EMPLOYMENT TRIBUNALS

Claimant	**Respondent**
Mr Matthew Hilley	**Good Relations Limited**

Heard at: London Central

On: 4 – 6 August 2025
In chambers: 7 August 2025

Before: Employment Judge Lewis
Mr P De Chaumont-Rambert
Ms J Marshall

Representation

For the Claimant: Represented himself.
Accompanied by his aunt, Ms Lachowycz

For the Respondent: Mr D Green, Counsel

RESERVED JUDGMENT ON LIABILITY

The claimant was unfairly dismissed.

There is a 90% deduction from the compensatory award after the first 4 weeks under Polkey principles.

The remedy hearing will take place on 3 December 2025.

REASONS

Claims and issues

1. The claimant brought a claim for unfair dismissal. At the preliminary hearing and in this hearing, he mentioned other matters which could potentially fall under other legal headings, eg disability discrimination under the Equality Act

2010 and possibly victimisation under the Equality Act or dismissal for whistleblowing. It was established at the preliminary hearing and again at the outset of this hearing that he was only claiming unfair dismissal. His mention of the failure to make adjustments for his deafness during the consultation process was something which he wanted to be taken into account for the unfair dismissal claim, but not to stand as a separate discrimination claim. This was made absolutely clear and was agreed with the claimant at all points. Although the claimant occasionally slipped back into the language of the Equality Act, even referring to sections 20 and 21, he never asked to bring a discrimination claim and in fact firmly confirmed that he was not trying to do so. This was important because a disability discrimination claim requires all sorts of additional stages to be proved, which is not the way this case was ever argued or run.

2. The issues on liability were as follows:

Unfair dismissal

2.1. Had the respondent shown that the reason or principal reason or dismissal was redundancy?

2.2. Alternatively had the respondent shown that the reason or principal reason was some other substantial reason of a kind which would justify dismissal, ie business reorganisation?

2.3. In either case, was the dismissal fair or unfair, applying the band of reasonable responses?

2.4. If the reason was redundancy, this will involve consideration of:
- 2.4.1. Whether the respondent adequately warned and consulted the claimant.
- 2.4.2. Whether the respondent adopted a reasonable selection process and decision, including its approach to a selection pool.
- 2.4.3. Whether the respondent took reasonable steps to find the claimant suitable alternative employment.
- 2.4.4. Whether dismissal was within the band of reasonable responses.

2.5. If the dismissal was unfair on procedural grounds, what is the chance that the respondent would have dismissed the claimant even if it had followed fair procedures and on what date? ('Polkey')

Procedure

3. The tribunal heard from the claimant and, for the respondent, from Remy Carr, Lawrence Collis, Richard Moss and Joanne Parker. We had witness statements from these witnesses plus, for the claimant, from Francesca Collins and Louis-Sebastian Kendall. There was an agreed trial bundle of 303 pages and a separate bundle on remedy which we did not at this stage look at. There was also an opening statement from the claimant, a closing

statement with a bundle of case law authorities from the respondent, and a table of resource planner calculations from the respondent.

4. Neither of the claimant's witnesses were asked to give oral evidence because Mr Green said it was unnecessary for him to cross-examine them. We read their witness statements. In any event, Ms Collins was in Dubai, which is in a different time zone and further, we did not have information regarding whether she would be allowed to give video evidence from there.

5. At the preliminary hearing, the tribunal had ordered that the respondent highlight those parts of the witness statements of the claimant and Mr Kendall which it said were not relevant, and the parties would seek to agree the changes. On the whole, the parties had not agreed the changes, so the witness statements were presented to us with the respondent's proposed strikethroughs in red. We did not find that a helpful approach from the respondent. The tribunal is perfectly used to reading witness statements from all parties which contain irrelevant information and just disregarding it. In this case, the witness statements were short and there was no compelling reason for us not to adopt that approach. It is for us to assess what is relevant here. Mr Green was content with that approach.

6. There were some without prejudice negotiations at the time of the dismissal. The without prejudice documents were not put into the trial bundle. The claimant had agreed the contents of the trial bundle to be shown the tribunal. The claimant did not seek to rely on any without prejudice content beyond that.

Reasonable adjustments

7. We discussed at the start of the case what adjustments would be helpful to the claimant. He has substantial hearing loss and wears hearing aids. He told the Judge that he could hear what she was saying. The claimant was accompanied by his aunt who was able to help him find documents and pages, and could identify if he appeared not to have heard something. We told the claimant that he should put his hand up and say at any time he did not hear something. We allowed additional breaks because of the tiredness caused by having to do extra mental processing. During the claimant's cross-examination, Mr Green waited for the claimant to find the relevant document before asking his question, and we stopped any overlapping talk. At one stage, Mr Green's voice was breaking up but this was solved when he put on earphones, and the tribunal went back over the matters discussed The claimant was repeatedly urged by the tribunal to say if he was having any difficulty. These adjustments having been made, as far as we could tell, the claimant was able to hear and respond to everything that was said.

