EMPLOYMENT TRIBUNALS

Claimants: **Mr G Quinlan**

Respondent: **Millbrook Healthcare Ltd**

Heard at: **Bristol Employment Tribunal by CVP remote hearing**

On: **3 and 4 September and 3 October 2025**

Before: **Employment Judge M Hallen (sitting alone)**

Representation

Claimants: Ms P. Sikri (Counsel)

Respondent: Mr C Banham (Counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that the claim of unfair dismissal is well founded, and the Claimant succeeds. There was an 80% likelihood that the Claimant would have been dismissed if a fair dismissal procedure was followed. A remedy hearing is fixed for 6 February 2026, and separate directions will be sent out to the parties to assist them to prepare for it.

REASONS

Background

1 The Claimant in his Claim Form submitted to the Tribunal on 23 September 2024 asserted that he was unfairly dismissed by reason of redundancy. The Claimant asserted that the redundancy that led to his dismissal was not a genuine redundancy and was engineered to dismiss him. Furthermore, he asserted that as a Senior Business Analyst he should have been appointed to the position of Project Manager which he was suitably qualified and that arose during his notice period whilst he was still employed. The

Respondent in its Response Form asserted that the redundancy that led to the Claimant's dismissal was genuine and due to a restructure within the meaning of Section 98(1)(b) of the Employment Rights Act 1996 (ERA). A fair procedure had been followed, and the Claimant was not suitably qualified to be shortlisted the role of Project Manager that it admitted arose during the Claimant's notice period.

2 The issues agreed between the parties at the outset of the hearing for the Tribunal were as follows:

2.1 What was the reason for the Claimants dismissal? The Respondent said that the reason was redundancy within the meaning of Section 98(2)(c) of the ERA.

2.2 If the reason for the Claimant's dismissal was the potentially fair reason of redundancy, did the Respondent act reasonably in treating redundancy as a sufficient reason for dismissing the Claimant, taking into account Section 98(4) of the ERA? In particular, following the guidance of **Williams & Others v Compair Maxam Ltd [1982] ICR 156**, did the dismissal lay within the range of conduct which a reasonable employer could have adapted? Relevant issues for the Tribunal to consider in the light Williams were:

(1) Did the Respondent adequately warn and consult the Claimant about the redundancy

(2) Was the Claimant fairly selected for redundancy?

(3) Did the Respondent take reasonable steps to seek redeployment for the Claimant?

3 I had in front of me an agreed bundle of documents made up of 127 pages as well as a witness statement bundle made up of 15 pages. I also had 4-page bundle of unredacted documents that was also in the main trial bundle in redacted format. During the hearing, the parties agreed to provide me with details of the qualifications and experience of the candidate that was ultimately appointed to the Project Manager post. The Claimant attended and gave oral evidence. The Respondent called two witnesses to give oral evidence. They were Ms Kim Morgan, Group Transformation Director and the Claimant's line manager, and Ms Lisa Wadsley, HR Business Partner. The witnesses were subject to cross examination, and I also asked some questions.

Facts

4 The Claimant was employed as a Senior Business Analyst under a contract of employment with a start date of 3 May 2022. He was dismissed by letter dated 24 April 2024 and was placed on garden leave during his three month notice period and his effective date of dismissal was 22 July 2024.

5 The Respondent is a business that provides services and equipment that help vulnerable people live independently at home, on behalf of the NHS and local authorities. The Respondent's services include delivering and maintaining community equipment like

mobility aids and hospital beds, performing home adaptations for safety, providing technology enabled care, using alarms and sensors, managing wheelchair services, and offering home improvement agency services. At the time of the Claimant's dismissal the Respondent employed 650 employees.

6 In Autumn 2023, at its worst, the Respondent owed 9 million pounds to its supply chain, with only a 1 million pounds monthly income. Some of the Respondent's customers were behind on their payments by several months, owing the Respondent millions of pounds. The financial outlook for the Respondent was perilous, and it was in a very serious position. Between October 2023 and March 2024, the Respondent carried out a comprehensive review of its business activities and contracts. The Respondent considered all options and alternatives to avoid headcount reduction and actively pursued the sale of the business. The Respondent carved out the business and made divestments; it engaged external consultants to benchmark Central Services; a portfolio of projects was started, from supply chain reviews to improving logistics; and the Respondent stopped all spending and system implementations.

