



EMPLOYMENT TRIBUNALS

Claimant: Ms D. Naylor

Respondent: Flintshire County Council

Heard at: Video (CVP)

On: 10th and 11th January 2022

Before: Employment Judge S. Evans

Representation

Claimant: Mr. B. Henry, Counsel

Respondent: Mr. R. Bradley, Counsel

RESERVED JUDGMENT

1. The Claimant's claim of breach of contract is well-founded. The Claimant is entitled to receive a contractual redundancy payment, which sum is inclusive of statutory redundancy pay entitlement.
2. The Respondent is ordered to pay to the Claimant the agreed sum of £20,016.43 in respect of the enhanced redundancy payment to which the Claimant was contractually entitled.

REASONS

Introduction

1. The Claimant was employed as a Housing Programmes Support Manager at the date of her dismissal. Her employment was terminated on 26 July 2020 on the ground of redundancy. ACAS was notified under the early conciliation procedure on 5 August 2020 and the certificate was issued on 12 August 2020. The ET1 was presented on 21 October 2020. The ET3 was received by the tribunal on 4 December 2020.

Claims and issues

2. The Claimant has brought a claim for breach of contract in respect of non-payment of an enhanced contractual redundancy payment and, in the alternative, a claim of entitlement to a statutory redundancy payment which

has not been paid. A written list of the issues was agreed at the start of the hearing and is replicated below.

Breach of Contract

- Did the respondent make an offer of alternative employment?
- Did the claimant refuse without good reason an offer of suitable alternative employment?
 - a. Was the offer suitable having regard to the Respondent's Organisational Change & Redundancy Policy that states 'whether a position is suitable will depend upon a number of factors including: the employee's skills; abilities and circumstances; the remuneration package; place of work, job content'?
 - b. Did the claimant refuse the offer without good reason?
- If not, is the claimant entitled to the contractual redundancy payment claimed?

Statutory redundancy payment

- Did the respondent make an offer to the claimant before the end of her employment to re-engage her under a new contract of employment pursuant to s141(1)(b) ERA 1996?
- If so, did the offer constitute an offer of suitable employment in relation to the Claimant?
- If so, did the claimant unreasonably refuse the offer?
- If the offer did not constitute an offer of suitable employment and/or the claimant did not unreasonably refuse the offer, is she entitled to the statutory redundancy payment claimed?

Procedure, documents and evidence heard

3. There was a tribunal bundle of approximately 318 pages. Ahead of reading the witness statements, I enquired of Mr. Henry and Mr. Bradley whether I should read anything other than the bundle pages referred to in the witness statements. I was asked by Mr. Bradley to read the respondent's redundancy policy at pages 67 – 93 of the bundle but otherwise, both parties confirmed that reading should be confined to the specific pages referred to in the witness statements. All page references below are to pages in the bundle.
4. The parties submitted a list of issues as outlined above. Mr. Henry and Mr. Bradley also confirmed that the figures set out in paragraph 11 of the Case Management Order of 11 June 2021, made by Employment Judge Ryan, were agreed, if liability was established.
5. Two copies of a chronology, prepared by the respondent, were submitted. The first was the original chronology and the second had the claimant's comments added. Save where referred to below, there was no dispute between the parties as to the sequence of events listed in the chronology. At the conclusion of the evidence, the claimant provided a skeleton argument and the respondent submitted an extract from Harvey on Industrial Relations and Employment Law/ Division E Redundancy paragraphs 239 to 254 inclusive.
6. Mr. Henry and Mr. Bradley indicated that the order of evidence identified in the Case Management Order of 11 June 2021 was correct. They were in agreement that the burden of proof in this case rested with the respondent.

7. I heard evidence from the claimant. I also heard evidence from Mr. Colin Everett and Mr. Neal Cockerton on behalf of the respondent.

Findings of fact

8. The claimant's employment with the respondent local authority began on 29 October 1989, although she had continuous local government service from 1 November 1981. On 1 April 1996, she was appointed as a Corporate Support Officer and, on 1 April 2006, she was appointed Customer Services Manager within the Information, Communication, Technology and Customer Services Portfolio. The claimant's salary grade in that role was grade K.
9. In 2015, there was a restructure of the local authority and the claimant's post of Customer Service Manager in the Information, Communication, Technology and Customer Services Portfolio was deleted. The Claimant became Housing Programmes Support Manager in the Housing and Assets Portfolio on 1 November 2016. Her salary grade in this post was grade I. The Claimant states in her evidence that she was "assimilated" to that role. The respondent's evidence, from Neal Cockerton, is that she "accepted" the post.
10. The respondent's Organisational Change and Redundancy Policy ("the Policy"), at pages 67 – 93, is incorporated into the claimant's contract of employment. Paragraph 7.2 of the Policy (pages 75 – 76) states that: "Assimilation is the means by which an employee is absorbed or slotted into a new or revised organisation structure, usually without competition.

Assimilation occurs when;

- a) The main duties and responsibilities/knowledge & skills of a post are mainly unaltered, although there may be minor changes to the job e.g. in the reporting line, location etc.

or

- b) At least 80% of the main duties and responsibilities/knowledge & skills of the new post are covered by the job description/roll profile for the old post."

11. As to whether the claimant was "assimilated" into this role in 2016 or whether she "accepted" the role, I find that she was assimilated, as set out in the agreed facts between the parties. The claimant and Mr Cockerton, for the respondent, used the words "accepted" and "assimilated" interchangeably on occasions in their evidence. Assimilation is the wording used and the process described on page 65 in the letter confirming the claimant's appointment as Housing Programmes Support Manager.
12. The letter on page 65 offered an opportunity for the claimant to appeal the assimilation. The claimant did not take up this offer as she wanted to avoid being in a redundancy situation.

