



EMPLOYMENT TRIBUNALS

Claimant: Alison Cooper

Respondent: Cranswick Convenience Foods Limited

Heard: in Sheffield

On: 19, 20, 21 and 22 January 2026

Before: Employment Judge Ayre

Representation

Claimant: In person, supported by her sister

Respondent: Kirstie Smith, solicitor

Upon a reconsideration of the judgment delivered orally to the parties on 22 January 2026, on the Tribunal's own initiative under rule 71 of the Employment Tribunal Procedure Rules 2024, and without a hearing:

JUDGMENT

1. The claim of unfair dismissal is not well founded. It fails and is dismissed.
2. The claim for equal pay is well founded and succeeds. The terms relating to pay in the claimant's contract of employment are modified by virtue of the sex equality clause from 18 November 2018 to 31 July 2024 so as not to be less favourable than the terms relating to pay in the contract of Tony Burke because:
 - a. The claimant's work was like Tony Burke's work under section 65(1) of the Equality Act 2010; and
 - b. The respondent has not established that the difference in pay was because of a material factor other than the difference in sex.

3. The respondent is ordered to pay to the claimant the sum of £21,638.27.

REASONS

Background

1. The claimant issued this claim on 17 November 2024 following a period of ACAS early conciliation that started on 9 September 2024 and ended on 18 October 2024. The respondent defends the claim.
2. A Preliminary Hearing took place on 19 May 2025 before Employment Judge James. At that hearing there was a discussion about the issues that need to be decided in the case, the case was listed for this final hearing, and case management orders were made.

Hearing

3. There was an agreed bundle of documents running to 273 pages. At the start of the hearing the claimant made an application for disclosure of records of overtime worked by her comparator, Tony Burke, since the termination of the claimant's employment. The respondent produced these records and they were added to the bundle by consent at the start of the second day of the hearing.
4. I heard evidence from the claimant and, on her behalf, from Jackie McDonald, former admin/stores co-ordinator. For the respondent I heard evidence from:
 1. Barry Higgins, Site Director;
 2. Jack Wood, Low Risk Engineering Manager;
 3. Gillian Murgatroyd, People Officer; and
 4. David Abbott, Chief Engineer.
5. Ms Smith produced written submissions for which I am grateful. The submissions were sent to the claimant, and she was given time before the start of the third day of the hearing to consider them. The claimant made brief oral submissions.
6. Judgment on the merits of the claim was delivered orally on the morning of the fourth day of the hearing. The parties were given some time to try and agree the question of remedy, and agreed a figure of £17,928.48 in respect of arrears of pay, exclusive of interest. The Tribunal calculated the interest payable on the award. A revised arrears figure of £16,808.48 was put forward by the respondent as part of the reconsideration process, and no objections were received from the claimant.

Reconsideration

7. After delivering judgment in the claim, the Tribunal wrote to the parties on 23 January explaining that the Tribunal was proposing to reconsider the judgment of its own volition pursuant to Rule 71 of The Employment Tribunal Procedure Rules 2024.
8. The reason for the proposed reconsideration was that the Tribunal made an error in identifying the date from which arrears should be calculated. By virtue of section 132(4) of the Equality Act 2010 the Tribunal can only award arrears of pay to the arrears date which, in a standard case such as the present one, is the day falling 6 years before the day on which the proceedings were instituted.
9. The proceedings in this case were instituted on 17 November 2024. The Tribunal can, therefore, only award arrears of pay for the period starting on 17 November 2024. In the judgment delivered orally during the hearing the Tribunal identified the relevant period for arrears of pay as starting on 1 August 2018, namely 6 years before the date upon which the claimant's employment terminated.
10. The parties were given 14 days to set out their views on whether the judgment should be reconsidered, and whether the reconsideration could proceed without a hearing. They were also asked to set out a proposed revised figure for compensation.
11. The claimant wrote to the Tribunal on 28 January stating that she had no objection to the judgment being reconsidered without a hearing. The respondent wrote to the Tribunal on 29 January stating that it agreed with the proposal to reconsider the judgment without a hearing. The respondent calculated the revised sum for arrears of pay as being £16,808.48 (the original arrears having been agreed by the parties as £17,928.48). The claimant did not object to this figure. The Tribunal has calculated the interest on this amount.

Issues

12. At the start of the hearing, we discussed the issues that would fall to be determined. The parties agreed that those were as identified by Employment James at the Preliminary Hearing, and are as follows:

Unfair dismissal

1. What was the reason or principal reason for dismissal? The respondent says the reason was redundancy or some other substantial reason.
2. In the circumstances (including the size and administrative resources of the respondent), did the respondent act reasonably or unreasonably in treating that as a sufficient reason to dismiss the claimant? That question is to be decided in accordance with equity and the substantial merits of the case and, in a redundancy case, will involve deciding, in particular, whether:
 - i. The respondent's adoption of the reasonable selection pool was within

the range of reasonable responses; and

- ii. The claimant's selection for redundancy was within the range of reasonable responses.