7 The Respondent's financial circumstances resulted in the appointment of a new CEO and a turnaround director, and the Company commenced its first headcount reduction activity, with a view to assessing leadership reorganisation. On 18 March 2024, Ms Morgan met with the Claimant for an initial redundancy consultation meeting. The Claimant was in the Project Management Office, which fell within the Central Services team. At this time, the total headcount for Central Services was about 94, which was a disproportionate percentage of a total headcount of around 650. Therefore, the Respondent placed 37 roles at risk of redundancy, with a view to making 24 roles redundant. Ms Morgan explained why the redundancies were being made. The two had a discussion about the existing structure and staffing levels, and the Claimant acknowledged that the Respondent was a top-heavy business. Ms Morgan advised the Claimant that his Senior Business Analyst role was at risk of redundancy as the PMO was being closed down. She explained that all change was stopping, and that his role was no longer required.

8 Ms Morgan went on to confirm the number and descriptions of the other roles the Respondent was proposing to make redundant, as well as the total number of staff affected by the redundancies. The Claimant told Ms Morgan that he had done some research and that he was concerned that if there should be a longer consultation period if more than 100 employees were being made redundant. Ms Morgan confirmed that although the Company was looking to reduce the Central Services headcount by 40%, only 24 redundancies were being proposed at this stage. The two had a lengthy discussion about the alternative options the company had considered. They talked about the needs for the business, and the skills and experience needed for the future. The Claimant explained that he felt the company could have avoided the situation, and that he was disappointed in the lack of support with certain projects. They also briefly considered whether any alternative roles were available to the Claimant at this stage, but he quickly confirmed that he had checked out vacancies and that he could not see anything that was suitable. Ms Morgan assured the Claimant that she would continue the consultation process, and she would ensure that he was kept informed and supported throughout. Ms Morgan confirmed that no decisions would be made within the next month.

9 Soon after this initial consultation, Ms Morgan met with the Board and CEO at one

of their weekly update meetings and passed on the Claimant's comments. Within HR, the Respondent had a tracker to record what consultations were taking place, what representations had been made, and which vacancies were available. At the weekly meetings, Ms Morgan would share progress and ensure that all suggestions and representations made by employees were given meaningful consideration.

10 On 17 April 2024, Ms Morgan met with the Claimant for a second consultation meeting. The Claimant was invited to bring a colleague or Trade Union representative to the meeting, but he chose not to. The parties picked up the discussion about alternative roles. Ms Morgan was aware that there were limited vacancies, as almost all recruitment was on hold at this point. However, the Claimant explained that he had not looked at any of those vacancies, as he had been unwell with Covid. Ms Morgan also revisited the general business case for the need to make redundancies at this time. She explained that the company was having to change the way the services were provided by the central teams in response to wider economic challenges. The Claimant asserted that he had spoken with a service centre manager and had been told that the financials were improving. Ms Morgan acknowledged that things were looking better, but she also noted that the improvements were largely due to the essential reductions that were being made.

11 On 19 April 2024, Ms Morgan met with the Claimant for a final consultation meeting. The Claimant was invited to bring a colleague or Trade Union representative to the meeting, but he chose not to. The parties again revisited the scope of the redundancies and why the Claimant's role had been placed at risk. The Claimant asked what selection criteria had been used, and Ms Morgan confirmed that as the Claimant's role was not in a pool of redundancies, a selection matrix was not appropriate. She explained that the Respondent was carrying out a restructure across the Company and the Claimant's duties could be absorbed by other employees. The Claimant also raised the savings he had made for the Company over the past year. Ms Morgan thanked the Claimant for his contributions but noted that this did not change the need to make reductions or change the reality that his duties could be absorbed. She explained that the decision to make redundancies was not a reflection of his performance or value. She advised the Claimant that his notice period would start on 22 April 2024 and that his last day of employment would be 22 July 2024. Ms Morgan confirmed that he could take *'garden leave'* for his notice period to enable him to look for another job or to attend any interviews or training that would help him secure alternative employment. The Respondent in the letter of dismissal dated 22 April 2024 confirmed, *'we remain committed to helping you find alternative work during the coming weeks.'* The Claimant was offered the opportunity to appeal his redundancy, but he chose not to do so.

