EMPLOYMENT TRIBUNALS

Claimant: Mr Ian Read

Respondent: Adventure Risk Management Services Limited

Heard at: Cardiff by CVP **On:** 23rd and 24th September 2021

Before: Employment Judge G Duncan

Representation
Claimant: Mr Pochron, Solicitor
Respondent: Mr Varnam, Counsel

RESERVED JUDGMENT

It is the decision of Employment Judge G Duncan that the Claimant's claim for unfair dismissal is dismissed.

REASONS

Introduction

1. The Claimant in this case is Mr Ian Read. He was formally employed by Tourism Quality Services Ltd (TQS) as a Senior Inspector from 1996. The Claimant was subject to a TUPE transfer on 1st April 2020 when he was transferred to the employment of the Respondent, Adventure Risk Management Services Limited (ARMS). The Claimant's employment was subsequently terminated on 27th April 2020.

2. The Claimant has been represented throughout by Mr Pochron. Solicitor.

3. The Respondent has been represented by Mr Varnam, Counsel.

4. The Claimant, by way of ET1, received on 22nd June 2020, claims that he was unfairly dismissed and that he is owed other payments. The accompanying Grounds of Compliant allege that the Respondent failed to provide the Claimant with sufficient information and keep him up to date with developments relating to the transfer. It is asserted that at no stage was it

considered that the Claimant may remain in employment with the Respondent. The Claimant alleges that the work he undertook still required completing post-transfer and that the proposal made by the Respondent, that the work be undertaken on a freelance basis, was substantially the same that he completed in his employed role. It is asserted that the sole or principle reason for the dismissal was the transfer itself. The Claimant asserts that the entire process was predetermined and that the consultation process was a sham and completely perfunctory.

5. The Claimant, by way of ET3 and accompanying Grounds of Resistance, denies the claims. It was initially denied that there was a TUPE transfer, a point that I will turn to in due course. The Respondent asserts that a decision was made by the HSE to radically change the way in which the AALA operated, that the contract with TQS (the Claimant's former employer) would not be renewed, that the way that the HSE was to operate was to substantially change, that the Respondent kept the Claimant fully informed of developments and consulted the Claimant throughout the process. The Respondent denies that the reason for dismissal was the transfer and, in any event, states that there was an Economic, Technical or Organisational reason for the dismissal. The Respondent states that there were substantial changes to structure and funding that required the way in which the Respondent worked to become more cost-effective. The Respondent states that the position of Senior Inspector was redundant. Following the preliminary hearing, the Respondent's position was further particularised by a Response dated 19th April 2021.

6. By way of background to the proceedings, as already mentioned, the matter came before EJ Webb for a preliminary hearing on 22nd and 23rd March 2021 to consider whether there was a relevant transfer from TQS to ARMS. He concluded that there was and the decision has not been challenged. The decision of EJ Webb can be found at pages 82 to 89 of the bundle. I need not rehearse the decision at this juncture in detail. It seems to me that the finding of fact section of the written reasons, from paragraph 10 to 21 provides the backdrop for my decision making and I adopt those paragraphs into the background of my reasons today. I do not propose to rehearse those paragraphs, the parties are acutely aware of the matters arising at the earlier hearing and in my view, having heard the evidence and considered the material in the bundle, paragraphs 10 to 21 give a comprehensive summary of the factual matrix upon which I must base my decision. Whilst EJ Webb was solely focused upon the issue of transfer, it is for me to consider the totality of the evidence and consider the same against that backdrop as found by EJ Webb.

7. I am assisted in my consideration of the claims by the 640 page bundle. There were some missing pages from that bundle that I have now been provided. For the avoidance of doubt, any reference to a page number is a reference to the number that appears on the bottom right hand corner of the page, not the electronic numbering used to navigate the PDF bundle.

8. I have also been provided with statements from the Claimant, Mr Morton and Ms Calleux. I clarified at the start of the hearing whether I should consider the statements prepared in advance of the preliminary hearing but

it was agreed that those statements would not assist me in determining the issues.