Remedy for unfair dismissal

3. In light of the Tribunal's conclusions on the unfair dismissal claim, there was no need to consider questions of remedy for unfair dismissal.

Like work claim

4. Was the work carried out by the claimant the same or broadly similar to the work carried out by Tony Burke? From what date? This requires deciding whether such differences as there are between their work are not of practical importance in relation to the terms of their work, having regard to:
 - i. The frequency with which differences in their work would occur; and
 - ii. The nature and extent of any such differences.
5. If they were employed on like work, was the whole of the difference in the rate of pay attributable to material factors other than the difference of sex pursuant to the defence in section 69 of the Equality Act 2010, namely, recognition of service and additional duties and responsibilities that were associated with Mr Burke's role as a High Risk Engineering Administrator?
6. What compensation is payable to the claimant if her like work claim succeeds?

Findings of fact

13. The claimant was employed by the respondent as an Engineering Administrator from 7 April 2017 until 31 July 2024. She worked in the Low Risk Engineering Department at the respondent's Valley Park site in Wombwell.
14. At the start of her employment the claimant was issued with a contract of employment and a job description which she signed on 17 April 2017. The job description contained the following:

***"JOB TITLE : Engineering Administrator
REPORTING TO: Engineering Manager***

....

JOB PURPOSE:

To Support the Engineering functions and to contribute to the achievement of overall factory objectives by ensuring that engineering administration tasks are completed and developed.

....

KEY ACTIVITIES

- *To work with and support the Engineering Stores person including holiday cover*
- *Produce daily/weekly/monthly KPIs*
- *Manage Shire queries, upgrades and training requirements*
- *....*
- *Complete the weekly and monthly labour planning reports and issue as appropriate*
- *....*
- *Maintain and promote a good working relationship with the customers and suppliers to enable effective communication and negotiation to take place*
- *....*
- *Organise meetings for both internal and external customers to support the engineering manager and engineering foreman*
- *....*
- *Assist the engineering team with administration tasks*
- *....*
- *Meeting budgets and timescales within the Engineering department*
- *....*
- *Maintain effective communication with all suppliers and customers*
- *Accurate management of the weekly and monthly labour planning reports*
- *Keeping the Engineering Manager informed of any problems which could impact the supply/delivery of goods or services to the department*
- *Ensure all reporting, recording and administrative requirements are achieved working closely with the engineering stores Supervisor*
- *....*
- *To report to the Engineering manager any major parts that are required*
- *....*
- *Receive and issue stores and equipment for capital items*
- *....*
- *To report to the Engineering manager any major parts that are required*
- *....*
- *Manage the contractor permit-to-work system*
- *Ensure all contractors have a current public liability insurance certificate*
- *All contractors have seen the induction video and the video is up to date*
- *All current CDM files, risk assessments and method statements must be kept for 3 years*

....

EDUCATION

Educated to GCSE "O" Level or equivalent in Maths and English...."

15. The claimant was assigned to the Low-Risk Engineering Department and worked out of a breeze block building at Valley Park. The Low-Risk Engineering Department deals with food before it is cooked. There is also a High Risk Engineering Department which deals with food after it is cooked. The High Risk department is based inside the factory and is much larger than the Low Risk department.
16. The respondent also employed an Engineering Administrator in the High Risk Engineering department. His name was Tony Burke and his employment with the respondent began in October 2006.
17. The claimant was originally employed on a fixed term contract as a maternity leave cover, working 40 hours a week. In April 2019 the claimant reduced her working hours to 36 a week. In April 2020 the claimant asked to reduce her working hours to 24 a week over 3 days. Shortly after doing so, the claimant suffered a TIA following which she was off work for several months. She returned to work in September 2020, working 24 hours a week. She remained working 24 hours a week for the remainder of her employment.
18. In June 2022 the claimant met with Jack Wood to discuss her job description. It was agreed that the following activities would be removed from her job description:
 1. Holiday cover;
 2. Producing daily, weekly and monthly KPIs;
 3. Completing weekly and monthly labour planning reports;
 4. Accurate management of weekly and monthly labour planning reports; and
 5. Contractor control.
19. In practice however the claimant continued to perform some of these duties. She gave evidence, which I accept, that she provided holiday cover and dealt with contractors.
20. The work carried out by the claimant included the following:
 1. Ordering parts;
 2. Working on an application called 'Shire' to maintain store levels;
 3. Identifying new suppliers;
 4. Dealing with contractors;
 5. Supporting the management team in meeting budgets and timescales;

