



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Hebditch

**Respondent:** Weston Super Mare Town Council

**Heard at:** Bristol **On:** 23, 24 and 25 November 2022

**Before:** Employment Judge Leith

## Representation

Claimant: In person

Respondent: Mr Wyeth (Counsel)

**JUDGMENT** having been sent to the parties 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

## Claims and issues

1. The claimant claims automatically unfair dismissal on the ground that he made a protected disclosure, or ordinary unfair dismissal in the alternative.
2. The issues for the Tribunal to consider were as discussed at the outset of the hearing. It was agreed that the issues remained as set out in EJ Midgley's Case Management Order, set out below, and that the Tribunal would consider liability and *Polkey*/contributory fault in the first instance:

### 1. Unfair dismissal

1.1 It is admitted that the claimant was dismissed

1.2 What was the reason for dismissal? The respondent asserts that it was a reason related to redundancy / some other substantial reason namely a business reorganisation carried out in the interests of economy and efficiency, which are potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996. The claimant maintains that dismissal for redundancy or SOSR was a pretext and that he was dismissed for making the protected disclosure.

1.3 Was the reason for dismissal wholly or attributable to the fact that the requirements of the respondent for employees to carry out work of Box Office administrators cease or diminish or were they expected to cease or diminish?

The respondent argues (para 21 GOR) that the two part-time Box Office administrator roles were no longer required and that it had a need for the newly created Marketing and Events Coordinator role, which focussed on marketing and digital services. The claimant argues that the responsibilities and function of the new role incorporated and were in reality those of his role under a different title.

1.4 Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant. The Tribunal will usually decide whether:

1.4.1 The respondent adequately warned and consulted the claimant;

1.4.2 The respondent adopted a reasonable selection decision, including its approach to a selection pool;

1.4.3 The respondent took reasonable steps to find the claimant suitable alternative employment.

1.5 Did the respondent adopt a fair procedure? The claimant does not specifically challenge the fairness of the procedure, but argues that it was a sham and further criticizes the process in the following respects;

1.5.1 The respondent refused to disclose how many people were affected by redundancy or the selection criteria;

1.5.2 The respondent failed to provide the claimant with marketing training prior to him being placed at risk of redundancy;

1.5.3 The respondent failed to fully consider the claimant's appeal against his dismissal.

1.6 If it did not use a fair procedure, what is the percentage chance that the claimant would have been fairly dismissed in any event and, if so, when would that have occurred?

## 2. Wrongful dismissal; notice pay

2.1 What was the claimant's notice period?

2.2 Was the claimant paid for that notice period?

## 3. Protected disclosure ('whistle blowing')

3.1 The respondent accepts that the claimant made a verbal protected disclosure during a meeting between him and Mr Malcolm Nicholson, Town Clerk, on 13 December 2019. The claimant alleged that the theatre manager and her husband were deliberately keeping the theatre as empty as possible and not working the hours for which they were paid and that the marketing of the theatre was minimal, the community notice board removed, and community art had ceased. The qualifying ground was s.47B(1)(a) criminal offence (“the protected disclosure”).

#### 4. Dismissal (Employment Rights Act s. 103A)

4.1 Was the making of that protected disclosure the principal reason for the claimant’s dismissal?

4.1.1 Has the claimant produced sufficient evidence to raise the question whether the reason for the dismissal was the protected disclosure?

4.1.2 Has the respondent proved its reason for the dismissal, namely redundancy or some other substantial reason?

4.1.3 If not, does the Tribunal accept the reason put forward by the claimant or does it decide that there was a different reason for the dismissal?

#### 5. Remedy

##### Unfair dismissal

5.1 The claimant does not wish to be reinstated and/or re-engaged.

5.2 What basic award is payable to the claimant, if any?

5.3 If there is a compensatory award, how much should it be? The Tribunal will decide:

5.3.1 What financial losses has the dismissal caused the claimant?

5.3.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

5.3.3 If not, for what period of loss should the claimant be compensated?

5.3.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

5.3.5 If so, should the claimant’s compensation be reduced? By how much?

5.3.6 Does the statutory cap of fifty-two weeks’ pay or £89,493 apply?

#### Procedure, documents and evidence heard

3. I heard evidence from the Claimant. On behalf of the Respondent I heard evidence from Fay Powell (Assistant Town Clerk, Operational Services), Malcolm Nicholson (Town Clerk), Councillor Ian Porter (a member of the Council) and Sarah Pearse (Deputy Town Clerk and Responsible Financial Officer).
4. I had before me a joint bundle of 349 pages.
5. The Claimant sought, at the start of the hearing, to adduce five further documents which had not previously been adduced. I adjourned briefly to allow Mr Wyeth to take instructions on the documents. The longest of the documents was a 70-page set of papers for a meeting of the full Council in January 2021. The Claimant explained that he wanted to use the document to prove that the Business Review Document was not prepared by Mrs Pearse presented to the full Town Council. Mr Wyeth confirmed that the Respondent accepted that proposition. The Claimant confirmed that in light of that, he no longer sought to adduce the document. The Claimant additionally confirmed that, upon further consideration, he no longer wished to adduce a second document, a paper which had been prepared for the Respondent's Heritage and Arts Committee on 30 June 2022.
6. I admitted the remaining three of the documents, for the reasons I gave at the time. They were:
  - 6.1. A fuller version of the Business Review document (an extract of which already appeared in the bundle);
  - 6.2. An excerpt from the Respondent's Staff Handbook; and
  - 6.3. An email exchange between the Claimant and Mr Nicholson.
7. The bundle contained a concatenated version of various email exchanges, and an issue arose during the hearing as to the exact order in which the emails had been exchanged. The full versions of those email chains were subsequently adduced, and I admitted them into evidence part-way through the hearing. Both parties confirmed that no witnesses needed to be recalled to deal with the full email chains.
8. At the conclusion of the evidence, I received written submissions from the Claimant. I heard oral submissions from Mr Wyeth and from the Claimant.
9. The Claimant noted in the course of closing submissions that the witness statements of Mr Nicholson and Mrs Powell contained a paragraph which was identical, word-for-word. The point had not been put to the witnesses in the course of cross-examination. The paragraph related to the offer of the role of Marketing and Events Coordinator to Jasmine Harris rather than to the Claimant. The Claimant sought, in his written submissions, to suggest that this may constitute contempt of court. In his oral submission he very fairly indicated that he had not had the opportunity to take legal advice so had, in essence, put the point at its very highest in his written submissions.

