



EMPLOYMENT TRIBUNALS

Claimants: Dr D Harvie (1)
Dr G Lightfoot (2)
Professor S Lilley (3)

Respondent: University of Leicester

Heard at: Leicester Employment Tribunal

On: 29, 30, 31 January 2024, 1, 2, 5 February 2024 and 6 February in Chambers

Before: Employment Judge Welch (sitting alone)

REPRESENTATION:

First and Third Claimants: Mr A Ohringer, Counsel
Second Claimant: In person
Respondent: Miss S Cowen, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

Unfair Dismissal

1. The complaints of unfair dismissal are well-founded. The claimants were unfairly dismissed.
2. The first and third claimants' claims of automatic unfair dismissal on grounds related to union membership or activities is dismissed upon withdrawal.
3. The claimants' claims of a breach of the right to academic freedom are dismissed upon withdrawal.
4. A remedy hearing will take place at Leicester Employment Tribunal on 19 and 20 June 2024.

RESERVED REASONS

Background

1. The claimants were all employed in the Business School of the respondent, until their dismissal.
2. The claimants all brought claims of unfair dismissal and breach of academic freedom. The first and third claimants also brought claims of automatic unfair dismissal on grounds related to trade union activities. Prior to the start of the final hearing, all claimants withdrew their claims of breach of academic freedom and the first and third claimants withdrew their claims of automatic unfair dismissal. These claims were therefore dismissed upon withdrawal. This meant that the only claim proceeding to a final hearing was unfair dismissal, a claim being brought by all three claimants.
3. A preliminary hearing for case management purposes had taken place on 30 August 2022 before Employment Judge M Butler.
4. The claimants had previously all been represented by the same representative. However, prior to the final hearing, it was confirmed that the second claimant would be representing himself at the hearing.

The proceedings

5. The first day of the hearing was a reading day and the parties did not attend the Tribunal. I heard evidence on days 2 to 5 of the hearing, with submissions being heard at the start of day 6. I reserved my judgment.
6. There were agreed bundles of documents running to over 1,300 pages. Additionally, further documents were added to the bundles with no objection from the other parties. References to page numbers within this judgment refer to pages within those bundles.

7. I heard evidence on behalf of the respondent from:
 - a. Professor H O'Connor, Provost and Deputy Vice Chancellor;
 - b. Ms N Bradley, HR Business Partner;
 - c. Professor D Ladley, Dean of the University of Leicester Business School;
 - d. Professor R Thomas, Professor of Archaeology;
 - e. Professor P Baines, Deputy Dean (Strategic Projects) in the University of Leicester School of Business; and
 - f. Mr G Dixon, Chair of the respondent's Governing Body (Council).
8. On behalf of the claimants, I heard evidence from:
 - a. Professor Lilley, the first claimant;
 - b. Dr D Harvie, the third claimant; and
 - c. Dr G Lightfoot, the second claimant.
9. All of the witnesses had prepared written witness statements. Professor Ladley had also prepared a supplemental statement and leave was given for this to be adduced in evidence, there being no objection from the claimants. All of the witnesses attended the Tribunal to give sworn evidence, which was tested by cross examination and questions from myself.
10. The claimants provided a further statement for Mr B Banerjee, but as he did not attend the Tribunal to give sworn evidence, I attached such weight to this statement as I considered appropriate.

List of Issues

11. The parties had agreed a list of issues for the unfair dismissal claims, as follows:

Unfair dismissal – s 98 ERA 1996

12. What was the reason or principal reason for dismissal?

13. If the reason was redundancy, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant. The Tribunal will usually decide, in particular, whether:
- a. the respondent adequately warned and consulted the claimants;
 - b. the respondent adopted a reasonable selection decision, including its approach to a selection pool;
 - c. the respondent took reasonable steps to find the claimants suitable alternative employment;
 - d. dismissal is within the range of reasonable responses.

Remedy

14. If the claims, or any of them, succeed, what compensation is it just and equitable for the Tribunal to award to that claimant in all the circumstances?
15. The parties had also helpfully prepared an agreed chronology and an agreed cast list, which were provided at the start of the hearing.

Findings of Fact

16. The first claimant had been employed by the respondent from 23 September 2005. At all relevant times, he was employed as Associate Professor in the University of Leicester School of Business ('ULSB').
17. The second claimant had been employed by the respondent from 1 September 2004, initially as a senior lecturer within the respondent's then Management Centre. At all relevant times, following a change of job titles from Senior Lecturers to Associate Professors, the claimant's job title was Associate Professor in Entrepreneurship and Accounting. I accept the second claimant's evidence that whilst he chose his own job title, this was approved by his line managers.

18. The third claimant had been employed by the respondent since 1 September 2003 as Professor in ULSB.
19. All of the claimants were employed under a teaching and research contract, such that they provided teaching to students studying at ULSB and, prior to COVID-19, carried out research for 40% of their working time. However, this was temporarily reduced to 20% for all academic staff within ULSB from 2020 until after the claimants' employment ended on 11 August 2021.
20. The respondent's policies and procedures are contained within its ordinances. These provide a redundancy policy [P127 - 136] and a redundancy procedure [P137 – 162]. Relevant extracts from the ordinances provide as follows:
Redundancy policy.

“4.3 Where it becomes necessary to reduce staff numbers, whether for economic or other reasons, it is the [respondent's] policy to try to minimise the effect on those concerned. In addition, clear explanations will be given to staff of any changes and full consultation will take place with all relevant parties.”