9. I am further assisted by EJ Webb by the list of issues outlined at paragraph 34 of the CMO, dated 23rd March 2021. That CMO is supplemented by the agreed list of issues found at page 80 of the bundle. There are slight differences between the two documents in terms of their drafting but they are substantially the same.

10. I heard oral evidence from Mr Morton, Ms Calleux and the Claimant throughout the course of Day 1. The Claimant concluded his evidence on the morning of Day 2. I am grateful to both representatives for providing written submissions for my consideration. Those written submissions were supplemented by oral argument on the morning of Day 2 before I reserved my reasons so to give myself sufficient time to revisit the key documents and consider the written submissions in detail.

Findings of Fact

11. One of the earliest references to the threat of redundancy arises in an email dated 4th January 2019 from Marcus Baillie, Head of Inspection at AALS, to the Claimant [440]. It refers to the hope, at that time, that there will be a new contract in March 2020. It is stated that "it is unlikely, with numbers continuing to fall, that we would continue with 4 Senior Inspectors for England". There is clear reference within that email to the author assuming that the Claimant would be entitled to redundancy pay but that it would need to be discussed with the HSE. Regardless of this email, or any others, it was the oral evidence of the Claimant that employees knew that the contract with HSE would expire in March 2020, as was the fact that there would need to be a retendering process, albeit the details at this time were not clear.

12. In August 2019, the HSE launched a public, open tender to appoint a new contractor delivery service. The Statement of Service Requirements can be found at page 231 of the bundle. The schedule details that the service would be "substantially different". The document outlines that various aspects of the contract with TQS were to be brought into the control of HSE. Further, it references a change to the funding model in that the contractor will be expected to meet all costs associated with delivery [234]. The model was to be based on a two tier system of payment depending on whether a site visit was required. A key difference between the contract with TQS, and the Statement of Service, was that HSE would no longer commit to guaranteeing any loss made as a result of the implementation of the contract.

13. If matters relating to redundancy were unclear at the start of the year, they had become somewhat clearer later in 2019 as reflected in an email from John Walsh-Heron to the Claimant's wife, known as "Twinks", dated 30th September 2019 [441]. There is reference within the email to HSE changing their operation to take administrative duties in house and only offering the inspection side as a contract. An explanation is provided that as TQS Ltd is not for profit, they could not apply. It is explained within the email that the preferred bidder will be announced by the end of October but that TQS's contract finishes on 31st March 2020. There is reference within the email to

a process of transfer but, "for those that are not required, there will be redundancy". It is stated that Mr Walsh-Heron will keep her informed of the situation.

14. The aforementioned information regarding TQS's inability to tender is supported by the Claimant's written evidence. He states that in October 2019, TQS informally told Senior Inspectors that because of the changes in the nature of the contract and payment structure that it would not submit a tender.

15. Mr Morton formed the Respondent company on 19th November 2019 and successfully bid for the contract. It is agreed that there were no consultations between the existing staff members at TQS and with Mr Morton acting in his capacity as the prospective bidder for the new tender. Mr Morton makes the point in his oral evidence that this was a confidential tender and that other individuals at TQS had considered their own bids.

16. On 26th November 2019, by email from Tim Morton to a number of employees at TQS, it is announced that the company that he formed in order to bid, Adventure-RMS, was successful in the tendering process [442]. It is emphasised within the email that the contractor's role is very different due to matters moving in house with HSE, the change of funding mechanism and a lack of subsidy. It is clearly outlined that the newly formed company will operate an entirely freelance/subcontracted inspectorate. Mr Morton explains that he hopes to have clarity regarding the transfer process as the circumstances at that time were not clear.

17. In December 2019, it appears that Mr Morton was receiving advice to try and manage the transfer and commencement of the contract in April of the following year. Mr Morton's intention regarding his proposals for sharing of information and one-to-one sessions can be considered in the email of 23rd December 2019 [444].

