Case No: 3301799/2020

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs J Casemore	v	Buckinghamshire County Council

Heard at: Watford **On:** 6-9 April 2021

Before: Employment Judge Douse (Sitting alone)

Representation:

For Claimant: Mr J Lewis-Bale (Counsel)

For Respondent: Mr N Bidnell-Edwards (Counsel)

JUDGMENT

1. The Claimant was fairly dismissed by reason of redundancy.

2. The Claimant's claim for unfair dismissal therefore fails.

REASONS

Claims and issues

1. The Claimant has brought a claim for Unfair Dismissal contrary to Sections 94, and 98 of the Employment Rights Act 1996.

2. There was a list of issues agreed in advance, some of which were dealt with as preliminary matters as detailed in the procedure section below. What remained was:

    2.1 Can the Respondent prove a potentially fair reason for dismissal?

a) The Respondent relies on the potentially fair reason of redundancy; and

b) The Claimant alleges she was dismissed because of the disciplinary proceedings

2.2 If so, was the dismissal of the Claimant fair in accordance with Section 98 of the Employment Rights Act 1996, such that it was within the range of reasonable responses open to a reasonable employer? Specifically:

i) Was there a genuine redundancy situation?

ii) Was the Claimant's dismissal due to the redundancy situation?

iii) Has the Respondent failed to offer the Claimant suitable alternative employment?; and

iv) Was the Respondent's overall process fair in accordance with equity and the substantial merits of the dispute?

Procedure, documents, and evidence heard

3. As some of the details in this case relate to children, it was agreed that there will be certain pieces of information that will be anonymised within the judgment and reasons.

4. There were some preliminary issues dealt with at the start of the hearing, namely:

4.1 Has the Claimant included references to a conversation which is inadmissible by virtue of Section 111A Employment Rights Act 1996, or Without Prejudice Privilege? Specifically:

i) are Paragraphs 23, 24, and 26.11 of the Claimant's Particulars of Claim, and
ii) Paragraphs 109-113 of the Claimant's Witness Statement inadmissible by virtue of Section 111A of the Employment Rights Act 1996, or Without Prejudice privilege?

5. This issue concerned the meeting between the Claimant and Sheila Fearon-McCaulsky on 13th November 2019, and whether the contents of that meeting, and the fact it took place are inadmissible in these proceedings.

6. Mr Bidnell-Edwards, on behalf of the Respondent, submitted that s.111A applies broadly to pre-termination negotiations, and so long as I was satisfied that the discussions occurred prior to termination of the contract, and that the discussions relayed to termination, I must conclude that s.111A applies. He referred me to the

case of *Faithorn Farrell Timms LLP v Bailey 2016 ICR 1054, EAT* in support of his position.

7. Mr Lewis-Bale, on behalf of the Claimant, submitted that I have to look at the context of how the meeting took place. That is, until the evening of 12 November 2019 the Claimant had been expecting to have a meeting in relation to her conduct and disciplinary appeal. Ahead of the meeting Ms Fearon-McCaulsky said she wanted to discuss how best to move forward [E201] and had decided to put the appeal on hold. The Claimant says that there was no notice that a settlement would be discussed at that meeting, and that in any event any offer should have been made through ACAS.

8. Much of what the Claimant submits are areas raised within the ACAS '*Code of Practice on Settlement Agreement'*, and their separate *'Guide on Settlement Agreements'*. These include that it would be good practice if: reasons for the proposal are given; an employee be allowed to have a companion at the meeting if they request; and that it would be advisable to make sure that it is made clear at the start of the meeting that everyone is aware that the discussions would be inadmissible in any legal proceedings. None of these things happened in this instance. However, the Code and Guide are not binding, and s.111A does not require that any of these steps are taken.

9. The Claimant submits that the offer made at the meeting was not serious. Again, this is not a matter for consideration under s.111A, and the Claimant does not go so far as to suggest that this was improper behaviour on the part of the Respondent, which would exclude protection under s.111A.

10. S.111A effectively extends the general 'without prejudice' rule to situations where there is not an existing dispute. In this case, there were pre-existing disputes, but nonetheless it follows that even where an employee is surprised by a settlement offer, s.111A can still apply.

11. I accept that the Claimant may not have expected to discuss settlement offers at the meeting, but that does not mean the discussions are therefore admissible.

