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EMPLOYMENT TRIBUNALS

Claimant: Ms A Rao
Respondent: East London NHS Foundation Trust
Heard at: East London Hearing Centre
On: Wednesday and Thursday 1-2 May 2019
Before: Employment Judge Jones (sitting alone)

Representation

Claimant: Ms Steeman (Counsel)
Respondent: Ms Criddle (Counsel)

JUDGMENT

The judgment of the Employment Tribunal is that:

1. The Claimant was redundant.
2. The Claimant refused an offer of suitable employment.
3. The Claimant was not entitled to a redundancy payment.
4. The claim is dismissed.

REASONS

Claims and issues

1 On 13 December 2018, the Claimant presented an Employment Tribunal claim alleging that she was entitled to a redundancy payment because the Respondent failed to offer her suitable alternative employment and that therefore, she was redundant.

2 The Respondent defended these proceedings. It was the Respondent's case

that the Claimant had refused an offer of suitable alternative employment and that she was therefore not entitled to a statutory redundancy payment.

3 The parties confirmed at the start of the hearing that the following were the list of issues that the Tribunal needed to consider: -

List of issues

- 3.1 Whether the Respondent's offer of the post of Consultant Psychological Therapist/Training Lead – Specialist East London Hub amounted to an offer of re-engagement or renewal within the meaning of section 141(1) of the Employment Rights Act 1996.
- 3.2 Whether the training lead post amounted to suitable employment in relation to the Claimant within the meaning of section 141(3)(b).
- 3.3 If so, whether the Claimant's rejection of the Respondent's offer of the training lead post was unreasonable.
- 3.4 If not, whether the Claimant is entitled to a statutory redundancy payment of £12,192.00 or some other amount.

4 The Tribunal heard from the Claimant in support of her own case and from Ravinda Rana, Director of Therapies at the Trust and Gillian Williams, Borough Director for Newham Adult Mental Health Services at the Trust. The Tribunal also had an agreed bundle of documents.

5 The Tribunal apologises to the parties for the delay in the promulgation of the judgment and reasons in this case. The Judge was unwell for most of 2019 and there has been delays in typing as well as pressure of other work. The Tribunal regrets any inconvenience caused.

Findings of fact

6 The Tribunal made findings of fact on the evidence in the hearing that relate to the issues above.

7 The Claimant started working for the Respondent in June 2001 as Head of Adult Mental Health. This was a consultant grade role and was graded as a Band A to D role following the introduction of Agenda for Change in 2004.

8 The Claimant continued to hold senior roles within the Trust. In 2013 there was some restructuring which led to the Claimant being appointed to the band 8C role of Consultant Clinical Psychologist, Psychological Services Lead for Borough-wide Psychological Services and Specialist Services Psychology teams. The Claimant considered that this was her 8D role that had been restructured and down banded.

9 In 2014, Ms Rana was appointed to the role of Director of Psychological Therapies. This was a senior management post which involved having oversight of all therapies services, including psychological therapies, provided by the Trust to adults in

secondary care. In this role Ms Rana did not have any direct operational responsibilities and had limited managerial responsibilities and she only line managed one part-time and one full-time member of staff.

10 The Trust recognised that there were several issues with the way in which the service was then organised. Services had grown and developed locally over time in accordance with what funding and resources were available rather than the result of a strategic plan, which meant that there was fragmentation and little consistency with respect to the provision of psychological therapies services across the Trust's directorates. The service in each directorate had difficulties in being able to meet increased demands for psychological therapies and waiting times for treatment were considered unacceptably long in all areas despite changes made locally. The Respondent also had to respond to the increasing recognised need to provide integrated and better co-ordinated care across physical and mental health and to respond to the NICE guidelines which sought to promote more person-centred care rather than focus on discrete medical conditions. It was considered that what was required was for there to be an in-depth look at the service and for there to be new vision.

11 Ms Rana's evidence was that her appointment was on a clear 5-year plan centred around reorganising and redesigning the Trust's psychological therapies workforce to enable psychologically informed care to be at the foundation of all the Respondent's services. Her vision was that this would involve the specialist psychology therapies workforce upskilling the rest of the organisation to provide more psychologically informed care.

12 The Claimant and Ms Rana never worked together on any projects but did meet at the Psychological Therapies Committee meetings, which they both attended. In 2014, Ms Rana became Chair of that Committee. The Committee met monthly and had an advisory role. All consultant psychologists attended this meeting. The purpose of the Committee was to provide a regular forum for discussion of issues and concerns pertinent to the development and provision of psychological therapies across the Trust and to advise the Director of Psychological Therapies.

13 After 2 years Ms Rana had developed a sustainable plan for the reorganisation of the Respondent's psychological therapies services in East London. In January 2017, Ms Rana presented an overview of the strategy and potential challenges that she had formulated following her assessment of the psychological therapy services in East London that came under the Respondent's remit. Her strategy included the rationalisation of the overarching management structure layer within psychological therapies services to enable there to be a more coherent and directed response in each borough to meet local needs. Her proposal involved removing the separate therapist lead roles in each borough and creating one lead post for each borough supported by a deputy lead. Alongside this, her proposal included the creation of a central "Hub" of three consultant level specialists. The Hub was envisaged as a centre of excellence and expertise to support the development and delivery of high quality therapeutic interventions across all integrated care pathways in the Trust. It was envisaged that the Hub posts would oversee the provision of specialist consultation and training to drive forward improvements and ensure the quality and the consistency of care across the directorates and more widely across the Trust. The Hub posts were

designed to have oversight of Trust-wide psychological therapies services and be more outward-facing, strategic and forward-thinking than the borough lead posts, as those would focus on operational delivery and strategy within each borough.

14 At the time, the Claimant was one of two consultant psychological therapist leads. She was the lead for Newham. Her job description was in the bundle of documents. The purpose of the job was stated as: to operationally manage and professionally lead all psychologists, psychotherapists and psychological practitioners of all grades within the borough-wide psychological services which meant that all of those practitioners within specialist services in the Borough were ultimately accountable to her; although much of the direct line management would have been delegated. In conjunction with other psychological services leads and senior managers, the Claimant was responsible for ensuring the maintenance and coordination of psychological services in Newham. The Claimant's role involved both direct and indirect clinical responsibilities as well as management tasks. For example, it included undertaking highly specialist functional and cognitive assessments for service users, providing an appropriate range of specialist psychological interventions and formulating highly specialised programmes of care. In collaboration with the leads in the psychological services across primary and secondary services and Associate Clinical Directors, she was responsible for identifying the psychological needs of the population in Newham and informing managers of the resources required to meet those needs.

15 The ideas around the reorganisation and the Hub were discussed extensively among the Respondent's senior members of staff and those on the Psychological Therapies Committee. There was an awayday on 16 February 2017 during which the Trust's Chief Executive, Navina Evans, gave a presentation about the future direction of the Trust. Ms Rana presented two linked draft proposals for discussion, one concerned the integration of the psychological therapies resources in each borough to enable the development of integrated care pathways and the other was about the creation of a specialist hub. There was significant discussion around how the Hub would work but Ms Rana's recollection was that the overall consensus was very positive. It was agreed that the service leads, which included the Claimant, would discuss the proposals within their teams and that Ms Rana would discuss them further with the Borough Service Directors and Clinical Directors. The proposals continue to be the subject of discussion within the Psychological Therapies Committees. Ms Rana's evidence at the hearing was that she did not recall any concerns being raised by the Claimant during those discussions about the lead roles or the Hub roles during those discussions. She believed that the Claimant had been positive and enthusiastic about the reorganisation from the outset. She also did not remember the Claimant raising concerns during discussions on the proposed reorganisation when they spoke in the bi-monthly meetings of the Psychological Therapies Committee.

16 Following approval of the proposals by the Respondent's Joint Staff Committee, subject to the consultation process; Ms Rana wrote to the Claimant on 12 June 2017. The letter informed the Claimant that it was the Respondent's intention to engage in consultation with her regarding the reorganisation of Psychological Therapies. The document outlined the proposal to provide generic Psychological Therapies for adults in secondary care in the three East London Boroughs covered by the Trust: City & Hackney, Newham and Tower Hamlets, through multi-disciplinary teams and

integrated care pathways supported by the Hub. This contrasted with the existing arrangement which was to have a mixture of multi-disciplinary teams and Borough-based Specialist Psychological Therapies Services. The consultation paper attached to the letter set out full details of the proposal and how they potentially affected the Claimant together with a copy of the Respondent's management of change policy and procedure. The letter informed the Claimant that the process would be managed in line with that policy and procedure.

17 The timetable in the letter stated that during the consultation period, individual one-to-one meetings would be available for affected staff. The consultation period was expected to end on 31 July with feedback and comments being considered during the week beginning 7 August. The final proposal was expected to be published in the week beginning 21 August with staff being notified of the outcome of consultation on the same day and with any job matching and slotting-in process also happening in the same week. The ringfenced selection process for candidates would start in the week beginning 4 September with the new structure being implemented from Monday 11 September. The letter recorded that Ms Rana had met with some people informally to discuss the proposals and its potential implications. The letter also invited anyone who wanted to meet with her on a one-to-one basis with a representative from HR to let her know so that a meeting could be arranged. The letter urged the Claimant to contact her union representative, professional body or the Trust's Health & Wellbeing service, if she needed to do so.

18 The consultation period was extended to 31 July 2017 at the request of staff. During this time, both individual and group consultation meetings took place, and several queries raised regarding the proposals. From that process a consultation response document was produced, which was in the bundle of documents. The Tribunal finds that the document is structured so that the bold headings are the questions that were asked by members of staff during the consultation process with the Respondent's answers set out below. One of the comments/queries from staff recorded in the document was uncertainty about the Hub as it was a new development. The answer recorded in the report was that the concept of the Hub was that it would initially largely consist of established senior clinical experts, but would evolve according to service need and that its function and structure will need to be closely monitored and reviewed. The Hub's purpose was to provide access to highly specialist consultation, supervision and training that would not otherwise be available and would support service developments, for example neuropsychology assessment.

19 Other issues raised by staff and addressed in the document were – problems in recruitment/retention of staff, whether this was going to result in a reduction in overall leadership capacity, whether this was going to lead to a reorganisation of local psychological services, and queries over what some saw as a lack of prior consultation. The Respondent addressed those issues within the consultation response document.

20 The Respondent's Management of Staff affected by Change policy was in the trial bundle. Its purpose was to set out the Respondent's approach to the management of organisational change and the procedures that should be followed by managers wishing to implement major change. In that document, 'slotting in' is defined as the

process by which staff at risk are confirmed into a new post in a new staffing or management structure which is similar to their substantive post and where that individual is the contender for that post. Slotting may occur where a post is in the same band as the individual's substantive post and/or where it remains substantially the same i.e. 75% or more with regard to education and qualifications; knowledge and experience; strategic management; finance resource management, staff management and operational management/service delivery. 'Ring-fencing' is defined as the process by which staff at risk will be considered for a post in a new staffing or management structure which is similar to their substantive post and where there is more than one contender for the post. 'Staff at risk' means staff whose posts may potentially be redundant as a result of organisational change if suitable alternative employment cannot be found.

21 The policy outlined 3 stages in the process for filling posts in a new structure. Once a matching process has occurred, Stage 1 takes place which is where posts in the new structure are filled either by slotting in or by ring-fencing as described above. Stage 2 is where wider competition takes place for any posts that remain vacant after Stage 1. Posts would be opened up to access by any staff at risk for whom the post is considered suitable alternative employment or where there are no such applicants - to open competition internally and externally, in line with the normal recruitment process. Job descriptions and person specifications will be produced for new posts, which would be matched or evaluated in accordance with applicable national or local systems. The two stages may run in parallel but all reasonable and practicable steps would be taken to avoid compulsory redundancies.