“9.1 A redundancy pool is a group of posts under potential threat of redundancy. These are the posts that will then be subject to a selection process for redundancy....

9.3. The pool will vary from situation to situation depending on the extent to which there are other staff/roles undertaking the same or similar work and the extent to which these roles can be deemed interchangeable...

11. Collective consultation

11.4. The [respondent] is legally required to disclose the following information during collective consultation with trade unions or elected representatives:

- *the reason for the proposed redundancies (for example, the expiry of fixed term contracts or closure of a department):*
- *the numbers, and descriptions of members of staff whom it is proposed to dismiss as redundant;*
- *the total number of members of staff of any such description employed by the [respondent] and the distribution of such staff within the [respondent];*
- *the proposed selection and assessment criteria (where possible) and details of when assessments will take place;*
- *the proposed method for implementing the dismissals, including relevant timescales (where possible).*
- *The method of calculating severances and redundancy payments.”*

“13 Selection Method.

13.1 The selection method used to identify members of staff at risk of redundancy will be fair, objective, consistent and transparent....

13.3 Selection method used may focus on:

- *skills and experience relevant to the [respondent’s] current and future requirements; and*
- *qualifications relevant to the [respondent’s] current and future requirements.*

13.4 Objective records may be used as part of the selection method, where appropriate.”

Redundancy procedure

“Procedure B: Multiple Redundancies (More than one post in a redundancy pool) [P147 – 158]

“3.3 Where it is proposed that multiple redundancies are likely to go ahead, HR will contact the Trade Unions, verbally, to give them advance warning of

the redundancy initiative. The discussion will be on a strictly reserved and confidential basis.

Applying the Selection Method (Multiple Redundancies)

7.9 After the meeting, the manager will consider any suggestions in relation to the method of selection, altering it accordingly, where possible.

7.10 The manager will then begin the proposed method of selection for all of the posts/staff in the Redundancy Pool in order to determine the subset of posts/staff within the Redundancy Pool to be provisionally selected for redundancy.”

21. ULSB is one of the schools within the College of Social Sciences, Arts and Humanities. Professor O'Connor was Head of this College and therefore had oversight of the financial performance, staffing and student numbers within ULSB. All of the claimants worked within ULSB.
22. Since 2020, ULSB comprised of two departments and two divisions: The Department of Economics, Finance and Accounting, the Department of Marketing, Innovation, Strategy and Operations, the Division of Work and Employment and the Division of Management and Organisation.
23. Towards the end of 2019, Professor O'Connor provided a report to the Vice Chancellor on the strengths and weaknesses of each school within the College of Social Sciences, Arts and Humanities. The Vice Chancellor visited ULSB around this time.
24. In the summer of 2020, the respondent's President and Vice Chancellor undertook a strategic review of the respondent's activities, called "*Shaping for Excellence*". This was carried out across the entirety of the respondent's organisation, including ULSB.

25. It was felt that ULSB was losing market share as its student recruitment was not as good as other competing business schools. It was therefore identified that ULSB should enter a process of pre-change engagement to shift its strategic focus to become a credible challenge to other business schools.
26. On 13 October 2020, Professor O'Connor emailed the staff in ULSB to announce that a pre-change engagement process was to be carried out [P192]. The email explained that this was being undertaken to ensure that the future direction of ULSB aligned with the future vision for the respondent and invited staff to "*contribute to developing the future direction of the School of Business for the [respondent].*" This email confirmed that a formal redundancy procedure may result from this process. A number of engagement sessions to be held by Teams were arranged with all departments/divisions in ULSB, save for the Department of Economics, Finance and Accounting.
27. Shortly after Professor O'Connor's email, the Vice Chancellor sent an email to all staff announcing the Shaping for Excellence programme [P201 – 203]. This identified five impacted academic areas together with several support services departments that were also impacted.
28. Pre-change engagement meetings commenced in ULSB on 22 October 2020. [P193/207]. These were held by Teams due to the Covid 19 pandemic. The Dean and Deputy Dean of ULSB, Professors Devlin and Ladley, held the pre-change engagement sessions which were said to present insight into the challenges for the School and to seek feedback on the changes needed to meet those challenges.
29. The presentation given at the pre-change engagement sessions [P 207 – 216] set out the respondent's strategic ambition, "*To be a top 25 Business School in all*

areas of activity [in] the UK and to be competitive at a global level". It also stated that its future research-led scholarship and learning needed to "*enable [the respondent] to deliver the skills and knowledge that students will require now and in the future*".

30. Staff were given until 6 November 2020 to feedback on the pre-change engagement exercise. A confidential survey was sent to all staff within ULSB, asking a number of questions including what they felt were the strengths and weaknesses of the School, and how the research aligned with the knowledge and competencies required by students for the world of work.
31. Following these sessions and after the period for feedback had closed, a review was undertaken by the managers of ULSB.
32. It was decided that only staff within the Department of Marketing, Innovation, Strategy and Operations, the Division of Work and Employment and the Division of Management and Organisation would be screened to see whether the teaching and research staff within those areas, primarily focused their research on critical management studies and political economy ('CMS/PE').
33. In December 2020 and January 2021, Professors Devlin and Ladley carried out what the respondent termed a 'screening' process to identify the academic staff within the three departments/ divisions of ULSB whose primary research focus was considered to be CMS/PE. This screening did not include the Department of Economics, Finance and Accounting. Professor Ladley's evidence confirmed that it was clear to him that the research activity of the Teaching and Research staff in the Economics, Finance and Accounting department aligned with the proposed strategic focus for ULSB, and that no members within that department were

conducting research primarily in the areas of CMS/PE or in any other area that did not align with ULSB's proposed strategy.

