RM

EMPLOYMENT TRIBUNALS

Claimant: **Mr A. Shidane**

Respondent: **Dahabshiil Money Transfer Services**

Heard at: **East London Hearing Centre (by CVP)**

On: **8 October 2020**

Before: **Employment Judge Massarella**

Representation
Claimant: In person
Respondent: Mr M. Howson (Consultant)

RESERVED JUDGMENT

The judgment of the Tribunal is that: -

1. the Claimant was unfairly dismissed.

REASONS

This has been a remote hearing, which has not been objected to by the parties. The form of remote hearing was V (CVP). A face to face hearing was not held because it was not practicable and all the issues could be determined in a remote hearing.

Background

1. By a claim form presented on 12 July 2020, after an ACAS early conciliation period between 13 May and 30 June 2020, the Claimant, Mr Abdi Karim Shidane, complained of unfair dismissal. In its ET3, the Respondent contended that the dismissal was for redundancy, and denied unfairness.

2. At the hearing, I had a bundle of just over a hundred pages. I heard evidence from the Claimant and from Mr Lamin Bojang (the Respondent's Deputy CEO

and Financial Controller). The Claimant and the Respondent's representative, Mr Howson, both made oral closing submissions.

3. I apologise to the parties for the delay in promulgating this judgment. This was caused by pressure on judicial and administrative resources, and the competing demands of other cases.

Findings of fact

4. The Respondent is an international funds transfer company. The Claimant was employed, from 26 May 2015 to 8 May 2020, in the compliance department.

5. His most recent role was as Senior Compliance Officer and Deputy Money Laundering Reporting Officer ('MLRO'). By letter dated 1 June 2019, he was confirmed in that more senior role. He had been acting up into the role for some time before that formal confirmation.

6. There were six compliance officers working alongside the Claimant; they all reported to the Head of Compliance, Mr Fabian Bennett.

<u>The Respondent's business case for restructure and redundancy</u>

7. In a document dated 9 April 2020, which appears to have been an internal document, created to work through the relevant issues in a systematic fashion, the Respondent recorded a proposal to restructure several departments, including the compliance, customer service, and business development departments, as well as its Birmingham office. The Claimant's position was one of a number of posts identified as being at risk of redundancy. The proposal was to make fewer than twenty redundancies.

8. The document sets out the business reasons for the potential redundancies in some detail, including the following passage:

> 'Dahabshiil is facing ongoing concern threat [*sic*] resulting from significant operating losses over the last three years. The operating losses resulting from declining revenue and high overhead cost during this period. For Dahabshiil to continue to survive into the foreseeable future, urgent action is required to prevent insolvency and closure of the entire entity.
>
> Consequently, the Dahabshiil Board has taken the unprecedented step to restructure the business and return it back to profitability […] The two main objectives of the restructuring are to increase revenue, reduce cost and reposition the business for sustainable growth and development into the foreseeable future.'

9. The document recorded that, from 2017 onwards, the financial position of the company had deteriorated: a loss of £445,884 in 2017; and a loss of £1,313,487 in 2018; at the time, the 2019 accounts were not yet audited, but the Respondent anticipated a further loss.

10. The document set out the impact on employees, including that headcount in the compliance department would be reduced from eight to four full-time staff. The eight affected individuals in the compliance department were identified on

a chart. The Respondent considered whether any roles were interchangeable, and concluded that they were not. They also considered whether there were any open vacancies within the organisation. This document records that the only open vacancies were for the CEO and an HR manager.

11. The overall effect of the proposal was summarised at the end of the document:

> 'The proposed redundancy plan, alongside cost reduction and value for money initiatives, is estimated to reduce our operating expenditure by approximately £750K. This will bring the company back into profitability and stave off the going concern risk.'

12. Before the formal consultation process began, a conversation took place between the Claimant and Mr Bojang, in which Mr Bojang asked the Claimant how many people he thought were necessary to run the compliance department. Mr Bojang had a similar conversation with Mr Bennett.