12 The Claimant in his Claim Form and at the outset of the hearing before me asserted that redundancy was not a genuine redundancy and that a fair procedure for dismissing him for that reason was not applied by the Respondent. However, after hearing the evidence of the Respondents' witnesses at the hearing before me, in his evidence in cross examination he confirmed that he accepted that the redundancy was a genuine redundancy because the Respondent was in serious financial trouble and needed to make cutbacks in the Central Services department. He also accepted that the Respondent made 24 redundancies in that department and that the two workers in his team, the Project Management Office, were made redundant. One of those workers was an independent contractor whose contract was not renewed, and the other was himself who was made redundant. The work of this team would no longer continue. In these circumstances, he

accepted that the Respondent did not need to follow an objective selection process as both of the workers in his team were made redundant as there was no need for them to undertake the duties for which they were employed. He accepted that there was a genuine reason to make his position redundant and that the Respondent by conducting 3 consultation meetings with him prior to confirming the decision to dismiss him by reason of redundancy on 22 April 2024, had followed a fair procedure in so far as consultation and prior warning with him was concerned. He maintained that his only concern now in respect of his claim for unfair dismissal was that whilst he was on *'garden leave'* during his notice period, a position of Project Manager was advertised for by the Respondent and that the Respondent did not act reasonably in failing to properly consider him for that suitable alternative role.

13 In May 2024, a month into his garden leave, the Claimant was conducting a search for jobs on a job search agency, *'Indeed,'* and he noticed a job advert for a Project Manager at the Respondent. On reading the job description, he realised that the role was one that he was qualified to do albeit that it was at a lower salary than his role as Senior Business Analyst. As, the Claimant had no access to the Respondent's internal systems, he submitted his application form and CV to *'Indeed'*. The Respondent did not bring this vacancy to the attention of the Claimant even though it had indicated through Ms Morgan and Ms Wadsley that it remained committed to helping the Claimant in finding him suitable alternative employment while he was still employed.

14 At the hearing, the Claimant stated that this was a role he was more than qualified for as from his CV and from his work experience with the Respondent he had worked in the Project Management Office. Over his extensive career from 2011 onwards, he had successfully managed projects in complex and high—stakes environments, including delivering significant cost saving initiatives and technical implementations, including those for the Respondent (for example Project 'Cage'). Within the Respondent itself, he had received direct praise from the CEO for the delivery of his most recent project. The Respondent sought to persuade me that the Claimant was not qualified for the role of Project Manager, but I did not accept this evidence. I preferred the evidence of the Claimant who made extensive reference to his experience of project management in his CV and also in respect of Project 'Cage' that he project managed. He also referred me to other jobs on his CV that showed that he had undertaken project management work. The Respondent's witnesses did not dispute that he was responsible for project managing Project 'Cage', but they sought to downplay his efforts in this regard. I accepted that he did indeed have recent experience in project management whilst working for the Respondent and that there was a level of interchange between his job as Senior Business Manager and project management.

15 Even though the Respondent had not brought this vacancy to the Claimant's attention, considering the commitment that was given to him by the Respondent to assist him with the internal search for suitable alternative employment while he was on garden leave, the Claimant remained hopeful that the Respondent would contact him and invite him for an interview. He genuinely thought that he had a very good chance of securing this role or at least being shortlisted for interview for it.

16 On 28 June 2024, over a month after the Claimant had submitted his application and without having heard anything from the Respondent, he finally received an email from the Respondent. The email was short and from Ms Wadsley. It stated that*, 'after careful*

consideration we have decided not to progress your application to the next stage at this time." The next stage was shortlisting the candidates for interview for the role. The Claimant was upset on receiving this email and could not believe that he had been rejected so unceremoniously from a job that he believed he was qualified to do, without any real explanation. The Respondent gave evidence before me that I accepted that there were four other candidates for this position plus the Claimant and that it interviewed four external candidates for the role. It eventually appointed an external candidate.

17 At the hearing, Ms Wadsley told me that in hindsight she should have consulted with the Claimant about this role, and she did not have a rational explanation for not doing so. She was aware of the commitment to continue to support the Claimant in his job search whilst he was under notice of dismissal but sought to persuade me that the Claimant was not qualified to undertake this role. I did not accept her evidence. This was especially so given the fact that Ms Morgan who was the Claimant's line manager said in her witness statement to the Tribunal that the Claimant should be progressed for the role. In her statement, Ms Morgan said, '*however, when Lisa [Wadsley] contacted me, my initial view was that Greg should be considered for the role, just like any other candidate.'*