34. No staff or Trade Unions were consulted over this screening process prior to it being utilised, nor over the decision to leave the Department of Economics, Finance and Accounting out of the screening process. Professor Devlin has since left the respondent's employment and did not attend to give evidence at the Tribunal. However, Professor Ladley gave oral evidence of how this screening process was carried out.
35. It was clear that Professors Devlin and Ladley were using what they referred to as a 'basket of indicators' to decide whether or not an individual's primary research focus was CMS/PE. However, at the time of carrying out this screening, the basket of indicators was not shared with the staff being screened and/or any Trade Unions.
36. The basket of indicators included publications, grant applications, self-declared affiliations, and content on the respondent's website. This appeared to be a list of what material was to be considered to decide whether someone's primary research focus was CMS/PE. The respondent intended to use the basket of indicators to identify staff who prima facie primarily researched in areas that were not aligned with the ULSB's future direction, namely CMS/PE.
37. I was referred to a matrix [P776 - 786] which was used by Professor Ladley to record the screening exercise for each individual being assessed. It was described as a 'living document' by Professor Ladley and it was clear that it had evolved over time, following the initial screening process carried out by himself and Professor Devlin. There were no earlier versions available, and no notes of

the initial screenings that had been carried out, other than what was contained within the final matrix within the bundle.

38. Whilst Professor Ladley gave evidence that the matrix was completed initially in December 2020/January 2021, it was not possible to see what screening was undertaken at that time, nor to understand what had been added in, or removed as part of the consultation or review process referred to below. Professor Ladley confirmed in cross examination that there were no notes of any of the discussions between himself and Professor Devlin when carrying out this initial screening exercise.
39. The matrix when initially drawn up [P776 – 788] did not have a right hand column confirming whether the individual was “*selected or not, with comments*”. This right-hand column of information containing the outcome of whether someone was selected or not was stated to have been inserted in February/March 2021, according to Professor Ladley’s evidence.
40. Those screened, who were found to be focused primarily on research in the areas of CMS/PE, were placed in the pool for redundancy. There was no further selection process carried out and the employees placed within the pool for redundancy would be made redundant unless, through consultation, they could convince the respondent that their primary focus for research was not in the areas of CMS/PE and was aligned with ULSB’s strategic focus.
41. A Case for Change document [P217 – 275] was prepared to rebalance ULSB’s research activity which specifically stated at paragraph 1.6:

“...our proposal to disinvest from research and scholarship in critical management studies and political economy (hereafter CMS/PE) to refocus

research within the School and introduce significant coverage of subjects currently substantially or completely neglected...

42. The Case for Change document confirmed that clusters based primarily in the Economics, Finance and Accounting department were “*chiefly informed by quantitatively orientated economics and finance: research that is aligned with School Strategic Priorities...*” Therefore, staff within the Economics, Finance and Accounting Department were not considered to be within the pool of staff at risk of redundancy, nor were they screened to see where their research priorities lay. The respondent’s evidence was that it was clear that these staff were researching in areas aligned with ULSB’s strategic priorities.
43. The Case for Change document included the respondent’s proposal, “*that the institution will no longer support research in the areas of CMS/PE.*” It went on to state,

“*...it is proposed that 16 staff (13.6 FTE) in the posts outlined below will be put at risk of redundancy. The scope of those at risk was determined by an initial screening exercise aimed to identify staff who prima-facie primarily research in areas highlighted above that are not aligned with the School’s future direction. Because this proposed reorganisation is driven by research alignment, only Teaching and Research Staff (there are no Research Focussed staff in this area) are in scope.*”
44. The Case for Change document went on to highlight that six new posts were to be created in areas currently under-represented in the School, focusing in the areas of quantitative and data analytics techniques and entrepreneurship. However, whilst those at risk of redundancy were eligible to apply for the new roles, the respondent considered it unlikely that they would be deemed suitable alternative

employment if an individual's research was confirmed through the consultation process as not being aligned to the future strategic direction of the ULSB. However, all claimants were given the opportunity to submit an expression of interest in the new alternative roles as part of the redundancy process.

45. It was confirmed that the 16 staff were to be placed at risk of redundancy at the start of consultation and that affected staff would be invited to consultation meetings.
46. Paragraph 4.1 of the Case for Change document stated:
"If the redundancy proposals in this case for change proceed, staff who are placed at risk would be made redundant, unless the consultation determines that their individual research aligns with the focus of the School going forward, or they are selected into new roles in the proposed structure or redeployed into other available roles in the [respondent]. Consequently, it would not be necessary to carry out a selection exercise to select at risk staff for dismissal on the grounds of redundancy."
47. The respondent's evidence was that there was no need to carry out a selection exercise since everyone within the pool would be made redundant unless the consultation identified that their research was aligned with the future direction of the School.
48. Following the initial screening exercise, 16 staff were placed at risk of redundancy, including the claimants. They were informed of this by the Case for Change document which was sent to staff on 18 January 2021 and by a letter sent to them on the same date [P283 – 286]. The letter invited the staff placed at risk of redundancy to their first group consultation meeting.