12. I determined that s.111A applies to the meeting between the Claimant and the Respondent on 13 November 2019, including the discussions within that meeting, and that the meeting took place. Any evidence relating to these are inadmissible in these proceedings.

13. I therefore directed that paragraphs 110 – 113 of C's first witness statement, along with paragraphs 23, 24, 26.11 & 26.12 of her Particulars of claim, be struck out.

14. I considered whether paragraphs 108 and 109 of the Claimant's witness statement should be excluded, but was satisfied that those deal with events leading up to any

meeting being agreed and confirmed, and do not contain any information relating to inadmissible matters.

15. In relation to the hearing itself, there was an agreed bundle amounting to 963 pages electronically. I heard oral evidence from the Claimant, and on behalf of the Respondent from Mr Gareth Morgan – Head of Service, Early Help at the Respondent; Jody Twycross – Team Manager in Children's Services at the Respondent; and Paulette Thompson-Omenka – former Head of Service for Children in Care at the Respondent.

16. Both representatives provided written submissions, and Mr Bidnell-Edwards, on behalf of the Respondent, supplemented his with oral submissions.

Findings of Fact

Background

17. The Claimant was employed by the Respondent from February 2009. At the time her employment ended, in November 2019, she was an Assistant Team Manager in the Family Resilience Service ('FRS'). Essentially the FRS worked with families and children, where the threshold for statutory intervention wasn't met, to ensure that children stayed safe. The Claimant worked with practitioners covering a range of family issues and behaviours, and as part of her role was expected to be able to identify new and increasing risks to children which might trigger the need for social care to intervene.

18. To determine the issue regarding the reason for dismissal, it is necessary to look at the background to the disciplinary matter which began in September 2018, and to some extent the personal family background of the Claimant prior to this. In short, the Claimant (along with her partner) had a Special Guardianship Order ('SGO') in relation to her two grandchildren - this had been in place since July 2015, and remains in place today. For the first year of the SGO there was also a supervision order which included monitoring by the relevant Local Authority - Buckinghamshire County Council - who were also the Claimant's employers.

19. The Claimant's line manager was aware of the SGO from the outset, and her personal situation was covered during supervision sessions [JC WS 103].

20. As time progressed, the Claimant had facilitated contact between her grandchildren and their mother, the Claimant's daughter, including overnight stays. No issues had been raised in relation to the SGO until 4 September 2018.

21. At the end of August 2018, the Claimant went on holiday for a fortnight, during which time the grandchildren stayed with her daughter at approved family accommodation. On 4 September 2018, the police received a call that C's daughter was drunk in charge of the children. Officers attended, but determined

there was nothing that met the threshold for a criminal investigation. As a matter of course, because the call related to children, the police informed the Local Authority safeguarding team which triggered a social care investigation. However, the children stayed in the care of the Claimant's daughter until the Claimant got back from holiday on 7 September.

Conduct and disciplinary process

22. On 10 September the Claimant informed her line manager, Jayne Foster, of the situation and she advised the Claimant to speak to Gareth Morgan as Head of Service. There is some dispute about whether the Claimant told Mr Morgan directly, or whether he was told by Ms Foster. Regardless of *who* informed Mr Morgan, it is clear that the Claimant notified her employer as soon as possible, and did not wait for social care to do this.

23. The Claimant and Mr Morgan met on 13 September, where she provided him with full background information, and as much information related to the 4 September incident as she knew at that time. Mr Morgan took notes at that meeting, which were signed by the Claimant, and he undertook to ensure those were saved to Respondent's system [E8]. This does not appear to have happened as the notes have not been located, and so were not available to the Tribunal.

24. Mr Morgan placed the Claimant on management leave whilst he gathered more information [E17-18] – this was initially due to end on 28 September, as this was the date that the child protection investigation should be completed by. A child protection conference eventually took place on 19 October 2018 - this resulted in the Claimant's grandchildren being placed on a child protection plan. However, the SGO remained unchanged [E27].

25. Following discussions with HR, Mr Morgan determined that the Respondent needed to carry out a full investigation and suspend the Claimaint, *"given the allegation that the Claimant had placed her grandchildren at significant risk of harm"* and *"her role as an assistant team manager who supervised and advised family support workers and who was required to identify and escalate any safeguarding concerns raised by practitioners"* [GM WS §17].