Fact findings

8. The respondent is a public relations and social agency. It is the PR arm of the VCCP Group. At the time of the relevant events, the respondent employed about 60 people.

9. The claimant was employed from January 2022 as an Associate Director. This was a relatively senior post with strategic responsibilities. He managed accounts and contributed to large projects.

10. The claimant's line manager at the relevant time was a Managing Director, Lawrence Collis.

The decision to make redundancies

11. Richard Moss was the respondent's CEO. He had monthly financial review meetings with his own manager, the CEO of the Group, When he was putting together the financial review for the March 2024 meeting, it became apparent that the company's income was well short of target. This was because several clients had either withdrawn their projects or significantly reduced their budgets, and new business in the pipeline was not coming to fruition as anticipated. Mr Moss raised this when presenting his Profit and Loss calculations in the meeting and was told that he had to put together a plan.

12. The respondent was already operating at the lower level of the parent company benchmark. By March 2024, the position fell below that. There was a total revenue shortfall against budget just short of £500,000. Mr Moss's target was to generate profit of £1.2 million. He was budgeting for 17%, but the £500,000 shortfall brought it down to 13% which the Group CEO considered unacceptable, even though the respondent was still in profit.

13. Mr Moss's initial steps were to implement a hiring freeze and to cancel discretionary bonuses for the year. In his next monthly meeting in early April 2024, there was a further £200,000 which needed to be saved. It was decided to achieve this by reducing the marketing and discretionary budget to the extent possible and by making 3 redundancies: an Executive Director, an Associate Director and a Senior Account Manager. An employee in a different position subsequently left the business which made it possible to avoid making a Senior Account Manager redundant. The choice of which roles should be made redundant was down to what could be absorbed without affecting operational capacity. It was felt that three Associate Directors would be able to do the work load currently carried out by four. The Executive Director was a stand-alone position.

14. We were shown the monthly resource planners. These showed that in each of the months January – April 2024, none of the Associate Directors were meeting 100% of their billing targets. The billable targets made allowances for non-billable time (20 - 25%). The claimant says that the Associate Directors were fully occupied, even when time was not billable. We are not in a position to judge that. On balance, we accept the respondent's evidence that it considered three Associate Directors could cover the work previously done by four. There is no evidence that the claimant was replaced

and we know that projects with some of his clients, as well as those of others, had fallen off.

15. By July 2024, the respondent's headcount had reduced by seven from that budgeted. This comprised the two redundancies and five frozen roles. This brought the company back to a more stable state.

16. The claimant mentioned two Account Directors in the corporate team who joined February / end of March 2024. However, these had been hired the previous year, offered contracts and were working notice with their previous employers at the time finances started to look difficult. Their roles were two levels below that of Associate Director, but their skills were felt to be needed for the corporate area of business going forward.

17. The claimant also mentioned that staff were promoted, presumably with more pay, from June 2024 onwards. This was made possible because a number of employees left subsequent to the claimant's redundancy who the respondent did not replace.

The redundancy process

18. At that time, Remy Carr was employed by the respondent's parent company VCCP as a People Adviser. She worked with the respondent's Operations Director, Kate Griffiths, in planning the redundancy procedure. The process was approved by Mr Moss.

The scoring process

19. There was no prior consultation with any of the four Associate Directors on the process to be followed. It was decided that the four Associate Directors would be scored against a set of selection criteria. The lowest scoring would then, for the first time, be informed of the position and invited to consultation meetings.

20. The respondent's reasoning was that it did not want to unnecessarily upset and cause instability amongst the team of Associate Directors at a time when their finances were precarious. It did not want to worry and upset any of the three Associate Directors who would ultimately not be selected. The respondent maintained that its mind would remain open through the consultation process.

21. The next problem was who should do the scoring. There was no single manager who had close current knowledge of all four Associate Directors in the pool.

22. Mr Collis line-managed the claimant and one other person in the pool. He was involved in some work with the other two, one of whom he had line managed in the past. However, the two others had a different line manager at this point, Jodie Simpson, and she knew their work better than he did. Ms Griffiths and Mr Moss therefore decided that Mr Collis would independently

score his two reports and Ms Simpson would independently score her two reports. They would then meet to to check they were applying their scores in a consistent way, eg that they were agreed on what warranted a 4 or on what warranted a 6. Mr Collis and Ms Simpson duly followed this process.

23. Mr Collis had been responsible for gathering feedback for the claimant's most recent 360 review in November/December 2023, and he re-looked at comments in the review when he completed the scoring.

24. Mr Collis and Ms Simpson had been given a table listing the criteria, rationale and score levels. 4 meant 'meets standard expected', 5 meant 'slightly above standard expected', 6 was 'exceeding expectations and 7 was 'outstanding performance'. 1 – 3 were lower scores. In the section on 'rationale', markers were told to provided a detailed rationale for the score. The criteria were client leadership – inspiring confidence and shaping agenda; Team leadership – directing and motivating account teams to deliver best practice standards; proactivity and initiative; adaptability to respond to changing client/project environment; flexibility of skills across earned channels; communication and collaboration; decision-making; business development and commercial awareness.