18. On 10th January 2020, the Claimant and other employees are emailed by Mr Walsh Heron to inform them that the process of consulting and informing will begin shortly [445].

19. During January 2020, it is agreed that Kevin Daniforth was chosen to act as the employee representative. I have had sight of internal emails suggesting that a representative is appointed and that Mr Daniforth accepted the position.

20. On the 22nd January 2020, Mr Morton visited the Claimant's home for a meeting. I have had regard to the notes of Mr Morton at page 104 and the Claimant's notes at 105. The Claimant had clearly prepared for the meeting as he outlines a number of questions for Mr Morton relating to the transfer and potential redundancy. The following day, the Claimant emailed Mr Morton and thanked him for the visit [450]. The Claimant thanks Mr Morton for "taking the time to explain what is going on… let's just keep our fingers crossed for next week".

21. On 28th January 2020, the Claimant was copied into an email to Kevin Daniforth and the other senior inspectors [454]. The email outlines a

chronology of events in respect of the efforts made by Mr Morton to keep the Senior Inspectors informed of developments. In particular, the email lists matters that were discussed at the face-to-face consultations that were arranged during January 2020 with various individuals. The Claimant accepted that a number of the topics contained in the email, listed in bullet points, were discussed with him during the earlier visit on 22nd January 2020. Having considered the notes of both the Claimant and Mr Morton, and the contents of the email at page 454, I find as fact that the bullet points listed within the email were discussed with the Claimant.

22. The email continues to state that it is important to resolve the TUPE consultation before moving on to consider the redundancy consultation. It emphasises that all individuals will be given time to consider their options. It is specifically stated within the email that whilst it has been determined that the senior inspector role will be made redundant, the opportunity still exists for redeployment. The email outlines that each Senior Inspector should request any information or seek clarification if required.

23. In response to the email, it appears that the Claimant requested further clarification regarding the TUPE transfer and Mr Morton, in reply, sends a power point presentation regarding how ARMS will operate. Mr Morton, again, invites the Claimant to ask any questions that he may have.

24. On 30th January 2020, Mr Morton sends a further email clarifying that there will be a separate redundancy consultation following the TUPE consultation. It is following an email at page 458 that the Claimant appears to have become frustrated with the situation. There is an email exchange in which the Claimant raises the impact the transfer is likely to have and Mr Morton responds.

25. On 3rd February 2020, a telephone conversation took place between the Claimant and Mr Morton. Whilst I have no notes of the discussion, there is an email from the Claimant sent at 8:43pm stating that “I feel a lot better having spoken to you and things are becoming clearer. Having thought about what you said, I actually feel quite excited and can see myself doing some work for you, I suppose it is a case of seeing how the period after 1.4.20 goes” [460].

26. The sentiment, however, does not persist as the next week a further email exchange demonstrates that the Claimant feels that he has been left out of the sharing of information due to him being on sick leave. Despite a request for “information, substance and proposals of intention to cease trading”, there appears to be no direct request for specific information at the time, nor at any stage thereafter. An exchange of emails precede a further update from Mr Morton by way of email on 24th February 2020 [475]. The email states that he is seeking further clarification on timescales and appropriate redundancy consultations.

27. By email of 28th February 2020, Mr Morton discusses two particular roles that would remain on an employed basis following any restructuring. An earlier email appears to have been omitted from the bundle as no party has been able to locate the same, that email though leads to Mr Morton outlining the role of Consulting inspector as a position that the Claimant may be

interested in. In his response, the Claimant suggests that the role may be a good fit for him.

28. Further updates are provided to the Claimant via email prior to a formal TUPE notification letter being sent on 10th March 2020 [482 to 484]. The Claimant is sent a measure statement on 18th March 2020 [488] and is followed up by a further detailed email to all Senior Inspectors on 23rd March 2020 explaining circumstances around the transfer [489].

29. On the 27th March 2020, a further telephone call took place between the Claimant and Mr Morton. I have had regard to the notes at pages 107 and 108. It is clear that the transfer was again discussed and the Claimant sought to clarify a number of issues. It is recorded within the Claimant's notes that the redundancy discussions cannot start until after the transfer.