13. Although the consultation process did not begin until 21 April 2020, the decision to restructure had in fact been made in November 2019, and was supposed to take place in the first three months of 2020. Mr Bojang explained that the timing of the eventual restructure related to a commitment the Respondent made to their auditors to 'do it after the end of the financial year'. Asked why they had not started the consultation process earlier, since they had known about the proposal for many months, Mr Bojang said that there were 'other issues', including 'some changes in management' and the fact that Mr Bojang 'had to go on holiday'. I found those explanations vague unsatisfactory.

<u>The selection criteria</u>

14. There were three selection criteria, against which employees were assessed: cost to the business; qualifications; and sickness absence record.

15. Cost to the business equated to salary. This was given the highest weighting of 60%, because of the importance of reducing overheads. The individual sickness record was given a weighting of 15%, and qualifications and skills a weighting of 25%.

16. Under the salary criterion, the Respondent scored individuals against benchmark pay scales relating to their roles, which they had identified from a website called payscale.com. Thus, salaries were not scored in absolute terms, but in relative terms, by reference to the market rate. The table below illustrates how this was applied in practice. There were two bands in the compliance team, one for compliance officers and one for the head of compliance role.

Cost to DTS - Compliance Officers	score	weighting
Expensive (£33.1 Plus)	1	60%
Fairly Expensive (£30.1 to £33K)	2	60%
Reasonable (£27.1K to £30K)	3	60%
Fairly Reasonable (£24k to £27K)	4	60%
Cost to DTS - Head of Compliance	score	weighting
Expensive (£80.1K plus)	1	60%
Fairly Expensive (£75.1 to £80K)	2	60%
Reasonable (£70.1 to £75K)	3	60%
Fairly Reasonable (£65-70K)	4	60%

17. Mr Bennett was assessed against his own pay scale, to reflect the difference of seniority in his role. The Claimant, however, was assessed against the same pay scale as the compliance officers, even though he was a senior compliance officer, and Deputy MLRO. No account was taken of the fact that his role was different from theirs.

18. At the time of the redundancy process, the Claimant's annual salary was £35,000. He had 21 sickness absence days in 2019. The Claimant had a degree-level qualification. Once the weighting had been applied, he scored 0.6 for cost of the business, 0.15 for sickness absence, and 1.25 for qualifications. He was the lowest-scoring employee.

19. The Head of Compliance was also selected for redundancy, along with two compliance officers.

Collective consultation meeting

20. Mr Bojang chaired a group consultation conference call on 21 April 2020 with those at risk, including the Claimant. He announced the proposed restructure and set out the redundancy process that would be followed. He notified those employees who were at risk of redundancy on the basis of the scoring, which had already been conducted.

Individual consultation meetings

21. Mr Bojang held an individual consultation meeting with the Claimant on 24 April 2020. The notes record a brief exchange. The Claimant asked whether there was a redundancy policy; Mr Bojang replied that there was not because the redundancy exercise 'was guided by the applicable legislation'. The Claimant is recorded as indicating that he had 'no suggestion of any alternative to the redundancy exercise'.

22. On 29 April 2020, Mr Bojang sent the Claimant a copy of his scores. On the same day, he held a further consultation meeting with the Claimant. At that meeting, there was a discussion as to how the Claimant's qualifications were factored into the scoring; the Claimant observed that his sickness record appeared to be a little high; he also questioned the application of the 'cost of the business' criterion. Mr Bojang observed that the criterion:

> 'is a reflection of relative importance of cost in the business restructuring decision and therefore considered reasonable and objective, and were reviewed by our HR advisers, Peninsula.'

23. On 30 April 2020, Mr Bojang held a third and final consultation meeting with the Claimant, at which he confirmed that the Claimant would be made redundant, and set out the payments which the Claimant was entitled to receive.

Alternative employment

24. The Claimant raised the issue of alternative employment during the consultation process. He was told that there was no alternative employment to offer him, given the scale of the redundancies being made across departments and locations.

25. He also raised the issue of furlough. The Respondent's view was that the furlough scheme was not appropriate, as it was a temporary measure in response to the pandemic; the Respondent's financial issues preceded the pandemic, and were long-term.