25. The claimant accepts the criteria were suitable but feels there should have been objective measures within each criterion. The respondent says that the nature of the job meant that these were the appropriate type of criteria and that they were not subjective, because they had to be supported by a rationale. We accept that the role was creative and also relied on the individual's ability to work effectively with colleagues and clients. The respondent did not consider individual billing would be a fair measure of performance and the claimant did not try to argue that that measure should have been used.

26. One of the claimant's main objections at the tribunal hearing was that he believed Ms Simpson had some input in his scores when she did not know his work. That was not in fact the case. Ms Simpson did not score the claimant. In her bench-marking discussion with Mr Collis after the marking, none of the scores done individually were changed.

27. Mr Collis did not enjoy having to do this exercise at all. He did not want to select someone for redundancy and he regarded all four Associate Directors as good at their job.

28. The score sheets for all four Associate Directors were in the trial bundle. There is nothing to suggest they were not genuinely marked. The claimant accepted in cross-examination that his marks represented Mr Collis's genuine opinion, but his concern was that Mr Collis did not understand him. The claimant told the tribunal that he feels a third person who had some knowledge of all four Associate Directors should also have been involved in the process.

29. The maximum available score was 56. The Associate Directors scored 49, 45, 41 and the claimant scored 35. None of them scored less than 4 on any single criterion.

30. After the initial marking, the sheets were shown to Ms Carr so she could check that the scores had been adequately explained. Ms Carr only added comments on the claimant's sheet. This was because – as the person who scored the lowest - he was the one whose scores needed to stand up to examination. None of the scores were changed as a result of her input.

31. Looking at Ms Carr's comments, they are not uniformly pushing the marking in a negative direction. For example, she asks why the claimant was only scored 4 on Team Leadership. On Client leadership, Mr Collis had originally noted 'Has good relationship with the Fora client and also the Halford client, but lacks the relationships at a more senior level. Tricky relationship with the Celebrity client.' These were the the claimant's three large clients. Ms Carr asked 'Was the tricky relationship with Celebrity his doing or was this historical and out of his control? Add a comment around shaping agenda'.

32. The final wording gave more detail, but also omitted the specific positive references to Fora and Halford. Mr Collis says that had it not been for the positive relationship with FORA, he would have given a lower score.

33. The claimant was scored 4 on each criterion save for 5 on 'communication and collaboration' and 6 on 'flexibility of skills'.

Consultation with the claimant

34. On 24 April 2024, the claimant was asked by Richard Moss, the CEO, to come to a meeting. The claimant was not told what it would be about. When he arrived in the meeting room, Ms Carr was also there. Mr Moss read out a script which Ms Carr had prepared for him. The claimant was told that a redundancy situation had arisen because of a £1 million shortall in budgeted revenues. In recent months, the company had been told that it would no longer be working with Celebrity Cruises, FORA and NWEC. Krispy Kreme had halved the scope of their work and other clients, including Shell and Hisense, were reducing the scope of work or not signing off on projects.

35. We would mention here that Celebrity and FORA, as well as Halfords were the claimant's clients. Since the claimant's redundancy, one of the other Associate Directors has taken over Halfords.

36. The claimant was told that the respondent had decided to freeze recruitment for the foreseeable future, but that would not be sufficient and it had to make redundancies across the business. He was told it would be making one Associate Director redundant and that they had pooled together the four Associate Directors and scored them against set criteria relevant to their role. The claimant was told he had scored the lowest and his role was now at risk of redundancy.

37. The claimant was told they would now begin the consultation process with him. The consultations were an opportunity for him to make any suggestions or proposals as to how the redundancy could be avoided or minimised, as well as raise any other concerns or questions. He was entitled to be accompanied by a trade union representative or fellow employee during the consultation process. The first meeting would be Monday or Tuesday the next week. Meanwhile, the claimant was told to keep matters confidential.

38. The claimant did not take in much of this because he was in shock. However, essentially the same content was confirmed in a follow-up letter emailed the same day. The claimant was invited to a first consultation meeting the following Monday or Tuesday. The purpose would be 'to explore ways of avoiding the redundancy. If necessary, we will also discuss other options, such as suitable alternative employment within the business and other internal roles. It is also an opportunity for you to make any suggestions or proposals as to how this redundancy could be avoided or minimised, as well as raising any other concerns or questions'.

39. The first consultation took place on Tuesday 30 April 2024 with Mr Moss, Ms Carr and the claimant. The claimant did not bring a representative. Ms Carr asked him at the outset if he was happy to go ahead without a trade union representative or colleague to accompany him. He said that he was. He did not indicate there was any problem with his hearing or that he would like to be accompanied by his aunt, partner or anyone else.

40. In the meeting, the claimant said he understood the financial situation and did not want to delve further into the rationale. He said he had no further questions. He was asked whether he would like to see the scoring criteria and scores.

