EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**Respondent**
	AND
Miss AM Corrie	British Pregnancy Advisory Service

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham (remotely via CVP)

ON 23 and 24 August 2021

EMPLOYMENT JUDGE Dimbylow

Representation
For the claimant: In person
For the respondent: Mr T Perry, Counsel

This hearing took place against the background of the coronavirus pandemic; and was conducted remotely by CVP in accordance with safe practice and guidelines.

JUDGMENT having been sent to the parties on 25 August 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claim. This is a claim by Miss Ann-Marie Corrie (the claimant) against her former employer British Pregnancy Advisory Service (the respondent). The claim form was presented on 3 November 2020 following early conciliation via ACAS with the start and end dates both being 2 October 2020. In the claim form the claimant brought a claim for unfair dismissal. The response form was lodged on 11 December 2020 and the claim was resisted. The tribunal issued some standard directions for the just disposal of the case on 18 November 2020 when at the same time these 2 days of hearing were fixed. The directions included the preparation of an agreed bundle, exchange of witness statements, and the

provision of a schedule of loss. Helpfully the parties complied with the directions given.

2. The issue.

Was the claimant fairly dismissed by reason of redundancy?

3. The law and guidance. It was agreed between the parties that the claimant was dismissed, and so the respondent would present its case first. I adopt in relation to an unfair dismissal claim arising out a redundancy an analysis based on the leading authorities of Burrell v Safeway Stores Plc [1997] IRLR 200 EAT and Murray v Foyle Meats Ltd [1999] IRLR 562 HL, and I use the test derived from them as this:

3.1 Was the claimant dismissed?

3.2 Had the requirements of the respondent's business for employees to carry out work of a particular kind ceased or diminished or was expected so to do?

3.3 If so, was the dismissal caused wholly or mainly by the cessation or diminution?

3.4 Was the claimant's work actually affected by the cessation or diminution? If not, an explanation from the respondent will be required.

3.5 Was there any opportunity for re-deployment?

4. I would also consider the case of Williams & Others v Compair Maxam Ltd [1982] IRLR 83 and guidance given to tribunals in relation to dismissal for redundancy. This includes:

(i) Were the criteria for selection objectively chosen and fairly applied?
(ii) Was the claimant warned and was there consultation?
(iii) Were the trade union's views obtained? In this case the claimant was not a trade union member.
(iv) Again, was alternative employment discussed?

5. There is an initial burden of proof upon the respondent to establish a potentially fair reason for dismissal. This is upon the balance of probabilities pursuant to section 98 (1) and (2) of the Employment Rights Act 1996 (ERA). Thereafter, overall fairness is neutral, there being no burden of proof on either party, and my assessment is made subject to section 98(4) ERA. This would include my examining the dismissal and appeal processes.

6. Section 98 ERA states this:

"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or, if more than one, the principal reason) for the dismissal; and

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

(2) A reason falls within this subsection if it –

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

b) relates to the conduct of the employee,

c) is that the employee was redundant, or

d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a) –

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

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

a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

b) shall be determined in accordance with equity and the substantial merits of the case.

(5) …..

(6) …..

7. I also considered the ACAS Code of Practice.

8. Redundancy is defined in the ERA at s.139 as follows:

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

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

(2) For the purposes of subsection (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).

(3) For the purposes of subsection (1) the activities carried on by a local education authority with respect to the schools maintained by it, and the activities carried on by the governors of those schools, shall be treated as one business (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).

(4) Where—

(a) the contract under which a person is employed is treated by section 136(5) as terminated by his employer by reason of an act or event, and

(b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment, he shall be taken for the purposes of this Act to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in paragraphs (a) and (b) of subsection (1).

(5) In its application to a case within subsection (4), paragraph (a)(i) of subsection (1) has effect as if the reference in that subsection to the employer included a reference to any person to whom, in consequence of the act or event, power to dispose of the business has passed.

(6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.