13. A job description for the role of Housing Programmes Support Manager is at pages 96 – 121 of the bundle. I read and take account of the whole of that description. The claimant had up to three people reporting to her. She managed a training budget of £10,000 and a salary budget of £30,000 - £50,000 for two members of staff. The aspects of the Housing Programme Support Manager's role relating to "Gypsy Traveller Provision" referred to on page 97 and detailed at pages 98 – 114 were removed from the role in January 2018. These duties were replaced with responsibility for collating and circulating paperwork for the North East Wales ("NEW") homes board meeting, held every two months. The claimant also organized refreshments for the board meeting and attended the meeting to present a report for which data had been provided to her. She was responsible for preparation and circulation of the minutes of the board meetings.
14. The Claimant had hoped that the role of Housing Programmes Support Manager would develop but it proved to be an administrative role and she felt it did not challenge her.
15. In June or July 2018, the claimant made a request to Neal Cockerton to be considered for voluntary redundancy. She did so after she had applied for a role within the respondent organisation and was not invited for interview. She explained to Mr. Cockerton that her role was not challenging and that her workload had diminished so that the redundancy would be an efficiency saving. Mr. Cockerton indicated there were no voluntary redundancies on offer and the request went no further.
16. In 2019, there was a further reorganisation which proposed the deletion of the claimant's role as Housing Programmes Support Manager. This activated the provisions of the Policy set out below.
17. Clause 6 of the Policy deals with consultation regarding "proposals which may lead to significant change in the workplace and/ or redundancies". Under clause 6.1, the Policy specifies that "where individual consultation is to take place, the Council will ensure that a meaningful consultation is conducted and this will usually entail at least two consultation meetings taking place with individuals before significant changes implemented or notice of redundancy is served." It goes on to specify that "employees will receive written notification of any formal consultation meeting and will be entitled to be represented at meetings by a trade union representative or workplace colleague."
18. Under paragraph 7.0, the Council undertakes to act reasonably and ensure that the selection of employees to roles during organisational changes is made fairly and in accordance with objective and non-discriminatory criteria. It outlines three possible methods during organisational change when selecting to roles in the revised organisation structure:-
 - “ 1. No Change (NC):-Where a post in a new structure has no change in relation to the old structure, there are likely to be proposals to slot existing post- holders into the post. This would occur when no changes are made to the main duties, responsibilities and knowledge and skill of the post.
 2. Minor Change (MC):- This would normally occur when at least 80% of the main duties, responsibilities and knowledge and skill of the post

remains the same. Where a post in a new structure has “little change”, there are likely to be proposals to assimilate existing post-holders to the post. This could take place with a development plan where there is a skills gap.

3. Significant Change (SC):- This would normally occur when the main duties, responsibilities and knowledge and skill of the post changes by more than 20%. Where there is significant change, there are likely to be different proposals i.e interview and selection, redeployment and/or redundancy considerations.”

Clause 7.0 states “Where there is significant change and redundancy is likely the Council will ensure that the Redundancy Procedure is followed and that selection criteria are discussed and considered with trade unions.”

19. Under paragraph 7.2, the Policy states:

“On exceptional circumstances and with the agreement of HR, it may be appropriate to decide that “assimilation with a development plan” is an appropriate outcome where the 80% threshold is marginally not achieved. In reaching this decision the following factors would be of primary consideration:-

- The impact on any other employee that may be considered for assimilation into this new post
- The knowledge, skills and capability of the individual
- Any skills gap that would be left by not considering assimilation and the length of time it would take to train/ fill the skills gap
- The impact of not considering assimilation.

20. Under paragraph 7.3 “Significant Change”, it is provided that “where assimilation is not appropriate, e.g. the main duties and responsibilities of the post and the knowledge and skills have been redesigned such that there can be no reasonable claim for assimilation, the employee will be at risk of redundancy and alternative employment will be sought within the council through redeployment.” Paragraph 7.3 goes on to state that “Where there has been significant change to a role and assimilation is not appropriate, the new roles may be suitable alternative employment. Employees in the affected workgroup will be invited to apply for the new roles and go through a selection process against the person specification for the new roles. In the first instance these new roles will be ring fenced to the affected work group.”

21. Paragraph 8.0 deals with redeployment and states:

“in order to minimise compulsory redundancies the Council will give employees at risk of redundancy the right to be given prior consideration for Council vacancies before the normal competitive recruitment process is utilised.

Employees will be given access to the redeployment service when they are formally identified as being at risk of redundancy in order to maximise their chances of redeployment. Employees will be placed on the prior consideration vacancy list (PCVL) and then sent details of prior consideration vacancies on a weekly basis. Employees will have one week to express interest in a role and to request prior consideration.

As part of the redundancy consultation, each at risk employee will be required to complete a skills and knowledge profile which will be used by

HR and recruiting managers to match against the essential criteria for the vacant post.

If the post is believed to be a suitable alternative position, the employee will be considered, possibly alongside other employees at risk of redundancy, for the position through a prior consideration interview.”

The clause goes on to say:

“if it is identified through the skills matching process that there is an insufficient knowledge or experience match, consideration will be given as to whether the deficit can be overcome through training and development plan. If this is not a possibility, then the ‘at risk’ employee will not be considered for a prior consideration interview.

Employees will continue to have access to the redeployment service until they find suitable alternative employment or until the date of termination of employment, whichever is sooner.

Whether a position is suitable will depend upon a number of factors, including: the employees skills; abilities and circumstances; the remuneration package; place of work, job contents.”

Clause 8.0 concludes by stating that “ where an employee who is at risk of or on notice of redundancy refuses to accept a reasonable offer of suitable alternative employment, this will result in the employee being dismissed as redundant but will forfeit their entitlement to redundancy pay.”

22. Clause 9.0 of the Policy deals with trial periods and confirms the employee’s entitlement to a statutory trial period of four weeks where an employee at risk of redundancy is offered a new role through redeployment as suitable alternative employment and the terms and conditions of the new contract differ from their original contract. The Policy states “trial periods are extremely important and management should ensure that this is used constructively to ensure a successful redeployment into the identified post. Before the trial period starts, the manager should produce an individual development plan, detailing the objectives and training requirements for the trial period.”
23. Clause 14 of the Policy deals with redundancy payments and states that “an employee dismissed by reason of redundancy qualifies for a redundancy payment provided they have at least two years continuous service with the Council.” Details of the method of calculation of a redundancy payment are provided. The penultimate paragraph of clause 14 states “an employee may lose their entitlement to redundancy payments if they:
 - refuse without good reason an offer of suitable alternative employment;
 - decline without good reason an interview with the recruiting manager for a post which is considered to be suitable by the Council;
 - is dismissed from his conduct during the training/ trial period/ notice period”.
24. By May 2019, the respondent was engaged in the process of considering alternatives roles for those affected by the reorganisation. On May 22nd 2019, an internal email was sent (Page 165) by the respondent’s HR

business partner, Lesley Newton, to Neal Cockerton, then the Chief Officer of the Housing and Assets Portfolio. Reference was made there to a plan to assimilate a colleague of the claimant into a management position in the DFG service.

