EMPLOYMENT TRIBUNAL

Claimant: Ms. Julie Dennis

Respondent: Buckingham Holdings Limited

Heard at: London Central ET (via video/CVP) **On:** 10-12 May 2022

Hearing: Final Merits Hearing

Before: Employment Judge Tinnion

Appearances: For Claimant: In person
For Respondent: Ms. Kaur (Solicitor)

RESERVED JUDGMENT

1. The Claimant's complaint of unfair dismissal against the Respondent under ss.94-98 of the Employment Rights Act 1996 is well-founded.

2. The Respondent shall pay the Claimant compensation in the total sum of £21,960:

    a. basic award (s.118(1)(a) of Employment Rights Act 1996) - £0

    b. compensatory award (s.118(1)(b) of Employment Rights Act 1996) - £21,960

REASONS

Claim

1. By an ET1 presented on 5 July 2021 [2], the Claimant presented a complaint of unfair dismissal against the Respondent under ss.94-98 of the Employment Rights Act 1996 (**ERA 1996**) [2-19].

2. By an ET3 [20-27] and 'Particulars of Response' [28-36], the Respondent resisted the complaint on the grounds that (a) the Claimant had been dismissed for a fair reason – redundancy, alternatively a business reorganisation amounting to a substantial reason of a kind such as to justify her dismissal (b) the Claimant's dismissal for that reason was fair because genuine and meaningful consultations took place with the Claimant, the constitution of the redundancy pool and the decision to include the Claimant in that pool was fair, the selection criteria used to determine who would be made redundant were fair and objective and applied fairly

and reasonably, and the Respondent investigated the possibility of alternative employment for the Claimant but there were no suitable alternative jobs available.

Final Merits Hearing

3. The Final Merits Hearing (**FMH**) was held on 10-12 May 2022. The Claimant acted in person. The Respondent was represented by a solicitor. A PDF bundle of 517 pages – with one additional page added during the course of the hearing - was produced (references in square brackets are to the relevant page of that bundle). The following people made witness statements and gave oral evidence: (1) the Claimant (2) Mr. Quin Sprague (Director) (3) Mr. Stuart Kimm (Company Secretary) (4) Mr. Scott Moorhouse (external business consultant). The Tribunal was satisfied all witnesses sought to assist the Tribunal by giving their honest, best recollection of events. The Tribunal notes it did not have witness statements or hear oral evidence from any witness from Peninsula, the Respondent's external HR consultants who conducted the Claimant's redundancy/dismissal process.

Background findings of fact

4. The Tribunal makes the following findings of fact, including any contained in the other sections of this Judgment and Reasons, on the balance of probabilities.

5. The Respondent company was founded in 1982 and manages residential and commercial properties in London and elsewhere in the UK for the ultimate benefit of a family trust [368]. Mr. Sprague is a director of the Respondent and a beneficiary of that trust. The Respondent has fewer than 10 employees [367]. The Respondent's balance sheet for the year ended 24 December 2020 [364] – the financial year preceding the year in which the Claimant was dismissed – shows shareholder funds in the sum of £8,846,200, ie, the Respondent was comfortably solvent. The decision to make the Claimant's Office Manager post redundant was made by Mr. Sprague alone in December 2020.

6. The Respondent forms an intermediate link in a chain of associated companies [517]. The Respondent owns 100% of the shares of a subsidiary called Buckingham Management Services Ltd. ("**BMS**", of which Mr. Sprague is a director) and 80.10% of the shares of another subsidiary called Coventry Business Estates Ltd. ("**CBE**", of which Mr. Sprague is a director) which itself owns 99.73% of the shares of a subsidiary called Iliffe Properties Ltd. ("**IPL**", of which Mr. Sprague is a director). For the purposes of s.231(a) of ERA 1996, the Respondent, BMS, CBE and IPL are associated companies. Applying s.139(2) of ERA 1996, the business of these companies are to be treated as one for redundancy purposes.