9. The evidence. I received oral evidence from the following witnesses:

For the respondent:

Mrs Cheryl Hannah Crosby
Mrs Lisa Ann Palfreyman
Mrs Jacqueline Ann Turley
Mrs Amanda Jane Myers
Mrs Joanne Deans

The claimant gave evidence in her own cause and also called one witness namely:

Mrs Rachel Overton

I also received a number of documents which I marked as exhibits as follows:

R1 Agreed bundle of documents (237 pages)
R2 Bundle of witness statements (39 pages)
R3 Agreed reading list
R4 Agreed chronology and list of issues
R5 Bundle of respondent's authorities

10. Findings of fact. I make my findings of fact on the basis of the material before me taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. I have taken into account my assessment of the credibility of the witnesses and the consistency of their evidence with the surrounding facts.

11. The parties helpfully were able to supply me with an agreed chronology, and I do not need to recite everything that is set out in the document. The claimant commenced work for the respondent on 16 October 2008, and the effective date of termination of her contract of employment was on 7 August 2020. The claimant was entitled to contractual notice of 12 weeks and she received pay in lieu of notice rather than having to work during that time. At the time of her dismissal the claimant was employed as Area Manager (AM) for the North West region of the respondent. She worked a 36 hour week and was paid £4,500 gross per month and she received a company car as part of her remuneration package. Since leaving the respondent the claimant was able to find a new job

commencing on 19 October 2020, although at a reduced salary. The claimant has to a large extent mitigated her losses although she is looking for opportunities to enhance her remuneration. Plainly, the claimant is hard-working, and possessed the necessary qualities to make her a valued member of the respondent's business in her role as an AM.

12. The respondent is an independent healthcare charity which advocates and cares for women and couples who decide to end a pregnancy. The respondent regards itself as the leading specialist of abortion advice and treatment in the UK, taking care of some 100,000 women each year and has about 65 reproductive healthcare clinics nationwide. It has approximately 828 employees spread across 65 sites. It has an annual turnover of some £39 million. It is a company limited by guarantee rather than shares. It has its own in-house HR function and I regarded it as a significant employer in terms of size and administrative resources.

13. For my purposes the claimant's employment with the respondent was unremarkable until the summer of 2020. I accept and find the factual narrative described by **Mrs Crosby** in her evidence to me as accurate. At that time the claimant was one of four AMs who reported to Mrs Crosby as the Associate Director of Operations (ATO)-North. Mrs Crosby now has a different role in that she is currently Director of Operations and reports to the Chief Executive Officer (CEO). Stated shortly, in June 2020 the decision was made to put AMs at risk of redundancy and this came about because of the impact of the Covid 19 pandemic, and the way in which the respondent delivered its services. Since earlier in 2020 the respondent was working towards a telephone-based consultation model and the introduction of "Scan as Indicated" and "Pills by Post" systems meant there was a reduction in the need for face-to-face contact with clients. At the same time there were other factors which accelerated the change, including legislative changes made in response to the pandemic, by allowing early medical abortion drugs to be available to women via their pharmacies. The need for women to attend physically and be cared for in a clinical setting had significantly reduced. The respondent found that remote consultation was working well for both the respondent and the women accessing its services. This prompted the respondent into considering its management structure, and the leadership needed, to support this operating model. The decision was made that the existing role of AM would not be fit for the future needs of the respondent, reflecting the shift away from clinics being managed "hands-on". Instead, managers would be taking a more independent approach to decision-making and proactively lead and manage Treatment Unit Managers (TUMs), with a strategic focus on quality and outputs. TUMs reported to AMs. This led to the AM role being replaced by an Operational and Quality Manager (OQM) role with 5 OQMs covering new geographical regions and 1 OQM being responsible for a remote service. The respondent recognised that this was a potential redundancy situation.

14. A process was devised by a panel of senior management comprising: Mrs Crosby, Mrs Palfreyman and ND (a former ADO who has since left the respondent) with the purpose of finding employees with the strongest leadership and management skills. A decision was made to go down the path of a competency based interview in order to achieve this result. It was decided that an interview would enable management to test the skills likely to be required of the OQM role, when undergoing scrutiny from the clinical commissioning groups, the Care Quality Commission and during internal scrutiny meetings.