22 The period of consultation came to an end in August 2017 and in her letter to the Claimant dated 18 August 2017, Ms Rana confirmed that the Respondent had decided to implement the reorganisation as outlined in the consultation paper. The Claimant was notified that the Respondent wanted to know what post she was interested in from the available vacancies identified. The Claimant was asked to complete a post-preference form with her preferences and return those to the Respondent's senior HR adviser. A list of vacancies was attached and a timeline was set out in the letter which asked staff to provide their post-preference forms by 21 August 2017 with the deadline for doing so being 1 September. The ringfenced interviews for those posts were to take place during week beginning 11 September with the new structure implemented from 18 September.

23 The proposals were intended to be cost neutral. This reorganisation was not designed to make financial savings. No redundancies were envisaged because there were sufficient positions in the new structure for all affected staff to be retained in employment.

24 The Claimant indicated her first preference for the role of Head of Psychology and Psychological Therapies which was a 1 whole time equivalent post (WTE) at Band 8c role in the borough of Newham. The Claimant's second preference was for a 1WTE 8c Senior Clinical Specialist role in the Hub which was in fact a combination of two – 0.5 8c roles- Senior Clinical Specialist (Psychodynamic/Social. Her third preference was for the 1WTE Head of Psychological Therapies, which was another lead post for either Tower Hamlets or City & Hackney. There was more than one applicant for each of the borough lead posts which meant that staff could not be 'slotted in' to the

available post and a competitive interview process needed to happen.

25 HR wrote to the Claimant on 6 September 2017 advising her that an interview would take place on 15 September 2017 for her first preference, the Head of Psychological Therapies Lead post. The interview panel would be composed of Ms Rana, Mr Calaminus, Chief Operating Officer and the Respondent's lead for East London Adult Psychological Therapies and the service user.

26 As the Claimant applied for the Head of Psychological Therapies Lead post, it is likely that she had no issue with it being considered as a post suitable for ringfencing for her to be interviewed for the post with her similarly qualified colleagues. There were four candidates for the three borough lead roles, including the Claimant. She did not ask to be slotted in to the role and could not be so, given that there were others similarly qualified to fill it. In the ring-fenced recruitment process all candidates were asked to give a presentation on the same topic and were then asked a set of questions. The same questions were asked of all four candidates, which were designed to fit the requirements of the role and to enable the candidates to demonstrate their skills and experience. All candidates were scored against the same criteria.

27 Ms Rana's evidence at the hearing was that she did not do job matching in this situation and she was advised by HR that job matching was not relevant in this case. The new roles had come out of the same service it was likely that there would be no dispute among staff that those who were interviewed were in posts similar to the new post. The Respondent did not do a formal job matching process as set out at Appendix 2.

28 The job description for the lead post was not in the bundle of documents so the Tribunal was unable to see whether it stated that any reliance would be placed on a CV and application form. The Claimant was adamant during the hearing that the fact that she had not been asked for a CV and application form was to her disadvantage but there was no evidence that the other applicants for the job had to submit a CV and application form either.

29 The Respondent's Appendix A organisational change principles was attached to the consultation paper for Psychological Therapies Department sent to staff. It was likely that this was a more generic document rather than one created specifically for this consultation process. Under a section headed '*Suitable alternative employment*' it referred to slotting in and repeated the definition in the management of change document. It stated that slotting in would only occur if there are the same number or less eligible staff at risk. The policy did not allow slotting in to occur to a post one grade higher even if there is a 75% match to the existing role. If that is the case, the member of staff would have to be considered alongside other eligible candidates. Where suitable alternative employment is offered and unreasonably refused, the employee would no longer have the right to receive a redundancy payment. The next section of the document is entitled '*Selection and appointment principles*' and stated that:

"The aim is to have a fair and transparent selection process where (sic) the best

candidate will be appointed based on the skills, experience and personal specification outlined in the job description and person specification. Selection will be conducted by interview and other tests if deemed relevant to the post. Applicants in a competition would be asked to submit a CV and a supporting statement. Interviews would be held by a panel of three. A structured interview will take place and scores will be completed for each interviewee.”

30 None of the applicants in this recruitment were asked to submit a CV or application form but they were asked to do a presentation and answer interview questions. Ms Rana's evidence was that the selection process was based on performance at the interview including, the quality and depth of the presentation given by the candidate. She had been advised that CVs would normally be used to short-list but not to appoint. She confirmed that none of the other interviewees presented CVs or supporting statements and none of them were asked to do so. They understood that they did not need the CV and supporting statement. If people were expected to submit CVs and application forms, then the panel would have asked the Claimant to provide those documents. This recruitment was done under Stage 1 of the Respondent's Managing Change policy under which application forms and CVs were not required.

31 The Respondent wrote to the Claimant on 15 September to notify her that she had been unsuccessful and was not appointed to the lead role. Her colleague, Dr Erasmo Tacconelli was appointed to the role of Head of Psychological Therapies. Her evidence was that she was informed that she had not provided good enough examples as other candidates had about integrated care. The scores which were on page 273 of the bundle, show that the Claimant scored the lowest total of the four candidates at 97 points whereas the top scorer was awarded 143 points. Each member of the interview panel scored the Claimant with the lowest points. The Claimant was unhappy that she had not been appointed to the post.

32 In her letter to the Claimant, Shefa Begom, the Respondent's HR Business partner invited the Claimant to attend an interview for the Hub posts on 21 September. She was advised that the interview panel would be made up of Ms Rana, Mr Calaminus, Mr Graham Fawcett, Professional Lead for East London Psychological Therapies and a service user. The Claimant was asked to confirm her attendance by return.

33 On 20 September, the Claimant responded to HR. She addressed her email to Corinne Cunningham and copied it to Ms Begom. She expressed her reservations about the interview process, her dissatisfaction with the approach and the reasons given to her for her not being successful. She expressed her belief that an application form/CV/ supporting statement was an important recruitment standard and that she was unclear why that had not been requested. She could not understand why she was not considered to have enough experience to lead the service when she had previously played a pivotal role in expanding and developing other services within the borough. She referred to her previous experience working across multiple networks such as the PCT, CGs, local bodies, third sector, community groups, professional bodies and managing many redesigns successfully; as examples of her being able to work with integrated care. She stated that she believed that the process had been flawed, biased and discriminatory. She ended her email by stating that she had lost trust in the process and that she was both disappointed and concerned about the emergent

pattern towards the senior psychology consultants who had been demoralised, demoted and made redundant in recent years. She indicated that would not be taking part in the ongoing rounds of interviews and would be looking at all her options.

34 In her evidence, the Claimant stated that she found the feedback giving approach following the first interview process to be insensitive and she was concerned, in the absence of an application form/CV, about the reference to her level of experience. The Claimant did not believe that the Respondent's decision to rely solely on performance at interview had been fair to her.

35 It was likely to have been surprising to the Respondent that the Claimant was withdrawing from the process since as already stated, there were equivalent number of posts for the people who were ringfenced for the process. It was not expected that anyone would become redundant as a result of this reorganisation. Ms Rana was clear that pay would have been protected for at least 2 years for anyone who ended up with a job that was in a lower band than the one that they had previously occupied. That applied to the combined band 8b/8c Hub post that the Claimant had put as her second preference and for which she had been invited to interview on 21 September. She was clear that the lead post was a step up in terms of seniority and influence across the Trust.

36 The Claimant did not attend the interview on 21 September. Ms Begom wrote to the Claimant on 21 and 22 September to try to persuade the Claimant to attend a rearranged interview and to answer her concerns about the process. She confirmed that application forms/CVs were not required at Stage 1 of the managing change process where posts are to be filled either by slotting in or from ring fenced interviews. Ms Begom asked the Claimant whether she wanted her email to be considered as a complaint under the grievance policy. The Claimant was asked whether she still wanted to be considered for the Band 8c Training Lead Hub post as the Respondent could offer her a further opportunity to be interviewed and considered for it. The Claimant did not respond to those emails.

37 On 21 September, the Claimant met with her line manager, Dudley Manns Clinical Director Newham for a handover meeting. Mr Manns was keen to discuss the Claimant's concerns about the reorganisation process and to set up a meeting to think about what happened next. A further meeting between them was planned for 26 October but this was cancelled by the Claimant. After their conversation, Mr Manns wrote to Tanya Carter, the Respondent's Associate Director of HR to ask her to offer the Claimant some HR advice on her options.

38 In the interim, another candidate was appointed to the 0.5 WTE Psychodynamic Psychotherapies Hub post in the interview round that the Claimant had declined to attend. After that, Ms Rana and Mr Manns met with HR to discuss how they could find a solution to retain the Claimant in employment, within the reorganisation process. There was clearly an intention to find a suitable role for the Claimant that would use her experience, expertise and reflect her long-service within the organisation. Although there were no notes produced from those discussions, the Tribunal finds it likely from Ms Rana's evidence that in this period she spoke to the Respondent's HR officers and Mr Manns in an effort to come up with a solution that would be acceptable and suitable to the Claimant and would work for the Respondent. The Tribunal considered the

emails in the bundle of documents, in particular, Ms Rana's emails on page 287 and 288 and Tanya Carter's invitation to meet with the Claimant to discuss the situation on 291; to all demonstrate that there were discussions between the managers to try and come up with an acceptable solution that would fit in with the Respondent's reorganisation.

39 After being referred to Tanya Carter for HR advice, the Claimant met with her to discuss her options. Ms Carter felt that the Claimant was looking for a resolution outside of the Trust processes. Ms Carter advised the Claimant that she could not withdraw from the process as the Respondent had a commitment to mitigating redundancies. The Respondent wanted to secure suitable alternative employment for her and Ms Carter confirmed that she understood that there would be suitable post in the newly created structure for the Claimant. The Claimant indicated that she wanted the Respondent to consider redundancy for her given the stress that she was under. The Claimant expressed that the repeated reorganisations was having a damaging impact on her career. She also believed that the Respondent had allowed other consultant psychologists to be made redundant and she felt that she also ought to be afforded that opportunity.

40 On 3 November 2017, the Claimant sent a borough-wide email to Newham Psychological Services entitled: "*Closing email with thanks and gratitude*". The process clearly had not concluded as far as the Respondent was concerned but this email indicates that it was likely that the Claimant considered that for her, it had concluded. This email may also have been prompted by the fact that the new structure was due to start from Monday 6 November. In the email, the Claimant stated that she was pleased that Psychological Services were returning to a joined up and unified leadership structure after five years and that the design offered a new opportunity to develop a coherent care pathway in response to radically shifting financial and policy challenges. She acknowledged in the email that the way the service had been operating in recent times had many challenges with its costs at both personal and professional level. She gave her view of the Respondent's Psychological Services over the period of her employment and set out some of the achievements and successful changes that she had made to the service over the years. The Claimant stated in the email that she was sad that she would not be with the service for the next stage but that she had great confidence that the work would continue. She reiterated her commitment to inclusive, compassionate, system leadership which she said has its challenges would increase financial and survival vulnerabilities in the NHS. She confirmed that her work would not be stopping but would continue in various forms. She stated that she was sure that everyone in the service would join her in welcoming Mr Tacconelli as the new lead from 6 November and that she was in the process of organising a handover meeting with him and Mr Manns to support the transition. She also stated that she would be at work on Monday, focusing on her clinical work and closing her role responsibilities. She ended the email by informing her colleagues that she would let them know as soon as she was in a position to firm up her future plans. This was to all intents and purposes, a farewell email from the Claimant to her colleagues within the service. It demonstrated that at the time she considered that her employment was soon going to be at an end.

