RESERVED JUDGMENT

EMPLOYMENT TRIBUNALS

Claimant:	Mr M Khan
Respondent:	NSC Global Limited
Heard at:	Leeds Employment Tribunal
Before:	Employment Judge Cronin
On:	19 October 2021

Representation
Claimant: Ms S Davies (Counsel)
Respondent: Mr S Healey (Counsel)

RESERVED JUDGMENT

The claimant's claim for unfair dismissal is well-founded and succeeds.

REASONS

INTRODUCTION

1. The Claimant was employed by the respondent between 01 November 2009 and 26 February 2021 as a technical support engineer.

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2. The Respondent is an IT service management company and is the UK subsidiary of NSC Global Plc, employing around 200 staff in the UK.

3. ACAS issued the early conciliation certificate to the claimant.

4. On 25 June 2021 the ET1 Claim Form was presented in time. On or around 27 July 2021 the ET3 Response Form was sent to the Tribunal.

PROCEDURE, DOCUMENTS AND EVIDENCE HEARD

Procedure

5. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was "V: video whether partly (someone physically in a hearing centre) or fully (all remote)". A face to face hearing was not held because it was not practicable due to the COVID-19 pandemic and no-one requested the same. The documents that I was referred to are in a bundle, the contents of which I have recorded.

6. The claimant and the respondent attended the hearing through CVP.

At the start of the hearing I checked whether any reasonable adjustments were required and none were required.

Evidence and submissions

7. The respondent provided a file of documents running to 96 pages which I considered together with a bundle provided by the claimant running to 62 pages. There was a schedule of loss and mitigation bundle provided which ran to 44 pages together with witness statements from:
    a. the Claimant, Mr Masood Khan; and
    b. for the Respondent, Miss Amaya Gestoso-Mattar (HR).

8. I heard oral evidence from each of the witnesses. I also heard oral submissions from both representatives.

CLAIMS AND ISSUES

9. The Claimant brought a claim for unfair dismissal (under section 94 of the Employment Rights Act 1996 - the **ERA**). There is no dispute that the respondent dismissed the claimant. The respondent contends that the reason for the claimant's dismissal was due to redundancy.

THE ISSUES FOR THE TRIBUNAL TO DECIDE

10. I agreed the issues set out below at the start of the hearing.

11. The issues to be decided in relation to the Claimant's claim of unfair dismissal are as follows:

    a. What was the principal reason for dismissal?
    b. Was it for a potentially fair reason under sections 98(1) and (2) of the Employment Rights Act 1996 (**ERA**"). The Respondent contends that it was the potentially fair reason of redundancy.
    c. Was there a genuine redundancy?
    d. Whether the definition in section 139(1)(b)(ii) was met in this case; namely that the requirements of the respondent for employees to carry out work of a particular kind in a place where the employee was so employed had ceased or diminished.
    e. Was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the respondent in all respects act within the 'band of reasonable responses'?
    f. The claimant said the dismissal was unfair within the meaning of section 98 (4) in that: the consultation was not genuine or fair as the outcome was a foregone conclusion; that the respondent had not turned its mind to the issue of the selection pool; or if the respondent had turned its mind to the issue of the selection pool, then the selection pool was outside the band of reasonable responses to have a pool of the claimant alone; the range of the selection pool was not within the band of reasonable responses and was there no reasonable search for alternative employment.
    g. Was there was a breach of the ACAS code with regard to a grievance raised.
    h. The respondent also argued that there should be a reduction in any compensation awarded due to *Polkey*, i.e. the chance that the claimant would have been dismissed in any event if a fair procedure had been followed.

RELEVANT LAW

Unfair dismissal

12. The right not to be unfairly dismissed is set out in s94 of the ERA. The Tribunal must consider whether the respondent is able to establish a fair reason for that dismissal (as defined by s98 of the ERA).