7. In September 2014, the Claimant joined the Respondent. On 2 September 2014, she signed a contract of employment [41-48] which stated her employer was the Respondent, her job title was PA/Admin. Assistant, her salary was £40,000 per annum, her duties were to give to the 'Company' – defined as the Respondent, IPL and CBE – "*such explanations assistance and information as the Company may reasonably require* …" [42], and she was to report to a Ms. "AD", a non-company law director of the Respondent.

8. In the period September 2014 – December 2017, the Claimant performed the role. She passed her initial 3 month probationary period [88], and formed part of what appears to have been a small 'tight knit' team at the Respondent. She enjoyed her job (which gave her respite from her difficult domestic life), and got on well with her colleagues, including Mr. Sprague whose respect she had. She received annual pay rises and bonuses.

9. In 2018, the Claimant was directly involved in bringing to Mr. Sprague's attention a long-standing business expense impropriety involving AD, whose relationship with Mr. Sprague by this point in time had crossed over into the personal. In an email AD sent Mr. Sprague and fellow director Mr. Pirouet on 9 March 2019 [100], AD openly admitted her wrongdoing in clear, unambiguous terms:

> "*This narrative is not an excuse for the appalling and dishonest way in which I have behaved but an attempt to explain the reasons for such behaviour. My actions of late, since joining the company, have, sporadically, been shameful. For decades I had adopted the ostrich syndrome, burying my head in the sand and did not even monitor my own income/expenditure. This resulted in the accumulation of debts, my debit card not being replaced at expiry and numerous unpaid bills being hidden at home. I had not shown any interest in our finances and had no idea of bank account balances or credit cards held by Tim. My unacceptable ignorance of the true situation and unwillingness to confront Tim thereby avoiding further aggravation led me to acquire the requisite funds from the company. I naively believed each time that it would be a 'one off' or at the very least the final time. I did not gain from my dishonesty, I merely calmed a volatile situation but effectively deferred the inevitable. Eventually I sought help and guidance from Chris, the manager at Lloyds bank in Pall Mall, who helped me understand the scale and seriousness of the debts. After decades of living in a financial wilderness foolishly adopting the ostrich syndrome I now have control over all payments associated with my debt/credit cards and the flat. Regrettably my earlier lack of involvement and resultant debts caused me to act dishonesty taking funds to which I was not entitled bowing to pressure from Tim who was not working and requesting money*."

10. The Respondent did not refer AD's conduct to the police. Sadly, AD suffered a serious health-related incident in December 2018 as a result of which she was unable to work. AD's absence from the business, preceding her resignation, put considerable strain on the Respondent's small team. The Claimant had to step up and perform tasks AD previously performed. By email on 3 April 2019 [101], Mr. Sprague dictated a letter to tenants [102] stating health issues had led AD to leave the Respondent following her resignation (this was true, but only half the picture) and asked tenants for the foreseeable future to contact Mr. Sprague or the Claimant with management issues.

11. Minutes of the Respondent's board meeting on 19 February 2019 [94-98] noted directors Gardner and Pirouet were "*grateful that the team has pulled together during this challenging period and thank them for their efforts*". The Claimant and Mr. Kimm were awarded a £5,000 bonus for their contribution during "*this challenging period*."

12. Notwithstanding that expression of gratitude, the Claimant's perception at the time was (and remained) that her role in bringing AD's wrongdoing to light had 'marked her card' with Mr. Sprague and she was at risk of retaliation for having done so. The Claimant said, and the Tribunal accepts, that Mr. Sprague was highly attached to AD and reluctant to let AD go notwithstanding serious, admitted financial dishonesty on her part. The Claimant believes her role in exposing AD's wrongdoing played an important role in her selection for redundancy and dismissal.

13. On 20 February 2019, a former GP employer of the Claimant wrote to Mr. Kimm [99] stating she had left his employment owing him a substantial amount of money part of which she had repaid under a Court order. The GP asked Mr. Kimm to confirm she was still an employee of the Respondent, and he would then forward forms for an attachment of earnings order. The Claimant was spoken to about this. In the event, no forms were completed, and the Claimant's earnings were not subject to an attachment of earnings order. The Claimant believes this incident may also have formed part of the reason for her selection for redundancy and dismissal.