41 At the same time, the Respondent was continuing efforts to find a position for the Claimant. On 8 November, following an invitation from Mr Manns, the Claimant

met with him, Tanya Carter and Ruth Heidon, who was a Unite trade union representative. During the meeting, Mr Manns offered the Claimant two options for her to remain employed by the Respondent. Option 1 was - a competitive interview for a ring-fenced 0.5WTE 8c post within the Hub, working as a Consultant Psychological Therapist/Training Lead; with the remaining 0.5WTE of that post offered at 8b level within the Newham highly skilled psychologist/psychotherapist deputy post in Newham. Pay protection for the 2nd half of the post would be offered for 3 years. Option 2 was – slotting in directly into a 1WTE 8b post as highly skilled Psychological/Psychotherapist Deputy within the Newham Directorate. The Claimant would be given pay protection for 3 years. Mr Manns wrote to the Claimant on 10 November setting out these options in writing.

42 In the letter Mr Manns acknowledged the Claimant's concern that moving into a band 8b role would entail loss of the titled Consultant Psychologist. He stated that it was the Respondent's position that the title would not fit the responsibilities of the 8b role and so it would not apply.

43 The Respondent nevertheless believed that the 8b role was suitable alternative employment for her. Mr Manns acknowledged that the process had been challenging for the Claimant and that she had been through other reorganisations previously while employed by the Respondent. The Claimant was advised that if she failed to accept suitable alternative employment, this could result in her forfeiting the right to a redundancy payment. The Respondent's commitment to mitigating redundancies was restated in that letter and she was encouraged to participate in the process so that she could secure a role within the new structure. The Claimant was asked to communicate her preference of the two options proposed to her in writing by 17 November.

44 On 16 November, the Claimant attended a handover meeting with Mr Manns and Mr Tacconelli who was the newly appointed Head of Psychological Therapies for Newham. The Claimant had prepared a handover note which they went through during the meeting. After that the Claimant continued to work with her existing patients and was also working on concluding a project she was doing on a Therapy Development Initiative. She handed over all other responsibilities.

45 On 17 November, the Claimant wrote to the Respondent to refuse both options of alternative employment. The Claimant considered that the Respondent had gone a step too far. She did not consider either of the two options offered to her as suitable alternative employment for the following reasons: -

- 45.1 They were not similar to the work that she had taken up with the Trust during the last 16 years in terms of seniority and breadth of responsibilities;
- 45.2 They would lead to a further diminution of her status and role responsibility;
- 45.3 They will lead to further reduction in pay in the long-term;
- 45.4 They did not match her skills, abilities, experience and aptitude. The Claimant went on to say in relation to this point that the post offered for

direct slotting in was the role that she had done for nearly 17 years. She stated that being the deputy in the same team where she had been the Service Head and the fact that she had developed/brought these teams together in the new structure would make it an embarrassing demotion for her;

- 45.5 The job description for the Consultant Psychological Therapist/Training Lead did not match well with the breadth of her experience and skillset and would restrict their application. She did not consider that the terms and conditions of option 1 were appropriate and professionally robust and to offer two roles of different grades was not justified or equitable;
- 45.6 The roles offered were a backward step for her in terms of her professional development and did not meet her career aspirations;
- 45.7 As far as Mr Manns' comment about her concerns about the loss of the title Consultant Clinical Psychologist, she noted those but it was her position that the title attached to the post showed the level of skill required and while it was not a protected title, it denoted profile, status and recognition of skillset, knowledge base and experience. She considered that the Respondent was using the arguments about the use of the title Consultant Clinical Psychologist against her but that it had not done so in relation to the employment of other candidates considered for the Borough Head/Consultant role. She stated that she found selective use of the policy and professional guidelines inappropriate, unfair and discriminatory and that Mr Manns had not been aware of the professional ramifications of the loss of the consultant title when they met on 8 November.

46 The Claimant referred to the Respondent's contractual redundancy obligations and stated that as she had made a reasonable refusal of the alternative options outlined, she expect that she could now be made redundant unless suitable alternative employment can be found before her current role closes on 1 December 2017.

47 In her statement of case to the grievance hearing, the Claimant recorded that she had a conversation with Tanya Carter around this time in which she requested that the Respondent consider making her redundant. Ms Carter informed her that redundancy was not an option but that she could resign from the Respondent and be paid in lieu of notice. The Claimant did not accept that option.

48 On 23 November, Dr Manns replied to the Claimant and stated that the Respondent considered that the combined post of Lead for Training and Deputy Lead for Psychological Therapies was suitable alternative employment. The Trust proposed that she be slotted in to the post with effect from 1 December 2017. The Claimant appealed against this decision. The Respondent treated the Claimant's letter of appeal as a grievance.

49 The Claimant's letter was dated 27 November. In it she stated that she wanted it treated as an appeal under the Management of Staff Affected by Change Policy. The Respondent chose to deal with it as a grievance. The Respondent's case was this was

being treated as a formal grievance in line with both the policy and Agenda for Change. At paragraph 23.2 of the Respondent's Management of Staff Affected by Change Policy and Procedure, it stated as follows:

"In the event of a complaint about misapplication of the *Change Management Principles and Procedures*, which is not covered in paragraph 23.1, this will be dealt with in accordance with the Trust's Grievance Policy and Procedure, under Formal Stage 2 – Appeal Hearing."

50 Paragraph 23.1 deals with appeals against a decision to dismiss an employee by reason of redundancy, but as the Claimant had not been dismissed that section did not apply.

51 On 21 December 2017, the Respondent held a short meeting but decided to adjourn it to give the Claimant further time to submit a full statement of case under the grievance procedure. Dr Mohit Venkataram, Executive Director of Commercial Development and Performance wrote to the Claimant to confirm the postponed hearing. The Claimant was to submit all documentation by 18 January 2018. Dr Venkataram also requested that Dudley Mann create an interim job plan and duties for the Claimant whilst the process was ongoing. It was predicted that the rescheduled appeal hearing was not likely to be before February 2018 and that in the interim, the Claimant needed a job plan to give her some security and reassurance and that it would be in place for about 2 months. Dr Venkataram also asked for the job matching data to be included in the management case papers for the re-scheduled appeal hearing. Lastly, he confirmed that the Respondent were going to consider the Claimant's appeal under the grievance procedure and that it would be the final stage of the process.

52 The grievance hearing reconvened on 26 February 2018 before Dr Venkataram. Ms Rana attended on behalf of the Respondent accompanied by Corinne Cunningham, a senior HR adviser and the Claimant attended with her trade union representative, Ms Hydon. Mr Dudley Mann also attended the grievance hearing together with a senior HR adviser and there was a note-taker present.

53 The Claimant's grievance was that the combined job was not suitable alternative employment because - it was not similar to her old role in terms of seniority and breadth of responsibility; it would lead to a further diminution of her status and responsibility; the 8b role would take her back 17 years and take away her Consultant title; her pay would reduce further in the long-term; the role does not match her skills, abilities, experience and aptitude; and being the deputy in the same team where she had previously been the service head would be embarrassing and a demotion. She stated that these points all made her refusal of the offer reasonable. She believed that what was being proposed was a step too far, that the whole process had been handled in an insensitive manner and that the Trust should make her redundant, unless other suitable alternative employment could be found as a result of her appeal.

54 These points were fully explored at the grievance hearing. The minutes record that the Claimant stated that the Trust would not be meeting its contractual obligations if redundancy was not offered to her as her refusal to accept the offer was reasonable in the context that this was her 4th redeployment, there was an impact on her wellbeing

and she had reservations about the process. During the discussion the Claimant was asked why she did not want the job after she had put it as her 2nd preference on her form. She is recorded as stating that she was objecting to the 8b part and that if full-time, the 8c would be her second preference.

55 Dr Venkataram wrote to the Claimant on 21 March 2018 to inform her of the outcome of her grievance hearing. When asked to show the panel how the decision was made by the Trust that the post was suitable alternative employment, the Respondent was unable to provide the panel with the evidence to show how it came to that conclusion. Due to the lack of evidence shared by management, the panel upheld her appeal on the issue of whether the offer of the combined post was suitable alternative employment.

56 However, the panel also decided that it was not possible to decide whether her refusal of the offer was reasonable or unreasonable until the offer was confirmed to be suitable alternative employment. Dr Venkataram recorded that the Claimant had stated in the hearing that she felt discriminated against from the way in which the management case had been written. The panel agreed that she had been upset from the change management process but it could not identify any victimisation or discrimination. In her live evidence the Claimant confirmed that although there had been some difficult words stated between her and Ms Rana, they apologised to each other during the grievance appeal hearing.

57 As far as the question of what was the right process to consider the Claimant's appeal was concerned, the Respondent addressed all the Claimant's points in the decision letter. The panel agreed that the process had been fair and equitable to all concerned parties. It then recommended ways to make the consultation process even better for staff by, for example, scheduling at-risk meetings, a thorough post consultation implementation, a more transparent job matching process and interviewing staff only once. The decision letter confirmed that the appeal panel's decision was final and that the Claimant had no further right of appeal.

58 Following the outcome of the grievance, discussions took place between Ms Rana; Gill Williams, the Borough Director for Newham; Bailey Mitchell, the Deputy Borough Director for Newham; and Mr Tacconelli, the newly appointed Head of Psychological Therapies for Newham in order to determine how to move matters forward in a way which was suitable for both the Claimant and the Respondent. The Respondent was keen to retain the Claimant's valuable skills and experience within the Trust. The discussions focussed on how a role could be created that was suitable for the Claimant within the confines of the Respondent's existing structures and budgets. Those discussions were not minuted but the Tribunal find from the evidence of Ms Williams and Ms Rana that those discussion took place. There are a series of emails in the bundle that demonstrate this and one email dated 20 March 2018 from Bailey Mitchell to Ms Rana in which reference was made to earlier discussions between Ms Rana, Ms Williams, Shefa Begom of HR and Mr Tacconelli about Ms Rana's proposal for the Claimant. An email from Ms Rana dated 23 March 2018 confirmed that she was meeting with Shefa Begom to continue to check all the aspects of the job role to ensure that they have covered everything.

59 The Respondent was able to reallocate some local funding to create a part-time

band 8c clinical post, which together with the part-time Training Lead Hub post would result in a full-time post for the Claimant which the Respondent considered to be suitable and highly valuable for her.

60 The Respondent's senior managers decided that the offer of the job should be made face to face with the Claimant rather than through a letter, which would allow them the opportunity to further explain the rationale for the new offer and the expectations for the new role.

61 At a meeting between the Claimant, Ms Rana and Ms Williams (as Mr Manns had by then moved to another post) on 25 April 2018, the Respondent offered the Claimant an 8c role called Consultant Psychological Therapy/Training Lead – Specialist East London Hub. This was an 8c role and was for 37.5 hours and therefore a full-time position.

62 The Claimant confirmed that both her and her union representative took notes of the meeting on 25 April. Those notes were not provided in the bundle for this hearing. The Tribunal had brief notes made by Ms Rana as well as the Respondent's minutes. The Claimant was pleased to be offered a role but considered that the description of the job was weak and that Ms Rana's answers to her questions were vague. However, Ms Rana did outline the nature of the role, her vision for the Hub part and that there would be some flexibility within the role which would give the Claimant, as a senior member of staff opportunity to focus on her key strengths and interests and make the role her own. She understood that the role was part strategic role in the Hub and part clinical work. The Claimant was told that Gill Williams will be the operational line manager and that Ms Rana will be the professional line manager. She was also told that she would be based in the Newham Centre for Mental Health (NCfMH). She confirmed in the Tribunal hearing that she was pleased that a job had been offered to her and she was interested in the job. Although the role was titled Consultant, the Claimant was concerned that did not have professional management responsibility and about the aspects of a role that she believed would make it properly a consultant role.