13. Section 94
    (1) An employee has the right not to be unfairly dismissed by his employer…

14. Section 98
    (1) In determining…whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is…a reason falling within subsection (2)…
    (2) A reason falls within this subsection if it is that the employee was redundant…

15. 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) 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 shall be determined in accordance with equity and the substantial merits of the case…"

16. Section 98 identifies redundancy as a potentially fair reason for dismissal. Redundancy is defined by s139 of the ERA as follows:

Section 139
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 the fact that the requirements of that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish…"

17. If a redundancy situation exists, then the Tribunal must consider the fairness of the redundancy process followed. I note that the ACAS Code on disciplinary and grievance procedures explicitly states that it does not apply to redundancy situations.

18. In **Williams v Compair Maxam Ltd** [1982] IRLR 83, the EAT set out the standards which should guide Tribunals in determining whether a dismissal for redundancy is fair under s 98(4). In summary, employers are obliged to consider taking steps to consult with employees regarding their proposals and to mitigate the hardship caused by redundancies including to:

a. give as much warning as possible of impending redundancies, in order to enable the employees who may be affected to consider possible alternative solutions and, if necessary, find alternative employment within the business or elsewhere;

b. seek to agree objective selection criteria to be applied to the pool of employees at risk of redundancy;

c. seek to ensure that the selection is made fairly in accordance with these criteria and to consider any representations the regarding such selection (having first provided employees with sufficient information about the selection process, for example details of their scores against the criteria);

d. consider suitable alternative employment, as an alternative to redundancy dismissals; and

e. offer a right of appeal against dismissal.

19. The Tribunal is required to apply a band of reasonable responses test as laid down in **Iceland Frozen Foods Limited v Jones** [1983] ICR 17. It is not for the Tribunal to decide whether the Tribunal would have dismissed the employee, as set out in the Iceland case at paragraph 24:

(i) the starting point should always be the words of Section 98 for themselves;

(ii) in applying the section the Tribunal must consider the reasonableness of the employer’s conduct, not simply whether they (the members of the Tribunal) consider the dismissal to be fair;

(iii) in judging the reasonableness of the employer’s conduct, the Tribunal must not substitute its decision as to what was the right cause to adopt, for that of the employer;

(iv) in many (though not all) cases there is a band of reasonable responses to the employee’s conduct within which one employer might reasonably take one view, another quite reasonably take another;

(v) the function of the Tribunal as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair, if a dismissal falls outside the band, it is unfair.”

20. I also note that s98(4) requires the Tribunal to take account of the circumstances, including the size and administrative resources of the

employer's undertaking, in determining whether the employer acted reasonably or otherwise for the purposes of the unfair dismissal legislation.

21. There are therefore two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party; whether the respondent acted fairly or unfairly in dismissing for that reason.

22. In redundancy cases, the factors the Tribunal will look at are the basis for selection, consultation and any alternative employment options in assessing whether the dismissal was unfair. In terms of whether the employer shows the reason for dismissal as redundancy: the statutory definition of redundancy will be borne in mind. The relevant part of Section 139 (1) of the ERA is subsection (1)(b) – was the Claimant's dismissal wholly or mainly attributable to the fact that the requirements of the respondent for employees to carry out work of a particular kind had ceased or diminished or expected to cease or diminish?

23. In **<u>Beatt v Croydon Health Services NHS Trust</u> [2017] EWCA Civ. 401; [2017] IRLR 748; 23 May 2017** Lord Justice Underhill stated that the "reason" for a dismissal is the factor or factors operating on the mind of the decision-maker which causes them to take the decision to dismiss or, as it is sometimes put, what "motivates" them to dismiss.

24. On pools for selection, in **<u>Capita Hartshead Ltd v Byard</u>** [2012] IRLR 814, having reviewed the case law, Silber J at para 31 gave this summary of the position:

> "Pulling the threads together, the applicable principles where the issue in an unfair dismissal claim is whether an employer has selected a correct pool of candidates who are candidates for redundancy are that:
>
> (a) "It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted"

(per Browne-Wilkinson J in **Williams v Compair Maxam Limited**);

(b) "…the courts were recognising that the reasonable response test was applicable to the selection of the pool from which the redundancies were to be drawn" (per Judge Reid QC in **Hendy Banks City Print Limited v Fairbrother and Others (UKEAT/0691/04/TM**);

(c) "There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem" (per Mummery J in **Taymech v Ryan EAT/663/94**);

(d) The Employment Tribunal is entitled, if not obliged, to consider with care and scrutinise carefully the reasoning of the employer to determine if he has "genuinely applied" his mind to the issue of who should be in the pool for consideration for redundancy; and that

(e) Even if the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it.''

