



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms O Akande

**Respondent:** London Borough of Camden

**Heard at:** London Central by Teams **On:** 21, 22, 25 January 2021

**Before:** Employment Judge Walker (sitting alone)

## **Representation**

Claimant: in person

Respondent: Ms Stanley of Counsel

# RESERVED JUDGMENT

**The Claimant's claim for unfair dismissal is unsuccessful and is dismissed**

# REASONS

1 Miss Akande has brought a claim against the London Borough of Camden claiming unfair dismissal arising out of the termination of her employment by the Respondent in May 2019

## **Nature of the Hearing**

2 The hearing was a remote public hearing which was conducted using Microsoft Teams. It was originally intended to take place using Cloud Video Platform but when we did a trial run the day prior to the hearing, the Claimant was unable to get sound on her system. We then tried Microsoft Teams which enabled everyone to be seen and heard. The parties agreed to it being conducted in this way.

3 In accordance with rule 46 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, the Tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. Members of the public who wanted to observe were given a joining link and did attend.

4 The parties and members of the public were able to hear what the Tribunal heard and see the witnesses as seen by the Tribunal. I had a poor connection at the outset but was able to relocate my work station and then commence the proceedings. The Claimant also had some brief connectivity issues but reconnected successfully. For the remainder of the hearing the system worked effectively.

5 The participants were told that it was an offence to record the proceedings.

### **Evidence**

6 The Tribunal heard evidence from Angela Spooner, currently Head of Tenancy Services at the Respondent, Dermott Mullan, currently Landlord Services Manager at the Respondent, Hayley Agbandje, currently an HR Business Advisor for the Respondent, and Fiona McAdoo currently Associated Director of Organisational Development for the Respondent.

7 The Tribunal also heard from the Claimant herself.

8 There was an agreed bundle of documents which was supplemented by additional documents on the second day of the hearing.

9 The Claimant had a hard copy bundle and had printed out the witness statements for herself.

10 The Tribunal ensured that each of the witnesses who were all in different locations had access to the relevant written materials which were unmarked. I am satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.

### **The Amendment Application**

11 In the ET3, the Respondent said that the reason for the Claimant's dismissal was redundancy. In the ET3 there is no specific mention of the potentially fair reason for the dismissal being due to some other substantial reason by virtue of the reorganisation, but the ET3 did state "the Claimant's position became redundant following the Respondent's proposal to significantly change the way in which Landlord services were being delivered within the Council".

12 In August 2020, the Respondent wrote to the Claimant informing her that they would be arguing, in the alternative, that the dismissal was for some other substantial reason due to the reorganisation. The Claimant did not challenge that at the time. At the outset of this hearing, we discussed whether the matter required an amendment. The Respondent's representative submitted that it was not necessary for there to be a formal amendment but if I concluded that was wrong, she argued that this was a simple relabelling exercise. I was referred to the case of Hannan v TNT-IPEC (UK) Ltd [1986] IRLR 165, which was a case where the Tribunal had reached the conclusion that the dismissal was by reason of a reorganisation when this had not been pleaded or argued. Nevertheless, their decision was upheld on appeal.

13 I asked the Respondent to make a formal application for permission for an amendment. The Respondent did so, while maintaining that it considered a formal

amendment was not necessary. The Respondent's application was that when deliberating on the reason for dismissal it was necessary to determine the set of facts applicable. In this case, the facts were that the Claimant's role had been deleted from the old structure and she had not been offered a new role in the changed structure. The Respondent argued that was what was in the dismissing officer's mind and those underlying facts had not changed, so that redundancy was the correct legal label, but nevertheless they were seeking to add the alternative of some other substantial reason, which was a mere re-labelling. The case of Selkent Bus Co v Moore provided that where there was simple re-labelling and it would not cause prejudice, it would usually be allowed. The time limits would not be applicable as the original proceedings had been issued within time limit. As regards the timing and manner of the application, it had been set out in the email in August 2020 notifying the Claimant of this which was in advance of the witness statements and in the circumstances, when looking at the balance of hardship between the parties, since the facts were going to be the same, if the Respondent were prevented from arguing the case of some other substantial reason, it could be extremely harsh whereas the Claimant knew the case she was dealing with and would not suffer any hardship.

14 The Claimant explained that the email that she received in August 2020 did not necessarily make any sense to her and she did not know what it meant. She assumed that, as it was relayed to the Tribunal, she would get some sort of feedback and her main focus was on obtaining the bundle at the time. She did not understand the impact it would have on her position and she had not consented to it.

15 I concluded that the amendment might not be technically necessary in view of the wording in the ET3, but I wanted it considered nonetheless in order to ensure absolute fairness. I was satisfied that the ET3 described a re-organisation leading to dismissal and so the proposed amendment was mere relabelling and should be permitted. I was satisfied that the Claimant was given advance warning of the matter and while I understand she would not necessarily have understood that email from the Respondent, I do not think it changed the evidence that she wanted to give. In practice the facts I need to explore remained the same and this new label did not require a change in the evidence before me, or any new evidence.

16 I recognised that I would need to give some consideration to the background to the change to the reorganisation and whether there was a sound business reason for it, but I did not think that otherwise there was any impact on the parties. I could see that the greater hardship would fall on the Respondent, if I refused to let the Respondent rely on that reason for dismissal whereas I did not think the Claimant would suffer as it was likely that I might have found that reason in any event. As the case of Hannan noted, it would have been open to me to reach the view that the dismissal was due to a reorganisation and was accordingly a dismissal for some other substantial reason and thus potentially fair, without any amendment. Accordingly, the amendment was permitted.

## **Facts**

17 The Claimant was employed by the Respondent from November 2007 until 28 May 2019 when her employment ended. The reason given to the Claimant by the Respondent was redundancy.

### The Claimant's role

18 The Claimant had been a Ward Housing Manager for the Respondent. She had held that role since 23 November 2009. The Ward Housing Manager was responsible for liaising with tenants over various day to day problems. I asked the Claimant to explain her role to me and she gave me some examples of the kind of things she would deal with such as noise or nuisance. She also referred me to a job profile for a Ward Housing manager which was in the bundle. Angela Spooner in her witness statement listed the Claimant's duties in summary as working with community safety and partnership organisations to address anti-social behaviour, work with tenant and resident groups to deliver environmental and community safety projects, act as housing management contact and liaise with other servicers, work closely with ward councillors and directly line manage 4 staff. I note that the job profile in the bundle also refers to overseeing all void management processes from notice of vacation to sign up, but I understand that there was a voids team who did much of that work. The Claimant did not challenge Ms Spooner's description of her role.

19 The Claimant said she was responsible for managing between four and six housing officers although on occasions if she was covering for another member of staff, she might be responsible for twice that many.

### The Previous Structure

20 The Respondent operated a system of teams which dealt with different aspects of the tenancy management, reporting to the Head of Tenancy Services. There were four relevant groups.

20.1 The first group was a group of 9 Ward Housing managers, each of whom was responsible for a team of Housing officers.

20.2 The second group dealt with rent. This was led by a Rent Services Manager who managed 2 Rent Team Leaders. They in turn managed a team each consisting of 10 Rent Service officers.

20.3 The third group dealt with voids which arose when a property was empty.

20.4 A fourth group dealt with support for tenants with specific problems such as mental health issues or financial difficulties.

21 According to Angela Spooner, for the purpose of this review the roles in the old structure were the Ward Housing team (9 Ward Housing Managers and 40 Housing Officers), the Rent team (2 Rent Team Leaders and 19 Rent Service Officers), the Voids team (9 Voids Homes Officers and 1 Voids Co-ordinator), the Floating Support team (consisting of a number of people but covering other areas as well so for these purposes, 1 full time equivalent Floating Support Team Manager with 8 full time equivalent Floating Support Officers) and 1 Performance Support Manager.

The Landlord Services Review Consultation

22 It was accepted by the Claimant and clear from the witness evidence given by Angela Spooner that in 2016 Ms Spooner set up a team working in Kentish town to review the main issues for residents and whether their needs were being met by the existing system. They considered the operation of the existing system and the behaviours it encouraged and trialled different ways of working. The outcome was a decision to restructure in order to deliver a better service to tenants.

23 The problems identified included the fact that each team dealing with tenants would resolve the particular problem if it fell within their area, but otherwise would pass it on to another team responsible. Tenants had to deal with a multiplicity of council officers. Council officers had to spend up to 80 per cent of their time being chased up by residents and other officers or chasing others. Additionally, it appeared that there was a trend under which tenants were suffering increasing numbers of financial problems and mental problems, which exacerbated the levels of rent arrears and indicated growing levels of work in supporting tenants with these issues.

