idea. Nevertheless, it is not suggested that this note, or indeed NS's evidence about it was in any way disingenuous and so I accept face value that, four days before the executive board meeting, there remained a real possibility of creating a role for the Claimant to occupy.

38. The proposal placed before the board on 24 July 2018 was, broadly speaking, for the Respondent to follow the Lorica model of organisation, so that responsibility for all types of business conducted in a particular region would be given to a regional or branch manager. Whilst a principal aim was to effect savings, it was said that other aims included the benefits of simplifying the business, by facilitating integration between the businesses at ground level, allowing the business to be more responsive to the local market and, in time, manage a reduction in the number of brands so as to manage the risk of confusion in the market.

39. In practical terms, implementing the plan would mean the dissolution of teams of specialist businesses operating nationwide prior to integration, such as the Professions division. In relation to the Claimant, it would mean that his role would cease to exist because his management responsibilities would be distributed to regional managers.

40. The plan drawn up for Board approval explicitly recognised that Professions would be integrated alongside other businesses in the Birmingham location as well as in Leeds. As for the section in the proposal entitled *'People Structure'*, the Birmingham office was identified to be headed by *'James Sellers/Jason Mole or Jon Cook'*. The proposal envisaged making announcements of redundancies in September 2018, after the summer holiday season with a view to implementation in the first quarter of 2019.

41. The board gave its approval to the proposal at its meeting on 24 July 2018.

42. On 26 July 2018, SP emailed NS in which he described, of a meeting between himself and PE, as PE *being "enthusiastic and frustrated in equal measure . . but he is full of ideas and we would be daft to ignore what he can offer the business. I went through a few numbers with him highlighting various problem areas within ProFin so that he can fully understand that corrective action is needed, sooner rather than later"*. In his customary economic style, NS responded the next day *"I agree – just tried calling. Let's talk next steps. N".*

43. I find that NS, SP and PE did have various discussions over the course of the following months, about the work that the respondent could offer PE. I find that those discussions included various permutations and combinations of areas of work. I find this because, by this stage, NS and SP knew that they were moving to the Lorica model of organisation, that the Board had approved the deletion of the leadership roles including Head of Professions and they approaching the two year anniversary of PE's employment meaning that might lose someone who, on all accounts, ably and profitably headed up the QPI 'sub-division'. What would have been surprising is if NS and SP had not been having conversations with PE about whether the company would retain his skills and in what capacity: as SP put it, it would be 'daft to ignore' what PE could offer.

44. On 31 July 2018, NS made a note in a meeting with BMcM, in which he wrote *"✓Phil/Jon"*. Although NS is unable to recall the precise discussion, I infer that the dialogue with PE as to what capacity he could remain in employment was still ongoing.

45. NS took it in upon himself to inform the Claimant personally about the changes to the Professions division. This was ostensibly because he had been the claimant's line manager until very recently but a significant part of the rationale for doing so was because NS understood that there was a tension between the claimant and SP.

46. On 7 August 2018, therefore, NS emailed SP stating *'I'll liaise with HR so we can address JC/put him on notice as we begin communicating the changes from September – okay? N'* (page 263). I am invited to find that that the words 'on notice' evinces a plan to, as I understand the point to be, put the claimant on notice of dismissal. It bears no such scrutiny. On a plain reading of the email, and in the context of the full sentence, it suggests an intention to forewarn the claimant of the announcement of the proposed changes.

47. On 21 August 2018 NS wrote an email to himself in which he listed a number of employees (including PE) together with words next to the names (including that of PE), such as *'change of role'.* In the case of the Claimant, the word appearing next to his name is *'termination'.*

48. The claimant describes the email as being *"conclusive",* of I understand, the fact that the consultation process was a sham and its outcome predetermined. I do not accept this. It might have been one thing had NS written this in a formal document for circulation (even then, he is not a lawyer) but it is quite another to attach such evidential significance to what was, self-evidently, an aide memoire. In addition, the subject line of the email is *'Staff Impact'.* The claimant's case demands an answer to the question, *'the impact of what, on the staff?'*. It was no part of the claimant's case that there was to be a sham consultation process in relation to all 11 employees. I find, therefore, that the note was simply intended to be a note of the potential impact of the proposal on those employees (including PE) and not as the claimant suggests, the impact of the consultation process.

49. Announcements were not, in fact, made in September in accordance with the proposal put to the Board; in early August, it was decided (not by NS) to delay the announcement of the restructure proposal so as to avoid the potentially destabilising effect in the Professions division – which would be directly affected - given that the deadline for the annual renewal of solicitors' professional indemnity insurance is 1 October.

50. On 8 October 2018 Andrew Baxter, Group HR Business Partner ('AB') emailed Fiona Andrews, Chief People Officer ('FA'), seeking approval for the cost estimate that he had drafted in relation to the claimant's redundancy.