63 The notes show that they discussed a job matching form. Corinne Cunningham from HR stated that as this was not a slotting in process, it was not suitable for job matching. But she did consider whether there was a job match. The Claimant was shown the job matching scoring sheet which appears at page 365 of the bundle. The Tribunal was told that Shefa Begom prepared it. On that sheet, it states that the education/qualifications were fully met between the two jobs as was the knowledge and experience. The matching in respect of Staff Resource Management was also recorded as fully met whereas the Strategic Management and Operation Management/Service Delivery was recorded as partially met. There was an increased financial management responsibility and so there was no match in respect of that part of the post. The scoring sheet shows that the match was just slightly under 75% as it was scored 8 out of 12.

64 Ms Rana was confident that at the end of the meeting on 25 April, the Claimant had a good understanding of the job that she was offered, that it was an 8c Consultant role (which was part of a job that she had previously stated that she agreed was a match) and what the Hub role entailed. The Hub had also been discussed during the grievance process. Ms Rana took the opportunity during the grievance hearing to go

over again the nature of the role and her vision for the Hub part of it, which would involve developing the psychological therapies workforce as well as encompassing broader workforce development initiatives across the Trust. These were the matters that the Claimant seemed to be pleased about in her farewell email to the department the previous year. The Claimant had been reassured that there was flexibility within the role which she later referred to as Ms Rana being vague about it.

65 Ms Rana's memory of the meeting on 25 April was that the Claimant did not really show an interest in the new job but simply asked for documents. Having been through the process of introducing a new job before she expected the Claimant to ask for details around the job. Her recollection was that the Claimant did not ask about the clinical component of the role as that was something that she would have been able to answer. Ms Williams and Ms Rana came prepared to discuss the post as they considered that they had managed to get together a really good offer for the Claimant. They were surprised when there was little enquiry from the Claimant at the meeting for details of what the work would entail.

66 Ms Williams wrote to the Claimant on 25 April to formally offer her the position, and confirmed their discussion earlier that day. The job description was enclosed with the letter. The letter confirmed the office space at the NCfMH and that she would be line managed by Gill Williams with Ms Rana providing professional management. The Respondent's HR policy governing the process for change was enclosed with the letter. The Respondent also included a statement from Corinne Cunningham, the Respondent's Senior HR Adviser, in relation to the Claimant's questions about the job matching process. Ms Cunningham advised the Respondent that job matching usually takes place as part of the management of change process, at the beginning of the procedure for filling posts in the new structure. Posts in the new structure are filled in by either slotting-in, which may occur where a post is in the same band as the individual's substantive post or where it remains substantially the same; or, individuals could be considered for posts that are similar to their substantive post (ringfencing). Once both processes had been exhausted, suitable alternative post would be considered. Suitable alternative employment is work within the Trust that is broadly similar to the individual's current role. The Trust will look at the employee's skills and experience, and the terms of the alternative job including location, duties, pay, hours and responsibility. It was the Respondent's position that job matching was not appropriate for this part of the process, coming as it did after slotting-in and ringfencing interviews had taken place.

67 Attached to the letter that Ms Williams sent to the Claimant confirming the offer was the job description and person specification for the role.

68 The Tribunal compared the Claimant's role before this latest re-organisation with that of the role she was offered in April 2018. The job description for the role the Claimant occupied just before the reorganisation was in the bundle of documents at page 429. The role was Consultant Clinical Psychologist, Psychological Services Lead for Borough-wide Psychological Services and Specialist Services Psychology. This was a full-time role. The Tribunal compared this job description to that of the Consultant Psychological Therapist/Training Lead – Specialist East London Hub role which was at page 589 of the bundle.

69 In the hearing, the parties compared the knowledge, experience and skills required for both jobs. The discussion was on the job description on 429 and the person specification on 439 as related to the old job and the documents at 597 as the person specification for the new job. The Tribunal finds that the person specification on 439 has a slightly different job title but that was the one that both parties treated as related to the job that the Claimant held just before the restructure. For that job the post-holder was required to have the following:

“Experience of working as a qualified Clinical Psychologist (or equivalent as above) including substantial post qualification experience within Adult Mental Health. Experience of specialist psychological assessment and treatment of patients across the full range of care settings including outpatient, community primary care and inpatient and particularly in the use of psychosocial interventions in psychosis. Experience of working with a wide variety of patient groups across the whole life course and presenting problems which reflect the full range of clinical severity. Experience of supervising qualified psychologists and/or psychotherapists and other staff working in mental health settings. Experience of multidisciplinary team working.”

70 Under the heading of “Experience” in the person specification for the Training Lead post the following was listed:

Experience of working as a qualified Psychological Therapist (or equivalent as above) including substantial post-qualification experience within Adult Mental Health. Experience in organising and delivering training to different professional groups. Experience in organising training events, conferences or courses. Experience of specialist Psychological assessment and treatment of patients across the full range of care settings including outpatient, community, primary and inpatient. Experience of developing and delivering therapeutic interventions in various formats, including individual and group. Experience of working with a wide variety of patient groups across the whole life course and presenting problems which reflect the full range of clinical severity. Experience of supervising qualified psychologists and/or psychotherapists and other staff working in mental health settings. Experience of multidisciplinary teams. Experience of managing qualified psychologists and/or psychotherapists and other staff working in mental health settings.

71 I also compared the *knowledge and skills* required for both jobs and found them to be very similar and in some respects, they were identical.

72 I also compared the *Purposes* section of the two jobs from the job descriptions in the bundle. Whereas the Purpose of the earlier role was to ‘*operationally manage and professionally lead all psychologists, psychotherapists and psychological practitioners of all grades within Newham*’; the Purpose of the new post was to ‘*co-ordinate and oversee delivery of high quality training in basic psychological skills to all clinical staff across the Trust to promote and sustain a psychologically minded workforce*’. The other Purposes were similarly phrased.

73 In the new post, the post-holder would be required to carry a clinical caseload in their area of expertise whereas in the old role the Claimant was expected to provide a

specialist clinical service that spanned Psychological Therapy and Psychological Services in CMHTs. Both required the post-holder to undertake highly specialist functional and cognitive assessments, including joint assessments, for users of these services. The original job description required the Claimant to *'be responsible for the formulation of highly specialised programmes of care and plans for the psychological treatment and/or management or service users' families, carers, and groups'* whereas the new job description required the post-holder to *'evaluate and make decisions about treatment options taking into account both therapeutic and theoretical models and highly complex factors concerning historical, developmental and cultural processes and systems which have shaped the individual, family or group'*. Both posts required the post-holder to be responsible for communicating effectively across language and other barriers, undertake risk assessments and act as a service user advocate, where necessary.

74 Several of the policy and service development goals of both posts were similar or appeared to be of equivalent depth and seniority. In the new job description, the post-holder had to contribute to the work of the Trust Psychological Therapies Committee and contribute to the national and professional policy discussion through attendance or presentations at conferences. The old post required the Claimant to initiate development to ensure effective clinical governance for psychological services within CMHT settings and ensure that those accountable to the post-holder implement Trust and local service policies and procedures. She had to attend relevant psychological service meetings.

75 One point which was in the original job description, which was not replicated in the new job was *'being an authorised signatory for relevant budgets where appropriate'*. However, the new job description stated that the post-holder had responsibility to ensure the participation of relevant Psychologists/Psychotherapists/PSI practitioners in teaching, training and supervision, where appropriate and to ensure the development and maintenance of the highest professional standards of Psychological practice amongst practitioners through adherence to their relevant professional guidelines and their active participation in internal and external CPD training and development programmes.

76 Ms Rana's evidence was that although there were differences in the job description for the Training Lead Hub role compared to the Claimant's previous role, those related to the overall purpose and direction of the role. There were significant areas of overlap in terms of job content/duties involved. 10 of the 11 direct clinical duties in the training lead job description were identical between the two jobs and many of the policy and service development duties were the same. All the human resources, management, supervision, teaching, training and CPD duties in the training lead job position had been contained in the Claimant's previous job description. The Research and Development and Information Technology duties were almost identical.

77 After the meeting, Ms Rana did not recall the Claimant asking her any further questions about it. As Ms Rana had been accused by the Claimant of bullying and harassment, she did not contact her but was available along with Ms Williams and Mr Mann to answer any queries the Claimant had about the role. They all saw the Claimant at work in the interim period and the Claimant had previously contacted these senior managers in relation to her redeployment. There were no queries from her with

regard to this latest offer and her position generally within the Respondent.

78 During the hearing, Ms Rana and Ms Williams were taken to task for not having contacted the Claimant in response to her letter of 30 April to try to persuade her of points with regard to the Hub and its secure nature or with details of the line management and budgetary responsibilities that she would have and with further details of the work that she was expected to do in the role. Their evidence was that these points had been covered in the consultation process leading up to the implementation of the reorganisation, in team meetings, the grievance process and in other discussions thereafter.

79 The Claimant had been consulted about the remit of the Hub post including the training lead post, from the outset of the process as she had been on the Psychological Therapies Committee and had been on the awayday when this had been presented. Ms Rana discussed the Hub post and potential remit on many occasions throughout the process, both with the Psychologist Therapies Committee and with teams, stressing the flexibility of the posts and the need for these to be shaped and developed over time.

80 Ms Rana had made it clear in previous discussions with the Claimant that there was a need for flexibility in relation to the Hub. Rather than being vague and uncertain, the Hub offered the Claimant the possibility of using her skills and experience flexibly. Ms Rana's evidence was that the current post-holder has organised the job to reflect her interests and that she was working together with the others in the Hub to provide a new type of psychologist service within the Trust. The job descriptions were written broadly to allow the post-holder to build something new. At this senior level within the Trust, there was an expectation that there would be some input from post-holders in formulating the direction and vision for the service/post. From the contents of her farewell email to the team the Tribunal finds that the Claimant's vision for the service was closely aligned with that of those who had devised the reorganisation of the service. The letter of 25 April confirmed the office space that had been identified for the Claimant and it was likely that there would have been admin support. Although Ms Rana was asked about admin support at the Tribunal hearing, it does not appear from the Claimant's letter of refusal that the fact that she had not been told the name of the person who was going to be her dedicated admin support person was part of her reason for rejecting the offer of the role.

81 The flexibility that was expected was to allow for the balance between direct clinical work and more strategic work to be determined once the person was in post and to reflect a balance between their interest and the needs of the Hub and the managers to whom the post-holder reported. The Claimant made no approaches to Ms Williams or to Ms Rana between 25 April and her refusal of 30 April to ask for any clarification or any further detail on the role.

82 On 30 April, the Claimant wrote to Mrs Williams declining the offer of the training lead post and setting out her reasons why she did not believe that it was suitable alternative employment. She referred to 'missing job matching scores'. She stated that the post was not tenable because it did not have budgetary/human resource responsibilities, which she had done in her previous role. The Claimant did not ask any questions about the role or for further information but set out her reasons for refusing

the role. She was sceptical as to whether the post objectives were deliverable in its current form. She also expressed concern about the working relationship she would be able to have with Ms Rana were she to take up the post. She considered that the role was not suitable alternative employment, was not tenable and that her refusal of it was reasonable. She concluded by stating that she hoped that the Trust would be meeting its contractual redundancy obligations unless other suitable alternative employment could be found to address her concerns without further delay. She asked for a decision to be made promptly as the current situation was damaging to her career and was extremely stressful.

83 The Respondent considered that the Claimant's letter of 30 April was a rehash of the points that she raised in relation to the 8b/8c role that she had previously been offered. Although this was a different job, it was their opinion that the Claimant had not given fresh consideration to this new job.