25. The leading case on this remains the decision of the **EAT in <u>Williams v Compair Maxam Ltd</u> [1982] IRLR 83.**

26. In general terms employers acting reasonably will give us much warning as possible of impending redundancies to employees, consult them about the decision, the process on alternatives to redundancy, and take reasonable steps to find alternative such as redeployment to a different job.

CONTEXT

27. This case is dependent on evidence based on people's recollection of events that happened some time ago. In assessing the evidence relating to this claim, I have borne in mind the guidance given in the case of **Gestmin SGPS -v- Credit Suisse (UK) Ltd [2013] EWHC 3560**. In that case, the court noted that a century of psychological research has demonstrated that human memories are fallible. Memories are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe our memories to be more faithful than they are. External information can intrude into a witness' memory as can their own thoughts and beliefs. This means that people can sometimes recall things as memories which did not actually happen at all.

28. The process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to the parties. It was said in the Gestmin case: 'Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.'

29. The Tribunal wishes to make it clear that simply because it does not accept one or other witness' version of events in relation to a particular issue does not mean that it considered that witness to be dishonest or that they lack integrity.

FINDINGS OF FACT

30. The Tribunal will only make such findings of fact as are relevant for determination of the issues set out above.

31. The claimant was employed by the respondent between 01 November 2009 and 26 February 2021.

32. The claimant's ET1 and witness statement stated that he was employed as a technical support engineer. In evidence however, the claimant stated that was employed in a number of other roles, namely as a subject matter expert, technical consultant and lead engineer for projects delivery. The respondent stated that the claimant was a remote technical support engineer. The claimant gave evidence that he worked remotely at home and I found the claimant to be employed as a remote technical support engineer.

33. The respondent's business is an IT service management company and is the UK subsidiary of NSC Global Plc, employing around 200 staff in the UK. Prior to the claimant's dismissal, the respondent employed two employees as technical support engineers based in the UK, namely the claimant and Justin Halpern (JH).

34. The respondent gave evidence that a decision had been taken to migrate the technical support from the UK to Hungary. I accepted the evidence of the respondent that this migration had now happened. There was no evidence that other roles had been migrated to Hungary. The claimant stated that technical support engineers were also employed in India and I also accepted and found this to be the case.

Respondent's Rationale for Redundancies and Events Leading to Redundancies:

35. The respondent stated that the business of the respondent company was severely impacted by the Coronavirus pandemic and that they implemented a cost saving model to ensure the sustainability of the future of the business in the UK and elsewhere. Miss Gestoso-Mattar confirmed that the costs saving model and restructuring led to a total of 31 redundancies being implemented in the UK over a period of 12 months.

36. The respondent did not provide any financial information to the Tribunal and did not provide any documentation detailing the types of redundancies and the particular rational for any of each redundancy exercises. Whilst I was not concerned with other redundancy exercises, I was not provided with any specific details of the decision making process for the redundancy exercise involving the claimant, save for Miss Gestoso-Mattar saying in evidence that it was a commercial decision and she recalled being told in a meeting with a Senior Vice President (SVP) and manager. She had never seen any documents as they were for far more senior members of staff.

37. Miss Gestoso-Mattar accepted in evidence that the claimant and his representative had requested a copy of the business plan but this had never been provided.

38. The respondent first advised the claimant that he was at risk of redundancy on 14 July 2020 by way of letter sent by email. The claimant was invited to a

meeting on 16 July 2020. The letter confirmed that he had the right to be accompanied to the meeting by a representative of a trade union or a work colleague.