14. In late March 2020, following the onset of the Covid-19 pandemic, the Respondent's staff including the Claimant began working from home - cf [116]. It is not in dispute that the Claimant's home working circumstances were far from ideal, and despite repeated requests for equipment and notice of her poor working conditions [119-123, 125], it was not until October 2020 that the Claimant's requests [142-144] were finally actioned. It is also not in dispute that the Claimant's home life with her partner was volatile, and Mr. Sprague and Mr. Kimm were aware of this [118, 124]. The Claimant infers the Respondent was hoping she would get sick of her situation and resign.

15. In 2020 and 2021, there were numerous changes to the Respondent's team.

16. First, the Claimant's post changed from PA/Admin. Assistant. On 16 July 2020, the Claimant signed a statement of the main terms of her employment [49-51] which stated she was employed as Office Manager and her duties were "*as advised by the Managing Director*." Her salary was £55,000 per annum (the Tribunal accepts it was not raised to £56,100 on 21 July 2020 because she took the post [141] but because of normal annual pay rises). So far as the Claimant was concerned, the Office Manager post was a demotion not a promotion, as certain of her responsibilities which she enjoyed – property management, liaising with contractors, liaising with tenants – were removed. On 16 July 2020 the Claimant signed an Office Manager job description [79] of which made reference to one of her main tasks being "*Property Management support*." At the time, the Claimant was of the view that she was being gradually managed out of the company, and stated when the draft Office Manager job description was circulated that it sounded like "*a perfect job for Scott [Moorhouse], not me. Other than the phone and office supplies which you could just get a receptionist to do, he could easily have carried out the rest*." [132].

17. Second, in August 2020 a Mr. Justin Weller joined the Respondent as General Manager. Mr. Sprague's 8 June 2020 email [130] notifying his team of this appointment highlighted Mr. Weller's experience in property/project management. The email referred to an ongoing restructure at the Respondent – Mr. Sprague stated many of the changes related to the reporting structure within the company. A General Manage job description appeared at [303] – it included responsibilities which

the Claimant had previously discharged (eg, tenant complaints, contractor liaison).

18. Third, in December 2020 – at the same time Mr. Sprague was deciding to make the Claimant's Office Manager post redundant – Mr. Sprague offered employment to Mr. Bashir Dikko as Head of Service and Delivery, which post Mr. Dikko took up on 1 April 2021. A Head of Service and Delivery job description which Mr. Dikko signed appeared at [341-342] – it also included responsibilities which the Claimant had previously discharged (eg, tenant liaison).

19. Fourth, following successful completion of a 3-month probationary period, a Mr. Joseph Cannon joined the Respondent's team [156]. The Tribunal accepts the Claimant was not informed of this at the time even though it would have been her job to line manage Mr. Cannon. The Claimant inferred – not unreasonably, in the Tribunal's view – that her exclusion from this process was suspicious.

20. Fifth, on 2 December 2020 Mr. Scott Moorhouse entered into a self-employed Consultancy Agreement with the Respondent [334-34] on terms requiring him to assist the Respondent on matters relating to its business. Mr. Moorhouse had by then already been working with Mr. Sprague for several years. It is clear that by June 2020 the Claimant's working relationship with Mr. Moorhouse was poor [493].

Redundancy process

21. By no later than November 2020, Mr. Sprague began considering whether the Claimant's Office Manager post should be made redundant. In December 2020, Mr. Sprague decided to make her post (and only her post) redundant. The Claimant was not consulted about this, nor were Mr. Sprague's fellow directors – the decision was his and his alone. In cross-examination, Mr. Sprague did not suggest his decision was merely one of *potential* redundancy.

22. On 1 March 2021, the Claimant sent an email to Mr. Sprague and Mr. Kimm explaining how she proposed to work from home [169]. The Claimant still had no idea at this stage that her post was at risk of redundancy.

