EMPLOYMENT TRIBUNALS

Claimant: **Mr C Cox**

Respondent: **British Gas Services Limited**

HELD AT: Manchester by CVP **ON:** 19 & 20 July 2023

BEFORE: Employment Judge Fearon

REPRESENTATION:

Claimant: Mr Cox in person
Respondent: Ms Marianne Tutin (Counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that:

The claimant's complaint of unfair dismissal is not well founded and is dismissed.

REASONS

Introduction

1. Mr Cox was employed by the respondent as a Heating Sales Advisor ('HSA') from 21 April 2015 until his employment ended by reason of redundancy on 4 December 2020. Mr Cox presented a claim for unfair dismissal on 26 April 2021.
2. The respondent disputes the claim on the basis that the claimant was fairly dismissed by reason of redundancy.

The Issues for the Tribunal to decide

3. At the outset I discussed with the parties issues in the case. The Respondent's counsel had drafted a list of issues which was agreed by the claimant and which is as follows:

UNFAIR DISMISSAL

a. **Fairness**

i. Was the reason for the Claimant's dismissal a diminished need for employees to do work of a particular kind or the cessation of work at a location?

ii. Did the Respondent carry out reasonable consultation with the Claimant about the redundancy?

iii. Was the selection process reasonable (in terms of the pool and the criteria applied to the pool)?

iv. Did the Respondent act reasonably in looking for alternative employment for the Claimant?

v. Was dismissal within the range of reasonable responses open to the Respondent?

b. If the Tribunal does not agree that the reason for the Claimant's dismissal was redundancy, the Respondent alternatively contends that the reason for dismissal was some other substantial reason. In this regard:

i. Did the Respondent have a sound, good business reason to dismiss the Claimant?

ii. Did the Respondent follow a reasonable process in effecting the dismissal?

iii. Was dismissal within the range of reasonable responses open to the Respondent?

REMEDY

c. If the Claimant's claims are upheld:

i. What remedy does the Claimant seek?

ii. What financial compensation is appropriate in all of the circumstances?

iii. Should any compensation awarded be reduced in terms of Polkey v AE Dayton Services Ltd [1987] ICR 142 and, if so, what reduction is appropriate?

iv. Should any compensation awarded be reduced on the grounds that the Claimant's actions caused or contributed to their dismissal and, if so, what reduction is appropriate?

v. Has the Claimant mitigated their loss?

Evidence

4. I considered:

   4.1 the agreed main bundle of evidence provided by the parties comprising 913 pages;
   4.2 the agreed collective consultation bundle of evidence provided by the parties comprising 1571 pages;
   4.3 the claimant's statement and the statements of Mr Phill Cox, Ms Louise McCarthy and Mr Daniel Parr on behalf of the respondent.
   4.3 The claimant gave sworn evidence. I heard sworn evidence on behalf of the respondent from Mr Phill Cox, Ms Louise McCarthy and Mr Daniel Parr.

5. The respondent provided a chronology of key facts with relevant references to evidence in the bundles.

Findings of Fact

6. The Respondent is an energy and home services provider in the United Kingdom.
7. Whilst the claimant had been employed by British Gas as a Heating Sales advisor for a period between June 2006 and 2012 when he resigned, then after a break worked in this role as a contractor from October 2012 to April 2015, for the purposes of this claim, the relevant period of the claimant's employment with the respondent was as a Heating Sales Advisor ('HSA') from 21 April 2015 until his employment ended on 4 December 2020.
8. The claimant was part of the HSA team which was part of the respondent's Field Sales division within the Sales and Marketing team. The claimant's role involved visiting customers to provide advice on central heating products and services and surveying, specifying and selling heating solutions in the home.
9. Mr Phill Cox was employed by the respondent as Head of Sales – Field Sales, at the material time of the redundancy process and the claimant's dismissal. Mr Cox knew the claimant and the claimant's line manager, Mr Huw Davies, as Mr Davies

was one of Mr Cox's direct reports. Mr Cox was made redundant by the respondent and left their employment in April 2022.

10. Ms Louise McCarthy is employed by the respondent as a Senior HR Consultant. Her role includes providing guidance, oversight and support when restructuring and redundancy situations arise.
11. Mr Daniel Barr is employed by the respondent, now as a Customer Vulnerability Manager, following a redundancy process. Prior to that and at the material time of the redundancy process involving the claimant, he was employed by the respondent as a Customer Services Manager.
12. As part of the "Reimagine Centrica" project in 2020, Centrica plc, which is the parent company of the respondent, launched a project to simplify its leadership team and streamline its business having identified that the respondent's customer numbers had declined and earnings consequently reduced. As a result, a compulsory redundancy programme was announced in June 2020 with up to 1,566 potential redundancies anticipated. That number was later increased to 1,663.
13. The claimant was part of the Level 8 HSA group and from that group 369 roles were placed at risk of redundancy.