84 Although the 30 April letter was clearly the Claimant's final decision on the matter, the Respondent resolved to give her another opportunity to accept the role and a letter was written to her on 3 May asking her to reconsider her position. The Respondent also attempted to address the issues raised in the Claimant's letter of 30 April.

85 In a letter dated 3 May, the Respondent made another attempt to persuade the Claimant to accept the role of Consultant Psychological Therapist/Training Lead – Specialist East London Hub which was a full-time role with the title of consultant. In her letter, Ms Williams referred to the Respondent's management of staff affected by change policy, which stated that:

“Suitable alternative employment is work within the Trust that is on broadly similar terms and within the same range of skills required as the substantive employment. It may be on any site operated by the Trust subject to travel considerations. Staff at risk will be given prior consideration for suitable post in line with their skills, experience and capabilities and where appropriate will receive protection of pay.”

86 Given those considerations, Ms Williams stated that she believed that the post that the Claimant had been offered would enable the Claimant to utilise her skills and experience and therefore, her refusal to undertake the role was considered unreasonable which meant that she would not be entitled to receive a redundancy payment. The Claimant was asked to reconsider her position.

87 Ms Williams' evidence was that the remit of the Hub post was far wider than the Claimant's previous role because she would have had significant influence over the delivery of psychological care throughout the Trust and not just in Newham. Her previous post only covered services in Newham. The new post was a strategic leadership role with an element of training but was not simply a training role, as the Claimant referred to it. Ms Williams accepted that the new role did not have the same level of personnel or budgetary responsibilities as the Claimant's previous role but contended that this was not unusual for senior management roles and did not equate to a lack of status.

88 The Hub had a ringfenced budget and allocated office base and administrative support and the role would have entailed significantly more influence and autonomy than her previous post. Given that at the time, the Hub was not yet fully functional because the post that had been offered to the Claimant had not yet been filled; it was not possible to implement a review of the Hub. The creation and design of the Hub had received full support and signed off up to Chief Executive level. The Respondent has gone on to create the Hub. As already stated above, there was someone in post at the time of the hearing. This was therefore a realistic offer and proposal.

89 As the Claimant had not raised any questions about the role or how it would work, in her letter of 25 April, Ms Williams did not consider it to be beneficial to enter into further written dialogue about the points she had raised but did offer the Claimant an opportunity to reconsider her decision. The Claimant had opportunities in the period of time between 25 April and the meeting of 22 May to ask questions of either Ms Rana or Ms Williams as she worked with them and saw them during that period.

90 On 9 May, the Claimant wrote to the Respondent stating that Ms Williams had not responded to her concerns. She stated that because of that and because she had not been provided with job matching scores, she did not believe that there were any further substantive reasons for her to review her decision. The Claimant stated that she had not had a defined role for over six months and that after 17 years of many senior positions, she was disappointed to have reached this point. She referred to her repeated redeployments and said again that the present offer was a step too far for her. She repeated that she did not consider it to be suitable alternative employment and she did not see the post as tenable. She continued to hold serious reservations whether the post objectives were deliverable in its current form and referred to her concerns about the way she had been treated and the reputational damage it had caused her as well as structural setbacks/changes in her career. The Tribunal was not clear what reputational damage and structural setbacks in her career were being referred to because at that point, the Claimant had not yet taken up the post. She could not have been caused reputational damage by the new post as she had not accepted it. It was also not clear what reputational damage she would suffer if she took on the Consultant lead role in the Hub.

91 On 11 May, Ms Williams wrote to the Claimant to invite her to a meeting on 23 May to discuss the next stage of the process. The Claimant was informed that the likely outcome of this meeting was that she would be issued with a formal notice of redundancy. The Claimant was advised that she was entitled to be accompanied by a trade union representative and that there would be an HR representative in attendance at that meeting. This meeting took place on 22 May. The meeting was attended by Gill Williams and Corrinne Cunningham of HR. The Claimant was accompanied by Ruth Hydon, her trade union representative.

92 In the Tribunal hearing, the Claimant confirmed that at the time of this meeting, she was aware that she would have been entitled to a trial period in the new post, if she had taken it up. She confirmed that she had not asked to trial a job. She also confirmed to the Tribunal that she understood that if she did not accept the job, it was likely that she would be dismissed.

93 During the meeting on 22 May, Ms Hydon asked what was the options the

Respondent had for the Claimant and if there would be any other jobs offered to her. The Respondent confirmed that it did not have any other jobs that it could offer. Ms Williams confirmed in her evidence that the Claimant did not ask any questions about the job in the meeting on 22 May. Instead, she made it clear that she had no intention of changing her mind about accepting the role. She did not indicate to the Respondent that she wanted answers to the points she raised in her letter of 30 April.

94 Ms Williams wrote to the Claimant after the meeting to confirm the outcome. Although the letter is dated 11 May, Ms Williams confirmed in her witness statement that the letter was sent on 25 May. The letter recorded what happened in the meeting. It also confirmed that the Claimant's previous post had been deleted as part of the reorganisation and that the Claimant had been offered the role of Consultant Psychological Therapist/Training Lead – Specialist East London Hub as suitable alternative employment. Following the Claimant's refusal to accept that role, the process had now moved on. The Respondent had to give her 12 weeks' notice that her employment would end on 15 August 2018 by reason of redundancy. Ms Williams confirmed that she would need to meet with the Claimant separately to discuss what work she would be undertaking during her notice period. The letter confirmed that they had discussed the possibility of the Claimant working only part of her notice and the rest being paid in lieu of notice, which she agreed to consider.

95 Ms Williams confirmed in her witness statement that she was aware that the Claimant undertook a significant level of work outside of her Trust role including various professional membership/honorary roles which included both public speaking and training engagements. She considered that the role that had been offered to the Claimant at the Hub would make excellent use of her full skill-set and experience including those she utilised in her external activities.

96 Her letter recorded that in accordance with section 16 of the Agenda for Change terms and conditions handbook a redundancy payment was subject to the Claimant not having obtained or been offered suitable alternative NHS work and not having unreasonably refuse to accept such work. In the circumstances, the Claimant would not be entitled to a redundancy payment in accordance with that section due to her unreasonable refusal to accept the role of Consultant Psychologist Therapist/Training Lead – Specialist East London Hub which the Respondent deemed to be suitable alternative employment. The letter also referred to section 141 of the Employment Rights Act. The Claimant was informed that she had a right to appeal against the decision and that she needed to write to Tanya Carter in order to do so. Her appeal must be submitted within 15 working days of the date of the letter. She was also reminded that she had access to the confidential care service provided by CIC employee assistance programme and she was given a number to contact that service, should she wish to do so. Ms Williams thanked the Claimant for her contribution to the work of the Psychology Services in Newham over many years and gave her best wishes for the future.

97 On 4 June, the Claimant appealed against the decision to make her redundant without a redundancy payment. She wrote to Tanya Carter to confirm that the notice of redundancy had been given to her during the meeting on 22 May. She recorded that she had been told in the meeting that she would be put on the 'At risk' register and that if any other roles came up during the notice period, they would be offered to her. That

was not recorded in the letter from Ms Williams.

98 In her letter, the Claimant set out again why she considered that the offer job was not suitable alternative employment. Her position was that the role was not similar to the recent post she had worked in and other roles that she had taken up at the Trust in terms of breadth of responsibilities. Although she did not clarify what that was a reference to, it is likely that this is a reference to the absence of budgetary and personnel/HR responsibilities.

99 The Claimant confirmed that she understood that the job was of the same salary and grade as her previous job but considered that the training aspect of the role meant that it was a diminution in her status within the organisation. The Claimant set out that she considered the role to be a backward step in terms of a professional, human resources and financial management/accountability and degree of influence and autonomy and did not meet her career aspirations and that the role was located in a virtual Hub with no resources and budgets attached. The letter concluded by the Claimant's statement that her reasons for refusal were reasonable because of the Respondent's failure to send her the job matching scores and evaluation factors.

100 The copy of the letter in the bundle of documents at page 645, contains the Respondent's responses to the points made by the Claimant, in the body of the text. Those responses had been provided by Ms Rana. In response to her point that the alternative post would lead to further diminution of status and role responsibility, the Respondent stated that the role was a Trust wide role with broad strategic responsibilities at that level. The high status of the role was reflected in its inclusion along with the other Hub and borough lead roles in the Therapies Advisory Group which was a strategic group led by the Director of Therapies. The Respondent accepted that the roles were different but that the key skills, competencies and knowledge required for this post were very similar to those of the Claimant's previous role and would draw on her work experience over many years. The Respondent confirmed that whereas in the past the Claimant had an office with attached secretarial support which had been withdrawn. It was no longer Trust policy to have personal secretarial support. Senior staff were expected to share office space. However, each Hub team member was allocated infrastructure support from within the Borough they were located in for their clinical work and each would have office space and admin support, as appropriate. The Claimant would not have been treated differently from Mr Tacconelli or any other senior member of staff in that regard. The Respondent confirmed that the Director of Therapies had continued to be available to meet with the Claimant to discuss the post; however, the Claimant had not requested such a meeting. Instead, while they were engaged in discussions to clarify the role and its potential for her the Claimant had written to the Respondent to affirm her belief that the role was not suitable alternative employment and to request a contractual redundancy payment. Ms Rana had been available to discuss with her any concerns she had about the role or to provide further information but she had not requested it. She had not asked Ms Williams for further details either.

101 On 18 June, Mashal Abdulla from HR emailed the Claimant to confirm that the Claimant's details had been added to the Respondent's redeployment register. The Claimant would assist her in finding suitable alternative employment and suitable roles would be sent to her for her to consider and apply. The Claimant was sent the

redeployment proforma for her to complete and the email informed her that she was able to search for restricted opportunities within the Trust as well as search and apply for other job opportunities with other NHS Trust through the register.

102 On 2 August 2018, Ms Williams emailed the Claimant to offer to organise a formal leaving event for her. She acknowledged in the email that the Claimant had made a significant impact on the shape of Psychology Services in Newham and that she wanted to publicly acknowledge this by arranging a leaving event for the Claimant. At the same time, she understood that the Claimant may wish to forego a public event given that the last year of her employment had been a particularly stressful one for her. In her response dated 6 August, the Claimant refused the offer of a formal leaving event. She did not feel it was appropriate given the way in which her employment had come to an end. She wished Ms Williams and Newham well in the future and hoped that Mental Health Services would continue to thrive under her leadership.

103 In a further email dated 14 August, the Claimant informed Ms Williams that she had now closed all her work, handed over all equipments, cards and fobs as well as the parking permit. She confirmed that she had sent her CV to the redeployment register but had heard nothing from the person responsible for administering it.

104 The Claimant's appeal letter together with Ms Rana's comments were sent to the appeal panel for them to consider at the appeal hearing on 6 September. Ms Rana was not going to attend as she was on leave on that day but she had prepared a management case to present at the appeal hearing. The appeal hearing date was moved to 13 September. The panel was to be chaired by Andy Cruikshank, Interim Director of Nursing for Mental Health and Cathy Dhillion attended to provide HR support. Ms Rana attended the hearing as Ms Williams was unable to attend. Shefa Begom, HR Business Partner also attended on behalf of the Respondent. During the appeal hearing, the Claimant set out her position with regard to the role that she had been offered. She confirmed that the role had been originally offered to her as a 0.5 post and that after the grievance process, the Trust changed and offered her the role as a full-time post. She continued to consider it not to be suitable alternative employment. The Claimant considered that she had been treated differently/discriminated against in that there had been redundancies offered to others without them being taken through a process of change management yet there was no explanation why that was not offered to her.