10. The experience of this Tribunal is that it is not unheard of for witness statements to contain some duplication. Looked at in context, it does not, in my judgment, indicate any wrongdoing on the part of Respondent or its legal advisers. That said, a statement should reflect the witness's own evidence, in their own words. The duplication therefore inevitably goes to the weight that I can give to the evidence of Mr Nicholson and Mrs Powell on its own terms, and I bear that in mind in considering the evidence as a whole.

### Fact findings

11. I make the following findings on balance of probabilities. I do not cover every piece of evidence, but focus on the main points necessary to reach a decision on the points in issue. There are a number of distinct threads to the factual matrix. For ease of reading, I do not deal with the fact-finding in a strictly chronological manner, as some elements can more clearly be dealt with in thematic order. However, in coming to my decision, I have considered the incidents in their chronological context.
12. The Respondent is the parish council for Weston Super Mare and the surrounding area. It employs around 34 permanent staff. The Respondent manages the Blakehay Theatre in Western Super Mare.
13. The Claimant was employed by the Respondent as Box Office Administrator at the theatre. His employment commenced on 3 January 2017. His contract entitled him to one month's notice of dismissal.
14. During the events at the centre of this claim, the Blakehay Theatre had a relatively small permanent cohort of staff. There was a Theatre Manager, Sally Heath, a Theatre Technician, Rob Heath (who is married to Sally Heath), the Claimant, and one other box office administrator, Jasmine Griffiths. The Claimant and Ms Griffiths were described as job-sharing.
15. A business plan for the theatre was adopted in July 2016, following a review of its operations undertaken in 2015/16. In January 2019, a further review was undertaken. Mrs Pearse described it in evidence as a light-touch review. The 2019 review noted that the box office ran at a loss due to the associated staffing costs, although it was noted that the roles being in the building covered matters such as fire evacuation in order to be able to operate the building safely. The report further noted that 40% of ticket sales went through the box office administrators, with the remainder being sold online. The report noted that the box office was described as a valued service by patrons.
16. On 13 December 2019 the Claimant made a verbal disclosure to Malcolm Nicholson that:
  - 16.1. Sally and Rob Heath were deliberately keeping the theatre as empty as possible with around one main show per month;

- 16.2. The same two employees were not working the hours they were paid for; and
  - 16.3. Marketing was minimal, the community notice board had gone, and community art was stopping
17. In addition to his verbal disclosure, the Claimant gave Mr Nicholson various documents, and a hard drive containing extracts from the Respondent's CCTV system (which were said to show the times that Mr and Mrs Heath had entered and left the theatre). The Claimant had accessed the Respondent's CCTV system to footage of Mr and Mrs Heath entering and leaving the theatre, and had collated and saved various clips showing them doing so.
18. The Respondent accepts that the disclosure to Mr Nicholson was a protected one within the meaning of s.43B ERA 1996.
19. On 3 January 2020, Mr Nicholson wrote to the Claimant to confirm that the matters he had raised would be investigated. Mr Nicholson indicated in his letter that he could see no reason why he would need to disclose the Claimant's name to any colleagues.
20. Mr Nicholson asked his Deputy Town Clerk, Sarah Pearse, to carry out the investigation.
21. The Claimant's evidence was that he told Mr Nicholson that he did not want Mrs Pearce to be involved in investigating the complaints he had raised. Mr Nicholson's evidence was that the Claimant did not tell him that at the first meeting between them, although he did say it at a later stage. His evidence was that he was unaware of any friendship between Mrs Pearce and Sally Heath, and that in any event he had confidence in Mrs Pearce's impartiality. I find that the Claimant did ask Mr Nicholson to ensure that Mrs Pearce was not involved in the investigation, but that Mr Nicholson nonetheless instructed Mrs Pearce to investigate.
22. The Claimant suggested to Mrs Pearce in cross-examination that she was friends with Mrs Heath (and that it was consequently inappropriate for her to be investigating his disclosure). Mrs Pearce's evidence was that she is not friends with Mrs Heath. I found Mrs Pearce to be a candid witness, who was quick to accept points that may have been considered adverse to the Respondent's position (for example, that she had worked out that the Claimant was the whistleblower, and that it would also have been reasonably obvious to Sally Heath). She answered the questions put to her carefully and in some detail. I accept her evidence regarding her relationship with Mrs Heath.
23. Mr Nicholson asked Mrs Pearce to focus her investigation on Sally Heath in the first instance. His rationale for doing so was that it was improbable that Mr Heath could have engaged in wrongdoing without Mrs Heath being aware and involved, so it was proportionate to focus only on Mrs

Heath at first; if the investigation found wrongdoing by Mrs Heath, the scope could then be extended to cover Mr Heath.

24. Mr Nicholson gave Mrs Pearse a briefing note regarding the allegations, on which the Claimant was pseudonymised as "E". As part of Mrs Pearse's investigation, she interviewed Sally Heath. Mrs Pearse accepted in evidence that, by a process of elimination, it was obvious to her that the Claimant had raised the concerns. She accepted that it would also have been reasonably obvious to Mrs Heath.
25. Mrs Pearse completed her investigation on 6 February 2020. She found that the concerns raised by the Claimant were not substantiated. The Claimant was not informed of the outcome of Mrs Pearse's investigation, either by Mrs Pearse or by Mr Nicholson.
26. The Claimant's evidence, which I accept, was that, given the general speed with which things happened within the Town Council he had not found the apparent delay in receiving an outcome to be surprising. However, on or around 30 June 2020, he asked Mr Nicholson what the outcome of his concerns had been. Mr Nicholson explained to the Claimant that his concerns had been found not to be substantiated.
27. The Claimant was not satisfied with that explanation. He telephoned the Mayor, Cllr Sandiford, to express his concerns. The Mayor spoke to Mr Nicholson. Mr Nicholson's evidence was that he explained what had been done to investigate the grievance, which satisfied the Mayor, and that the Mayor asked him to feed back to the Claimant that he was satisfied that the concerns had been investigated. I did not hear evidence from the Cllr Sandiford, but I accept Mr Nicholson's evidence regarding his exchanges with Cllr Sandiford, which was consistent with the contemporaneous emails in evidence. Mr Nicholson emailed the Claimant on 14 July 2020 in the following terms:

"The Mayor has approached me to discuss a call from you regarding the management of the Blakehay. After discussion he asked me to tell you that he is satisfied that your concerns have been thoroughly investigated."
28. The Claimant remained dissatisfied. On 19 August 2020 he sent a detailed response to Mr Nicholson indicating that he felt let down by the way his concerns had been handled, and that he could not see how his claims had not been substantiated. Mr Nicholson responded to explain that both he and the Mayor had confidence in the investigation, but that he could not share the report with the Claimant, as doing so would have employment law and data protection implications. He concluded his email as follows:

"I believe that you were well intentioned and genuine in making these allegations against the Theatre Manager and I respect your right to do so when you had concerns; but in your turn you need now to accept the outcome."