The dismissal

26. The decision to dismiss the Claimant was confirmed by Mr Bojang in an email of 30 April 2020. A formal letter of redundancy was sent to the Claimant, dated 6 May 2020. The letter expressly refers to his right to appeal against the decision.

27. The Claimant was paid in lieu of notice, and received a statutory redundancy payment.

Appeal against dismissal

28. The Claimant had already indicated his intention to appeal, by way of an email dated 1 May 2020, in which he commented on the brevity of the consultation period, and the absence of a redundancy policy. He repeated his intention to appeal in an email dated 6 May 2020: in that email he alleged bias and unfairness, and threatened legal action.

29. The Claimant chased the appeal on 16 May 2020, and was informed that it would be conducted by Mr Abdulwahab Osman, a non-executive board member. Mr Osman had not previously been involved in the redundancy process. On 22 May 2020, Mr Osman wrote to the Claimant, informing him that he would hear his appeal by video conference on 26 May 2020, and asking him to be more precise about his grounds of appeal.

30. The Claimant clarified his appeal in an email of 25 May 2020: among other things, he contended that the selection criteria were unfair; that the consultation period was too short; that no evidence had been provided of his sickness absence record; that the Respondent had not exhausted other options; that the selection was biased; and that no HR support was provided to employees.

31. The appeal hearing took place on 26 May 2020, during which the Claimant complained (among other things) that 'there should have been a separate

group based on his role as Deputy MLRO, which would have given him a better score'. He complained again about the brevity of the consultation period.

32. Mr Osman set out his reasons for dismissing the appeal in a report.

The appointment of the compliance manager

33. The Head of Compliance was also made redundant. His employment terminated later than the Claimant's, on 30 September 2020. Mr Bojang explained that senior management asked him to work until then to do a handover. It emerged in cross-examination of Mr Bojang that that handover was to an individual who had been appointed to a new role of Compliance Manager. The role had been advertised internally among the four compliance officers, who had been successful in the redundancy selection exercise. Mr Abdi Fatah Hussain had been appointed, on a salary of around £43,000 during his probation period of three months, increasing then to £45,000. Mr Hussain was also appointed to the role of MLRO.

34. In response to questions from the Tribunal, Mr Bojang stated that, before the consultation process started in April, there was a proposed new structure in place, which included this new role of Compliance Manager. An organogram was produced at that time. It was only shared with the Respondents HR advisers, and not with the affected employees, including the Claimant.

35. Asked why the Claimant was not given the opportunity to make representations that he should be considered for that role, Mr Bojang replied:

> 'what we decided we were going to do was to make that job for everyone to apply for, rather than just give it to someone […] The first thing to do was to ask staff members who made it through the selection process to apply. That came afterwards'.

36. The Claimant had no knowledge that this process would occur, nor that Mr Hussain would be appointed to the role, even though Mr Hussain had been his junior in the previous structure.

The law

Unfair dismissal

Redundancy

37. S.94 of the Employment Right Act 1996 ('ERA') provides that an employee with sufficient qualifying service has the right not to be unfairly dismissed by his employer.

38. S.98 ERA provides so far as relevant:

> **(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –**
>
> **(a) the reason (or, if more than one, the principal reason) for the dismissal, and**

> **(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.**
>
> **(2) A reason falls within this subsection if it—**
>
> **…**
>
> **(c) is that the employee is redundant …**
>
> **…**
>
> **(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –**
>
> **(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and**
>
> **(b) shall be determined in accordance with equity and the substantial merits of the case.**

39. A redundancy situation is defined by s.139 ERA.

> **(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—**
>
> **(a) the fact that his employer has ceased or intends to cease—**
>
> **(i) to carry on the business for the purposes of which the employee was employed by him, or**
>
> **(ii) to carry on that business in the place where the employee was so employed, or**
>
> **(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.**

40. An employee may argue that a dismissal for redundancy was unfair either because redundancy was not the real reason; or because, although a redundancy situation existed (and the employee was not selected for an automatically unfair reason), the dismissal was nevertheless unreasonable under S.98(4) ERA.