26. On 6 November Mr Morgan met with the Claimant, and informed her that allegations of gross misconduct were being made against her, namely:

    26.1 Serious breach of the Respondent's code of conduct;
    26.2 Reputational damage to the Respondent; and
    26.3 Breach of trust and confidence

27. Further details of the allegations were outlined in a letter Mr Morgan sent the Claimant the same day (E38-40]. The Claimant was formally suspended, having remained on management leave until this point.

28. An Independent Investigating Officer ('IIO'), Sarah Tuxford, was appointed at the suggestion of the Respondent's HR department [E28]. She was briefed by Mr Morgan, and began her investigation on 8 November 2018. As part of the investigation process the IIO interviewed the Claimant, Jody Twycross (Team Manager, Family Resilience), Daniel Jones (Fostering Team Manager), Jayne Foster (Team Manager, Family Resilience), Bernadette Little (Family Resilience Worker), and Samantha Finch (Assistant Team Manager).

29. On 4 January 2019 the IIO gave Mr Morgan a provisional view that the allegations were not substantiated. On 6 January Mr Morgan indicated to Julie Davies (Head of Quality, Standards and Performance) his view that *"subject to seeing the full report-that the summary provided doesn't seem to address the core issues...but I will wait and see"* [E54].

30. The IIO provided the full report on 9 January. She found all allegations to be unsubstantiated, and recommended that the Claimant's return to work should be managed.

31. On 15 January, Mr Morgan advised the Claimant that he had the IIO report, *"which I need to review and discuss next steps and this will include a review meeting with the LADO and discussions with HR. It is important that I have input from appropriate professionals to enable me to progress this matter"* [E73]. A meeting between the Claimant and Mr Morgan was scheduled for 24 January.

32. Following conversations with other professionals, Mr Morgan was initially minded to follow the IIO recommendations, and on 22 January suggested to the LADO that he discuss a reintegration plan with the Claimant at their meeting later that week [E74]. However, on 23 January the LADO indicated that:

> "With the benefit of additional knowledge about events in the Child Protection Conferencing arena, the LADO service wishes to challenge the outcome of the internal investigation on the basis that it was not completed with the benefit of honest or full disclosures" [E79]

33. The LADO stated that further investigation was needed, and went on to say:

> "LADO advice is that JC's return to work should be postponed until the LADO service has been able to review the outcome of this second investigation. This is a decision for you ultimately but should JC return to work sooner this may increase risk to children and their families, JC herself, and Buckinghamshire County Council." [E80]

34. On 23 January, Mr Morgan emailed the Claimant to cancel their planned meeting on 24 January, explaining "some additional information has been raised with me today that I need to consider fully alongside the Investigating Officers [sic] report and in consultation with HR colleagues" [E76].

35. Debbie Hewes, HR Advisor for the Respondent, initially queried the suggested LADO approach, stating that: "The wider investigation that you are requesting below sounds more like a social care one than and employment one." [E79] but she subsequently provided Mr Morgan with details of a potential second IIO. On 25 January she indicated that Andrea Smith "can take on this investigation in the next couple of weeks" [E78]. The Claimant was not made aware of the existence of a potential new IIO.

36. Mr Morgan wrote to the Claimant on 30 January, notifying her that further investigation was needed and as such her suspension was being extended until 6 March 2019 [E84].

37. On 8 February, Mr Morgan emailed the Claimant asking her to attend an update meeting on 12 February [E86]. This meeting took place, where he provided her with a letter [E94-95] stating:

> "On receipt of the report from the IIO it is my view that the investigation did not fully consider the seriousness of your conduct and behaviours from a direct risk perspective in respect of your grandchildren's safety and care, and also the potential for transference of risk, in the context of your role as an Assistant Team manager within the Family Resilience Service. In addition, further information has come to light as a result of the Child Protection process. The new information is that:
>
> - The accommodation the children were staying in with your daughter at times during your absence was not suitable nor safe for them
> - Following the incident that occurred on 4th September at your daughters flat, the grandchildren have now been placed back on a Child Protection Plan.
>
> Both the above factors give additional weight to the allegations of you failing to exercise due care for your grandchildren, and call into question your ability to make appropriate and safe decisions.
>
> In view of the above I intend to hold one further interview with you to raise my concerns on information obtained during the investigation, as well as the two new matters referred to above so that I can obtain your responses. The notes of this interview will then be considered alongside the investigators report and findings prior to a decision on the way forward being taken." [E95]

38. Mr Morgan met the Claimant on 7 March, with a view to conducting the further interview referred to above. However, the meeting did not go ahead as planned because the Claimant identified inaccuracies in her statement taken by the IIO. The meeting was deferred to the following week, before which the Claimant was given the opportunity to express her views on appointing a second IIO or having the interview with Mr Morgan.

