EMPLOYMENT TRIBUNALS

Claimant: **Mrs G Gosling**

Respondent: **Morphy Richards Limited**

Heard in Sheffield **On: 14 and 15 June 2023**

Before: **Employment Judge Brain**

Representation

Claimant: **In person**
Respondent: **Ms A Niaz-Dickinson, Counsel**

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The claimant's complaint that the respondent failed to comply with the collective consultation requirements in section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is dismissed following the claimant's withdrawal of the complaint.
2. Upon the claimant's complaint of unfair dismissal brought pursuant to section 98 of the Employment Rights Act 1996:
   2.1. The respondent dismissed the claimant by reason of redundancy.
   2.2. The respondent did not unfairly dismiss the claimant.
   2.3. Accordingly, the claimant's compliant that she was unfairly dismissed fails.

REASONS

Introduction and preliminary issues

1. The claimant presented her claim form on 18 August 2022. The respondent presented their response to the claim on 3 October 2022.
2. In her claim form, the claimant made three complaints. The first of these was that she was unfairly dismissed by the respondent. This is a claim brought pursuant

to the Employment Rights Act 1996. The second complaint is that the respondent failed to comply with the collective consultation requirements in section 188 of the Trade Union and Labour Relations Act 1992. The third complaint was one of detriment and/or dismissal for having made a public interest disclosure.

3. The case has benefited from a case management hearing. This was conducted by telephone. The hearing came before Employment Judge Knowles on 20 February 2023. The claimant withdrew the public interest disclosure claims which were dismissed by Employment Judge Knowles pursuant to a judgment also dated 20 February 2023. Employment Judge Knowles identified the issues to be determined at the hearing and gave case management directions. The Tribunal shall return to the issues in the case later in these reasons.

4. At the start of the hearing on 14 June 2023, Ms Niaz-Dickinson applied to introduce into evidence a document which had not yet been disclosed. This was a document dated 13 January 2022 entitled '*Overheads 2022'.* The claimant was given some time to consider the document. She objected to the document being admitted into evidence upon the basis that it had been disclosed late in the proceedings.

5. There is merit in the claimant's complaint about late disclosure. That said, the parties in any litigation are under an obligation to give disclosure of documents in their possession and control which are relevant and necessary to enable the Tribunal to fairly decide the issues in the case. This obligation continues throughout the litigation. It would therefore have been wrong for the respondent not to disclose the document. Where there is late disclosure, the question which arises upon admissibility is that of whether a fair trial is still possible. In the Tribunal's judgment, late disclosure of this document was not prejudicial to a fair hearing.

6. Particularly persuasive is the fact that the claimant does not dispute that the reason for her dismissal was redundancy. The document '*Overheads 2022*' goes to the question of whether in the early part of 2022 the respondent was faced with a need to make redundancies. As this is not disputed by the claimant, it is difficult to see how a fair trial of the issues is prejudiced. The new document is not relevant to the central question for this Tribunal of the reasonableness of the respondent's decision to dismiss the claimant because of redundancy.

7. There was also an issue around several of the documents in the bundle. The first of these was the document appearing at page 239A. This was a letter addressed to the respondent's employees by Robin Van Rozen. He is the chief executive officer of Glen Dimplex Consumer Appliances *("GDCA"*). (We can see the GDCA leadership team in the organisation chart (dated March 2022) at page 435 of the bundle. The Tribunal shall say a little more about GDCA shortly).

8. Page 239A his was ruled to be admissible. Again, the issue is one of prejudice to the fairness of the hearing. The claimant did not dispute that she had seen this document in March 2022. Its late admission therefore cannot affect the fairness of the hearing.

9. The next issue was around pages 207A and 207B. These are documents which sit behind that at page 249 (which had been disclosed already). As pages 207A and 207B explain the already disclosed document at page 249 then again, in the Tribunal's judgment, there is no prejudice to the fairness of the process by allowing the two late disclosed documents to be admitted into evidence.

10. Page 239B was a list of roles made redundant within the respondent. The respondent's case was that the collective consultation obligations in section 188 of the 1992 Act were not engaged because they were not proposing to dismiss as redundant 20 or more employees within a 90 days' period. Again, it is difficult to see how the admission of this document is prejudicial to the fairness of the process. It was always the respondent's position that only 17 roles were redundant. Page 239B lists the roles in question. Possession of that information can only benefit the Tribunal and the claimant. (In the event, in any case, the claimant withdrew the complaint which she brought under the 1992 Act. The withdrawal of it was upon the basis that though she was unable to establish that the respondent was proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days. She withdrew the claim during the course of closing submissions and after the Tribunal had heard all of the evidence).