24 Put briefly, the outcome of the review was a proposal to change the system in order to reduce the number of people any tenant would have to deal with as well as providing a service which was focused more on identifying trends and being proactively resolving problems in what was described as a holistic manner. Whereas in the past, the Respondent council had created specialist teams of officers, now they wanted to move to a system of more generalist teams capable of dealing with a variety of problems without passing them to another team. They also wanted to approach resident's problems in a different and more proactive manner. Accordingly, the Respondent commenced consultation with a view to initiating this organisational change.

25 The Respondent produced a paper entitled Landlord Services Review Consultation Paper dated October 2018. This document was issued on 29 October 2018 and explained the problems I have noted and set out a variety of matters including the proposed new service, who was affected by it, a timetable for the process, dates for staff briefings an explanation of why the change was required as well as the proposed new approach and set out details of proposed new roles as well as the selection process that would be followed.

26 The Consultation Paper recorded that the GMB and Unison Trade Union representatives had been presented with a copy of the paper and there was to be consultation with them. It also recorded that there would be arrangements for all staff to have the Consultation paper and associated papers and an email inbox for staff to ask for further information and to give comments on the proposal.

27 The report explained how there were a growing number of vulnerable residents living in their homes and how it was expected that the general population had approximately one in four people experiencing a mental health problem each year. It also referred to the financial pressures following the introduction of Universal Credit. The report referred to the need for staff members to develop the skills and experience to provide a holistic service, pulling in specialist help where necessary, rather than referring on cases. It said that the work the Review had done had proven that early intervention and engagement with a trusted point of contact was important for residents. It also stated this approach helps to stop

cases from escalating and getting stuck as well as helping build a service which was both resident and community resilient.

### The New Proposal

28 The new proposal provided for two Senior Neighbourhood Managers, 8 Neighbourhood Managers and 80 Neighbourhood Officers as well as a few interim Rent and Court team staff which would exist for twelve months and be assessed to see what the need was. The Floating Support resource was also to be integrated within the Neighbourhood teams and staff in the Floating Support team were invited to apply for jobs in the new structure. Effectively the separate Ward Housing team, most of the Rent team and the Voids team, as well as the part of the Floating support team which assisted the other teams, were being abolished as separate teams and integrated into one.

### Job Analysis and Comparison

29 The Consultation paper addressed the question of job matching, assimilation where there was little or no change between the roles in the old and new structure, and ring fencing. Ring fencing was split into two types. The first, where there was little or no change between the roles in the old and new structure but fewer posts and people, and a second type of ring fencing where there was an alternative position. That was detailed as applying where roles in the new structure were not fundamentally the same as the roles in the old structure but were sufficiently similar in nature to be considered a possible suitable alternative. In the event that roles were ringfenced but not fundamentally the same roles, the consultation paper proposed that “employees would be ring fenced for this position and there would be a selection process to assess the suitability of the employee for the post”.

30 The Consultation paper specifically recorded that there was no automatic right for any employee to be appointed to a role. It further stated that in a situation, where the post was not fundamentally the same, the Respondent Council would operate a trial period that would start on the first working day in the position and normally last for three months. The report stated that ring fenced (alternative position) would apply to a number of different roles and including the role of Ward Housing Managers and Rents Team leaders applying for the role of Neighbourhood Manager.

31 Appendix 4 to the Consultation paper was a job matching table which showed that the Respondent considered that the Neighbourhood Manager role was a match for four different roles including the 8 Ward Housing Managers but fell within the concept of ring fenced alternatives which meant there would have to be a selection process. There was no other documentary evidence showing the job matching exercise nor witness evidence explaining the job matching analysis for the Ward Housing Manager role.

32 At this stage there were more staff in scope than there were Neighbourhood Manager posts. In addition to the Ward Housing Managers, there were also 2 rent team leaders, 1 floating support team manager, and 1 performance and support manager. The Senior Neighbourhood Manager was job matched against the 8 Ward Housing Managers and 1 Performance and Support Manager and required restricted competitive selection. The Neighbourhood Officer role was matched

against the Ward Housing Officers, Rent Officers, Floating Support Officers, Void Homes Officers and Senior Voids Home Managers. It was placed as a ring fenced alternative but there were 76 members of staff in scope with 80 new roles. However, this situation changed as there was also a process for expressing interest in voluntary redundancy or early retirement which some staff took.

#### Initial Proposal for Selection for Neighbourhood Manager roles

33 The Consultation paper referred to restricted competitive selection which applied where there were new posts created which were not considered suitable alternative posts for any current post holders and/or there is a significant grade increase of two or more increments. In that event, employees would be given the opportunity to apply for such posts prior to them being advertised in order to retain the employment of affected employees or as an additional way to avoid the number of redundancies within the reorganisation.

34 Employees would be required to participate in a selection process to assess their suitability and the Consultation paper stated there was no automatic right for any employee to be appointed to such a role.

35 The selection process was described as consisting of the following:

- (i) an interview consisting of a number of Camden ways of working questions asked in a face to face setting that will allow an individual to demonstrate how they meet the requirements of the role (as set out in the job capsules and supplementary information) and
- (ii) a scenario based activity to gauge your suitability for the post.

36 The precise arrangements were to be confirmed at a later date when the employees were invited to participate in the selection process.

#### Interview training

37 The Consultation paper went on to address interviews skills training which would be offered to staff. This training was designed to help employees think about the answers to interview questions based on Camden ways of working and scenario based interviews. The session was to help employees think about past behaviours and valuable experiences when structuring their answers as well as the opportunity to try out what they had learned with some mock interview practice at the end of the session.

38 Interview training did take place and on 17 January 2019, the Claimant attended a session, although it was voluntary. It was designed to help staff prepare for their interviews and think about the experiences they had had in relation to the skills and competencies being sought. There was some evidence about this which is not necessary to go into save to say an individual who was not known to the team members present entered the room while the training was ongoing, which unsettled a number of people including the Claimant. Overall, the Claimant was not happy about the training and made some comments about it in the feedback which indicated her discomfort with the process.

## Consultation

39 Consultation took place with the Unions and with staff. Staff concerns were documented. The Ward Housing Managers questions were detailed in a written document. There was a written reply document entitled Landlord Review Post Consultation Feedback and Implementation Report dated 14 January 2019. Following consultation, the proposals were slightly changed. The Union had pushed for all staff to be assimilated into the structure, but this proposal was rejected. However, a change was made. Instead of requiring a selection process for the Neighbourhood Officers, a decision was made to do a management assessment of the relevant staff and those who were assessed capable of doing the job were to be put into for a trial period of 12 weeks during which their performance would be monitored by their Neighbourhood Manager.

40 Angela Spooner had already emailed staff to tell them about this change on 20 December 2018. Her email explained "I have said all along that the proposed Neighbourhood Officer and Management roles are significantly different to the current roles and therefore staff appointed to these roles have to be assessed and provided with a trial period to carry out the new roles. After listening to the views of staff and the Unions, I have decided that those staff in scope of the Neighbourhood Officer role will be required to undergo a management assessment as opposed to being interviewed. All staff appointed to roles following the management assessments will be subject to a 12 week trial period."

## Claimant's query about Management Assessment for the Neighbourhood Manager role

41 The Claimant emailed Angela Spooner (who was leading the change) on 20 December 2018, to ask why this management assessment process could not be applied to the Neighbourhood Managers. The Claimant complains that she did not get a substantive reply. Miss Spooner believes that she did have a telephone conversation with the Claimant, however it is clear that prior to that the Claimant had sent a message and then withdrawn it, amended it and re sent it, leading to a little bit of confusion on the part of Miss Spooner whose response to the Claimant asked to whether it required a reply, given it had been withdrawn. The Claimant's response stated, "I recalled and amended the initial email so this is the amended version." That was the Claimant's way of saying it did require a reply .

42 It is not necessary for me to determine whether or not there was a reply. Clearly it would have been polite to reply and we do not know if that occurred. However, Miss Spooner explained at the appeal hearing her rationale for maintaining the requirement for Neighbourhood Manager role to go through a selection process involving what I would call the recruitment approach. It seems that the possibility of a change to the selection process for other roles had been considered and rejected, so nothing would have changed as a result of the Claimant's enquiry. The reply to a question about the Union's position being assimilation for all staff was replied to in the consultation feedback with a comment that after consultation it had been decided to use management assessment for the Neighbourhood Officers position. In the same comment it specifically said, "Managers will be appointed via an interview process".



Appointment to the Senior Neighbourhood Manager role

43 The Respondent decided to recruit from the top down so that the first recruitment process focused on the appointment of two Senior Neighbourhood Managers. It would have been open to the Claimant to apply for the Senior Neighbourhood Manager role, but she chose not to do so.