39. On 8 March 2019, Mr Morgan requested information from HR about the availability of a second IIO, and sought advice on the impact of him conducting the interview instead [E97].

40. In the absence of information about another IIO having been identified, or how long the process to find one may take, on 12 March the Claimant agreed to Mr Morgan conducting an investigation [E99].

41. Mr Morgan's interview of the Claimant took place on 14 March, and he concluded his investigation and produced his report [E104-109] in May 2019. Mr Morgan found that all allegations were substantiated, and recommended that the case should proceed to a conduct hearing.

42. The Claimant's ongoing suspension for gross misconduct, led to her appraisal rating being 'unsatisfactory' [E102].

43. The conduct hearing was initially scheduled for 14 June, but was subsequently postponed to 17 July due to the Claimant's representative not being available on the first date [E109]. The hearing was chaired by Errol Albert, Head of Children's Safeguarding Services. Mr Morgan attended the hearing to present the management case [E131-149], but played no other part in the process thereafter. Mr Albert found all the allegations to be substantiated and issued a Final Written Warning as a sanction on 24 July 2019[E150-155].

44. Following the initial disciplinary hearing, Mr Morgan liaised with the Claimant's line manager about the Claimant's return to work [E157]. Before this could happen, the Claimant was unwell and went on sick leave [E168, E183 & E184]. She did not return to work prior to employment terminating on 14 November 2019.

45. The Claimant appealed the outcome of the disciplinary hearing. The appeal was initially scheduled for 16 September 2019, but was rescheduled twice due to the Claimant's ill health, and was eventually heard on 15 January 2020, by Jane Bowie (Service Director). The appeal outcome was given on 30 January, upholding the original decision of a final written warning [E260-266]. Grievances that the Claimant had raised in relation to Mr Morgan's behaviour during the process, were also dealt with at this hearing, and were found to be unsubstantiated [E266].

46. The other grievances raised by the Claimant on 7 November 2019 were dealt with by Richard Nash (Service Director) at a meeting on 14 January 2020 – these were all unsubstantiated.

Redundancy process

47. Whilst the disciplinary process was taking place, the Respondent was also engaged in a restructuring. This had been in mind since March 2019, and employees were formally notified of the consultation process starting on 8 April

2019. The outcome of the restructure was to be the creation of a new Family Support Service ('FSS'), comprised of the Respondent's existing services, and bringing other external services into the Respondent's remit, with all old posts in the FRS deleted. There were to be 104 new roles - less roles than in the old service - and staff were told they would have to apply for these.

48. Consultation with staff included the offer of one-to-one meetings, a dedicated mailbox to send questions to, regularly updated and published FAQs, and interview skills training sessions. The Claimant was not in work during this time, but was provided with the relevant information and given the opportunity to request a one-to-one meeting. The Claimant did not take advantage of any of the resources provided by the Respondent.

49. As part of the process, employees could apply for voluntary redundancy, and were also advised about the Employee Transfer Register ('ETR') where other vacancies with the Respondent would be available to those who weren't successful in gaining a role in the new FSS.

50. The roles available were published, and existing staff were able to apply for these by submitting an expression of interest ('EOI'), for up to two (or three, on request) roles. The EOI form specified that:

> "Shortlisted candidates will be invited to attend an interview that will focus on the following criteria:
>
> - Evidence of competencies required for the post
> - Evidence of experience, skills and qualifications required for the post
> - Evidence of work performance against current or recent targets
> - Evidence of ability to respond positively to change" [D99]

51. The Claimant submitted EOIs for Assistant Team Manager ('ATM'), and Early Help Pathways and Practice Manager ('P&P Manager'). She now accepts that the application for P&P Manger was in error, she had intended to apply for the Team Manager ('TM') position as her second EOI. The Claimant believed she should have been asked to attend one interview for both roles as they required the same skills. She has maintained this position, although the initial basis of this was her intention to apply for ATM and TM. The Claimant was given separate interviews for ATM and P&P Manager, because the roles weren't deemed to be similar enough [D269].