23. The Claimant's redundancy process finally began on 8 March 2021, when by letter [172] Mr. Sprague asked the Claimant to attend a remote meeting on 9 March 2021 with a Peninsula consultant regarding her employment.

24. On 9 March 2021 [175-191], the Claimant attended a remote meeting with Peninsula consultant Mr. B. Rudston, minuted in the form of a transcript. At the meeting:

    a. Mr. Rudston accepted he was not independent of the Respondent because of the contract between Peninsula and the Respondent, but stated he was unbiased and impartial as he didn't know the Claimant or Respondent;

    b. Mr. Rudston read out the Respondent's 'business case' for the Claimant's redundancy, which (summarising) was that the Respondent no longer needed its office at 18 Pall Mall, as it had a smaller office adequate to its needs; all personnel were working successfully from home; the Office Manager's role will no longer be required, as the remaining departments could "easily" absorb

any remaining duties; many of the Office Manager tasks (staff coaching, counselling, monitoring, scheduling staff) are not required; office procedures with any clerical function can be picked up by individual staff members;

c. Mr. Rudston stated the Respondent would invite the Claimant to an individual consultation meeting where she could put alternative suggestions forward.

25. By email on 10 March 2021 [192]. Mr. Rudston shared documents with the Claimant via a Groupshare link. By 12 March 2021 (if not earlier), the Claimant had instructed a solicitor - cf [195].

26. Under cover of a letter dated 11 March 2021 [196], Mr. Sprague forwarded a copy of the Respondent's business case for her redundancy to the Claimant, and invited her to attend a consultation meeting on 15 March 2021.

27. The Claimant through her solicitor had been involved in settlement negotiations with the Respondent. In that context, the Claimant requested the return of her personal belongings. By email on 15 March 2020 [200], Mr. Rudston stated that as the Respondent had taken no final decision it would be inappropriate to assume there was a requirement for her to collect her belongings at this stage.

28. On 15 March 2021, the Claimant attended a further remote meeting with Mr. Rudston [202-218].

29. Under cover of an email on 18 March 2021 [220], Mr. Sprague forwarded a letter inviting the Claimant to attend a further meeting on 23 March 2021 [221] and a consultation 'FAQ' [222-224] to the Claimant answering some of her questions.

30. On 23 March 2021, the Claimant attended another remote meeting with Mr. Rudston [226-235]. Mr. Rudston stated the Respondent was terminating the Claimant's employment contract by way of redundancy from today's date [230]. Mr. Rudston confirmed the Claimant would be paid for her notice period, her accrued holiday, and would receive a statutory redundancy payment.

31. Under cover of an email sent on 23 March 2021 [236], Mr. Sprague forwarded a letter to the Claimant formally notifying her of her dismissal with effect from 23 March 2021 on redundancy grounds [237-239]. The letter's rationale for making her post redundant and dismissing her was stated to be as follows [237-238]:

"*The company has identified a redundancy situation as due to the Covid-19 pandemic its employees have been provided with necessary provision to work from home. Therefore, the large central office space [at 18 Pall Mall] will be relinquished, and a smaller office will be used moving forward for the business to remain economically viable. Even if the move to a smaller office was delayed or postponed, it has already been discussed and agreed that internal dividing walls can be removed at Pall Mall enabling the idea of open plan 'Hot Desking' still feasible and removes the requirement for receptionist, which currently is carried out as a duty by the Office Manager. As stated the main duties and occasional support duties of the Office Manager will no longer be required, and the remaining duties can easily be absorbed by the remaining departments … The Company*

has taken steps to try to avoid compulsory redundancies where possible, unfortunately, these steps have not avoided the need to make redundancies."

32. By a report dated 26 [sic] March 2021 [241-250], Mr. Rudston summarised the situation and recommended that (1) the Claimant be informed that her role was redundant (2) the Claimant's employment be terminated in the absence of suitable alternative roles being available. Leaving aside the date of this report, it is clear Mr. Sprague accepted Peninsula's recommendation and acted upon it. On 26 March, a transcript of the 23 March 2021 meeting was forwarded to the Claimant [240].

