



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms N Hamilton Watson  
**Respondent:** Countrywide Estate Agents  
  
**Heard at:** East London Hearing Centre  
**On:** 10 and 11 December 2020  
  
**Before:** Employment Judge Burgher

## Appearances

**For the Claimant:** Ms N Larbi (Free Representation Unit volunteer)  
**For the Respondent:** Mrs L Quigley (Counsel)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing Cloud Video Platform and was fully remote. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.

## JUDGMENT

1. The Claimant was unfairly dismissed by the Respondent. There was an 85% chance that the Claimant would have been fairly selected for redundancy.
2. A remedy hearing, if necessary, will take place by CVP at 2pm on 23 February 2021.

## REASONS

1. The matter was listed before me to consider the Claimant's claim for unfair dismissal. The Respondent asserts that it dismissed the Claimant by reason of redundancy, a potentially fair reason. If the Respondent establishes redundancy then the Tribunal is required to consider whether the dismissal is fair and reasonable in all

the circumstances have regard to the principles of Williams v Compair Maxam namely whether there was information and consultation about the redundancy fair selection pool and criteria and fair application of the criteria to the selection pool, and whether there was alternative work.

2. At the end of the first day of the hearing, after the Respondent had completed its evidence it submitted a series of documents that it was said the relevant to the assessment tests for the administrator selection that was omitted from the bundle. Ms Larbi did not object to this documentation and was permitted to recall Ms Fletcher to ask questions relating to them.

### **Evidence**

3. The Claimant gave evidence on own behalf.

4. The Respondent called

4.1 Ms Polly Ogden Duffy, formerly regional director now managing director and dismissal officer;

4.2 Ms Laura Fletcher, operation support manager, now PA to managing director; and

4.3 Ms Joanna Wilson, regional director and appeal officer.

5. All witnesses gave evidence by way of affirmation and were subject to cross examination and questions from the Tribunal. The Tribunal was also referred to relevant pages in the bundle consisting of 307 pages.

### **Facts**

6. The Respondent is an unlimited company registered at Companies House. It has a number of subsidiary estate agencies including John D Wood.

7. The Claimant commenced employment with Hamiltons plc, a subsidiary of the Respondent on 17 March 2016 as a corporate receptionist. The Claimant was promoted to the position of front of house and office manager in December 2017.

8. The Claimant had subsequent discussions with Ms Ogden Duffy about whether there would be any alternative roles for progression and development. Ms Ogden Duffy made this known to her staff prior to going on maternity leave in August 2018. Consequently Mr James Waight, acting regional director who was covering for Ms Ogden Duffy, interviewed the Claimant for an opening at a sales administrator role at the John D Wood Branch in Richmond. The Claimant was very interested in this role as she wanted a new challenge for herself.

9. At the interview with Mr Waight the Claimant made it clear that she had no previous experience in the duties and she wanted to feel confident and undertaken the role and whether training would be provided. Mr Waight confirmed that training would be provided. The Claimant was issued with an offer letter for the sales

administrator role on 12 December 2018. The offer letter stated that the Claimant will be required to undergo relevant training as soon as possible on starting the role.

10. The Claimant commenced the sales administrator role on 14 January 2019. She was required to work with three other sales administrators, two of whom were very experienced, namely Tanya Simpson who was acting head of regional administration and Michael Neri senior sales administrator. The other administrator at the time was Annette who was newly appointed.

11. The administrators worked in a small administrative hub about the size of a double bedroom and was located on the first floor of the John D Wood branch in Richmond. Ms Fletcher gave the Claimant training on anti-money-laundering and GDPR and Michael Neri was allocated as her buddy to assist her on day-to-day development in work and processes. It was said that the main training was on the job by virtue of one-to-one discussions relating to tasks. The Claimant stated that Mr Neri was very supportive and helpful but he was under significant work pressure having to deal with what she called the heavy lifting of specific tasks assigned to him by Ms Simpson. The Claimant complained that Ms Simpson did not give her an opportunity to develop into doing more difficult tasks.