52. The new ATM role was similar to the old one, but the new ATM would have more responsibilities, including more people to line manage and ensuring adherence to a performance framework.

53. The Claimant did not receive notification of invitations to interview until she contacted the Respondent on 8 July 2019 about the outcome of her applications. She was advised that invitations had been sent in the post to her, and was provided with a further electronic copy.

54. As highlighted in the EOI documents, the interview was the candidates' opportunity to demonstrate how they met the criteria for the role. The panel had an expectation that certain terminology, key words and phrases or buzzwords would be used to convey this.

55. The Claimant attended an interview for ATM on 10 July 2019 – the panel was made up of Jody Twycross and Louise Collins. The interview panel had a set of questions that they asked all candidates [D413-416], including a scoring matrix out of 5 for each question [D417]. The Claimant scored a total of 18/35 from each panel member [D278 & D284]. Her scores were generally low, although she scored 4/5 for safeguarding. Ms Twycross explained in her feedback to the Claimant (on 29 July):

> "In interview, there was insufficient reference to strategic or service drivers and explicitly, no reference was made to the BCC Ofsted Improvement plan or planning for the SEND inspection both of which underpin the Early Help strategy and the new Family Support Service and which supervisors would be expected to understand and link to their work. Some evidence was provided in terms of addressing performance but this was not detailed enough in terms of process if informal action has been unsuccessful to give confidence about supervisory knowledge and understanding." [D310]

56. Mr Morgan moderated all interview scores in the restructure – this was mainly with Lucy Pike, but as she wasn't available on 12 July, he moderated the ATM interview scores along with Sarah Callaghan. They reviewed the front score sheet for each interviewee, along with the unsuccessful Team Manager applicants who had indicated ATM as their alternative, to check the scores and identify the highest scorers to appoint. Mr Morgan was therefore involved in moderating the Claimant's scores, but did not change them.

57. Mr Morgan explained that a candidate would need to score at least 65% to be considered appointable - the Claimant did not meet this threshold and so was not considered appointable as ATM.

58. The Claimant has compared her scores to those of other candidates - Angela Foy and Sarah Mohan – who had less experience than her, but who were appointed. In giving oral evidence the Claimant accepted, having heard the explanation of Ms Twycross, that she hadn't used the key words and phrases in the same way as other candidates and that this could be a reason for her lower scores.

59. There were other candidates who met the threshold score, but were still not considered appointable as ATM [D435].

60. Only eight of the nine ATM positions were filled at the end of the interviews. Mr Morgan considered is options to either revisit unappointable candidates, advertise externally and delay appointment, or explore options in wider pool where people had performed exceptionally well. He chose to appoint someone who had interview extremely well for both of his roles, Joe Head. The Claimant took issue with Mr Morgan giving the last ATM role to someone who had been interviewed for a

different position. However, in cross-examination she accepted that this was an option that was open to the Respondent.

61. As the Claimant was unsuccessful in her application for ATM, and had withdrawn her application for P&P Manager, on 14 August 2019 she was notified that she would be made redundant, effective 14 November. She was reminded about registering for the ETR but she did not do so, stating she was exhausted by the processes she had already gone through.

62. The Claimant appealed her redundancy on 17 August, which was heard at a hearing by Paulette Thompson-Omenka (Service Director for Education) on 10 October (rescheduled from 2 October at the Claimant's request). In addition to the comparisons detailed above, in her redundancy appeal the Claimant also raised that her positive appraisal ratings hadn't been considered. In the management case, Mr Morgan explained that this wasn't used as a measurement, to ensure a level playing field for candidates who didn't have a rating to rely on [D330]. The Claimant additionally suggested that her absence from the workplace affected her ability to have up to date knowledge and information.

63. The Claimant was given the chance to provide further information by 14 October, which she did, including comments on the management case [D351-378]. Ms Thompson-Omenka gave the Claimant a verbal decision on 24 October, followed by an electronic and hard copy on 1 November – none of the grounds of appeal were upheld [D395].