18 The Respondent sought to persuade me that the '*consideration'* that was referred to actually took place at a discussion that took place between Ms Wadsley and Ms Morgan on 28 June 2024. This discussion must have occurred sometime after Ms Wadsley sent an email to Ms Morgan at 11.02 am that day that I was referred to. There were no notes of this meeting produced to me so I could not tell what consideration was given to the Claimant's application let alone whether it was reasonable. It was clear on the evidence of the Respondent's witnesses that no objective procedure was applied measuring the Claimant against the other external candidates. I also noted that the Claimant was rejected for the role by Ms Wadsley on the same day by email timed at 2.35 pm. This was shortly after the discussion the two had in relation to the Claimant's application. I did not accept that this was a reasonable consideration of the Claimant's application as it involved no input from the Claimant and no comparative objective procedure was applied in measuring the Claimant against other candidates for the post.

19 The Claimant gave evidence to me that was not challenged by the Respondent that whilst he was working on Project 'Cage', he had a good working relationship with Mr ME, Managing Director of Community Equipment Services, who was impressed by his work on that project and subsequently turned out to the hiring manager of the Respondent that commissioned the recruitment for the Project Manager role that the Claimant applied for during his notice period. He had raised is work in the Community Equipment Services on Project 'Cage' in his witness statement. The Claimant said that if Mr ME knew that the Claimant had applied for the role, he would have had a good chance of being hired. The Respondent's witnesses agreed that Mr ME was the commissioning manager for this role but that he had not been consulted at all about the Claimant's application for the role.

Law

20 The question of whether a dismissal is fair or unfair must be determined having to regard to Section 98(4) of the ERA 1996. Once an employer has established that the reason for dismissal was a potentially fair reason (as set out in S98(1) of the ERA 1996), the determination of the issue of whether the dismissal is fair or unfair, having regard to the reason shown by the employer for the dismissal, 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. That question must be determined in accordance with the equity and substantial merits of the case. The requirements set out in Section 98(4) look, first, at the reason established for the dismissal, in this case redundancy, and then look at whether (in the light of the matters just set out, the employer acted reasonably or unreasonably in treating that reason (in this case redundancy) as a sufficient reason for dismissing the employee.

21 The cornerstone is, as has been stated many times in appellate authorities, an assessment of reasonableness. That means that a Tribunal or Judge must not substitute their own view for that of an employer; rather, what is required is to determine whether or not an employer acted reasonably, focusing on the range of different responses to the particular circumstances reasonably open to a reasonable employer. In redundancy cases, the question is not whether it was reasonable to dismiss *'an'* employee, but whether it was a reasonable decision to dismiss this particular employee for the potentially fair reason of redundancy.

22 A number of authorities have addressed reasonableness and fairness in the specific context of redundancy notice. Notably, albeit in 1982, in **Williams v Compair Maxam Ltd [1982] IRLR 83,** it was noted that a reasonable employer will usually seek to ascertain whether, instead of dismissing an employee, the employer could offer him alternative employment. Focusing on the question of alternative employment, in **Quinton Hazel Ltd v WC Earl [1976] IRLR 296**, the EAT considered the previous decision of **Vokes Ltd v Bear [1973] IRLR 363** which addressed the question of the duty of looking for alternative employment prior to dismissal. The EAT, in the Hazel case, noted that in Vokes Ltd v Bear not a single reasonable step was taken by the employer. In contrast, in the case before the EAT (Hazell) the Respondent had considered possible posts which might have provided the employee with alternative employment was available: they did, quoting from paragraph 7, *''consider how to go about the question of looking at alternative employment''*. They did have consideration for the Claimant; they did wonder whether he could be placed somewhere else; they did have in their mind the possibility of other reduced-pay jobs; but ruled them out because they assessed, reasonably, the situation before them.

23 In **British United Shoe Machinery Co Ltd v Clarke [1977] IRLR 297**, the EAT concluded that a Tribunal had been entitled to find that an employer had failed to take reasonable steps to find the Claimant alternative employment. The EAT noted that, Whilst the standard to be applied in determining whether the employer had discharged that obligation is the standard of the reasonable employer, in the case before the EAT, the Tribunal's decision was one which was open to them upon the evidence and could not be challenged on appeal. The EAT also stated that where a Tribunal finds a dismissal unfair, it will be necessary to make some estimate for the purpose of assessing compensation, of what would have been the likely outcome had that been done which ought to have been done. The EAT considered that this is a question well-suited to Tribunals, in their capacity as industrial jury, to answer, provided a Tribunal remembers that what it is trying to do is to assess the loss suffered by the Claimant, and not to punish the employer for their failure in good industrial relations.