29. The Claimant did not accept the outcome. He raised a grievance regarding the way the investigation had been carried out, and his perception that the whistleblowing policy had not been followed. Because he viewed his concerns as being regarding Mr Nicholson, the most senior officer of the Council, he raised his grievance with Cllr Fox, the Chair of the Personnel Committee.
30. The Claimant's grievance was heard by a panel of three Councillors – Cllr Fox, Cllr Peak and Cllr Russe. The hearing took place on 24 September 2020. I did not hear evidence from any of the panel, but their outcome letter dated 1 October 2020 was in evidence before me. The Panel found the Claimant's grievance partially upheld, in that Mr Nicholson ought to have kept the Claimant updated regarding his complaint. The Panel found that the original investigation was carried out in a timely manner. The Panel directed Mr Nicholson to write to the Claimant updating him regarding the outcome of his whistleblowing complaint.
31. Mr Nicholson wrote the Claimant a detailed letter on 2 October 2020. He apologised for the failure to keep the Claimant informed regarding the progress and outcome of the investigation. He summarized Mrs Pearse's findings. He then indicated that, in order to provide further assurance to the Claimant regarding his concerns, he would ask the Council's auditor to look into the theatre during the forthcoming audit. He informed the Claimant that he could speak to the auditor as part of that process if he wished to do so.
32. The Claimant responded to Mr Nicholson's letter indicating that he would like to speak to the auditor during the audit. He set out in some detail why he felt that the investigation was, in his words, "severely flawed and unfit for purpose". The Claimant's letter concluded as follows:

"This letter, with the included appendices, alongside the original evidence that I provided – CCTV footage of the foyer over a period of 15 weeks from July 2019 to October 2019, a spreadsheet of the times that Rob and Sally arrived at the theatre in the morning and left for home, mocked up timesheets to allow comparison with their own submitted timesheets, emails sent to potential hirers, emails from Sally, and a list of other staff who could corroborate my claims, constructs an indisputable case showing gross misconduct carried out by both Rob and Sally.

I am aware Malcolm that you would like me to let this issue go, however I have always been motivated to fight injustice or unfairness and do not stop until a fair outcome is achieved. The theatre is paid for by the residents of Weston. I am an intelligent man and I would not continue in this endeavour if there was any chance I could be mistaken or ignorant of parts of the situation. I am struggling to understand your motivations in supporting and enabling the conduct of two employees who in most organisations



would not have been able to operate as they do for five minutes let alone five years and as the email to Hot Rock Productions in Appendix 1c shows, are continuing to operate, even though they are aware they are being investigated. I struggle to understand what would lead you to disregard and undermine council policy (the sign in sheets for example) in order to support and validate their choices. I do not understand why you have wilfully ignored prior complaints of this nature and continue to disregard mine. As I have stated previously, I have nothing against Sally and Rob as people, but their professional conduct is to the detriment of a potentially vibrant community resource and that cannot be allowed to continue.”

33. On 12 October 2020, Mr Nicholson asked the Claimant to confirm whether his email was an appeal against the decision of the Grievance Panel. The Claimant responded on the same day that he was not appealing. He indicated that he was waiting to see how thoroughly the auditor looked at his concerns, and that he may raise a further grievance if he was not satisfied.
34. Mr Nicholson emailed the Claimant again on 20 October 2020 to inform him that any subsequent challenge to the investigation would be dealt with as an appeal. The Claimant responded that he was unhappy with that. Various emails were exchanged on the subject, which concluded with the Claimant being invited to an appeal hearing on 4 December 2020, before a panel of Councillors.
35. On 30 October 2020, the Council’s Auditor, Stuart J Pollard of Auditing Solutions Limited, presented a report of his audit of the Blakehay Theatre. His report concluded that, with the exception of the attendance issue regarding Rob Heath (which was not within the ambit of Sarah Pearse’s original investigation), a thorough and appropriate investigation had been undertaken. The report further concluded that Mrs Pearse’s investigation was undertaken effectively, with due diligence and an open mind, and that reasonable and appropriate conclusions were reached based on the available evidence. The report went on to make some recommendations in order to strengthen controls, improve openness, and reduce the risk of further misinterpretation of the matters raised by the Claimant.
36. Meanwhile, Mr Nicholson had additionally commissioned a Nigel Steward to carry out an external investigation of the matters raised by the Claimant. Mr Steward concluded his investigation on 23 November 2020. His report recited the evidence he had collected, which included the evidence submitted by the Claimant. The report made it clear that Mr Steward had not viewed the CCTV footage, which he considered had been acquired in an inappropriate manner and not compliantly with the GDPR. Mr Steward concluded, in summary, that the matters raised by the Claimant were not substantiated.

37. The Claimant's grievance appeal was heard on 4 December 2020, by a panel of three Councillors – Cllr Porter, Cllr Payne and Cllr Taylor. The panel heard from the Claimant, and from Mr Nicholson and Mr Steward.
38. During the hearing, the Claimant explained that he would like to transfer to another department of the Council, as it was difficult for him to continue working in the theatre given that Sally and Rob Heath knew what he had done.
39. The panel concluded that:
  - 39.1. The original investigation was not as robust as it ought to have been in that further steps should have been taken to take statements from other members of staff, and in particular Rob Heath ought to have been interviewed.
  - 39.2. The appeal was not otherwise upheld.
40. Cllr Porter wrote to the Claimant on 17 December 2020 to inform him of the outcome of the appeal. With that letter, he expressed the Panel's "grave concerns" regarding the method in which the Claimant had accessed CCTV footage. The letter stated that that issue would be "investigated and dealt with separately to this ongoing process".
41. Mr Nicholson was tasked by the Panel with dealing with the CCTV issue. On 14 January 2021, he wrote a letter to the Claimant headed "Letter of Concern".
42. Within the letter, he indicated that the Claimant's use of CCTV was a potential data breach, and that the external investigator had highlighted that it could be classed as a criminal offence. He explained that the Respondent was not taking any formal disciplinary action at that stage, but that the Claimant's conduct was not appropriate and that any repetition may lead to formal disciplinary action.
43. Mr Nicholson did not undertake any further investigation before writing that letter to the Claimant, and did not speak to the Claimant or otherwise ascertain his version of events regarding the accessing of the CCTV footage. His evidence was that this was because he had taken the softest course of action he could, by not invoking the formal disciplinary process.
44. The Claimant wrote to Mr Nicholson on 3 February 2021 indicating that he was "troubled" by the letter of concern. There followed an exchange of correspondence. Mr Nicholson indicated that he had taken advice from the Information Commissioner's Office, and consulted the Respondent's external Data Protection Officer, and that in the circumstances a letter of concern was the "very least" he could do.
45. Meanwhile, in response to his indication in the appeal hearing that he wished to move to another department, on 15 January 2021 the Claimant

was offered a temporary secondment to the Grounds Department. On 18 January 2021, the Claimant emailed Tania Middlemiss, Assistant Town Clerk for HR, rejecting the offer. His rationale for doing so was that it was not compatible with his childcare responsibilities.