51. On 10 October 2018 NS telephoned PE to invite him to a meeting at the London office the following day. NS spoke to other members of the team that evening, I accept that in that conversation NS told PE something of his concerns about the performance of the Professions division, but no detail was given about his plans for the next day in respect of the Claimant. That same evening, according to the Claimant, PE telephoned him to *"give [him] the heads up and warn him that something was going on".*

52. On 11 October 2018 at the London office NS told PE that he was about to place the claimant at risk of redundancy.

53. NS then met the claimant at the same office. He explained to the claimant that the business was likely to be restructured so that the proposed operating model would be that going forward, reporting lines for businesses would be on a regional basis so that the Professions division would no longer exist as a standalone business, and that, consequentially, the claimant would be placed at risk of redundancy. The claimant took the news very professionally and extended an offer to support an orderly handover of his clients. At the end of the meeting, NS invited the claimant to remain a might appreciate a discussion about the procedure with FA, who was in the building. FA had worked alongside the claimant since joining the respondent in September 2015.

54. FA explained the redundancy procedure to the claimant, including the fact that because the role occupied by the claimant was unique, he would not be 'pooled' in a group of other employees at risk of redundancy. FA volunteered that, for this reason, she did not expect the consultation process to be lengthy. The claimant had, prior to this process, conducted some 20-25 redundancies; I find that he understood the reason for that comment.

55. In his own personal note made after that meeting, the claimant states that FA told him that he would not be successful in the redundancy process or in applying for other jobs. In his witness statement, the claimant said, at significant variance with his own note: *"it was absolutely apparent to me that the decision had already been taken to make me redundant".*

56. I readily accept that that the claimant was likely to be despondent after his conversations with NS and FA. I readily accept that FA was direct with the claimant in describing the significant likelihood that the claimant's role would be deleted from the structure and that he would no longer occupy it. That is, however, not the same as saying that it was a certainty (or as good as certain) that the claimant would be dismissed by reason of redundancy - and it is certainly not the same as suggesting that she told him that the redundancy process and any search for suitable alternative employment was doomed to failure. I reject the implicit suggestion that FA said, or otherwise conveyed, any such impression. Insofar as the claimant relies on this as part of his claim that FA was involved

in a conspiracy to remove him from the business, I reject that claim also: she was simply being direct with him.

57. The claimant was given two letters that day, the first being the formal 'at risk' letter. In that letter the consultation period was described as commencing on 11 October 2018 and concluding on (or by) 19 October 2018. The claimant was told that current vacancies would be shared with him. He was told that if no suitable alternative employment was identified by the conclusion of the consultation period he would receive formal notice of dismissal by reason of redundancy and that is employment would be terminated at the end of the notice period. The letter concluded with an offer to discuss any questions or thoughts that might arise.

58. The second letter was an invitation to a consultation meeting, to take place on 12 October 2018. The letter repeated the offer to discuss any questions or thoughts outside the formal consultation meetings. It was accompanied by a document, presented in a 'Q&A' format, providing information about the rationale for, and consultation process in respect of, the restructure.

59. Later that day, SP met with PE. PE maintains that SP told him that 'they' by which PE understood he mean *"realised that 'they' could not replace the claimant with someone carrying out the exact role".* I consider that, even if recounted with absolute accuracy, there is nothing controversial about that statement per se. Discussions about the role which PE could occupy, and its precise nature were still ongoing.

60. In the event, the first consultation meeting took place on 16 October 2018, by telephone, with AB. The claimant was accompanied by a colleague, Chris Price.

61. At that meeting the claimant said that he understood the rationale of the restructure and that he also understood that it was open to him to ask questions outside the formal consultation process. He said that he had the general impression that the respondent wouldn't want him to apply for an alternative role but that he was interested in the Operations Manager (Thistle Underwriting) role.

62. At the end of the meeting the claimant made a verbal statement to AB, who took a note of what was said. The claimant said that he accepted that his role was to disappear; he said he did not ask for Lorica to come into the business and that there were some unhappy people at Lorica. He said that he had felt on the edge of the business and pushed out in the last 3-4 months. He said that he had had a discussion with NS and BMcM on 21 and 22 May 2018 regarding money for his shares, maintaining his belief that his employment and shareholding were tied together (they were not).

63. AB sent to the Claimant a list of current vacancies; the claimant confirmed his wish to be considered for the Operations Manager role.

64. On Thursday 18 October 2018 the claimant was invited to a second consultation meeting to take place the following week, at 2.30pm on Wednesday 24 October 2018. The letter stated that the decision had been made to extend the consultation period (which was originally envisaged to conclude on 19 October) for a further week until 26 October 2018 to ensure the claimant has sufficient time to pursue the Operations Manager role.

65. At 7am on Wednesday, 24 October 2018, the claimant emailed Andrew Baxter stating *"Andy morning, I will struggle to make this and in any case, I have not had feedback on the Thistle role. Can we reconvene please?".*

66. In his reply an hour later, AB informed the claimant that the lack of feedback about the alternative role would not prevent a second consultation meeting taking place; he said he would arrange a meeting for the next day. AB sent to the claimant, 15 minutes later, an invitation to a new second consultation meeting, this time to take place at 2pm on Thursday, 25 October 2018.

67. Four minutes later the claimant emailed Andrew Baxter as follows *"Andy I can't make this one either – can we agree a time and date please?".* AB asked the claimant for his availability, to which the claimant replied *"Andy yes sure, I've not kept my diary up-to-date. Would I be able to appeal the decision by the way?".* He received a response in the affirmative from AB and again, a request to provide him that day with a date convenient to the claimant for the second consultation meeting to be held. The claimant did not do so.