24 More recently, these issues were considered in **Mr Joseph De Bank Havcocks v**

ADP RPO UK Ltd [2023] EAT 129 and Mrs S Mogane v 1) Bradford Teaching Hospitals NHS Foundation Trust 2) Karen Regan [2022] EAT 139. In particular, in Haycocks the BAT stated, at paragraph 23: "*23. Starting with Compair Maxam [Williams & Ors v. Compair Maxam Ltd ICR 156] the theme surrounding reasonableness in redundancy situations is that it reflects what is considered to be good industrial relations practice; that employers acting within the band of reasonableness follow good industrial relations practice. The substance of what amounts to good practice will vary widely depending on the type of employment, workforce and the specific circumstances giving rise to the redundancy situation. However, there are certain key elements which seem to appear. First amongst those is that a reasonable employer will seek to minimize the impact of a redundancy situation by limiting numbers, mitigating the effect on individuals or avoiding dismissal by engaging in consultation. At one time consultation, certainly in the cases above, tended to relate to methods of selection. However, in more recent years it has been noted that consultation could result in a broader range of outcomes. (During the hearing the JCB workforce taking a pay cut to avoid redundancies was discussed as an example).'*

25 The parties also drew my attention to **Hendy Group Ltd -v- Daniel Kennedy [2022] EAT 000015**. This case was relevant in giving guidance to Tribunals on applying the right test on whether the Respondent had properly considered alternative employment for the Claimant. The EAT in this case reiterated the need for Respondent's to take reasonable steps to assist a Claimant to secure alternative employment whilst at risk of redundancy. This included consulting with the employee about suitable alternative employment that arises during their employment and properly considering them for such roles.

26 If a dismissal was unfair due to procedural failings but the appropriate steps, if taken, would not have affected the outcome, this may be reflected in the compensatory award, **Polkey v A E Dayton Services Ltd [1987] IRLR 503, HL**. This may be done either by limiting the period for which a compensatory award is made or by applying a percentage reduction to reflect the possibility of a fair dismissal in any event. The question for the Tribunal is whether this particular employer (as opposed to a hypothetical reasonable employer) would have dismissed the Claimant in any event had the unfairness not occurred.

Tribunal's Conclusions

27 In this case, I had firstly to establish whether redundancy was the genuine reason for dismissal and if it was, secondly, whether the Claimant was dismissed fairly by reason of redundancy. If the Claimant established that redundancy was not the genuine reason for dismissal, then the dismissal would be unfair. I could come to this conclusion if the Claimant could show on the balance of probabilities that the redundancy process was not genuine and that it was engineered to remove him.

28 In this case, I accepted that redundancy was the genuine reason for dismissal as asserted by the Respondent. Although at the outset of the hearing before me, the Claimant's position was that the redundancy was not genuine and that the procedure followed to dismiss him for this reason was not fair, during the course of his evidence to me that followed the Respondent's witnesses testimony, he came to accept that there was a genuine redundancy situation in Central Services as the Respondent faced severe

financial pressure to cut jobs in his department. He accepted that 24 employees were made redundant to make financial savings and that the two employees remaining in his section (Project Management Office) were made redundant. This he accepted was a legitimate business decision that was taken by the Respondent at the time. As a consequence of all of these concessions made by the Claimant in evidence before me at the hearing, I found that the genuine reason for dismissal was redundancy.

29 I then had to consider whether the Respondent followed a fair procedure in dismissing the Claimant by reason of redundancy. Although he initially argued in his Claim Form and his witness statement that an objective selection process was not applied, the Claimant again accepted in his evidence to me that the Central Services Department was top heavy and that the Respondent needed to make cuts in that department. He accepted that this department was cut back by 24 staff and that these cuts also included his team in the Project Management Office as both workers in his team were made redundant. He accepted that as both workers in his team were made redundant, there was no need for an objective selection process to be applied. He also accepted in his evidence to me that the Respondent went through a fair and reasonable consultation process with him and only took the decision to make him redundant after that consultation process offering him the chance to appeal against his dismissal. Although in closing submissions the Claimant's counsel sought to persuade me that the Claimant had not accepted that a fair and objective selection process had been applied in this case, I find that on the Claimant's own evidence to me, he had accepted that there was no need for such a process to be applied to his case as his entire team had been cut due to the redundancy situation that existed in Central Services at that time.