46. On the same day, the Claimant attempted to log into the Theatre staff Monday morning team meeting. He was unable to do so. He found that the team meetings had been removed from his calendar. He texted a colleague, who provided him with log in details to the meeting. Sally Heath then explained to the Claimant that she had been told he had been seconded to the Grounds team. The evidence of the Respondent's witnesses was that it had simply been assumed that the Claimant would accept the secondment, since he had asked to move away from the Theatre. The Claimant's access to the Monday morning meetings was reinstated, and he continued in his role.
47. The Respondent has a process of setting and managing its annual budget. The draft budget for the coming year is initially considered by the Policy and Finance Committee in December, where it is scrutinised. The budget is then recommended by the that Committee to the full Council, which sets the precept for the year. That takes place in January. Any aspect of the budget which has staffing implications also has to be considered by the Personnel Committee. The budget is then reviewed by Councillors at the mid-point of the year.
48. On 3 September 2020, the Respondent's Expenditure and Governance working party (a committee of Councillors) considered a report from Mrs Pearce regarding the Month 5 budget report. The budgetary position was somewhat different from what had been forecast, due to the effect of COVID. The Council had seen a drop in income, but had also seen a drop in expenditure. The minutes of the meeting were before me; they were somewhat skeletal. Mrs Pearce's evidence, which I accept, is that the minutes are kept in a prescribed form and are not verbatim. The minutes record that Mrs Pearce asked the Councillors whether there were any particular areas they wanted her to focus on, and that it was agreed that she would present options on where savings could be made. Mrs Pearce's evidence regarding the meeting, which I again accept, was that the Councillors asked specific questions about arts and culture. They were particularly topical at the time because the difficulties being suffered by theatres and museums nationally had been the subject of considerable media reporting. The Working Party resolved that Mrs Pearce should present options on where savings could be made.
49. In response, Mrs Pearce drafted a Business Review Document. The document made various recommendations about area of the Councils operation. In respect of the theatre, it recommended as follows:

“Housekeeping – we currently employ one PT housekeeper (16 hours per week) and this it is felt could reduce to 9 hours per week at the Theatre currently, the remaining hours could be considered

for redeployment to GH/GL [other buildings operated by the Respondent]”

[...]

“The box office role should be reviewed urgently as the impact of COVID and the increase in digital and online buying means that there are by default less people now likely to walk into the Theatre ahead of the show date to buy tickets. The facility could still be open on “Show times” and be staffed by casual employees as and when required”.

“The theatre has undoubtedly moved into a new era, and with the successful CRF grant a focus on digital streaming to compliment the “live” theatre when we can and this now needs to be the prominent marketing consideration. With this in mind there is now a need to create a dedicated position “Events & Marketing Coordinator” who has experience and ideally should be trained in Audience development to support the Manager and Councils Communication & Marketing Officer with the aim of maximizing income and use both of the live theatre, events and digital performances. In addition, this role could oversee the Theatre Bar (which was currently allocated 8 hrs per week which in reality was slightly excessive for ordering and bar stock monitoring and rota’s etc). This position would make a nominal saving of around £2k per year in permanent staff costs.”

50. Mrs Pearse’s evidence, which I accept, was that the reference to an “increase in digital and online buying” did not refer specifically to changing trends in theatre ticket purchase pre-COVID. Rather, what she had in mind was that people’s buying habits had changed during (and due to) the pandemic. Online shopping via, for example, websites like Amazon had become much more common. She believed that these behavioural changes would continue, and that in the future there would be a higher proportion of online ticket purchases. Her evidence was that she accepted that the box office was a valued service; but in light of the need to market the theatre more effectively, which was exacerbated by the effects of COVID, the need for a dedicated marketing role outweighed the need for a staffed box-office.

51. The Business Review Document was put before the Policy and Finance Committee on 14 December 2020, along with the draft budget for the year. Two draft budgets were put forwards; one allowing for continuing COVID restrictions, and the other not allowing for COVID restrictions. The Policy and Finance Committee approved the business Review Document, and incorporated it into the draft budget which was recommended to the Town Council for approval. The full Business Review Document was not presented to the Town Council. The proposal was subsequently also considered by the Personnel Committee.

52. On 9 February 2021, Fay Powell and Sally Heath met with the Claimant and Jasmine Griffiths to notify them of the potential redundancy. This was followed up in a letter of 10 February 2021.
53. The Claimant attended a consultation meeting on 23 February 2021, with Fay Powell, Tania Middlemiss, and Sally Heath. Sally Heath was present as minute-taker. The Claimant asked at the start of the meeting if he could record it; he was told that he could not, but that minutes were being kept. The Claimant nonetheless covertly recorded the meeting.
54. The Business Review Document was sent to the Claimant in advance of that meeting; he confirmed that he had had the opportunity to consider it. The Claimant asked a number of questions regarding the business case. The Claimant expressed his view that the proposed change would be damaging to the theatre.
55. The Claimant was informed that there was a full time position available on the Grounds Team for a Cemetery and Conservation Officer, and that there was budget provision for Rangers and seasonal staff, although those roles were not ready for recruitment. There was also some reference to a temporary role in cemetery/grounds admin (described as the “Pear Mapping role”).
56. The Claimant asked if the role of Marketing & Events Coordinator would be available as a job share. Tanya Middlemiss explained that the question of a job share would be a matter of discussion, as it was a key post. The Claimant explained that he could not work 30 hours per week due to other commitments.
57. There was some dispute before me regarding the accuracy of the minutes kept by Sally Heath. The minutes recorded that the Claimant was specifically asked if he would still be interested in the Marketing & Events Coordinator role if it was not available as a job share, and that he did not reply to the question. The transcript of the Claimant’s covert recording showed that the Claimant was asked “is that, uh, not of interest to you unless it’s job share”, to which the Claimant replied “Yeah, I I might only be interested in it if it’s if it’s job share. I mean obviously the the box office job at the moment is a job share. I don’t think there’s been any any kind of issues with regards to it being a job share in.”
58. Transcripts do not, of course, capture tone, and it may very well be that the Claimant felt that he was giving a definitive answer; equally, I can see from the transcript why his response may have been viewed as equivocal. Therefore, while the minutes do record it in relatively stark terms, I am not satisfied that they were an obvious misrepresentation of the position based on the transcript. The Claimant was sent a copy of the minutes before the second consultation meeting, so he had an opportunity to raise the issue.