64. The Claimant's employment with the Respondent terminated on 14 November 2019.

Relevant law

<u>Unfair Dismissal – Employment Rights Act 1996</u>

65. *Section 94. The right.*
(1) An employee has the right not to be unfairly dismissed by his employer.

66. *Section 98. General.*
(1) In determining for the purposes of this part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or if more than one the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it- ...
(c) is that the employee was redundant …

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.

67. *Section 139. Redundancy.*
(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

(a) …

(b) The fact that the requirements of the business –
(i) for employees to carry out work of a particular kind, or
(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

Case Law

68. In ***Williams & Others v Compare Maxam Ltd [1982] ICR 156***, the EAT laid down guidelines that a reasonable employer might be expected to follow in making redundancy dismissals. They were as follows:-

- Whether the selection criteria were objectively chosen and fairly applied;
- Whether employees were warned and consulted about the redundancy;
- Whether if there was a Union, the Union's view was sought; and
- Whether any alternative work was available.

69. The Claimant also referred to the cases of ***Gwynedd Council v Barrett [2020] IRLR 847***, which concerned fairness of the redundancy consultation and appeal process, and ***Uddin v London Borough of Ealing [2020] IRLR 332*** at para 73-78, regarding the relevance of the knowledge and conduct of someone involved in the disciplinary process to the fairness of a dismissal.

Conclusions

70. I applied the relevant legal tests to the findings of fact that I have made, to reach my conclusions on the issues for determination. I have set my conclusions out in the same order as the list of issues.

Can the Respondent prove a potentially fair reason for dismissal?

71. The Claimant submits that there was a blurring of the lines between employment and social care in the way the Respondent dealt with her disciplinary matter. However, she recognises that there was potential for events in her personal life, related to the care of her grandchildren, to be relevant in her professional role. She had already made her line manager - Jayne Foster - aware of the existence of the SGO, discussed the situation in supervision meetings, and then notified Ms Foster when the issues in September 2018 arose.

72. The incident was relevant to the Claimant's employment because of her role with the Respondent, due to the overlapping subjects of risk and safeguarding of children across work and private life. The Claimant accepted that the nature of the allegations against her were such that the Respondent was entitled to carry out a disciplinary process.

73. The disciplinary process was carried out within the Respondent's policies and procedures. There were delays at times, but these were on both sides, and were unavoidable.

74. Whilst Mr Morgan took responsibility for all decisions made, he sought views of, and took advice from, other relevant parties at various points throughout the process. In particular, is clear that the decision to conduct a further investigation, after the initial IIO report, was heavily influenced by what the LADO, Maria Thompson, wanted. The email of 23 January [E79-80] was very clear about the potential risks of the Claimant returning to work until a fuller investigation had been carried out, and in oral evidence Mr Morgan said it undoubtedly influenced his decision-making.

75. A number of allegations have been made about Mr Morgan's conduct during the internal processes, which were the subject of grievances ultimately not upheld. In evidence to the Tribunal, the Claimant's position on this was somewhat diluted. The Respondent invited the Tribunal to make a finding in relation to the reason for the schism between the Claimant's oral evidence and what is contained within the ET1 and grievance documents in particular. I do not believe that is necessary. It is clear to me that the Claimant was genuinely aggrieved, and that how this was expressed in various documents is how she felt at the time. There is no doubt that the overlapping timing of the disciplinary and redundancy processes, although unavoidable, muddied the waters and gave the Claimant a basis to believe that there must be something untoward going on behind the scenes. In respect of Mr Morgan's actions, and at various other points in her evidence, the Claimant made concessions when asked to reflect on matters and when she was provided with an alternative explanation for an action or decision. It is in fact to the Claimant's credit that when challenged in cross-examination she did not simply maintain her position to avoid criticism that she had now changed her story.

76. For the avoidance of doubt, I do not find that Mr Morgan did anything improper at any stage of the disciplinary or redundancy process. However, it *was* ill-advised of him to conduct the second investigation (regardless of the Claimant's consent) as it contributed significantly to the *impression* that the process lacked independence. I suspect, with the benefit of hindsight, he may well have made a different decision in relation to this aspect of the process.

77. It is unfortunate that the general timing of the disciplinary and redundancy processes overlapped, but there is no evidence to suggest that this was intentionally engineered, by Mr Morgan or any other person.