25. On 17th June 2019 the claimant was invited by email (page 166) to an individual consultation meeting with the respondent on 24th of June 2019. Prior to that meeting, an email was sent by Lesley Newton of the respondent's HR department to Neal Cockerton dated 18th of June 2019 (page 167) stating there would be a need to place the claimant at risk of redundancy for her to receive prior consideration for a position of disabled facility grants manager ("DFG"). This was the role that had been planned for a colleague of the claimant who subsequently took up a different role. Mr. Cockerton disagreed with Ms. Newton that the claimant should be put at risk of redundancy.
26. The claimant attended an individual consultation meeting with the respondent on the 24th of June 2019. A draft record of the first consultation meeting was prepared [page 168] which stated that the new position of DFG manager was to be discussed with the claimant, that a desktop job matching exercise would be carried out to determine if the claimant would assimilate to the role and that if there was no automatic assimilation, the DFG manager post would be considered a suitable alternative to redundancy and a prior consideration interview would take place.
27. There was a conflict of evidence between the parties as to whether the claimant was offered the role of DFG manager at the meeting of the 24th June. Mr Cockerton's evidence was that an oral offer was made to the claimant at that meeting. The claimant denied that such an offer was made. The claimant was very clear in her recollection of the meeting. Mr Cockerton accepted that no offer was recorded and that he had seen the outcome letter before it was sent to the claimant dated 1st of July 2019 [page 171] . Within that letter, there was no reference to the claimant having been offered the role of DFG manager and the letter stated "I confirmed that if you were not assimilated into or offered the DFG manager position as a reasonable alternative to redundancy, you would be issued with notice of redundancy ...". I find that no offer was made of the role of DFG manager to the claimant at the meeting on June 24th.
28. Despite various follow-up emails from the claimant and her trade union representative to the respondent in August and October 2019, no details were sent to the claimant of the results of the desktop job matching exercise, comparing the claimant's current role and that of DFG manager.
29. On 23 August 2019, the claimant applied for a post of Services Manager Housing and Prevention. This was a post at grade K, one scale above her current salary grade at that time. She was shortlisted for the role but was not appointed as there was a stronger candidate in terms of CV and interview performance, who demonstrated a clearer understanding of the role and the multi-faceted processes involved.
30. A second individual consultation meeting was arranged with the claimant for 22 November 2019. On 21 November, Lesley Newton confirmed to Neal Cockerton that the role of DFG manager had been filled by a secondee for

a period of 12 months and that the role was not available for prior consideration for the claimant. She stated that notice of redundancy needed to be issued to the claimant “tomorrow”, namely 22 November 2019.

31. Ahead of the second consultation meeting, the results of the desktop job matching exercise were available to the respondent (pages 184 – 188) and showed a match of 25% on the main duties and responsibilities of the claimant’s then post and that of DFG Manager and a 21% match on knowledge and skills. The report concluded that the DFG Manager role was not suitable for assimilation for the claimant.

32. The job description for the DFG role is at pages 122 – 125. The principal accountabilities are summarised below:

- Managing all of the operational activities of staff, providing staff with motivation and support in order to maintain high standards of service delivery and ensuring that service performance targets are maintained;
- Ensuring that the work of the service is focused on meeting the complex needs of customers and that it delivers services with sensitivity;
- Effective management of complaints;
- Effective management and monitoring of core DFG and Welsh Government “Enable” Budgets to ensure robust accountability;
- Responsibility for financial performance including reconciliation of all financial returns for the adaptations service and management of budgets;
- Managing and monitoring contractor performance, ensuring key performance indicators are met and where necessary taking remedial action in cases of poor or under performance;
- Providing regular assurance regarding value for money in respect of adaptations works, reporting areas of concern or high performance and exploring alternative solutions;
- Ensuring that robust project management practises used throughout the service and that, in particular, construction industry good practise is used in managing works to properties;
- Full line management to the staff in the service and ensure the continued professional development of staff through the identifying, and meeting of training and wider development needs;
- Actively managing the performance of the service, reporting highlights and variances and leading the team to find innovative solutions to further improve performance;
- representing the service and the local authority at forums, multi-agency working groups and all other relevant meetings in order to ensure that accurate representations of the authority’s services are provided to all interested parties;
- Ensuring that the service operates systems and processes that enable effective customer and case management, accurate and timely reporting and financial accountability; and
- Proactively promoting the work of the service.

33. The role listed a degree level qualification or substantial relevant experience as essential and a degree or equivalent in building surveying to be desirable. It also listed an ILM qualification in management as desirable.

34. The knowledge and experience requirements listed as essential in the DFG Manager job description were:

- Significant experience in housing management and/or service improvement
- Significant experience of delivering high value programmes and projects and ability to demonstrate recognised programme and project management practice
- experience and ability to operate effectively and supervise project managers who are creating common managing and closing effectively projects of all scales and levels of complexity
- significant experience of managing external funding
- ability to communicate effectively with senior managers to advise them of progress, notify them of issues or risks and to propose options for their resolution ability to collect, compile and interpret complex data relating to all areas of work and then communicate this effectively to audiences with a range of levels of understanding and suggest options for action that relates to this information
- ability to effectively problem solve and develop creative solutions to challenging or contentious issues
- experience of procuring and contract managing contracts in the construction sector
- experience of managing a team of staff in a demanding customer focused environment.

35. The draft record of the second consultation meeting (pages 182 – 183) states that the role of DFG manager was filled and “on further analysis the DFG manager position is not considered to be a suitable alternative to redundancy and therefore no prior consideration interview will be arranged.”

36. The respondent’s case is that the word “not” in this sentence was a typographical error and it should have read “on further analysis the DFG manager position is considered to be a suitable alternative.”

37. The initial draft was amended before the second consultation meeting, as Mr Cockerton disagreed with Lesley Newton’s proposal to issue a notice of redundancy to the claimant.