41. The claimant's evidence in the tribunal was clear that he never asked to see the scores at any time prior to his redundancy. The claimant was vaguer as to whether he had been asked if he wanted to see the scores. He could not clearly remember. Ms Carr says that he had been asked twice if he wanted to see the scores. The minutes of the meeting of 30 August 2024 record that he was asked whether he would like to see the scoring criteria and scores. Although the noted answer, 'I understand the scoring criteria and scores no questions on this' does not make sense, as it is agreed that he had not seen the scores, it is possible he meant that he understood the system. In any event, the totality of the evidence and the claimant's own vagueness in the tribunal suggests he had been offered a view of them at least once and had declined.

42. Ms Carr said they would send the claimant a list of all live internal roles, as they did not know what he might be interested in. If he wanted to see a job spec or speak to the recruitment team, that could be arranged. He could attend an interview for any vacancy and he would move over if he and the hiring manager thought he would be a good fit.

43. Ms Carr ended by saying that if the claimant had any questions, he should email, and they would book another meeting perhaps on Thursday. Mr Moss said he was happy to follow the claimant's lead on timing.

44. Mr Moss found the claimant 'curiously disinterested' in discussing the detail of the business rationale and his own scoring and selection. Mr Moss says the claimant seemed 'completely reconciled' to an idea that redundancy was inevitable and that the respondent was just following a process.

45. It is true that the claimant felt that there was no point in discussing anything, that it was a fair accompli and that management was just going through the motions. The reason the claimant felt this was because of the way the matter had been handled, the fact that there had been no consultation at any stage with others in the pool, and because he had been told at the very first announcement meeting to keep things quiet.

46. Mr Moss told the tribunal that he was not going through the motions and that he had been advised to and was prepared to enter a substantive discussion. Whether or not such discussion would have been with an open mind or merely performative, as the claimant suggests, is something we address in our conclusions.

47. Mr Moss and Ms Carr attributed the claimant's reason for being disengaged to his apparent desire to agree a negotiated settlement.

48. Following the meeting, Ms Carr sent the claimant a list of live roles and asked him to let her know if there were any he was interested in learning more about. She said she would arrange a second consultation meeting on Thursday (2 May) to discuss further. The claimant said he would find the weekend helpful. Ms Carr suggested the following Tuesday, 7 May 2024, instead.

49. At 9 am on 7 May 2024, the claimant texted Ms Carr to say he had a massive head cold and had stomach cramps all night and so barely slept. He said he was really sorry but he had to call in unwell: 'just feel like death (or possibly Covid)'. He asked if they could postpone the meeting to the next day and said he would also like to speak to her first.

50. Later that day, Ms Carr texted to say she had found a lunchtime slot for 8 May 2024. The claimant replied 'Thanks Remy. FYI I think I have Covid, as it's the only thing that makes me pass out this much and I have no taste! So will play by ear for virtual or in person tomorrow. Although I am keen for in person!' Ms Carr replied sympathetically and asking the claimant to keep them posted.

51. The next morning, the claimant texted 'Still feel hideous so am off today. But could do you then Richard remote. But wanted to do in person. So could drag myself in tomorrow. Happy either way.' Ms Carr replied that he should not drag himself in if he was not feeling up to it. She then said, 'If OK with you, I think we should still go ahead with the meeting today, remotely. Can

always follow up in person when you are feeling better if you would like to.' The claimant replied 'Sure :)'.

52. It was also agreed they would meet first at 12.

53. Meanwhile, Ms Carr and Ms Griffiths were communicating regarding the state of play. Ms Carr said 'He's messaged to say he's still not well. I've said we will need to press on with the meeting today remotely. So will let you know what he says'. Ms Griffiths replies, 'OK. Thanks. Do you think you will call it today if so? We need to get a message out to agency asap. I know Kim was trying to finalise with L [the other redundant employee] yesterday as it was continuing to be a bit tricky … Do you have any wording from anything else we can draft something up as we need to update clients and team – and we want to do it in one go.' Ms Carr replies 'Yes should do as long as no curveballs are thrown our way!'

The prior meeting with Remy

54. Ms Carr met the claimant privately as requested ahead of the consultation meeting on 8 May 2024. The claimant wanted to give feedback generally on his time with the respondent. He was emotional and tearful. He talked about his mental health difficulties arising from the death of his best friend the previous year. He mentioned some concerns he had had about the way certain things had been handled. Ms Carr asked whether the claimant wanted to raise these matters at the consultation meeting. The claimant said he did not think that the redundancy consultation was the right forum to discuss with Mr Moss his wider feedback and concerns. The claimant wanted to give feedback and leave on a positive note. Ms Carr therefore suggested they arrange a different time to meet.

55. The claimant had told Mr Collis in 2023 and again during the Nov/Dec review about the impact on his mental health of his friend's death.

The second consultation meeting and dismissal

56. The second consultation meeting took place on 8 May 2024 with Ms Carr and Mr Moss. Again the claimant was asked and confirmed that he was happy to proceed unaccompanied by a fellow employee or trade union representative.

57. The meeting took place in a small private meeting room. The claimant confirmed in the tribunal that he heard and saw everything.