105 The Claimant confirmed that she had not sent any emails to Ms Rana requesting meetings with her to discuss anything about the post. She believed that she had to address all queries to Gill Williams and she confirmed that she had been liaising with her about the offer of the role.

106 Ms Rana responded to the Claimant's points in her presentation to the appeal panel. She referred to the Claimant's attendance at the Psychological Therapies meetings in January 2017 when the consultation process began and the discussions that took place about the Hub and the shape of the service following the reorganisation. She pointed out that the Claimant failed to attend an interview for one of the Hub post although it was a post she had expressed an interest in. The Respondent confirmed that it accepted that the roles were different but that it believed that the key skills, competencies and knowledge required were the same. The

Claimant's last post had more operational responsibilities whereas the post that she was offered had more emphasis on strategic development across the Trust. The intention was that this post would be quite senior and would be much more autonomous than the post the Claimant previously occupied. The Respondent acknowledged that the Hub post did not involve direct line management of staff or budgets in the same way as the Claimant's previous role as it was a different role. The evidence was that as a person progressed up the management structure at the Trust it was not unusual to have direct line management of less people as the roles become more strategic.

107 In her witness statement, Ms Rana confirmed that in her previous role, the Claimant had overall responsibility for managing approximately 12/13 whole time equivalent staff and a budget of £1m. In contrast, the training lead role did not have direct line management responsibility for staff but did have responsibility for developing clinical expertise in the Psychological Therapies workforce across all three London Boroughs which amounted to over 100 whole time equivalent (WTE) staff as well as for promoting psychological mindedness in the wider Trust workforce. That meant that the post had the potential to affect the working lives of approximately 5,500 members of staff. Although the post did not have direct budgetary responsibility, the Hub role involved negotiating course costs and fees with external providers ranging from individual supervisors to university departments. Ms Rana commented in her witness statement that her own role as Director of Therapies did not carry significant staff management or budgetary responsibilities as it was at a more senior level. Some of the most Senior Consultant Clinical Psychologists in the Trust also did not have significant staff line management responsibilities.

108 Although the operational duties of the two roles were different, Ms Rana's evidence was both entailed aspects of clinical governance, care pathway redesign, service development projects, quality assurance, considering demand and capacity issues and training of staff. The job description of the Hub post was broad because of the nature of the role and in order to allow the role to develop so that it could be tailored to suit the skillset and working preferences of the post-holder.

109 Although the Claimant continued to say in her appeal letters that she had reservations about the viability of the role and of the Hub, it had been explained to her at the 25 April meeting, that the Hub would need to build up its links with other departments organically over time but that all three London Boroughs had agreed to fully fund one Hub post each, including salary and associated costs and to provide accommodation and secretarial support. Each Hub post was to have a significant clinical element comprising 40% of the post which was specifically designated for the local borough and it was agreed that each member of the Hub staff would be located in the local borough where they will have office base and administrative support, including for their clinical activity. There would have been substantial autonomy with the Hub post in determining how the aims of the Hub would be delivered. Given the Claimant's seniority and breadth of experience across the Trust, the Respondent had full confidence that she would have been able to meet the expectations of the job. It was not possible to review the Hub until it was fully established - part of which was the Claimant taking up her position.

110 All of these points had been made by Ms Rana and Ms Williams, either at the

meeting on 25 April or at the appeal meeting on 13 September, or previously, during the consultation process or at the grievance hearing.

111 During the appeal hearing, the Respondent explained again, that the job matching process had not been appropriate at this stage of the process. Shefa Begom referred to the Respondent's policy at Appendix 3, which set out the different stages that the Respondent had to go through in order to fill the post. Job matching had not been appropriate in this part of the process and it was the Respondent's position that the Claimant misunderstood its managing change process. Ms Begum also confirmed in an answer to the Claimant's trade union representative My Hydon, that no-one had been made redundant as part of this process. There had been more band 8c people than posts as the process had involved the reduction of band 8c post. The surplus band 8c people had been appointed to other roles, some of which were band 8b roles.

112 The Respondent confirmed in the appeal meeting that the key responsibilities, knowledge required, training and experience required were similar for the Claimant's last role within the Respondent and the role that she had been offered and that the level of autonomy for the new role were slightly higher.

113 In summarising the management case, Ms Rana pointed out that if the Claimant had agreed to trial the post, then objectives would have been set for her but as she refused to trial the post, that had not been done. She also stated that many of the Claimant's points around suitability had been covered in the previous appeal. Most of the points had been responded to previously, when the Claimant had been offered the role as a 0.5 role and that she was aware that Ms Williams had had extensive discussions with the Claimant during the process.

114 The Respondent acknowledged that the process had been protracted and that had made it stressful for the Claimant but it was its position that the offer had been suitable alternative employment.

115 In her summary, Ms Hydon on behalf of the Claimant, pointed out that there were two separate issues: whether the role was suitable and whether the Claimant's refusal was reasonable. Reasonable refusal can relate to her concerns about her career path and qualifications in a manner in which the offer had been made, especially if it has damaged relationships between employer and employee. It is likely that this is a reference to the Claimant's relationship with Ms Rana. She reiterated that the Claimant's concerns were that the role did not have any budgetary or direct line management responsibility and that this impacted on her career opportunities. The Claimant confirmed her belief that the role was not senior enough and that this would have a detrimental effect on her professionally and personally which made her refusal reasonable. The Claimant did not agree that she had extensive discussions about the new role with Ms Williams as she believed that Ms Williams had moved on and that she had had a few months with no management.

116 The Respondent wrote to the Claimant on 28 September to notify her of the outcome of the appeal hearing. The panel acknowledged that the primary focus of the new role was different to the role the Claimant undertook in the locality in Newham as the virtual Hub was a new venture and an emerging provision that would take time to be established. The panel considered that taking into account the Claimant's

experience, knowledge and seniority, the job would meet the definition of suitable alternative employment. It was acknowledged that the role had a different focus in that the boundaries of practice would be greater within the training role. But, the new role was intended to have significant influence over the delivery of psychological care within the Trust. It was likely that the role would have challenges and the Respondent preferred to have a credible senior figure to influence and guide changes and practice with some authority. That was one of the reasons why the role was offered to the Claimant. It was noted that the Claimant indicated this option as her second preference when considering redeployment options at the start of the change management process. Although the post that she indicated her preference for at the start of the process was not titled the same as this post, as it was called the Senior Clinical Specialist (Psychodynamic and Training), it is likely that the role that she was finally offered was very similar.

117 The panel considered that the Respondent had taken into account her position at the grievance hearing and offered the band 8c clinical and training component as a whole time equivalent post, which it would be appropriate and suitable for her to accept. It was acknowledged that the Claimant had successfully argued at the grievance hearing that the band 8b part of the role was unsuitable. The Respondent had reasonably assumed that a full-time band 8c role would be in keeping with her preferences. The offer of the 8c clinical component effectively acknowledged her seniority and expertise and the 8c training component also acknowledged this and gave more strategic authority to help shape the Respondent's services. The panel accepted that this was the departure from direct line and budgetary management but made the point that neither of those job elements were absolutely necessary for senior strategic roles. The Claimant's experience was expected to add value to the discussions and development of future care.

118 The panel believed that a trial period would have helped to establish conclusively whether the post met the Claimant's requirement but acknowledged that it would not be possible for that to happen as her last working day with the Trust was 15 August 2018, which had by then passed. The panel's considered decision was that the offer was suitable alternative employment and that the change in focus would enhance rather than diminish the Claimant's influence and seniority. The panel did not uphold that ground of appeal.

119 The panel then considered whether the Claimant's reason for her refusal were reasonable. The panel stated that the offer of suitable alternative employment was intended to mitigate the risk of redundancies and was deemed to be suitable unless it could be demonstrated that accepting the role would place the staff member at some disadvantage. The Claimant had not made any points associated with practicable issues such as working hours, travel and so on. The panel acknowledged that the lengthy process that had been followed in this case may have made it stressful for the Claimant. However, it confirmed that the process had been transparent and had followed policy. The panel stated that they could see no evidence of any discrimination against the Claimant. It was acknowledged that the Claimant had been unsuccessful in gaining her first choice of post which was the Head of Psychological Therapies in Newham and that it was at that point that the Claimant became reluctant to wholly engage in the process. It was not clear to the panel what other assistance could have been provided to the Claimant.

120 It was also clear that the Claimant's opinion differed from management in how she saw the seniority and responsibility of the new role. The points she made about diminution and status and a negative effect on her career prospects would usually be associated with a move to a less senior role but the post offered to the Claimant was a senior role with Trust-wide responsibilities, at the same grade. The panel stated that "*In effect one set of traditional responsibilities is being swapped for a broader set of objectives*". The panel concluded that this did not diminish the Claimant's obligations in regard to clinical practice, safeguarding and assurance. The difference in responsibilities i.e. no longer having personnel and budgetary controls, and the Claimant's perceived loss of status could be reasonably mitigated by the autonomy and influence of the new position. Therefore, on balance, the panel did not consider that the Claimant's refusal was reasonable although it did acknowledge the emotional distress the process had caused the Claimant. The panel did not uphold the ground of appeal. The Claimant was informed that the matter had now concluded and the decision of the panel was final.

121 In her witness statement, the Claimant referred to the fact that this was her fourth redeployment since 2013 alongside other changes to her portfolios at Newham Psychological Services as Newham Psychological Services had been reorganised a number of times. This restructure had been a prolonged and protracted process and she had been left isolated without any defined role for 10 months with no regular line management. She was also concerned about what she considered to be the Respondent not adhering to the recruitment standards set out in the organisational change paper.

122 She considered that the role that she had been offered was much narrower in focus, namely it concentrated on training and that it did not have the same level of managerial, budgetary, personnel or supervisory/management responsibilities and therefore was not at the same level that she wished to continue to operate at. She remained of the view, which was the view that she maintained at the hearing, that the job would lead to a diminution of status and role responsibility and would affect her career prospects.

123 The Claimant had come to the end of the internal process. She submitted her complaint on 13 December 2018 having begun the ACAS conciliation process on 29 September 2018.

Law

124 Section 135 of the Employment Rights Act states that:

- "(1) An employer shall pay a redundancy payment to any employee of his if the employee –
- (a) is dismissed by the employer by reason of redundancy, or
 - (b) is eligible for a redundancy payment by reason of being laid off or kept on short-time."

Section 141 ERA

125 Section 141 of the Employment Rights Act 1996 (ERA) states as follows:

- “(1) This section applies where an offer (whether in writing or not) is made to an employee before the end of his employment –
- (a) to renew his contract of employment, or
 - (b) to re-engage him under a new contract of employment,
- with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.
- (2) Where subsection (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer.
- (3) This subsection is satisfied where –
- (a) the provisions of the contract as renewed, or of the new contract, as to –
 - (i) the capacity and place in which the employee would be employed, and
 - (ii) the other terms and conditions of his employment,would not differ from the corresponding provisions of the previous contract, or
 - (b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.
- (4) The employee is not entitled to a redundancy payment if –
- (a) his contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of the offer,
 - (b) the provisions of the contract as renewed or new contract as to the capacity or place in which he is employed or the other terms and conditions of his employment differ (wholly or in part) from the corresponding provisions of the previous contract,
 - (c) the employment is suitable in relation to him, and
 - (d) during the trial period he unreasonably terminates the contract, or unreasonably gives notice to terminate it and it is in consequence terminated.”