38. I reject the suggestion of a typographical error. The same wording appears in the amended, and signed, record of the meeting (pages 189-190). In addition, the desktop job matching exercise had shown very little similarity between the claimant’s role and that of DFG Manager. The handwritten notes of the meeting confirm the role was filled for twelve months and make no reference to suggest that the DFG role was flagged to be available for the claimant. By the meeting of 22 November 2019, the respondent had recorded that the DFG manager role was not a suitable alternative for the claimant.

39. After the second consultation meeting, no notice of redundancy was issued and no letter confirming the outcome of the hearing of 22 November was sent to the claimant. On 3rd December she raised a grievance which included concerns as to the protracted nature of her redundancy process and her belief that the respondent was not seeking to find a role that was genuinely suitable for her. The grievance was acknowledged but not dealt with. The acknowledgment letter (page 193) erroneously stated that the

claimant had been offered the role of DFG manager and had declined it. The claimant's trade union representative concurred with the respondent that the grievance procedure should not continue until the outcome of the consultations was known.

40. On 4th December 2019, Lesley Newton sent an email to Neal Cockerton and Sharon Carney, from HR, (page 192) asking if they would consider the claimant for a new position as Programme Manager stating "It would be on a higher grade than she is in receipt of currently and could be more palatable from a status position. She has good customer service skills and has housing knowledge, but I do understand the complexities of the programme and you would be best placed to decide if this could be suitable or not." Nothing came of this suggestion.

41. A third consultation meeting took place on 9 January 2020. At this hearing, the claimant was offered a role as Supporting People and Commissioning Manager ("SPCM"). A draft job description for this role was given to the claimant (page 144-145).

42. The principal accountabilities are summarised below:

- Responsible for the commissioning, contract management and monitoring of services funded by the Welsh Government Supporting People ("SP") programme
- Managing the performance of the SP team contributing to reporting to members, senior officers and the Supporting People Planning Group as required on key SP matters. To offer expert advice as required.
- Responsible for the management of the SP budget (including payments to internal and external providers) and to be responsible for compliance with audit and other requirements of the council and the Welsh Government ("WAG").
- Responsible for review of all SP funded schemes and contract monitoring, including negotiating on behalf of the authority with relevant WAG officials, providers and other stakeholders in relation to contractual issues and/ or disputes. Supervise the production of reports and recommendations on review outcomes
- To work with providers to produce and implement improvement plans.
- To manage the re-modelling or de-commissioning of existing services and the commissioning and procurement process for new ones.
- To interpret any relevant WAG guidance on the SP programme, developing policies accordingly and monitoring the effectiveness all SP policies, procedures and systems making changes as required.
- To act as the SP "lead expert" ensuring that the programme is widely known within the local authority and the community, commenting on and contributing to consultation papers and other matters relating to SP programme and representing the authority in key SP meetings nationally.
- To manage the development of the SP strategic plans.
- To ensure the appropriate contracting and tendering procedures are implemented in accordance with agreed financial regulations and policies.

- To explore and develop opportunities for subregional, regional and cross border collaboration.
- To represent the council on regional/national groups.
- To represent the Housing and Prevention Service Manager at national and regional meetings when required.
- To maintain a robust evidence base for the work of the service and use to inform strategies, policies and recommendations to the council, Welsh government and external bodies.
- To contribute to the wider work at the service and of the council.

43. The draft job description referred to a £6 million budget. The qualifications were listed as a degree or equivalent qualification or relevant experience in Housing Services and a management qualification or significant management experience.

44. The professional qualities listed in the draft job description were as follows:

- Significant experience and knowledge of best practise and national and regional policy in Supporting People, Homelessness and Housing Allocations.
- Significant experience and knowledge of relevant financial and contract regulations.
- Significant experience and knowledge of related areas including housing benefit regulations, immigration regulations and service commissioning.
- Financial acumen -experience of developing business plans analysing, understanding and acting on financial information. Sufficient skill and experience to manage budgets of circa £6 million per annum.
- Demonstrates an understanding of how the service areas will contribute to the organisation's success; Using knowledge to anticipate trends and amend service provision and priorities accordingly.
- Experience of managing complex partnerships and complex multifaceted work programmes.
- Demonstrates excellent judgement and decision-making taking account of resources, constraints and organisational priorities.
- Experience of service and process improvements to enhance organisational and operational effectiveness.
- Excellent verbal and written communication skills.
- Ability to manage performance management through effective use of performance indicators, service standards etc. Ability to manage poor performance effectively.
- Excellent programme and project management skills and significant experience.

45. The SPCM role was indicated, and subsequently confirmed, to be at grade I. The claimant was also told, at the meeting of 9th January 2020, that the DFG Manager role was available to her. The claimant was asked to provide support to the Supporting People and Commissioning Services team on an interim basis. The claimant agreed to consider the suitability of the two roles.

46. Job matching exercises were carried out in relation to the SPCM and DFG roles after the third consultation meeting of 9th January 2020. The DFG

exercise (pages 126 – 143) concluded a match of 25% in comparing the main duties and responsibilities of this role with the claimant's current position and a knowledge and skills match of 44%. The SPCM exercise (pages 146 – 152) revealed a match of 16% in relation to main duties and responsibilities, compared to the claimant's current position and a knowledge and skills match of 58%.

47. The outcomes of the job matching exercises caused concern to the claimant who felt that the respondent was trying to "shoehorn" her into one of the two roles. She reviewed the two roles on offer and set out her response to each in a document entitled "Response to Job Offers" dated 3rd of March 2020 (pages 214 – 216). This document was sent to the respondent as an attachment to an email of 27th of March 2020 (page 219).

48. The claimant was off work on sick leave from 13th of February 2020.

49. A final individual consultation "meeting" was held by email sent by Lesley Newton to the claimant on Wednesday 25th of March 2020 (pages 217 – 218). The consultation took this format due to the onset of the Covid-19 pandemic.

50. The email confirmed that the SPCM and DFG roles were considered to be suitable alternative work for the claimant, stating:

"In both cases, Neal and I believe that your transferable skills and experience both prior to joining the Housing & Assets Portfolio and since working within this service, would make either of these opportunities suitable alternative work for you and as such you have been asked if you would accept one of these positions."