30 Furthermore, in his evidence he told me that the only argument that he was now making having heard the Respondent's witness's testimony was that a fair procedure was not followed by the Respondent when it came to considering him for the Project Manager role that arose during his '*garden leave*.' He said that he was well qualified for the role of Project Manager that arose when he was on *'garden leave'* and that he that he had a good chance to be appointed into that position. The Respondent's position was that the Claimant was considered for this position but that he was not qualified for it and was not shortlisted for interview for the role. In these circumstances, I had to determine if the actions of this Respondent in this case fell outside the band of reasonable responses open to this employer in this case. I have concluded that the Respondent's actions with respect to its consideration of the Claimant for the suitable alternative role of Project Manager were outside the band of reasonable responses open to a reasonable employer for the following reasons: -

(a) the decision not to shortlist the Claimant was taken by Ms Wadsley, the human resources officer in this case and not by the line manager, Ms Morgan. Ms Wadsley had no knowledge of the work undertaken by the Claimant for the Respondent and she had no real awareness of the skills and experience that the Claimant had. The more appropriate officer to make such a decision was Ms Morgan given her seniority and the fact that she was the line manager of the Claimant and did have sufficient skills to make the decision. There was no reasonable explanation offered to me for this by the Respondent. It was Ms Morgan's evidence that the Claimant should have been put forward for the role that to me meant he should have been shortlisted for it and interviewed for it. At the hearing, Ms Morgan sought to

persuade me that what she meant by considered for the post was not that he should be shortlisted. Rather, the consideration occurred when she spoke to Ms Wadsley on 28 June 2024 about the Claimant's application. I did not accept this explanation. I did not see how the Claimant could properly be considered for the post without some kind of objective process being put into place by the Respondent. A brief chat between Ms Morgan and Ms Wadsley was not a reasonable consideration of the Claimant's application for the post. A reasonable employer would have put into place an objective comparative selection process measuring the Claimant against the other four external candidates and then deciding who to interview for the role. No such reasonable consideration taking place. In addition, in her own evidence, Ms Morgan confirmed that the Claimant had project management experience while working on Project 'Cage' that showed to me that he was a suitable candidate to be shortlisted for interview for the alternative role.

(b) Ms Wadsley confirmed in evidence that she took the decision not to shortlist the Claimant for interview without any prior consultation or discussion with him to ascertain his skills and experience and suitability for the role. She accepted in evidence that in hindsight this was not a reasonable thing to do. There was no reasonable explanation offered to me by the Respondent as to why this consultation did not happen. A reasonable employer in such circumstances would have at the very least consulted with the Claimant to establish his skills, experience and suitability for the role.

(c) The consideration that was given to the Claimant's application for the role was undertaken by the Respondent at a meeting between Ms Morgan and Ms Wadsley that took place on 28 June 2024. This meeting was not documented, and no notes of the meeting were produced to me. This was an important discussion between these two individuals and both of them would have been aware given their skills and experience that a note should have been prepared and retained. Ms Wadsley was an experienced human resources officer and would have known the significance of considering the Claimant for suitable alternative employment in a fair and objective way. The Respondent was at pains during the hearing to confirm to me that it was well aware of its duty to assist the Claimant with respect to suitable alternative employment in order to avoid compulsory redundancy. However, the manner that the Claimant's application was dealt with did not show to me that the Respondent took his application for the role of Project Manager seriously. The detailed explanation offered to me at the hearing by Ms Wadsley as to the Claimant being unqualified for the role appeared to me to be a rearguard action mounted by the Respondent to justify a poor selection decision that was taken without consulting the Claimant. I find that a reasonable employer would have retained a detailed note of the consideration of the Claimant for this role.

(d) The Claimant gave evidence to me that was not challenged that he was known to the hiring manager Mr ME, who was well aware of his good work on Project 'Cage' and was the hiring manager for the Project Manager role that came up during the Claimants notice period. The Claimant's evidence was that if Mr ME was made aware of his application for the role, given his

previous good interaction with the manager, he would have stood a good chance of being at least short listed for interview for the role. I find that a reasonable employer in these circumstances would have discussed the Claimant's application for this position with the hiring manager to take the hiring managers view on the suitability of the Claimant for such a position and whether he should be shortlisted for interview. This is especially the case here as the Claimant was an internal applicant for the role at the risk of redundancy and known to the hiring manager.