15. On 2 July 2020 an at-risk meeting took place led by Mrs Crosby with the 8 AMs at risk being present. Mrs Crosby used a script adopting the contents of a letter at page 70 to 74 of the bundle (dated the same day), explaining the reasoning for the redundancies, and describing the procedure. This included at paragraph 5.3. “Stage Three”, which would be a third meeting to give feedback and: “It is anticipated that all interviews for the roles of OQM will have been conducted and outcomes confirmed at this stage”. The letter was very detailed and covered the things that would be expected, for example suitable alternative employment opportunities and the appeals procedure, which would involve an interview with Mandy Myers (Deputy CEO and Director of Operations), and if the candidate was still aggrieved, a second level of appeal would be heard by the CEO.

16. During cross examination of Mrs Crosby the claimant put forward the various strands of her case including the assertion that there should have been 2 competency based interviews by 2 different people for fairness. Mrs Crosby rejected that contention, insisting that the policy that had been put forward had been followed. It was described in the pack provided to the claimant and discussed before the interview.

17. There was a first consultation meeting with the claimant, remotely, on 8 July 2020. There is a note of this at page 79. The claimant raised no questions about the consultation process and had received the documentation. When considering any proposals to avoid or mitigate the need for change and potential redundancies, the claimant raised the subject of a drop in hours, but weakened the position immediately by saying: “I get that doesn’t work”. Furthermore, she indicated she would take a pay cut and reduce hours to enable everyone to keep their job, and then adding: “…but it may not be the best way forward”. The claimant acknowledged she had looked at the proposal and said: “I can see the structure makes more sense.” The claimant went on to state that she hated interviews; but would get through it, although it was not a pleasant process. She would get tongue tied and would be nervous like everyone; but would do her best. Mrs Crosby drew attention to HR giving support about interview techniques if the claimant wanted access to it. The claimant obtained advice from HR (Ms RT) at pages 80-81 and this was a useful crib sheet for preparing for a competency based interview.

18. The interviews for the 8 candidates for the 6 Jobs took place on 13 and 14 July 2020 and were conducted by **Mrs Palfreyman and Mrs Turley**. They were chosen because Mrs Palfreyman could assess the candidates from an operational perspective and Mrs Turley was well placed to assess and identify relevant leadership competencies. The claimant was given a 90 minute slot commencing at 3:15pm on 13 July 2020. Each candidate had the same length of time. The claimant was given that particular slot because of her having to travel and it was thought that by giving her this time she would not have to incur the expense of staying in a hotel overnight. That became an issue of criticism later as the claimant thought it was a disadvantage having that slot. I do not propose to recite the detail of the interview, but it followed a common pattern. Notes were taken and I saw them in the bundle. The candidates were marked at the end of each day.

19. The scoring method used involved awarding a point against each competency point under the 12 overall competencies identified. There were 61 points available. Mrs Palfreyman awarded 13 points to the claimant and Mrs Turley 15 points. An analysis of all 8 candidates was in the bundle (129-131). The employee with the highest score secured an average of 35 out of 61. Unfortunately, the claimant had the lowest score of the 8. Mrs Palfreyman awarded lower scores than Mrs Turley to each AM; but their ranking of the 8 was the same.

20. Mrs Palfreyman had the task, unenviably, of communicating the outcome and she did this by telephone on 16 July 2020. The claimant indicated that she was “gobsmacked” and shocked by the outcome. Feedback was provided (140-141). The claimant responded to this and explained why she felt the procedure was unfair. These points were summarised at page 172. This note is quite accurate and reflects much of the claimant’s case before me. This was circulated and comments made by those involved.