12. I accept on the evidence before me that the Claimant was taking some time to develop into the role and that she was making mistakes that inevitably impacted on the confidence necessary for Ms Simpson to be able to assign time sensitive responsibilities. This led Mr Neri to become overburdened and frustrated. I accept that Mr Neri and Ms Simpson relayed their concerns about the workload to Ms Ogden Duffy when she returned from maternity leave in March 2019. I also accept that Ms Simpson relayed concerns to Ms Ogden Duffy about the Claimant's performance, ability to develop and timekeeping. Ms Ogden Duffy stated that the Claimant had a reputation for poor performance albeit that this had not been formally raised with the Claimant.

13. The Claimant asserts that Ms Simpson created a difficult working atmosphere in her treatment of Anette and this made her feel uncomfortable in the interactions with Ms Simpson. However, the claimant did not make any complaint to Ms Simpson or Ms Ogden Duffy about the working environment at the relevant time.

14. Anette resigned from the administration hub in March 2019. Ms Crystal Brown, who was a current employee in another department of the Respondent, was appointed as a new sales administrator in April 2019 to replace Anette.

15. About a week before the end of April 2019 Ms Simpson informed Ms Ogden Duffy that she was intending to resign. Ms Simpson was required to give three months notice. I find that given the frustrations that Mr Neri had communicated to Ms Ogden Duffy about his workload, the fact that there may no longer be a head of administration in view of Ms Simpson's proposed resignation, Ms Ogden Duffy took the opportunity to review the structure of the sales administrative function. Whilst

there may have been a decreasing number of properties instructions and transactions at the time the evidence was that the hub as far as Mr Neri was concerned was under heavy pressure. This pressure could have been resolved by recruiting more effective and efficient members of the administrative team. The administrative hub was responsible the seven offices with seven different managers who had different processes and this also impacted upon effectiveness across the team within the administration and the front office. Having considered the matter Ms Ogden Duffy decided to close the administrative hub.

16. The Claimant was on holiday on Wednesday 1 May 2019. The other administrators of the hub were physically present in the office at Richmond. Ms Ogden Duffy decided to announce the restructure on this day. No explanation was provided as to why the restructure announcement could not have waited until the Claimant returned a week later to ensure all individuals received the information in the same context. The consequence of this was the Claimant whilst on holiday received a text from Miss Ogden Duffy. The Claimant was ill-prepared to deal with the communication that was sent to her whilst she was on holiday and she was suspicious that the three other members of the hub had been provided further information and concerned that the information had come out of the blue she was ill unaccustomed to dealing with any redundancy process and was anxious in this regard.

17. The Claimant was emailed a letter on 1 May 2019 that stated that the purpose of the meeting held that morning was to the administrators that the company believes that a business reorganisation is required to focus resource on specific offices in the regions to deliver consistent standards of administration support. I do not find that this reason provides sufficiently clear explanation to the employees as to why the change is being considered for them to have properly considered matters. Ms Ogden Duffy stated that in the meeting it was proposed to reinstate all administrators back into branches with one line manager each covering two or three offices each rather than working across seven offices. Before me, Ms Ogden Duffy stated that the current hub setup had negatively impacted upon morale across the team and with staff in the front offices who complained about inefficiencies. These could have been matters that we conveyed in the correspondence but was not.

18. Whilst the letter of 1 May 2019 stated that the employees would be given an opportunity to give feedback regarding the proposal with any supporting suggestions no confirmed date for the second meeting was given but all employees were informed that their roles were risk of redundancy.

19. Notwithstanding the proposed consultative nature of the letter of 1 May 2019 Ms Ogden Duffy also emailed all the administrators concerned on 1 May 2019 setting out three positions available in the SW region. She wrote:

*Following our meeting this morning, I am writing to outline the three positions available in the SW region:*

- *Chiswick Administrator covering Chiswick and St Margarets portfolio*
- *Richmond administrator covering Battersea and Richmond portfolio*
- *Southfields administrator covering Southfields, Wimbledon and Wandsworth*

*The portfolios may change in future based on business demand but at present it seems this is the most sensible allocation of portfolios. I am open to discussion on the portfolio allocation if you have ideas to share how this could be worked better.*

*I am available to meet with any of you to discuss any further questions or discuss these positions in more detail. The roles are defined as administrator, senior administrator, Area administrator (similar to ALOCO).*

*All administrators will report into the branch managers of their respective offices.*

*The process to apply for these roles is the following:*

- *Email me to advise which role you are interested in*
- *Admin test and Interview to take place this week or next*

20. There is nothing proposed about this email. I conclude this was reflective of a firm decision that had been made which led those attending in no doubt that the proposal to change the structure had been made. Indeed the reference to interviews administrative tests and interviews to take place this week or next confirms this.