68. On the evening of Thursday 24 October 2018, the claimant emailed NS and SP. In that email AB permitted himself to comment that he had *"the distinct impression JC is now playing a bit of a game on this".* He stated that if the claimant responded the next day to his request to provide him with the date for the second consultation meeting, he would deal with the matter, but otherwise his colleague Jenny would have to pick up matters in during his absence on leave the following week. He wrote *"I have briefed Jenny on the termination letter which will need to be confirmed with Jon once consultation has concluded or alternatively if he is successful we will need to discuss T & CS etc . . In the potential that Jon is not successful can you please give some thought to a release date for Jon as this will need to be detailed on the termination letter Jenny will run through with Jon. You will of course need to give consideration to the practicalities of handover etc."*

69. In reply NS emailed AB in his customary economic style, with a single line *"thanks Andy – can we go for a termination date of month and please – i.e. 31st October. Thanks, N".* The claimant's claim that this demonstrates that NS *'wanted [him] to be dismissed'* is self-evidently unsustainable; it is an answer to a specific question posed by AB.

70. On the morning of Friday, 25 October 2018 AB emailed the claimant asking him again to confirm which date would be convenient for a second consultation meeting, asking him to reply by the end of the day. Approximately an hour later the claimant responded in the following terms *"Andy yes sure. Can you review the attached notes of our Telecom last week first with additions."*

71. To that email, the claimant attached a document which was headed *"notice of Telecom on 16.10.18 with Andrew Baxter and background to exit",* albeit the document was dated 15 October 2018: it was three pages long. In that document the claimant asserted that he could demonstrate that there was *a "requirement for a continuing leadership role employment in situation which will inevitably lead to be brought to the table in the near future. To reiterate, I will continue to act professionally and protect the businesses interests until I exit".* He continued with a description of the sacrifices that he says he made and stated that *"the business should consider how i.e. disengage with it because there are sensitivities to my employment in situation which will inevitably need to be brought to the table in the near future",* a claim that he was being *"pushed out"* by SP, a claim that the figures for the division *"have improved, its numbers are on track with my revised forecast in spring"* and that *"the consultation process masks the underlying reason for my being exited – that the P and L of the business is what it is".*

72. AB responded the same day acknowledging receipt of the documents he asked – for the fourth time - when it would be convenient the claimant to attend the second consultation meeting. He offered *"we don't necessarily need to have this meeting, as part of consultation it would be in your interest I feel".*

73. Later that same day the claimant wrote to AB stating *"Andrew it is clear that the business wants and needs to put me through a process"* he continued there were personal reasons to be on leave the following week (which reason was not in issue) and offered *"I will look at my diary and come back to you but I have to say that it appears the business will do what it will do".*

74. The Resourcing Manager for the respondent notified the claimant on 26 October 2018 that he was not successful in securing the Operations Manager role, stating *"the hiring manager has reviewed your CV and unfortunately he feels your skillset does not match what he is currently looking for".* The claimant took up the offer for further feedback, but did not receive it; that omission was a matter he did not raise with his employer at any time subsequently.

75. On Friday, 2 November 2018 the claimant emailed to the respondent *"formal notice"* of his wish to engage the grievance process. He said that he would forward a background as to why he thought he was being put through a consultation process, claiming that the two matters were linked.

76. FA responded by asking that any supporting documentation to be forwarded to her as soon as possible. In the event, the claimant did not forward that information, nor, for the avoidance of doubt did he suggest in his evidence what that information might have consisted of.

77. FA continued by saying that the second consultation meeting would take place with herself and NS at 11am on Tuesday 6 November in London, and providing the claimant with the opportunity to attend by telephone instead. The claimant acknowledged the email and said he would return to FA. He did not, leaving her to chase him on the 5 November 2018 as to which method of attendance he chose. The claimant responded 10 minutes later with the following; *"thanks Fiona, my availability for the call tomorrow depends on someone being able to join it with me. My ability to achieve your time lines around the grievance will rely on my obtaining advice, your time lines are what they are, if I can't obtain advice within that period I won't be able to achieve them."* This was the first time since the claimant had been placed at risk almost a month previously that he suggested he needed to take advice. FA responded by explaining that the grievance process and consultation process were not legal matters, and that NS would explain the business case for the proposal to restructure the following day.

78. The consultation meeting took place in person the following day; at that meeting was the claimant, NS and FA. NS ran through the business reasons again with the claimant and informed him that the decision to place him at risk followed the agreement of the respondent/Lorica integration plan and, as a result, the Professions business would seek to exist in its current form from 31 December 2018, that the claimant's role was one the key roles impacted and, whilst *"consultation around the exact format/template and resource deployment for Professions going forward continues… However what is clear and known is that Jon's role in its current form will not be replicated in the structure".*

79. Whilst significance is placed on this last line by the claimant, I find that it is consistent, with the fact that discussions were ongoing with PE; I consider there to be nothing inconsistent with the proposed deletion of the Head of Professions role. The claimant participated in a discussion, and it is no part of the claimant's case that any matters raised were not responded to; ultimately, no alternatives to dismissal were identified.