6. Completing relevant forms and due diligence;
 7. Organising forklift repairs and the collection of skips;
 8. Stocktaking year end;
 9. Ordering capital expenditure items;
 10. Counting the returns of oil drums and filters; and
 11. Placing purchase orders for contractors.
21. There was a conflict of evidence as to how similar the work the claimant carried out was to the work carried out by Tony Burke, her counterpart in the High Risk Engineering Department. The claimant's evidence was that her work mirrored that of Mr Burke. Mr Wood's evidence was that there were some differences between them. Mr Wood accepted however that he did not manage Mr Burke and was reliant on what he had been told by Mr Burke's line manager. I prefer the evidence of the claimant on this issue. She has more direct knowledge of the work she carried out and covered for Mr Burke when he was on holiday.
22. In January 2023 Jackie McDonald began working for the respondent as an admin / stores co-ordinator in the Low Risk Engineering department. She was initially employed on a specific project and then remained, working two days a week as the claimant's job share partner. Ms McDonald was paid the same hourly rate as the claimant from the date upon which her employment started.
23. Mr Burke was paid more than the claimant. Both were paid an hourly rate. Mr Burke's hourly rates of pay were the following: from 1 May 2011 - £10.6286; from 29 April 2012 - £10.8412; from 29 April 2013 - £11.11; from 27 April 2014 - £11.33; from 3 May 2015 - £11.56; from 5 May 2019 - £11.91; from 3 May 2020 - £12.27; from 2 May 2021 - £12.69; from, 1 May 2022 - £13.32; from 30 April 2023 - £14.12 and from 21 April 2024 - £14.61.
24. The claimant's hourly rates of pay were the following: from 17 April 2017 - £9.24; from 13 August 2017 - £9.37; from 29 April 2018 - £9.56; from 5 May 2019 - £9.85; from 3 May 2020 - £10.15; from 2 May 2021 - £10.55; from 1 May 2022 - £11.08; from 30 April 2023 - £11.74; from 21 April 2024 - £12.15. The claimant was paid less than Mr Burke throughout her employment.
25. There was very limited evidence before the Tribunal of how pay rates are set within the respondent's business, and in particular there was no direct evidence of how the rates for the claimant and Mr Burke were decided upon. Gillian Murgatroyd gave some evidence about how the hourly rate of slicing operatives is set and that pay is reviewed annually. She told the Tribunal that for operatives the same pay scales are used in both the High Risk and Low Risk engineering departments. When asked what is used to determine differences in rates of pay for other staff she replied, 'length of service'. The Tribunal heard evidence however that Jackie McDonald was paid

the same as the claimant from the very start of her employment.

26. Gillian Murgatroyd was unable to tell the Tribunal why Tony Burke's hourly rate was set at the rate it is set at, as she is not involved in setting pay scales.

27. Jack Wood's evidence in his witness statement was that:

"I was not part of the hiring team so I cannot speak to why the Claimant was not offered the same rate of pay as Tony when she started."

28. He commented in his witness statement that *"Tony had worked for the Respondent for a long time at the point the Claimant started. He had built up a lot of years experience in the role and in particular in the stock management system. He had immense knowledge of engineering parts that were required on site. Tony was the administrative user of ...our stock management system for the full engineering department.... He set up new users, added new suppliers and catalogued new parts. This is very important for the business...."*

29. He did not expressly state however that this was the reason Tony Burke was paid more than the claimant. The claimant's evidence was that she also had administrator access to the stock management system. None of the respondent's other witnesses gave any evidence as to why Tony Burke received a higher rate of pay.

30. Both the claimant and Mr Burke had the same job title and worked on the same site, but in different departments. When one of them was on holiday the other covered most of their work. They were not allowed to take holiday at the same time. There was no evidence before the Tribunal to suggest that Mr Burke had a different job specification or job description to the claimant

31. There were some differences between the work carried out by the claimant and by Mr Burke but limited evidence as to how significant these were or how often they occurred. Mr Burke carried out regular stock checks and produced daily, weekly and monthly reports for the senior management team. He also conducted seven day planning preventative maintenance and dealt with contractors who came onto site. This included carrying out contractor inductions which, in the Low Risk department, were carried out by Mr Wood rather than by the claimant.

32. As he worked inside the factory Mr Burke was also required to remove cardboard boxes from parts, take parts into the factor and sanitise them. He prepared risk assessments and method statements for contractors, whereas in the Low Risk department these tasks were completed by team leaders and the engineering manager.

33. Mr Burke worked full time, 40 hours a week, whilst the claimant worked 24 hours a week.

34. Mr Wood told the Tribunal that he considered the combined role that was created as

a result of the restructuring in 2024 to be very, very similar to the role that the claimant had been doing previously. He also accepted in his oral evidence that the roles performed by Tony Burke and by the claimant were very similar.