33. On 30 March 2021, the Claimant appealed against her dismissal [251-353].

34. By letter dated 1 April 2021 [254-255], Mr. Sprague acknowledged receipt of her appeal and invited the Claimant to attend a remote appeal hearing on 7 April 2021 chaired by a different Peninsula consultant.

35. On 7 April 2021, the Claimant's remote appeal took place [272-294]. It was chaired by Peninsula consultant Chipo Rapson.

36. By email on 13 April 2021, the Claimant forwarded further information in support of her appeal [269-271] to Mr. Rapson. Mr. Rapson forwarded the Claimant's email to Mr. Sprague for comment.

37. By letter dated 14 April 2021 [295-299], Mr. Sprague provided a written response to the Claimant's updated information, which focuses almost entirely on the issue of whether the Claimant's post of Office Manager was redundant or not (he said it was). The entirety of what Mr. Sprague said about finding alternative employment for the Claimant was as follows: "*I did carry out due diligence to see if JD could fit elsewhere within the company but this simply wasn't viable*" [299].

38. By a report dated 21 May 2021 [256-266], Mr. Rapson summarised the Claimant's appeal, rejected all grounds of appeal, and dismissed her appeal in its entirety.

39. After the Claimant's dismissal, the Respondent ultimately did not move premises, and remains situate at 18 Pall Mall.

Relevant law

40. Sec 139(1) of ERA 1996 states that for the purpose of that 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.

41. The reason for dismissal is a set of facts known to and/or beliefs held by the employer which cause it to dismiss an employee. Abernethy v Mott, Hay & Anderson [1974].

42. Provided a genuine redundancy situation arises, the Tribunal does not have jurisdiction to determine whether an employer's decision to have redundancies either at all or in the numbers decided upon rather than take an alternative course of action was unfair or unreasonable, or decide an unfair dismissal claim on the basis that that decision was unfair or unreasonable. In a genuine redundancy situation, the decision whether or not to make posts redundant is a business decision for the employer. Moon v Homeworthy Furniture (Northern) Ltd. [1976] IRLR 298.

43. Williams v Compair Maxam [1982] UKEAT/372/81. Where employees are represented by an independent union recognised by their employer, reasonable employers will generally seek to act in accordance with the following principles:

44. First, the employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and if necessary find alternative employment in the undertaking or elsewhere.

45. Second, the employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employee as possible. The employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.

46. Third, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked.

47. Fourth, the employer will seek to ensure the selection is made fairly in accordance with these criteria, and will consider any representations the union may make.

48. Fifth, the employer will seek to see whether instead of dismissing the employee the employer can offer the employee alternative employment.

49. Sixth, the factors above are not present in every case, and can be departed from where good reason is shown.

50. There is no obligation on an employer to use selection criteria where the employer proposes to dismiss on redundancy grounds all employees in a particular pool.

Issues

51. The liability issues the Tribunal has to determine are as follows:

52. First, has the Respondent established the Claimant was dismissed for a potentially fair reason – it relies on (a) redundancy, or (b) a business reorganisation providing

'some other substantial reason' of a kind potentially justifying her dismissal.

53. Second, if a fair reason for dismissal has been established, did the Respondent act reasonably or unreasonably in treating that as a sufficient reason for dismissing her, given the circumstances, the Respondent's size and administrative resources, and the equity and substantial merits of the case (the range of reasonable responses test applies). In particular:

    (a) did the Respondent seek to give the Claimant reasonable early notice of her possible redundancy so as to enable her to take early steps to inform herself of the relevant facts, consider possible alternative solutions, and if necessary find alternative employment in the undertaking or elsewhere?

    (b) did the Respondent consult the Claimant as to the best means by which the desired management result could be achieved fairly and with as little hardship to her as possible, and seek to agree the criteria to be applied in selecting the employees to be made redundant?

    (c) did the Respondent seek to establish criteria for selection which so far as possible did not depend solely upon the opinion of the person making the selection but could be objectively checked?