39. The claimant did not attend the consultation meeting on 16 July 2020 and the meeting was rescheduled for 17 July 2020. The claimant again did not attend as he was not well. The claimant was signed off from work from 17 July to 16 September 2020. Emails were sent to the claimant's representative in relation to arranging a meeting. I found that the respondent had acted in a reasonable manner in arranging the consultation meetings and that the redundancy consultation process was placed on hold during the claimant's absence from work.

40. The claimant returned to work on 10 October 2020 and the first consultation meeting took place on 26 November 2020. The claimant was accompanied by Mr David Phillips, his trade union representative, and the respondent was represented by Mr Aaron Kumar (the claimant's manager) and Miss Amaya Gestoso-Mattar.

41. It was explained to the claimant that his role was at risk of redundancy due to the proposed migration of the technical support function to the existing team in Hungary. The respondent said that the proposed migration was part of a cost saving model but the business plan or other formal documentation were not provided to the claimant.

42. A further meeting was undertaken on 10 December 2020 which was referred to a touch base meeting. The claimant was again accompanied by Mr David Phillips with Mr Aaron Kumar and Miss Amaya Gestoso-Mattar present.

43. Following the meeting, vacancies were provided to the claimant.

44. The final meeting being on 2 February 2021. The claimant was advised of the outcome later that day.

Discussions during Consultation meetings

45. No notes or minutes were taken by the respondent or by the claimant or his trade union representative of any of the consultation meetings.

46. The claimant was provided with little information as to the selection criteria within the consultation process. The claimant was provided with information as to alternate vacancies. Please refer to my findings set out below.

47. I found that respondent did not discuss the Co-operative Bank (the "**co-op project**"); this was a five year contract which commenced in 2018 worth in excess of £300,000 per annum with the claimant or his representative during the course of the consultation. Miss Gestoso-Mattar saying in evidence that she could not understand how discussing it would have made any changes.

Selection Criteria

48. Miss Gestoso-Mattar stated that she and Mr Kumar decided that only the claimant would be placed in the pool of employees at risk of redundancy. There had been several conversations by way of virtual meetings between them prior to the initial consultation meeting with the claimant.

49. No minutes or a record had been taken of those conversations and therefore no documentation was provided to the Tribunal.

50. Miss Gestoso-Mattar stated that JH provided dedicated technical support to one particular client project for the co-op project. JH had undertaken a data knowledge transfer which required several days on site and this would not have been possible for another employee to do that due to the lockdown in 2020 and 2021. She said that this was the deciding factor that JH was excluded from the pool for selection for redundancy.

51. I was referred to an email sent by Mr Kumar to the respondent's General Counsel and to Miss Gestoso-Mattar dated 11 March 2020 in that he wrote *"The management has already decided to let go of this employee".* The claimant came into possession of this email after he had been dismissed as a result of his Subject Access Request ("**SAR**").

52. Miss Gestoso-Mattar stated that she did not have an answer when asked why the claimant was not told why he was in a pool of one. The respondent did not apply any selection criteria to the claimant because no other employees were pooled for selection for redundancy alongside the claimant.

53. The claimant stated that he would not have been selected for redundancy as he had more qualifications than JH. Although the claimant had provided details of his qualifications which were not challenged, I found that some of his qualifications had actually expired and this was referred to in the bundle.

Selection Pool

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54. An important argument for the claimant was that he should not have been the only person placed at risk of redundancy. The claimant's argued that he should have been pooled for selection with JH, who also worked as a technical support engineer. During his oral evidence, the claimant also stated that engineers from India should have been included in the pool. This was not included in the ET1 or witness statement and had not been put by the claimant's counsel to the respondent in cross examination.

55. The evidence from the respondent was that it was the UK based support engineer role that was being migrated to Hungary.

56. The claimant asserted in his oral evidence that the senior team in India who shared the same job should also have been included in the pool. The claimant accepted that he had not said this in his witness statement or ET1, nor had the respondent had not been cross-examined on the point by the claimant's counsel. The claimant also accepted that during the course of the redundancy that he did not suggest that the redundancy should be wider than the UK. Having regard to the evidence before me, I did not accept what the claimant said in relation to engineers in India and therefore did not find that those employees should have been placed in a selection pool with the claimant.