(e) The Respondent asserted to me in evidence that it was aware that it had a positive role when considering redundant employees for suitable alternative employment to avoid compulsory redundancy and said as much to the Claimant in writing in the letter of dismissal. In this case, the Respondent took no positive steps in informing the Claimant of the vacancy that arose for the Project Manager position during his notice period. It was the Claimant who discovered the position advertised on '*Indeed*' and he made the application himself without any assistance from the Respondent. I find that this failure to engage with the Claimant was the exact opposite of what the Respondent tried to persuade me of at the hearing. I find that a reasonable employer in the circumstances would have taken a more positive role in respect of bringing the vacancy to the Claimant's attention especially given the positive assertion made to the Claimant by the Respondent in the letter of dismissal.

31 Given my above conclusions, I find that the Claimant's dismissal was unfair as the Respondent's actions in this case were outside the band of reasonable responses regarding its obligation to reduce the need for compulsory redundancy by considering suitable alternative employment for the Claimant.

32 In relation to *'Polkey'* considerations, the question for me to determine was what would have been the position if the Respondent did not unfairly dismiss the Claimant in failing to properly consider him for the Project Manager role. In other words, would he have been successful in obtaining the role or would he have still been made redundant?

33 Based on the facts of this case, I do not conclude that the Claimant would have been appointed into the Project Manager role as there were a few steps the Claimant would successfully have had to go through before he could have been appointed. Had he been put forward for the role as Ms Morgan felt he should have been, his application would have been shortlisted along with the other candidates, and he would have been interviewed for that role. This Respondent would have put into place an objective selection process for interviewing the candidates using an objective interview process that would have involved the candidates being asked questions relevant to the post that would have been matched against a model answer matrix at the very least. Therefore, the best conclusion that I can come to is that the Claimant would have been shortlisted for interview for this post by this employer if it was acting fairly. That in itself did not mean that he would have succeeded in interview in obtaining that role. Given the fact that there were 4 other external candidates for the role under consideration at the time, and, taking the above matters into consideration, I find that the Claimant would have had a 20% chance of succeeding at interview for the position which means that he would have had an 80% chance of being made redundant. I come to this conclusion for the following reasons: -

(a) I accepted the Claimant's evidence that he had suitable qualifications and experience for the Project Manager role since 2011 and that he had undertaken project manager roles for the Respondent especially on Project 'Cage.' I accepted his evidence that his role as Senior Business Analyst was interchangeable with the role of Project Manager and indeed whilst working for the Respondent, he worked in the project management team of Central Services. Although at the time of the Claimant's redundancy there were only two workers in this team, I accepted his evidence that the team was much larger when he joined the Respondent initially as a contractor in August 2021.

(b) The Claimant gave unchallenged evidence that he had impressed the hiring manager, Mr ME for the project manager role that came up during his notice. Had Mr ME been consulted about the Claimant's application he would have suggested the Claimant should be at least shortlisted for the position. The Respondent led no evidence from the hiring manager Mr ME in this case even though the Claimant in his witness statement said that he worked with on Project 'Cage' that was in Mr ME's department.

(c) The Respondent produced no documentary evidence to support its rationale for rejecting the Claimant for the position of Project Manager in respect of the discussions that took place between Ms Wadsley and Ms Morgan on 28 June 2024. The only evidence was that contained in Ms Wadsley's witness statement and oral testimony which I treated circumspectly on the basis that she was an experienced human resources officer and understood she needed to take a note of such an important discussion at the time. As I have said above, I have concluded that what was contained in her witness statement and in her evidence before me was a rearguard action mainly designed to bolster the Respondent's case not to shortlist the Claimant for interview for the position of Project Manager.

34 Based upon the above conclusions, I find that the compensatory award to be paid to the Claimant for his unfair dismissal should be reduced by 80% on the basis that there was an 20% chance of him being appointed to the Project Manager role if this particular Respondent had followed a fair procedure in reasonably considering the Claimant for this role.

35 With the agreement of the parties, I have listed the case for a remedy hearing for one day on Friday 6 February 2026 that will be conducted by CVP remote hearing. I shall send out directions to the parties separately to assist them in preparation for this remedy hearing. However, I am hopeful that given the outcome of this liability judgment that the parties can come to an agreement on remedy without the need for attend the remedy hearing.

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Employment Judge M Hallen – 7 October 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON
28 October 2025

FOR THE TRIBUNAL OFFICE