80. By letter dated 8 November 2018, the claimant was given notice of his dismissal by reason of redundancy, terminable on 30 October 2018, until which time he would be placed on gardening leave: he was reminded of his right of appeal.

81. On Thursday 15 November 2018, the claimant appeal by email, in which his stated grounds were that the reason for the redundancy was not genuine and that a proper process had not been followed. On being informed that Bernard Mageean ('BM') had been appointed as chair of the appeal hearing, the claimant sent to FA two emails that same day stating his concern that BM should chair the meeting, something that, of itself, is surprising given that the claimant had already conveyed to a colleague that he considered FA to be *"part of the issue"* (page 381).

82. The next day, in a third and longer email, the claimant criticised a number of people: purporting to speak for the rest of his team he set out a dislike for BM's conduct; he said he believed FA to belong to a *"circle of trust"* that he described as the *"friends of Brendan*", and he criticised the 'senior group', including swingeing but unparticularised criticism about NS. He volunteered no details, instead choosing to invite FA to seek further information from him about his beliefs. He stated that he believed that his reasoning *"some issues around compliance… was the start of my decline in this business and the beginning of me being pushed out".*

83. When asked to specify concerns about BM the claimant summarised his core concern as being based the report by a member of his team that BM had behaved in a verbally aggressive manner during a grievance meeting, a report which he not maintained must not only be accurate but from which he extrapolated that his own ability to have a fair appeal hearing would been compromised. That the claimant was unable to revisit his assessment, even in light of AB's evidence, under oath, that he had been present at that meeting and that BM had not behaved in the manner suggested, was a significant factor in my assessment of the reliability of his evidence.

84. I accept the respondent's evidence that BM was a statutory director of, and a senior employee of PIB, that his role is wholly unrelated to that of the Professions division and that he had not, hitherto, had any involvement in the redundancy consultation process; indeed, the claimant did not suggest otherwise. I find that BM was a suitable chair for the claimant's appeal hearing.

85. FA responded to the claimant, rejecting the claimant's criticisms of BM but stating that the claimant would *"be invited to bring a colleague to the meeting which will ensure a fair and equitable process and the matter will be observed by a senior member of my team".*

86. In fact, the only senior member her team that had been involved in the process throughout, was AB, who is the only person in this case that the claimant does not criticise as being part of a conspiracy to *'push him out'.* AB continued to liaise with the claimant about the appeal hearing.

87. The claimant was invited, by letter dated Friday 16 November 2018, to an appeal meeting on Thursday 22 November 2018. He was asked to confirm his attendance by close of business on Tuesday 20 November. He did not. On Wednesday 21 November 2018 he emailed stating *"Andy morning, I struggling to get someone to accompany me to Leeds on Friday. Will keep you posted."* Andrew Baxter responded soon thereafter pointing out to the claimant this hearing was scheduled the next day, being a Thursday and not Friday. I accept that that was a genuine error on the claimant's part. The claimant confirmed in his oral evidence, that despite the appearance in the email exchanges that he had an issue with the location of the hearing being in Leeds, that was not any part of his complaint.

88. AB asked for confirmation before the end of the day as to whether he was attending the meeting the next day. The claimant responded *"I'll try. It's simply that I am relying on others to make the trip to Leeds and I am subject to their diaries".*

89. AB responded by stating that he felt that the claimant had been given sufficient time to make arrangements for someone to accompany him and again asked him to confirm whether he was attending the appeal meeting the next day, or whether he was asking for it be re-scheduled.

90. At 7am on Thursday 22 November 2018, that is to say, three hours before the appeal meeting was due to commence, the claimant emailed AB stating: *"if you look at the average person's diary in a fast moving business like this, you will find that they are working three weeks ahead".* He said that few days' notice to get somebody to accompany him to Leeds was insufficient, stating that he *"could have no comfort"* in attending on his own. AB responded by thanking the claimant for confirming he would not be attending the meeting that day, and confirming that it would not be rescheduled.

91. In an internal email dated 14 November 2018, the hiring manager for the Operations Manager role summarised the reasons for rejecting the claimant's application were threefold; firstly, the salary was significantly lower than that which claimant was currently receiving, secondly that somebody with a proven track record of operational excellence was required and, *"having discussed with colleagues it would seem that this is not Jon strength",* and third was a key requirement was somebody who could demonstrate a proven track record of individual performance management and this did not *"come across in the CV".* The reference to 'having spoken to colleagues' was a reference, at least in part, to the hiring manager having asked FA about the claimant's operational and individual

performance who gave her opinion. The claimant's evidence in relation to this role was: *"I'm not saying I'm suitable for it, I just wanted to discuss it with someone".*

92. Also towards the end of November 2018, PE indicated his desire to leave employment, his two-year obligation to remain in employment at an end. After termination of his contract in April 2019, he was re-engaged by the respondent as a consultant for a further 3 months. There is a central dispute between the parties as to what role PE carried on after the claimant's dismissal.