Manager relationship

14. The claimant's line manager was Mr Huw Davies. The claimant alleges that his dismissal was pre-determined and Mr Davies subjectively applied the scoring criteria for him in the redundancy process because they had a poor personal relationship. The claimant alleges he was bullied by Mr Davies and Mr Cox.
15. The claimant believes the relationship with Mr Davies deteriorated from December 2017 when a new commission scheme was introduced and when he says Mr Davies brought new people in to the team and the area. The claimant says this reduced the amount of work available to him and consequently meant a reduction in his income. He was also concerned that his requests to reduce his work hours were not addressed.
16. I note the contents of numerous HSA 121 Forms completed for the claimant from January 2017. The 121 forms are evidence not of bullying but of a manger seeking to be constructive and supportive.
17. The 121 form dated 7 February 2017, as accepted by the claimant in evidence at the hearing, confirms that the number of appointments for the claimant to deal with had been reduced to support him with his "tiredness, mistakes, performance etc" and that his sub patch had been cut in half to help with distance and travel times.
18. The 121 form for Quarter 1 of 2017 which is dated 30 March 2017 notes the claimant was feeling much better with his health. The claimant agreed in evidence during the hearing that the adjustments made for him were helping him.
19. The 121 form dated 1 September 2017 for August 2017 raised a safety issue related to the claimant having missed suspect material and the implications of that.

This safety issue was followed up in Mr Davies' email to the claimant dated 12 September 2017 and the evidence suggests Mr Davies was supportive.

20. The 121 form dated 1 October 2017 for September 2017 the claimant raised concerns about the increased number of slots/hours he was expected to do which may impact on his safety and the safety of others and Mr Davies confirmed that he would raise those concerns with Phill Cox and keep the claimant informed.
21. The 121 form dated 2 January 2018 for Quarter 4 of 2017 notes the claimant's concerns about his long hours of work and his mental health and Mr Davies confirmed those concerns had been raised with Phill Cox and further information was being requested to deal with those concerns and the claimant would be kept informed.
22. The 121 form for July 2018 dated 30 July 2018 confirms a behaviours downgrade in scoring and the claimant's concerns about that. Mr Davies confirmed he would support the claimant as much as possible.
23. The 121 form for October 2018 dated 28 October 2018 records the conversation between Mr Davies and the claimant about the claimant having had issues with wrongly applying customer discounts. Mr Davies appears from the notes recorded to have been supportive.
24. The 121 form for Q1 2019 dated 28 March 2019 shows that at that time Mr Davies discussed with the claimant the ongoing issues regarding reduced workloads nationally and explaining why over winter there had been additional people working in the region to provide support and all actions were being taken to spread work evenly and fairly.
25. The 121 form for Q3 dated 22 September 2019 confirms Mr Davies and the claimant again discussed workloads, including that workloads were low for everyone. In October 2019 Mr Cox confirmed to the claimant that he considered Mr Davies had been very supportive of the claimant in making adjustments for him. He also noted Mr Davies had addressed the claimant's concerns on a continuing basis and there was no evidence of the claimant being treated unfairly.
26. The claimant did not raise in emails with Mr Cox on 9 October 2019, any concerns about Mr Davies bullying him. Although the claimant says he was dissatisfied with his manager, I find that the claimant did not request a new manager at the material times.
27. I accept Mr Cox's clear and consistent evidence that he was aware of the claimant having raised complaints about how jobs were allocated but was not aware of any personal issues between the claimant and Mr Davies.
28. The 121 Form dated 1 March 2020 confirms the diary team offered the claimant a busier bucket to increase the work available to him, but he declined that offer. In July and August 2020 Mr Davies again confirmed to the claimant there was a nationwide lack of work and gave him information and advice as to increasing his leads. In September 2020 it was confirmed to the claimant that none of the team were at full capacity.

29. Mr Barr confirmed in evidence that he did not establish from the claimant or Mr Cox, during his investigations in the appeal process, any deep set personal issues between the claimant and Mr Davies.
30. I find that Mr Davies and Mr Cox were not deliberately trying to suppress the work available to the claimant and nor were they engaged in a bullying campaign against him. Mr Davies sought to modify the claimant's hours when the claimant needed his hours to be reduced to accommodate his health needs. Mr Davies also consistently responded to the claimant's queries about workloads and he supported the claimant to increase his work volumes, including in the periods when there were reduced workload across the team.