58. The claimant said that he had no further questions on the process. He had looked at the alternative roles but he was not going to take that route as there was nothing suitable which he felt he would be happy in. Ms Carr said that as there were no other ways to avoid redundancy, they would confirm his role was redundant as of today. Ms Carr then moved on to set out the redundancy package. He would be paid 3 months in lieu of notice, statutory ready pay, untaken holidays and £5000 ex gratia. Ms Carr said Mr Moss and the team

would decide the best termination date. The claimant said he would be happy to work until the end of May.

59. Ms Carr followed up with an email the same day. She said the termination date would be 10 May 2024. She set out the figures of the termination package. She also informed the claimant of his right of appeal.

60. On 9 May 2024, Ms Carr emailed the claimant again, apologising for missing something. She said that, as discussed, they would also arrange a meeting to discuss the points and concerns which the claimant had raised in his proposal letter – this would give them the opportunity to hear about the claimant's time at the respondent and for him to provide feedback to be shared with the team.

61. This was not about the redundancy process. This was about the claimant's desire to feed back on how he felt certain other things had been handled during his employment.

62. Subsequent to the dismissal, the claimant asked to see his redundancy scores. Ms Carr sent these by letter dated 13 May 2024

Appeal

63. On 15 May 2024, Mr Moss sent out an email to all staff saying that the claimant and Ms Hart 'have let the business'. It then said some very positive words about each of them and hat 'both will be sadly missed'. Mr Moss said something similar to the claimant's clients. The claimant felt that, by not referring to redundancy, this gave his clients the impression that he had irresponsibly left mid projects. That was not Mr Moss's intention. He told the tribunal that his intention was to allow the claimant to control the narrative as to why he had left.

64. The claimant appealed in a letter dated 15 May 2024. He complained that he was given insufficient warning of his redundancy and insufficient time to prepare or, accept or deal with the redundancy process. The whole process from when he was first informed that he was at risk on 24 April 2024 to the dismissal on 8 May 2024, taking effect on 10 May 2024, was just over 2 weeks. He said that he was not informed of the possibility of redundancy at a formative stage, and methodology and selection criteria were not agreed on. When he was consulted, the respondent did not have an open mind. Others in the redundancy pool were not informed that they were at risk of redundancy. The claimant also thought the marking was unfair and that Ms Simpson had limited knowledge of his work.

65. The claimant also complained that no check was made in advance of the process to see whether any adjustments were needed for the claimant's hearing disability.

66. The appeal took place on 28 May 2024. The claimant asked to bring his partner because of his hearing impairment, to support and take notes. Although outside its usual procedure, the respondent agreed to this.

67. The appeal was heard by Joanne Parker, COO of VCCP and CEO of VCCP Business, the ultimate decision-maker, and Kim Jamieson, Head of People, VCCP Group.

68. The claimant was asked at the outset what outcome he was seeking. He said he felt the process was unfair but it would not now be tenable to go back to his role as people had been told that he had left. His solicitor had suggested a settlement package.

69. Moving on to the process, Ms Parker acknowledged that in an ideal world, they would have talked about the criteria in advance, but they did not mention it to everyone in the pool because it was a stressful process and to minimise disruption to the wider business.

70. The claimant said that he felt the scoring was not reflective of him and there was no recognition that he had lost his best friend in 2023 and had worked hard for the business. The claimant did not go into any depth challenging the scores. He did say that no one knew what he actually did on one of the biggest accounts because no one had oversight of it, except someone in the accounts team.

71. The claimant's suggestion was that it would have been fairer to have Mr Collis, Ms Simpson and Mr Moss each complete the scores separately.

72. The claimant also said it was unclear why the Associate Directors were chosen at all. The claimant felt he could not be criticised for work level or outputs but he stood up for himself and others on issues and he did not feel that was taken well. He mentioned there was a pregnancy-related illness in the team and everyone was told the employee would be signed off from work and they had to pick up the extra workload.

73. The claimant's appeal was rejected by dated 5 June 2024. Ms Parker said that she had looked into why one Associate Director was to be made redundant. That was because it had been carefully assessed that three Associate Directors could carry out the workload. As for pre-scoring, that was to minimise the impact on the business and the remaining individuals. The claimant had been given the opportunity to see his scores and the criteria in the first consultation meeting and he had declined. Ms Parker said she had reviewed the claimant's scores and the rationale given for them and these appeared fair and comprehensive. The claimant had scored well, but it was a strong pool. She said there was no evidence that the claimant was at any disadvantage because of his disability because of the format of the meetings.

74. The letter said that the claimant had raised some concerns which were not related to the redundancy process, eg about his bereavement and about the pregnancy-related illness, where the team were expected to pick up the

workload without support. It said that the claimant could raise a grievance post-termination if he wished.

75. Finally, Ms Parker did not think it necessary or appropriate to increase the £5000 ex gratia payment.

Law

76. The test for unfair dismissal is set out in section 98 of the Employment Rights Act 1996. Under section 98(1), it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.'

77. Redundancy is a potentially fair reason under s98(2). Under s139(1)(b)(i) an employee is taken to be dismissed for redundancy if his dismissal is wholly or mainly attributable to the fact that the requirements of the business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.