Redundancy situation

35. In late January 2024 the respondent was informed that a bid it had made to continue a significant contract with Aldi had been unsuccessful, and it was given approximately three months' notice of the contract end date. The loss of the Aldi contract resulted in a significant reduction in the work carried out on the Valley Park site where the claimant was employed.
36. The senior leadership team at Valley Park held a number of meetings to discuss what steps could be taken to reduce costs in light of the loss of the Aldi work. Each department was asked to identify where savings could be made, including in relation to headcount. David Abbott, Chief Engineer at Valley Park, met with the four engineering managers to explore what roles and work could be absorbed by other roles within the engineering department.
37. As part of this process they considered the work carried out by the Engineering Administrators. They identified that approximately 10-15% of their working day was spent collecting customers and parcels from reception and booking parcels into stock. This work could, they considered, be done by engineering apprentices in the future. They also considered that the task of raising purchase order numbers could be done by others in the engineering team, such as the Project Engineering Manager, and that engineers could take on responsibility for finding and ordering replacements for broken parts of equipment.
38. It was proposed that the number of engineering administrators within the High Risk and Low Risk engineering departments be reduced from two full time equivalents (Tony Burke being one of them and the claimant and Jackie McDonald the other) to one, and that one of the roles would be made redundant. It was anticipated that the work that the Engineering Administrators had been carrying out would continue but would be carried out by one Engineering Administrator covering both the Low Risk and High Risk departments, with other employees in the department picking up the remainder of the work.
39. It was proposed that the claimant, Jackie McDonald and Tony Burke be placed in one redundancy selection pool because it was considered that the duties associated with the High Risk and Low Risk Engineering Administrator roles were similar, and that the new, single role of administrator would cover both the High Risk and Low Risk departments.
40. The respondent initially identified that 185 redundancies may be necessary at Valley Park. It took steps to reduce that number, and the actual number of employees made redundant as a result of the loss of the Aldi contract was significantly lower.
41. The respondent carried out collective consultation in relation to the proposed

redundancies. The first collective consultation meeting took place on 3 April 2024. The Low Risk Engineering department, including the claimant, was represented at that meeting, and throughout the collective consultation process, by Rowan Pankhania.

42. At the meeting on 3 April there was an introduction to the collective consultation process and a discussion about the numbers of potential redundancies, which at that time was 172. The proposed selection criteria were shown to the representatives, and the representatives had the opportunity to ask questions.
43. After the first collective consultation meeting, the respondent wrote to the claimant on 4 April 2024 warning her that her role was at risk of redundancy and setting out what would happen next. In particular the respondent informed the claimant that there would be a period of collective consultation lasting at least 45 days with a view to avoiding or reducing the number of redundancies, giving employees the opportunity to make suggestions and raise questions, considering suitable alternative employment and seeking to agree redundancy selection criteria.
44. A second collective consultation meeting took place on 12 April 2024. At that meeting the respondent informed representatives that the respondent had obtained new work which meant that the number of proposed redundancies had reduced from 172 to approximately 50. There was a discussion about the numbers at risk of redundancy, about selection pools and about selection criteria. The proposed selection criteria were shown to the representatives and there was a discussion about them.
45. The proposed selection criteria were attendance, disciplinary record and length of service, with other criteria including a scored interview. The notes of the collective consultation meeting record that managers in the Low Risk section did not agree with the use of scored interviews and asked that the criteria be skills based. It was agreed that a meeting would be arranged with the managers to discuss this.
46. A third and final collective consultation meeting took place on 19 April 2024. At that meeting there was a discussion about the selection pools, challenges to those pools, and the selection criteria for each pool. A number of questions were asked by the representatives and answers were provided by the respondent.
47. One of the pools for selection for redundancy was engineering administration. Included within that pool were the claimant, Tony Burke and Jackie McDonald. The notes of the third collective consultation meeting record the following:
- “Engineering Admin : this pool was challenged. This was discussed and advised that every thought had been given to the roles and it was believed that both roles are the same, whilst they are in different areas (Low Risk & High Risk) fundamentally the duties and responsibilities are the same. Any further challenges around this can be raised in one-to-one consultation.”*
48. Later on in the notes it is recorded that *“All stated that the pools and numbers were*

now agreed” and that, in relation to selection criteria and scoring, “*Low risk Managers : Scored interview agreed.*”. The notes finish with the comment “*All representatives agreed to end collective consultation, and all signed to confirm this.*” The notes are signed by Rowan Pankhania, the representative for the Low Risk Engineering Department.