30. The transfer takes place on the 1st April 2020. On the same day, the Claimant is sent by Mr Morton a "Redundancy Consultation" letter. The letter demonstrates the commencement of the formal consultation period in respect of the proposed redundancy. The letter reiterates some of the points that had already been made during the earlier discussions regarding the transfer and information that was already known to the Claimant. The letter states that the services to be provided by ARMS are "significantly different", the change has been implemented so to "provide the services required by HSE" and that "relocation and reorganisation of the activities have been required in connection with this transfer, which have resulted in this redundancy situation". The letter reiterates that the Senior Inspector role is to be made redundant and offers a breakdown of the redundancy consultation process.

31. The Clamant and Mr Morton arrange a meeting on 7th April 2020 in an exchange of emails at 494 to 496. However, prior to the meeting, the Claimant instructs his solicitor to send a letter dated 6th April 2020 [499] detailing aspects of his intended claims.

32. A meeting took place on 7th April 2020, as referred to in emails at pages 506 and 507. On the 22nd April 2020, Mr Morton sent an email confirming that the consultation process has been completed, the Claimant is not required to work his notice period and that his last day in work will be the 27th April 2020.

33. The Claimant exercised his right to appeal the decision. By way of email dated 28th May 2020 he alleges that the decision on redundancy had been made prior to the process commencing and that there was never a time that either ARMS nor TQS considered any alternatives. The Claimant considered that appealing to Mr Morton would not be appropriate given that he was the decision maker during the redundancy process. It was initially anticipated that HSE would consider the appeal but this proposal never transpired. Accordingly, the appeal was heard by an external agency, namely, Employease: The Employment Practice Ltd. and was considered by Ms Julie Calleux. Ms Calleux completed an investigation report as found at page 118 of the bundle. The Claimant requested that the appeal be undertaken in writing and therefore Ms Calleux's questions and the Claimant's responses for the purpose of the appeal are found at page 135.

The Law

34. Regulation 7(1) of TUPE states that where the sole or principal reason for the dismissal is the transfer, the dismissal will be automatically unfair. Regulation 7(2) and (3) states that if the dismissal is for an economic, technical or organisational reason then the dismissal will not be automatically unfair but may be rendered unfair by virtue of ordinary fairness principles set out in S98(4) ERA 1996. If an ETO reason is established, Regulation 7(3)(b) deems the reason for dismissal to be either redundancy or some other substantial reason, and thus potentially fair. I have been referred to the principles distilled from the case of Hare Wines Ltd v Kaur [2019] EWCA Civ 216.

35. The issue of whether the transfer was the sole or principal reason is a question of fact for the tribunal. The burden of proof is initially on the Claimant to show a prima facie case that the TUPE transfer was the reason for dismissal. In assessing whether the transfer was the reason for dismissal, the question is what was on the mind of the decision maker.

36. The leading case in respect of redundancy is that of Williams v Compare Maxam Ltd [1982] ICR 156. In general terms, employers acting reasonably will give as much warning as possible of impending redundancies to employees, consult about the decision, the process and alternatives to redundancy, and take reasonable steps to find alternatives such as redeployment to a different job.

Conclusions

37. In structuring my conclusions, I again have regard to the list of issues as considered by EJ Webb and the slightly different version as contained in the bundle. I shall turn to each of the issues in turn.

38. The Claimant asserts that the reason for the dismissal was the transfer. I have considered submissions advanced on behalf of the Claimant that Mr Morton had decided there would be a reorganisation when he tendered for the contract in 2019. Accordingly, the Claimant submits that he and other employees did not fit into his financial plans and so it was the transfer that acted as the trigger for the dismissal. It is stated by the Claimant that Mr Morton had in his mind that he wanted the freelancers to undertake work, not the Senior Inspectors, and that from this the Tribunal can conclude that it was always his position that the Senior Inspectors were unwanted following transfer. I am specifically referred to a document at page 491 of the bundle that details an email from Mr Morton to the Claimant that indicates that the relocation and reorganisation of activities have been required in connection with the transfer, which resulted in the redundancy situation. I am invited to consider the proximity to the transfer as a factor to indicate that the transfer was the reason for the dismissal.