21. Mrs Crosby wrote to the claimant on 5 August 2020 (191-192) to advise that her role with the respondent would become redundant with effect from Friday, 7 August 2020. The claimant was advised as to her right to appeal. It was also confirmed that a more detailed letter confirming the leaving arrangements would be sent to her in due course, and this was done by Ms RT of HR in a letter dated 11 August 2020 (194-195).

22. The claimant appealed against the decision in a detailed letter on 14 August 2020 (197-201). There is no need for me to repeat it all here but the claimant set out in detail why she considered that the interview process was flawed. **Mrs Myers** dealt with the appeal. At the time she was one of two Deputy CEOs and then reported to the CEO. She is in the process of leaving the respondent at the end of December 2021. The claimant considered Mrs Myers not to be impartial because she was the line manager of those conducting the interviews and therefore it should have been someone else. As Mrs Myers pointed out, and I

accept as a fact, it would not be unusual for someone hearing an appeal to be involved in the chain of command in respect of those making the decision. She pointed out to the claimant that there was a second level of appeal which was to the most senior person in the business namely the CEO. Mrs Myers believed that since she was not on the panel making the decision, though part of the setup of the process, she was sufficiently independent to be the appropriate appeal officer, and that was reasonable in my finding. The appeal meeting took place virtually on 26 August 2020. The appeal was rejected and the outcome was confirmed by letter dated 27 August 2020 (224-225). Perhaps somewhat surprisingly, the claimant did not exercise her right to appeal to the CEO.

23. For completeness I say something about the other witnesses for the respondent. **Mrs Turley** is involved in "Learning and Development" (L & D) as a manager. Initially she was contracted to reinvent the respondent's L & D function and to devise its future L & D strategy. She initially had a short-term six month contract but this became permanent. Her background is in senior L & D roles with responsibility for management development and leadership; including the design of competency frameworks for interviews and appraisals. The claimant was critical of Mrs Turley's conduct, in much the same way that she was concerning Mrs Palfreyman, including during the interview: allegedly yawning, clock watching and prejudging the claimant.

24. **Mrs Deans** is the Head of HR at the respondent, undertaking this role since October 2019, having been employed since August 2008 when she joined as an HR Administrator. She provided strategic HR support during the redundancy process and was engaged with the claimant individually in response to concerns raised by her after the interview outcome was communicated to her. It was not the function of Mrs Deans to put the AMs' jobs at risk of redundancy or to bring in the OQM roles. She provided HR guidance and support to the decision-makers Mrs Crosby, Mrs Palfreyman and ND throughout. She provided advice on possible selection options such as: voluntary redundancy, pooling and the application of selection criteria, or an interview-based approach. She spoke to the claimant about the outcome on 20 July 2020. She was also present during a virtual meeting between Mrs Crosby and the claimant on 22 July 2020 when the claimant was informed that the likely outcome of the consultation process would be her redundancy. Mrs Deans was unaware that the claimant was recording the conversation. She had a further lengthy conversation of some 45 minutes with the claimant discussing feedback on 24 July 2020, and again the claimant recorded this without telling Mrs Deans. The claimant recited a number of concerns about the process, which resulted in a 12 point analysis by Mrs Deans, including: her conclusion that an interview only approach was unfair, there were too many questions and that a presentation, or a fact-based quiz might have been included in the process. Mrs Deans summarised the points raised by the claimant so that feedback could be provided (171-172).

25. The claimant's witness statement comprised of five pages. It differed in its structure from the statements of all the other witnesses including her own witness. The case management orders of the tribunal included an order that the claimant and the respondent must send each other copies of all their witness statements. The order goes on to state: "They must have paragraph numbers and page numbers……. They must also include any evidence about financial losses and any other remedy the claimant is asking for. If the witness statement refers to a document in the file it should give the page number." Unfortunately, the claimant did not follow that instruction and there were no page numbers, no paragraph numbers, nothing about financial losses and remedy, or an indication of the page numbers of the documents in the bundle. The claimant handled the rigours of cross-examination well, and I acknowledge the difficulty that litigants in person face when having to manage their case and give evidence in the proceedings.