41. It is the requirement for employees to do work of a particular kind which is significant. The fact that the work is constant, or even increasing, is irrelevant; if fewer employees are needed to do work of a particular kind, there is a redundancy situation (*McCrea v Cullen and Davison Ltd* [1988] IRLR 30). Thus, a redundancy situation will arise where an employer reorganises and redistributes the work so that it can be done by fewer employees. It is not for Tribunals to investigate the commercial reasons behind a redundancy situation (*Hollister v National Farmers' Union* [1979] ICR 542).

42. In many redundancy dismissals, the starting-point will be the familiar guidance in *Williams v Compair Maxam Ltd* [1982] IRLR 83 EAT (at para 18 onwards).

> **'19. In law therefore the question we have to decide is whether a reasonable Tribunal could have reached the conclusion that the dismissal of the applicants in this case lay within the range of conduct which a reasonable employer could have adopted. It is accordingly necessary to try to set down in very general terms what a properly instructed Industrial Tribunal would know to be the principles which, in current industrial practice, a reasonable employer would be expected to adopt […] there is a generally accepted view in industrial relations that, in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:**
>
> > **1. The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.**
> >
> > **2. The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.**
> >
> > **3. Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.**
> >
> > **4. The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.**
> >
> > **5. The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.**
>
> **The lay members stress that not all these factors are present in every case since circumstances may prevent one or more of them being given effect to. But the lay members would expect these principles to be departed from only where some good reason is shown to justify such departure. The basic approach is that, in the unfortunate circumstances that necessarily attend redundancies, as much as is reasonably possible should be done to mitigate the impact on the work force and to satisfy them that the selection has been made fairly and not on the basis of personal whim.'**

43. Employers have a great deal of flexibility in defining the pool from which they will select employees for dismissal. In *Thomas & Betts Manufacturing Ltd v Harding* [1980] IRLR 255 it was held that employers need only show that they have applied their minds to the problem and acted from genuine motives.

44. 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.

45. The Tribunal must judge the question of redundancy selection objectively by asking whether the system and its application fell within the range of fairness and reason, regardless of whether the Tribunal would have chosen such a system or applied it in that way themselves; see *British Aerospace v Green* [1995] IRLR 433.

46. In *Morgan v Welsh Rugby Union* [2011] IRLR 376 the EAT held (at para 30) that the guidance provided in *Williams* may not be of assistance where an employer has to appoint to new roles after a reorganisation.

> **'Where an employer has to decide which employees from a pool of existing employees are to be made redundant, the criteria will reflect a known job, performed by known employees over a period. Where, however, an employer has to appoint to new roles after a re-organisation, the employer's decision must of necessity be forward-looking. It is likely to centre upon an assessment of the ability of the individual to perform in the new role. Thus, for example, whereas *Williams*-type selection will involve consultation and meeting, appointment to a new role is likely to involve, as it did here, something much more like an interview process. These considerations may well apply with particular force where the new role is at a high level and where it involves promotion.'**

Polkey

47. Where a Tribunal finds that a dismissal was unfair, it must go on to consider the chance that the employment would have terminated in any event, had there been no unfairness (the *Polkey* issue).

48. In *Hill v Governing Body of Great Tey Primary School* [2013] IRLR 274 the EAT (Langstaff P presiding) noted that a *Polkey* reduction has the following features:

> **'First, the assessment of it is predictive: could the employer fairly have dismissed and, if so, what were the chances that the employer would have done so? The chances may be at the extreme (certainty that it would have dismissed, or certainty it would not) though more usually will fall somewhere on a spectrum between the two extremes. This is to recognise the uncertainties. A Tribunal is not called upon to decide the question on balance. It is not answering the question what it would have done if it were the employer: it is assessing the chances of what another person (the actual employer would have done) … The Tribunal has to consider not a hypothetical fair employer, but has to assess the actions of the employer who is before the Tribunal, on the assumption that the employer would this time have acted fairly though it did not do so beforehand.'**

Conclusions

What was the sole or principal reason for the dismissal? Was it a potentially fair reason?