57. I did however find that JH should have been included in the pool for the redundancy selection exercise because both JH and the claimant undertook the technical support engineer role.

58. The respondent stated that there would have been a commercial risk if JH had been placed in a pool and made redundant as the company could be left in breach of SLAs (service level agreements). They stated that JH was the only person to have undertaken the "on-boarding" to the co-op project.

59. The claimant had stated in evidence that he had also done some work on the co-op project and then stated that it was "50-50" as to which of the claimant and JH worked on the project. I did not accept the evidence of the claimant in relation to that. The claimant had not said this in his witness statement and his counsel did not cross-examine Miss Gestoso-Mattar on this point. The respondent stated that JH had undertaken the on-boarding and had carried out the data knowledge transfer. The respondent's evidence was that JH was the employee who worked on the co-op project.

60. After considering the evidence, I preferred that of the respondent and therefore found that JH had undertaken the majority of the work on that

particular project. This did not however mean that JH should have been excluded from the pool for selection for redundancy. The respondent provided no documentary evidence as to the commercial risk to the company if JH had been selected for redundancy. Miss Gestoso-Mattar said that it was evident that there was a commercial risk as the respondent could have been in breach of SLAs which could potentially result in a loss of contract. I did not find evidence that the respondent had properly addressed its mind to this and it had not provided any documentation to the claimant during the process and no documentary evidence provided to the tribunal in relation to the risk.

61. I found that the respondent's decision not to pool JH with the claimant was unreasonable. Both the claimant and JH were employed as technical support engineers within the UK. The respondent failed to provide any cogent oral or documentary evidence as to why it was reasonable to place the claimant and not JH within the pool. I concluded that the selection pool should have included both the claimant and JH, that there should have been an objective scoring system applied to both of them JH's work on the co-op project could have been evaluated as part of such a scoring system.

Notice of Redundancy Letter dated 2 February 2021

62. The respondent wrote to the claimant stating that it was unable to identify a means of avoiding redundancy or to identify a suitable alternative role for him within the organisation on 2 February 2021.

63. The claimant was advised that he had the right to appeal by sending an appeal in writing to Greg Shuler, SVP of People and Culture, within 5 days of receipt of the letter.

64. I found that the claimant did not submit an appeal as detailed in his dismissal letter. I did find that the claimant had previously raised a grievance on 16 December 2020.

65. I was referred to email correspondence and found that the claimant had emailed the respondent on 2 February 2021 asking for more information on the redundancy selection criteria and how he was selected. Miss Gestoso-Mattar replied asking the claimant to allow her some time to gather the requested information and that she would go back to the claimant as soon as she could.

66. The respondent did not however revert to the claimant and he again emailed on the 4 March 2021 in relation to the request for the NSC redundancy plan as well as moving the business out of the UK.

67. The claimant was not given any detail on the selection criteria applied to him and the reason why he was placed in a pool of one. He was not provided with any evidence of a redundancy plan by the respondent despite requests to do so.

Alternative Employment

68. The respondent provided the claimant a list of open vacancies on two separate occasions. Whilst I found that there was a delay in providing the list of vacancies, this did not prevent the claimant from applying to any vacancy that was appropriate.

69. The claimant did express an interest in two roles by email of 16 December 2020, namely Head of Logistics and Head of Delivery. I found that the claimant did not have the relevant experience for those roles and had himself stated that training would have been needed.

70. The claimant had confirmed to the respondent on 15 January 2021 that he could not find any suitable opportunity in the list of vacancies.

71. In evidence, the claimant did refer to an IT support engineer vacancy and said that he liked the manager but the role was 90 miles away from his home and that he did not apply for it.

72. Accordingly, the evidence demonstrated that the respondent had reasonably provided details of alternative employment to the claimant during the course of the redundancy.