44 The applicants for that role were required to complete a presentation which was delivered to the interview panel as well as participate in an interview. There were four applicants for the role and two were appointed to the two jobs.

Appointment to the Neighbourhood Manager role

45 The two unsuccessful applicants for the Senior Neighbourhood Manager roles were deemed to have demonstrated their suitability for the Neighbourhood Manager role in the course of the process used for the senior role. They had been through a process of a presentation and interview. Angela Spooner talked to HR after that process concluded and they decided that she could waive the requirement for those applicants to participate in the process of selection for the Neighbourhood Manager role and appoint them on the strength of their performance in the previous process.

46 The Neighbourhood Manager selection process was similar to the process for the Senior Neighbourhood Manager role, but instead of a presentation, there was to be a group exercise followed by an interview.

47 The Claimant knew about some other of her compatriots in Ward Housing. One had taken a post they had been carrying out on secondment and some others had taken voluntary redundancy. The Claimant believed that, by this stage, there would be three Ward Managers taking part in the group exercise which was the first stage of the selection for the Neighbourhood Manager role. In practice, as I have noted, two of those other Ward Housing Managers had been successful in obtaining the Neighbourhood Manager role by virtue of their performance in the recruitment process for the senior manager role and so the Claimant was the only Ward Housing Managers applying for the Neighbourhood Manager role at this stage, although there were some other Floating Support Managers applying.

48 The Claimant complains that on 25 February 2019, the day before the group exercise, she spoke on the telephone with her line manager, Dermott Mullan. Mr Mullan had been Acting Head of Tenancy Services for some time and had applied for a Senior Neighbourhood Manager role in the new structure and been successful. In his capacity as Acting Head of Tenancy Services, he was asked to be part of the interview panel for the Neighbourhood Manager posts. In that conversation the Claimant asked about the number of Ward Housing Managers would be attending the group exercise the next day. Mr Mullan's response made it clear something was not as the Claimant expected. Mr Mullan's evidence is that he wasn't sure how much information he was free to divulge.

49 Angela Spooner then called the Claimant and told her that two of the Ward Housing Managers had effectively been appointed to the Neighbourhood Manager role as a result of their performance in the selection process for the Senior Manager role, with the result she was the only Ward Housing Manager in this stage

of the application process because the others had already taken voluntary redundancy or were not seeking this role for other reasons.

50 The Claimant had already questioned why management assessment was not being used for the Neighbourhood Manager role, but her position is that she had not had any response as to why that was the case. She now faced two of the managers who had been in the same role as her having already been awarded the job she was applying for. This made no difference to her in terms of the risk as there were at this point sufficient roles for everybody who was applying, but she found it upsetting. The Claimant regarded it as lacking in transparency since she had not been told that if she applied for the senior manager role, she would be eligible to be placed as a Neighbourhood Manager without further interview. This process, however, had only been decided after the interviews and selection process for the Senior Manager role. It had not been the intention prior to that and so it would not have been possible for the Respondent to have advised the Claimant of this, at a time when she could still have applied for the Senior Manager role.

51 The process of selection for the Neighbourhood Manager role was a group exercise and an interview. The applicants were presented with a mock scenario of a letter from a resident complaining about her neighbours and asked how they would deal with it. A day or so later there was an interview. The Claimant says when she arrived for her interview, she was asked to do a letter writing exercise based on a scenario and this was followed by an interview where she was asked to talk about her response in the letter. This she says was followed on by her actual interview which she says was quite lengthy as each question appeared to have two to three parts. I do not have a copy of any draft reply letter from the Claimant, just her interview notes.

52 The Claimant has complained that the process was opaque, and she did not know how she was scored. In consequence, there was a fair amount of witness evidence as to what was the basis of the selection and in particular, what weight was applied to both those parts of the process. In her ET1, the Claimant said that a colleague of hers had received an email which she had seen which said the group exercise was not scored for the purpose of the interview. The Claimant also says at the same time successful applicants following the internal recruitment have been successful because they did a good group exercise. She made a similar complaint at the appeal hearing.

53 The Claimant did not produce the email she refers to, nor did she call any witnesses or identify who it was who she was referring to as having told her that the group exercise was not scored. The evidence of the Claimant's conversations with other members of staff was not detailed and could not be tested. It was hearsay. I recognise that the Claimant formed the genuine impression that there had been inconsistency in the approach, but the evidence before me from Miss Spooner and other witnesses who took part was that the two parts of the process were equally important. It is possible that some applicants might have performed well or badly in different parts which might account for the comments they received. I could only take account of the allegedly different explanations given if I was able to weigh the evidence that the Claimant has based her assertions on fully. As it is, I do not have sufficiently detailed and direct evidence about it to do so.

54 The Claimant undertook the group exercise on 26 February 2019. I understand that in that group exercise the Claimant performed perfectly well. There are some notes of the exercise made by Dermott Mullan and Angela Spooner. It was suggested in Mr Mullan's original witness statement that the Claimant came last in terms of her performance at the group exercise, but Mr Mullan says that was an error and she was in the middle. Angela Spooner's notes appear to show the Claimant being confident and doing some summarising of evidence well. Those notes indicate she was doing a good job at parts of the exercise although it's been suggested that she did not come up with proactive new suggestions for the problem. All in all, it does not seem that the group exercise had any particular impact on the Claimant's failure to be selected for the Neighbourhood Manager role.

55 The Respondent's evidence is that the reason they decided that the Claimant did not meet the requirements for the Neighbourhood Manager role was that she was poor at the interview which took place on 27 February 2019. The Claimant attributes this, in part, to the fact that on the morning of the interview (which she had requested take place early in the day) she learned that her mother was ill. The Claimant's mother had been abroad for a month at a funeral and was flying home that day. The Claimant was to collect her from the airport which is why she requested an early interview. Unfortunately, she learned that morning that her mother had thrombosis and was unable to fly. The Claimant says her first reaction was that she could do nothing to assist her mother because she was in a different country and she thought she should focus on doing the things she had to do that day including the interview. She did mention at the interview in response to general chat that her mother was not returning home that day after all, due to her illness. She did not indicate that she was distressed by this and she did not ask for the interview to be postponed. In consequence it went ahead.

56 The Claimant was scored on her interview performance and we have the notes showing their scores for two out of the three managers who held the interview, being Dermott Mullan, Angela Spooner and Holly McGivern. Angela Spooner's notes of the interview are no longer available. I was not told when those notes were lost or why they had not been retained as would be usual. Dermott Mullan made manuscript notes which he subsequently typed up and the typed versions are in the bundle. Holly McGivern's notes are manuscript notes. They are also in the bundle.

57 There was no record made of the interview other than those notes, and the Claimant does not have our own record of it. The Claimant was asked whether she accepted the notes were accurate and she did not. She pointed out that they were not verbatim notes. She called them "snippets" of the discussion. They were clearly not meant to be a word for word account. However, there is a strong similarity between the two versions of the notes which were taken by different managers, Mr Mullan and Ms McGivern. Therefore, although I can see that these are not verbatim, I am satisfied that they are a relatively good record of the discussion at the interview.

58 The Claimant scored between 2 and 2.5 for each answer on Dermott Mullan's notes. The score range was 1 to 5 where 5 would be a perfect answer. She scored 2's and a 1 on Holly McGivern's notes. I was told that the acceptable score was a minimum of three for each answer and the Claimant did not reach that level. I have been given detailed evidence of what was seemed to be lacking in

her answers. The Claimant herself admits that she wasn't on her best form that day and that she could have done better in interview. She also says that she interpreted one of the questions as being impossible for her to answer.

59 In the Neighbourhood Manager profile the technical knowledge and expertise listed as requirements are:

- 59.1 Ability to spot patterns, trends and blockages preventing an effective service and build evidence bases to support change;
- 59.2 Ability to persuade and inspire others and communicate effectively with a wide range of stakeholders;
- 59.3 Ability to listen and understand residents' demands, and sensitively work to identify relevant contextual issues that may not be apparent from the presenting demand;
- 59.4 Ability to coach, build capabilities and encourage residents and officers to reach their own solutions;
- 59.5 Sound understanding of housing law and tenancy/leaseholder management legislation;
- 59.6 Ability and aptitude to work with a number of different packages

60 Bearing in mind this list of attributes which sets out the requirements for the role, the interview and scenario were sufficiently linked to the first four items on the list of technical knowledge and skills, to make it a relevant process.