39. The Respondent invites the Tribunal to consider that the reason for dismissal was that the post had become redundant, not the fact that there had been a transfer. In support of the submission I am invited to consider that there is no evidence to support the Claimant's assertion that the transfer

was the operative factor in dismissal. It is submitted that the decision to make the Claimant redundant did not result from the transfer and instead was from the change of the services to be provided to the HSE. The Respondent states that the risk of redundancy was being raised long before the proposed transfer to the Respondent and that this acts as an indicator in support of a finding that the redundancies were not made due to the transfer.

40. In considering the respective arguments, I am acutely aware that the proximity of the transfer to the dismissal can act as a factor in support of the Claimant's case; however, in the particular circumstances of this case, it is in my view necessary to consider the lengthy chronology of events prior to the transfer and, in particular, the matters that were outside of the control of either TQS or ARMS. It was, in my view, outside of the control of both companies that there were to be changes to the funding arrangements and the manner in which the contract would be operated. It was a decision made by the HSE that necessarily required both TQS and Mr Morton to make changes to their respective working practices. It is, in my judgment, relevant that the HSE were making changes to their contractual requirements regardless of any acts that could be undertaken by TQS or Mr Morton and the contract with TQS was to be terminated on 31st March 2020 regardless of Mr Morton's actions.

41. I consider that, but for the transfer, it would still have been necessary for the Claimant's former employer to have taken some reactionary steps as a result of the actions of the HSE. Those reactionary measures were determined primarily by the fact that the HSE had amended their requirements of service, not as a result of decisions made by TQS or ARMS. In consideration of the reason for dismissal, I agree with the submission that the change of funding arrangements would have occurred whether or not there had been a transfer.

42. In assessing the reason for dismissal, it seems to me to be necessary to grapple with the email that I have been referred to at page 491 to state that the "relocation and reorganisation of the activities have been required in connection with this transfer, which have resulted in this redundancy situation". It is my view, on a general basis, that there has been a conflation between issues that relate to the TUPE transfer and the redundancy process. There are various documents within the bundle, that I shall consider further below, that necessarily provide information that is both relevant to the transfer and potential redundancy situation. It seems to me that in this particular case there is interplay between information that is relevant to the TUPE process and the redundancy process. For example, employees are informed at a relatively early stage that the contract with TQS will be terminated but that this may lead to transfer or redundancy. Questions raised by the Claimant to Mr Morton, as included in his own notes, range across issues that are relevant to the redundancy, TUPE or both. I consider that the email at page 491 is yet another example of the particular feature of this case and not determinative as a piece of evidence in support of the Claimant's position.

43. Having considered the submissions made by the parties, and taking a holistic view of the evidence available in respect of dismissal, I am not

satisfied that the reason for dismissal was the transfer. I attach particular weight to the factors that I outline above and I prefer the Respondent's submissions when reaching my conclusion.

44. If I am incorrect in my assessment of the reason for dismissal, and the reason for dismissal was the transfer itself, then it is my judgment that the Respondent had, in any event, an ETO reason for dismissing the Claimant.

45. On this particular issue, the Claimant submits that there is no evidence to underpin the financial decision making of Mr Morton. I am invited to embark upon a broad-brush analysis of the approximate figures outlined in evidence and conclude that the business model remained viable. The Claimant states that there was to be no immediate reduction in funding following transfer and that, whilst it is accepted that the HSE changed the overall contract, a profitable service for inspections remained. The submission is made on behalf of the Claimant that the amount of money the HSE paid per inspection was entirely decided by Mr Morton and that there was never any requirement that the business model operate freelance inspections only. I am asked to consider that the freelancers are, in reality, employees with a different label. I am invited to have regard to the submission that the HSE did not dictate the nature of the business model to the Respondent and other prospective contractors as part of the tendering process.