11. Pages 278A and 310A and 310B were simply unredacted copies of emails which have been disclosed to the claimant pursuant to a data subject access request made under the Data Protection Act 2018. Further, a *WhatsApp* message from the claimant at page 398A was also included in the bundle to which the respondent had no objection.

12. Having resolved the preliminary issues around late disclosed documents and ruling that all of them were admissible, the Tribunal heard the parties' evidence. Evidence from the claimant was heard on the afternoon of 14 June 2023. On 15 June 2023 the Tribunal heard evidence from the respondent's witnesses:

    12.1. Alexis Gauchet. He works for Glen Dimplex Home Appliances Limited *("GDHA")* as commercial director.

    12.2. Jette Rostgaard Andersen. At the material time, she held the position of chief sales officer with GDHA. She is no longer employed by them.

13. The Tribunal then heard helpful submissions from each party. Ms Niaz-Dickinson produced written submissions. She supplemented these in oral argument. Verbal submissions were received by the claimant. Given the lateness of the hour following the receipt of evidence as submissions, the Tribunal reserved judgment.

14. The Tribunal will firstly set out the factual findings. The relevant law will then be considered along with the issues in the case. The Tribunal will then set out the conclusions reached by application of the relevant law to the factual findings in order to arrive at conclusions upon the issues in the case.

Findings of fact

15. The respondent is a well-known designer and supplier of small household appliances. It is part of the Glen Dimplex group of companies. The respondent sits within the consumer appliances division known as GDCA. This division of the Glen Dimplex group of companies comprises of three companies: the respondent, Roberts Radio Limited and Glen Dimplex Home Appliances Limited.

16. GDCA is not a legal entity. It is an association of the three corporate entities which sit within that division of the Glen Dimplex group.

17. The claimant commenced her employment with the respondent on 25 July 2016. She commenced work as a category consumer manager. There was a reorganisation in January 2018. The claimant then took up the role of global

product manager. On 30 November 2020 she received a letter saying that she was at risk of redundancy from that role. During that redundancy process the claimant applied for and was successful in obtaining the role of consumer and market intelligence manager within GDCA. (It was from this role that she was made redundant and which redundancy exercise gives rise to this claim).

18. She reported to Hanneke Hetson, consumer marketing and strategy consultant and head of marketing insight. Hanneke Hetson was not an employee of the respondent. We see the consumer marketing and insight organisational chart dated March 2022 in the bundle at page 446. This shows the claimant reporting to Hanneke Hetsen who in turn reported to Robin Van Rozen. Marketing insight sat separately within the organisation from the consumer marketing function. A statement of her main terms and conditions in the consumer and market intelligence role signed by her on 22 April 2021 is in the bundle commencing at page 159.

19. The claimant's role within the insight team was to support the three limited companies within GDCA. It is not in dispute that the claimant's role was to work across the three companies. Indeed, this was the evidence of Mr Gauchet (in paragraph 11 of his witness statement).

20. Mr Gauchet gave evidence, in paragraph 9 of his witness statement, that the role of the claimant and Hanneke Hetson was to collate and analyse consumer and market data and consumer research – to understand what the customers like and want and to analyse industry wide trends. Mr Gauchet said that the claimant and Hanneke Hetson "*worked in partnership with third party providers such as GFK, who have industry wide data at their fingertips as well as other third party agencies, to validate value propositions tested with qualitive and quantitive panels. Hanneke and Geraldine would obtain and analyse the data, and would then feed back to their partners, across all three companies within GDCA".* This description of her role was not in dispute and was very much in the same vein as the claimant's account when she gave evidence under cross examination.

21. In paragraph 14 of his witness statement, Mr Gauchet says that *"by March 2022 we were looking at further redundancies across all three companies in the GDCA group".* He goes on in paragraph 15 to say that he was part of the senior management team across GDCA tasked with trying to make cost savings. Unfortunately, these were not successful in staving off the need to look at a reduction in head count.

22. Mr Gauchet's evidence is corroborated by the '*Overheads 2022'* document which was introduced on the morning of 14 June 2023. The claimant fairly acknowledged in cross-examination the difficult position facing the respondent. As has been said, she did not put in issue the question of there being a redundancy situation in the spring of 2022.

23. Mr Van Rozen made his announcement on 16 March 2022. This is the document at page 239 to which the Tribunal referred earlier. A decision was made by senior management that the marketing insight roles could be almost completely removed. According to Mr Gauchet's witness statement (in paragraph 19) they were as categorised as *"non-essential".* There was an issue in that the contract entered into by the respondent with GFK (mentioned in paragraph 20) was for a term of five years. There would therefore still be a need to download and store the relevant data from them. However, the view was taken that this residual task was not very time consuming and could be done by others.

24. As Hanneke Hetson was not an employee, the respondent was able to dispense with her services more or less immediately. She therefore left on 1 April 2022.