61 I have reviewed the questions and answers carefully. I am satisfied from reading the answers and from the evidence that the scoring was not unreasonable. The Respondent's case is that the Claimant did not do a good job of demonstrating she had the skills which had been identified as required for the new Neighbourhood Manager role at that interview. The Claimant admits her performance was not good on the day. The notes suggest she was tentative and not confident. The scoring led to the Respondent concluding the Claimant was not suitable for the role. Examples of lack of confidence are that when asked why she thought she would be suitable for the role, the Claimant said she was enthusiastic but had reservations. She also referred to working on her own initiative and being able to make decisions outright but talked about the need for escalation. When asked if she could describe a time when she used data or evidence to influence somebody to change their mind or to make improvements to her work, she referred to a situation where she had to put her case across and she mentioned persuasion and seeing things from your point of view and trying to put them in your shoes. It was pointed out to me by the Respondent that the Claimant's approach was to describe where she had influenced somebody, but she omitted to address the part of the question which asked about her use of data or evidence. In relation to the last question on the interview sheet which, in written form, asked the Claimant to give an example of when she had led on or managed a piece of work and to describe what went well and what went not so well, the Claimant only recalled being asked about a project she had led. She initially said she could not answer this question as she had not led on any projects. The interviewers then prompted her with a matter they know she had been involved in, being the restorative approach. I understand the Claimant did not regard herself as having led that project but rather that she saw her role as one of assisting. She did talk about that, but her strong view was that this was not a project she had led. Later that day, Angela Spooner informed the Claimant that she had been unsuccessful based in her interview and she offered her feedback. The Claimant did not want to discuss that immediately.

62 On Thursday 28 February 2019 the Claimant spoke with Mr Mullan. She was working from home and was tearful. She asked him whether the outcome would have been the same if the selection process had been by way of management assessment instead of the interview. The Claimant says Mr Mullan told her probably not. Mr Mullan denies being so clear and says he was trying to be comforting and still be vague as he could not say what the management assessment might have asked, since there wasn't one. Whatever Mr Mullan said, his words gave the Claimant the strong impression that she would probably have been selected to the role if she had been through management assessment, rather than through an interview.

63 The Claimant gave evidence about her work carrying out a management assessment of the staff reporting to her for the Neighbourhood Officers role. She explained that it was quite lengthy and detailed.

64 On 20 March 2019 Angela Spooner sent the Claimant an email attaching a what look like five separate scanned documents, which said "Olu, Notes of interview attached. See you on Friday, Angela." A number of scanned documents were attached. The Claimant says she eventually met with Angela Spooner and got feedback. That must have been the meeting referred to in this email which would have taken place on Friday 22 March 2019. During that meeting, the Claimant was told that she had failed to sell herself sufficiently. She complains that her feedback was focussed on the interview. She also thought the comments were the consequence of over familiarity and that she had been disadvantaged by being known to the interview panel as two of them had line managed her and the other had worked with her.

65 The Respondent decided the Claimant had not met their requirements for the role and sent the Claimant a letter dated 18 March 2019 informing her that she had been unsuccessful in the selection process for the new roles.

66 The Claimant was made redundant by a letter dated 26 March 2019. Her last day of employment was to be 28 May 2019. The letter of redundancy instructed her to take all her outstanding holiday during her notice period. During her notice period the Respondent agreed to continue to try to find suitable alternative employment for the Claimant.

67 The Claimant was enrolled in the Respondent's redeployment group but did not find any other place within the new structure. She was not interested in applying for the more junior role of Neighbourhood Officer and in fact did not apply for any other role as there was no other obvious role which the Claimant could have applied for. The Claimant was given access to information about alternative roles within the organisation, but no appropriate roles came up. She was due to have a meeting with a person within the redeployment group, but the individual was not present at the appointed time. The Claimant later learned that she had been unwell that day. Efforts were made to rearrange but eventually, through a combination of events which were no-one's fault, it took place by telephone and was a short discussion.

### Appeal

68 The Claimant appealed her redundancy in writing on 1 April 2019. The appeal procedure provided for an appeal to be made on one or more of five

grounds. In essence the Respondent's process dictated that an appeal had to be based on one of a series of grounds. These were that:

- 68.1 a belief that the organisational change policy and procedure had not been correctly followed and this had significantly affected the decision; or
- 68.2 a belief that a manager had made a decision about a significant fact which it was not reasonable for him or her to make; or
- 68.3 the outcome of the decision was one which no reasonable person could have come to; or
- 68.4 that new evidence had come to light which the employee could not have introduced at an earlier stage; or
- 68.5 that the basis for the redundancy was unreasonable and insufficiently supported.

69 The Claimant's appeal referred to grounds 1 and 3. Her explanation for the appeal was as follows. The Claimant referred to the fact that that the roles of Neighbourhood Manager and Neighbourhood Officer were ring fenced. She referred to the decision that staff in scope for the Neighbourhood Officer role would be required to go undergo a management assessment rather than an interview and to the fact that she never had a response to her question about why the Neighbourhood Manager position did not warrant management assessment as opposed to Interview. The Claimant explained that her in her view the Neighbourhood Manager role should have been assessed by way of management assessment rather than interview. She believed had this been the case she would have been deemed appointable to the role. She also referred to her uncertainty as to what were the weighting lay with regard to the group exercise, the letter writing and the interview. She referred to a successful applicant stating to her that they were told they were successful because of how they conducted themselves in the group exercise, while another was told that the group exercise was not taken into account. She therefore she thought there was a lack of consistency. She referred to her performance during the previous year, which was assessed as performing well, while other members of staff who had been assessed as not performing well having still been selected by management assessment, based on being given additional support and training.

70 The Claimant also referred in her appeal to the process for the senior management role not being transparent as staff who applied for this role and were not successful were then deemed appointable to the role of Neighbourhood Manager. She complained this process was not made clear from the onset and she was the only informed when she found out she was the only remaining Ward Housing Manager going through the interview process for the Neighbourhood Manager role. The Claimant indicated she thought the outcome would have been different had she been told from the outset that she could apply for the Senior Manager role and that performance would be taken into account in relation to the Neighbourhood Manager role.

71 Although the Claimant had been given 5 days from the date of notification of the decision to dismiss her to lodge her appeal, which she did on 1 April 2019, the Respondent took some time to organise an appeal hearing and then the Claimant was on leave. I understand the Claimant had some pre booked holiday but in any event as noted, the Respondent's terms for the redundancy included an instruction that she take outstanding leave before her notice period expired, which meant that her last day of work was 19 May. The Claimant was away from work

between 20 May and 27 May 2019. On her return, there was a request that she attend an appeal hearing on 5 June 2019, after her employment ended, but this had to be re-arranged as the Claimant had a pre-existing appointment that day. It was re-arranged again after that to accommodate her trade union representative with the result that it finally took place on 19 June 2019, some two and a half months after her appeal had been lodged.

72 The appeal was chaired by Fiona McAdoo and attended by Kathryn Byrne, a member of the Appeal Panel, Debra L'Esteve, an Employee Relations Manager, Hayley Agbandje, an HR Business Adviser and Angela Spooner, who put the Respondent's case forward. On the Claimant's side she attended with a Mr Tatlow, her Union representative.

73 Fiona McAdoo gave evidence and explained that she took the view that the primary issue that the Claimant had was whether or not she should have been able to take on the Neighbourhood Manager role without the level of scrutiny applied, so she focused on whether the role was sufficiently similar to the previous role of Ward Housing Manager, although she did listen to all of the Claimants complaints.

74 At the outset of the appeal hearing the Claimant's trade union representative presented a written statement including additional information acquired from his conversation with the Claimant that morning. The main points identified by Miss McAdoo included his questioning why the Claimant had been made redundant when there were more roles than employees in scope. The argument he made was that this could not be a redundancy situation given that, at the end of the process, vacant posts remained. He argued that the recruitment process had been unfair and had changed part way through the process. He also said the new role was not fundamentally different to the role the Claimant had been doing to date. He argued that the roles were sufficiently similar to her previous role that she should have been placed into that role if there was a surplus of vacant roles over the number of people in scope.