46. Contrary to the Claimant's submissions, the Respondent submits that there was a change to the work force in that the number of Senior Inspectors declined from five to zero, the workforce more generally shrank significantly and 30% of the role of each Senior Inspector was no longer to be performed.

47. The Claimant effectively invites the Tribunal to undertake a careful analysis of the Respondent's business model, make calculations regarding the efficacy of the model and determine the reasonableness of the minutiae of the business decisions that were required to be made at the time the tendering process commenced in 2019. It is not the role of the Tribunal to dictate to businesses how they should be managed. In my approach to this particular issue, a number of points carry substantial weight. Firstly, the HSE had determined that the contract was to substantially change in nature. Secondly, as part of the change, there were significant reductions in the tasks to be undertaken as part of the role. Thirdly, the HSE were no longer offering an indemnity of sorts so to make up for any shortfall between the fees received and expenses incurred. Fourthly, on my general assessment of the financial position as a result of the changes, the Respondent was perfectly entitled to make business decisions to reflect the changing nature of the contractual expectations. I have particular regard to the fact that the number of Senior Inspectors reduced to zero and the number of freelancers increased dramatically. In terms of the financial implication, it appears, in my judgment, that a significant saving would have been made as a result of the organisation and that as a result of the reorganisation the Respondent was able to adhere to the expectations contained within the Statement of Service Requirements.

48. Having considered the totality of the evidence, I find that the Respondent would have had an ETO reason for dismissal, had I made the initial finding

in favour of the Claimant and found that the transfer was the principal reason for dismissal.

49. As a result of my conclusions in respect of the above, I turn to consider whether there was a potentially fair reason for dismissal. For many of the reasons already outlined above, I consider that the reason for dismissal was redundancy. I have already outlined the contractual changes outside of the Respondent's control, the financial implications of those changes, the wholesale structural change that the Respondent deemed necessary and the reduction in tasks to be undertaken in the role of inspector. In my view, these issues are all strong indicators that redundancy was the reason for dismissal and I consider that the requirements of the business for employees to carry out work of the kind undertaken had ceased or diminished.

50. In assessing whether the Respondent acted reasonably, the Claimant makes submissions in respect of a number of issues, namely:

    a) Was there reasonable consultation during the period prior to dismissal?

    b) Did the Respondent act reasonably in identifying a pool of employees from which to make dismissals and, if relevant, did the Respondent act reasonably from selecting from that pool?

    c) Did the Respondent take reasonable steps to identify suitable alternative employment?

51. In respect of the consultation period, the Claimant asserts that Mr Morton had made decisions regarding the business model at the time he formed the Respondent compaany in 2019. It is suggested that there was nothing that could be said to change his mind. The Claimant submits that there was never any information provided in respect of the financial model. It is suggested that the Respondent should have engaged with the Claimant at the time the business was formed. The Claimant submits that a consultation in 2019 would have allowed genuine engagement and allowed the employees an opportunity to obviate dismissals. I am referred to a number of emails to state that a decision had already been made. I am invited to consider that the Claimant was effectively prevented further from engaging in genuine consultation when it was stated in correspondence that there would first be the TUPE consultation and that this would be followed by the redundancy consultation.

52. The Respondent submits that the Claimant places far too high an obligation on the company and that it is unrealistic to suggest that the Respondent company should consult with Senior Inspectors at a time when the company had yet to be, or only recently been, formed and when the individuals were not the Respondent's employees. It is submitted that the need for redundancies was driven by commercial imperatives connected to the HSE funding model and that whilst there has been criticism by the Claimant due to an alleged failure to consult to avoid redundancies, the Claimant failed to offer any alternatives during the appeal process. It is advanced by the Respondent that it is unclear what consultation about alternatives to

redundancy could have achieved given the structural changes required. I am invited to consider that the Claimant was kept apprised of the situation, engaged in various discussions and meetings with the Respondent, was made aware of alternative roles, was able to ask questions regarding the process, that the Claimant accepted that no information was discovered post-dismissal that he says should have been disclosed during the consultation and that the aforementioned submissions are the relevant background upon which to assess formal consultation process.