49. The question of voluntary redundancy was also considered during the collective consultation process, and the respondent was able to reduce the number of compulsory redundancies through the use of volunteers.
50. During the collective consultation process Rowan Pankhania raised concerns on behalf of the claimant and Jackie McDonald because they were unhappy that they were in a selection pool with Tony Burke. Julia Langford, the respondent’s HR Manager, explained the rationale for including the three of them in the selection pool. There was no evidence before the Tribunal to suggest that any alternative pool was put forward on behalf of the claimant. The claimant accepted in cross examination that the selection pool used was reasonable.
51. Rowan Pankhania also stated during the collective consultation process that the preference of the claimant and Jackie McDonald was for qualifications to form part of the selection criteria. Gillian Murgatroyd and Julia Langford considered this and reviewed the job specification for the Engineering Administrator role. They formed the view that as the respondent had never required any qualifications for the role, it was not appropriate to include qualifications.
52. Mr Pankhania took soundings from the claimant, Jackie McDonald and Mr Burke as to what they wanted the selection criteria to include. He then relayed the views of each of them to Gillian Murgatroyd and Jack Wood. Mr Burke was in favour of an interview if necessary, both Jackie McDonald and the claimant favoured qualifications over an interview.
53. The claimant and Tony Burke were scored the same for attendance and length of service, both receiving a maximum of five points for each.
54. As the claimant and Jackie McDonald had suggested using qualifications as a selection criterion, Gillian Murgatroyd asked both of them and Tony Burke to send her their qualifications. Ms Murgatroyd then reviewed the qualifications and noted that they all had similar accounting qualifications, so it would have been hard to separate those in the pool if qualifications were used as a criteria.
55. On 20 May 2024 Gillian Murgatroyd wrote to Rowan Pankhania stating that “*We are at a bit of a loss as not sure what qualifications are needed for the role, I’ve had a quick look to see what qualifications the 3 have and some are pretty similar and don’t make a great deal of difference, there is still a tie....*”.
56. The respondent decided to use a structured interview to decide who should be offered the new role because it did not consider that qualifications were necessary for the role or that using qualifications would break the tie between the claimant and

Mr Burke.

57. On 8 May 2024 the respondent wrote to the claimant, Jackie McDonald and Tony Burke inviting them to a scored interview on Monday 13 May. The letter inviting them to the meeting explained that the interview would be competency based and would form part of the redundancy selection process.
58. The claimant wrote to the respondent on 8 May asking for confirmation of the selection criteria that would be used, and was informed that it would be the selection criteria agreed during the collective consultation.
59. The claimant and Jackie McDonald appeared at the time to be confused as to why they had been invited to an interview rather than an individual consultation meeting. On 13 May the claimant sent an email to the respondent asking for clarification that the meeting was a job interview and not a consultation. In response to the email Gillian Murgatroyd invited the claimant and Rowan Pankhania to a meeting during which she explained that the claimant had been invited to a scored interview for her to answer set questions, and that those scores would then be used to decide who should be provisionally selected for redundancy.
60. In light of the confusion about the purpose of the meeting, the interviews were postponed to 29 May 2024. The claimant and Mr Burke attended interviews on that day. Ms McDonald's interview was postponed to early July because she was off work sick. Ms McDonald ultimately decided not to attend the interview, she resigned and left the respondent's employment on 5 July.
61. There was a conflict of evidence as to whether, at the start of the interview on 29 May, the claimant was provided with a job description for the new role. The claimant said she had not received one. Gillian Murgatroyd said she had given the claimant a copy. Jack Wood, who was also present during the interview did not recall one way or another, but the notes he took during the interview record that "*No Job Spec provided prior to the role/interview*". This suggests that a job specification was provided at the start of the interview. I find on balance that one was provided at the start of the interview.
62. The claimant was interviewed on 29 May by three people : Gillian Murgatroyd in HR, Jack Wood and Chris Dobson who carried out the equivalent role to Jack Wood but in the High Risk Engineering Department. The claimant was asked 13 questions and received a score between 1 and 5 for each question. Each of the interviewers scored her independently and the scores were then reviewed at the end and an average agreed. The same process was followed during Mr Burke's interview.
63. Mr Burke performed much better than the claimant. Jack Wood, who knew the claimant as he was her line manager at the time, formed the view that the claimant was not taking the interview seriously and lacked professionalism. He was disappointed as he had advocated for her during the redundancy selection process.
64. At the end of the interviews, the claimant received a score of 27 out of 65. Tony

Burke scored 50 out of 65. The claimant was therefore provisionally selected for redundancy.

65. The individual consultation process was put on hold temporarily. There was no express evidence before the Tribunal as to why that was the case, although Jackie McDonald gave evidence that she was off sick at the time.
66. On 5 July 2024 after Ms McDonald had resigned, the respondent wrote to the claimant inviting her to an individual redundancy consultation meeting on 15 July 2024. The claimant was advised that she could be accompanied at the meeting by a colleague or trade union representative and informed that at the meeting they would be discussing the outcome of the collective consultation and the selection process and that she would have the opportunity to make suggestions, raise questions and consider possible suitable alternative employment.
67. On 15 July 2024 the claimant attended an individual consultation meeting. Also present were Jack Wood and Gillian Murgatroyd. At the meeting the claimant was shown the redundancy selection scores for all those in the selection pool. She asked for a copy of the scores, and one was provided to her. The claimant asked what the reason for redundancy was and Jack Wood explained that it was due to the loss of a significant volume of work.
68. There was a discussion about suitable alternative employment. Mr Wood stated that they had not identified any suitable alternative roles, unless the claimant was interested in travelling, but that there were roles available at Valley Park as production operatives (including on a job share basis) and a role as a Technical Services Officer.
69. The claimant asked for a copy of the job description for the Technical Services Officer role and whether it was full time. She was told that it was a full time role and replied that due to medical conditions she could not do full time, and that she didn't know what qualifications were needed for the role.
70. Gillian Murgatroyd told the claimant that she would send her the job description for the Technical Services Officer role and asked if the claimant was interested in travelling to work at another site. The claimant replied that she was not.
71. After Gillian Murgatroyd sent the Technical Services Officer job description to the claimant, the claimant wrote to her on 16 July thanking her for doing so and stating that *"Unfortunately due to medical conditions relating to my TIA (stroke) I will not be able to apply"*.
72. During the consultation meeting the claimant was asked if she had any questions or suggestions and asked why Tony Burke was doing overtime. Jack Wood agreed to look into this. The claimant also asked what would happen if Tony Burke was off sick or on holiday, and was told that his duties would be picked up by the team. At the end of the meeting the claimant was told that the respondent would get answers to the questions that she had raised and then invite her back in for a further meeting.