It also stated that the claimant had indicated a wish to leave the respondent's employment on the grounds of redundancy and that the DFG post was not acceptable to her. The email included an offer that, if the claimant was well enough to work, she would be put in touch with the Service Manager of the Supporting People team and the consultation would be put on hold if this was acceptable to the claimant. In the alternative, the email indicated "If you intend to remain absent from work, we will require a decision from you by Friday morning in relation to the offer of the Supporting People & Commissioning Manager post. We expect you to indicate if you accept this post as suitable alternative work."

51. The claimant responded to the email on 27th of March 2020, attaching a copy of the Response to Job Offers document refer to at paragraph 37. In this document, she listed the reasons why she did not consider that role to be suitable. These are set out in full at pages 214 – 216 and summarised in paragraphs 52 – 55 below.

52. With regard to the SPCM role, the claimant had general management experience but she had no working knowledge of the subject area nor any experience of working in that area. Substantial training would be required. She had witnessed the dynamics of the SP team as she shared an office with the team for a brief time. She knew of difficulties in the team, which at that time was without a manager. The claimant felt she would be "setting myself up to fail" if she had taken the role as she would not be able to provide the required management and leadership to support staff.

53. The draft job description (page 144) listed the qualifications required as a degree or equivalent qualification or relevant experience in Housing Services and a management qualification or significant management experience. The claimant did not have a degree. She has an in house level 5 ILM qualification in management.
54. The claimant has no significant experience or knowledge of policies and regulations relevant to the role and no experience of managing complex partnerships and complex multifaceted work programmes.
55. The claimant had a level of experience in the remaining personal and professional qualities listed in the SPCM job description but there had been limited opportunity to utilise those relating to leadership and management in her current role.
56. The claimant provided less detail as to the reasons why the DFG role was unsuitable. This was because she understood the role not to be available other than by moving the secondee currently in that position. That person was to be in the DFG role for a period of twelve months. The Respondent was prepared to remove that person to accommodate the claimant assuming the role. This caused distress to the claimant who did not want to be responsible for someone being displaced from their role. The claimant also believed the DFG job to be unsuitable as it bore no resemblance to any work she had previously undertaken nor to anything that she was doing in her current role.
57. The claimant's email of 27th of March also expressed a preference that the consultation process should continue and confirmed that she was unable to return to work from her sickness absence at that time.
58. There was no further communication from the respondent until a letter of the 28th of April 2020 (page 220 – 221) terminating the claimant's employment on the grounds of redundancy. The letter summarised the consultations held between the claimant and the respondent and stated that, as the claimant had declined "both offers of suitable alternative employment" she had forfeited her right to a redundancy payment and to receipt of unreduced pension benefits."
59. The claimant appealed the respondent's decision to withhold the redundancy payment on 11th May 2020. Prior to the appeal being heard, Mr Cockerton, assisted by Ms Lesley Newton, prepared a chronology and background information for use at the appeal (pages 225 – 261). The claimant's comments were added to this document.
60. The appeal was heard by Mr. Colin Everett on 17th June 2020. The hearing involved a discussion based on the chronology and background information document. The appeal hearing did not look at the detailed requirements of the job descriptions for the two alternative roles.
61. The claimant's appeal against the decision to withhold the redundancy payment was rejected. Mr Everett concluded that on the balance of the evidence, management had made a case that the roles were suitable compared to her current position. He did not consider the claimant's role

before 2016 to be relevant. The claimant was offered the opportunity of accepting one of the two roles.

62. The outcome of the appeal was confirmed in a letter sent to the claimant dated 22nd June 2020.

63. On 25th June 2020, the claimant's trade union representative confirmed to the respondent that the claimant would not be accepting either of the roles.

64. The claimant's employment ended on the 26th July 2020.

Applying the Law to the Facts.

65. The parties agreed that the claimant's dismissal was for redundancy.

66. The respondent's Policy at Clause 14 provides that an employee dismissed by reason of redundancy qualifies for a redundancy payment provided they have at least two years continuous service with the council. The claimant's eligibility for a redundancy payment in relation to her continuity of service was not in dispute between the parties.

67. Clause 14 sets out the basis upon which the amount of any redundancy payment will be calculated. It is agreed between the parties that, if payable, the amount of the claimant's contractual entitlement would be £20,016.43.

68. Clause 14 states "an employee may lose their entitlement to redundancy payments if they:

- refuse without good reason an offer of suitable alternative employment;
- decline without good reason an interview with the recruiting manager for a post which is considered to be suitable by the Council;
- is dismissed for misconduct during the training/ trial period/ notice period".

69. The claimant did not decline an interview with the recruiting manager for either of the roles considered suitable by the respondent. No offer of interview was made.

70. The claimant was not dismissed for misconduct during any training or trial period or notice period. It is agreed that her dismissal was on the ground of redundancy.

71. The respondent has the burden of proving, on a balance of probabilities, that the claimant has lost her entitlement to a redundancy payment because she refused without good reason an offer of suitable alternative employment. In fact, the respondent says that two offers of suitable alternative employment were made, namely the DFG Manager role and the SPCM role. I will deal with these separately below.

72. Counsel for the claimant submits that the respondent cannot rely on the contractual exemption under Clause 14. He relies on Clause 8 of the Policy (at page 78) which provides that "Employees will be given access to the redeployment service when they are formally identified as being at risk of redundancy in order to maximise their chances of redeployment.

Employees will be placed on the prior consideration vacancy list (PCVL) and then sent details of prior consideration vacancies on a weekly basis. Employees will have one week to express an interest in the role and to request prior consideration.” This process was not followed in the claimant’s case. The claimant had been identified as being at risk of redundancy. It was proposed that her role was deleted and if another post was not found, her employment would end by reason of redundancy. As far back as 21 November 2019, Ms Newton had indicated that a notice of redundancy should be given to the claimant the next day but she was not given access to the redeployment service.