126 Both parties referred the Tribunal to the case of *McHugh v Hemsall Bulk Transport* [1992] EAT/410/90. In that case, the EAT held that a valid offer for the purposes of what is now section 141 ERA had not been made in circumstances where the employee's employment had not been terminated and was not going to be terminated when the offer was made. Mr McHugh worked for a haulage company, part of which was bought by another haulage company, Robertshaw Transport Services Ltd. Mr McHugh was personally made an offer of alternative employment by Mr Robertshaw immediately prior to the transfer of part of the business to Robertshaw's, as a result of the purchase. He did not respond to that offer. He had been told by the Respondent that he would continue to be employed by them if he did not take up the offer from Robertshaw. The EAT held that no valid offer had been made as it was not an offer of renewal or re-engagement to take effect immediately on the ending of his employment with the Respondent or within four weeks thereafter. The EAT also held however, that the:

“matter might have been different, indeed probably would have been different, if the Respondents had terminated Mr McHugh's contract, with or without notice, on or before 1 January 1990, or if Robertshaw's offer had been for a job which would take effect immediately after Mr McHugh's employment with the respondent ceased.”

127 The Claimant submitted that the Tribunal would be assisted by the case of *Brooks v Kent and Medway NHS and Social Care Partnership NHS Trust* case number 2303079/2015 which was an Employment Tribunal case heard by EJ Kurrein sitting alone at the London South Employment Tribunal at Ashford. In that case, the Employment Judge's decision was that subsection 141(1) requires the offer of employment to take effect either immediately on or after an interval of not more than four weeks after the end of the employment. In that case, at the time of the offer the claimant had not been given notice of termination. In that tribunal's judgment, those circumstances were fatal to the respondent's claim that the offer fell within the provisions of section 141(1) since the offer did not take effect on or within four weeks at the end (or intended end) of the claimant's employment.

128 The Respondent in this case submitted that the decision in *Brooks* was wrong as the statutory wording did not state that notice must have been given in order for an offer to fall within the ambit of the statutory scheme, nor does it otherwise stipulate how far in advance of termination of employment the offer should be made. The Respondent submitted that the difference in *McHugh* was that no valid offer had been made because the claimant was to continue in employment regardless of the offer being made. In contrast, the Respondent submitted that in the instant case, it had been clear to the Claimant that her employment would be terminated by reason of redundancy if she did not accept the offer of alternative employment made to her.

Suitability and reasonableness

129 *Harvey* states that when considering suitability, the tribunal must consider the nature of the job offered and make an objective assessment of the job offered. The question is not whether the employment is suitable in relation to that *sort* of employee, but whether it is suitable in relation to that *particular* employee. The tribunal has to ask

whether the job matches the person in terms of his skills, aptitudes and experience. The whole of the job must be considered, not only the tasks to be performed but the terms of employment, especially the wages and hours and the responsibility and status involved. The location must also be relevant. All factors must be considered as a package. The question for the tribunal is - was this job, in all the circumstances, a reasonable offer for that employer to suggest to that employee?

130 The principle from the case of *Executors of JF Everest v Cox* [1980] ICR 415 is that the question of suitability is one to be assessed objectively, whilst reasonableness or unreasonableness of a refusal depends on factors personal to the employee and is assessed subject to belief from his or her point of view at the time of the refusal.

131 The way in which an employee responds to an offer of alternative employment, such as refusing to inform the employer of his position or to discuss the offer, was a relevant consideration to consider in the assessment of reasonableness (*Lincoln & Louth NHS Trust v Cowan* EAT/895/99).

132 The Claimant submitted the case of *Cambridge & District Cooperative Society Ltd v Ruse* [1993] IRLR 156 in which the EAT held that it was not unreasonable for an employee to refuse an offer of suitable alternative employment where he perceived loss of status in the job offered. The court held that it was possible for an employee to reasonably refuse an objectively suitable offer on the ground of his personal perception of the job offered. The question of the reasonableness of the refusal was a matter of fact for the tribunal.

133 In *Harvey* the issue of reasonableness of a refusal of an offer of a job is addressed as follows: “*the question is not whether a reasonable employee would have accepted the employer’s offer, but whether that particular employee, taking into account his personal circumstances, was being reasonable in refusing the offer: did he have sound and justifiable reasons for turning down the offer?*”

134 In the case of *Harris v E Turner & Sons (Joinery) Ltd* [1972] LCR 31, the NIRC held that it was necessary in considering the suitability of alternative employment offered to an employee to take into account his functions and status. It was held that in that case, the tribunal had failed to give sufficient weight to the instructional content of the employee’s work and the status which went with that work. That made the alternative employment offered to him unsuitable.

135 In the case of *Bird v Stoke-on-Trent Primary Care Trust* UKEAT/0074/11/DM the EAT held that in determining whether the employee had unreasonably refused the offer of a post, the tribunal substituted its own view about the reasonableness of the reasons for the employee’s refusal, rather than considering whether someone in her particular circumstances could reasonably have taken the view of the alternative post that she did.

Applying law to facts

Whether the Respondent’s offer of the post of Consultant Psychological Therapist/Training Lead – Specialist East London Hub (“Training Lead post”) amounted to an offer of re-engagement or renewal within the meaning of section 141(1) ERA

1996?

136 In this Tribunal's judgment, section 141 ERA requires that an offer should be made in advance of termination, to take effect on termination or within 4 weeks thereafter. There is no mention of a notice period in section 141. The clear purpose of these provisions is to avoid someone being made redundant, if there is an offer of suitable alternative work that is available for them. If such an offer could be made in advance of termination, to avoid what would otherwise be a termination of employment then that is in keeping with the purposes of the section. In the case of *McHugh*, Robertshaw's offer was not an offer of employment that would take effect on the end of Mr McHugh's employment because when the offer was made and when the employee failed to accept it, his employment had not been terminated and was not going to be terminated. He had not had notice of termination of employment and his employers had confirmed that he was to remain in its employment. It was in those circumstances, that the offer made by Robertshaw was not an offer which came within the scope of legislation. In contrast, it was clear to the Claimant that her employment would be terminated by reason of redundancy if she did not accept the offer of alternative employment. She had not yet had formal notice of termination but, as she confirmed in her evidence, it was clear to her at the time that the offer was made on 25 April 2018 that if she did not accept the offer of alternative employment, her employment would be terminated by reason of redundancy. The Claimant could have accepted the offer at any time after that date. Instead, on 30 April she made it clear that she was not going to do so. She could have accepted the offer before the notice was given and in so doing, avoided the need for notice to be given.

137 In this Tribunal's judgment, the offer of the post of Consultant Psychological Therapist/Training Lead – Specialist East London Hub was made to the Claimant before the end of her employment. It was an offer to employ her in a new job, to take effect on or after an interval of not more than four weeks after the end of her employment. Had she accepted it, it could have taken effect immediately on the end of her employment. The section does not refer to a specific date on which the offer is to take effect, as long as it is not more than 4 weeks after the end of employment. The section does not require notice of termination of employment to be given before the offer of alternative employment is made.

138 All that is required is that the offer should be made in advance of termination to take effect on termination. That is what occurred here.

139 In those circumstances, it is this Tribunal's judgment that the Respondent complied with section 141(1) of the Employment Rights Act 1996. In this Tribunal's judgment, the decision in *Brook* is wrong and the law is correctly stated in *McHugh*. The Respondent has complied with the law as stated therein.

Suitable alternative employment

140 *Whether the Consultant Psychological Therapy/Training Lead – Specialist East London Hub post offered to the Claimant was suitable alternative employment within the meaning of section 141(3)(b) ERA 1996.*

141 Did the proposed terms of the new job differ from the corresponding provisions

of the previous contract? The burden is on the Respondent to prove that the new job was suitable and that her refusal was unreasonable.

142 On 25 April 2018, the Claimant was offered a post which was a full-time, band 8c role with the same salary as her previous role and with the title of 'Consultant' which had been an important matter for her. The Claimant's previous post had also been a band 8c role. It is this Tribunal's judgment having considered the experience, knowledge and skills required for the post-holders of both jobs and the purposes of both jobs that although the roles were different, the skills, competencies and knowledge required for the new post were not that different to what had been required for the Claimant's previous role.

143 The new job was at the same band, therefore attracting the same salary and with the same seniority as the post the Claimant previously held. It was also a full-time role and comprised the same number of working hours. The job was going to be located at a different work location but one that was close to the Claimant's previous base and to which she had already moved as she could no longer stay at the office she had occupied when she held the earlier post. The Claimant did not refuse the role and it was not her case that the role was unsuitable because she would have had to use a different office space.

144 The Tribunal bore in mind that the Claimant indicated on her preference form at the start of the process, that she would be interested in the combined band 8c Senior Clinical Specialist (Psychodynamic/Training) role. When the Claimant was offered the role on a half-time basis as option 1 in Dudley Manns' letter of 9 November 2017, she refused it in her letter dated 17 November. During the grievance process the Claimant successfully argued that the band 8b part of the role that she had been offered was not suitable alternative employment for her and it was removed. The Respondent took the part of the job she indicated that she considered to be suitable alternative employment (the band 8c 0.5 post) and expanded it into a full-time role.

145 The offer of the new role was made in good time prior to termination of employment with ample opportunity for the Claimant to consider and accept it.

146 The Claimant's previous role was the Head of the Borough-wide Psychological Services and Specialist Services Psychology Team dedicated to Newham. That was an operational role in that she was the person to lead and manage all psychological practitioners within the Borough. The new role was to provide more strategic development and leadership across the Trust. In the new post she would be responsible for co-ordinating, overseeing and organising all psychological training across the Trust as opposed to focussing on one part of psychological services in one Borough, as she had been previously. The new role was not simply delivering training. In the new post the Claimant was being asked to do some clinical work and to develop policy, work with colleagues and other leads to maintain the quality of the psychological therapies provided and to promote and sustain psychological mindedness in staff; across the Trust. The Tribunal's understanding of the new post is that the Respondent was asking the Claimant to take responsibility for ensuring that all clinical staff, from the most junior to the most senior, across the Trust, had the training, knowledge and skill necessary to ensure that the Respondent provided a high-quality service that met service users' needs. This would have been across the three Boroughs that the

Respondent served.

147 It is this Tribunal's judgment that the new role was likely to increase the Claimant's sphere of influence in that the work that she would be doing would be Trust-wide rather than restricted solely to Newham, as had been in the old job.

148 In drafting the job description for the new role, the Respondent had exchanged personnel, management and budgetary tasks for strategic development of Psychological Services across the Trust. That does not automatically mean that there would be a diminution of the Claimant's position, as she appeared to believe. The strategic development encompassed in this role would have been at a senior level. Not all senior managers within the Trust had line management responsibility. Neither Ms Rana nor Ms Williams, who were both senior within the Trust, had, according to them, much line management responsibility although they did have some budgetary involvement. It is likely that they both managed no more than one person each. Line management responsibility is only one way of measuring seniority. It is not the only way. In the new role, the Claimant had the power to affect budgets across the Trust given that part of the role was to assist and develop training policy, organise training placements and Trust-wide events and services across the Trust. She would have been working with outside agencies such as Universities. Whereas she managed approximately 12 posts in the earlier role, in this role, although she did not have direct line management responsibility in the traditional sense, she had the power and authority to work with and directly affect over 5,000 people. It would also, given that it included speaking at conferences and contributing to national and professional policy discussions, involve her in continuing to do work at national level, which she had previously been doing on a personal basis and on behalf of the Respondent.

149 In this Tribunal's judgment, the role was different to the post she had occupied just before this restructure. But the salary, banding and title were the same. The role was offered to the Claimant in sufficient time to enable her to consider it, discuss it and accept it and start or at least start a trial period, well before the termination of her employment.