73. On 19 July 2024 Jack Wood wrote to the claimant inviting her to a second individual consultation meeting and advising her of her right to be accompanied by a colleague or a trade union representative.

74. The second consultation meeting took place on 31 July. Present at the meeting were the claimant, Jack Wood and Gillian Murgatroyd. During the meeting Jack Wood provided answers to the questions raised by the claimant in the first meeting. The minutes of the meeting record that Mr Wood told the claimant that:

"...there has been historic overtime now for a number of years, it has been discussed with the line manager, dept manager and the employee and the role can be done in 40 hours, but other things that are not in the remit of the role are and have been picked up..."

75. There was a further discussion about alternative roles at Valley Park. The claimant had been provided with a list of current jobs available at Valley Park, including the Technical Services Officer role. The claimant was asked if she was interested in any of the roles and replied, *"No qualifications and not interested in full time work"*.

76. At the end of the meeting the claimant was informed that she was being dismissed because of redundancy, and that her final day would be the 31st July.

77. After the meeting on 31 July, Gillian Murgatroyd wrote to the claimant confirming the decision to dismiss her. In the letter she wrote:

"...In the meetings we discussed the reason for redundancy, in that the business has lost a significant volume of work, the need to safeguard for the future and the need to become competitive in the market.

We had discussed other opportunities to redundancy, although there were no suitable alternatives we gave the option of applying for other roles within the business. You confirmed in your meeting that your decision would be to take the redundancy as you did not wish to apply for those roles.

In accordance with your contract of employment, you are entitled to 7 weeks' notice, which you are not required to work. Your last day of employment will be 31st July 2024 and the termination payment we will be processing for you (as set out in the attached financial statement) and will be paid on Friday 9 August 2024.

If you feel that your selection for redundancy is unfair or inappropriate in some way, you may appeal against this decision. If you wish to appeal, you should do so in writing to David Abbott (Chief Engineer) within 5 working days of receiving this letter...."

78. The financial statement enclosed with the letter provided for the claimant to receive a statutory redundancy payment of £3,061.80 and 7 weeks' notice pay of £2,041.20 less tax and national insurance.

79. On 5 August 2024 the claimant appealed against the decision to dismiss her. The grounds of her appeal were, in summary, that the role and the selection criteria had been unfairly picked, and that her role had been distributed to other people and managers on a higher level of pay than she was, so the change was not cost effective.
80. An appeal hearing took place on 12 August 2024 and was chaired by David Abbott, with Simon Foreman present as HR Advisor. The minutes of the meeting record that it lasted just 19 minutes. During the appeal hearing the claimant said that she felt her role had been unfairly picked for redundancy, and that Tony Burke was still doing overtime. She complained that the role had been given to someone who gets paid a higher rate of pay and that people were getting overtime. Mr Abbott commented that Tony Burke was still doing 'bits of overtime' but no more than before.
81. On 16 August 2024 David Abbott wrote to the claimant informing her of his decision on her appeal. The appeal was not upheld, and the reasons given were the following:

"Your first ground of appeal was centred around you feeling that your role being selected for redundancy was unfair and you felt the selection criteria was unfair, during the collective consultation criteria was agreed with representatives from each department, and members of the works committee, the aim of the collective consultation was to provide a communication channel between the people affected by the redundancy situation, I understand that you feel that being interviewed was unfair. But this was deemed as a selection criteria during the process. This was covered and is noted in your first and second 1-2-1 consultation on 15th July 2024 and 31st July respectively.

Your second ground of appeal was centred around your role being distributed to other employees on a higher rate of pay than yourself and that you cannot see how this has saved costs. Elements of your role have been absorbed by other members of the team, these members of the team are expected to pick up these elements of the role within their normal working hours.

During the meeting you also raised an issue with Tony Burke doing overtime, as explained to you in your second 1-2-1 consultation meeting, Tony assists the department with elements that are outside the remit of his normal role."