49. This meant that a number of academic staff working in ULSB, in addition to those working in the Economics, Finance and Accounting department, were not placed at risk of redundancy. They were left outside of the redundancy process. The respondent's case was that, following the screening exercise, these individuals were focused on research which was not primarily in CMS/PE or other areas not aligned with ULSB's strategy and was therefore aligned with the future research of the School. Professor Ladley's evidence was that it would not have been appropriate to put all ULSB staff at risk of redundancy and then conduct the same exercise as this would have caused unnecessary stress for staff, when there was sufficient knowledge of their research activity to be confident that they would not have been placed at risk of redundancy had they been included in the screening exercise.
50. There were references to different numbers of staff working in ULSB. In most of the witness statements, there was a reference to there being 66 Academic and Research staff within ULSB, but the matrix only showed information relating to 57. I am satisfied that all other Academic and Research staff within ULSB were not placed at risk of redundancy and only 16 were placed at risk following the initial screening.
51. Following on from staff being placed at risk of redundancy, consultation meetings were set up. This included collective consultation meetings with the Trade Unions, group consultation meetings with staff and individual consultation meetings with those at risk of redundancy.
52. It appeared to me that there was a programme of consultation, set up in accordance with the respondent's ordinances.

53. Collective consultation commenced with the Trade Unions at a meeting on 26 January 2021. The respondent's evidence was that no verbal discussion about redundancies had taken place with the Trade Unions prior to the first collective consultation meeting as the Unions were unable to confirm that those discussions would remain confidential.
54. On the same day, 26 January 2021, the first group consultation meeting was held with affected staff. The minutes for both the collective consultation and group consultation meetings were contained within the bundle [P319-324 and P325-331 respectively].
55. At the group consultation meeting, Professors O'Connor, Devlin and Ladley gave a presentation. The PowerPoint slides for the presentation [P292 – 318] referred at page 302 to the 'basket of indicators' which was referenced as, "*publications, grant applications, self-declared affiliations and content on the University website.*"
56. The staff were dissatisfied with the initial group consultation meeting, feeling that there was insufficient time for proper consultation to take place, since several individuals had questions which were unable to be answered in the allotted time. However, I was satisfied that the staff attended a further group consultation meeting and were prompted to send any questions/ queries or further information to the respondent throughout the consultation process. Answers were provided to the questions raised throughout the process, even if they were unable to be answered in the meetings themselves.
57. Also, on 26 January 2021, Professors O'Connor, Devlin and Ladley held a meeting with staff not directly affected by the proposed redundancies. The minutes for this meeting [P332 – 340] included Professor Devlin's response at page 336 which stated, "*I do not see a pathway for people currently involved being directly affected*

in any way.” This suggested that the respondent was only looking at the redundancies of staff who had been already selected within the pool and no further consideration would be undertaken for those not provisionally selected for redundancy. The implication being that these individuals were safe.

58. Several affected staff, including all three claimants, sent a letter to Professors Devlin and Ladley on 28 January 2021 [P346-7]. It complained, amongst other things, that the respondent had failed to fully disclose the criteria and process by which individual staff were selected for the redundancy pool and that the pre-selection carried out effectively determined whether or not members of staff would be made redundant. It went on to request the full criteria by which the selection was made.
59. The respondent responded by letter on 1 February 2021 [P360-361] which enclosed a document called, “*ULSB consultation: further information.*” This provided definitions for CMS/PE which the respondent said had been used in the screening exercise. There was much debate over whether these definitions were appropriate.
60. The further information document identified the basket of indicators used in the initial screening exercise as:
- *Known publications since 2014 (including: Journal of publication, Title of Article, Abstract, Content of article, Autobiographies including self-declared research interests);*
 - *Known grant applications since 2014;*
 - *Membership of research centres;*
 - *School websites (School staff websites; research centre websites).*

61. The respondent's evidence was that academic staff would be familiar with the items identified in the basket of indicators since these were regularly used in assessing staff's research for the Research Excellence Framework ('REF'). However, there was no further information about how this list of research was to be assessed.
62. A further letter was sent to the respondent from several individuals at risk of redundancy, including the three claimants, on 5 February 2021 [P 371 – 372]. This queried how the respondent had established primary focus of research and queried whether the basket of indicators had been weighted. Again, it was responded to by Professor Devlin [P373 – 4] although it appeared in the response that some of the questions were not answered. It did confirm that the respondent considered all publications contained within the respondent's Integrated Research Information System ('IRIS'). This is a record of the research that staff have had published. The individual staff member has the responsibility of keeping this up-to-date. It also confirmed that there was no weighting applied to the factors contained within the basket of indicators.
63. Individual consultation meetings commenced in ULSB on 15 February 2021; the first and third claimants' individual consultation meetings took place on 18 February 2021 and the second claimant's individual consultation meeting took place on 19 February 2021. The minutes for these meetings were again in the bundle [P394-403, P405-415, and P384-393].
64. I am satisfied that there was consultation relating to each of the claimant's individual redundancies, as evidenced by those minutes. The minutes which were provided to each of the claimants also provided information about the screening exercise and included information on what had been used during their own

screening exercise so that they could raise any further information they wished to be taken into account, or query any of the information already taken into account in the screening exercise. It was clear that the claimants provided information to the respondent about their own research.

65. Around this time, the claimants made complaints to the respondent concerning the alleged infringement of their academic freedom. As these were not relevant to this hearing, I make no further comment on them.
66. An additional collective consultation meeting with Trade Unions took place on 25 February 2021, following a request from the Unions [Minutes at P422-426]. In addition to providing feedback, the respondent confirmed that it had decided to establish a Review Group to consider all the individuals placed at risk of redundancy. This was not provided as part of the respondent's ordinances but was in response to some of the issues raised during the consultation process. At this meeting Professor Ladley was minuted as saying, "*The [respondent] adopted the particular definition [of CMS/PE] but this is part of the consultation and we are going to look at all the comments and feedback we have.*" There did not appear to be any further consideration of the definitions used despite this comment.
67. On 3 March 2021, the staff at risk of redundancy sent a further document entitled, "Collective statement and feedback on the consultation process at ULSB" [P450-9]. This raised various concerns over the process which had been adopted by the respondent and requested that the Case for Change be removed.
68. Staff were informed on 4 March 2021 that a further collective consultation meeting with the Trade Unions had been arranged for 17 March 2021 and the second group consultation meetings with affected staff were also set up for 16 and 17 March 2021.

69. Prior to the Review Group meeting, Professors Devlin and Ladley reviewed the cases of the staff who had been initially screened, but who were not placed at risk of redundancy. This was said to check whether any of them should have been placed at risk. No new staff were identified, and again, it was not possible to see from the matrix provided what new/ additional information (if any) had been considered.
70. On 5 March 2021, the Review Group met for the first time. This was made up of Professors O'Connor, Thomas (the College's Dean of Research), Baker (Head of the College of Life Sciences), Devlin and Ladley. Two representatives from HR were in attendance to support the group.
71. Terms of reference had previously been agreed for the Review Group [P500 - 503]. The Review Group's purpose was to scrutinise the information from the initial screening exercise and the information which had been received during the consultation process against the basket of indicators to decide whether each of the individuals at risk of redundancy should remain within the pool or whether they should be removed from it.
72. The term "primarily" was explained in the Terms of Reference as not being used as a quantifiable measure based on a specific proportion of "*outputs or grants, but as a descriptor to determine the more significant or principal focus of research activity in an individual's research profile.*" [P502]
73. Professor O'Connor's evidence was that the Review Group scrutinised the information from the individual screening exercise and the information provided by at-risk staff during the consultation process against the basket of indicators to decide whether the individuals should remain in the pool for redundancy.

74. Professor Ladley's evidence was that the Review Group assessed whether a reasonable person would consider that the individual was conducting research primarily in CMS/PE or in other areas not aligned with ULSB's strategic direction.
75. The Review Group only considered staff who were already within the pool for redundancy and did not consider the staff who were not in the pool, as they had already been de-selected either because they worked in the Economics, Finance and Accounting department or as a result of the initial screening by Professors Devlin and Ladley.
76. The Review Group considered each of the claimants as part of its review. Notes of the Review Group meetings on 5 and 8 March 2021 appeared in the bundle at pages 470 to 496. The same basket of indicators was used as Professors Ladley and Devlin had used in the initial screening. These discussions went into some detail over the research which had been reviewed for each individual within the pool, and/or any other information that the individuals had provided during their individual consultation meetings.
77. Each of the individuals in the selection pool was sent a letter following the Review Group meetings, which included the terms of reference for the group, the information that had been considered by the Review Group about the individual's research outputs and grant applications and a summary of the conclusions reached.
78. Following the Review Group, three academic staff members within the selection pool were removed from it and were therefore no longer at risk of redundancy. All others remained at risk, including all three claimants.
79. The three claimants were sent individual letters on 12 March 2021, which confirmed the outcome of the Review Group in their respective cases. The

decision of the Review Group was that their research was primarily focussed within the areas of CMS/PE and/or. in the case of the second claimant, was “*not aligned with School strategic priorities in the area of research*”. [P517 – 526, P507 - 516 and P497- 506 for the three claimants respectively.]

80. In respect of the second claimant, Dr Lightfoot, there was reference to there being “*some alignment with future strategic direction but [his] more recent work is in CMS/PE as per the definitions.*” Professor Ladley said that this was “*one isolated paper*” and the rest of his work did fall within areas which ULSB were disinvesting itself from. It was therefore still considered that he should remain in the selection pool although he would have an opportunity to express an interest in the new role of Associate Professor in Entrepreneurship, one of the six new roles created. The letter to the second claimant encouraged him to submit an expression of interest form for this role. The second claimant believed that the respondent was “*utterly unaware*” that he held the role of Associate Professor in Entrepreneurship and Accounting as set out in an email dated 24 March 2021 [P604-5]. He considered that the new role was in fact his own role and he should not have been placed at risk of redundancy.
81. I am satisfied that this was a new role and was not the same as the role carried out by the second claimant. In any event, despite not completing an expression of interest form, the second claimant was considered for the role and the additional information provided as part of the consultation process was accepted as his expression of interest for the role.
82. The second claimant was therefore invited to a meeting with Professor Baines, Professor Devlin and Tracey Dodman to consider whether his skills and experience matched the essential criteria for the new role. This took place on 15

April 2021. I am satisfied that there was a thorough assessment carried out by the panel and accept the evidence of Professor Baines that all three panel members considered that the second claimant did not satisfy the essential criteria for the new role. Whilst this was disputed by the second claimant, and the job titles of the roles suggested that the second claimant would be a good fit for the new role, I am satisfied that the panel genuinely believed that the second claimant failed to show *“a sustained record of publications at the highest international standard in international journals and with leading publishers in Entrepreneurship”* and had not demonstrated *“a track record of publications using a quantitative and statistical approach”*.

83. The second claimant disagrees with their assessment, but I am satisfied that he was genuinely considered for this role as an alternative to being made redundant and was unsuccessful.
84. None of the other claimants expressed any interest in the alternative roles being created, but I am satisfied that they were given the opportunity to do so.
85. Second group consultation meetings took place on 16 and 17 March 2021. The claimants attended one of these meetings.
86. On 16 April 2021, a Case for Change Counter Proposal was made. It proposed that staff going forward would commit to ending any provision of research within the areas of CMS/PE. They believed that this would avoid the need to make redundancies but would ensure that any future research aligned with ULSB’s new strategic direction.
87. This was ultimately rejected by the respondent on 10 May 2021 [P730-731]. The respondent did not consider this to be sufficient to avoid compulsory redundancies. It believed that the strategic priorities for ULSB were immediate as

there was an urgent need to have staff able to undertake research-led teaching in relevant areas. The respondent felt that it would take some months/years for academics to be able to realign their research focus and build up a body of work. Also, that the Counter Proposal lacked specificity as to how individuals might realign their own research areas.

88. A second individual consultation meeting was held with the three claimants on 21 April 2021. Advance notice of these meetings was provided. [Notes for these meetings were at pages 668-673, 659- 665 and 679-685 respectively].
89. At the second individual consultation meetings, the respondent confirmed that the claimants were provisionally selected for redundancy and remained at risk.
90. Further questions were raised by staff at risk of redundancy on 27 April 2021 which were responded to on 10 May 2021.
91. A letter giving notice of termination was sent to each of the claimants on 11 May 2021, which confirmed that their last day of employment would be 11 August 2021 [P749 - 751, 744 – 746 and 737 - 739 respectively]. The letters gave the right of appeal in accordance with the respondent's ordinances.
92. All of the claimants appealed against their redundancy on 25 May 2021. Their letters of appeal were lengthy and raised similar complaints about the process, save that the second claimant also complained that his role was continuing. [The first claimant's appeal from P866 – 899; the second claimant's appeal from P828-865 and the third claimant's appeal from P790-827].
93. Documents were prepared by the respondent called the "Management Response" to each of the appeals. These were prepared in July 2021 and appeared at pages P925-991, P992-1065 and P1066-1138 respectively.

94. Appeal panel hearings took place for the three claimants on 29 July 2021 [P1175-1198], 26 July 2021 [P1152-1172] and 30 July 2021 [1175-1198] respectively. The panel were chaired by Mr Gary Dixon, Chair of the respondent's Council and there were two other Senate panel members. At the appeal hearings, Professors O'Connor and Devlin presented a response to the appeals. The panel had already been provided with grounds for appeal and a redundancy pack, including the Case for Change document, notes of consultation meetings, correspondence during the consultation process and the Management Response.
95. Some alleged conflicts of interest were raised by the claimants, but the panels considering the appeals were not altered.
96. Mr Dixon's evidence was that the panel were not there to review the substance of the decisions made by those considering where the research focus lay, but rather to look at process followed and confirm whether the decisions reached were reasonable.
97. All of the claimants appeals were not upheld and they were made redundant with effect from 11 August 2021.

Submissions

98. All parties provided me with written submissions/skeleton arguments, which were read before they were given the opportunity to expand upon them orally.

The respondent's submissions

99. In brief, the respondent's submissions were that the Tribunal must not substitute its views for those of respondent. Rather, it was to consider whether a reasonable process had been followed, which the respondent contended had been, including consultation of over 90 days. Also, whether dismissal was within the band of

reasonable responses. The respondent had followed its ordinances and had even set up a Review Group as an additional stage not provided for by the ordinances.

100. The question of how a pool should be defined is primarily a matter for the employer to determine and is difficult to challenge where the employer has genuinely applied its mind to the issue. There was nothing in the ordinances prior to the identification of the pool and therefore it was reasonable for the respondent to draw up pooling criteria, which allowed all staff in ULSB (save for those in the Economics, Finance and Accounting department) to be considered in light of the proposal to disinvest in particular research areas.
101. The screening basket of indicators had not changed throughout the process and neither had the definitions of CMS/PE. The claimant's assertion that the definitions were changed during the process was not supported by evidence. Nor was it an impressionistic pre-selection procedure as suggested by the claimants.
102. There was no law which dictated that redundancy can only apply if a majority (or other percentage) of an employee's work is ceasing.
103. In conclusion, the screening was carried out reasonably using a basket of indicators as a reasonable tool to do so. In response to feedback, a Review Group was introduced which did not form part of the respondent's ordinances.
104. The review group and appeal panel considered the screening to ensure any subjectivity was removed and further information had been considered.
105. The second claimant's assertions that his role had continued following his redundancy was supported by no evidence. The role which the second claimant was considered for was a different role to his and six people considered that he was not appropriate for this new role.
106. Therefore, the respondent contended that all claims should be dismissed.

Claimants' submissions

107. The first and third claimants' submissions were that the claimants accepted that the respondent was entitled to disinvest from CMS/PE and was entitled to make redundancies resulting from strategic decisions. The respondent could have run a lawful redundancy exercise, but this would only be lawful if it complied with the requirements of fairness, which was not the case here.
108. Selection for redundancy was conducted in a sloppy manner without a codified selection criteria or marking scheme and with unreliable information. The documentation for the selection was not kept, as it was subsequently amended. Not until 26 January 2021 were staff placed at risk of redundancy told how they had been selected and informed of the basket of indicators. There was no consultation on the selection before it was adopted or even after it was announced.
109. The basket of indicators is not a method of selection but a list of sources of information. Selection was not systematic, consistent or comprehensive. The Review Group did not carry out a fair and impartial reconsideration of selection. The selection net was widened from CMS/PE to include work otherwise considered outside of ULSB's future interests. The role of the appeal panel was to consider whether the Ordinances had been followed and the decision was reasonable. They did not and were not equipped to reconsider the substance of the decisions.
110. The second claimant relied upon submissions made by the first and third claimants' Counsel but also raised the following points in his written/ oral submissions. His role was continuing and was, in fact, increasing. Someone was recruited in his place. The definitions of CMS/PE did not seem to be well understood and were not used consistently. There were no records of any

amendments to the initial basis of selection for those made redundant. The consultation meetings nor the Review Group assessed the second claimant's existing role against the new Associate Professor in Entrepreneurship. The second claimant detailed how he considered he met the essential criteria of the new role. The ambiguity in the selection process meant that the respondent could subjectively decide who to make redundant.

Law

Unfair Dismissal - redundancy

111. It is for the employer to show the reason for dismissal and to satisfy the Tribunal that it is a potentially fair reason, section 98(1) Employment Rights Act 1996 ('ERA'). Redundancy is a potentially fair reason for dismissal, section 98(2)(c) ERA.
112. Section 139 ERA states that:
- (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.”

113. In considering whether the Respondent has established that there was a redundancy situation, I must consider whether there was (i) cessation of the business; and/or (ii) cessation or diminution in the Respondent’s requirement for employees to do the work.
114. In Williams –v- Compair Maxam Ltd [1982] IRLR 83, the EAT set out guidelines for considering the fairness of a dismissal by reason of redundancy. These are guidelines only and are not principles of law. The guidelines provide inter alia that “*...in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:*
- a. *The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.*
 - b. *The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.*

- c. *Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.*
- d. *The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.*
- e. *The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.”*

115. The guidance in Williams does not address a situation where redundancy arises in consequence of re-organisation and there are new, different roles to be filled. Where an employer has to decide which employees from a pool of existing employees are to be made redundant, the criteria will reflect a known job, performed by known employees over a period. Where, however, an employer is to appoint to new roles after a re-organisation, the employer's decision must, of necessity, be forward-looking. It is likely to centre upon an assessment of the ability of the individual to perform in the new role such as by an interview process, particularly where the new role is at a higher level, Morgan v Welsh Rugby Union UKEAT/0314/10/LA.

116. The obligation to consult requires the Respondent to give a fair and proper opportunity to understand the matters about which consultation is taking place to express views and have those views properly and genuinely considered, Crown v British Coal Corporation, ex parte Price (No. 3) [1994] IRLR 72.

117. The obligation to find alternative work is an obligation which is again subject to the caveat of reasonableness. The employer is not under a duty to take every possible step to retain an employee, simply to do what it can so far as is reasonable, Thomas & Betts Manufacturing Company v Harding [1980] IRLR 255.
118. The relatively recent case of Joseph De Bank Haycocks v ADP RPO UK Limited [2023] EAT 129 reviewed some of the authorities on redundancy dismissals. At paragraph 22, HHJ Beard states:
- “22. *The authorities set out the following guiding principles:*
- a. *The employer will normally warn and consult either the employees affected or their representative; Polkey.[v A E Dayton Services Ltd [1988] 1 ICR 142]*
 - b. *A fair consultation occurs when proposals are at a formative stage and where adequate information and adequate time in which to respond is given along with conscientious consideration being given to the response; British Coal.*
 - c. *Whether in collective or individual consultation, the purpose is to avoid dismissal or ameliorate the impact; Freud [v Bentalls Ltd [1982] IRLR 443].*
 - d. *A redundancy process must be viewed as a whole and an appeal may correct an earlier failing making the process as a whole reasonable; Lloyd v Taylor Woodrow [Construction [1999] IRLR].*
 - e. *The ET's consideration should be of the whole process, also considering the reason for dismissal, in deciding whether it is reasonable to dismiss; Taylor v OCS [[2006] I.R.L.R. 613].*

f. It is a question of fact and degree as to whether consultation is adequate and it is not automatically unfair that there is a lack of consultation in a particular respect; Mugford [v Midland Bank [1997] IRLR 208].

g. Any particular aspect of consultation, such as the provision of scoring, is not essential to a fair process; Camelot [Group Plc v Hogg [2011] UKEAT 19/10/BJ].

h. The use of a scoring system does not make a process fair automatically; British Aerospace [PLC v Green & Ors. [1995] IRLR 433].

i. The relevance or otherwise of individual scores will relate to the specific complaints raised in the case; British Aerospace.”

Conclusion

119. I am satisfied that this was a genuine redundancy situation following a review of the respondent's organisation. The dismissal of the claimants, along with other staff within ULSB fell within the definition of redundancy as set out in the ERA.
120. There was therefore a potentially fair reason for each of the three claimant's dismissals, namely redundancy as set out in section 98(2)(c) ERA. I am not satisfied that the second claimant's role continued after his redundancy for the reasons set out in the findings of fact above.
121. Having found this, I must consider whether the dismissals were fair in accordance with section 98(4) ERA. For dismissals for reason of redundancy, I had regard to the guidelines from Williams v Compair Maxam and guiding principles in Joseph De Bank Haycocks v ADP ROP UK Limited. I reminded myself that I must not substitute my view for that of the respondent. Rather I must consider whether the decision to dismiss was within the range of reasonable responses, viewing the redundancy process as a whole.

122. In this case, I am satisfied that there was sufficient warning of impending redundancies well in advance of the first dismissals taking effect. The employees were made aware of the possibility that redundancies may occur in Professor O'Connor's email dated 13 October 2020.
123. The decision to leave the department of Economics, Finance and Accounting out of the selection pool appears to have been reasonable, and I accept that the respondent genuinely put its mind to considering which departments/ divisions of ULSB should be at risk of redundancy.
124. However, Professors Devlin and Ladley then went further in carrying out a selection of those staff within the remaining departments/ divisions without consulting over how that selection would be carried out.
125. The respondent contends that Professors Devlin and Ladley's 'pre-selection' was to determine the pool for redundancies. However, I do not accept that to be the case. The pool for selection was initially determined by not placing those working in the Economics, Finance and Accounting department of ULSB in the pool for selection for redundancy. Everybody else within the School was to be screened to see where their research focus lay. The initial selection pool appeared, in effect, to be the departments/ divisions of ULSB excluding Economics, Finance and Accounting.
126. The decision to leave out the department of Economics, Finance and Accounting appears to have been taken very early on in the process, as the initial engagement sessions excluded this Department. There is no criticism of this, but it confirmed that the respondent had put its mind to who should initially be considered for proposed redundancies and that this was everyone within the ULSB save for the department of Economics, Finance and Accounting.

127. The pre-selection then carried out by Professors Devlin and Ladley effectively selected whether the individual staff would be made redundant, since it made clear that unless through consultation, individuals were able to convince the respondent that their research focus lay within the respondent's future areas of research (ie were not CMS/PE and/or areas not aligned with ULSB's strategic research direction), then they would be made redundant.
128. As such, I consider that the screening exercise was in fact a selection process and that a reasonable employer would have viewed it as such and have consulted in advance of its use. Professor Ladley's view that it would have caused unnecessary stress to staff who were not ultimately made redundant is not an acceptable reason for undertaking a redundancy process in this way, and a reasonable employer would have both consulted on the selection process to be adopted and then would have carried out the selection after the consultation had taken place with all staff who were to be scored as part of the process.
129. Whilst there was debate over the definitions Professors Devlin and Ladley had used, this was after the selection had already taken place and I do not consider there to have been any proper consultation over the selection criteria used. Rather, the respondent appeared defensive in its use of the basket of indicators and the definitions it had applied.
130. Consultation, from the authorities set out above, should generally occur at the formative stages of a redundancy situation so that employees are given the opportunity to provide input and the potential to impact upon the decision. This did not take place in respect of the selection process. Even when viewing the redundancy exercise as a whole, including the detailed consultation which did take place and the appeals which were held and which can remedy defects in

appropriate circumstances, the failures mean that the dismissals were not within the range of reasonable responses.

131. There was collective consultation with the Trade Unions and group consultation with the affected employees together with individual consultation with employees at risk of redundancy but I am not satisfied that this was sufficient in light of the failures outlined above.
132. Further, it was not clear how that initial selection had been carried out, since there was no documentation, other than the matrix, which had been overwritten during the consultation process. It was, therefore, not possible to ascertain what was originally taken into account, nor were there any emails or notes of meetings between Professors Devlin and Ladley to support the evidence of Professor Ladley or provide any assistance on this. This did not help in considering whether a fair process had been adopted and that the decision to dismiss was within the range of reasonable responses.
133. Following the initial selection, whilst there were discussions over the basket of indicators and confirmation of how this had been carried out, there was no proper consultation on this. The respondent attempted to justify why the basket of indicators had been used. I had sympathy with the claimants in that the basket of indicators appeared to be a list of items to be considered, but there was not any indication of how this was to be applied to individuals. Also, I accept the claimants' assertion that the respondent initially referred to disinvesting itself from research in the areas of CMS/PE, whereas this later was referred to as research in the areas of CMS/PE and/or areas not aligned with School strategic priorities, which did seem to widen the scope of who might be made redundant.

134. Therefore, I consider that the procedure was flawed. Firstly, in there failing to be appropriate consultation on the proposed method of selection prior to it being used, as provided for in the Guidelines in Williams v Compair Maxam. Secondly, in the pool not including some of the ULSB employees to avoid unnecessary distress. I am not satisfied that the selection itself was reasonable in the circumstances.
135. Therefore, since this meant that individuals were placed at risk of redundancy without having had a fair and reasonable selection carried out, this affects the fairness of their dismissals, even when the process is viewed as a whole.
136. I am satisfied that the consultation carried out other than on the selection procedure was effective and was reasonable in the circumstances.
137. There was a consideration of alternative employment for all of the claimants and the respondent took reasonable steps to find the claimants alternative roles. They were given access to vacancies for which they could apply and be given priority.
138. As far as the second claimant's additional argument that his role continued after his redundancy, I do not accept that to be the case. Whilst the job titles were similar, I accept that the jobs were not the same and I further accept that the second claimant was considered for the new role of Associate Professor of Entrepreneurship and was genuinely found to be lacking essential criteria for the role. I note that the second claimant believes that he held the necessary essential criteria, but there was evidence before me of why the respondent did not consider that he did. I find that the respondent genuinely considered the second claimant for the role and had valid reasons for not appointing him to it. Therefore, this aspect of the second claimant's claim fails.

139. However, in light of my findings, all of the claimants' claims of unfair dismissal succeed.

140. There will be a remedy hearing on the dates set out above.

Employment Judge Welch
1 March 2024

Judgment sent to the parties on:

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For the Tribunal:

.....

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