150 The Claimant could not be offered the same role as she had before as that role no longer existed. The service had been reorganised. In her email of 3 November 2017 to the team, the Claimant indicated that she agreed with the aims of the reorganisation and referred to the new opportunities that it presented. This role arose out of that reorganisation and was a credible, real role within the Hub that the Claimant had been aware of since the beginning of the consultation process.

151 In this Tribunal's judgment, there was no evidence that there would be a diminution in the Claimant's position or any reputational damage from accepting this post. It retained the title of consultant which was something that she expressed concern about earlier in the process and it was at the same band and pay and level of seniority as her earlier job.

152 It is also the Tribunal's judgment, that the role required someone with the Claimant's authority and seniority to develop it and make it her own. The Hub was a new thing and although the vision for it was clear, there were aspects that would only be solidified once the person was in post. Added to that, the Respondent wanted

someone with authority to spearhead the training aspect within the Trust and the Claimant's experience, authority, long-service and the fact that she was well-known within parts of the Trust was likely to have made this post particularly suitable for her. In this Tribunal's judgment, the Respondent devised this post from its need and with the Claimant's skills and experience in mind; within the confines of its budget.

153 It is this Tribunal's judgment that the role of Consultant Psychological Therapist/Training Lead – Specialist East London Hub was suitable for the Claimant. It suited her seniority, her skills, aptitude and her long-service with the Respondent.

154 The new role was suitable alternative employment within the meaning of section 141(3)(b) ERA 1996.

155 *Whether the Claimant's rejection of the Training Lead post was unreasonable.*

156 The Claimant made some points when rejecting the role in November 2017. At that time, she was offered the role as a ringfenced 0.5WTE 8c post as a Consultant Psychological Therapist/Training Lead in the Hub; with the remaining 0.5WTE of that post offered at 8b level. Those were the same points she made in the grievance process. The Respondent took on board her comments and grievance outcome and addressed her points in the discussion in the grievance hearing. There was a full discussion at the meeting on 25 April. The Claimant continued to make the same points thereafter.

157 From the Claimant's point of view, what made the new job unsuitable and were those objections reasonable? She complained that the post would represent a diminution in her status within the organisation. She repeatedly asked about job matching criteria and forms, she initially complained that not having the title 'Consultant' would adversely affect her standing within the Trust and her future prospects; that the new job did not match her skills, abilities, experience and aptitude or the breadth of her experience within the Trust and that it marked a backward step for her.

158 In this Tribunal's judgment, the Respondent changed the job it offered to the Claimant after the grievance process. It was not a job that she had been matched to in the sense of the Management of Change policy job-matching process but it was a job that had been created for her which at the same time, was necessary and needed at the Hub. In the correspondence she received from the Respondent and in the meetings conducted with her in April and May, the Claimant was informed about how the post would be funded, paid for, serviced and managed; and where it would be located.

159 In considering whether the Claimant's rejection of the role was reasonable the Tribunal also considered that the Claimant had been employed by the Respondent for 17 years and had been a senior manager within it. She had been through at least 4 reorganisations before this one and was clearly fed up with the whole process of reorganisation. At the start of the reorganisation, the Claimant chose the Head of Psychological Therapies, Newham as her preferred role. It was when she was unsuccessful in securing that role, that she seemed to withdraw from the whole process. Although her evidence was that she only made second preferences because

she was told that she had to, they were her preferences and when she was invited to attend the interviews, she did not attend. Even though she did not attend the interviews, the Respondent continued to offer her the roles and when she refused to take up option 1 or option 2, the Respondent changed what it was offering to make it more acceptable for her.

160 It was following her failure to secure the first, preferred role that she indicated that she would not be taking further part in the process and would be looking at her options. She withdrew from the process. That was not reasonable. The Respondent had not conducted the interview and appointment process for the Head of Psychological Therapies post in an unfair manner. No one had been required to submit a CV an application form and the Claimant had not been disadvantaged by not being asked to submit these documents. It was appropriate and fair for the Respondent to rely, in interviewing and appointing to a senior role from internal candidates; on performance at interview.

161 Later she referred to her entitlement to a redundancy payment. The Claimant also appeared to have in her mind the situation that related to colleagues whom she did not name in the hearing but who she stated had been allowed to take redundancy payments rather than go through another reorganisation. The Tribunal has no knowledge of who she was referring to and whether this did happen and if so, whether their circumstances were similar to the Claimant's or whether there were distinguishing features. This was not a matter that the Claimant developed in the hearing and did not form part of her case.

162 The post offered to her in April did not come out of the blue as the concept of the Hub and the posts within it had been discussed as part of the consultation process. The post offered to her on 25 April was not the same as initially envisaged as it had been a 0.5 WTE part of a post. In making it full-time, the Respondent did not change the location but extended the hours, wage, added the Consultant title and added additional tasks. It tailor-made a job for the Claimant.

163 As the Claimant was quite a senior member of staff and had been working with the Respondent for a number of years, she knew of the issues that created a need for the Hub and of the issues that it was attempting to address. In her farewell email of 3 November 2017 to the department she expressed her agreement with the reorganisation that had happened and with the way that the service would look thereafter.

164 In this Tribunal's judgment, Ms Rana, Mr Manns and Ms Williams at various stages spoke to the Claimant and provided her with the information that she needed in response to the questions that she asked. The point about the job matching information was provided to her in the letter in which it was stated that it was not appropriate to do job matching at this stage of the process. At the meeting on 25 April she was shown the job matching form that Shefa Begom prepared, which showed that the job match was 8 over 12, just under 75% although it was explained to her that it was not appropriate because of the stage in the process that they had reached. She continued to ask for job matching criteria after that meeting. That was not reasonable.

165 In this Tribunal's judgment, after the meeting on 25 April the Claimant's

repeated the objections she had made previously. She had not accepted the Respondent's explanations. The Respondent explained that the role was a Trust-wide role with broad strategic responsibilities and that it would be reporting to Ms Williams and Ms Rana. That would have indicated its seniority to the Claimant. It was at the same band as her last job and paid at the same salary level. Had she looked carefully at the job description, which was the key document that would tell her whether she was going to be asked to do something quite different or more junior than what she had previously done; she would have seen that the key skills, competencies, experience and knowledge required was very similar to that of her last job and would draw on her work experience over the time that she had worked for the Respondent.

166 In this Tribunal's judgment, it was not reasonable for the Claimant to reject the Respondent's explanations without good reason.

167 The Claimant described this job as a training role and sought to downplay the work that she would be asked to do. The job was not simply a training role and it was not reasonable for her to continue to refer to it as that when there were clinical duties attached and the job description stated that the post-holder also for example – had to develop strategy around training, develop, set and maintain professional standards, co-ordinate the provision of specialist clinical supervision and be responsible for creating psychologically minded staff – across the Trust. The training aspect was not simply to run training courses but was to do strategic development of Psychological Services across the Trust. The Trust served three Boroughs. Her work would affect staff in three Boroughs and not only in Newham as had been the case in the old job. She had the opportunity to be instrumental in the way in which training was devised and delivered and to ensure that everyone was psychologically minded with the services that they created or delivered. In this Tribunal's judgment, from the information provided to the Claimant at the grievance meeting and subsequently, in correspondence from Ms Williams and from Ms Rana, in the meeting that took place on 25 April and in the letter sent to her subsequently; that the Claimant was given the answers to the information and the reassurance that she requested, in relation to the new job.

168 It was evident that the Claimant did not address her mind to the information that was given and that is demonstrated by the fact that the points highlighted above, which she made in response to Mr Manns letter in November 2017 were essentially the same points she made in response to the job offer made to her on 25 April 2018. In the interim the Respondent's offer had changed. She had since been offered a different job. It was now a Consultant role. It was now full-time. It now had some clinical responsibilities although it was not clear what percentage of the job offered on 25 April represented clinical duties. In this Tribunal's judgment, it is unlikely that the Claimant asked any questions about the role at the meeting on 25 April. It is likely that she simply repeated her requests for job matching criteria and job evaluation information. This was also stated in her letter of 30 April. Ms Williams wrote to her on 3 May in a final attempt to give answers to some of the objections she had to the role and to ask her to reconsider her position.

169 In her submissions, the Claimant stated that she had been given a short time period in which to respond. The fact that Ms Williams wrote to her on 3 May to try to persuade her to accept the role showed that the Respondent was in no hurry to end

the process and if she had asked for more time, it is likely that it would have been agreed. In relation to the other points made in the Claimant's submission it is this Tribunal's judgment that the Respondent answered the Claimant's queries and objections to the post in meetings. The managers preferred to address her points in face to face meetings to ensure her understanding. Letters were written after meetings to confirm what had been said.

170 In this Tribunal's judgment, the Respondent explained to the Claimant why the job matching form was not appropriate at this stage on the reorganisation. If she wanted to know whether the job matched her skills, abilities or aptitude the best place to look would be the job description and person specification. Having looked in detail at those – in the hearing and in these reasons – the Tribunal's judgment is that the job was suitable for the Claimant. Although it was a different job it was similar in terms of responsibilities, seniority, influence, breadth and importance within the Trust. The Claimant made no complaint about the job particulars such as location and hours, so it was reasonable the Respondent to conclude that these were all acceptable to her.

171 The Claimant did not provide evidence to show that the role would lead to a diminution of her status and role responsibility. She was concerned about the viability of the Hub. She had all the information that the Respondent had on the Hub and she had known about it since it was an idea – at the beginning of the consultation process. By April 2018 the 3 Boroughs had signed off on it and it was viable. The Respondent gave her all the information that it had and all the reassurances it was able to give at the time.

172 In this Tribunal's judgment, the Claimant disengaged from the process of seeking alternative employment from November 2017 and soon after her focus was on leaving the Respondent with a redundancy payment.

173 It was the case that this process had been long and stressful for the Claimant. The Respondent acknowledged that. It was also unfortunate that she had been through so many reorganisations within the Trust. That is likely to be the nature of the Trust as a public body within the NHS. That was not directed at her personally and in this Tribunal's judgment those facts did not make the job offer unreasonable, especially when the Respondent had taken on board her comments and changed aspects of the job.

174 The Respondent had removed the band 8b part of the job that had originally been offered to her as she considered that it was not pitched at a senior enough level. At the grievance hearing she indicated that she considered the band 8c part of the role to be suitable. She objected to the loss of the 'Consultant' title. Both of those objections were taken into account in the revised role that was offered to her on 25 April which the Claimant refused.

175 It was within the Claimant's power to decide that she no longer wanted to be part of any further reorganisations and that she had had enough of working for a Trust in which there is a constant tendency to reorganise on a regular basis as services develop or to respond to local need. However, it was not reasonable to refuse the post on that basis. The Claimant was required to look at the actual post she was offered, consider the explanations she had been given for why it was drafted in the way that it

was; and decide whether it was suitable for her. in this Tribunal's judgment she had not done that.

176 It was appropriate that the Trust as part of the NHS and a steward of public money should ensure that it made the Claimant a suitable offer of alternative employment before moving to a redundancy payment. The Respondent's policy was to ensure that it made every effort to find suitable alternative employment for people in the Claimant's position and it is this Tribunal's judgment that it had done so and that the Claimant unreasonably refused the post.

177 It is this Tribunal's judgment, that the Claimant was entitled to want a job that gave her security, that took account of her aptitude, experience, skills and interests and her long-service within the organisation. The Respondent had done that. She was entitled to have her observations on the proposed job taken into account. The Respondent did so. The job maintained her salary, her title, her position, her seniority and her interests. The Claimant could not reasonably reject the new post offered to her on 25 April 2018 even when viewed through the prism of her particular circumstances. Her refusal of the job was unreasonable.

178 The Claimant is not entitled to a redundancy payment.

179 The Claim is dismissed.

Employment Judge Jones

Date 13 March 2020