75 Fiona McAdoo's evidence was that there was a point when the panel discussed the matter amongst themselves. In that discussion, the panel concluded that the key question was whether indeed the roles fell into the category of "little or no change". If they did, they would be subject to direct assimilation or sufficiently similar as to constitute a suitable alternative role. In that event the trade union representative's argument would have been correct in Miss McAdoo's opinion. The panel then asked for evidence that the roles were or were not sufficiently similar. The Claimant and Mr Tatlow did not, according to Miss McAdoo, present evidence demonstrating the fundamental similarities between the two roles. I have checked the appeal hearing notes and Kathryn Byrne asked whether Mr Tatlow had the role profile for the existing role and the new one. She then asked Mr Tatlow if he had gone through the two roles to highlight where they are similar. He did not respond to that specific question. Later Ms Byrne asked Ms Spooner to set out why the Neighbourhood Manager role was not fundamentally the same as the old roles and why the ring fencing was different for this role. Angela Spooner replied that the Claimant's "substantive post was as Ward Housing Manager, this meant managing staff in one specific area...tenancy management. The NM role had a much wider function, for instance it included rent management, the management of empty properties and such like." She said "it was a totally different approach to the work, based on a systems thinking basis... it required the ability to pull together staff so

that all the functions could be fulfilled... the NM would need to support members of staff to learn new responsibilities and to ensure the new way of working settled in.”

76 Ms Byrne asked if the Claimant’s previous role related to just tenancy related activities and how many staff she had managed. She was told it was just tenancy issues and there were 4 housing officers Ms Byrne asked a further question of Ms Spooner about what was not included in the previous role and was told the additional work was “managing voids, outreach work, rents.... playing a leading role in the neighbourhood, working with residents so they could sustain their tenancies, working with other managers in the neighbourhood”. Ms Spooner went on to say, “Given the difference in the role and working approach, neighbourhood working is different to the previous setup we needed managers to be able to demonstrate their ability to support staff to work in this way, collaboratively.”

77 The appeal panel asked questions about the number of Neighbourhood Housing Officers who would be managed by the Neighbourhood Manager and evidence given to me by Miss McAdoo was that the appeal panel formed the impression that the Neighbourhood Officers officer would be a key individual for residents to contact for support in all matters relating to sustaining their tenancy. The appeal hearing notes show that Ms Spooner said The NM role is key ... we could not afford to give that [a 13 week trial period] as their responsibility is to manage the NHOs and to determine if they can do the job. We expect more of the NMs, they are a key part of the management team in determining who can do the NHO role, and to shape the service.”

78 Miss McAdoo gave evidence that the appeal panel considered whether the roles were sufficiently different from the old ones but although before the appeal hearing she had not been clear on this point, she as reassured by the management response that these roles were substantially different and that while some of the tasks that the new role required were similar to those in the old post of Ward Housing manager, the new role was fundamentally different and covered a wider function than the old post and the skill set was significantly different as the new role holder was required to coach and develop staff to work in new ways to proactively review and improve the service and delivery and to find suitable solutions for residents with complex needs and to work collaboratively with colleagues throughout the Council to ensure early intervention.

79 Miss McAdoo recorded in her witness statement that that additional matters such as the Claimant’s view that management assessment should have been used to appoint Ward housing managers to the neighbourhood manager role and her concern about the lack of clarity over scoring were considered. She also said she felt it would have been preferable if both parties had been able to provide clear written evidence in defence of or challenge of the roles similarity or difference, but the discussion held at the hearing had convinced the panel that the roles were fundamentally different and therefore it was appropriate and in accordance with the Council’s organisational change procedure for a selection process to be undertaken to assess whether those in scope for new posts were suitable for the role.

80 The evidence given was that the panel considered the Claimant’s complaints that the overall process was not reasonable, fair and transparent but concluded her complaints were not valid. They considered that the interview



process could have been communicated more clearly but this did not in the panel's view, have appeared to have disadvantaged the Claimant. The panel concluded the Claimant had been made redundant.

### **The Issues**

81 The issues we identified at the outset are as follows.

81.1 What was the reason for the Claimant's dismissal?

Note: The Respondent argued that it was either redundancy or some other substantial reason by virtue of the reorganisation.

81.2 Did the factual finding for the reason for the dismissal amount to a potentially fair reason?

81.3 Depending on the reason, was the dismissal fair in accordance with equity on the substantial merits of the case?

81.4 In the case of a redundancy, fairness required me to consider whether the Respondent had consulted, utilised and a fair selection process, and taken steps to redeploy any employees who are at risk of being redundant with a view to avoiding redundancies and generally that no other unfairness had occurred which was sufficient to render the dismissal unfair.

81.5 In the case of the reorganisation, I was required to consider whether there was a sound business reason for the change, and whether the process was fair.

81.6 The Claimant in her ET1 identified the following matters which she considered unfair.

81.6.1 She considered that the appointment to the Neighbourhood Housing manager role should have been automatic as there were enough roles for existing staff.

81.6.2 Alternatively, if there was to be a selection process, the Claimant believed it should have been by way of management assessment. She also complained that if it had been, she probably would have been appointed as she had been told this by Dermott Mullan. She had been a good performer for some time and her ability had never been questioned.

81.6.3 The Claimant complained that the process was not transparent and inconsistent due to the last minute change to the approach for the Ward Housing Managers who applied for the senior manager role then being appointed to the Neighbourhood Manager role without a further selection procedure and to the fact that the Claimant's history of good performance not being taken into account in the same way it was for the role of Neighbourhood officers. She also complained that procedure was not followed when this change was made. Additionally, the Claimant complained that if she

had known there was only to have been one selection process for both roles, she might have applied for the senior role and she might have been in a better frame of mind when those interviews took place as she would not have been worried about her mother's health.

- 81.6.4 The Claimant complained that she did not know what was taken into account or how she was scored, and different staff were given different feedback about the scoring. She also complained that it would have been impossible to have given her feedback on how she scored against other Ward Housing Managers given the fact they were appointed after a different selection process, namely the selection for the Senior Neighbourhood Manager role which was a presentation and interview as opposed to a group exercise and interview.
- 81.6.5 The Claimant complained that she was disadvantaged by being the only applicant to have been managed by two of the selection panel and to have worked with the third on a project.

## **Submissions**

82 The Respondent gave their submissions first at the request of the Claimant. I had asked if they were prepared to do so in order that the Claimant understood the type of matter they would refer to and to put her at her ease. The Respondent had requested an opportunity to reply if the Claimant in her submissions covered matters that they had not anticipated, but that was not necessary.

### **Respondent's submissions**

83 The Respondent submitted that the first stage was to consider what the facts were which led to the dismissal. Their primary submission was that the job which the Claimant had been doing had been eliminated completely so that this was a redundancy. However, the Respondent accepted there was a possibility that I would conclude that the tasks and actual work had not diminished but were being dealt with in a different way and thus it would be a reorganisation but in either case those were potentially fair reasons for the dismissal.

84 The Respondent submitted that the Claimant's main focus was on the manner in which the selection process took place in the and I could only find it was unfair if I concluded that the Respondent had acted outside the range of reasonable responses. The Respondent had consulted with unions about the need for change and the process it intended to follow as well as consulting with individual members of staff. The Respondent had adapted the proposal in the light of some of the consultation comments by changing the selection process for Neighbourhood Officers, which showed the consultation process was genuine.

85 The Respondent had endeavoured to assist staff in preparing for the selection by providing interview training. The selection process had been fair and transparent, and the Claimant had an opportunity to apply for both the Senior Neighbourhood Manager role and the Neighbourhood Manager role. The Claimant elected not to apply for the Senior Manager role.

86 The Respondent could not be held to have acted outside the range of reasonable responses when it decided that two applicants for the Senior Manager role who had been unsuccessful had already demonstrated their suitability for the Neighbourhood Manager role and their decision not to require them to undergo a second round of selection.

87 As regards the Claimant's complaints, first the Claimant complained that she was the only Ward Housing Manager who was required to go through the selection for the Neighbourhood Manager role. This was not a correct interpretation of the facts. All the managers were required to go through a selection process. The reason the Claimant was the only Ward Housing Manager in that position was not down to any prior determination, but purely because of the numbers who had taken another option. The Claimant was put through the same process as several other managers who are in the housing team, but simply in other parts of it.

88 The Claimant had admitted that she had performed badly on the day of the interview which had been the basis for her being unsuccessful. She had performed adequately in the group exercise and she was incorrect in her suggestion that it was unclear how the scoring should take place or there was confusion and doubt as to the way in which things operated.

89 In the course of the hearing, the Claimant complained about there being no matrix which she could look at which would enable her to compare her scores with other peoples or would show that there had been factual objective determination of the scoring were not correct. The Respondent had taken a reasonable objective look, by following a questionnaire at interview which applied the same questions to each individual in the same order and noted their responses. After the interview process, when the Claimant had been unsuccessful, she had been introduced to the redeployment team who had sent her the explanatory email about the process and included her in regular emails about available jobs.

90 The Respondent argued the redeployment efforts had been serious and genuine. There had been an effort made to meet with the Claimant which had been unsuccessful in part due to her own wish not to travel to their office in the rain. While there had been one day when she had a meeting booked, when the officer involved had been away, that had been due to illness which was clearly unforeseen. In consequence, the Tribunal should find that the Respondent had tried to find alternative work for the Claimant but there was no suitable alternative work for the Claimant at the time.