21. The Claimant returned to work on 7 May 2019. The Claimant confirmed that she had thought about the changes whilst on holiday and would like the opportunity to apply for administrative position at one of the offices.

22. Ms Ogden Duffy responded by saying that an interview and an administrative test would be provided and the Claimant should have a look at the Countryside website to see what else the Claimant may wish to apply for. There was no invitation from Ms Ogden Duffy for the Claimant's comments on whether the redundancy should take place at all.

23. The Claimant was invited to take the administrative test and interview on 9 May 2019. Her test commenced at 12:03 and she emailed the response excluding the Excel at 14:01.

24. The administrative test instructions stated:

*You will be given five minutes to read through the assessment prior to starting. There are tasks in Word and Excel, as well as literacy/numeracy, and a speed typing test. You will be given 1 hour to complete the test, if you finish before this time, please tell the invigilator.*

*In order to ensure that your score is as high as possible, if you cannot complete one of the tasks please go onto the next one, you may have time at the end to revisit the tasks you have missed.*

*You are advised to save your work regularly.*

25. The Claimant did not read the instructions and although she said she attempted the first 8 questions of the excel she neither saved them nor submitted them to Ms Fletcher. The Claimant complained that the test had to be undertaken in a busy office in Belgravia and it was difficult for her to concentrate. However, this was the same for all the candidates and they were required to work undertake the test in an environment of similar to that in which they were going to work.

26. The Claimant attended what she thought would have been her interview for an administrative role on 9 May 2019 in a different office the other side of London immediately after her administrative test. However, prior to the interview the Claimant had what was said to be a first consultation of redundancy. The Claimant had no prior notice of this and went through the motions, I find that she was in awe of Ms Ogden Duffy did not wish to rock the boat. She claimed she signed the first consultation meeting notes but I find that the absence of any prior notice of this consultation meeting that she did not have sufficient opportunity to prepare for and reflect upon the questions that she would be asked during that meeting.

27. In the interview for administrative roles that followed the first consultation and the Claimant mentioned that she was having difficulty finding her feet in the sales administrator and Ms Ogden Duffy took this answer into account when assessing who was most suitable for each of the three available roles.

28. On 10 May 2019 Ms Fletcher emailed Ms Ogden Duffy the results of the administrative tests.

28.1 Ms Simpson scored 75% with a typing speed of 45 words per minute. It took her 1 ½ hours to do the test.

28.2 Mr Neri scored 86% with a typing speed of 55 words per minute and it took him just under an hour.

28.3 The Claimant scored 56% with a typing speed of 24 words per minute. It took her two hours to do and it was stated that she did not have time to do the excel section (17 questions). This was not strictly correct and Ms Fletcher did not ask the Claimant whether she had time or not. She assumed this. Before us the Claimant stated that she did the first 8 questions of the excel but did not save or submit them. The Claimant accepted that her typing speed was poor and not acceptable for the role of administrator. She readily accepted she was not a secretary or a typist.

28.4 Ms Brown scored 48%. She was not strong in excel or maths but better in word and literacy. She had a typing speed of 55 words per minute and she did the test in 1 ½ hours.

29. By this stage there was no information given to any of the administrators regarding how they would be selected. On the evidence before me I find that the selection criteria was organic in that that there was a combination of administrative test score, typing speed and interview assessment. However, this was not clearly communicated to the Claimant as part of her redundancy exercise for her to assess why she was selected for redundancy against the others. The Claimant was not provided the outcome of her assessment scores despite being given an indication that this would be done. On the face of it the Claimant had scored better than Ms Brown but her typing speed was far less. No evidence was proffered as to Mr Brown's interview performance.

30. Having considered test score, typing speed and interview performance Ms Ogden Duffy decided that the Claimant should be selected for redundancy. Whether this was a fair application of the selection criteria against the selection pool was could not be objectively assessed as it was Ms Ogden Duffy's decision. Further, Ms Ogden Duffy stated before me that it was known that the Claimant had a reputation for poor performance regarding her timekeeping and her speed. I conclude that Ms Ogden Duffy did took these background matters into account when ultimately deciding between the Claimant and Miss Brown (the two worse scorers).