25. As the claimant was an employee with more than two years' continuity of employment, the respondent recognised the need to consult with her. The consultation process commenced on 23 March 2022. The email of that date addressed to the claimant is at pages 241 and 242. It was sent to her by Wendy Young, People and Culture Service partner.

26. The email referred to Mr Rozen's announcement of 16 March 2022 (page 239A). The claimant was informed that following on from that announcement the respondent had been reviewing its organisational costs. The claimant was informed that it was *"possible that your role may be affected by the proposed re-prioritising of activities and proposed reductions in overheads; and this may regrettably result in your role as consumer and market intelligence manager being no longer required".* The claimant was invited to a meeting to be held on 25 March 2022.

27. This was attended by Wendy Young and Mr Gauchet. The claimant availed herself of the right to be accompanied at the meeting.

28. The record of the meeting is at pages 243 to 249. It was conducted by Microsoft Teams.

29. The claimant was informed of the challenging environment. This was supported by the document at page 249 to which reference has already been made. This shows a reduction in operating profit and gross margin. The claimant was informed that the respondent had attempted to stem losses by taking the steps referred to in *"supporting note 2"* which appears also at page 249 but that further savings were needed.

30. The claimant was informed that the measures taken and referred to in *"supporting note 2"* had been insufficient. She was notified that her role was potentially at risk of redundancy. She was informed that the individual consultation process was her opportunity to discuss proposals in more detail and to advance any suggestions which she may have. She was also informed that the respondent would attempt to find another vacancy that fits her skills and experience.

31. With reference to her role, she was informed that the consumer insights and intelligence function budget was cut to nearly zero for the foreseeable future with all research and "*value proposition house"* work being stopped. In these circumstances, no work was required in consumer markets and intelligence.

32. On the fourth page of the new document *"Overhead 2022"* we can see that it was an anticipated saving that there would be a saving of £700,000 were marketing activities to be stopped. It seems from the fifth page of the same document that just over £250,00 worth of savings had already been made. The final page identified a possible further savings from marketing of around £400,000. The respondent was therefore looking at savings of around £650,000 to £700,000 per year by cutting back on supporting marketing and insights activity.

33. There is a list of all of the projects and activities in which the claimant and Ms Hetson were involved. This is at page 502. Mr Gauchet confirmed in evidence given under cross-examination that all of these activities were stopped and were no longer supported. This was not disputed by the claimant.

34. The claimant was informed (On 25 March 20200) that there was going to be a minimum of three meetings as part of the consultation (including that of 25 March 2022). She was informed that the next meeting was to discuss any questions which she may have and would be an opportunity for her to reflect on what had been said at the first consultation meeting.

35. On 25 March 2022 the claimant emailed Wendy Young and Alexis Gauchet with a series of questions (page 250 to 254). Wendy Young provided a response on 29 March 2022 (pages 255 to 259). It is not necessary to set out *verbatim* the claimant's questions or Wendy Young's answers. It is sufficient to summarise them as follows:

    35.1. Wendy Young confirmed the respondent's position that the collective consultation provisions in the 1992 Act were not applicable.

    35.2. The respondent's *"short term vision"* was to reduce costs given the challenging marketing conditions and that they were currently a loss-making business.

    35.3. The consumer insights intelligence function budget had been cut to nearly zero for the foreseeable future with no work required in those areas.

    35.4. The respondent would work towards the redundancy and re-deployment policy (which is within the bundle at pages 36 to 58).

    35.5. The carrying out of any residual activity left to be done was to be reviewed post-consultation.

    35.6. The issue of alternative employment was to be discussed at the next consultation meeting.

36. Mrs Young proposed meeting the claimant again on 5 April 2022. This was in fact deferred until 6 April 2022.

37. Mr Gauchet says in paragraph 30 of his witness statement that Mrs Young sent to the claimant an employee information sheet/redundancy process information sheet. This is at pages 267 and 268. (It is not clear precisely when this sheet was sent to the claimant by the respondent. It appears not to be referred to in Wendy Young's email of 29 March 2022. Ms Andersen ascertained that it was sent to the claimant after the second consultation meeting held on 6 April 2022).

38. The record of the second consultation meeting held on 6 April 2022 is at pages 261 to 266. This time, the claimant was not represented. Mr Gauchet and Wendy Young were present on behalf of the respondent.

39. It was confirmed that the claimant's role was still at risk of redundancy. The claimant said that she was unhappy with some of Mrs Young's answers to the questions which the claimant had raised on 25 March 2022. The claimant announced her intention to raise a grievance about the process that was being followed. She requested Mrs Young revisit her answers to some of the questions raised by her in her email of 25 March 2022. Mrs Young maintained that she had answered them and therefore considered the issue to be closed.