91 The Respondent taken all the steps necessary for this to be a fair dismissal and the other complaints made by the Claimant were not matters which were sufficient to amount to the Respondent acting outside the range of reasonable responses which the Respondent said was essential to find that the dismissal was unfair.

#### Claimant's Submissions

92 The Claimant referred at length about the process that she had encountered and the matters which he found difficult, all of which were matters which about which she had given evidence. Some of the details she referred to were new facts and, as it was raised during submissions rather than during her evidence, I am not

able to consider it as evidence. I have focussed on the factual matters which were addressed in the ET1 and the evidence.

93 The Claimant maintains her dismissal had been unfair and the process lacked consistency. She considered that the goal posts had been changed at times to accommodate the Respondent. The Claimant said that the Review had been discussed with the unions who had been concerned about the proposed selection and as a result the Neighbourhood Officer role process of selection had been changed to management assessment. It was not clear why that change was made. She had heard evidence about the broader role, but she also thought that broader role applied to the Neighbourhood Manager's role as well. She appreciated the Neighbours Housing Officers had a longer trial period, but she felt management could have dealt with that.

94 The Claimant reminded me that the Unions would have wanted all staff assimilated into the structure. Some other people in the review process had more information about it than other staff. Angela Spooner said everybody had got to apply and had said that assimilation was not appropriate, but she did decide management assessment was suitable for the Neighbourhood Officers. Those management assessments were carried out by their managers and were quite detailed.

95 The Claimant said she felt a management assessment would have been more fitting. It should have been the same process for the Neighbourhood Officers as for the Neighbourhood Managers since in both cases the role was much broader. They needed managers who could take on board that position and she had been in management for many years and had managed a rent team some years ago. She believed the principles of how one collected rent and how you did a viewing were essentially the same.

96 The Claimant said that at the appeal, Angela Spooner was asked why they decided on a presentation and group exercise and had said that it just evolved that way when Neighbourhood Manager role was brought up and it was a good way to test behaviour. That hadn't been the discussion for. They could have done the same for the senior manager role and neighbourhood manager role and had a presentation and interview.

97 The Claimant complained about the feedback she received and the training for the interviews. She complained about the unknown person appearing in the training session.

98 The Claimant objected to not being told about the position whereby applicants for the senior role were not asked to undertake a second round of interviews and said that she didn't apply for the senior role as she didn't want to go through two interviews but if she had been told she did by applying for one she could cover the requirement for both then she might have decided to do that. She felt it was moving the goal post to change the position.

99 Looking at the notes regarding the group exercise the Claimant felt that she still lacked information about how well she done against other people and the absence of a scoring matrix meant that she didn't have adequate feedback which she could have challenged. She didn't need to have individual scores, but she did need to know some information in order to raise a challenge.

100 The Claimant referred to her interview and she accepted it was not the best, but she thought in hindsight it might have been better if she had waited and asked for a postponement of the interview but at the time, she had thought there was nothing else she could do for her mother and should get the interview done. She felt strongly that the interview questions about leading a project were unfair as she was clear that she hadn't ever led a project as such, and she found it that a considerable disadvantage. She also thought that it was a disadvantage to have the people on the interview panel who had either managed her or worked with her and as they wouldn't have been able to give the sort of advice, which they did in feedback, to anyone else in the way they did since they knew her better.

101 The Claimant found the process of the redeployment distressing because the meeting she was due to attend resulted in her going over to the office and not being able to find the person she was supposed to meet, and no one knew why that was. She had expected an in depth discussion about her future but felt it was very short.

### **The Law**

102 Section 98 of the Employment Rights Act 1996 provides that a dismissal is fair if the employer can show that the employee was redundant or that the dismissal was for some other substantial reason.

103 Section 98 provides as follows

(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 was redundant;

### **Distinguishing a redundancy and business reorganisation**

104 Section 139(1) of this Act defines redundancy:

(1) for the purposes of this act an employee who was dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:

(b) the fact that the requirements of that business –

- (i) for employees to carry out work of a particular kind, ...have ceased or diminished or are expected to cease or diminish.

105 The judgment in the case of Barot v London Borough of Brent UK EAT/0539/11/BA recites the provisions in Harvey about this statutory definition stating:

*“The statutory definition is not, however, all embracing. According to the authorities, there may be a rationalisation or reorganisation which does not create a redundancy situation. If, overall, the business still requires just as*

*much work of the particular kind in question and just as many employees to do it, then there is no redundancy situation, even if individual jobs disappear as a result.”*

106 The case of Safeway Stores v Burrell 1987 IRLR 2000 identified three questions to answer in relation to this kind of redundancy situation being:

- (i) Has the Claimant employee been dismissed as defined?
- (ii) Was there within the business a reduced need for employees to do a particular kind of work?
- (iii) Was the Claimant employee dismissed wholly or mainly because of that reduced need?

107 Burton J in the case of Kingwell & Others v Elizabeth Bradley Designs Limited EAT/0661/O2 said:

*“It is plain from the case [Johnson v Nottinghamshire Combined Police Authority 1974 ISR 170] and from Safeway Stores PLC v Burrell and Murray and Foyle Meats Limited 1999 IRLR 562 that it is not an automatic consequence of there being a business reorganisation that there is a redundancy; nor is there a need for business reorganisation in order that there should be a redundancy situation. The two are entirely self-standing concepts. But if a business reorganisation leads to a diminution in the requirement for employees carrying out the relevant work, then that business reorganisation leads to redundancy situation and if not, not.”*

Law relating to a fair procedure in the case of a redundancy.

108 Williams & Others v Compair Maxam Limited [1982] ICR 156 is the leading case which sets out the general guidelines which employment tribunals should use when considering the procedure adopted in a redundancy case. The following key principles have been identified from it.

- 1 The employer will seek to give as much warning as possible of impending redundancies.
- 2 The employer will consult with the union and staff and in particular the employer will seek to agree with the criteria to be applied in selecting the employees to be made redundant.
- 3 Whether or not an agreement as to the criteria to be adopted has been agreed, 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.

109 However, the process of selection for redundancy has been scrutinised over the years and in particular, the lengths to which employment tribunals should scrutinise selection has been debated.

British Aerospace v Green [1995] ICR 106 109E

*“It is not the function of the employment tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether*

*the dismissal lay within the range of conduct which a reasonable employer could have adopted.”*

110 Millard LJ made the following observations at paragraph 1019 G

*“The question for the [employment] tribunal, which must be determined separately for each applicant, is whether that applicant was unfairly dismissed, not whether some other employee could have been fairly dismissed... The tribunal is not entitled to embark upon a reassessment exercise. I would endorse the observations of the Employment Appeal Tribunal in Eaton Limited v King and others [1995] IRLR 75 that it is sufficient for the employer to show that he set up a good system of selection and that it was fairly administered, and that ordinarily there is no need for the employer to justify all assessments on which the selection for redundancy was based.”*

Law relating to a reorganisation.

111 The law relating to a fair procedure in the case of a reorganisation is not the same as for a redundancy or for determining which employees to appoint to new roles within the organisation. HHJ Richardson in the case of Morgan v Welsh Rugby Union [2011] IRLR 376 said as follows

*“There are some redundancy cases, of which this is one, where redundancy arises in consequence of a reorganisation and there are new, different, roles to be filled. The criteria set out in Williams [Williams v Compair Maxim] did not seek to address the process by which such roles were to be filled. We shall turn in a moment to the authorities which support this proposition. But it is, we think, an obvious proposition. 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 reorganisation, 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 William’s 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.”*

112 Similar matters were addressed in the case of Samsung Electronics (UK) Limited v Mr K Monte-D’Cruz [2012] UKEAT/0039/11. The Honourable Mr Justice Underhill addressed the procedure to be followed when appointing a redundant employee to a new role and cited another paragraph of the judgment of HHJ Richardson in the Morgan case as follows.