49. The reason for the Claimant's dismissal was redundancy: there was a diminution in the Respondent's requirement for employees to carry out work in the compliance department. The Respondent planned to reorganise and redistribute the work so that it could be done by fewer employees. The Claimant's dismissal was wholly attributable to that state of affairs.

50. It is not for the Tribunal to investigate the commercial reasons behind that decision. Nonetheless, I am satisfied from the evidence that I heard that the Respondent was in economic difficulties, and needed to reduce the overall headcount as part of a process of reducing costs. There were also reductions to other departments.

Did the employer seek to give as much warning as possible of impending redundancies, so as to enable those affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere?

51. A reasonable employer will seek to give as much warning as possible of impending redundancies, so as to enable those affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.

52. The Respondent did not do that. For reasons which were not explained to my satisfaction, even though it had known about the proposed restructure since the previous year, it delayed the consultation process until the last possible moment, and then initiated a procedure which lasted only nine days. Mr Howson valiantly argued that the Claimant had had 'informal notice', of the exercise, because of the private conversations he had had with Mr Bojang. I reject that submission, in part because there was no indication that the Claimant realised, when he was having those discussions, that his own job might be at risk. In my judgment, no reasonable employer would have given the affected employees so little notice of their potential redundancy, giving them the bare minimum of time to engage in the steps identified above, including finding alternative employment.

The pool for selection

53. I am satisfied that the Respondent turned its mind to the question of the appropriate pool, and that its decision to include all eight members of the compliance team fell within the band of reasonable responses.

Was the selection made fairly in accordance with the criteria adopted

54. Turning to the application of the selection criterion, the Respondent was entitled to use the broad criteria they adopted: they were objective. As for the 'cost to the business criterion', it relates directly to the overall purpose of reducing overheads. However, an issue arises as to whether that criterion was then applied fairly.

55. The Respondent purported to take a nuanced approach to scoring against that criterion: it did not simply take the salary of all the individuals, and assign low marks to high salaries and high marks to low salaries. Rather, it introduced an additional element of benchmarking salaries against the market rate for the role in question. For that reason, it applied the criterion differently to the Head of the Compliance team, from the way it applied it to the compliance officers. There was a sound rationale for that, indeed it was arguably a fairer way of doing it.

56. However, in my judgment, the Respondent did not then apply that underlying principle consistently in practice. It assessed the Claimant against the same benchmark as the compliance officers, even though his role (both contractually and practically) was different from, and more senior to, theirs. Because the Claimant's salary was high by reference to the benchmark for an ordinary compliance officer, he scored the lowest possible mark. Logically, he would have scored higher, had he been scored against a higher benchmark appropriate to his more senior role. The Claimant contends that his salary was towards the bottom end of the range of salaries for people in that role, or comparable roles, which he says was £45,000.

57. By acting as it did, the Respondent applied a principle it had devised for itself (that employees' salaries should be assessed by reference to the market rate for the role they performed) to compliance officers and to the Head of Compliance, but not to the Claimant. There was a fundamental inconsistency in its approach and, as a result, the scoring of the Claimant was inherently unfair. No reasonable employer would have allowed such an obvious flaw in the process to stand, and I conclude that the Respondent acted outside the band of reasonable responses in this respect.

Did the employer seek to see whether instead of dismissing an employee he could offer him alternative employment?

58. There was also a very significant omission in the consultation process, which goes to the question of the availability of alternative employment. The Respondent knew when it began to consult that it would be appointing someone from within the pool to a new role of Compliance Manager. To that extent, this was not only redundancy exercise, it was also a restructuring exercise. That was plainly a permissible proposal: there would need to be some form of leadership of the streamlined team.

59. However, the Respondent did not inform the Claimant of this proposal in the course of the consultation process. Indeed, I conclude that it deliberately withheld the information. Whether it informed any of the other affected employees, I do not know. In any event the effect of this was that the Claimant was deprived of the opportunity to make representations in respect of this new role.