82. The evidence before the Tribunal was that Tony Burke worked overtime before the claimant was dismissed and after she was dismissed. The number of hours overtime worked did not appear to increase after the claimant's dismissal.

The law

Unfair dismissal

83. In an unfair dismissal case, such as this one, where the respondent admits that it dismissed the claimant, the respondent must establish that the reason for the

dismissal was one of the potentially fair reasons set out in section 98(1) and (2) of the Employment Rights Act 1996 ("the ERA").

84. Section 98(1) provides that: *"In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show – (a) the reason (or, if more than one, the principal reason) for the dismissal, and (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held."*

85. Section 98(2) of the ERA provides that

"A reason falls within this subsection if it –

....

(c) is that the employee was redundant...."

86. The burden of establishing a fair reason for dismissal lies with the respondent. The reason for dismissal has been held to be the factor or factors operating on the mind of the decision maker which causes them to make the decision to dismiss (**Croydon Health Services NHS Trust v Beatt [2017] ICR 420**).

87. Section 98(4) of the ERA states as follows:

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

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

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

88. Section 139 of the ERA contains the definition of redundancy:

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

(a) The fact that his employer has ceased or intends to cease –

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

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

(b) The fact that the requirements of that business –

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

(ii) For employees to carry out work of a particular kind in the place

where the employee was employed by the employer,

Have ceased or diminished or are expected to cease or diminish...

(6) In subsection (1) “cease” and “diminish” mean cease and diminish either permanently or temporarily and for whatever reason...”

89. In **Safeway Stores plc v Burrell [1997] ICR 623, EAT** (subsequently approved by the House of Lords in **Murray and anor v Foyle Meats Ltd [1999] ICR 82**) the Employment Appeal Tribunal held that the three questions for the Tribunal, when deciding whether an employee was dismissed by redundancy are:

1. Was the employee dismissed?
2. If so, had the requirements of the employer’s business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish?
3. If so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution?

90. A redundancy situation can arise even if there has not been any overall reduction in the amount of work that has to be done. The focus is on whether the employer’s requirement for employees to do the work has reduced or diminished.

91. It is not the role of the Tribunal to decide whether the respondent’s business decision to make redundancies was correct or not. In **Hollister v National Farmers’ Union [1979] ICR 542** the Court of Appeal held that a ‘good commercial reason’ is sufficient to justify a decision to make redundancies. In **James W Cook and Co (Wivenhoe) Ltd v Tipper and ors [1990] ICR 716** the Court of Appeal emphasised that it is not for Tribunals to investigate the commercial and economic reasons behind a decision.

92. Where a dismissal is by reason of redundancy, the Tribunal must consider whether the employer acted reasonably and this will normally involve asking whether the employer warned and consulted affected employees, adopted a fair basis on which to select for redundancy and took reasonable steps to avoid redundancy by searching for suitable alternative employment (**Polkey v AE Dayton Services Ltd [1988] ICR 142, HL**).

93. The starting point for a fair redundancy dismissal in a case such as this one is for the employer to identify the pool of employees from which redundancies will be made. Employers have a considerable discretion in selecting the pool from which redundancies will be made but must show that they have applied their mind to the

question of the pool and acted from genuine motives (***Thomas and Betts Manufacturing Co v Harding [1980] IRLR 255 CA***).

94. The pool will normally consist of employees doing the same or similar work, and the test for the Tribunal is whether the pool selected by the employer fell within the range of reasonable responses available to an employer in the circumstances (***Kvaerner Oil and Gas Ltd v Parker and ors EAT 0444/02***).
95. The selection criteria used by an employer in selecting employees for redundancy should be clear and transparent and, as far as possible, objective. The fact that the criteria include some degree of subjectivity, however, does not necessarily render the dismissal unfair. In ***Mitchells of Lancaster (Brewers) Ltd v Tattersall EAT 0605/11*** the EAT held that just because selection criteria were 'matters of judgment' did not mean that they could not be assessed in an objective manner'. It recognised that purely objective selection criteria could limit redundancy selection processes to 'box-ticking exercises'.
96. It is not for the Tribunal to subject an employer's selection criteria to scrutiny which is too detailed, provided that they are objective (***British Aerospace plc v Green [1995] ICR 1006, CA***). Nor is it for the Tribunal to substitute its view as to what selection criteria it would have used. Rather, the Tribunal must consider whether the selection criteria were within the range of reasonable responses open to the employer.
97. The Tribunal can, when assessing fairness, consider whether the selection criteria were applied fairly, but should not question the actual scores awarded by the employer unless there has been an obvious mistake or there is evidence of bad faith (***Dabson v David Cover and Sons Ltd EAT 0374/10***).
98. Before dismissing an employee by reason of redundancy, an employer is expected to consult individually with that employee. Consultation should normally include a warning that the individual has been provisionally selected for redundancy, an explanation of why she has been selected, the chance to comment on the selection and consideration of alternative employment. The employee should also be given the opportunity to raise any matters or questions that she has.
99. The employer must also take reasonable steps to find alternative employment for the employee at risk of redundancy (***Thomas and Betts Manufacturing Co v Harding [1980] IRLR 255, CA***). Where an employer creates a new role and selects the candidate for that role from those at risk of redundancy, it is entitled to do so using a competitive interview process, and the same degree of objectivity is not required.