*“...The guidance given in the authorities about the procedures to be adopted, and the criteria to be applied, in selecting an employee for redundancy cannot be transposed to the process for deciding whether a redundant employee should be offered an alternative position: the two situations are different.*

He said, at para 36:

*“A tribunal considering this question must apply section 98(4) of the 1996 Act. No further proposition of law is required. A tribunal is entitled to consider as part of its deliberations, how far an interview process was objective; but it should keep carefully in mind that an employer’s assessment of which candidate will best perform in a new role is likely to involve a substantial element of judgement. A tribunal is entitled to take into account how far the employer established and followed through procedures when making an appointment, and whether they were fair. A tribunal is entitled, and no doubt will, consider as part of its deliberations whether an appointment was made capriciously, or out of favouritism or on personal grounds. If it concludes that an appointment was made in that way, it is entitled to reflect that conclusion in its finding under section 98(4).”*

113 Where there is a reorganisation, the cases make it clear that this can be a fair dismissal for some other substantial reason. The case of Hollister v National Farmers Union [1979] ICR 542 and Catamaran Cruisers Ltd v Williams and Others [1994] UKEAT both confirm this. Tribunals must assess whether there is a sound business reason for the reorganisation and must also consider fairness of the procedure.

## Conclusions

114 On the issue of what was the reason for the dismissal, my view is that the reason for dismissal was that the Claimant’s role in the Housing Department was deleted as part of a reorganisation and the Claimant was not appointed to the role she applied for, namely Neighbourhood Manager, in the new structure.

115 The question that follows on from this is whether those circumstances amount to dismissal by reason of redundancy which is the Respondent’s primary submission. The difficulty I have had with this is largely the point raised by Fiona McAdoo in relation to the appeal hearing. The evidence which would identify how similar the roles were or indeed how different they were was not pulled together in a clear and concise fashion and I did not have the job matching comparison, only the outcome, so it required some analysis.

116 It is clear that the Respondent regarded the role of Ward Housing Manager as having been deleted and indeed explained at some length that the work was broadened significantly and the approach towards it changed. The Claimant thought the new role encompassed a large part of her work. Nevertheless, it is clear that while some part of the work remained, there was a significant change.

117 No-one explained, as they do in some cases, how much time the Claimant’s original work would have taken her while carrying out the new role, as opposed to the new work which was added into the role. I therefore took some time to review the evidence on this.

118 There were three aspects to the change in the role. First, I was told that there was an expected reduction in aspects of the previous work which can be described as liaising with, chasing and being chased by residents and other departments. A key purpose of the change was to reduce the amount of wasted time by the generalised structure of the new role. I have noted that at



one point in the Consultation paper, it was thought that this could take up as much as 80 per cent of an employee's time. I recognise that was not an average, but it indicates a significant amount of time spent in this way.

119 Secondly, the role now included other work previously carried out by other teams to whom the resident would have been referred in the past, so it embraced voids and rents and work carried out by the floating support team previously all of which was to be carried out by the Neighbourhood Officers who were to be managed and by the Neighbourhood Manager, thus the Neighbourhood Manager's role covered these areas too.

120 The new role was to embrace a new approach to managing the Neighbourhood Officers in her team, involving monitoring trends and developing ways of working to address these trends, coaching and supporting staff and encouraging early intervention and using the same staff to work on the entirety of the resident's issues, which might be multifaceted and complex.

121 Considering all this, while I do not have a percentage time assessment, it seems that, in practice, the role that the Claimant undertook previously did not form a major part of the new Neighbourhood Manager role as the Claimant assumes. In fact, it seems the new role was to be carried out in such a different way that even though at times, it addressed areas of resident work the Claimant had previously carried out, it was a different role.

122 On that basis, I conclude the Claimant's work had largely diminished to the point where was correct for the Respondent to decide that her role had disappeared. This would in my view amount to redundancy.

123 Thus the next issue is whether or not in the circumstances the dismissal was fair in accordance with equity and the substantial merits of the case. In other words, given the reason found, did the Respondent follow a fair procedure and was it reasonable to dismiss the Claimant in this situation.

#### Reorganisation

124 If I am wrong in my determination that the new role of `Neighbourhood Manager was sufficiently different to the Ward Housing Manager role as to mean the old job had diminished to the point where there was a redundancy, it is clear that there was a significant reorganisation. The Claimant's dismissal was triggered by the reorganisation. That is also a potentially fair reason, though, as the case law highlights, if as a result of the re-organisation the role disappears, it is a redundancy.

125 I therefore examined whether there was a sound business reason for the re-organisation. The Consultation paper set out at some length the findings of the Landlord Review which led to the proposal to re-organise. That identified problems with the previous arrangements which had led to significant inefficiencies and waste of time. There were difficulties for the residents such as the confusion over which Council officer to contact, being passed from one to another officer and duplication of time in chasing other officers. The Respondent's Landlord review showed they had trialled alternative ways of working and concluded that the new more generalist or holistic approach was more effective. They recognised the changing needs of their resident population and also wanted to create a more

analytical approach towards understanding the trends and build in a process of looking for solutions at an earlier stage. All of that represents a sound business reason for the change.

#### Fairness in a redundancy dismissal

126 In a redundancy scenario, a fair procedure normally involves consultation with the Union and staff, as much warning as possible to the employees in advance of the process, and, where there is a need for selection, a fair selection process. Thereafter it would have been important for the Respondent to look for jobs within its organisation and try to find ways of avoiding the redundancies.

127 In this case there was plenty of warning and a careful consultation exercise. The Respondent produced a lengthy Consultation paper which explained the rationale for the proposed restructure and the steps that it intended to take. The Respondent consulted with the Union and individual employees over the proposals and indeed, the Respondent adjusted the proposed steps to take account of comments made in that process of consultation.

128 Employees were given considerable warning about the proposal as the Consultation paper was circulated in December 2018 and the initial process of interviewing employees for the new jobs did not commence until February 2019.

129 It is important to distinguish between selection for redundancy and appointment to the new roles. The old Ward Housing manager roles had all disappeared and there was no selection as such for the redundancy as no roles were left. What then happened was that new roles, which were different, were created and employees were able to apply for those roles. As I have noted, the case law makes it clear that it is reasonable to follow a forward looking approach which is more in the recruitment style when appointing to new roles, rather than trying to assess employees on the basis of past performance in a different role. That is what happened in this case.

130 As the Claimant was unsuccessful in her application for the new role she applied for, there was a continued process of redeployment and searching for a new role for the Claimant. Although the Claimant had an unfortunate experience when the employee with whom she was supposed to liaise failed to attend a meeting due to illness, the Respondent did work to communicate to the Claimant all the job prospects in its organisation and she was aware of any jobs she could have applied for. It is a sad fact that nothing suitable arose.

#### Fairness in a reorganisation dismissal

131 The case law relating to a reorganisation envisages a fair procedure but is less specific than in a redundancy dismissal. In *Morgan v Welsh Rugby Union*, the requirement for the employer to have a forward looking approach when appointing to new roles after a reorganisation was addressed and it was noted that this was likely to centre on an assessment of the ability of the individual to perform in the new role. That is what happened in this case. The group exercise and interview were both designed with the new role in mind. There was a standard set of questions which were asked of all interviewees. Thereafter the Claimant was included in the circulation of information about all the vacancies in the organisation. The process was fair.

Specific complaints on fairness

132 I have examined the individual complaints which the Claimant raised. As the Claimant has pointed to a number of areas where she feels that she was unfairly treated, it is important to look at these both individually and in the round.

133 One of the Claimant's main complaints is that, in her view, because she considers the Neighbourhood Manager job was similar in many respects to her old job, whatever the nature of her dismissal, the process adopted for it should have been either to slot her in without any assessment or if assessment was required, to use management assessment, which she believed would have led her to getting the role. I have explained why I have found that the roles were significantly different, and the process adopted by the Respondent was fair. It is not for an employment tribunal to replace the decision taken by the employer about the process to be adopted, if that decision was reached in a fair manner and was not tainted by any prejudice or bias. The Respondent's decision to use the interview and group exercise as its method of determining who should be awarded the new role was a reasonable which it was open to them to take. It was consistent with the case law.

134 Another facet of this complaint is that the Claimant objected to the interview process coupled with the group exercise and letter writing. However, this appointment process reflects the increasing trend for that to be a "recruitment" approach and is frequently used where the new job is different to the old one. That approach has been recognised as a fair procedure so long as it is not tainted by personal issues or discrimination. There is no evidence here that it was.

135 I have addressed the Claimant's primary argument that she should have been appointed by a management assessment. I questioned her about this since she also objected to the fact that the three managers who interviewed her included Miss Spooner and Mr Mullan, who had both managed her and also another employee, Holly McGivern, who had worked with her. She felt that in some respects this was a disadvantage. I can see no disadvantage in this and certainly not one which renders the dismissal unfair.