93. That dispute, in essence, is whether the respondent offered to PE an interim role, taking over the solicitors' indemnity insurance work only, for an interim period until implementation of the restructure in early 2019, or whether, as PE states, he was asked to take over, and did take over all aspects of the claimant's role – that is to say each team, in every office, across every specialisation, save for the independent financial advisor work in London and the 'Frankland surveyors team'.

94. I prefer that of the respondent. I do so for the following reasons:
    a. The respondent's case has a logic to it; PE was very successful carrying out work related to solicitors' professional indemnity and the respondent's plan required only a temporary solution before implementation of the restructure;
    b. NS designed the restructure (at least that part of it that is relevant to this case). I was provide with no reason as to why:
        i. he would immediately undermine his own work;
        ii. he would mislead the CEO BMcM;
        iii. he would mislead the Executive Board;
    c. On PE's own evidence, SP expressed words that indicate 'they' knew that PE could not be simply slotted into the claimant's role. Had it been the claimant's case that SP was acting on a frolic of his own, that would be one thing, but it was not: the claimant's case requires complicity on the part of NS, and for the reasons above, I do not accept any such suggestion;
    d. PE in his oral evidence accepted that he did not perform all of the claimants' role (immediately before stating that he did perform all of the role);
    e. I find the various conversations that would have taken place, together with PE's nature (*'enthusiastic and frustrated in equal measure'*) is likely to have, as Ms McColgan puts it, coloured his memory;
    f. On the eve of the claimant's 'at risk' meeting, PE telephoned the claimant to warn him that 'something' was happening. On the face of page 260, and I find, PE was far more involved in detailed discussions about the tasks associated with the claimant's role than what he shared with the claimant that evening. I appreciate that he may have been acting out of a sense of loyalty - or indeed to pre-empt any questions from the claimant, it being the respondent's case that the NS had called more people in the claimant's team than just PE - but it follows that I cannot be confident now that he is not revisiting events in his own mind in a genuine but misplaced effort to assist the claimant now.

95. In early 2019, the respondent implemented the restructure approved by the Board in July 2018.

The Law

96. In determining whether unfair dismissal, it is for the employer to show the reason for the dismissal is a potentially fair reason within s.98 ERA. A potentially fair reason includes one which relates to redundancy s.98(1)(b) ERA.

97. The definition of redundancy in section 139(1)(b) of the Employment Rights Act provides as follows: *"(b) the fact that the requirements of that business -(i) for employees to carry out work of a particular kind, or(ii) 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."*

98. When considering whether redundancy is the reason for the dismissal, the proper approach is to first whether there exists one or other of the various states of economic affairs mentioned in the section, for example whether the requirements of the business for employees to carry out work of a particular kind have ceased or diminished. The second question, which is one of causation, is whether the dismissal is wholly or mainly attributable to that state of affairs. Safeway Stores v Burrell [1997] IRLR 200, upheld by the CA in Murray v Foyle Meats [2000] 1 AC 51.

99. Fairness of a dismissal is to be measured against the requirements at s.98(4) ERA 29916.

100. In Williams v Compair Maxam Ltd [1982] ICR 156 the Employment Appeal Tribunal laid down the matters which a reasonable employer might be expected to consider in making redundancy dismissals:
   a. Whether the selection criteria were objectively chosen and fairly applied;
   b. Whether the employees were given as much warning as possible and consulted about the redundancy;
   c. Whether, if there was a union, the union's view was sought;
   d. Whether any alternative work was available.

101. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it, where the employer has genuinely applied his mind to the problem citing with approval Taymech Ltd v Ryan [1994] UKEAT/663/94.

102. In R v British Coal Corporation [1994] IRLR 72, the Divisional Court endorsed the test proposed by Hodgson J in Gwent County Council ex parte Bryant [1988] Crown Office Digest 19 HC, namely that fair consultation means
   a. consultation when the proposals are still at a formative stage
   b. adequate information on which to respond
   c. adequate time in which to respond
   d. conscientious consideration by an authority of the response to consultation.

103. In Polkey v AE Dayton Services [1988] ICR 142 it was held that an employer will normally not act reasonably unless he warns and consults employees affected by a potential redundancy and takes steps as may be reasonable to avoid or minimise redundancy within the organisation. However, in determining the question of reasonableness, it is not for the Tribunal to impose its standards and decide whether the employer should have behaved differently. Instead it has to ask whether the dismissal lay within the range of conduct which a reasonable employer could have adopted. The Tribunal must also bear in mind that a failure to act in accordance with one or more of the principles set out in Williams v Compair Maxam will not necessarily lead to the conclusion that the dismissal was unfair: it must ask itself, the hypothetical question as to whether, on the balance of probabilities, the result would have been any different had the appropriate procedural steps been taken.

Conclusions

Reason for the Dismissal

104. The definition of redundancy requires the identification of 'work particular kind'. It is only when there is a reduction or cessation for the need of employees to do that work in particular kind the redundancy situation arises at all.

105. The work that the claimant did, and that he was engaged to do: in the absence of submission to the contrary, I find that Head of Professions that is the 'work of a particular kind'. That work involved being responsible for personnel and budgets across the team nationwide in respect of professional indemnity insurance for professions such as solicitors, independent financial advisers, surveyors, accountants and other professions.