59. In any event, the Claimant attended an interview for the role of Events and Marketing Coordinator on 2 March 2021. The interview panel consisted of Fay Powell, Sarah Pearse and Sally Heath. The Claimant was not appointed to the role – Jasmine Griffiths, the other Box Office administrator, was appointed.
60. Sarah Pearse's evidence regarding the interview was that the Claimant did not answer the questions as well as the successful candidate, Ms Griffiths. Her evidence was that he came across as disorganized in his answers and they were not answered with the depth of the successful candidate.
61. Ms Griffiths had previously received training in marketing and audience development while undertaking the role of Box Office Administrator. Mrs Pearse's evidence was that the Claimant had been offered training opportunities in various areas including marketing, but that he had preferred to concentrate on Health and Safety and banking, and hadn't expressed any interest in marketing training. The Claimant's evidence was that he had not received any training in marketing. He suggested for the first time in the course of cross-examining the Respondent's witnesses that he had been denied opportunities to undertake marketing training. That was not a suggestion he had made in his own evidence. On balance, I accept Mrs Pearse's evidence that the Claimant had had the opportunity to express an interest in marketing while undertaking the role of Box Office Administrator, but that his interests simply lay elsewhere.
62. During the meeting on 23 February 2021, the Claimant had queried various aspects of the business case. Some of his queries could not be answered in the meeting. The answers to those questions were given to the Claimant in a follow up document on 4 March 2021. The document stated that:
- 62.1. 34% of tickets sold in 2019/2020 were purchased through the box office, compared to 60% in 2018/19 (which was said to have come from an E&G working party report).
  - 62.2. Of the 34% of tickets sold through the box office, 42% were sold on the day of the performance.
  - 62.3. The Council did not hold information regarding how many tickets for online events had been sold during the current year.
63. Neither Sarah Pearse nor Fay Powell were able to tell the Tribunal who had prepared the 4 March 2021 document. The 60% figure was inaccurate – the E&G working party document referred to, which was in evidence before the Tribunal, showed that in fact 40% of ticket sales were purchased through the box office in 2018/19. The Claimant suggested that this was a deliberate attempt to overstate the reduction in box-office sales. I deal with this in my conclusions below.
64. There was also evidence before the Tribunal that the Respondent did in fact have information regarding how many tickets for online events had been sold during the current year, and that the Council had made a total of

£14 from ticket sales for online events. Again, the Claimant suggested that this was a deliberate attempt to disguise an unhelpful fact from him.

65. A further consultation meeting took place on 8 March 2021. The Claimant again covertly recorded the meeting.
66. The Claimant asked for feedback regarding the interview. He was given feedback, in summary, that he had given good examples of involvement in physical event planning, and regarding admin and prioritizing tasks, but that he struggled to give answers regarding strategy and marketing campaigns. It was noted as being of concern that Claimant felt there was no future in digital events.
67. There was some discussion over whether the Events and Marketing Coordinator role could have been undertaken on a job-share basis. Tanya Middlemiss informed the Claimant that he had not been appointed based on his performance at interview, and that in any event the role was not suitable for job share. The rationale given was that it was a specialist role, which for consistency reasons was not deemed suitable for a job share; that the ability to communicate between job-share partners would take up some of the hours of the role; and that there would also be cost implications regarding training and equipment.
68. The Claimant asked where some aspects of the Box Office Administrator role would be going. It was explained that some aspects of the role would be picked up by other members of the theatre team.
69. The Claimant queried the statistic that 42% of box office sales were on the day of the performance. Sally Heath informed him that that 42% of sales were made on the day of the show, an hour before the show started (as the box office was always open an hour before performance). The Claimant explained in the meeting that that was not indicative of his experience. Mrs Heath explained that the data had come from Ticket Source, the Council's ticket platform.
70. Before the Tribunal, the Claimant adduced evidence, in the form of an email from TicketSource, that their platform could not break down sales by time, and that they could not therefore say how many tickets were sold in the hour before a performance started. Mrs Heath did not give evidence before the Tribunal, so was unable to explain this apparent discrepancy with the information she provided during the consultation meeting.
71. A further consultation meeting took place on 24 March 2021. The Claimant again covertly recorded the meeting. The Claimant continued to ask for data which he believed he had not been provided with regarding the rationale for the redundancy situation. Tania Middlemiss explained to the Claimant that the business case had been based not only on a reduction in box office sales but also in line with pandemic impacts and changing consumer trends. The Claimant asked for examples of theatres

that operated without box office. He was told he would be given the information after the meeting.

72. The Claimant asked to be sent the Respondent's redundancy policy. He was told that the Respondent did not have one.

73. The Claimant expressed that he had a slight interest in the Pear Mapping role (which was available on a temporary basis). The Claimant asked if he could have a trial period in the role. He was told he could, and that he could start the following week.

74. On 25 March 2021, Tania Middlemiss sent the Claimant a list of four theatres which it was said did not run with a dedicated on-site daytime box office provision. The Claimant responded on 30 March indicating that he had looked into the four examples and that only one of them did not have a physical box office.

75. On 30 March 2021, Fay Powell wrote to the Claimant to confirm that his role of Box Office Assistant was confirmed as redundant, giving him one month's notice of termination. Within the same letter, it was confirmed that he was offered a four-week trial period in the Pear Mapping role, commencing on 1 April 2021 and ending on 29 April 2021. (The trial period was subsequently extended by two weeks to 13 May 2021). The pay for the Pear Mapping role was slightly lower than the Claimant's existing pay, but he was informed that his pay would be maintained during the trial period. The letter finally informed him that he had a right to appeal the redundancy decision by writing to Mr Nicolson.

76. The Claimant exercised his right of appeal. His appeal was heard by Malcolm Nicholson on 21 April 2021. In advance of the appeal hearing, the Claimant asked Mr Nicholson what the appeal hearing would entail. Mr Nicholson explained that he would listen to what the Claimant had to say to persuade him that the role was not redundant, and then adjourn to consider what he had said. Mr Nicholson told the Claimant that, if he needed more time to prepare, the hearing could be postponed. The hearing did go ahead on 21 April 2021. The meeting took around an hour and 50 minutes. On 27 April 2021, the Claimant sent a further email to Mr Nicholson expanding on his concerns.