26. The claimant called one witness namely Mrs Overton, who was the other unsuccessful candidate. In cross-examination Mrs Overton ventured that it was a foregone conclusion that she and the claimant would be dismissed on the basis that at the first consultation meeting with the group of candidates, she could see that the managers only looked at the other people and not the claimant and her. In cross-examination, counsel put to Mrs Overton that the claimant said she was very surprised at being dismissed, in a contrast with Mrs Overton, who said it was obvious. Mrs Overton agreed that that was the case. Mrs Overton was rather sanguine about what happened, and whilst disagreeing with the outcome she accepted it. Mrs Overton had found another job and was enjoying it.

27. The submissions. I heard from **the claimant with her submissions first**. She relied on oral submissions. She emphasised her long history of work with the respondent, her sickness record, which involved a low level of absence, her flexibility, and the progression that she had enjoyed through the respondent. This included responsibility for the biggest clinic in the respondent's portfolio, being that on Merseyside. She had hoped that her job with the respondent would put her in good stead for the future and she very much enjoyed it.

28. The claimant accepted that a redundancy situation arose. She accepted that the process for redundancy was correct and there was no argument over the respondent using its pool of 8 employees, being the AMs who were going to be reduced to 6 in their new roles. The claimant also accepted that the respondent had followed the timetable it had set out at the start, although it altered the final date of the process towards the end. Nevertheless, the claimant submitted that overall there were a number of failings which made the dismissal unfair. The points she emphasised in her submissions were these:

1. Not being told that a single interview would determine the outcome of the application.

2. The policy adopted was vague and confusing, and she repeated that she was not told it was the only process being followed.

3. She quoted the respondent in its documentation at pages 72 and 56 (at paragraph 4 - which states that the respondent: "…will seek to spread any changes to working patterns and hours as equally as possible amongst the groups affected. No account will be taken of long service or job performance.)" This may be something required by the respondent; but was not suitable. She then submitted that the policy had not been followed and emphasised once again that it was not made plain to her that it was only the interview that would count.

4. She accepted that she was "at risk".

5. It should have been made more plain to her that the respondent was only going to take into account the one interview.

6. The respondent had raised the issue of alternative employment concerning 5 hub manager roles. She accepted that these roles were not ready at the time of her dismissal and therefore it was wrong of the respondent to have brought them into the conversation.

7. The way in which the interview had been conducted on the day was not fair. She answered all the questions in the 90 minutes allocated, with almost 30 minutes to spare, but she felt the process was rushed because her interview was late starting.

8. The respondent failed to take into account alternatives that she had put forward such as a reduction in hours and pay reduction, and also not allowing her to work her notice, which would have taken her to another year's worth of redundancy pay.

9. The appeal was defective because it should have been heard by someone outside the operational team, such as another director from another department who would have been more impartial.

10. The claimant made a number of references to "a policy" which had not been followed. The claimant was unable to tell me where the policy could be found. I gave her the opportunity to take a break if she wanted so that she could find it and look at it with less pressure; but she declined the opportunity.

29. I then heard from **Mr Perry**. He too relied upon oral submissions. He submitted that the reason for dismissal was redundancy. This followed adequate warnings and consultation meetings, which also considered alternative employment. A process was put in place which was followed. He submitted that I should find that it was reasonable for the respondent to decide to select the

claimant as one of the two unsuccessful candidates for the new role. Mr Perry then introduced a raft of case law:

1. British Aerospace Plc v Green and Others [1995] IRLR 433. The point I should take from this case counsel submitted, was that an interview process was an acceptable way to proceed.
2. Williams v Compair Maxam (op cit)
3. Morgan v Welsh RFU [2011] IRLR 376
4. Mitchells of Lancaster Brewers Ltd v Tattersall UKEAT 0605/11/SM
5. Canning v National Institute for Health and Care Excellence UKEAT 0241/18/DA