73. Clause 8 goes on to say that “each at risk employee will be required to complete a skills and knowledge profile which will be used by HR and recruiting managers to match against the essential criteria for the vacant post.” The claimant was not invited to complete such a profile.
74. Counsel for the claimant submits that neither of the job offers made to the claimant were made in accordance with the Policy. He says that, as the claimant did not put in an expression of interest in either role pursuant to clause 8, all she did was decline an invitation to apply for the two proposed roles. That is not a scenario in which the exceptions apply under clause 14 of the Policy.
75. The claimant’s case is that the process set out in Clause 8 is there for two reasons. Firstly, that local authorities are under a duty to follow a due process when awarding contract, including employment contracts, and any offer of employment outside of due process risks criticism (and possibly sanctions). Secondly, by failing to apply the correct process, the respondent put the claimant under undue pressure from the beginning of the process that she may be at risk of losing her redundancy pay. The correct application of the process means that an employee at risk of redundancy does not also face the risk of losing their redundancy payment when considering whether to express an interest in vacancies that are available for alternative posts. If an employee follows the process and then unreasonably refuses an interview or an offer of suitable alternative employment, that is the point at which the sanctions bite.
76. I am persuaded by this argument. The claimant was put under considerable pressure to consider the two roles that were offered, in circumstances where the respondent had not followed the procedures outlined in Clause 8. Clause 7 of the Policy set out three possible methods during organisational change when selecting to roles in the revised organisation structure. It is agreed that both the DFG Manager role and the SPCM role involved “Significant Change” as the claimant’s assimilation was not recommended for either role after the job-matching exercises were complete. Clause 7 states that “where there is significant change, there are likely to be different proposals i.e. interview and selection, redeployment and/or redundancy considerations.”
77. Clause 7.3 provides that “where assimilation is not appropriate, e.g. the main duties and responsibilities of the post and the knowledge and skills have been redesigned such that there can be no reasonable claim for assimilation, the employee will be at risk of redundancy and alternative employment will be sought within the council through redeployment.” Paragraph 7.3 goes on to state that “Where there has been significant

change to a role and assimilation is not appropriate, the new roles may be suitable alternative employment. Employees in the affected workgroup will be invited to apply for the new roles and go through a selection process against the person specification for the new roles. In the first instance these new roles will be ring fenced to the affected work group.”

78. Once it was concluded that assimilation was not appropriate, the redeployment process outlined in Clause 8 should have been followed. That process was not followed and therefore the offers made on 9th January 2020 were not made in accordance with the Policy. I find that the respondent is not entitled to rely on any of the contractual exemptions set out in Clause 14 as the claimant did not refuse without good reason an offer of suitable employment made in accordance with the process set out in the Policy.
79. The claimant is entitled to the contractual redundancy payment in the sum of £20,016.43.
80. Even if the respondent was permitted to rely on the contractual exemption under clause 14 of the Policy, the contractual redundancy payment is due for the reasons set out below.
81. Both parties agreed that there was no difference between the meaning of “suitability” and “without good reason” under the Policy and the statutory wording of s.141 Employment Rights Act 1996, referred to below. It follows that the respondent must show that at least one of the alternative jobs was suitable and, if it was, that the claimant unreasonably refused it.
82. The two roles of DFG Manager and SPC Manager have to be considered separately but the relevant law is applicable to each consideration.
83. It must first be determined whether the role was suitable. Counsel for the respondent directed me to paragraph 240 of Harvey on Industrial Relations and Employment Law/ Division E Redundancy. Suitability requires the Tribunal to make an objective assessment of the job offered: *Carron Co. v Robertson (1067) 2 ITR 484*. Paragraph 240 goes on to state that it is not an entirely objective test. I have to consider whether the role is suitable in relation to the particular employee, here the claimant. Paragraph 240 goes on to provide a useful commentary, cited with approval in *Bird v Stoke-on-Trent PCT* UKEAT/0074/11 (21 July 2011),

“It comes really to asking whether the job matches the person: does it suit their skills, aptitude and experience. The whole of the job must be considered, not only the tasks to be performed, but the terms of employment, especially wages and hours and the responsibility and status involved. Location may also be relevant...No one single factor is decisive; all must be considered as a package. Was it, in all the circumstances, a reasonable offer for that employer to suggest that job to that employee?”
84. I remind myself that the assessment of suitability will always require a careful comparison of the alternative employment with the former employment. *Stevenson v Mid Essex Hospital Services NHS Trust EA-2019-000834 (previously UKEAT/0334/19) (5 August 2021)*. In reaching my decision, I identified the differences and their practical effects to decide whether those differences matter. I explain my conclusion for each role below.

85. If, and only if, the alternative employment is suitable, I must go on to determine whether the claimant unreasonably refused it. I remind myself again that the issues of suitability and reasonableness of refusal are separate: *Knott v Southampton and South-West Hampshire Health Authority* [1991] ICR 480.
86. In deciding whether the claimant unreasonably refused the offer of suitable alternative employment I must assess whether the respondent has shown that this particular employee, taking into account her personal circumstances, was being unreasonable in refusing the offer: *JF Everest v Cox* [1980] ISR 415. This is a subjective assessment. The manner in which the employer makes the offer of alternative employment and the manner in which the employee responds to it is relevant to the overall assessment of the reasonableness of the employee's refusal: *Lincoln and Louth NHS Trust v Cowan* EAT/895/99.

The DFG Manager role

87. Counsel for the respondent submitted that comparison by the job matching exercises was insufficient to conclude that this role was unsuitable for the claimant. The burden is on the respondent to show that the role offered was suitable. Mr. Cockerton's evidence was that it would be similar administration work to the claimant's current role but she would "have more autonomy in managing the services". The job matching exercise demonstrated a 25% match of main duties and responsibilities and a knowledge and skill set match of 44%.
88. I did take the job matching exercise results into account in reaching my decision but in addition I took account of the fact that the respondent itself decided that this was not a suitable alternative ahead of the second consultation meeting on 22 November 2019.
89. I also reviewed the differences between the claimant's role as Housing Programme Support Manager and the DFG role by comparing the job descriptions as well as the oral evidence given. I carefully considered all the detail provided and in particular concluded that the essential requirements of the DFG role listed at paragraphs 32 to 34 above meant this was not a suitable role for the claimant. The claimant possessed general management skills and had experience in customer service but the other requirements of the role did not match her skills, aptitude and experience gained in her role as Housing Programmes Support Manager.
90. The claimant's role as Housing Programme Support Manager involved management of a budget of up to £60,000 of which £10,000 was for training and the rest for salary. It did not equip her to effectively manage and monitor Welsh Government budgets nor to assume responsibility for financial performance including reconciliation of all financial returns for the adaptations service and management of budgets. Her experience and skills did not include managing and monitoring contractor performance, ensuring key performance indicators are met and where necessary taking remedial action in cases of poor or under performance. The claimant had no experience of ensuring that construction industry good practise is used in managing works to properties. Without experience in the construction industry or the degree qualifications listed in the job description, she was

not matched to a role which required her to ensure the continued professional development of staff through the identifying, and meeting of training and wider development needs; nor to actively managing the performance of the service, reporting highlights and variances and leading the team to find innovative solutions to further improve performance.