53. In my judgment, as I have commented upon above, there is an overlap between the relevant issues relating to the transfer and the redundancy matters. This was necessarily the case given Mr Morton's role within the Respondent company but also the Claimant's previous employer TQS. It is, in my view, artificial to suggest that the redundancy process only commenced when the formal process was commenced on the 1st April 2020. I have been referred to various emails, notes of meetings and telephone discussions that demonstrate the process of consultation and sharing information had been ongoing for a significant period prior to the 1st April 2020. In my view, Mr Morton was as open as he could have possibly been in the circumstances of a confidential and sensitive tender process. Thereafter, once the decision had been made to offer his company the tender, I consider that Mr Morton was again as open as he possibly could have been with the Claimant and other employees given the mixed messages he received from the HSE on matters relating to transfer. In my judgment, Mr Morton engaged with the Claimant over a period of months and actively sought to explain the circumstances of the transfer and redundancy as best he could given the information available.

54. It is necessary to grapple with the submission made by the Claimant that the decision was already made back in 2019 to make the Claimant and others redundant and that there should have been consultation at that time. In my judgment, it is unrealistic to suggest that the Respondent should have engaged with the Claimant in consultation in November 2019, or earlier, in particular when the company had only been recently formed, did not employ the Claimant, was engaged in a confidential tender process in which other competitors may have been involved and that ultimately related to an overarching business decision that Mr Morton was entitled to make that, in his opinion, was necessarily in the business interests of his company and reflective of the changing service needs of his prospective contractor, the HSE. I reject the submission that the Respondent should have consulted at this early stage. It is, in my view, placing a monumentally high expectation upon the Respondent in the circumstances.

55. In my view, having considered the factors that I identify at para 53 above, and assessing the procedure as a whole, I conclude that the Respondent acted reasonably. I agree with the submission made on behalf of the Respondent, this was amply sufficient consultation.

56. I thereafter turn to the submissions made regarding pooling. The Claimant submits that imposing a blanket position that all employees with the Senior Inspector role were to be made redundant was unreasonable. I am asked to consider that a number of individuals could have been kept on a salaried basis given that 70% of the role still needed to be undertaken. On a

rudimentary assessment, I am invited to consider that three of the five roles could have been saved. The Claimant, in response, makes the point that all roles had ceased to exist and so it was plainly reasonable to place all individuals in the role at risk of redundancy.

57. In my judgment, having made the decision that the fundamental restructuring was required, and that the restructuring required an alternative business model that rendered the role of Senior Inspector redundant, it is reasonable that those individuals were placed in a pool together. The role had ceased to exist and, in my view, it follows that the pooling process itself was necessarily reasonable.

58. I turn finally to the identification of suitable alternatives. The Claimant submits that the Respondent failed to properly put its mind to alternatives and that the only offering available was the existing inspector role but on a freelance basis. In my view, it is plain from a full reading of the correspondence that the Respondent sought to engage the Claimant in discussion relating to the Consulting Inspector role and also put forward details of a Liaison Officer role. Whilst the Liaison Officer role was inappropriate, Mr Morton demonstrated support to the Claimant in suggesting that his skills may be appropriate for the Consulting Inspector role. Over and above these discussions are more general opportunities as a freelance inspector, a role that the Claimant at least one stage had demonstrated some interest in engaging with. I consider that the attempts made by Mr Morton were genuine and, in all the circumstances, were reasonable given the nature of the business needs at the time and the structure that was to be reasonably implemented.

59. Accordingly, I dismiss the claim.

Employment Judge **G Duncan**
Date 3rd October 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 4 October 2021

FOR EMPLOYMENT TRIBUNALS Mr N Roche