30. Mr Perry submitted that whilst the claimant asserted that the respondent had been misleading, unfair and biased, the consultation procedure described at page 72 made it plain that the respondent would be proceeding via an interview process, and this had also been confirmed in meetings held with members of the pool. The policy allowed for that. The sole criteria was the interview. The claimant was inconsistent in her own evidence; on the one hand denying knowledge of the importance of the interview and on the other, because of unnumbered paragraph 14 of her witness statement, where she confirmed that she did loads of preparation for the interview, which signified she knew its importance. The expression the claimant actually used was “massive amount”. Mr Perry submitted that I should have regard to how the claimant had dealt with the case at the tribunal, having prepared few questions, reflecting how she performed in her interview, where she had been unprepared and exhibited brevity. The officers of the respondent were entitled to have regard to the fact that the claimant did not give full answers, and she was given every opportunity to answer fully. He urged me to find that all of the respondent’s witnesses were very professional. Alternatives to redundancy were considered and he referred me to page 79 in the bundle where the claimant raised alternatives and then acknowledged that they were not workable. This was not a coherent approach he submitted.

31. The claimant had failed, he reminded me, to adopt the further layer of protection that was available to her with the second appeal. Had she taken that step then it would have fulfilled her argument that she should have had someone more independent consider her appeal.

32. Counsel then raised the issue of another case Octavia v Morris [1989] IRLR 158. He submitted that this case was authority for the view that it would not render a dismissal unfair if alternative jobs became available later. The claimant accepted this point in her submissions, acknowledging that there was nothing available at the time that the respondent made the decision.

33. I was not provided with copies of any of the cases referred to by Mr Perry, and he had not forwarded any of them to the claimant in advance of the hearing. In the circumstances, I considered it was just, fair and proportionate that I

directed him to send copies of the cases to me and to the claimant, and he agreed to do that within 30 minutes of the close of the first day of hearing. I directed that if the claimant wanted to make any submissions on the cases supplied by the respondent then she should put them in writing to me and the respondent's team by 10am on the morning of the second day of the hearing.

34. Finally, Mr Perry turned his attention to what should happen if I found procedurally an unfair dismissal had taken place. Following the case of Polkey v AE Dayton Services Ltd 1988 ICR 142, HL I should find that there was a risk, amounting to a chance of 70%, that the claimant would have been dismissed following a fair procedure in any event. It was a high percentage he submitted.

35. I gave the claimant an opportunity to respond to that point. She disagreed entirely and said that there would have been no reason to dismiss and she would have gone on working until her retirement age. She submitted: "I'm a sit back person, not a big personality in the group. I'm a listener and then comment on things I hear."

36. I confirm that Mr Perry sent me copies of the cases in accordance with my direction. The claimant also had them and responded to them by two emails within the time limit that I had set. The claimant was concise, and pointed out that a number of the cases were not relevant given the concessions that she had made. She also made some further comments on the case of Polkey.

37. My conclusions and reasons. I apply the law to the facts. The respondent has proved on the balance of probabilities a potentially fair reason for dismissal, namely redundancy. Then I asked myself, was the dismissal overall fair? I find that the requirements of the respondent's business for employees to carry out work of a particular kind had ceased or diminished in the sense that there was a restructure involving a group of 8 people which would reduce to 6 doing a different job. It is common ground that a restructure can form the basis of a redundancy exercise when the numbers of employees is reduced. The claimant had no difficulty in agreeing with the respondent on this part of the analysis. However, where the claimant diverged was on the issue of causation. If I summarise her position correctly then it was not the requirement for the restructure and reduction in the workforce which caused her to be selected for redundancy; but rather it was a failure in carrying out the process in a fair way in relation to her candidacy for the new role which caused her to be selected. This is a viable argument and one which I had to consider very carefully. The claimant put forward a raft of reasons which she asserted had collectively undermined her position in the selection exercise and stopped her being one of the top 6 candidates.

38. There is no doubt that the claimant's work was actually affected by the cessation of the AMs' role and the diminution in the requirement of 8 people to carry out the new role. Alternative positions were considered, but as the claimant

recognised, there was nothing actually available that was suitable to her at the time. It was reasonable for the respondent not to want to go down the route of job sharing and salary cuts, and to do so would not be following the procedure, which I conclude the claimant also recognised. This part of the analysis was not seriously contested by the claimant. It all comes down to causation.

39. The claimant's list of defects about the way in which the respondent's officers approached the task is set out in many places, and the claimant has been quite consistent in her approach to the case. The decision was tainted by bias and unfairness which resulted in the unfair dismissal, and as it is stated in the summary at the end of the claimant's witness statement it resulted in: "My role being given to a member of staff who had worked for the organisation for 6 months and who I had a role in recruiting." Mrs Overton was more open in asserting that she had been deliberately selected for redundancy. There is a subtext to the claimant's case which is more or less the same, that is, she was always going to be one of those selected not to be given a new job. The claimant's case is based on the claimant's analysis of all the factors she puts forward to come to that conclusion.

40. We know from the case law that where an employer has to appoint to new roles after reorganisation the employer's decision must of necessity be forward-looking. It is likely to centre upon an assessment of the ability of the individual to perform in the new role. This sort of appointment is more like an interview process. I have to consider the fairness of the process.

41. I find and conclude that the same process was applied to the 8 candidates for the 6 jobs. The claimant was provided with all the relevant information so that she understood what was going to happen, and this was done both orally in meetings and in writing. By her own admission, she does not do well in interviews and becomes very nervous. She knew it was important, and given the coaching she had, she knew she had to prepare for it, and did so. Unfortunately, her marks were low and this ultimately led to her selection for redundancy. The complaints she makes about the process were matters that she could have raised once she knew of the procedure that was going to be adopted. She did not do that; but accepted advice to have some coaching and sensibly did that. I have looked at her complaints individually and collectively to see whether they undermined the fairness of her selection. I am prepared to accept that the interviewers may have looked at the clock and yawned occasionally; but these things did not get in the way of their objectivity when marking the candidates. No doubt it was a tiring task to deal with four candidates on each day, having a time allocation of 90 minutes each and having to make notes and mark against them. Unfortunately for the claimant, I conclude that the dismissal was caused by the diminution in the numbers of employees required to carry out work of a particular kind rather than unfairness in the process. The respondent adopted a fair procedure, without any sign of conduct, particularly on the part of the two interviewers, and the appeal officer, which detracted from its fairness and

objectivity. It is my judgment therefore that the claimant was fairly dismissed by reason of redundancy.

42. I had regard to the size and administrative resources of the respondent, and came to my decision having regard to equity and the substantial merits of the case.

43. In coming to my conclusions I had regard to how the witnesses presented to me. The respondent's witnesses were individually and collectively open and honest. They were articulate and intelligent. They presented as credible. I know that that is not the end of the matter because credible witnesses can be mistaken. I thought about that very carefully; but I concluded they were not mistaken and much of what they had to say was supported in the documentation.

44. The claimant also is articulate and intelligent. She was organised and able to present her case reasonably well as a litigant in person. However, I concluded she lacked an eye for detail in some circumstances. I concluded she missed the significance of the interview in the respondent's process. However, if there was a failure by the respondent to emphasise the importance of the interview, which I conclude was not the case, then it was a failure which affected all of the candidates. From the evidence I received, I concluded that others were much better prepared for the interview, and I know from the claimant's own evidence that she was not good at interviews. I have also remarked on her missing the detail required for her witness statement and its presentation, underling the fact the claimant can miss an important item of detail. Had the claimant been concerned about the procedure before it took place then I am sure that she would have complained about it at the time, as she is unafraid to state her case, as she has done after the event. Mrs Overton gave me limited insight into the case and she was more accepting of the outcome, although disagreeing with it.

45. Thus, wherever there was a relevant conflict between the parties in the evidence, on balance, I preferred the evidence of the respondent's witnesses.

Employment Judge Dimbylow
01 November 2021