91. Whilst the claimant had general management skills, most of these were from her previous role which she had left four years earlier. She was also skilled in collection of reports prepared by others. She had experience of being responsible for presentation of a single report to the NEW housing board. She did not match the knowledge and experience listed in the DFG Manager job description, in particular, in relation to:

- supervision of project managers who are creating common managing and closing effectively projects of all scales and levels of complexity;
- managing external funding;
- ability to collect, compile and interpret complex data relating to all areas of work and then communicate this effectively to audiences with a range of levels of understanding and suggest options for action that relates to this information;
- experience of procuring and contract managing contracts in the construction sector.

92. Although I undertook a detailed analysis to compare the DFG Manager role with the claimant's position as Housing Programme Support Manager, the respondent produced little evidence of such an analysis. Mr. Cockerton conceded substantial training would be required for the claimant to assume the role. He relied on the claimant's general skills set and experience to conclude the role was suitable.

93. Both Mr Cockerton's evidence and the fourth consultation meeting email of 25th March 2020 failed to differentiate between the two jobs on offer or to give a detailed explanation of the reasons why each post was suitable. The email of 25th March 2020 stated:

"In both cases, Neal and I believe that your transferable skills and experience both prior to joining the Housing & Assets Portfolio and since working within this service, would make either of these opportunities suitable alternative work for you and as such you have been asked if you would accept one of these positions."

94. Mr Everett's consideration of the appeal was based on the six documents produced by management with no analysis of the detailed job description. He concluded that on the balance of the evidence, management had made a case that the roles were suitable. As management had not undertaken an adequate analysis in the first instance, the appeal did not progress the matter.

95. In relation to the question of whether the role of DFG Manager was suitable for the claimant, I am satisfied that it was not. The respondent has not discharged its burden of showing that the role was objectively suitable for this employee. The job did not "match the person" *Bird v Stoke-on-Trent PCT* UKEAT/0074/11 (21 July 2011), It did not suit her skills, aptitude and experience. I am mindful that the whole of the job must be considered, not

only the tasks to be performed, but the terms of employment, especially wages and hours and the responsibility and status involved. The salary, hours and grade were the same as the claimant's current role, as was the location. No one single factor is decisive and I must consider all as a package. Having done so, my conclusion is that the factors that would remain unchanged do not outweigh the very different nature of the role offered in terms of the knowledge and experience required and the principal attributes of the job as listed. For these reasons, the respondent has not persuaded me that, in all the circumstances, this was a suitable role for it to offer to the claimant.

96. As the role of DFG Manager was not objectively suitable for the claimant, I am not required to go on to consider whether the claimant unreasonably refused that role. I do however conclude that, even if the job had been suitable, the respondent has not persuaded me that this particular employee, taking into account her personal circumstances, was being unreasonable in refusing the offer.
97. I remind myself that this is a subjective assessment and that the manner in which the employer makes the offer of alternative employment and the manner in which the employee responds to it is relevant to the overall assessment of the reasonableness of the employee's refusal.
98. The claimant was told the DFG role was open to her on 9th January 2020. At no point did the respondent provide any detail of the training they acknowledged would be necessary and at no point did they discuss in detail with the claimant why they considered the claimant suitable, for example by going through a detailed analysis of the job description with her.
99. The claimant felt that she was being "shoehorned" into a role to prevent her being made redundant. Her experience at the previous restructure in 2016 had made her aware of the need to consider alternative roles very carefully. The respondent submits that the claimant rejected the role because she wanted a position at a higher grade or that she rejected the role because she wanted her redundancy payment. The respondent relies on the fact that the claimant had suggested voluntary redundancy in 2018, that she asked for her redundancy figures during the consultation process and that she had made clear her wish to secure a role at a higher grade.
100. I fully accept that the claimant wanted to return to a role at a higher grade. I am not persuaded by the respondent's submission that this was the reason she rejected the DFG Manager role. She refused it because she felt her skillset did not meet the requirements and that any training required to address this would be excessive. The respondent offered no detailed reassurance of how those training needs would be met. She also refused it because there was already a person in the post on secondment for twelve months. The claimant was told that this person could be removed from the role to accommodate her. This caused distress to the claimant who did not want to be responsible for someone being displaced from their role.
101. I find the claimant's request to take voluntary redundancy in 2018 to be of no significance. She felt under-used in her role as Housing Programmes Support Manager and that lay behind her request. Her prediction that the

role would be removed was of course well-founded as it disappeared in the 2019 restructure.

102. The consultation process was confused and outside the procedures set out in the Policy. These failures of process by the respondent put the claimant under considerable pressure. It was entirely reasonable for the claimant to ask for details of her redundancy figures once she was aware of the planned re-organisation and the planned disappearance of her role.
103. For the reasons set out above, I am not persuaded that the claimant's refusal of the DFG Manager role was unreasonable.