106. I find that there was a cessation of the requirement of the respondent for employees to do work of that particular kind was expected to cease in accordance with the definition of s.139(1)(b)(i) ERA 1996. I do so because the respondent intended to implement a restructure of the business, by mirroring that operated by Lorica, of a flattened structure whereby reporting lines would be based on a regional basis, rather than arranged by specialism.

107. The next question is whether the dismissal was wholly or mainly attributable to the situation above. The burden of establishing as much, on the balance of probabilities, rests upon the respondent. For his part, the claimant contends that the reason for the dismissal was not redundancy but a sham, essentially that the restructure effected on consequence of the acquisition of Lorica served as a ruse to conceal the real reason for his dismissal, namely that the respondent was intent on *"pushing him out".*

108. I find that the reason for the dismissal was redundancy, as the respondent contends: I set out my rationale below.

109. The respondent's business model is to grow by acquisition. That is how the claimant came to be employed by the respondent and that is how PE came to be employed by the respondent. It follows as a matter of logic that once the businesses acquired there will need to be some steps taken to integrate the acquired business, however modest or ambitious; some attempts may be less successful (PBI/QPI) than others. In the case of Lorica, whose size was similar, if not slightly larger than that of the respondent, it seems entirely unremarkable that one potential method of integration would be to adopt the regional division of work as already existed in Lorica. The necessary effect of doing so would be to render unnecessary those heads of division whose responsibilities were spread across the country. Whilst, of course, it is no part of the Tribunal's remit to consider whether that decision to implement the Lorica model was a commercially good decision, or a even disastrous one, given that the claimant does not seek to suggest that the decision to adopt the Lorica model was in any way questionable, paints a strong picture that that is the restructure is the reason why he, as a divisional head, was dismissed.

110. The respondent's concerns about the claimant's capability in his role was not far from its mind; I have heard no evidence to suggest it, and not redundancy, was any reason at all, much less the principal reason, for the claimant's dismissal.

111. In finding for the respondent on this issue, I have considered the claimant's case is that there was a predetermined plan, or as the claimant says, a conspiracy to oust him. Doing the best I can, I understand the claimant's case to be that the restructure simply formed the backdrop; it was a ruse, an opportunity to dismiss him and replace him with PE. That conspiracy consisted of NS, SP, BMcM and FA (but not AB).

112. I reject the claimant's claim in this regard for the following reasons.
   a. The claimant in his evidence accepted that his specialism was not treated any differently to the employees in a similar position;
   b. On the claimant's own case, he was performing capably;
   c. In respect of NS, the claimant relies on two instances in May 2018, both of which I have found to be completely anodyne in nature, and both of which, significantly, post-

date the Lorica acquisition. However, his case ignores the fact that it was NS who gave him the 2017 year-end review, of which he is proud of. Furthermore, the claim of bad faith on the part of NS ignores the fact that it was NS who was had made a note reflecting the possibility of creating a managing director role for the claimant, and it was NS who was responsible for drafting a proposal that potentially kept the claimant in employment at the Birmingham branch: even assuming SP wished to be rid of the claimant, his efforts were lost on NS, who drafted the proposal;

d. That NS's proposal was not vetoed by BMcM would suggest that he, too, had no design to oust the claimant.
e. The executive board, of which FA is a member, approved the plan in which the claimant was identified as a possible contender the Birmingham branch manager role: that does not suggest that FA harboured any ill will on the part of FA either.
f. That FA/AB/NS was involved in an exchange about the cost of the claimant's potential redundancy, is not remotely unusual; what is somewhat surprising is that the claimant who on his own account has conducted 20-25 redundancy exercises and oversaw the closure of the Manchester and Bristol offices earlier that same year in a costs-saving exercise, seeks to attach evidential significance to a obtaining a quote of the cost of a redundancy;
g. The claimant provided no explanation as to why, even if each individual were ill-disposed towards him, they conspired together to oust him;
h. There was no plan to give PE the claimant's role. I have already rejected that, as incorrect, however, in addition the claimant provided no explanation as to why, even if there was a conspiracy to oust him, any of the individuals allegedly involved would choose to mislead the Executive Board as to their plans to replace him with PE.

113. I readily accept that the claimant, no doubt together with many employees, would be concerned that the acquisition of such a substantial undertaking such as Lorica, there were likely to be changes afoot. I have little doubt that in the case of the claimant those concerns – whether he admits them or not - would be heightened by the poor financial health of his division (which even on his case was at least an apparent loss). But there is no evidential basis, whatsoever, for suggesting that there was any bad faith on the part of any person that effected his dismissal.

114. The reason for dismissal was not a sham; I find that the respondent has comfortably discharged the burden of proving that the principal reason for the dismissal was redundancy. It is therefore unnecessary for me to consider whether there was a 'SOSR' reason for the dismissal in the alternative.

Fairness of the dismissal

115. It is said by the claimant that the respondent acted unreasonably in delaying the announcement of the proposed changes to the structure, and consequentially notifying him that his position was at risk of redundancy. The Compair Maxam guidelines suggest

that an employer will seek to give as much warning as possible of impending redundancies so as to enable employees to inform themselves of the relevant facts, consider possible alternative solutions and if necessary, find alternative employment in the undertaking (or elsewhere); the guidelines serve as standards of expected behaviour and are not principles of law.