Collective consultation

31. On 19 August 2020. An email was sent to employees, including the claimant, informing them of possible redundancies.
32. A collective consultation process took place including with the GMB Union ("GMB") which the claimant was a member of. The Respondent recognised the GMB for the purposes of collective consultation.
33. 10 collective consultation meetings took place across approximately four months with the Unions and employee representatives on the following dates:

    25/26 August 2020

    3 September 2020

    9 September 2020

    16 September 2020

    22 September 2020

    29 September 2020

    7 October 2020

    15 October 2020

    28 October 2020

    8 December 2020 (this last meeting being after the claimant's employment had terminated)

34. At the first consultation meeting on 25/26 August 2020 the Respondent set out the business case for redundancies and confirmed that up to 1,566 redundancies were proposed, with the first redundancies scheduled to take place over 90 days from the first meeting. It was confirmed that there was a proposed 9% reduction in level 8 roles, the claimant being in the Level 8 HSA Group.

35. At the second collective consultation meeting on 3 September 2020, the pool of 370 Level 8 HSAs and the potential reduction of around 48 FTE was announced.
36. On 9 September 2020 at the third consultation meeting, the proposed selection criteria were discussed and they included the key behavioural capabilities to be applied to all at risk, depending on seniority.
37. On 16 September 2020 at the fourth consultation meeting proposed criteria for technical capabilities were discussed and feedback on the criteria was invited by 22 September 2020. No issues were raised by trade union or employee representatives concerning the selection approach or criteria for the HSA L8 pool.
38. Throughout the consultation process the Unions and employee representatives were encouraged to submit questions and feedback by uploading these to a central intranet site and answers were published on a central FAQs document. The consultation documentation was made available to employees to view on the 'Reimagine British Gas Collective Consultation' intranet Sharepoint site and after each collective consultation meeting, information from the meeting was emailed to affected employees including the claimant.
39. As well as the consultation meetings there were weekly Town Halls held on Teams to which affected employees, including the claimant, and their representatives were invited. The meetings were also recorded and uploaded to the SharePoint site for anyone who was unable to attend the meetings.
40. An Expression Of Interest ("EOI") process for voluntary redundancies was carried out to try and reduce the number of compulsory redundancies. Employees at risk of redundancy were awarded redeployee status which gave them priority consideration for suitable vacancies over a non-redeployee.
41. At the eighth collective consultation meeting, it was confirmed that 47 requests for voluntary redundancy had been accepted against a reduction of 48 full time equivalent ("FTE") roles which were required in the L8 pool.
42. At the ninth collective consultation meeting it was agreed that a call would be arranged to clarify the headcount against the FTE role reduction required, as well as the position on acceptance of applications for voluntary redundancy.
43. No proposals for mitigation of redundancies in the HSA pool were made by the unions or employee representatives during the consultation process.
44. Whilst the claimant was not directly involved in the collective consultation process, it is clear he received the initial email, dated 19 August 2020, announcing redundancies and he was aware from at the latest early September 2020 that his role was at risk of redundancy. All the information disseminated to the Unions and affected employees was made available to the claimant.

Selection process – pooling, criteria, mapping

45. The HSA Level 8 teams were divided by region. As part of the HSA restructure, the respondent re-categorised 35 regions into 19 regions, taking account of the varying demands for work in different regions.

46. The claimant was in the pool for regions 10 and 11 which were combined for pooling on the basis that due to their size and proximity, employees could work across both regions.
47. In September 2020 the respondent invited affected employees to apply for voluntary redundancy but there were still reductions required. The respondent therefore carried out a mapping exercise to establish where role reductions were still required and this exercise identified surplus HSA resource in four regions which were then discussed with the unions including the claimant's union, the GMB.
48. It was queried whether those at risk could be retained by moving regions and trading roles with people who had applied for voluntary redundancy.
49. Ms McCarthy confirms that reasonable travel distance between regions had been considered as a potential way to mitigate redundancies and that one hour was used as a general indication. If an individual wished to be reconsidered for relocation, they were able to raise this during the individual consultation process.
50. Mr Phill Cox considered this and as is clear from his email dated 6 November 2020, he concluded that based on travelling distances and proximities, that this was not feasible way to mitigate redundancies. It was not an option available to the claimant.
51. Mr Cox notes in his email of 6 November 2020 that for five of the eight people at risk of compulsory redundancy there was nobody within the relevant radius who had had an EOI rejected. In the main bundle of evidence is a map showing the claimant's home location and a 30 mile reasonable travelling distance marked out. The key on the map confirms that there was no employee within that area who had had an EOI declined; accordingly there was no opportunity available to move the claimant in his or a neighbouring area.
52. Following the mapping exercise, managers completed the desktop exercise for all HSA's to ensure assessment data was available for all teams.
53. Mr Davies, the claimant's line manager, carried out the desktop selection exercise for the claimant in October 2020.
54. The selection pool criteria were agreed in consultation with the Unions and employee representatives and all employees had access to the selection matrix.
55. The desktop scoring exercise criteria were communicated in the collective consultation process and in written communications to employees as well as being available on the SharePoint site.
56. The claimant alleges that the QVB or NPS scores should have been used in the selection criteria. He did not raise this directly or via his union in the consultation process. Louise McCarthy explained in evidence that the unions did not wish those scores to be used as specific criterium as the data was not sufficiently robust. I accept her evidence on that.
57. The selection matrix was based on objective criteria, being technical competencies and behavioural competencies. The technical competencies for the HSA Team

were selected by Mr Phill Cox from the list of Centrica Technical competencies. The technical and behavioural competencies were broken down in to specific criterion as follows:

61.1 Technical competencies: (i) customer acumen, (ii) performance management and (iii) selling;

61.2 Behavioural competencies: (i) demonstrates autonomy, (ii) demonstrates resilience, (iii) builds collaborative relationships, (iv) makes sound decisions and (v) customer focus and obsession.

58. The managers carrying out the scoring exercise were given compulsory training and guidance on how to do so objectively and fairly. They were provided with technical and capability frameworks, a detailed overview document, detailed scoring guidance, diversity and inclusion information and the desktop scoring template which contained further guidance on completing the scoring exercise. The managers carrying out the scoring exercise were instructed to provide clear, specific and robust examples to support their scoring and were advised that each scoring evaluation should take approximately 30 to 45 minutes.
59. In the scoring exercise, employees in L8 roles were weighted 50% for each area of competency. Managers were advised when scoring to focus on recent examples within the last 12-18 months but it was open them to consider a longer period if that was appropriate for a particular employee, for example, maternity leave affecting the period which could be considered. In considering the period from which to gather relevant evidence for the scoring exercise, managers were advised to apply the guidelines in a fair and reasonable way.
60. The claimant alleges the scoring was inconsistent and subjective. I accept Ms McCarthy's evidence that whilst there would naturally be an element of subjectivity in the scoring particularly when considering the Behavioural competencies, training was given to the scoring managers to ensure that their assessment was evidence based and completed in accordance with the guidance to ensure fairness and consistency.

Calibration exercise – L8 HSA Pool

61. The calibration process had two stages, regional and national.
62. The calibration process for L8 HSA pool was led by Phill Cox with HR support provided by Louise Mc Carthy.
63. The HR team provided the manager of each region with a calibration pack which included a list of scores for each region with a breakdown of the scores for each competency.
64. After the regional exercise Mr Cox and Ms McCarthy carried out the national calibration exercise on 15 October 2020, to consider all scoring for all regions and

to ensure consistency across all areas in the UK. As Ms McCarthy's evidence confirms, they tested scoring, including by discussing benchmarks and examples of "good" and "excellent" and any outliers to ensure consistency.

65. I accept Ms McCarthy's evidence that in relation to L8 HSA Pool she was not aware of any issues which may have impacted on the fairness of the scoring for that pool or any issues which suggested the claimant's role being at risk was predetermined prior to the redundancy process taking place.
66. Mr Cox on doing the calibration exercise considered that the scores awarded for the claimant by Mr Davies were fair and consistent. Mr Cox's evidence, which I accept, is that whilst managers such as him and Mr Davies were carrying out these exercises, they were also at risk of redundancy themselves and therefore fully understood the importance of what was at stake for their colleagues. He spoke to Mr Davies at the time and says he is confident Mr Davies undertook the scoring exercise for the claimant fairly.
67. The appeal manager, Daniel Barr, reviewed the scores awarded to the Claimant and his colleagues; he concluded that the scoring process was fair and consistent.
68. Following the calibration exercise the claimant's score remained the lowest and therefore he was notified his role was at risk of redundancy. He was given the selection form containing all his scores to review. The overall score awarded to the claimant for behavioural competencies was the lowest in the pool. I find that Mr Davies, as the claimant's line manager and was well placed to assess the claimant's competencies. Mr Davies in the selection form set out the evidence he relied upon to support the scores he awarded.

Individual consultations and alternative employment

69. The respondent sought to avoid compulsory redundancies by inviting EOIs for voluntary redundancy. An 85% reduction of roles was achieved through the EOI process. This left 8 roles at risk of compulsory redundancy in the HSA pool.
70. At a 'Deep Dive' session for HSAs in October 2020, the business clarified that it was seeking to make 49.8 FTE HSA L8 roles redundant.
71. A detailed individual consultation process then took place with affected employees.
72. By letter dated 23 October 2020 the claimant was notified his role was at risk of redundancy and he was invited to an individual consultation meeting on 28 October 2020. He attended that meeting along with his union representative, Mr Stewart Taylor. The claimant confirmed he was not challenging the points raised in the evaluation form so it was not necessary to go through the examples in the form during the meeting. It was confirmed to the claimant at that meeting that there were 11 in the pool of HSAs and that the scoring range was from 11 to 20.5. Neither the claimant nor Mr Taylor raised any issue during the meeting about the criteria used or the ratings applied. The claimant did not challenge the fact that it was Mr Davies alone carrying out the scoring exercise.