APPLICATION OF THE LAW TO THE FACTS

73. I will now apply the law to my findings of fact.

Unfair dismissal

74. I first had to consider whether the respondent had a potentially fair reason for the claimant's dismissal. I concluded that the reason for the claimant's dismissal was redundancy because:

    a. I accepted the respondent's evidence that the business of the Company was severely impacted by the Coronavirus pandemic and implemented a cost saving model; and

    b. I accepted that the support engineer role was being migrated to Hungary and that this falls within the definition of redundancy set out in s139 of the ERA, i.e. a reduction in the number of UK based technical support engineers.

75. I then had to consider whether the respondent's redundancy process met the procedural requirements of s98 of the ERA. Having done so I concluded that the dismissal was unfair for procedural reasons because of the following key factors:

    (i) the respondent failed to provide sufficient information as to the rationale for the redundancy concerning technical support engineer role to the claimant during the consultation process to allow him or his representative the opportunity to make representations based on that information. No business plan or other documentation was ever provided. I found it was unreasonable to simply state that the role was being migrated to Hungary;

    (ii) I found that it was unreasonable not to pool JH with the claimant; they were both employed as support engineers within the UK and the respondent did not provide any cogent evidence as to why it was reasonable to exclude JH from the pool for selection;

    (iii) I noted the fact that that Mr Kumar was one of the two persons to whom the task of selection was delegated. Mr Kumar had sent an email on 11 March 2020 to Miss Gestoso-Mattar and to the respondent's General Counsel stating that he had a situation with the claimant and that management had already decided to let him go.

76. Whilst I did find that the respondent had turned its mind to the selection pool, the fact that the claimant was the only support engineer placed at risk of redundancy was outside the band of reasonable responses based on the evidence. The respondent had simply decided that JH would not be included due to the co-op project and had not reasonably considered the effect on the project if JH had been included. The respondent failed to produce any records of meetings or any minutes to justify the decision and in oral evidence said it was an evident commercial risk. The respondent gave evidence as to a cost

saving model being implemented but provided no documentation as to that model. On the evidence presented, I found that it was unreasonable for the claimant to have been placed in a pool of one and that JH, the other support engineer should have also been included within the selection pool.

77. The claimant was offered a right of appeal by the respondent but he chose not to appeal. I did find however that the claimant had not been provided with information relied upon by the respondent in relation to the redundancy process or the decision making process.

78. In coming to these findings I took into account the size and resources of the respondent's business. Miss Gestoso-Mattar had confirmed that the company employed 200 people in the UK alone.

79. I found that there were no suitable alternative vacancies available within the respondent's business.

POLKEY

80. Counsel on behalf of the claimant submitted that if the tribunal found that only JH would have been in the pool with the claimant, then a reduction of 20-25% would be the appropriate Polkey reduction based upon the evidence provided and referred to qualifications of the claimant.

81. Counsel for the respondent submitted that the best that the claimant could have hoped for was a 50% chance of retaining his role. He submitted that due to the fact that JH had undertaken the knowledge transfer and was the main contact for the co-op project, then the chance of the claimant retaining his role was less than 50%.

82. The respondent stated that the co-op contract was the deciding factor and relevant to the pool. Whilst I find that this would have been one relevant consideration, there would have been other relevant selection criteria. The tribunal was however not provided with evidence as to likely scoring categories.

83. I concluded on the evidence that there would still have been a 50% chance that the claimant would have been dismissed, if JH had been included in the pool for selection alongside the claimant.

ACAS UPLIFT IN RELATION TO THE GRIEVANCE

84. This issue was raised by Counsel on behalf of the claimant with Counsel for the respondent submitting that it was illogical. Having regard to the evidence, I find that the grievance relates to the redundancy in this case. I remind myself that the ACAS Code on disciplinary and grievance procedures expressly provides: The Code does not apply to redundancy dismissals. I find that the Code does therefore not apply to the grievance in the circumstances of this case.

REMEDY FOR UNFAIR DISMISSAL

85. The claimant has already received his statutory redundancy pay in full and is not entitled to any additional basic award.

86. The claimant is entitled to a compensatory award to be calculated at a remedy hearing.

Employment Judge Cronin
Date: 11 November 2021