    (d) did the Respondent seek to ensure the selection was made fairly in accordance with the selection criteria, and consider any representations the Claimant had to make regarding her selection?

    (e) did the Respondent take reasonable steps to see if alternative employment was available for the Claimant rather than dismissal?

Discussion / Conclusions

54. First, the Tribunal is satisfied the two alternative reasons the Claimant has mooted as the real reason for her dismissal – (a) her 2018 role in bringing to Mr. Sprague's attention AD's involvement in a business expense fraud (b) an issue which a former GP employer raised with the Respondent about a historic debt – were not the reason for her dismissal. The Tribunal rejects reason (a) on the following grounds:

    a. the Respondent's corporate decision - which Mr. Sprague must have approved - to award the Claimant a £5,000 special bonus for 'stepping up' to assist it after AD ceased working for the company is inconsistent with any animus towards the Claimant for exposing AD's business expenses fraud;

    b. the significant 2+ year gap between the underlying events at issue involving AD and the December 2020 decision to make the Claimant's post redundant;

    c. the Tribunal's acceptance of Mr. Sprague's evidence that what happened with AD played no part in his decision to make the Claimant's Office Manager post redundant or to dismiss her – as stated, the Tribunal found all witnesses to be honest, with Mr. Sprague in particular presenting as a highly credible witness (he made appropriate concessions when due, there was not the

slightest hint of rehearsed answers, when he was unable to answer a question he said so) – put bluntly, when Mr. Sprague said this was not a factor in his decision-making, the Tribunal believed him;

d. the absence of any real evidence corroborating the Claimant's suspicion that her role in exposing AD's fraud in 2018 played a role in the selection of her post for redundancy in December 2020 or her dismissal in March 2021.

55. The Tribunal also rejects reason (b) as the reason for dismissal. There is no evidence which corroborates the Claimant's suspicion – which the Tribunal finds to be groundless - that this incident played any part in her selection for redundancy or dismissal. The Claimant overcomplicates the request her former GP employer made to her employer, which simply stated a debt was due and sought the Respondent's assistance to help get it paid. The Claimant wrongly thinks the GP's request made, or must have been based on, allegations of dishonesty – this is simply not true, people get into debt for all sorts of reasons. The Respondent acted reasonably in discussing the GP's request with the Claimant, and ultimately chose not to cooperate with the GP (to her benefit). There is again a substantial gap in time between the GP's February 2019 letter and the December 2020 decision to make the Office Manager post redundant and the March 2021 decision to dismiss the Claimant.

56. The Tribunal is satisfied, on the balance of probability, that the Respondent's reason (or if more than one, principal reason) for the Claimant's dismissal in March 2021 was a combination of the following factors, which collectively gave the Respondent a potentially fair substantial reason for terminating the Claimant's employment:

a. the Covid-19 pandemic in 2020 and the ensuing requirement to work from home, which established that the Respondent could run its business effectively while most of its staff worked from home;

b. given the above, the reduced need for the services of a full-time 'in the office' Office Manager;

c. the Respondent's reasonable expectation that after the worst of the Covid-19 pandemic was over, there would be a change in its working practices making it more likely staff would work from home or on a hybrid office/home basis;

d. a wider restructure in the Respondent's business in 2020 (Mr. Weller's appointment as General Manager in 2020, Mr. Moorhouse being drawn into a tighter business relationship with the Respondent in 2020, Mr. Dikko's appointment as Head of Service and Delivery in December 2020);

e. the Respondent's genuine intention in late 2020/early 2021 to vacate 18 Pall Mall and move into a smaller office – the Tribunal declines to draw an adverse inference from the fact it ultimately did not do so and remained in that location the rest of the year (in cross-examination the Claimant did not challenge para. 64 of Mr. Sprague's witness statement which stated "*At the time we had two smaller offices that were vacant, and it was agreed that we would look to move our office from Pall Mall to our smaller premises*.");

f. the Tribunal is satisfied that the Claimant was effectively in a redundancy or quasi-redundancy situation in March 2021, hence the Claimant could be fairly dismissed if a fair redundancy/dismissal procedure was followed.