78. Under s98(4) '… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.'

79. The tribunal has reminded itself that the question is whether dismissal was within the band of reasonable responses open to a reasonable employer. It is not for the tribunal to substitute its own decision.

80. The tribunal should not embark on a reassessment exercise or an over-minute examination of how the employer applied selection criteria. The central question is whether the employer set up a fair system and administered it fairly and genuinely and without bias. (Eaton Ltd v King [1995] IRLR 75, Bascetta v Santander UK Plc [2010] EWCA Civ 351)

81. The Court of Appeal has reviewed the case law authorities and given guidance most recently in De Bank Haycocks v ADP RPO UK Ltd [2004] EWCA Civ 1291. That case happens to be similar to the present case in that consultation did not start until after Mr De Bank Haycocks had been scored.

82. The Court of Appeal noted that redundancy situations arise in an extraordinarily wide variety of circumstances and the adequacy of consultation has to be considered on a case by case basis. Consultation must take place at a formative stage. That does not necessarily mean early in a temporal sense, but at a time when it can make a difference to outcomes and

when the employee can realistically still influence the decision. No doubt the later in the process the consultation occurs, the greater the risk that the decision-maker will have closed their mind, but whether that is so in a particular case is a matter for the actual assessment of the tribunal.

83. The Court of Appeal said it is good practice for employees to be given, in the course of individual consultation, the opportunity to express their views on any issue that may affect their dismissal, whether it is peculiar to them as an individual or common to the affected workforce as a whole. It certainly should not be assumed that an individual will have nothing to contribute on common issues. It depends on the particular case. The Court of Appeal was not saying that failure to give that opportunity would necessarily make any subsequent dismissal unfair – again that depends on the circumstances.

Conclusions

Issues 2.1 – 2.2

84. The respondent has shown the reason for dismissal was redundancy. There was a shortfall in the respondent's financial target and the parent company was demanding action. Clients were withdrawing projects or anticipated projects were not coming to fruition. The respondent took various other measures at the same time to save costs, ie freezing vacancies, cancelling discretionary bonuses and reducing a particular budget. The respondent made one other redundancy, so it was not only the claimant who was made redundant. There would have been one further redundancy had someone not unexpectedly left.

85. As for why the claimant was one of those selected for redundancy, there were four people in the role of Associate Director and it was assessed that they had capacity to share the work between three. Some of their clients had paused projects. The monthly resource planners showed that each of the four were not meeting 100% of their targeted billable hours. This was not a matter of criticism – they were utilised on other work. But it did mean they had capacity. These posts were relatively highly paid so the salary saving was meaningful in terms of the overall savings measures.

86. A process was then followed to choose who to select as redundant from the Associate Director pool of four and the claimant was chosen.

87. The claimant was not subsequently replaced. His work was reallocated. There were subsequent promotions, but that was possible because the company was now more stable financially and more money was freed up when further employees left.

88. The evidence therefore positively suggests that the reason the claimant was dismissed was redundancy. In addition, there is no evidence that there was any other reason for dismissing him. Although he had raised a few matters of concern in the previous year, not all of which had been actively

supported by the respondent, there was no evidence that any of this had created any hostility towards the claimant. The claimant was considered to be performing well and it is clear he was well liked. It is just that his three colleagues scored more highly on the redundancy criteria.

Issues 2.3 – 2.4

89. We now move on to whether the dismissal was fair, applying the band of reasonable responses test.

90. The respondent chose a fair selection pool. It identified Associate Directors as an area where it could absorb the loss of one post and it was therefore entirely logical to choose all four Associate Directors to be in the pool.

91. The claimant says that during the consultation, he was not told who was in the selection pool. The 24 April 2024 letter could be clearer, although it does say, immediately after mentioning a reduced workload for Associate Directors, 'we have pooled individuals together where they carry out similar work or have similar roles'. The script at the announcement meeting is clearer in that it explicitly says 'We have 'pooled' individuals together at the Associate Director level'. However, the claimant was not sent the script at the time and he did not take in much of what was being said at the announcement meeting. Having said all that, if he was unclear, he only needed to ask.

92. The selection criteria were reasonable. They suited the nature of the posts. An element of subjectivity is inevitable in performance-related criteria, but they were broken down into various elements, and a rationale was required.

93. The scoring system was reasonable. The respondent identified available scores of 1 – 7. Each number was given a definition. The two scorers liaised to check they were pitching their scores at the same level.

94. There is no evidence of bias in the scores. The claimant accepted that Mr Collis's score of him represented Mr Collis's genuine option. The claimant says that Mr Collis did not understand everything he was doing, but Mr Collis was his line manager. Mr Collis also took account of the 360 performance review which had been carried out in November/December, where there as feedback from a variety of people who had worked with the claimant. We cannot see that the redundancy scores were obviously out-of-line with the comments in the performance review. The claimant did not challenge the 360 review and was open to constructive criticism.