31. On 14 May 2019 the Claimant's colleagues were informed that they were successful in their new roles. The Claimant was present when they were informed. After this the Claimant received a call from Ms Ogden Duffy stating that she was not successful and that she would be made redundant. The Claimant was invited to attend another meeting.

32. On 15 May 2019 the Claimant had a meeting with Ms Oates, lettings manager from the John Dee Wood branch in Wandsworth, Ms Oates confirmed Ms Ogden Duffy had contacted her to discuss a possible lettings coordinator role with the Claimant. The lettings coordinator role was similar to the role of sales administrator but required a different knowledge base.

33. The Claimant had a meeting with Ms Oates on 16 May 2019 in relation to the role and was informed that she would be notified about the role the following week. Ms Oates did not provide any feedback to the Claimant. However Ms Oates did provide the following feedback to Ms Ogden Duffy on the 17 May 2019.

*Sheena – met her yesterday, you are right she is lovely and I do feel I could train her, but her knowledge of lettings is absolutely zero and my concern is that there are some basics I feel that are required to do this role and I do not feel she would be confident in answering queries from LLs or applicants when*

*we are not in the office, having confidence in producing the paperwork and knowing what is required. I also feel that she may be keen simply due to the position she is in – rather than really wanting the role.*

34. The next meeting between the Claimant and Ms Ogden Duffy took place on 20 May 2019. The Claimant was still waiting feedback from Ms Oates and mentioned that she had an interview and was waiting feedback. Ms Ogden Duffy did not inform the Claimant that Ms Oates had informed her previous week of her concerns about offering the Claimant the lettings coordinator role. The meeting concluded with the Claimant being provided with a further week to seek try and find alternative employment. The Claimant contacted Ms Le Surf, the Respondent's recruitment officer and was informed to check roles on the Respondents website. There were no suitable vacancies on the website that the claimant identified.

35. The Claimant had a final meeting with Ms Ogden Duffy on 23 May 2019. The Claimant was informed that her redundancy was confirmed and she would be placed on gardening leave from 24 May 2019. Her redundancy will be effective from 21 June 2019.

36. By this stage the Claimant was angry and upset and expressed her unhappiness about how she had been treated. The Claimant stated that she was treated like a modern day slave and the environment was not a contented place to work.

37. The Claimant was given a letter dated 29 May 2019 confirming her redundancy setting out her entitlements. The letter in the bundle stated that the Claimant had the right of appeal within seven days. There was evident confusion on the Respondents part as to whether the Claimant was given a period of 7 or 14 days to appeal. Ms Alice Downes employee relations specialist. In evidence, the Claimant maintains she was given 14 days. The Claimant did not appeal within 7 or 14 days. The Claimant appealed on 20 June 2019 and posed a number of questions about the fairness and operation of the redundancy process. The Claimant believed that she had been unfairly treated.

38. The Claimant's redundancy appeal grounds were considered by Ms Wilson, without arranging a meeting. Ms Wilson did not seek clarification from the Claimant about the nature of the matters being raised but she did speak to Ms Ogden Duffy, Ms Simpson, Ms Fletcher, Ms Oates and Ms Le Surf.

39. Miss Wilson issued the appeal outcome to Ms Ogden Duffy for approval and to Ms Downton to advise. The Claimant's criticism that the appeal went to Ms Ogden Duffy for approval is well-founded. It was not reasonable for her to have done so when undertaking an independent appeal. However there was no indication that Ms Wilson changed the letter on the basis that of anything Ms Ogden Duffy said.

40. The Claimant's appeal was refused by email dated 8 July 2019.



## Law and submissions

41. I was assisted by the helpful written and oral submissions submitted by both parties on the facts and law.

42. Section 98 of the Employment Rights Act 1996 (ERA) provides for unfair dismissal.

### **98 General.**

*(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—*

*(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,  
(b) relates to the conduct of the employee,  
(c) is that the employee was redundant, or  
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*

*(3) In subsection (2)(a)—*

*(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and  
(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.*

*(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.*

43. Section 139 ERA defines redundancy as follows:

*(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.