77. Mr Nicolson wrote to the Claimant on 5 May 2021 to explain that his appeal was not upheld. His reasoning, in summary, was as follows:

77.1. The decision regarding the box office had been agreed by the Policy and Finance Committee and endorsed by the full Council and the Personnel Committee. The Claimant's disagreement with some of the detail presented during the consultation did not justify reopening the fundamental findings of the Business Review in relation to the operation of the Theatre.

77.2. The information provided by the Claimant regarding online sales and regarding comparator theatres was of very little



relevance, and did not make any difference to the overall conclusion.

77.3. Jasmine Griffiths had been appointed to the role of Events and Marketing Coordinator on merit.

77.4. The Claimant had been given marketing training opportunities, but had not been particularly interested in marketing development and had preferred to focus on health and safety and banking work.

77.5. The Claimant's allegation that the redundancy was a "plot" by Sarah Pearse and Sally Heath to get rid of him because he had blown the whistle was completely unsubstantiated.

78. On 13 May 2021, the Claimant wrote to Fay Powell to indicate that he did not want to take up the Pear Mapping role following the trial period. His dismissal took effect that day. The Claimant's evidence before me was that he felt that the role was isolating him and edging him out of the organisation (as it was only available on a temporary contract). I accept that that was his perception of the role.

79. In the meantime, the Respondent had decided (based on advice from the ICO) that it needed to destroy the hard drive provided by the Claimant on which he had stored CCTV footage from the theatre. It was agreed that the Claimant would be provided with a like-for-like replacement hard drive. The Respondent's IT supplier provided a replacement hard drive. The replacement drive was provided on 10 March 2021; it was a 1tB Hard Drive valued at £48 plus VAT.

80. On the same day, the Claimant sent the Respondent an invoice which he said was for the device which had been destroyed. The invoice was for £177 including VAT, and stated on its face that it was for an 8tB Home Personal Cloud device. The invoice was dated 2018.

81. Sarah Pearse asked the Finance Officer to check with the Respondent's IT supplier that they had sent the correct replacement device. The Respondent's IT supplier confirmed that the device they had destroyed was a Toshiba 1tB Hard drive, manufactured in 2013.

82. Mrs Pearse informed Mr Nicholson of the issue. On 11 March 2021, Mr Nicholson asked Mrs Pearse to investigate. Mrs Pearse spoke to the Claimant on 23 March 2021. The Claimant indicated that he believed the invoice he had supplied was the correct one, but that he would check.

83. Later the same day, the Claimant emailed Mrs Pearse indicating that he was "pretty sure" it was the correct invoice.

84. Mrs Pearse wrote up a report of her findings, which included the information gathered from the Respondent's IT provider. She recommended that:

- 84.1. The Claimant be given the replacement device, but no cash reimbursement; and
- 84.2. Consideration be given to disciplinary action for making a false claim for expenses.
85. Mr Nicholson received the report; he wrote to the Claimant on 31 March 2021 to invite him to a disciplinary hearing. He sent the Claimant a copy of Mrs Pearse's report.
86. The disciplinary hearing took place on 14 April 2021. The Claimant explained that the description on the invoice appeared to be incorrect, but that he believed that it was the invoice he had received for the device that had been destroyed.
87. Mr Nicholson found that the invoice sent in by the Claimant was not the invoice for the device that had been destroyed. He found that he could not conclusively establish whether the claim was deliberately dishonest or fraudulent, and therefore he regarded it as serious misconduct rather than gross misconduct. By a letter dated 27 April 2021, he gave the Claimant what he described as a first and final written warning.
88. The Claimant appealed Mr Nicholson's decision. His decision was heard on 14 May 2021 by a panel of three Councillors, Cllr Russe, Cllr Taylor and Cllr Fox. The Panel considered that the imposition of a final written warning was inappropriate given that the process had not established whether the Claimant's claim was deliberately dishonest/fraudulent. They imposed instead a written warning, which was confirmed to the Claimant in letter dated 17 May 2021.
89. The claimant notified ACAS under the early conciliation process of a potential claim on 11 June 2021 and the ACAS Early Conciliation Certificate was issued on 12 July 2021. The claim was presented on 8 August 2021.

#### Law

##### Protected disclosure

90. I do not need to rehearse the law regarding what constitutes a protected disclosure, since the Respondent accepts that the Claimant made a protected disclosure.

##### Automatically unfair dismissal

91. Section 103A of the Employment Rights Act 1996 ("ERA") provides as follows:

"An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one,

the principal reason) for the dismissal is that the employee made a protected disclosure.”

92. Section 105 ERA provides as follows:

“(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,

(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and

© it is shown that any of subsections 2A to 7N applies.

[...]

(6A) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103A.”

93. The reason for a dismissal connotes the factor or factors operating on the mind of the decision-maker which cause them to dismiss, or which motivates them to do so (*The Co-operative Group v Baddeley* [2017] EWCA Civ 658).

94. In *Kuzel v Roche Products Limited* [2008] ICR 799, the Court of Appeal said Tribunals should adopt a three-stage approach to deciding the reason for dismissal:

94.1. First, the employee must prove that he or she made a protected disclosure and produce some evidence to suggest that they have been dismissed for the principal reason they have made a protected disclosure, rather than the potentially fair reason advanced by the employer;

94.2. Secondly, having heard the evidence of both sides, it will then be for the employment tribunal to consider the evidence as a whole and to make primary findings of fact on the basis of direct evidence or reasonable inferences; and

94.3. Thirdly, the tribunal must decide what was the reason or principal reason for the dismissal, on the basis that it was for the employer to show what the reason was. If the employer does not show to the Tribunal's satisfaction that it was its asserted reason, then it is open to the Tribunal to find that the reason was as asserted by the employee. However, the Tribunal is not bound to accept the reason alleged by the employee. The true reason for dismissal may be one not advanced by either side.

Unfair dismissal

95. Section 94 ERA confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that they were dismissed by the respondent under section 95.

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

97. Redundancy is a potentially fair reason for dismissal under section 98(2). Redundancy is defined in section 139 ERA as follows:

“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.”

98. Section 98(4) deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

99. It is not for the Tribunal to decide how an employer should manage its business. In determining whether it was appropriate for an employer to make cuts in a particular area of its business, I must consider whether the decision taken by the employer fell within the range of reasonable responses open to a reasonable employer.