95. The claimant believed that Ms Simpson should not have been involved in scoring him because she did not know his work. However, Ms Simpson did not score him. Mr Collis scored the claimant independently. Ms Simpson's only involvement was a benchmarking discussion to ensure they were pitching their scores at an equivalent level.

96. In an ideal world there would have been one or even two managers who had in-depth knowledge of the work of all four Associate Directors and who could mark all four. But such a person did not exist. The claimant mentioned one person who had some knowledge of all four, but that is not the same as a line manager. It was reasonable here for the markers to be the two line managers. The only problem was if the two would pitch their scoring at a different level. That was addressed by them liaising at the end. There was also the safeguard of Ms Carr checking that scores had been given a proper rationale.

97. Regarding the expanded wording under 'client leadership' after Ms Carr's query, it did cause us some concern that the positive comments were removed after further detail was given to support the negative comment. However, this was the only example of that, and the score did not change. We therefore do not attribute it to any desire to mark down the claimant, but rather to giving greater clarity for the reason why the score was only 4.

Issue 2.4.1

98. The claimant says that the consultation was unfair because he was not asked what adjustments he might need for his hearing disability and, in particular, because he was not offered the opportunity to bring a companion other than an employee or union representative and was required to attend the last consultation meeting on-line. Obviously this is a serious matter and the respondent did know the claimant had a hearing impairment. On the other hand, the respondent did not know that the claimant was at any disadvantage in the redundancy selection process. During his day-to-day working life, the claimant appeared to be managing meetings with his hearing aids. If the battery had run out, for example, he would say so. No other adjustments had been requested or made as far as we are aware. The respondent was therefore not alerted to potential difficulties.

99. Best practice would have been for the respondent to have asked the claimant. However, the claimant was a relatively senior and articulate employee and he could himself have asked if he felt he needed to bring someone. He did ask at the appeal stage and was allowed to bring his partner. Regarding the second and final consultation meeting, he did say he would prefer it to be in-person, but he did not say why, and he did not insist on that. He conveyed that he was happy to go ahead on-line. Indeed he was the person who first suggested having the meeting virtually.

100. The claimant never told the respondent through the process that he was or might be disadvantaged or that he could not hear anything. In addition, there were detailed written communications throughout the process which covered all the ground. We therefore think that while it would have been good practice proactively to ask the claimant if he needed any adjustments or if he wanted to bring a different kind of companion, the failure to do so did not make the dismissal unfair.

101. However, we do have some other concerns with the consultation process. One is that it was rushed through with great speed. The claimant did not have sufficient time to absorb and consider what he wanted to say or do. He had to react and make decisions very quickly.

102. The claimant was first informed on Wednesday 24 April 2024 that he had been provisionally selected for redundancy. Up to that point, he did not even know that any redundancies in the company were under consideration. He was called into the 'announcement meeting' out of the blue, which he did not take in. He received a letter that day inviting him to the first consultation meeting the next Monday or Tuesday. The meeting took place on Tuesday 30 April 2024. Later on 30 April 2024, the claimant was sent a vacancy list and the respondent suggested the second consultation meeting take place on Tuesday 2 May 2024, only two days later. The claimant asked for the weekend, so Ms Carr suggested 7 May 2024 (6 May 2024 was the Bank Holiday). The meeting took place on 8 May 2024 as the claimant was unwell the previous day. He was told of his dismissal at that meeting. His termination date was 10 May 2024 with pay in lieu of notice.

103. The speed of this process was compounded by proceeding with the second and final consultation meeting when the claimant was unwell. This was not a situation where there had already been long delays at the claimant's behest. Ms Carr knew that the claimant had barely slept overnight on 6/7 May 2024 due to stomach cramps and that he still felt 'hideous' on 8 May 2024. Moreover, in their pre-meeting, he was emotional and tearful. We are not saying that an employer should postpone a redundancy consultation meeting simply because the employee is extremely distressed about a likely redundancy. But this was a situation where the respondent knew that at the same time he also had Covid and felt terrible. The claimant may have agreed to the remote hearing going ahead, but he had first signalled that he would prefer an in-person meeting. The text saying 'Can always follow up in person when you are feeling better I you would like to' was hardly fair when Ms Carr knew that the decision to make redundant was quite possible during that meeting. The respondent knew the claimant was unwell as well as emotional. They could have postponed for a few days. We would still have said the overall process was too fast, but this is an additional point.

104. All this was in the context that there had been no prior consultation or even hint of redundancies prior to the claimant being told he was provisionally selected. The claimant was not eased in gently to the idea that he was at risk of redundancy. He did not have much time to marshal his arguments or contingency plan.

105. We find that no reasonable employer would have rushed through the redundancy consultation process in this way or gone ahead with the second and final consultation meeting on a day when the claimant was unwell. The dismissal is unfair for these reasons alone.

106. We also consider the dismissal was unfair on the facts because there was insufficient consultation at a formative stage. We appreciate that it is not

necessary in every instance to consult employees regarding the process to be adopted prior to scoring them, even if it may be good practice. However, in this case, by the time the claimant was consulted, he could not realistically still influence the decision.