The SPC Manager Role

104. This role was first offered to the claimant at the third consultation meeting on the 9th of January 2020. In assessing the objective suitability of the role, I considered the job matching exercise results, together with my detailed analysis the differences between the claimant's role as Housing Programme Support Manager and the SPC Manager role by comparing the job descriptions as well as the oral evidence given.
105. The SPC Manager job matching exercise (pages 146 – 152) revealed a match of 16% in relation to main duties and responsibilities, compared to the claimant's current position and a knowledge and skills match of 58%. Whilst I bear in mind the submission of counsel for the respondent that these details should not be taken as adequate evidence of unsuitability, they are a relevant consideration.
106. I also carefully considered all the detail provided in the draft job description for the role of SPC Manager, listed in paragraphs 39 – 41 above. I concluded that the essential requirements of the SPC Manager role meant this was not a suitable role for the claimant. As I indicated in my consideration of the DFG role above, the claimant possessed general management skills and had some limited experience in report presentation but the other requirements of the role did not match her skills, aptitude and experience gained in her role as Housing Programmes Support Manager.
107. The claimant had a management qualification in the form of her ILM level 5 qualification and she had management experience. She did not have a degree or equivalent qualification or relevant experience in Housing Services.
108. The role required the Manager to be responsible for the commissioning, contract management and monitoring of services funded by the Welsh Government Supporting People ("SP") programme. The claimant had no knowledge or prior experience of this area. Whilst she had experience of managing team members, that was not in the context of the SP team and her lack of knowledge and experience in that area would have precluded her from providing expert advice as required.
109. The respondent's evidence was that training would be provided but no details were given, either to the claimant at the time or to the tribunal.
110. The SPC Manager needed to be responsible for a budget of £6 million and to be responsible for compliance with audit and other requirements of the council and the Welsh Government. Although the claimant had experience

of managing a budget, that was in the region of up to £60,000 pounds and a very different proposition to the budgetary and compliance requirements of this role.

111. The respondent produced no evidence to specifically demonstrate how the claimant's skill set and experience linked to the role requirement of negotiating on behalf of the authority with relevant Welsh Government officials, providers and other stakeholders in relation to contractual issues and/ or disputes.
112. There was no evidence that the claimant had experience of managing the re-modelling or de-commissioning of existing services and the commissioning and procurement process for new ones.
113. The claimant's lack of knowledge or experience in the Supporting People area would challenge her ability to interpret any relevant Welsh Government guidance on the SP programme or to develop and monitor SP policies, procedures and systems.
114. The claimant's skill set knowledge and experience was not consistent with the requirement to act as the SP "lead expert".
115. She did not have experience in contracting and tendering procedures and no detailed knowledge of financial regulations.
116. An aspect of the role was to represent the Housing and Prevention Service Manager at national and regional meetings when required. The respondent submits that, as the claimant applied for the role of Housing and Prevention Service Manager, she was clearly suitable for the SPC Manager position. I reject this submission for two reasons: firstly, the claimant was unsuccessful in her application for the role of Housing and Prevention Service Manager and secondly, the respondent produced no evidence that two roles had similar requirements. The claimant's evidence, accepted by the Tribunal, was that the Service Manager role was at a less operational level and better suited to her general management skills.
117. The respondent produced no evidence to demonstrate the claimant had the skill set, attributes or experience to meet the professional qualities listed below:
 - Significant experience and knowledge of best practise and national and regional policy in Supporting People, Homelessness and Housing Allocations.
 - Significant experience and knowledge of relevant financial and contract regulations.
 - Significant experience and knowledge of related areas including housing benefit regulations, immigration regulations and service commissioning.
 - Financial acumen -experience of developing business plans analysing, understanding and acting on financial information. Sufficient skill and experience to manage budgets of circa £6 million per annum.
 - Demonstrates an understanding of how the service areas will contribute to the organisation's success; Using knowledge to

anticipate trends and amend service provision and priorities accordingly.

- Experience of managing complex partnerships and complex multifaceted work programmes.
- Excellent programme and project management skills and significant experience.

118. Although I have considered the issue of suitability separately for each of the roles of DFG Manager and SPC Manager, I repeat the points made above in paragraphs 93 – 94 as they are equally relevant to the respondent's consideration of the SPC Manager role.
119. The respondent has not persuaded me that the role of SPC Manager was objectively suitable for the claimant. The job did not "match the person" It did not suit her skills, aptitude and experience for the reasons outlined above. In reaching this conclusion, I did take account of the fact that the salary, hours, location and grade were the same as the claimant's role as Housing Programmes Support Manager but, looking at all the factors, I concluded that those that would remain unchanged did not outweigh the very different nature of the role offered in terms of the knowledge and experience required and the principal attributes of the job as listed. For these reasons, the respondent has not persuaded me that, in all the circumstances, this was a suitable role for it to offer to the claimant.
120. Although my finding above negates the need for me to go on to consider whether the respondent has shown that the alternative employment was unreasonably refused, I will do so for completeness.
121. The respondent has shown that the claimant refused the job of SPC Manager. Remembering that the issue of whether a refusal is unreasonable is a subjective one, I conclude that the respondent has not persuaded me that she did so unreasonably.
122. The SPC Manager role was raised with the claimant for the first time at the meeting of 9th January 2020.
123. Except for the reference to the DFG role in paragraph 98, I repeat the content of paragraph 98 – 99 above as they are equally applicable to the refusal of the role of SPC Manager.
124. I fully accept that the claimant wanted to return to a role at a higher grade. I am not persuaded by the respondent's submission that this was the reason she rejected the SPC Manager role. She refused it because she felt her skillset did not meet the requirements and that any training required to address this would be excessive. The respondent offered no detailed reassurance of how those training needs would be met.
125. The respondent submits that the claimant's mind was closed to this role and that that was evidenced by her decision not to take up a suggestion that she could support the SP team on a temporary basis. The respondent portrays this as an offer of a trial period. I do not accept that that it was put as a formal offer of a trial period but in any event, I am not persuaded that it provides evidence of an unreasonable refusal for the reasons below.

126. The claimant had witnessed the dynamics of the SP team as she shared an office with the team for a brief time. She knew of difficulties in the team, which, at that time, was without a manager. The claimant felt she would be “setting myself up to fail” if she had taken the role as she would not be able to provide the required management and leadership to support staff. The respondent has not persuaded me that this was an unreasonable concern.
127. I repeat the content of paragraph 101 – 102 above as they are equally applicable to the refusal of the role of SPC Manager.
128. For the reasons set out above, I am not persuaded that the claimant’s refusal of the SPC Manager role was unreasonable.
129. The claimant is entitled to the contractual redundancy payment in the agreed sum of £20,016.43 which sum is inclusive of statutory redundancy pay entitlement.

Employment Judge **S Evans**

Date 9th February 2022

RESERVED JUDGMENT & REASONS SENT TO THE
PARTIES ON 3 March 2022

FOR EMPLOYMENT TRIBUNALS Mr N Roche