136 In the course of the hearing, but not before, the Claimant also said it was inappropriate for Mr Mullan to have been involved in the interview since he had previously bullied her (which was not a matter raised at any time before in the hearing. It was not raised at the time, not raised at the appeal, or in the ET1, or indeed in her witness statement). The Claimant referred to this as part of her argument that she should have been subject to management assessment rather than an interview. In response to my questions about this, the Claimant agreed that a management assessment process would have been carried out by Mr Mullan as her line manager. The process would be similar to her assessment of people who reported to her which the Claimant's evidence indicated was quite a detailed process. Mr Mullan would have been required to comment on the Claimant's performance and possibly meet with her to discuss what he could say in terms of the assessment questions. It is difficult to see how it can be said that assessment by Mr Mullan alone would have been fair, when it was not fair for Mr Mullan to be one of three people who interviewed the Claimant because she objected to him due to his behaviour towards her in the past. I reject this argument. There is no evidence that the Respondent was aware of any bullying. The Claimant raised no formal complaint about Mr Mullan's behaviour previously. She raised no complaint

about Mr Mullan's involvement in the interview process at the time, or at any time before this hearing.

137 While management assessment was carried out in relation to the appointments to the Neighbourhood Officer role, it was not chosen by the Respondent for the more senior roles and they gave cogent reasons for this. I understand that the Claimant felt unhappy when she realised that she was the only one of a number of Ward Housing Managers who would be in the group exercise as a result of the other two having been allocated roles already. However, a number of Ward Housing Managers had taken voluntary redundancy. Had they not done so but chosen to apply for the Neighbourhood Manager role, they too would have been in the group exercise. The other managers who were in the rental team and floating support were also required to go through the group exercise and interview. The evidence given was that the senior roles were critical, and the Neighbourhood Manager would need to spend the first 12 weeks encouraging and coaching the Neighbourhood Officers under their control in order that they were able to adjust to the new system and pass their own trial period of 12 weeks. The expectation was that the Neighbourhood Manager would be up and running more or less immediately and able to make the new system effective.

138 As noted, the case law provides that the system for appointments should be fair but if it is, it is not up to the Tribunal to substitute its own views for those of the Respondent as to what sort of system should be chosen for a new forward looking role of this nature. It is accepted that if there is a new role, particularly a more senior one, a recruitment style approach is fair. I therefore reject the suggestion that because the role of the Neighbourhood Officer role was broadened and so was the Neighbourhood Manager, there was anything unfair in using management assessment for the more junior role but not for the more senior role.

139 The Claimant raised a number of other points about the process. First, the Claimant considered that the appointment to the Neighbourhood Housing Manager role should have been automatic as there were enough roles for existing staff. As I have noted, I have carefully considered the position, but I have determined that in fact there was a redundancy, and the new role was significantly different to the old one so much so that the appointment process was fair and appropriate.

140 I am aware that the Claimant felt uncomfortable in the interview training. That was not a formal part of the process but was an additional effort by the Respondent to prepare staff for the process they faced. Attendance was voluntary. The fact that the Respondent provided it in a group context where the staff present felt that, to some extent, they were competing with each other for the available jobs, does not render the dismissal unfair.

141 The Claimant complained that the process was not transparent and that it was inconsistent due to the last minute change to the approach for the Ward Housing Managers who applied for the Senior Manager role then being appointed to the Neighbourhood Manager role without a further appointment procedure and to the fact that the Claimant's history of good performance not being taken into account in the same way it was for the role of Neighbourhood Officers. She also complained that procedure was not followed when this change was made. Additionally, the Claimant complained that if she had known there was only to have been one process for both roles, she might have applied for the senior role and

she might have been in a better frame of mind when those interviews took place as she would not have been worried about her mother's health.

142 I understand that the Claimant was surprised to learn that two of the Ward Housing Managers had been allocated Neighbourhood Manager roles on the strength of their previous applications and interviews for the senior housing role. That decision was taken in the middle of the process and there was clearly no intention to mislead the Claimant. I appreciate that had she thought there would only be one set of interviews she might have taken the step of applying for the senior role, but she chose not to pursue that role and I do not think the fact the process changed renders it unfair. The two Ward Housing Managers who were allocated Neighbourhood Manager roles following their application for the Senior Manager role had gone through a presentation exercise and an interview and while I do not have the details about that process, but it was for a more senior role and therefore, I have no doubt it was at least as rigorous as the process the Claimant was asked to follow. I can understand that the Claimant regrets that had did not apply for the senior role. I understand that had she been told there would only be one selection process for both the Senior Manager role and the Neighbourhood Manager role, if she applied for the Senior Manager role, she might have chosen to do that, but it was not the initial intention. I do not regard a change in process midway of that nature as particularly detrimental, given the fact that all applicants had to undergo an exercise of some sort followed by an interview.

143 The Claimant has suggested that the Ward Housing Manager role was the closest to the new role and thus she should have been exempted from this group exercise and interview, but she did not demonstrate to me that was the case and my own determination is that there was a significant difference between the roles. I accept the Respondent's evidence that the role changed significantly with the addition of work on rents and voids and the proactive approach to be taken so that I consider that the Claimant was treated fairly by being put in the same position as the other managers who had applied for the role. The only difference in treatment was slight and that was the two managers who had applied for the Senior Manager role and who were excused from a second round of exercises and interviews on the strength of the process they had already gone through.

144 The Claimant complained that she had been treated unfairly in that she was known to the interviewers and they gave her feedback afterwards based on her work which they would not have been able to do with someone whom they did not know so well. I do not consider that this was unfair treatment. Rather it appears to me that the interviewers genuinely tried to give the Claimant proper feedback.

145 The Claimant has commented on the scoring and the lack of a matrix which would enable her to evaluate whether the scoring appeared consistent. I accept that some of the cases indicate that in the question of a redundancy, where there is a selection being made between employees with fewer jobs available than the number of roles, it is preferable to provide some evidence of the scoring so that the employee can challenge it. That was not the position at this time. Because the roles had been changed significantly, the Respondent was not seeking to reduce the workforce for a smaller number of roles. On this occasion the Respondent had removed the entire coterie of Ward housing managers and indeed other teams and replaced them with a new role. This is not the case that there were an adequate number of very similar roles for everyone who might apply from the internal organisation, but rather an appointment process for new roles which

were very different. The appointment system was designed to be forward looking to find employees with the skill basis suitable for that new approach.

146 I spent some time considering whether the information about her performance which was provided to the Claimant was adequate, as her comments suggested it was some time before she got information about her scoring. The documentary evidence shows that the Claimant was sent the interview notes on Wednesday 20 March 2019 before her feedback meeting with Angela Spooner which was fixed for Friday 22 March 2019. The Claimant was aware very quickly that she had not performed well at the interview. The interview notes included the scores. The Claimant has not told me that the ones sent to her were in some way redacted. The Claimant must have had her scores when she was sent the interview notes on 20 March 2019 and had the opportunity to discuss them with Ms Spooner two days later which was in good time to use it, if she wanted, at her appeal.

147 There is an additional aspect to this complaint, which is that the Claimant was hampered in her effort to challenge the decision not to offer her the new role by the lack of provision of her scores with the other applicants' scores in some form of matrix so she could see how she performed as regards other applicants and against a clear set of criteria. I was not provided with the interview notes from other employees for the role and as far as I am aware there was no matrix prepared as such, but I do not think this renders the Claimants failure to be appointed unfair. She was applying for a new role. The process involved the applicants all answering the same questions and those who did not had already answered something similar.

148 I did conclude that the Respondent relied on both the group exercise and the interview in reaching the conclusion and although the Claimant complained that there was misleading and confusing feedback to various colleagues, I simply cannot reach a conclusion on that as I have explained.

149 I recognise that the Claimant was saying that she felt she had undertaken the interview at an unfortunate time for her. She did not make her own notes at the interview after the event and we only have the notes of the other of the two interviewers whose notes were retained but I have compared them, and they do indicate the same discussion. I have no doubt that the Claimant was endeavouring to be as honest as possible in her interview. I do not doubt the Claimant was quite daunted by the organisational change, and by the process of selection including the group exercise and the interview process and I accept that she now believes that the news of her mother's health disturbed her and impacted on her performance at that interview. However, I cannot conclude that the Respondent has acted unfairly, as the Claimant did not ask for a postponement. The Respondent had made efforts to prepare the Claimant and the other employees with interview training and the circulation of the new job profiles.

150 Therefore my conclusion is that this was a redundancy. If I am wrong in that, it was a re-organisation. I have considered the process generally against both sets of criteria (for redundancy and for reorganisation) and I have considered the Claimant's individual complaints about the process. Taking those complaints individually I do not find any unfairness and looking at them in the round I still do

not find any unfairness. It is my view that the dismissal was procedurally fair. Accordingly, the Claimant's application for unfair dismissal fails.

Employment Judge Walker

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Date 3 February 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

.04/02/21.

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FOR THE TRIBUNAL OFFICE