57. Second, the Tribunal holds that the Respondent acted unreasonably, and outwith the band of reasonable responses open to it at the time, in treating the above reason as a sufficient reason for dismissing the Claimant, given the following:

58. *First*, the Respondent did not give or seek to give the Claimant reasonable early notice of her possible redundancy so as to enable her to take early steps to inform herself of the relevant facts and consider possible alternative solutions. Under cross-examination, Mr. Sprague pinned down November 2020 as the date on which he began to consider whether the Office Manager post should be made redundant/dispensed with, December 2020 as the date on which he made the decision to do so, and it is not in dispute that the Claimant was not informed that her job was at risk until 9 March 2021. In the Tribunal's judgment, the latest the Claimant should have been informed that she was involved in a potential redundancy situation was December 2020, not March 2021. That 3 month delay meant the Claimant missed an important window of opportunity to look for alternative employment.

59. *Second*, the Respondent did not consult the Claimant as to the best means by which its desired management result – saving money - could be achieved fairly and with as little hardship to her as possible, nor did it seek to agree with her – or consult her about - the criteria to be applied in selecting the employee(s) to be made redundant (pool, redundancy selection criteria). These matters were unilaterally decided by Mr. Sprague in December 2020 without any attempt to consult the Claimant (or for that matter anyone else, including his fellow directors). By the time she became aware her job was at risk on 9 March 2021, the reality is that the die were already cast and her post had already been selected – not "provisionally" selected – for redundancy.

60. *Third*, the Respondent did not seek to establish criteria for selection which so far as possible did not depend solely upon the opinion of the person making the selection. Mr. Sprague unilaterally decided to make the Claimant's Office Manager post - and only her post – redundant. There were no redundancy selection criteria at all. The Tribunal accepts it was ultimately a business judgment for the Respondent as to whether to make any post (or posts) redundant and if so which ones, but the process adopted was completely reliant on the opinion of one person – Mr. Sprague's – with no opportunity given to the Claimant to provide input on those matters when plans were at a formative stage.

61. *Fourth,* in the absence of witness evidence from a Peninsula witness tested under cross-examination, the Tribunal declines to find that the Claimant's redundancy selection process was conducted fairly, or that the representations the Claimant had to make regarding her selection were genuinely considered (for the avoidance of doubt, the Tribunal does not go so far as to make a positive finding that it was conducted unfairly or that her representations were not fairly considered either). In most unfair dismissal claims where a respondent is legally represented, the employer will normally call the key decision-makers in the dismissal process to give evidence. In this case, the Tribunal heard no evidence from either Mr. Rudston or Mr. Rapson, with no satisfactory explanation given for them not giving evidence.

Hearing their evidence tested under cross-examination would have assisted the Tribunal in enabling it to make an informed assessment of whether those individuals did genuinely consider the Claimant's representations, and did not simply take at face value the representations Mr. Sprague made to them. The Tribunal notes its concern that the whole redundancy consultation process may have been no more than a 'box-ticking exercise', given the fact that by December 2020 the decision had already been made to make the Office Manager post redundant. Although she did not know the reason why, the Claimant had reasonably grounds to suspect the outcome of the redundancy process was pre-determined. No criticism is made of Peninsula's conduct – the fact is, the Respondent instructed Peninsula too late in the process, when the key decisions had already been made.

62. *Fifth,* the Tribunal is not satisfied that the Respondent made reasonable efforts to see if alternative employment could be found for the Claimant. None of the Respondent's witnesses specifically addressed whether within any of the Respondent's associated companies – BMS, CBE, IPL – might be a possible source of full-time or part-time employment for the Claimant. In the absence of evidence to that effect, the Tribunal infers no consideration was given as to whether alternative suitable employment for the Claimant might be found at one of these companies.