116. The claimant contends that he should have been warned that he was at risk of redundancy as of 24 July 2018, when the Board approved the plan, or soon thereafter. This was the restructure that would affect several divisions and all the staff in those divisions in one way or another; the decision to delay an announcement with consequential destabilising implications for five weeks until after the staff had returned from summer vacations and be present during the announcement and be able to access advice cannot be said to be unreasonable.

117. As to the delay between early September 2018 and 11 October 2018, the respondent's explanation was that a conscious decision had been made to delay the announcement because the professions division would not only be effected, but that September is the most important month for renewing solicitors indemnity insurance and so, I understand it to be said, the potential destabilising effects of an early announcement would create a negative impact on the business as well as colleagues. I considered why, if it was so important, the potential problem had not been foreseen prior to the proposal to the executive board. However, it seems to me that operationally, that was a sound reason; bearing in mind that the impact of the announcement would not be confined to the claimant personally but would also concern much of his team as to the consequential changes to them, I find that the conscious decision to delay the announcement was not unreasonable. I find that the respondent did adequately warn the claimant.

118. In any event, even if that delay were unreasonable, I would be required, applying the principle in Polkey, to consider whether, on the balance of probability, that delay of approximately five weeks from early September to 11 October 2018 was such that it would render the dismissal unfair; I find that it would not. I do so because there is no evidence before me that suggests that those extra five weeks would have enabled the claimant to make a compelling proposal so as to avoid his post being made redundant or alternatively successfully apply for an alternative role within the respondent so as to avoid dismissal together. Indeed, it seems to me, that the five-week delay from early September to 11 October 2018 meant that the claimant remained in employment longer than he might otherwise have been.

119. I next turned to the question of whether it can be said that to place the claimant in a 'pool of one', rather than to pool him with other employees, can be said to fall outside the band of reasonable responses open to an employer. I find that it was so reasonable. The proposal was to delete from the structure the head of Professions. The claimant contends that he should have been pooled with at least PE, Jason Sellars and Jason Mole; neither

was a head of division and therefore neither was at risk in the new structure. It cannot be said that the failure to pull the claimant with those individuals could be said to be outside the band of reasonable responses. Indeed, it appears to me that the claimant, in suggesting that he should have been pooled with Jason Sellars or Jason Mole, introduces, by the back door, an argument for 'bumping', but that was not an issue before me in this case. For those reasons, I find that this is one such case where it is reasonable for an employer to focus on a single employee.

120. I next the question of consultation. I remind myself of meaning of adequate consultation in British Coal Corporation case. I find that consultation did occur as a formative stage; if adopted, the proposals for the restructure were not due to be implemented until the first quarter of 2019.

121. I find that the claimant did have adequate information on which to respond; on 11 October 2018 the rationale for the restructure was explained to him verbally by NS, and on the same date was set out in writing in the 'at risk' letter and also contained in the question and answer information sheet enclosed with the letter the first consultation meeting. At that first consultation meeting, on 16 October 2018, the claimant told AB that he understood the reason for the restructure. In addition, it has been no part of the claimant's case in his evidence that he either did not understand the rationale for the restructure or that he had ever asked, but information was either withheld or not forthcoming. Insofar as Mr Johnston in his submissions suggests that what information was provided was insufficient, I note that the offer to engage at any stage, outside the formal consultation process, was one that was repeated in the claimant at risk letter, and every letter inviting him to a consultation meeting (of which there were at least four); the claimant did not take up that offer, but I find that it was genuinely there.

122. I find that the claimant had adequate time in which to respond to the proposal. I agree that the respondent's first suggestion that the consultation period commences on 11 October 2018 and concludes on 19 October 2018 appears uncomfortably tight. That said, the proposals were not particularly complicated, and more pertinently, the consultation period ultimately commenced on 11 October 2018 and concluded some three weeks later on 5 November 2018. In the circumstances, and in particular in the absence of any evidence to the contrary, I find that that was an adequate period of time in which the claimant could respond to the proposals.

123. I turn to the requirement that there is a conscientious consideration by an authority of the response to consultation. Mr Johnston invites me to find that, because AB attended the first consultation meeting on 16 October 2018, the whole of the consultation process was lacking. I agree that it would have been far preferable for, as Mr Johnston describes, *"operational line management",* to be present at both consultation meetings, but on the facts of this case that suggestion poses a number of difficulties. The first is that on the claimant's own case both NS and SP would be inappropriate, the latter being significantly

more undesirable than the former. Indeed, of all people involved in this case, AB with the only person that the claimant did not criticise as being a part of any conspiracy, and for that reason on the claimant's own case the presence of AB at the consultation meeting must be eminently reasonable. Second, what is required is 'conscientious consideration by an authority of the response to consultation'. On 16 October 2018, the claimant told AB that he accepted that his role would disappear; he made no comment that could be construed as a proposal. On 25 of October 2018 the claimant email AB with a note purporting to reflect the contents of the first consultation meeting 16 October 2018, but which was considerably lengthier and, indeed, dated 25 October 2018. In that document, he makes only one comment that could be said to be construed as a proposal and that is an assertion that he could demonstrate there was a *"continuing requirement for a leadership role",* pointing to his belief that PE was occupying his role. That assertion, insofar as it was a proposal at all, was responded to by NS on 6 November 2018, when NS explained to there was a lack of clarity about the precise *"template for Professions going forward"* but that what was clear was that the claimant's role would no longer exist.