107. The respondent's reason for not consulting the claimant and his colleagues in the pool at the outset was that it would have been de-stabilising at a time when the business needed those remaining to be focused on bringing in money. But this is not an unusual situation in redundancies. We do not find it a sufficiently powerful reason in the particular circumstances to override the benefits of consulting the our people in the pool regarding the selection process to be followed.

108. Some of the claimant's key objections at the tribunal are to the process itself – whether there should be a redundancy amongst Associate Directors at all; the decision as to who should carry out the scoring and the particular selection criteria. By the time the claimant was consulted, there was a strong disincentive for the business to reopen matters to the extent of going back to the drawing board and changing the selection method. The evidence suggests that they would have been very reluctant to do that. That is indicated by a combination of factors - the speed of the consultation with the claimant; pressing him to go ahead with the second and final consultation meeting even when he was ill; the text exchange between Ms Carr and Ms Griffiths where the latter asks Ms Carr whether they will 'call it today' and says they want to get a message out asap; they wanted to do it 'in one go' with the other redundancy' and 'should do, as long as no curveballs are thrown our way!' It is also indicated by the general desire to keep the redundancy process quiet and confined to those who were selected. The respondent was invested in the decision it had made, which enabled a smooth and quiet process. Even the announcement when it went out talked about the two employees having 'left' rather than been made redundant. That may in part have been to allow them to control the narrative, but the claimant was not consulted regarding which he would prefer and we suspect it also suited the respondent.

109. The respondent witnesses asserted in the tribunal that they still had an open mind. We are sure they would have entered into a discussion had the claimant wanted to engage. But would they realistically have been open to reconsidering and starting again? We are conscious that this was not tested either way, because the claimant did not really engage with the consultation process. The claimant's reaction might be relevant to compensation, but we have set out our reasons why we believe that even if the claimant had asked to see his scores and made his points about the process, realistically he would have been unable to change the outcome.

110. On the particular facts, we consider that no reasonable employer would have started consulting the claimant at such a late stage, let alone then rushed through the consultation stage. Any reasonable employer would have consulted the four Associate Directors at the outset on whether there were alternatives to redundancy and what would be an appropriate selection

process, including bearing in mind that the four in the pool had different line managers.

111. For this reason too, we find the dismissal unfair.

112. We do not consider that the appeal process was able to make up for these failings. There were too many matters on which the claimant had lost the opportunity to consult at a formative stage. Nor could an appeal compensate for the effect of the rushed process on the claimant in terms of his willingness to engage at that stage or earlier.

Issue 2.4.3

113. Finally just to mention alternative employment. The claimant was shown the vacancy lists so he could indicate any positions which interested him. In the short time-scale of this process, he did not see any positions which he wanted.

Polkey: Issue 2.5

114. We now have to decide what would have happened if the respondent had followed a fair process in the respects we have identified.

115. We find that starting the consultation process earlier and having a reasonable consultation period overall, whether because the claimant was on notice earlier or because the process was less rushed at the end, would take an additional 4 weeks.

116. After that, we believe there is a 90% chance that the outcome would have been the same. These are our reasons.

117. We do think the claimant would have engaged. That is because the reason he did not engage was the direct result of the way the respondent had handled matters. The claimant believed it was pointless to engage, because the first he heard about the entire matter was when he was told out of the blue that he had been provisionally selected for redundancy; he did not even know redundancy was a possibility; his colleagues did not even know a redundancy exercise had taken place; and he was told he should keep matters confidential. It is not a case where he had previously been looking for a way to leave the company.

118. We believe that had the consultation started earlier, the claimant would therefore have engaged. However, we think the chance that the respondent would have made a different decision about making redundancies or which pool or that it would have chosen a different process is slim. As we have already said, the selection criteria were reasonable and there were no obvious alternatives. The difficulty of there being no single person who knew the work of all four equally well would have remained. We think there is a slim chance that the respondent would have brought in one additional person who had some knowledge. Even if that happened, there is no real evidence that

the outcome would have been any different. There was a 6 point discrepancy between the claimant and the next lowest colleague over seven criteria. There was a 10 point discrepancy with the next person. It is very unlikely that such a differential would have been overcome, even if some marks were adjusted. So while we cannot rule out the possibility, we cannot put the chance of avoiding dismissal any higher than 10% after the extra 4 weeks.

Remedy

119. The remedy hearing will go ahead by CVP on the date provisionally fixed, ie **3 December 2025**.

120. I would recommend that the parties see whether they can agree compensation to avoid such a delay and avoid the cost and stress of coming back to the tribunal. It may help to give these guidelines, although they are not comprehensive:

120.1. There will be no basic award, because the claimant was given statutory redundancy pay.

120.2. Our finding is that the process would have taken 4 weeks longer but after that, that there is only a 90% chance of not being made redundant.

120.3. Tribunals have no power to make awards for injury to feelings in unfair dismissal cases.

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Employment Judge Lewis

Dated: 11 August 2025

Judgment and Reasons sent to the parties on:

13 August 2025
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For the Tribunal Office