40. The claimant was also concerned that the issue of residual activity was only going to be reviewed post-consultation. Mrs Young replied that there would be a post-consultation review should residual activity remain. Mr Gauchet explained that the residual activity was not sufficient as to warrant a part time role.

41. Upon the question of alternative employment, the claimant was informed that the respondent would seek to ascertain whether there might be any opportunities for her in any other parts of the business or within the Glen Dimplex group. She was referred to the current vacancies list for her to view. A list of vacancies had in fact been sent to the claimant just prior to the commencement of the meeting. The relevant email is at page 260.

42. Mrs Young followed up on the meeting by emailing the claimant the next day, 7 April 2022 (pages 269 to 275). This included a list of current vacancies, a redundancy schedule and the employee information sheet. There is reference in the email of 7 April 2022 to the fact that the sheet had also been emailed on 6 April 2022. (The email of 6 April 2022 appears not to be in the bundle, hence the uncertainty with the chronology of events referred to in paragraph 37).

43. On 8 April 2022 the claimant emailed Wendy Young (pages 287 to 289). She raised further questions of Wendy Young about the process.

44. The issue of residual activities was once again raised. She said that in the second meeting Mr Gauchet said that the residual activities had not been reviewed *"line by line but things like the GFK contract would still continue."* She was concerned that there had been no proper assessment of the residual activities and that the respondent could not be certain of business need if these had not been properly reviewed. She was concerned about the cessation of all consumer and market insights upon the business going forward. She also expressed an interest in the 'MS and P manager, sound' role which was in the list of current vacancies sent to her by Wendy Young on 7 April 2022. ('MS and P' stands for '*Market Strategy and Planning'*).

45. On 6 April 2022 the claimant emailed Bryce Dyer, chief people officer. The email is at page 282. The claimant raised concerns about Wendy Young's handling of the redundancy consultation process.

46. Wendy Young was therefore replaced as HR representative by Emma Moses ahead of the third consultation meeting which took place on 12 April 2022. The claimant was this time accompanied. Mr Gauchet was also present. The notes of this meeting are at pages 295 to 299).

47. At the third consultation meeting the issue of residual activity was once again raised. Mr Gauchet said that the activities had been reviewed prior to consultation but after consultation the work would need to be reviewed and addressed but the work would be administrative tasks. He said that any residual activities would be picked up by existing resources across the teams, but these were expected to be minimal. Mr Gauchet recognised the cessation of consumer and marketing insight activity may have "*an impact mid-term on our brand and commercial ambition".*

48. There was then some discussion about the MS and P manager role. The claimant requested further information about the salary and remuneration package.

49. The meeting reconvened on 13 April 2022. The same individuals were in attendance. The notes are at pages 299 to 302. The claimant did not pursue her interest in the MS and P role. She acknowledged, in paragraph 32 of her witness statement, that the remuneration package was well below that of the role which she held within the respondent and in any case, she did not have the required skills and experience.

50. Mr Gauchet informed the claimant at the end of the meeting on 13 April 2022 that the role of consumer and market intelligence manager was redundant, and the claimant was to be dismissed because of redundancy.

51. She received a letter to this effect on 14 April 2022 (pages 313 to 316). The effective date of termination was to be 13 July 2022. The claimant was notified that she was required to work during the three months' notice period.

52. On 14 April 2022 the claimant raised a written grievance (pages 319 to 322). This was addressed to Mr Dyer. Mr Dyer delegated the task of handling the claimant's grievance to Rachel Braddock, head of people and culture. She wrote to the claimant about her grievance on 21 April 2022 (pages 331 to 332).

53. Rachel Braddock told the claimant that the points raised by her upon the current redundancy consultation process would be treated as an appeal against her redundancy. The points raised about the current redundancy consultation process would be dealt with by the appeal manager once appointed.

54. The claimant also raised, in her grievance, a number of other issues. These were about the previous redundancy consultation process in 2020, her company car and data protection issues. These three issues are not relevant to the question of the fairness of her redundancy and the Tribunal therefore shall say nothing further about these matters.

55. Mr Gauchet's account is that there was very little work for the claimant to do during her notice period. Therefore, the respondent suggested the leaving date be brought forward to 20 May 2022. (There was some discussion about this issue during the course of the hearing. The claimant said that she felt that she had been given *"no choice"* but to agree to bring forward the termination date. The claimant did not raise any claim for breach of contract. Accordingly, the Tribunal need only record that the date of termination was moved from 13 July to 20 May 2022. There is no issue that the claimant's unfair dismissal complaint was brought outside the limitation period in section 111 of the 1996 Act. Bringing forward the end date had no effect upon the number of complete years of service. It follows therefore that the moving of the effective date of termination is inconsequential to the unfair dismissal claim).

56. The claimant's appeal was dealt with by Miss Andersen. It appears that the appeal letter at pages 319 to 322, Rachel Braddock's response to that at pages 331 and 332 and some email correspondence about the several issues raised at pages 334 and 335 were not seen by Jette Andersen at the time. What she had before her was an email from Rachel Braddock dated 26 April 2022 which set out the appeal points raised by the claimant. This email is at pages 342 to 343. There was also a distillation of the appeal points again prepared by Rachel Braddock which is at page 344.

57. The distillation of the points of appeal were:

    57.1. That the consultation process lacked fairness and transparency, the consultation was not meaningful and key information withheld to that the respondent demonstrated a lack of understanding and adherence to UK employment law.

    57.2. That there was a material breakdown of trust and a breach of the duty of care owed by the respondent to the claimant.

58. Jette Andersen was supported by Joanne Kelly, senior people and culture business partner. On 3 May 2022 the claimant was informed that Miss Andersen had not in fact seen the full grievance and had been provided with appeal points only (page 345).

59. The appeal meeting went ahead on 11 May 2022. The notes of this are at pages 367 to 373. The claimant made some amendments. These appear to have been included within the record within the bundle at pages 367 to 373.

60. Miss Andersen sent her decision upon the appeal to the claimant on 19 May 2022. The decision letter is at pages 388 to 393. Her conclusions were:

    60.1. It had been ascertained that the employee information sheet was in fact sent to the claimant after the second consultation meeting on 6 April 2022. Miss Andersen recognised that this should have been provided at an earlier stage in the process.

    60.2. Miss Andersen confirmed that 17 individuals were potentially at risk of redundancy within the respondent. She was satisfied therefore that the collective consultation obligations in the 1992 Act were not engaged.

    60.3. She said that a very small amount of residual activity remained such that a single dedicated employee was no longer required to perform them. She noted that the claimant acknowledged that she had little work left to perform. She concluded that Mr Gauchet's reference to *"residual activities being reviewed post-consultation"* was in the context of the gradual winding down of what few activities remained in role rather than an inference that she had been placed at risk of redundancy prematurely before a proper assessment of the position had taken place.

    60.4. There was no suitable alternative employment for the claimant.

    60.5. Miss Andersen acknowledged that the claimant was left without effective line management for a period after 1 April 2022 following Hanneke Hetson's departure. Miss Andersen said that the new reporting lines should have been communicated to the claimant more speedily.

61. The following evidence was given by the claimant during her cross-examination:

    61.1. That her of consumer and market intelligence manager within GDCA was unique and that, by reference to the job description at pages 105 and 107, it was a stand-alone role. She accepted that there was no other role within the respondent with similar functions.

    61.2. There was no issue that the respondent was facing significant challenges in the early part of 2022 and that her role ceased to exist because of the decisions taken by the respondent to end marketing activity. There was a diminished requirement for the claimant's role.

    61.3. The claimant accepted that she was in a pool of one *"in the way that the organisation did the process"*. However, the claimant indicated that there was a possibility of her being pooled with the consumer marketing managers the job description for whom may be seen at pages 102 to 104. We can see from the organisation chart at page 446 that the consumer marketing managers were in a different reporting line to that of the claimant and Hanneke Hetson.

61.4. The data from GFK would generate a minimal amount of work as would the extraction of data from the Survey Monkey account. Ms Niaz-Dickinson put to the claimant that there would only be a minimal amount of work generated by the GFK and Survey Monkey work. This the claimant accepted.

61.5. The claimant was cross-examined upon paragraph 42 of her witness statement where she explains the information conveyed by her at a handover meeting which took place on 9 May 2022. She lists (in sub-paragraphs L to O) four ongoing activities. (Two of these were the GFK work and the work analysing the Survey Monkey results). The claimant fairly accepted that none of these four functions justified the creation of a post.

61.6. The claimant said that she had marketing skills which she could use to develop products (outside the consumer insights role). The claimant said that she was able to develop propositions for new markets and work upon brand tracking surveys. It was acknowledged by the respondent that she had raised some of these issues during the third consultation meeting (at pages 297).

61.7. The claimant did not take issue with Rachel Braddock's distillation of her appeal points at pages 344 and 345.

61.8. It was suggested by Ms Niaz-Dickinson that what the claimant was seeking to do effectively was get the respondent to change their mind as to the need for the continuation of a marketing and insights role. This the claimant accepted.

62. The following evidence emerged during the cross-examination of Mr Gauchet:

62.1. The claimant raised an issue in the financial report at page 404 of the bundle that a significant donation of £3.5 million had been given to the Norton Foundation. Mr Gauchet said that he was not involved in this decision.

62.2. Mr Gauchet confirmed his view that the claimant's role was a stand-alone role and therefore she was in a pool of one.

62.3. Mr Gauchet confirmed that although no *"line by line assessment"* (as it was put) had been carried about the amount of residual activity that there would be after the claimant's dismissal, he was satisfied that he had sufficient information to make an assessment about what was required going forward.

63. During Mr Gauchet's cross-examination, an issue arose as to a role taken by Mark Stephenson. According to the organisational chart of March 2022 at page 446, at that time he held the role of consumer marketing manager, sound. It appeared from a LinkedIn post that Mr Stephenson had taken up an alternative role of head of marketing in or around May 2022. This generated some discussion during the hearing on 15 June 2023. The claimant maintained that she had the ability to undertake Mr Stephenson's apparent new role of head of marketing and wondered why this had not been drawn to her attention at the time. However, the respondent was able to demonstrate to the claimant that in fact Mr Stephenson did not take up his new role until November 2022. This was upon

the basis of documentation emailed to Ms Niaz-Dickinson during the morning of 15 June 2023. This point was therefore not pursued by the claimant.

64. The following evidence emerged from the cross-examination of Miss Andersen:

64.1. The claimant raised with her the issue of the charitable donation to the Norton Foundation. Ms Andersen said that she was not a director and therefore not party to that decision.

64.2. Miss Andersen denied that she was not impartial because she had been supplied with information by Rachel Braddock. The claimant referred to the email from Rachel Braddock to Ms Andersen of 18 May 2022 at pages 381 to 383 in which Ms Braddock commented upon the claimant's points of appeal which the claimant said was partial. Miss Andersen said that she had not been influenced by this and had made her own decision on the material before her.

65. That concludes the Tribunal's findings of fact.

The relevant law

66. The Tribunal now turns to a consideration of the relevant law. Section 98 of the 1996 Act provides as follows:

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

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

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

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

(a) …

(b) …

(c) is that the employee was redundant, …

(d) …

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

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

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

67. Redundancy is defined in Part XI of the 1996 Act by section 139 (1):

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

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

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

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

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

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

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

68. It is accepted by the claimant that the respondent had decided to end her role of consumer and market intelligence manager. The respondent had decided effectively to end marketing activities. There is no need under section 139(1)(b) for the employer to show the Tribunal an economic justification or business case for the decision to make redundancies. It is not for the Tribunal to pass judgment upon an employer's business decisions. Tribunals are only concerned with whether the reason for the dismissal was redundancy and not with the economic or commercial reasons for the redundancy itself.

69. The Tribunal has no jurisdiction to consider the reasonableness of the decision to create a redundancy situation. (*In cases where redundancy is used as a pretext and there is an argument that it is a sham to be rid of an employee, then tribunals are entitled to examine the evidence available to determine what was the real or principal reason for the decision to dismiss and to ensure the genuineness of a decision to dismiss for redundancy. However, no such case was argued by the claimant (quite properly) who fairly accepted that the role which she was occupying was genuinely redundant because the respondent had taken a business decision to end marketing activity).*

70. It is of course open to a dismissed employee to argue that they were unfairly selected for redundancy and that it was unreasonable for the employer to have dismissed them for that reason. In **Williams and Others v Compair Maxam Limited** [1982] ICR 156, EAT, the Employment Appeal Tribunal laid down guidelines that a reasonable employer might be expected to follow in making redundancy dismissals. The EAT stressed that in determining the question of reasonableness it was not for the Tribunal to impose its standards and decide whether the employer should have behaved differently. That would be to substitute the Tribunal's view for that of the employer. Instead, the correct question is to ask whether the dismissal lay within the range of conduct which a reasonable employer could have adopted.

71. The factors suggested by the EAT in the **Compair Maxam** case that a reasonable employer might be expected to consider were:

- Whether the selection criteria were objectively chosen and fairly applied.
- Whether employees were warned and consulted about the redundancy.
- Whether, if there was a union, the union's views were sought, and
- Whether any alternative work was available.

72. The third bullet point of the list above does not apply in this case. The workforce was not unionised.

73. In carrying out a redundancy exercise, an employer should begin by identifying the group of employees from whom those are to be made redundant will be drawn. This is known as the *"pool for selection".* In assessing the fairness of dismissals, Tribunals will look at the pool from which the selection was made since the application of otherwise fair selection criteria to the wrong group of employees is likely to result in an unfair dismissal. In **Wrexham Golf Co Limited v Ingham** EAT 0190/12, the EAT said that *"There will be cases where it is reasonable to focus upon a single employee without developing a pool or even considering the development of a pool".* The question in that case therefore was whether the Tribunal ought to have considered the question of whether, given the nature of the club steward's role, it was reasonable for the golf club not to consider developing a wider pool of employees.

74. In considering a pool for selection the following factors may be relevant:

- Whether other groups of employees are doing similar work to the group from which the selections were made.
- Whether employees' jobs are interchangeable.
- Whether the employee's inclusion in the pool for selection is consistent with their position.
- Whether the selection pool was agreed with any union.

75. If the selection pool is reasonable then the Employment Tribunal will consider the selection criteria applied by the employer to employees in the pool. The criteria should be clear and transparent. In **British Aerospace v Green and others** [1995] ICR 1006 the Court of Appeal emphasised that it is not the Tribunal's task to subject a redundancy process to overtly minute scrutiny. The Court of Appeal said that, "*In general the employer who sets up a system of selection which can reasonably be described as fair and applies it without any overt sign of conduct which mars its fairness will have done all that the law requires of him."*

76. Dismissals may be rendered unfair for lack of individual consultation. The importance of following proper procedures was made clear by the House of Lords in **Polkey v A E Dayton Services Limited** [1988] ICR 142, HL. There, Lord Bridge said that "*In the case of redundancy … the employer will normally not act reasonably unless he warns and consults any employees affected or their representative, adopt a fair basis on which to select for redundancy and take such steps as may be reasonable to avoid or minimise redundancy by re-deployment within his own organisation."* Consultation should include:

- An indication (ie a warning) that the individual has been provisionally selected for redundancy.
- Confirmation of the basis for selection.

- An opportunity for the employee to comment on their redundancy selection assessment.
- Consideration as to what, if any, alternative positions of employment may exist.
- An opportunity for the employee to address any other matters they wish to raise.

77. The consideration of alternative employment for employees selected for redundancy will often be an important part of a fair and reasonable redundancy procedure. An employer should do what it can so far as is reasonable to seek alternative work. The Tribunal will expect an employer with sufficient resources to take reasonable steps to ameliorate the effect of redundancy, including detailed consideration to whether suitable alternative employment is available.

Discussion and conclusions

78. The Tribunal now turns to an application of the relevant law to the facts as found in order to determine the issues in the case. The first question that arises is whether there existed a redundancy situation at all. This is a question of fact. As has already been said, the Tribunal is satisfied that the respondent has established as a fact that their need for employees to carry out work of the kind being undertaken by the claimant had ceased or diminished (or at the very least was expected to cease or diminish) when the claimant was made redundant. This is not disputed by the claimant.

79. The issue therefore is whether the respondent acted fairly and reasonably in treating redundancy as a sufficient reason to dismiss the claimant. The first question that arises is that of warning and consultation.

80. The claimant was warned by Wendy Young on 23 March 2022 that her role was at risk of redundancy. She attended the first consultation meeting on 25 March 2022 where again that warning was issued to the claimant.

81. There was then a second consultation meeting held on 6 April 2022 followed by the final consultation meeting. That in fact took place over two days on 12 and 13 April 2022.

82. On any view, the respondent fairly warned the claimant that she was at risk of redundancy. The respondent endeavoured to address the numerous questions which the claimant (quite properly) wished to raise about the position and the process. The claimant was informed that the respondent had taken the view that a business decision had been taken that her role was no longer required. The respondent's view was that the residual functions were not sufficient to justify her retention (even on a part time basis).

83. The claimant accepted, in evidence given under cross-examination, that as a matter of fact the residual functions were not such as to warrant the retention of an individual even on a part time basis. As Mr Gauchet said, *"even that would incur a cost to the business"* and would be contrary to the decision to simply end marketing activity.

84. The claimant was given a reasonable opportunity to participate in the consultation process and advance suggestions before the decision to make her redundant was made. It is unfortunate that any suggestions which the claimant made simply

rubbed up against the respondent's decision to end the marketing and insight function.

85. There is no doubt that the claimant disagreed with the respondent's business decision. The respondent recognised that there was a downside to the ending of her role. However, as has been said, it is not for the Tribunal to interfere with a business decision taken by the employer. That is what the respondent had decided to do. It meant that the claimant's role was redundant. The only issue for the Tribunal therefore is whether the employer acted reasonably in treating redundancy as a sufficient reason to end this employee's employment. Similarly, the claimant sought to argue that the money donated to the Norton Foundation may have been applied to saving her job role. However, it is not for the Tribunal to countermand business and spending decisions made by the employer.

86. The claimant recognised that her role was unique within GDCA. There is some merit in the claimant's suggestion that she could have been pooled with the consumer marketing managers. However, it is not for the Tribunal to substitute its view as to how the employer could have gone about matters for that of the employer. So long as the decision taken by the employer fell within the range of reasonable management responses, such will be sufficient. In circumstances where consumer and market intelligence and insight sat separately within the organisation and had a different function (as demonstrated by the job descriptions at pages 102 to 107) it is difficult to see how it can be said that the decision to place the claimant into a pool of one fell outside the range of reasonable managerial responses. Indeed, the claimant fairly recognised the differences between her role and that of consumer marketing manager in paragraph 26 of her witness statement.

87. The Tribunal now turns to the question of suitable alternative employment. This may be quickly disposed of. There was no suitable alternative employment available. The claimant did not pursue her interest in the MS and P manager role. It was not suitable alternative employment as, on the claimant's own recognition, her skill set did not match it. Even if it was suitable alternative employment, the claimant did not pursue her interest in it. There was no suggestion that there were any other suitable alternatives withheld from the claimant such as to render the process unfair.

88. The claimant makes several criticisms of the process. These are as follows:

    88.1. That the information sheet at pages 267 and 268 should have been sent to her earlier in the process.

    88.2. That the consideration of residual activity was going to be undertaken post-consultation.

    88.3. That there was pre-determination that her role was going to be made redundant in reliance upon the information in the spreadsheet at page 504.

89. It was recognised by Miss Andersen that the information sheet at pages 267 and 268 should have been sent to the claimant earlier in the process. However, in the Tribunal's judgment, this does not take the process outside of the range of reasonableness. In the final analysis, the employee information sheet was sent to the claimant during the consultation process. It appears to have been ascertained by Miss Andersen that it was sent to her straight after the second consultation meeting and prior to the third. At that point, no final decisions had been taken. The information was therefore given to the claimant before a

decision was taken to dismiss her. In any case, the information sheet does not appear to convey any further information or advice to the employee than that imparted at the first and second consultation meetings in any case. The late disclosure of the information sheet did not impact the fairness of the process carried out.

90. The Tribunal does not consider that Mr Gauchet's comment that the residual activities would be assessed post-consultation amounts to any kind of pre-determination. It was not disputed by the claimant that the residual activities were insufficient to warrant the creation of a stand-alone role to do them. Upon that basis therefore, Mr Gauchet reasonably concluded pre-dismissal that the residual activities were insufficient to warrant the retention of the claimant even on a part time basis. It is inevitable that an employer faced with the circumstance where there are going to be residual activities will have to deal with them post-dismissal as and when they arise. That effectively is what Mr Gauchet was saying.

91. There would be merit in the claimant's point were it to be the case that there had been no consideration at all of residual activity prior to the dismissal of her. However, in the Tribunal's judgment, the employer did what it was reasonably required to do to ascertain the amount of residual activity and the resources that would be needed to be devoted to it.

92. The document at page 504 is described in the index as a *"spreadsheet-budget".* It appears to be for internal budgeting purposes. In the Tribunal's judgment, this cannot amount to pre-determination of the claimant's position by the respondent. The Tribunal has no record that the claimant took either of the respondent's witnesses to page 504 and made a suggestion that this demonstrated pre-determination. It appears to be no more pre-determinative than the other documentation demonstrating a decision to cease the marketing and insight activity. That fell within the respondent's managerial prerogative as to how to run their business going forward and which the claimant had accepted to be a genuine decision.

93. The other issue raised by the claimant was that Miss Andersen had been furnished with information by Rachel Braddock and that this somehow impacted upon the fairness of the appeal process. It may be thought surprising that Miss Andersen was not furnished with the claimant's grievance letter at pages 319 to 322 at the time nor the other correspondence at pages 331 to 332 and 334 to 336.

94. However, there was no suggestion made by the claimant that Miss Andersen had been provided with a partial distillation of her appeal points. To the contrary, the claimant accepted that Miss Braddock had fairly distilled them.

95. In the final analysis, whenever an appeal manager gets involved who hitherto has had no involvement, he or she is bound to obtain the information necessary to determine the appeal. The Tribunal therefore sees nothing wrong with Miss Andersen approaching Miss Braddock to ask for information. Further, the claimant was given the opportunity of making representations to Miss Andersen and raising such points as she wished to make. In the Tribunal's judgment, Miss Andersen fairly and conscientiously considered the claimant's appeal.

96. It follows, therefore, in the Tribunal's judgment that there was a potentially fair reason for the dismissal of the claimant (upon the basis that her role was

redundant). The respondent complied with the requirements of **Compair Maxam** in that:

- The claimant was given a reasonable warning and was afforded reasonable consultation about the situation.
- The respondent acted reasonably in determining that the claimant was in a pool of one.
- The respondent reasonably considered the question of suitable alternative employment.

97. It follows therefore that the respondent acted within the range of reasonable responses in dismissing the claimant for redundancy. The claimant was therefore fairly dismissed, and the complaint of unfair dismissal is therefore unsuccessful.

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Employment Judge Brain

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Date 11 July 2023