78. The only overlap in terms of personnel in the two processes is Mr Morgan's moderation of the interview scores as part of the redundancy process. This activity is too removed to have had any effect on the outcome. In any event, he made no change to Claimant's scores from the two interviewers. The Claimant does not allege that Mr Morgan spoke to the interview panel ahead of the interviews.

79. At the time Mr Morgan carried out his investigation, March-May 2019, he was not aware that the Claimant would apply for any role within the new service. The Claimant had not requested a one-to-one consultation meeting with Mr Morgan, or otherwise discussed her intentions, and she submitted her EOI on 7 June, *after* Mr Morgan had completed his report substantiating the allegations.

80. There is no evidence that the disciplinary process influenced the redundancy process in any way. At the time Mr Morgan presented the management case at the disciplinary hearing on 17 July 2019, the Claimant had already been informed that she had been unsuccessful in her application for ATM in the new FSS, and that she would be made redundant. There was nothing to be gained from Mr Morgan influencing the outcome of the disciplinary hearing.

81. In dealing with the potential influence of the disciplinary case on the redundancy process, I have dealt with the fairness of the process itself to some extent. However, for completeness, with reference to the list of issues:

<u>Was the dismissal of the Claimant fair in accordance with Section 98 of the Employment Rights Act 1996, such that it was within the range of reasonable responses open to a reasonable employer?</u>

Was there a genuine redundancy situation?

82. It is agreed that there was a genuine redundancy.

Was the Claimant's dismissal due to the redundancy situation?

83. Having concluded that the Claimant's disciplinary matters had no influence on the redundancy I conclude that her dismissal was due to the redundancy situation.

Has the Respondent failed to offer the Claimant suitable alternative employment?

84. The Claimant was informed and reminded about the ETR on more than one occasion. Whilst her reasons for not wanting to go through another process are understandable, this was her choice and the Respondent could not make her engage with it. The Respondent cannot be expected to do more than they did.

85. The Respondent has therefore not failed to offer the Claimant suitable alternative employment.

Was the Respondent's overall process fair in accordance with equity and the substantial merits of the dispute?

86. The Respondent was entitled to deal with the restructure by way of the process that took place, including relying heavily on the outcome of the interviews.

87. The interview panel specifically didn't take into account the Claimant's appraisal rating, which had been negatively affected by her absence from the workplace, in order to create a level playing field with external applicants who would not have this rating.

88. In relation to Ms Twycross having knowledge of the Claimant's disciplinary issues, aside from passing reference to Jayne Foster having spoken privately to Ms Twycross there appears to be little in this. Ms Twycross does not recall any such conversations, and I have no reason to disbelieve her. Further, the other panel member - who the Claimant agrees had no previous knowledge of her – gave the same scores as Ms Twycross.

89. The Claimant's abilities in relation to safeguarding were assessed in the interview and she received 4/5 - 'good' on the matrix - from both panel members. If either panel member had any knowledge of the disciplinary matters, which related to safeguarding decision-making, that impacted their scoring in any way I would have expected the Claimant to score lower on this question.

90. Joe Head's appointment did not prevent the Claimant from securing a role as ATM. If Mr Morgan had decided to appoint another ATM applicant instead of directly appointing Joe Head, there were still a number of other interviewees who scored higher than the Claimant that would have been more likely to be considered.

91. The Claimant had the same opportunity as other candidates who were interviewed for the ATM role, including the option of engaging with an interview skills training session. Her preparation may well have been affected by what was going on in her professional and private life, but there was no specific disadvantage to her being

out of the workplace immediately prior to the interview. In this way she was on par with external candidates, who also didn't have personal experience of what was happening within the FRS.

92. Had the Respondent appointed the Claimant despite her performance at interview, *this* could have been criticised as an unfair process for other applicants that had met or exceeded the expected level of performance.

93. The Respondent's overall process fair in accordance with equity and the substantial merits of the dispute. The selection criteria was clear and applied across the board. Unfortunately, the Claimant did not meet the expected standard. All of the decisions made about the process to be applied were within the Respondent's discretion.

94. The Claimant was fairly dismissed by reason of redundancy, and her claim for unfair dismissal therefore fails.

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Employment Judge K Douse

Dated: …2 July 2021……

Sent to the parties on:

12/7/2021

N Gotecha

For the Tribunal Office