124. Mr Johnston, for the claimant, criticises the appeal stage of the process, and contends that the procedure was unfair because of the respondent's 'failure to hold an appeal hearing'. I agree with Mr Johnston's submission that the claimant was putting forward his inability to secure a companion to attend with him as the reason for not attending the appeal hearing that was arranged for him on 22 November 18, although that ignores another central aspect of the claimant's oral evidence, namely that BM was inherently unsuitable as a chair. I find that the appeal process, and indeed, the whole of the redundancy process was reasonably fair. I say that the following reasons.

125. First, I reject the claimant's evidence that it was Chris Price, specifically, that he wanted to accompany him. Whilst that claim appears attractive because Chris price attended the first consultation hearing (which took place by telephone), the claimant accepts that at no stage did he share with AB his desire to bring with him Chris Price to the meeting in Leeds, so as to at least give rise to the possibility that the respondent would assist in that arrangement. He was unable to explain why he did not tell AB of his specific difficulties in relation to Chris Price, and indeed the claimant himself suggested that he was reluctant to bring any of his colleagues to the hearing at all, in significant part for reasons connected with confidentiality/embarrassment. Furthermore, his emails were couched in very general terms, indicating he had no specific companion in mind, for example *"I'm relying on others to take the trip to Leeds"* (page 440) and *"If you look at the average person's diary"* (page 443).

126. Second, I find that the claimant did not, in fact, have any genuine desire to attend an appeal hearing. His reasons for not attending at the time were rarely fully and comprehensibly offered to AB but included: the identity of the chair, a suggestion that he had was not agreeable to the hearing being in Leeds, generally 'struggling to find someone'; slightly more specifically, a difficulty securing someone to accompany him to Leeds (although the location was not an issue in this case); 'the average person's diary'

being committed to work 3 weeks in advance; silence in the face of an explicit request to clarify whether he was seeking an adjournment. For the avoidance of doubt, I reject the claim that colleague's diaries were such that they were unavoidably committed 3 weeks in advance – if that were the case, the claimant would have said as much in his email of 21 November 2018.

127. Third, the claimant is a senior employee and he is articulate. There is a wholesale absence of any evidence on his part of an attempt to constructively engage with AB, who had been without qualification patient and civil to him and with whom he had no issue. In basic terms, consultation is a two-way process, and I find that the did not engage with AB in relation to the appeal, as with the original consultation process, because he ultimately had no meaningful contribution to make and that that frustration manifested itself in acts of delay and deflection.

128. It might be one thing to suggest that the respondent could have been more personal, more yielding or more sensitive to his perception of his wider role in the history of the respondent's business – those general points could be said of many employers in this situation – but that is not the same thing as alleging that it behaved unfairly within the meaning of the Act; it did not. I find that the procedure adopted by the respondent was reasonably fair.

Suitable alternative employment

129. An employer must take reasonable steps to find the claimant suitable alternative employment. That duty does not extend creating a position for a redundant employee. I find that the respondent did take reasonable steps to find the claimant employment; it offered to, and did, send the claimant a list of current vacancies, as well as, repeatedly in writing, offer to be available should he *"have any questions or thoughts to discuss".* It is no part of the claimant's case that information was withheld from him, or that there arose any other vacancies that were suitable for him, other than the Operations Manager (Thistle Underwriting) role.

130. The only role in issue in this case is therefore that of the Operations Manager. There is a dispute between the parties as to whether this amounts to suitable alternative employment. There was a paucity of evidence on this particular point; no job description or person specification was available nor, for that matter, the claimant's own CV: it was against his CV that the claimant's suitability for the post was evidently assessed at the time (page 395). The only documentary evidence I had before me therefore as to what the requirements of the role were, is in the email 14 November 2018, which set out the basis for rejecting the claimant's application.

131. I agree that the suggestion that the significantly lower salary that the Operations Manager role attracted was an indicator of the lack of suitability is not, without more, sustainable; that was a matter for the claimant. The second and third reasons as to why the claimant's application was rejected were the lack of a proven track record for operational excellence and a proven track record of individual performance management. In terms of the latter, there is certainly some evidence in the 2017 review, conducted by NS. As for operational excellence, the only parameter against which it might be possible to identify operational excellence in the evidence before me, is profitability - and the Professions business was failing in that regard, for four years in a row. Indeed, the claimant's suitability for the Operations Manager role, certainly on the very limited evidence before me, can be summarised with NS's own evidence *"you can be a strong leader without running a successful business, I suppose".*

132. In light of the deletion of the claimant's role from the respondent's structure, together with the lack of any suitable alternative roles, the decision to dismiss clearly falls within the band of reasonable responses.

Employment Judge Jeram

Date: 29 May 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE