



THE EMPLOYMENT TRIBUNALS

Claimants: (1) Mrs Catriona Stevenson
(2) Mrs Cathrona Leeke
(3) Mrs Sarah Stewart

Respondent: Mid Essex Hospital Services NHS Trust

Heard at: East London Hearing Centre

On: 27 January 2022

Before: Employment Judge Burgher

Representation

Claimants: Mr R Downey (Counsel)
Respondent: Mr I Scott (Counsel)

JUDGMENT ON RECONSIDERATION

1. The Respondent offered the Claimants suitable alternative work.
2. Upon reconsideration, the Claimants did not unreasonably refuse the offer of suitable alternative work.
3. The Claimants are therefore entitled to contractual redundancy payments as follows:
 - 3.1 The Respondent is ordered to pay Mrs Stevenson £35,260.00.
 - 3.2 The Respondent is ordered to pay Mrs Stewart £35,024.50.
 - 3.3 The Respondent is ordered to pay Mrs Leeke £11,642.75.

REASONS

1. This matter has been remitted following an appeal to the Employment Appeal Tribunal. The remitted issues for me to decide, following the decision of Mr Justice Bourne, are the questions of suitability of alternative employment and the reasonableness of refusal.

Statutory and/or Contractual Redundancy Payment

1. Were the Claimants offered suitable alternative employment under s.141(1) and s.141(3)(b) ERA 1996? In particular,
 - 1.1. What, if any, were the practical effects of certain differences between the Claimants' old roles and the allegedly suitable alternative roles i.e:
 - 1.1.1. what difference did it make that they would perform some functions only as "allocated" or "directed" when previously they had autonomy over them (paragraph 46 of EAT judgment);
 - 1.1.2. what practical difference would be made by working for a Group of 3 NHS Trusts, rather than, as previously, for the Respondent Trust only (paragraph 46 of EAT judgment);
 - 1.1.3. what was the significance of certain duties being part of the old roles but not of the alternative roles (paragraph 51 of EAT judgment);
 - 1.1.4. in what respects were the alternative roles more expansive than the old roles (paragraph 51 of EAT judgment); and
 - 1.1.5. what was the impact of the change in reporting line (paragraph 54-55 of EAT judgment)?
 2. If so, did they unreasonably refuse the offer under s.141(2) such that they lost the right to a statutory and/or contractual redundancy payment on termination of their employment?

Evidence

2. The Claimant's gave evidence on their own behalf and the Respondent called Ms Mary Foulkes. I was also referred to relevant pages in an agreed 402 page bundle.

Facts

3. I made the following specific findings and conclusions in the liability judgment sent to the parties on 17 July 2019 namely:

- 3.1 The Claimants worked closely and flexibly together when undertaking their roles (paragraphs 21 – 25);

- 3.2 The Claimants did not have a cooperative mindset (paragraph 37);
- 3.3 Mrs Hunt, the Managing Director of the Respondent informed the Claimants that they were valued and offered personal support and professional development options if required (paragraph 69);
- 3.4 There was a contractual requirement under Agenda for Change for Employers to seek to avoid the loss of staff through redundancy and an expectation that employees show some flexibility (Paragraph 75);
- 3.5 All Claimants adopted a closed mind (Paragraphs 103, 108 and 113);
- 3.6 All Claimants had a closed mind and inflexible approach and refused to consider a trial period (Paragraphs 107, 112 and 116); and
- 3.7 Mrs Leeke did not wish to break ranks with Mrs Stevenson and Mrs Stewart and would have accepted the Senior HR Lead role if they had done so regardless of her perception of loss of status (Paragraph 115).

4. I refer to the findings and conclusions above in the context of considering whether there was suitable alternative work and separately whether there was an unreasonable refusal, judged from the Claimants point of view on the basis of the facts as appeared or ought reasonably to have appeared to them at the time the refusal was made.

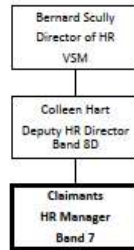
5. In view of the above context, and having balanced the further evidence and documentation, I make the following findings on the issues before me.

Suitable alternative work

6. For the Senior HR Lead role the Claimants would be required to work within the new group of 3 Trusts (the Group) instead of just one Trust where they had worked as (joint) Head of HR. The Group consisted of 15000 employees whereas the Claimants worked within a Trust of only 3000 employees.

7. In order to manage the Group a new HR line management structure was necessary. The Claimants asserted that their status and autonomy was reduced in the new structure by having to report to a Head of HR (which was their current job title) instead Director of HR. They were also concerned that there was another layer of line management inserted above them. They referred the following structure to demonstrate their position.

MEHT HR Structure – pre-December 2014



HR Structure – pre-consultation July 2017



Proposed HR Structure – post-consultation October 2017



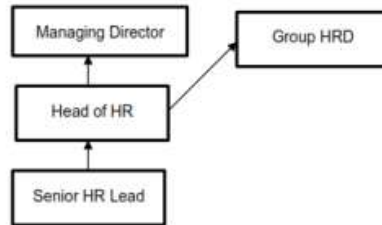
8. Ms Foulkes stated that there was a difference between the HR organisational line management and the day to day operational line management.

9. In respect of organisational line management, the Senior HR Lead would report to Head of HR (Band 8d) who would report to the Group HR Director (Band 9) who in turn would report to Chief HR Director. However, in respect of day to day operational line management the Senior HR Lead would have the same access to the Trust Managing Director as they had previously, albeit they would now report to a Band 8D as opposed to a VSM. Ms Foulkes' iteration of the structure going forward was therefore as follows:

The old ('pre-merger') structure



the intended ('post-merger') structure



10. I accept Ms Foulkes' evidence relating to the difference between operational line management and organisational line management. The change combining the 3 Trusts necessarily involved a change in organisation. In respect of reporting to the Head of HR, instead of Director of HR. This was line management change brought about by the reorganisation and the consolidation of roles across the 3 Trusts as a Group. However, I find that whilst line management changed, the Claimants' day to day operation at their Trust would not have changed; they would still have a 'seat at the table' to discuss matters regarding their expertise with the Managing Director of the Trust.

11. The Claimants' assert that changes to the job description meaning the Senior HR Lead could be 'allocated' or 'directed' to undertake tasks disregards the fact that, as (joint) Head of HR their Director of HR could allocate and direct them to undertake tasks. This is evident by the very fact of demarcation of their respective duties within the Trust and the flexibility they evidenced when working together. In doing so they 'supported' each other and the HR department in the delivery of effective and efficient HR services.

12. There were clearly more expansive and additional strategic responsibilities that accompanied being Senior HR Lead as part of the delivering HR within the Group. The additional anticipated responsibilities could not be reasonably said to indicate a loss of status, the contrary is the case. Having more expansive duties in the Group role was inevitable given the organisation change. However, the Claimants were wrongly maintaining that suitable alternative work would be no change at all.

13. In respect of specific changes I was referred to a comparison of job descriptions (bundle page 393 – 402). The following matters were highlighted between the Head of HR and Senior HR Lead Role.

Job purpose

UKEAT/0334/19/RN Stevenson, Leeke and Stewart v MEHS NHS TRUST Skeleton Argument on behalf of Appellants
APPENDIX

COMPARISON OF JOB DESCRIPTIONS
CLAIMANTS' SUBSTANTIVE ROLE AND ALTERNATIVE EMPLOYMENT OFFERED

	HEAD OF HR Claimants' Substantive Post	HR LEAD ROLE Alternative Employment Offered
1	JOB PURPOSE	
1a	Responsible for working as an integral part of the Group's Senior Human Resources Team to ensure that a strategic approach is taken to support the Trust in the design, delivery and development of services.	
1b	Responsible for working as an integral part of the senior leadership team providing support to senior leaders/managers in the Trust in the management of people issues and major change programmes.	
1c	Responsible for All Staff within HR Operations/Recruitment/Occupational Health/Staff Bank	Responsible for supervising "HR Business Partners and other Junior HR staff as directed by the Head of HR"
1d	Responsible for the provision, oversight and management of a comprehensive HR operational service across the Trust	Responsible for supporting the provision, oversight and management of a comprehensive HR operations service across the Trust
1e..	To provide professional leadership and management to a team of Human Resources professionals to ensure a first class range of HR services, functions and activities is delivered to a range of internal and external customers.	To provide professional leadership and management to a team of allocated members of the HR Team Human Resources professionals to ensure a first class range of HR services, functions and activities is delivered to a range of internal and external customers, across the Group.
1f.	Responsible for supporting the HR Director to develop and implement workforce strategies and other strategic plans to support the Trust in delivering its corporate objectives and transformation agenda.	Responsible for supporting the HR Director to develop and implement allocated workforce strategies and other strategic plans to support the Trust in delivering its corporate objectives and transformation agenda.

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14. In respect of 1c, In the Head of HR initial role, the responsibilities were assigned to the Claimants by their former Director of HR. The actual job description for the Claimants Head of HR role stated '*Responsible for supervising (if appropriate)*'. The matter in italics was not part of the Claimants comparison put before the Employment Appeal Tribunal. However, this is relevant as the Claimants were required to supervise staff but did not have carte blanche to decide who they would be responsible for and when. Their Director of HR could allocate or direct them as appropriate.

15. Whilst there may have been a light touch approach applied by Mr Scully, their Director of HR, I find that he was entitled to direct them what to do. As such it was not reasonable to anticipate reduced levels of autonomy or status. There is therefore no substantive difference with this change to the Claimants role to make the offer of Senior HR Lead unsuitable.

16. In respect of 1d, with the Head of HR role, the 3 Claimants necessarily supported each other, with their respective areas of specialism to provide a comprehensive HR operational service across the Trust. They did not do so alone and were not individually responsible for doing so. There is therefore no practical difference, no reduction in status or autonomy with this change to the Claimants role and this change did not render the offer of Senior HR Lead was unsuitable.

17. In respect of 1e, I was unable to distill any practical difference between these two versions, save for reference to the Group, which was inevitable given the reorganisation and change. The Claimants would necessarily have been part of a larger Group rather than the single Trust. There is therefore no substantive difference to autonomy or status with this change to the Claimants role at all.

1g.	Responsibility for the management, delivery, monitoring and review of HR activities in accordance with Service Level Agreements	Responsibility for the management, delivery, monitoring and review of HR activities in accordance with Service Level Agreements as allocated .
1h.	Accountable for the delivery of Workforce Key Performance Indicators as reported through the Trust Governance structures	Accountable for the delivery of allocated Workforce Key Performance Indicators as reported through the Trust Governance structures
1i.	Responsible for monitoring and reviewing the HR budgets and identifying and supporting opportunities for Cost Improvement Programmes.	Responsible for monitoring and reviewing allocated HR budgets and identifying and supporting related opportunities for Cost Improvement Programmes.
1j.	Provide expert high level advice and support regarding highly complex employment issues including organisational change, disciplinary matters, grievances, bullying and harassment cases, management of sickness absence, Employment Tribunals, TUPE issues and considerations around temporary and agency staff.	
1k.	To regularly deputise for the Director of HR when required.	To regularly deputise for the Director of HR Head of HR when required including attendance at meetings .
DUTIES AND AREAS OF RESPONSIBILITY		
2 Strategic Development		
2a.	To lead individual HR workstreams as part of the Essex Success Regime (Occupational Health, Bank and Agency, Recruitment, HR Policies)	To lead as allocated individual HR workstreams as part of the Essex Success Regime (Occupational Health, Bank and Agency, Recruitment, HR Policies)
2b.	To support and drive the implementation of key people strategies across Divisions including reward and recognition and transformational change management to support the delivery of Trust objectives.	To support and drive the implementation of key allocated people strategies across Divisions including reward and recognition and transformational change management to support the delivery of Trust objectives.
2c.	Lead on the planning and implementation of strategic projects to facilitate the delivery of the Trust's Workforce Strategy.	Lead as directed on the planning and implementation of strategic projects to facilitate the delivery of the Trust's Workforce Strategy.

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18. In respect of 1f - 1i Mr Scully was entitled to allocate the Claimants responsibilities in their Head of HR role. The reference to 'related' opportunities or responsibilities being 'as allocated' in the new job description therefore did not affect the Claimants status or autonomy to make the offer unsuitable.

19. In respect of 1k, there are two matters raised in this context. The first is that the Claimants would no longer deputise for the Director of HR but for a lower band Head of HR and second was including attendance at meetings.

20. In respect of reporting to the Head of HR, instead of Director of HR. This was line management change brought about by the reorganisation and the consolidation of roles across the 3 Trusts as a Group. However, I find that whilst line management changed, the Claimants' day to day operation at their Trust would not have changed; they would still have a 'seat at the table' to discuss matters regarding their expertise with the Managing Director of the Trust and this change confirms this.

21. In respect of reporting to a lower band Head of HR, Head the Claimants inflexibility is highly relevant. The Claimants primary contention before me was that there should not have been any change at all. However, this change, objectively assessed and looked at reasonably, did not result in a loss of status or autonomy. The Change involved consolidating three Trusts with a greater number of employees and workers to manage and more strategic decision making. Therefore, I do not conclude that this made the offer of the Senior HR Lead role unsuitable.

Duties and Areas of Responsibility

22. In respect of paragraphs 2a – 2e my findings above on the meaning of ‘as allocated’ and ‘as directed’ apply to equally to each of these comparisons. Specifically, the reference to ‘as allocated’ or ‘as directed’ had no practical difference in the circumstances to make the offer of Senior HR Lead unsuitable.

23. In respect of 2f, there was a change of emphasis in this regard. However, to the extent that the individual Claimants contend that they were singularly responsible the development of training and implementation of Trusts Values Based Recruitment, this was not the case. Insofar as is relevant, Mrs Stewart had the responsibility for recruitment, Mrs Stevenson had responsibility for HR policies and Mrs Leeke for Governance but they all worked closely and flexibly together. This would have continued going forward as part of a much larger senior HR Team across 3 Trusts.

24. I therefore conclude that this change had no practice difference in the circumstances to render the offer unsuitable.

25. In respect of 2i, the reference to ‘strategic’ leadership undermines the Claimant’s contention that the Senior HR Lead role was a reduction in status or autonomy. Replacing the word ensuring with supporting reflects the reality that going forward there would be a Group structure. The Claimants did not wish to engage with this. However, their refusal to engage did not render the offer of Senior HR Lead unsuitable work.

Operational Management

3a	To build and lead a pro-active HR service with the necessary capacity and expertise to support the delivery of high quality patient care and to meet service and business targets, assisting the Director of HR in advising and agreeing long term strategic HR goals and developing and proposing business cases, including presentations at the Trust’s Investment Group as part of the annual business planning cycle.	To Support in the building and leading of a pro-active HR service with the necessary capacity and expertise to support the delivery of high quality patient care and to meet service and business targets, assisting the Director Head of HR in advising and agreeing long term strategic HR goals and developing and proposing business cases, including presentations at the Trust’s Investment Group as part of the annual business planning cycle.
3b.	To build, lead, develop and manage a professional HR service ensuring that the HR operational teams are visible, responsive and innovative in their approaches, and make a positive contribution to both the division’s and organisation’s reputation, enabling positive experiences within and for the Trust’s workforce.	To build, Support in leading, developing and managing a professional HR service ensuring that the HR operational teams are visible, responsive and innovative in their approaches, and make a positive contribution to both the division’s and organisation the Group’s reputation, enabling positive experiences within and for the Trust Group’s workforce.
3c.	Responsible for the management and oversight of the Staff Bank service to ensure that there is both cost effective and efficient management of temporary staff working within the Trust.	Not included
3d.	Responsible for monitoring the performance of the Staff Bank service within the parameters of the Service Level Agreement and delivery against targets and expectations of service users within the organisation.	Not included
3e.	To provide expert professional advice on all matters relating to human resources management, employment legislation and best practice to a range of customers.	
3f.	Managing the provision of high quality operational HR services to a consistent standard throughout the organisation.	Managing Support the provision of high quality operational HR services to a consistent standard throughout the organisation Group .
3g.	Ensuring each element of the HR function works proactively with all managers and professional leads to provide expert advice, support, and input to effective corporate management.	Not included

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26. In respect of 3a - 3b and 3f, the Claimants were not individually responsible for building and leading pro active HR. They had to work together and support each other.

This was a requirement going forward. There was therefore no change to autonomy or status to render this offer of Senior HR lead unsuitable.

3h.	To support through HR best practice all operational aspects of corporate and organisational change management processes, ensuring that a relevant HR resource is allocated at the most appropriate level.	
4 Financial Management		
4a.	Lead designated cost improvement projects relating to strategic HR activity across the Trust.	Lead designated cost improvement projects relating to strategic HR activity across the Trust Group .
4b.	Working in conjunction with executives, senior managers and professional leads as well as representatives of external bodies e.g. CQC, HNSI to ensure HR policies, practices and processes support the achievement of quality and performance standards and to support the Trust's governance, and risk management objectives and standards.	Working in conjunction with executives, senior managers and professional leads as well as representatives of external bodies e.g. CQC, HNSI to ensure HR policies, practices and processes support the achievement of quality and performance standards and to support the Trust Group's governance, and risk management objectives and standards.
4c.	To act as the HR Lead for direct engagement meetings with SERCO/Medacs and other agencies as needed, to identify and implement the most efficient way to utilise staff within the Trust to ensure the most efficient and cost effective means of engaging staff.	As directed , to act as the HR Lead for direct engagement meetings with outsourced service providers, SERCO/Medacs and other agencies as needed, to identify and implement the most efficient way to utilise staff within the Trust to ensure the most efficient and cost effective means of engaging staff.
4d.	Responsible for the implementation and on-going management of the worker status of locum and agency roles Trust-wide, including management of the appeals process.	Not included
5. Staff Management		
5a.	Responsible for ensuring the management of teams within the HR Directorate (HR Operations, Recruitment, Workforce Systems, Occupational Health) is carried out in line with Trust policies and procedures including performance and attendance management.	Responsible for ensuring the management of teams allocated HR staff within the Group's HR Directorate (HR Operations, Recruitment, Workforce Systems, Occupational Health) is carried out in line with Trust the Group's policies and procedures including performance and attendance management.

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27. In respect of paragraph 4a – 4c my earlier conclusions regarding changes referencing the 'Group' and 'as directed', 'allocated' apply equally. Objectively assessed, there is no change in autonomy or status to render the offer unsuitable.

Staff Management

5b.	Responsible for the effective performance management of the overall HR Operations service and delivery.	Responsible for To support the effective performance management of the Group's overall HR Operations service and delivery.
5c.	Responsible for ensuring that the HR Managers have appropriate support and coach them to deliver and challenge appropriately.	Responsible for ensuring that the HR Managers allocated HR staff have appropriate support and coach them to deliver and challenge appropriately.
5d.	Responsible for ensuring that all staff in the wider HR team have an annual appraisal, meet identified objectives within the agreed timescales, have undertaken all mandatory training and have Personal Development Plans in place.	Responsible for ensuring that all allocated staff in the wider HR team have an annual appraisal, meet identified objectives within the agreed timescales, have undertaken all mandatory training and have Personal Development Plans in place.
5e.	Responsible for identifying and supporting training requirements for all direct reports.	
5f.	Responsible for managing the overall HR pay and no-pay budget (including Occupational Health, Recruitment, Bank and Workforce Systems) in consultation with the Director of HR and identifying savings as appropriate.	Not included
5g.	Responsible for approving expenses claims for HR staff submitted via the Trust Expenses system	Responsible for approving expenses claims for allocated HR staff submitted via the Trust Group's Expenses system
5h.	Responsible for approving and finalising the HR Roster on a monthly basis, ensuring all attendance is recorded accurately, any highlighted attendance issues are addressed appropriately and that the roster is within the prescribed budget.	Responsible for approving and finalising the HR Roster for allocated staff on a monthly basis, ensuring all attendance is recorded accurately, any highlighted attendance issues are addressed appropriately and that the roster is within the prescribed budget.
6. Policy/Service Development		
6a.	To provide expert professional advice on all matters relating to human resources management employment legislation and best practice to a range of customers.	

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28. In respect of paragraph 5a – 5d and 5g – 5h 4c my earlier conclusions regarding changes referencing the ‘Group’ and ‘support’ and ‘allocated’ apply equally. Objectively assessed, there is no change in autonomy or status to render the offer unsuitable.

Policy/Service Development

6b.	To develop, implement and monitor effective and relevant workforce policies and procedures that foster positive employment relations and comply with relevant employment legislation and codes of practice. This will require the postholder to interpret national legislation and policy and identify and assess how this should be reflected in Trust policies.	To lead on the As allocated, development, implementation and monitoring workforce policies and procedures that foster positive employment relations and comply with relevant employment legislation and codes of practice. This will require the postholder to interpret national legislation and policy and identify and assess how this should be reflected in Trust Group policies.
6c.	To lead on the development, implementation and monitoring of all HR Policies ensuring the Trust complies with all relevant employment legislation, ensuring managers are kept up to date with developments and best practice.	As allocated, lead on the development, implementation and monitoring of all HR Policies ensuring the Trust Group complies with all relevant employment legislation, ensuring managers are kept up to date with developments and best practice.
6d.	To be the Trust Management lead on Agenda for Change Issues including Job Evaluation and Terms and Conditions.	To be the Trust Management To lead as directed on Agenda for Change Issues including Job Evaluation and Terms and Conditions.
7. Staff Engagement and Partnership Working		
7a.	To promote excellence in partnership working with staff representatives and partner organisations.	
7b.	To act as the HR Lead for the Trust Culture Workstream and for developing the shared vision for the Trust's Values and Behaviours.	As directed To act as the HR Lead for the Trust lead specific Group culture Workstreams and for developing the shared vision for the Trust Group's Values and Behaviours.
7c.	To act as the HR Lead for Staff Engagement, including the National Staff Survey and Local Staff Survey with responsibility for identifying areas for action planning and improvement following analysis of the data set.	As directed to act as the HR Lead for on specific Staff Engagement projects, including the National Staff Survey and Local Staff Survey with responsibility for identifying areas for action planning and improvement following analysis of the data set.
7d.	To lead on Partnership working with local and regional Staffside representatives, including management of the regular JCNC meetings and any industrial action.	To support and lead as directed on Partnership working with local and regional Staffside representatives, including management of the regular JCNC meetings and any industrial action partnership meetings.

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29. In respect of 6b - 6d my earlier conclusions regarding changes referencing the ‘Group’ and ‘directed’ and ‘allocated’ apply equally. Objectively assessed, there is no change in autonomy or status to render the offer unsuitable.

Staff Engagement and Partnership Working

30. In respect of 7b – 7d my earlier conclusions regarding changes referencing the ‘Group’ and ‘directed’ and ‘support’ set out above apply equally. Objectively assessed, there is no change in autonomy or status to render the offer unsuitable.

Governance and Audit

8	Governance and Audit	
8a.	To be the lead contact for Internal audits relating to HR policies and practices, absence management, and payroll and to present findings of audits to relevant committees and ensure that action is undertaken in line with recommendations.	As directed, to be the lead contact for internal audits relating to HR policies and practices, absence management, and payroll and to present findings of audits to relevant committees and ensure that action is undertaken in line with recommendations.
8b.	Engage with Auditors, both internal and External, to ensure compliance and safe working practices as recommended.	
8c.	Contribute to the Risk Management and Board Assurance processes within the directorate and be responsible for the updating and reporting of the HR Risk Assurance Framework.	Contribute to the workforce related Risk Management and Board Assurance processes within the directorate and as directed be responsible for the updating and reporting on specific aspects of the HR Risk Assurance Framework.
8d.	To support the Director of HR leading and deputising at the Trust Workforce Strategy Group ensuring delivery of individual workstreams is regularly monitored and reviewed.	As directed to lead on workforce strategy and other groups To support the Director of HR leading and deputising at the Trust Workforce Strategy Group ensuring delivery of individual workstreams is regularly monitored and reviewed.
8e.	To act as the HR Lead for the Trust CQC Implementation Plan ensuring that action plans are effected in line with recommendations, continuing monitoring of process to final delivery and implementation.	As directed to act as the HR Lead for workforce related Group the Trust CQC Implementation Plans ensuring that action plans are effected in line with recommendations, continuing monitoring of process to final delivery and implementation.
9	Employee Relations	
9a.	To co-ordinate and facilitate the smooth running of employee relations matters in the Trust taking the lead in highly complex and/or sensitive cases which require detailed analysis of the situation in order to provide advice and guidance on case management including circumstances where there is no precedence or conflicting options for resolution.	To support the co-ordination and facilitation of the smooth running of employee relations matters in the Trust Group taking the lead as directed in highly complex and/or sensitive cases which require detailed analysis of the situation in order to provide advice and guidance on case management including circumstances where there is no precedence or conflicting options for resolution.

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31. In respect of 8a, 8c - 8e my earlier conclusions regarding changes referencing the 'Group' and 'directed' apply equally. Specific aspects of work references Group projects that would be of a similar or higher complexity than the Claimants were undertaking. Objectively assessed, there was no change in autonomy or status to render the offer unsuitable.

Employee Relations

9b.	To support the Director of HR in the development and delivery of employee relations strategies, policies and systems.	To support the Director of HR in take the lead as directed for the development and delivery of employee relations strategies, policies and systems and [see 9c below]
9c.	Provide senior level advice on complex HR/employee relations issues on a regular basis	
9d.	To lead on highly complex employee relations matters, ensuring effective partnership working and the development of effective mechanisms for communication, consultation and negotiation.	
9e.	To be responsible for managing employment tribunal cases effectively when required and to provide evidence at disciplinary and tribunal hearings. This includes liaising with the Trust's legal advisors regarding Employment Tribunal applications and other employment-related legal claims against the Trust, interpreting information received and applying the best interests of the Trust's reputation and business objectives. The postholder is also required to negotiate directly with ACAS, solicitors and/or barristers acting for claimants against the Trust.	To be responsible for managing allocated employment tribunal cases effectively when required and to provide evidence at disciplinary and tribunal hearings. This includes liaising with the Trust Group's legal advisors regarding Employment Tribunal applications and other employment-related legal claims against the Trust Group , interpreting information received and applying the best interests of the Trust Group's reputation and business objectives. The postholder is also required to negotiate directly with ACAS, solicitors and/or barristers acting for claimants against the Trust Group .
9f.	Responsible for oversight and management of legal costs relating to employee relations matters, identifying at an early stage cases where above average legal costs may be incurred.	Responsible for As directed provide oversight and management of legal costs relating to employee relations matters, identifying at an early stage cases where above average legal costs may be incurred.
9g.	To be responsible for managing complex referrals to professional bodies e.g. NMC, GMC, DBS and liaising with the appropriate external organisations and solicitors as cases progress.	
9h.	Provide support to the Chief Medical Officer/Deputy Chief Medical Officer, and where appropriate to Clinical Leads on highly complex medical staffing employee relations issues (MHPS), ensuring development of the HR Managers in supporting and leading as appropriate in this area.	Provide support to the Chief Medical Officer/Deputy Chief Medical Officer Site Medical Directors, Deputy Medical Directors , and where appropriate to Clinical Leads on highly complex medical staffing employee relations issues (MHPS), ensuring development of the HR Managers in supporting and leading as appropriate in this area.

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9i.	To be the HR lead for all safeguarding concerns relating to employees, including the Management of Allegations.	As directed to be the HR lead for all safeguarding concerns relating to employees, including the Management of Allegations.
9j.	Responsible for the management of Subject Access Requests and Freedom of Information Requests relating to employees.	As directed, be responsible for the management of Subject Access Requests and Freedom of Information Requests relating to employees.
9k.	Responsible for the management of the appeals process for all employee relations matters.	As directed, be responsible for the management of the appeals process for all employee relations matters.

32. In respect of 9a, 9b, 9e, 9f, 9h – 9k my earlier conclusions regarding changes referencing the 'Group' and 'support' and 'directed' and 'allocated' apply equally.

33. The deletion of references Chief Medical Officer/Deputy Chief Medical officer reflect that in the new structure there would be Site Medical Directors and Deputy Medical Directors. Objectively assessed, there is no change in autonomy or status to render the offer unsuitable.

Law

34. Section 141 Employment Rights Act 1996 states:

- (1) *This section applies where an offer (whether in writing or not) is made to an employee before the end of his employment—*
 - (a) *to renew his contract of employment, or*

- (b) *to re-engage him under a new contract of employment, with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.*
- (2) *Where subsection (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer.*
- (3) *This subsection is satisfied where—*
 - (a) *the provisions of the contract as renewed, or of the new contract, as to—*
 - (i) *the capacity and place in which the employee would be employed, and*
 - (ii) *the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract, or*
 - (b) *those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.*

35. The offer has to be a renewal or re-engagement to take effect immediately on or after an interval of not more than 4 weeks after the end of the employee's employment.

36. The burden is on the Respondent to show both that the offer of new employment or re-engagement was suitable employment in relation to the employee and that the employee unreasonably refused the offer.

37. Mr Downey referred to the case of Watson v Sussex NHS Foundation Trust [2013] EWHC 4465 (QB) stating that the offer has to be sufficiently certain to be one that is capable of creating an immediate binding contract.

38. The burden is on the Respondent to show both that the offer of new employment or re-engagement was suitable employment in relation to the employee and that the employee unreasonably refused the offer. Mr Downey referred to the EAT case of Bird v Stoke on Trent PCT UKEAT/0074/11 where Keith J stated that the questions are separate but not completely unrelated.

39. In Bird Keith J stated the correct approach to the question at paragraphs 18 and 19:

“The issue of suitability is conveniently (and correctly) summarised in Harvey on Industrial Relations and Employment Law, Vol 1, Division E, Issue 204, para. 1489, which reads:

“Under ‘suitability’ you must consider the nature of the employment offered. It is for the tribunal to make an objective assessment of the job offered (Carron Co v Robertson (1967) 2 ITR 484, Ct of Sess). It is not, however, an entirely objective test, in that the question is not whether the employment is suitable in relation to that sort of employee, but whether it is suitable in relation to that particular employee. It comes really to asking whether the job matches the person: does it suit his skills, aptitudes 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. The location may also be relevant, because 'commuting is not generally regarded as a joy' (Laing v Thistle Hotels Plc [2003] SLT 37, Ct of Sess, per Lord Ordinary Eassie). No 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? And the sole criterion by which that is to be judged is 'suitability'."

40. When considering the correct approach to the question of whether the employee unreasonably refused the offer. Keith J said at paragraph 19:

"The issue of reasonableness is also conveniently (and correctly) summarised in Harvey, op. cit., para. 1552:

"The question is not whether a reasonable employee would have accepted the employer's offer, but whether that particular employee, taking into account his personal circumstances, was being reasonable in refusing the offer: did he have sound and justifiable reasons for turning down the offer?" As the Employment Appeal Tribunal (Phillips J presiding) said in Executors of J F Everest v Cox [1980] ICR 415 at p 418C, the question whether the employee had sound and justifiable reasons for refusing the offer has to be judged from the employee's point of view, on the basis of the facts as they appeared, or ought to have appeared, to the employee at the time the offer was refused."

41. The importance of viewing the refusal from the employee's point of view was stressed a paragraph 20 of Bird where Keith J said:

"In Cambridge and District Co-operative Ltd v Ruse [1993] IRLR 156, the Employment Appeal Tribunal (Judge Hague QC presiding) said that loss of status was a factor which could make the employee's refusal of the offer reasonable. It also said at [18] that "as a matter of law, it is possible for the employee reasonably to refuse an objectively suitable offer on the ground of his personal perception of the employment offered". Indeed, that could be so even if other people think that "the personal perception" of the employee might be wholly unreasonable. That was not the case in Ruse because the industrial tribunal had merely found it possible that "he was being a little sensitive". But an employee's refusal of an otherwise suitable offer can still be said to be reasonable when he personally thinks that the post he is being offered involves a loss of status, even if that view might be groundless in the eyes of others, provided that it is not groundless from his point of view."

42. Mr Downey also submitted that the fact that an employee has prudently sought and accepted an offer of employment elsewhere is a highly relevant factor. He referred to the case of Thomas Wragg & Sons v. Wood [1976] ICR 313 per Lord McDonald at pages 315F-316A

"It is clear in the present case that a third factor does exist and it is one which counsel for the employers accepted may competently be taken into account,

although he argued that standing by itself it would not suffice. That factor, of course, is the acceptance by the employee of different employment before the expiry of his notice of dismissal. Our attention in this connection was directed to McNulty v. T. Bridges and Co. Ltd. (1966) 1 I.T.R. 367. It was stated in that case that the fact that an employee accepts the offer of employment outside his employer's company, before an offer of alternative employment by that company was made, does not necessarily mean that his refusal of the company's offer is to be treated as reasonable. We would not quarrel with that proposition, but it is very clearly a factor which is to be taken into account when considering the element of reasonableness, and that is stated in terms in the decision of the tribunal in that particular case. In the case with which we are concerned today, this third factor is in our opinion one of great importance. The employee obviously acted with some diligence and was successful in obtaining other employment which was due to commence at the termination of his employment with the employer. In our opinion, in doing so he acted very sensibly and very reasonably."

Conclusions

Suitable alternative work

43. In view of the comparative analysis of the Head of HR role and the Senior HR Lead role set out above, and considering the context of the Claimants inflexibly attitude, resistance to any change and their failure to consider a trial period, I conclude that the Senior HR Lead role amounted to suitable alternative work. Specifically,

- 43.1 the words allocated, directed or supporting had no practical effect. The Claimants did not have total autonomy over their tasks as Head of HR and could be directed and allocated tasks by the Director of HR if necessary;
- 43.2 there were no practical effects concerning differences between the Claimants' old roles and the Senior HR Lead role. Such differences, if any, could have only been ascertained following trial period and consultation about expectations going forward;
- 43.3 The Senior HR Lead role was a newly introduced position. Without undertaking a trial period, where the Claimant's operational memory and expertise could have been called upon to improve the effectiveness of the structure and confirm it was not possible to ascertain any practical difference between working for the Trust as opposed to the Group or confirm the scope and extent of any difference in day to day duties;
- 43.4 The operational site line management within the Trust was unchanged, save for the Claimants' being required to report to a Band 8d Head of HR. Given the merger of the Trusts a new organisational HR line management structure was introduced. This would not have adversely impacted on the Claimants daily activities.

44. I conclude that the Senior HR Lead role matched the Claimants and suited their skills, aptitudes and experience. When considering the role as a whole, including the tasks likely to be performed and the status, location, hours and salary, I consider that

the Senior HR Lead role was in all the circumstances a reasonable offer for the Claimants. I therefore conclude that the Senior HR Lead role amounted to suitable alternative work.

Unreasonable refusal

45. I do not conclude that the Claimants were justified in considering that there was a loss of autonomy or status with the offer of the Senior HR Lead role. Indeed, I consider that their perceptions in this regard to be objectively groundless. However, on the evidence I do not doubt that their 'personal perception' was that there would be a loss of autonomy and status. These were matters that they clearly expressed at the time.

46. Given that they were to report to a Head of HR (albeit different grade) and they were unconvinced about the planning for the new role and its credibility in the future Group structure as no reports had been identified by that stage, the Claimants personal perception was that the role would be of reduced autonomy and status. Following Bird I do not conclude that their perceptions were groundless from their point of view.

47. I therefore revoke the decision in this regard and conclude that the Claimants did not unreasonably refuse suitable alternative work.

48. In these circumstances, the Claimants claims for contractual redundancy payments succeed.

Remedy

49. The parties provided separate written submissions regarding remedy. It was agreed that any statutory redundancy payment would be included in the contractual redundancy payment calculation so that a Claimant could not receive the contractual entitlement plus the statutory entitlement.

50. The issue between the parties was how, if at all, to account for the Claimants' statutory redundancy payment entitlement when considering the Employment Tribunal contract claim statutory cap of £25,000 under the Employment Tribunal (Extension of Jurisdiction) (England and Wales) Order 1994.

51. The Claimants assert that where the contractual redundancy claim exceeds the cap it only applies after the statutory redundancy payment has been accounted for. Therefore, the Claimants claim, where relevant, they are entitled to statutory redundancy payment plus the contractual cap of £25,000.

52. The Claimants referred me to the case of Ugradar v Lancashire Care NHS Foundation Trust UK/EAT/0301/18/BA where HHJ Richardson held, in a case involving similar facts, that the claimant was also entitled to a statutory redundancy payment in addition to the contractual redundancy payment. Whilst the respondent in that case was entitled to set off the statutory redundancy payment against the contractual

redundancy payment, the set off was against the total contractual redundancy payment, not against the capped amount.

53. The Respondent asserts that this is a contract claim only and as such the only entitlement the Claimants have is their contractual entitlement capped at £25,000 where relevant.

54. I accept the Claimants submissions in this regard and follow Ugradar. Consequently, where relevant, the claimants are entitled to the contractual statutory cap of £25,000 plus their statutory redundancy entitlement. Given this:

54.1 Mrs Stevenson would have been entitled to a contractual redundancy payment of £64,740 (inclusive of £10,269 statutory redundancy payment). She is therefore entitled to £25,000 plus £10,269 totalling £35,260.00. The Respondent is ordered to pay Mrs Stevenson **£35,260.00**.

54.2 Mrs Stewart would have been entitled to a contractual redundancy payment of £58,865 (inclusive of £10,024.50 statutory redundancy payment). She is therefore entitled to £25,000 plus £10,024.50 totalling £35,024.50. The Respondent is ordered to pay Mrs Stewart **£35,024.50**.

54.3 Mrs Leeke would have been entitled to a contractual redundancy payment of £12,743.00 (inclusive of £2,200.50 statutory redundancy payment). Mrs Leeke. She is therefore entitled to £12,743.00 subject to any payment in respect of redundancy payment. Mrs Leeke received compensation £10,000 for unfair dismissal under a consent judgment sent to the parties on 20 August 2019. Under section 122(4) of the Employment Rights Act 1996 an employee is not entitled to a basic award and a redundancy payment in respect of the same dismissal. In the liability judgment, I concluded that Mrs Leeke contributed to her dismissal by 50% and therefore conclude that at least £1100.25 of the consent judgment was in respect of the Respondent's basic award liability. I deduct this sum from Mrs Leeke's entitlement by way of the contractual set off which was in effect a payment on account of her statutory redundancy entitlement. Mrs Leeke is therefore entitled to £12,743 less £1100.25 totalling £11,642.75. The Respondent is ordered to pay Mrs Leeke **£11,642.75**.

**Employment Judge Burgher
Dated: 17 March 2022**