44. In the case of Williams v Compair Maxam Ltd [1982] IRLR 83 Browne-Wilkinson J set out 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 the 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.*

45. In R v Gwent County Council ex-parte Bryant Crown Office (approved in Regina v British Coal Corporation, Ex Parte Price and Others [1994] IRLR 72) it was stated by Glidewell LJ that

*‘It is axiomatic that the process of consultation is not one in which the consultor is obliged to adopt any or all of the views expressed by the person or body whom he is consulting.’ ... ‘Another way of putting the point more shortly is that fair consultation involves giving the body consulted a fair and proper opportunity to understand fully the matters about which it is being consulted, and to express its views on those subjects, with the consultor thereafter considering those views properly and genuinely.’*

## Conclusions

46. Given my findings of fact and the law set out above, my conclusions are as follows.

Potentially fair reason

47. Despite the Claimant’s submissions to the contrary, the Respondent has established that there was a genuine redundancy situation. There was a decision to reduce the number of employees been undertaking sales administrator roles from 4

to 3 and there was a decision to cease the work at the admin hub which was the place they worked.

Fair process

48. When considering whether there was fair and proper consultation I conclude that the removal of the admin hub and the reduction of workers from 4 to 3 was a foregone conclusion. There was no genuine consultation in this regard, there was simply a selection process as to who was going to get one of three available roles.

49. Further, the Claimant was not properly informed about when her consultation meeting would be and I find that she was not expecting to have a consultation meeting on 9 May and went through the motions of that meeting before proceeding to interview questions.

50. The selection process was delphic and unable to be properly scrutinised by the applicant. The combination of admin test score, typing speed and interview performance was never clearly communicated. I am critical of the assessment of the selection criteria against the selection pool. Whilst it cannot be reasonably doubted that Ms Simpson and Mr Neri would not likely to have been selected for redundancy, given their scores and experience, it is clear that had the communication of the criteria been clearly communicated the Claimant would have been able to ascertain why she was selected, provide further information and make appropriate representations challenging the assessments. I therefore conclude that the Claimant was not given a proper opportunity to fully understand the matters about which has been consulted on was not able or equipped within adequate information to raise queries or make suggestions.

51. The Claimant's criticisms of the process in this regard are well placed.

52. In respect of alternative work there was a vacancy of lettings coordinator which was generated by Ms Ogden Duffy. This was considered by Ms Oates who I consider reasonably concluded that the Claimant would not be able to effectively undertake the role. There was poor communication by Ms Oates in failing to notify the Claimant of the outcome of the letting coordinator role. Whilst a trial period in the role may have been a possibility I do not conclude that it was unfair to offer such an opportunity in the context of an employee who had been struggling in the sales administrator role for nearly 5 months by this stage. The Claimant accepted that her typing speed was not acceptable this is unlikely to have progressed quickly.

53. I accept that there was the impression of lack of independence from Ms Wilson in dealing with the appeal however there was no evidence that she was in fact influenced by any comments that MS Ogden Duffy may have related to her. She was cross-examined on this point and denied it.

54. I have concluded that given that there was insufficient consultation on the reasons for redundancy, the selection criteria and a lack of information regarding how that selection criteria was applied. There was also poor communication with the Claimant in respect of the lettings coordinator role. Therefore I concluded that the Claimant was unfairly dismissed by the Respondent and her claim succeeds.

55. I then considered what was likely to have happened that had there been a fair process undertaken, with the Claimant provided a proper opportunity to consider the matters.

56. I concluded that there was an 85% chance that the Claimant would have been fairly selected for redundancy. I make this finding on the basis that the decision to close the hub and/or reduce the number of staff from 4 to 3 would have been unlikely to change given fair consultation. Out of the 4 staff, Ms Simpson and Mr Neri had vastly superior experience and knowledge and would not have been selected. There was an 8% differential between Ms Brown and the Claimant and on the admin score but Ms Brown's typing speed was over twice that of the Claimant. Typing was an essential part of the role.

57. There was insufficient time to complete remedy. However, any compensation award will be reduced by 85%. If compensation cannot be resolved between the parties a remedy hearing will take place a 2pm on 23 February 2021 by CVP.

58. The Claimant is ordered to provide a schedule of loss to the Respondent by 22 January 2021. The Respondent is ordered to send the Claimant a counter schedule of loss by 29 January 2021.

59. The parties are to notify the Tribunal by 5 February 2021 whether the remedy hearing is still required.

**Employment Judge Burgher  
Date: 19 January 2021**