63. *Sixth*, whether a dismissal for a potentially fair reason was ultimately reasonable (and hence fair) or not must be judged in the round, taking all relevant matters into account. Doing so in this case, the Tribunal determines that the Respondent acted unreasonably and outwith the range of reasonable responses open to it at the time by dismissing the Claimant on 23 March 2021, hence the Claimant's dismissal was unfair under s.98(4) of ERA 1996 and the Claimant is entitled to a remedy. The Respondent was a small company, with few employees, but it had considerable administrative and financial resources at its disposal at the time, and could have handled the Claimant's dismissal much better (and fairer) than it did.

Remedy

64. The Claimant is not entitled to a basic award for unfair dismissal under s.119 of ERA 1996, having received in full her statutory redundancy payment which s.122(4)(b) of ERA 1996 requires her to give credit for.

65. The Claimant's entitlement to a compensatory award for unfair dismissal under s.118(1)(b) of ERA 1996 is "*such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of her dismissal in so far as that loss is attributable to action taken by the employer*." Sections 124(1)(b) and 1ZA of ERA 1996 cap any compensatory award at the lower of either (a) £89,493, or (b) 52 weeks' gross pay. On dismissal, the Claimant's gross pay was £56,100 per annum.

66. Having reviewed the documentary evidence the Claimant has adduced to show her efforts to secure alternative employment following her dismissal on 23 March 2021 [390-410], the temporary work/income she was able to obtain in the period 4 October – 6 December 2021 in the sum of £7,123 [428-430], and having considered her evidence under cross-examination on the issue, the Tribunal is satisfied the Claimant discharged her duty under s.123(4) of ERA 1996 to mitigate her loss arising from her

dismissal. The Tribunal accepts compensation for 12 months' loss is reasonable.

67. The most difficult issue to determine is whether there is a chance – and if so how great – the Claimant would still have been dismissed if the Respondent had followed a fair procedure. This is a hypothetical question which requires informed speculation on the Tribunal's part, based on the materials and information before it. The Tribunal is satisfied there is a real chance the Claimant would still have been dismissed if a fair dismissal procedure had been followed, based on (a) the changes in the Respondent's staffing structure in 2020-2021, which meant some of the Claimant's previous responsibilities had been assumed by other employees (b) the Respondent's reduced need for a full-time Officer Manager following the onset of the Covid-19 pandemic and the largely successful practice of staff working from home (c) the Respondent's right to change its business structure to ensure it had the right people in the right positions (d) the Respondent's genuine intention at the time to move into smaller premises (the smaller the real estate, the less the need there was for an Office Manager to manage that estate). The Tribunal is not satisfied if a fair process had been followed, the Claimant's selection for redundancy and dismissal was inevitable - while some of her tasks had diminished over time, others remained, and some tasks had been assigned to other very new employees (Mr. Dikko), who might well have been included in a fair redundancy selection pool. Conversely, the Tribunal is not satisfied the Claimant's prospects of remaining in the Respondent's employment if a fair procedure had been followed were particularly high either: an unintended effect of the Covid-19 pandemic was to show that the Respondent could continue to function when most of its staff were working from home, meaning the role of Office Manager became less important. As the occupant of that role, the Claimant was in a vulnerable position. The Tribunal has no information at all about what alternative employment opportunities for the Claimant may have existed at BMS, CBE or IPL in March 2021, rendering that important factor a complete 'wild card'. Doing the best it can, the Tribunal assesses the likelihood of the Claimant being fairly dismissed if a fair procedure had been applied as 50/50. The Claimant's compensatory award will therefore be reduced by 50% to reflect that assessment.

68. The Tribunal sets out below its calculation of the Claimant's compensatory award:

    a. £56,100 (loss of 52 weeks gross pay);
    b. £41,227 (loss of 52 weeks net pay);
    c. £9,817 (loss of pension contribution, not challenged on cross-examination);
    d. £51,044 (£41,227 + £9,817);
    e. £43,921 (£51,044 - £7,123);
    f. £21,960 (£43,921 reduced by 50%).

Signed (electronically): Employment A Tinnion

Date of signature: 29 May 2022

Date sent to parties: 30 May 2022