100. In redundancy dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decision of the EAT in *Williams v Compair Maxam Limited* [1982] IRLR 83. In order to act reasonably, an employer must give as much warning as possible of impending redundancies to employees, consult them about the decision, the process and alternatives to redundancy, and take reasonable steps to find alternatives such as redeployment to a different job.
101. The EAT in the case of *Morgan v Welsh Rugby Football Union* [2011] IRLR 376 dealt with the situation where an employer is appointing to new roles after a re-organisation, rather than selecting employees for redundancy. The EAT gave the following guidance:
- “Where, however, an employer has to appoint to new roles after a re-organisation, 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. Thus, for example, whereas *Williams* type selection will involve consultation and meeting, appointment to a new role is likely to involve, as it did here, something much more like an interview process.”
102. The Tribunal should be slow to second-guess a good faith assessment of an employee’s qualities.

### Polkey

103. In the case of *Polkey v AE Dayton Services Ltd* [1987] UKHL 8, the House of Lords set down the principles on which a Tribunal may make an adjustment to a compensatory award on the grounds that if a fair process had been followed by the respondent in dealing with the claimant’s case, the claimant might have been fairly dismissed. Further guidance was given in the cases of *Software 2000 Ltd v Andrews* [2007] ICR 825; *W Devis & Sons Ltd v Atkins* [1977] 3 All ER 40; and *Crédit Agricole Corporate and Investment Bank v Wardle* [2011] IRLR 604.
104. In undertaking the exercise of determining whether such a deduction ought to be made, I am not assessing what I would have done; I am assessing what this employer would or might have done. I must assess the actions of the employer before me, on the assumption that the employer would this time have acted fairly though it did not do so beforehand: *Hill v Governing Body of Great Tey Primary School* [2013] IRLR 274 at para 24.

### Wrongful dismissal

105. Employees are entitled to a paid notice period on dismissal, save where the employee is in repudiatory breach of the contract (by committing gross misconduct).

Conclusions

106. I will deal first the complaint of automatically unfair dismissal.
107. It is not in dispute that the Claimant made a protected disclosure, or that he was dismissed. Given the timing of the dismissal, I consider that the Claimant has crossed the relatively low threshold of showing some evidence to suggest that he was dismissed for the principal reason he had made a protected disclosure.
108. I therefore turn to consider the reason for the Claimant's dismissal. The Respondent says that the reason was redundancy.
109. In considering the reason for the Claimant's dismissal, I bear in mind the following factors:
- 109.1. The Respondent had made a business decision to close the box office, and replace to it with a marketing-focused role. The Claimant sought to persuade me that the underlying business rationale was not sound, on the basis that:
- 109.1.1. The reduction in ticket sales at the box office vs online between 2018/19 and 2019/20 (the last year before the pandemic) was only 4 percentage points;
- 109.1.2. The statistic that most in-person purchase happened in the hour before a show was incorrect;
- 109.1.3. The suggestion that the theatre was moving in a more digital direction was also incorrect given the limited income from sales for online production, and the fact that the theatre had only undertaken one streaming event; and
- 109.1.4. Other comparable theatres used a box office.
- 109.2. I am not persuaded that the Claimant's criticism of the business case is well founded. Of course, the Respondent is entitled to make decisions regarding the operation of its business. The question for the Tribunal is not whether it was a good business decision, but rather whether it was a genuine one. I accepted the evidence of Mrs Pearse that the Respondent's rationale was predicated on an anticipated change of buying habits during COVID, rather than a pre-existing downturn in use of the box office. The Council's aim was to prioritise its limited resources towards marketing the theatre more effectively, particularly given the need to start again after COVID. There is in my judgment nothing inherently irrational or unsound about the underlying business decision taken by the Respondent.
- 109.3. Some of the information the Claimant was provided with during the consultation process was inaccurate – in particular, the statistics regarding the sale of tickets via the box office, and the suggestion that the Council did not hold information regarding how

many tickets for online events had been sold. The Respondent will, no doubt, want to reflect on how and why inaccurate information was provided. However, there was no evidence that the inaccurate information was considered by the Councillors in coming to their decision to remove the role of Box Office Administrator. The information in question was provided to the Claimant in response to questions he raised during the consultation process. In any event the points of inaccuracy were, in my judgment, of limited relevance to the underlying business decision regarding the box office.

109.4. The role of Events and Marketing Coordinator was, on the face of it, better suited to Jasmine Griffith's experience and skills, in that she had been trained in marketing while undertaking the role of Box Office Administrator. I have carefully considered whether the provision of training to Jasmine Griffiths was a deliberate attempt to reserve the role for her. In light of my finding that the Claimant did not take the opportunity to undertake marketing training, I conclude that it was not.

109.5. The decision not to allow the Events and Marketing Coordinator role to be done on a job share basis was again, in my judgment, a rational one for the Respondent to have taken in all of the circumstances. But given that the role was offered to Jasmine Griffiths after interview, it would have made no difference. There was no evidence that Ms Griffiths' preference would have been to job-share the role, after she had succeeded in being appointed to it on an outright basis.

109.6. The presence of Sally Heath as minute taker within the redundancy process was, in my judgment, not good practice by the Respondent. It was clear that the Claimant perceived some animus with Mrs Heath; he had asked to be transferred away from her theatre. Of course I do bear in mind the relatively small size of the Respondent, and the fact that Mrs Heath was the manager of the service concerned. In any event, the Claimant recorded the meetings. While there were some discrepancies identified between the Claimant's recordings and Mrs Heath's minutes, they were not, in my judgment, material.

109.7. Even during the redundancy process, the Respondent made efforts to redeploy the Claimant. The Claimant agreed to a trial period in the Pear Mapping role, which he subsequently turned down after the trial period. I can entirely understand why the Claimant turned it down. Compared to his customer-facing, people focused role in the box office, no doubt it did feel isolated; and a temporary role will always bring with it a degree of uncertainty. But if the Respondent wanted to get rid of the Claimant, in my judgment it is more likely that they would have avoided giving him any alternative role at all. Had he taken the Pear Mapping role, at the end of the temporary period other vacancies may have been

available, for which the Respondent would have to have considered him. Furthermore, bearing in mind the size of the Respondent, and the position they were in at the time due to COVID, it is unsurprising that they could not find any other immediate redeployment opportunities.

109.8. While there could be some criticism of the assumption that the Claimant would accept the Grounds secondment in January 2021, in my judgment it reflected simply an unfortunate (but not entirely unwarranted) assumption on the part of Respondent that the Claimant would accept the role.