73. The claimant then scored himself awarding himself a higher score than he had received.
74. On 30 October 2020 the claimant was invited to a second individual consultation meeting and that took place on 10 November 2020 and was adjourned to 17 November 2020. The claimant attended with his union representative, Stewart Taylor. The notes confirm the information shared with the claimant and his representative prior to the meeting including the slide pack for details on the process and numbers at risk. The claimant's pool was clarified and issues were discussed regarding travel and geography. The meeting notes confirm the claimant did not state he would definitely relocate, that was raised by him as a possibility only and it was confirmed to him in response that he would need to show a real intention to move home and relocate to a new geographical region should there be a vacancy. There was ultimately no relocation option available: a reduction in numbers was needed and relocation would not have achieved that reduction. At this meeting Mr Davies discussed the scores the claimant had given himself and following the meeting by email dated 19 November 2020, Mr Davies provided a written response in respect of each criterion to assist the Claimant in understanding why he had reached the score that he had. Mr Davies confirmed that after further consideration, he would not amend the original scores he had awarded. He said he believed them to be fair, accurate and consistent in the same way he had marked all the HSAs within the process.
75. The third consultation meeting took place on 27 November 2020. The claimant confirmed he had read and understood the notes of the second consultation meeting and the reflections of Mr Davies regarding his original scores. The claimant's questions regarding the pool and desktop exercise were discussed.
76. In relation to alternative employment, there were around 106 new roles that all employees could apply to, whether or not they were impacted by the proposed redundancies, although those at risk had preferential status. These roles were signposted and shared through regular communications on Workday, the employee portal. Redeployment was addressed with the claimant at his first individual consultation meeting. Mr Davies discussed with him a new sales agent job role and confirmed he would share details following the meeting. The claimant was also informed about the options available to him to find support and look at vacancies. The claimant did not ask for any further details about the sales agent role. Redeployment was raised again by Mr Davies at the second consultation meeting but the claimant did not wish to discuss it further. Mr Davies during the individual consultation process explained to the claimant they would keep him informed about any roles and encouraged the claimant to continue looking himself at possible roles.
77. Redeployment was again discussed at the third consultation meeting and the claimant confirmed he had not given any more thought to the sales agent role and there was nothing on Workday which interested him. As the consultation process

had concluded and the claimant had not secured redeployment, his redundancy was confirmed and notice was given for 2 December 2020 with the claimant's leaving date confirmed as 4 December 2020.

Grievance/appeal

78. The claimant raised a grievance about his proposed redundancy on 10 November 2020 which stated:

    "I am lodging a grievance following the Centrica Group Policy 'Grievance Procedure' due to a 'reasonable belief' that Huw Davis has breached Centrica's Code of Conduct and failed to apply the Redundancy Individual Consultation process and selection criteria in a fair and objective manner and observe the general guidelines in the consultation procedure:"

79. On 24 November 2020, the respondent notified the claimant that the matters raised in the grievance should be dealt with in the consultation process and if the claimant was not satisfied with the outcome, he could raise issues via the appeals process where the matter would be heard by an independent manager.
80. The claimant was issued with notice of his redundancy on 2 December 2020 and his employment terminated on 4 December 2020. He appealed against his dismissal on 3 December 2020 and his appeal was sent to the Employee Relations Team on 4 December 2020. His appeal was dealt with by Mr Daniel Barr. Mr Barr was not part of the claimant's team and was an independent manager carrying out the appeal.
81. With regard to the grievance raised by the claimant, the issues were dealt with in the appeal process conducted by Mr Barr.
82. By letter dated 6 January 2021 the claimant was invited to an appeal meeting on 8 January 2021 and the letter summarised the appeal issues the claimant had raised as follows:

    "Centrica failed to apply due diligence in the collective consultation nor utilised options available to them, that could have avoided compulsory redundancies;

    Centrica failed to identify a fair selection process and the application of the process resulted in subjective rather than objective criteria being used;

    The desktop exercise completed on him by the consultation manager was inconsistent, subjective and lacked detail and was not consistent with any known data that his manager had access to

    The consultation manager adopted a 'close minded' approach to the consultation which suggested pre-determination;

    The consultation manager failed to follow a process with any consideration of his challenges nor responded to the feedback given; and,

Centrica and the consultation manager failed to effectively explore alternative jobs or give sufficient details in relation to the same."

83. The claimant attended the appeal meeting on 8 January 2021 with his union representative, Mr Stewart Taylor.
84. In the appeal meeting Mr Barr asked if there were any further issues or evidence to be added in the appeal and the claimant and Mr Taylor confirmed there was nothing to be added. They did not ask Mr Barr to speak to any particular individuals as part of his investigations in the appeal process.
85. Mr Barr consulted with an ER manager, Mandy Ubhi, about the further enquiries he may need to undertake. He obtained a copy of the claimant's individual scoring and spoke to Mr Davies and Mr Phill Cox.
86. Having considered the evidence obtained during his investigations, Mr Barr wrote to the claimant on 1 February 2021 to confirm his decision was to uphold the decision to dismiss the claimant by reason of redundancy. He dismissed each of the matters raised by the claimant in the appeal and fully set out the reasons for his decision on each appeal point.
87. I find that the appeal process was thoroughly and fairly conducted by Mr Barr.

Relevant law – unfair dismissal

88. Section 94 of the Employment Rights Act 1996 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 he was dismissed by the respondent under section 95. In this case the respondent admits that it dismissed the claimant on 4 December 2020.
89. Section 98 of the 1996 Act deals with the fairness of dismissals. Firstly, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Secondly, 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.
90. 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.
91. When section 98 refers to redundancy it is defined in section 139 ERA 1996. When considering redundancy under section 139(1)(b) ERA 1996, the starting point is the requirements of the business. A tribunal will not look behind the employer's decision or require it to justify how or why the diminished requirement has arisen, provided it is

genuinely the reason for the dismissal: Moon v Homeworthy Furniture [1976] IRLR 298.

92. The leading case on establishing whether an employee has been dismissed by reason of redundancy is the EAT decision in Safeway Stores plc v Burrell [1997] IRLR 200, which was approved by the House of Lords in Murray and another v Foyle Meats Ltd (Northern Ireland) [1999] IRLR 562. In Safeway, the EAT formulated a three-stage test for applying section 139 of ERA 1996:
93. Was the employee dismissed?
94. If so, had the requirements of the business for employees to carry out work of a particular kind ceased or diminished (or did one of the other economic states of affairs in section 139(1) of ERA 1996 exist)?
95. If so, was the dismissal of the employee caused wholly or mainly by the state of affairs identified at stage 2 above?

Only if the answer at all three stages is "yes" will there be a redundancy dismissal.

96. Redundancy is a potentially fair reason for dismissal (section 98(2) ERA).
97. An employer must act reasonably in treating that reason as sufficient to justify dismissing the employee (section 98(4), ERA 1996).
98. In considering the reasonableness of an employer's decision to dismiss, a tribunal should not impose their own standards and decide whether had they been the employer, they would have acted differently. They must ask whether the employer's decision to dismiss the employee by reason of redundancy fell within the band of reasonable responses: Williams v Compair Maxam Ltd [1982] IRLR 83.
99. The leading case on reasonableness in relation to redundancy is Polkey, in which the House of Lords held that the employer will normally not act reasonably unless it: (i) warns and consults employees, or their representatives, about the proposed redundancy; (ii) adopts a fair basis on which to select for redundancy; and (iii) considers suitable alternative employment within its organisation.
100. The extent to which an employer is obliged to consult both collectively, under s.188 of the Trade Union and Labour Relations (Consolidation) Act 1992, and individually will depend on the facts. Collective consultation does not eliminate the need to consult with individual employees but it may, depending on the circumstances, make the employer's obligation less onerous in this regard: see e.g. Mugford v Midland Bank Plc UKEAT/760/96.
101. Regarding consultation, as was stated in R v British Coal Corporation and Secretary of State for Trade and Industry, ex parte Price [1994] IRLR 72:

> "It is axiomatic that the process of consultation is not one in which the consultor is obliged to adopt any or all of the views expressed by the person or body whom he is consulting ... Fair consultation involves giving the body consulted a fair and proper opportunity to understand fully the matters about which it is being consulted, and to express its views on those subjects, with the consultor thereafter considering those views properly and genuinely. " (at paragraphs 24-25.)

102. In order to be reasonable, the redundancy selection criteria should, as far as possible, be objective and measurable. It is legitimate for an employer to attach weightings to the criteria, reflecting their relevant importance. Selection criteria which involve a degree of judgment may be appropriate, provided they can be applied in an objective manner: Mitchells of Lancaster (Brewer) Ltd v Tattersall UKEAT/0605/11; Swinburne & Jackson LLP v Simpson UKEAT/0551/12. Selection criteria are not limited to "those which can be the subject of box-ticking exercises": Nicholls v Rockwell Automation Ltd UKEAT/0540/11.
103. Tribunals should not generally get involved with the minutiae of how individual scores are arrived at: British Aerospace Plc v Green and others [1995] IRLR 433; Bascetta v Santander [2010] EWCA Civ 351. Unless there are exceptional circumstances, "close scrutiny is inappropriate" in respect of marking and scores: Dabson v Cover & Sons Ltd UKEAT/0374/10. The Court of Session rejected the notion that employers are obliged to call direct evidence from managers who arrived at individual scores, holding that it was sufficient to rely upon the evidence of a senior manager who had no reason to doubt the accuracy of assessments made by others: Buchanan v Tilcon Ltd [1993] IRLR 417.
104. Generally, individual scores should be shared with employees so they have a means of challenging the scores if they wish to do so: see e.g. Alstom Traction Ltd v Birkenhead and others UKEAT/1131/00; Davies v Farnborough College of Technology UKEAT/0137/07.
105. An employer must make reasonable efforts in respect of searching for alternative employment: Quinton Hazell Ltd v WC Earl [1976] IRLR 296. Such efforts should continue until the date on which an employee's dismissal takes effect, rather than when notice of termination is given: Stacey v Babcock Power Limited (Construction Division) [1986] IRLR 3.
106. Employers should provide employees with sufficient information about any vacancies so that they are able to take an informed view as to whether the position is suitable for them (Modern Injection Moulds Ltd v Price [1976] IRLR 172).

Submissions

107. The claimant submits his dismissal and the outcome of the redundancy process for him was predetermined because of the poor relationship he had with his manager, Mr Davies. He submits the mapping exercise was carried out incorrectly and the scoring exercise was simply a box ticking exercise and that Mr Davies did not apply the selection criteria in accordance with the instructions and guidance given to him but carried it out subjectively. The claimant submits the respondent did not deal with his queries and the issues he raised during the consultation process. The claimant submits the appeal process was unfair and was not thorough.
108. The respondent submits the claimant was dismissed for redundancy or some other substantial reason, namely business reorganisation. The respondent submits on the basis the reason was redundancy they carried out a reasonable consultation with the Claimant about the proposed redundancy, the selection process was reasonable and the

respondent acted reasonably in looking for alternative employment for the Claimant. The respondent submits If the Tribunal finds that the reason for dismissal was some other substantial reason, they had a sound business reason to dismiss the Claimant and reasonable process was followed in effecting the dismissal.

Discussion and conclusions

Reason for dismissal

109. It is agreed that the claimant was dismissed on 4 December 2020. I find that the claimant was dismissed by reason of redundancy which is a potentially fair reason for dismissal under section 98(2).

110. The reason for the proposed redundancies was that Centrica plc, which is the parent company of the respondent, launched a project to simplify its leadership team and streamline its business having identified that the respondent's customer numbers had declined and earnings consequently reduced. As a result, a compulsory redundancy programme was announced in June 2020 with up to 1,566 potential redundancies anticipated, the number was subsequently confirmed as 1,663 redundancies. There was a reduced requirement for the respondent's employees across their workforce to carry out work, including in the Sales and Marketing division, and the business needed to streamline to return to growth.

111. There was a proposed 9% reduction in the Level 8 HSA Group roles, the claimant being in that group. This involved an anticipated potential reduction of around 48 FTE. An 85% reduction of roles was achieved through the EOI process. This left 8 roles at risk of compulsory redundancy in the HSA pool. At a ‘Deep Dive’ session for HSAs in October 2020, the business clarified that it was seeking to make 49.8 FTE HSA L8 roles redundant. There was a clear reduction in the number of employees.

112. The claimant’s line manager was Mr Huw Davies. The claimant alleges that his dismissal was pre-determined and Mr Davies subjectively applied the scoring criteria for him in the redundancy process because they had a poor personal relationship and Mr Davies was seeking to manage the claimant out of the business. The claimant alleges he was bullied by Mr Davies and Mr Cox. The claimant says that in early 2018 his relationship with Mr Davies and Mr Cox had broken down. I do not accept that it had based on the evidence in the documents which show that extensive efforts were made to help and support the claimant and not to bully him or treat him unfairly. The claimant did not raise a complaint or grievance in 2018 against either of Mr Davies or Mr Cox and did not request a new manager. The 1-2-1 forms do not show any evidence of a bullying campaign and show that Mr Davies was seeking to be constructive and supportive to the claimant. I accept the clear and consistent evidence of Mr Phill Cox, that there was no relationship issue between him and the claimant and he was not aware of any relationship issue between Mr Davies and the claimant. I find there was no predetermined decision by the respondent to dismiss the claimant in any event.

113. In all the circumstances I find that the reason for the claimant's dismissal was redundancy.

Fairness of dismissal process

114. The respondent consulted on the proposed redundancies through an extensive and thorough collective consultation process over a period of more than three months. During the collective consultation meetings, the respondent provided information about the impacted business areas and the reasons for the redundancy situation, the proposals, the potential impact on employees including numbers affected, the proposed selection criteria and approach and the arrangements for redundancy and redeployment.

115. Whilst the claimant was not directly involved in the collective consultation process, it is clear he received the initial email, dated 19 August 2020, announcing redundancies and he was aware, from at the latest early September 2020, that his role was at risk of redundancy. The claimant accepts the business decision and the reasons given for the redundancy situation. Whilst he may not have directly accessed all the information disseminated to the Unions and affected employees, I am satisfied it was made available to him and that the respondent took all reasonable steps to keep affected employees, including the claimant, fully informed.

116. I do not accept the Claimant's allegation that there was no consultation in respect of the selection or scoring criteria. The selection criteria were discussed and agreed by the unions during the collective consultation process. The desktop scoring exercise criteria were communicated in the collective consultation process and in written communications to employees as well as being available on the SharePoint site. The claimant alleges that the QVB or NPS scores should have been used in the selection criteria. He did not raise this directly or via his union in the consultation process. I accept Louise McCarthy's evidence that the unions did not wish those scores to be used as specific criterium as the data was not sufficiently robust. I find that no issues were raised by trade union or employee representatives concerning the selection approach or criteria for the HSA L8 pool and that the respondent caried out reasonable consultation regarding the selection criteria.

117. I find that any feedback and responses during the consultation process were considered, including the issue of whether redundancies could be avoided by moving employees geographically. The claimant did not challenge Mr Phill Cox on his evidence regarding the travel decision and the location map which showed a 30 mile radius from the claimant's home address nor on the position that there were no EOIs in that area. It is clear that this was not an option available regarding the claimant and in any event the respondent still needed to reduce the number of employees and moving employees geographically would not have achieved that.

118. I find the scoring process was not vague nor purely subjective. Whilst inevitably there would have been a subjective element, I find that overall the scoring exercise was carried out objectively. The selection matrix was based on objective criteria, being technical competencies and behavioural competencies. Compulsory training and

guidance was given to managers for the scoring process. They were provided with technical and capability frameworks, a detailed overview document, detailed scoring guidance, diversity and inclusion information and the desktop scoring template which contained further guidance on completing the scoring exercise. The managers carrying out the scoring exercise were instructed to provide clear, specific and robust examples to support their scoring. They were to focus on the last 12-18 months for evidence when scoring but it was open to them to consider a longer period if that was appropriate for a particular employee,

119. Mr Davies, as the claimant's line manager was best placed to comment on the claimant's performance and behaviours during the scoring exercise and I find that he carried out the scoring exercise for the claimant in accordance with the guidance which was provided to ensure fairness and consistency.

120. The calibration process had two stages, regional and national. The calibration process for L8 HSA pool was led by Phill Cox with HR support provided by Louise McCarthy. I find that they carried out the calibration exercise objectively, thoroughly and fairly.

121. Three individual consultation meetings were held with the claimant: the first on 30 October 2020, the second on 10 and 17 November 2020 and the third on 27 November 2020. The claimant was accompanied at those meeting by his union representative, Mr Stewart Taylor. Neither the claimant nor Mr Taylor raised any issue about the criteria used or the ratings applied. At the first meeting, the claimant did not challenge the fact that it was Mr Davies alone carrying out the scoring exercise, although he had the opportunity to do so. The claimant had the opportunity to score himself and his scores were discussed during the second individua consultation meeting. The claimant's questions regarding the pool and desktop exercise were discussed. The issue he raised about geographical location was also discussed and responded to.

122. Redeployment was discussed with the claimant throughout the individual consultation process, with Mr Davies providing the claimant with information about a specific sales agent role, explaining to the claimant they would keep him informed about any roles and encouraging the claimant to continue looking himself at possible roles. Available roles were signposted and shared through regular communications on Workday, the employee portal. I find that the respondent acted reasonably in making the claimant aware of alternative employment and encouraging him to consider and apply for alternative roles. The claimant confirmed he was not interested in any of the roles available to him. The evidence is clear that the claimant had available to him full and proper information on which to make a decision about alternative roles offered. The respondent made reasonable efforts to provide alternative employment for the claimant throughout the consultation and notice period.

123. The claimant raised a grievance about his proposed redundancy on 10 November 2020. The claimant as advised his grievance should be dealt with in the consultation process and if he was not satisfied with the outcome, he could raise issues via the appeals process where the matter would be heard by an independent manager. The claimant's

appeal was deal with by an independent manager, Mr Daniel Barr. Mr Barr discussed issues with the individuals involved, including the claimant, Mr Cos and Mr Davies and he considered the available documents relevant to the appeal issues. I find that Mr Barr conducted the appeal thoroughly and fairly.

124. I conclude that the respondent consulted on the proposed redundancies by way of an extensive, thorough and fair consultation process.

Conclusions

125. The claimant was dismissed by reason of redundancy. The respondent's decision to dismiss the Claimant fell within the band of reasonable responses available to it. The respondent made a considered decision in relation to the proposed redundancies. They carried out a thorough collective and individual consultation process; they considered carefully and responded to representations made by affected employees and the unions throughout that process. The respondent took reasonable steps to keep the claimant in employment. The evidence clearly shows the respondent acted reasonably throughout.

126. I find therefore that the claimant was fairly dismissed.

Employment Judge Fearon

Date: 12 August 2023

Judgment sent to the parties on

21 August 2023

For the tribunal Office