60. The Claimant confirmed in his evidence that he would have asked to be considered for this role, if he had known about it at the time. He might also have made representations that the selection process for that role ought to be conducted in a different way, having regard to the fact that there was going to be a more senior role available, at a salary higher than that of the compliance officers. He might, for instance, have proposed that there ought to be competitive interviews for that role. Because he did not know about it, he was deprived of the opportunity to make those representations.

61. The Respondent did not save any money by appointing Mr Hussain as Compliance Manager in preference to the Claimant: his salary in the new role was higher than the Claimant's been before the restructure. Mr Bojang confirmed that, if the Claimant had been appointed to that role, he would have been paid the same salary as was awarded to Mr Hussain.

62. Mr Howson's submission was that the Respondent acted reasonably by approaching the process in a two-step fashion: first, it 'cleared the decks' by reducing the overall headcount; then it went on to make an appointment to the more senior role from the remaining for individuals. I reject that submission. If the Respondent had gone through the process of 'clearing the decks', and only then realised that it still needed someone in a managerial position within the compliance department, the Respondent's submission might have had more force. However, what happened here was very different: the Respondent deliberately withheld from the Claimant the fact that it always planned to appoint someone to a managerial role, a role to which he might as deputy MLRO feel he had some claim, as part of the same restructuring exercise. No reasonable employer would have acted in such a deliberately misleading way.

By the objective standards of the hypothetical reasonable employer, did the decision to dismiss fall to dismiss the Claimant fall within the band of reasonable responses which a reasonable employer might have adopted in response to the misconduct?

63. For these reasons, singly and cumulatively, I conclude that the Respondent's conduct in dismissing the Claimant for redundancy lay outside the range of conduct a reasonable employer could have adopted, and the Claimant's dismissal was unfair.

Polkey

64. The next question is: what would have happened, had there been no unfairness. Mr Howson submitted that at least some of these defects would have made no difference to the eventual outcome, and that the Claimant would definitely have been dismissed. After some discussion, Mr Howson's final position was that, if I was unable to make a positive finding that, if the unfairness had been cured, it would not have made any difference to the eventual outcome, then I would need to hear further evidence and submissions, in order to decide the *Polkey* question.

65. I do not consider that I can make any such positive finding, without hearing further evidence and submissions. As for the salary criterion, if the Claimant is right and, by reference to the appropriate payscale for his more senior role, his salary were to be assessed as 'fairly reasonable', he would have scored the maximum 4 against that criterion which, weighted at 60%, would produce a score of 2.4. Added to his other scores, this would give a total of 3.8, which would have placed him second highest, and he would have avoided redundancy. By contrast, if his salary were assessed as 'reasonable', he would have scored 3 against the criterion; weighted at 60% this would produce a score of 1.8; added to his other scores, it would produce a total of 3.2, which would have left him still in the bottom four, and at risk of redundancy, subject to the other issues I have raised in relation to the Compliance Manager role.

66. Consequently, I will hear evidence as to how the Claimant's salary would have been scored, had he been benchmarked against the market rate for a senior compliance officer/MLRO (or the closest equivalent). I will also hear evidence as to what the chance was of the Claimant being appointed to the Compliance Manager role, had he been aware of it. That will involve a comparison between him and the individual who was appointed to the role.

Remedy

67. There will be a remedy hearing to determine the amount of compensation to which the Claimant is entitled. Any *Polkey* argument will be considered at that hearing.

68. If the Claimant wishes to rely on evidence relating to the pay scale against which he contends he ought to have been assessed, and the comparison between him and Mr Fatah, the parties must both produce evidence relevant to those issues. When I list the remedy hearing, I will give orders for disclosure, the preparation of a supplementary bundle, and supplementary statements, if appropriate.

69. By no later than 21 days from the date on which this judgment is sent to the parties, they shall provide their dates to avoid for a one-day remedy hearing (by CVP) in the six months from March 2021 onwards, which is realistically the earliest it might be listed.

70. The hearing will then be listed, and directions given. If the parties consider that one day is not sufficient, they should explain why when providing their dates to avoid.

71. If the parties are able to resolve the question of compensation by agreement, they must notify the Tribunal as soon as possible.

Employment Judge Massarella

7 January 2021