109.9. The Respondent had two other opportunities to dismiss the Claimant, without having to pay him a redundancy payment:

109.9.1. The CCTV incident. I treat this with some care, given that no formal disciplinary investigation was carried out. But the factual nexus was not in dispute. The Claimant had accessed the Respondent's CCTV system for a purpose which was not its intended purpose, without gaining any authority to do so, and had saved extracts to a hard drive of his own. The Claimant continued, before the Tribunal, to show no insight into why the Respondent may have legitimate concerns about his conduct. I accept that his (firmly held and honest) belief was that the end he was pursuing justified the means. But the Respondent had a report from an independent investigator raising significant concerns. The Respondent was entitled to treat it as an extremely serious matter. There was on any account, enough evidence for the Respondent to consider taking formal disciplinary action. The Claimant's criticism of Mr Nicholson for not carrying out a further investigation was not well founded. While the Claimant clearly had a strong desire to "clear his name", any formal disciplinary action would, in my judgment, almost inevitably have resulted in a disciplinary sanction being applied. By giving the Claimant a letter of concern, Mr Nicholson took the only course open to him which both acknowledged what had been asked of him by the Councillors, but avoided the Claimant ending up with a formal disciplinary sanction on his record.

109.9.2. The hard drive incident. Again, I treat this with some care. I am not in a position to make any primary finding of fact regarding whether the invoice presented by the Claimant was the correct one. But had the Claimant been dismissed, the Tribunal's approach to any unfair dismissal claim would have been to consider whether the dismissal fell within the range of reasonable responses open to a reasonable employer. In the circumstances, the Respondent would have been entitled to prefer the evidence of the computer expert



who had destroyed the hard drive. It would have been difficult for the Claimant to have challenged a decision to dismiss him in those circumstances.

109.10. It was put to the Claimant during cross-examination that, had the Respondent simply wanted him out, they would have dismissed him for one or other of those incidents. His response was that neither of them would have justified his dismissal. For the reasons I have given, I am not sure that is right. It is not at all clear to me that a decision to dismiss for either or both of those would necessarily have fallen outside the range of reasonable responses open to a reasonable employer. But in any event, in my judgment that misses the point. The Claimant challenges the fairness of his dismissal for redundancy. On his own case, the Respondent created a sham redundancy to terminate his employment. If they were willing to create a sham redundancy, why not an unjustified disciplinary process? A disciplinary dismissal would have been quicker and cheaper. It is implausible that, if the Respondent wanted to engineer a way to dismiss the Claimant, they would have forgone two possible disciplinary allegations in favour of a redundancy process.

109.11. The Claimant's concerns were investigated by both the Respondent's auditor and an external auditor. The Respondent could not be accused of trying to brush the matter under the carpet. The Claimant's grievance was heard by two panels of Councillors. They were willing to, and did, criticise the officers of the Council where they felt it appropriate to do so. The handling of the Claimant's protected disclosure, and his subsequent grievances, did not suggest any latent hostility towards whistleblowers – rather, they demonstrated a willingness to investigate and resolve the Claimant's concerns. On the other hand, the Claimant demonstrated throughout the various processes that he was entirely closed-minded, and that he would be dissatisfied with any investigation which did not yield the response he was hoping for.

110. The issues with the minute taker and the inaccurate information provided to the Claimant do not lead me to draw any inference that the Respondent's real reason for dismissing the Claimant was the fact that he had made a protected disclosure. Taking a step back and looking at the evidence as a whole, I conclude that the Respondent has shown that the reason for the Claimant's dismissal was redundancy. It follows that the claim of automatically unfair dismissal does not succeed.

#### Ordinary unfair dismissal

111. It follows from what I have said that I find that the reason for the Claimant's dismissal was redundancy. The Claimant's dismissal was attributable to the fact that the requirement for employees to carry out box office administrator work had ceased.

112. I turn then to the question of whether the Respondent acted reasonably in all of the circumstances in treating it as sufficient reason to dismiss the Claimant. In that regard:

112.1. The Respondent warned the Claimant on 9 February 2021 that it was being proposed to make the role of box office administrator redundant. Consultation meetings were held with the Claimant on 23 February 2021, 8 March 2021, and 24 March 2021. The consultation meetings were lengthy. The Claimant's view was that he did not get answers to the questions he had raised. Some of the information he was provided with was inaccurate. However as set out above, there was no evidence that the inaccurate information was considered by the Councillors in coming to their decision. And in any event the points of inaccuracy were, in my judgment, of limited relevance to the business decision to make the role of Box Office Administrator redundant.

112.2. The decision to interview for the role of Marketing and Events Coordinator was a reasonable one, and I am satisfied that the decision to appoint Jasmine Griffiths rather than the Claimant was made in good faith on an assessment of their relative performance at interview.

112.3. The Claimant was given the opportunity to be considered for other roles. He felt those roles were not suitable for him, but given the size of the Respondent's organisation, it cannot be criticised for the efforts it made to find him another job.

113. Looking then at the process adopted:

113.1. There is no weight, in my judgment, in the criticism that the Respondent refused to tell the Claimant how many people were affected by redundancy – he was well aware of the situation regarding his own role in the theatre and had sufficient information to engage in the consultation process.

113.2. Regarding the question of marketing training, I have found that the Claimant did have opportunities to be trained in marketing, but preferred to focus on other areas. In any event, there could be no sensible criticism of the Respondent for failing to anticipate the redundancy situation and upskill him for a role it had not decided to create before it decided to create that role.

113.3. The Claimant's appeal was heard by Mr Nicholson, who as the Town Clerk was senior to those involved in the Claimant's dismissal. The Respondent was not slow to have appeals heard by panels of Councillors when it was appropriate to do so. Mr Nicholson gave the Claimant's appeal detailed consideration. There is in my judgment no merit to the criticism of the appeal stage of the process.

113.4. Finally, for the reasons I have given, the process could not be said to have been a sham. I am satisfied that the Respondent carried out the process in good faith, and sought ways to avoid making the Claimant redundant.

114. That is not to say that the process was a perfect one. For the reasons I have given above, Sally Heath ought not to have been involved as minute taker, and of course the Claimant ought not to have been provided with incorrect information during the consultation process. But looking at in the round, I consider that the procedure followed fell within the range of reasonable responses open to the Respondent. I am satisfied also that Respondent acted reasonably in all of the circumstances in treating the redundancy of the role of Box Office Administrator as a sufficient reason to dismiss the Claimant.

115. It follows therefore that the claim of unfair dismissal is not well founded.

#### Wrongful dismissal

116. The Claimant was given one month's of termination on 30 March 2021. Because his trial period in the Pear Mapping role was extended, his employment did not in fact terminate until 13 May 2021, meaning that he was given almost one and a half months' notice. He was paid throughout that time. Therefore, his claim of wrongful dismissal is not well founded.

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Employment Judge Leith  
Date: 5 January 2023

REASONS SENT TO THE PARTIES ON  
11<sup>th</sup> January 2023 by Miss J Hopes

FOR THE TRIBUNAL OFFICE