Equal pay

100. The relevant legislative provisions are set out in the Equality Act 2010 as follows:

“64 Relevant types of work

(1) Sections 66 to 70 apply where –

(a) *a person (A) is employed on work that is equal to the work that a comparator of the opposite sex (B) does....*

65 Equal work

(1) *For the purposes of this Chapter, A’s work is equal to that of B if it is –*

- (a) like B’s work,*
- (b) rated as equivalent to B’s work, or*
- (c) of equal value to B’s work.*

(2) *A’s work is like B’s work if –*

- (a) A’s work and B’s work are the same or broadly similar, and*
- (b) such differences as there are between their work are not of practical importance in relation to the terms of their work.*

(3) *So on a comparison of one person’s work with another’s for the purposes of subsection (2) , it is necessary to have regard to –*

- (a) the frequency with which differences between their work occur in practice, and*
- (b) the nature and extent of the differences.*

66 Sex equality clause

(1) *If the terms of A’s work do not (by whatever means) include a sex equality clause, they are to be treated as including one.*

(2) *Where this section applies by virtue of section 64(1), a sex equality clause is a provision that has the following effect –*

- (a) if a term of A’s is less favourable to A than a corresponding term of B’s is to B, A’s term is modified so as not to be less favourable;*
- (b) if A does not have a term which corresponds to a term of B’s that benefits B, A’s terms are modified so as to include such a term.*

....

69 Defence of material factor

(1) The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which –

(a) does not involve treating A less favourably because of A's sex than the responsible person treats B, and

(b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.

(2) A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's....

(6) For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's....

71 Sex discrimination in relation to contractual pay

(1) This section applies in relation to a term of a person's work –

(a) that relates to pay, but

(b) in relation to which a sex equality clause or rule has no effect.

(2) The relevant sex discrimination provision (as defined by section 70) has no effect in relation to the term except in so far as treatment of the person amounts to a contravention of the provision by virtue of section 13 or 14....

79 Comparators

....

(2) If A is employed, B is a comparator if subsection (3), (54), (4A) or (4b) applies.

(3) This subsection applies if –

(a) B is employed by A's employer or by an associate of A's employer, and

(b) A and B work at the same establishment....

132 Remedies in non-pension cases

(1) This section applies to proceedings before a court of employment tribunal on a complaint relating to a breach of an equality clause, other

than a breach with respect to membership of or rights under an occupational pension scheme.

(2) If the court or tribunal finds that there has been a breach of the equality clause, it may –

(a) make a declaration as to the rights of the parties in relation to the matters to which the proceedings relate;

(b) order an award by way of arrears of pay or damages in relation to the complainant.

(3) The court or tribunal may not order a payment under subsection (2)(b) in respect of a time before the arrears day.

(4) In relation to proceedings in England and Wales, the arrears day is, in a case mentioned in the first column of the table, the day mentioned in the second column.

Case

Arrears day

A standard case

The day falling 6 days before the day on which the proceedings were instituted.

....”

101. In considering whether the claimant's work is like the work of her comparator, the Tribunal should focus on what each of them does and, if the work done is different, consider the nature and extent of the differences and how frequently they occur (***Eaton Ltd v Nuttall [1977] 3 All ER 1131***). The burden of providing that her work is the same or broadly similar to that of her comparator lies with the claimant.

102. The Tribunal should adopt a two stage approach and consider:

1. Whether the nature of the work carried out by the claimant and her comparator is the same or broadly similar, taking a broad approach; and
2. In more detail, the nature and extent of any differences in the tasks performed and the frequency with which such differences occur in practice.

(*Capper Pass v Lawton [1976] IRLR 366* and *Waddington v Leicester Council for Voluntary Services [1977] IRLR 32*).

103. The Tribunal should also consider whether the differences in the tasks carried out and the demands on the claimant and her comparator are of practical importance. The focus is on the work actually carried out, not that which the contract may in theory require.

104. Where an employer relies upon a material factor defence in an equal pay claim, it is for the employer to identify the factor which caused the difference in pay and to show that the factor was material, i.e. a significant and relevant difference between the cases, and that it in fact causes the difference in pay. The burden of proving a material factor defence is on the employer.

105. In **Glasgow City Council and others v Marshall and others [2000] ICR 196, HL**, Lord Nicholls set out what is required to establish a material factor defence, as follows:

“The scheme of the Act is that a rebuttable presumption of sex discrimination arises once the gender-based comparison shows that a woman, doing like work or work related as equivalent or work of equal value to that of a man, is being paid or treated less favourably than the man. The variation between her contract and the man’s contract is presumed to be due to the difference of sex. The burden passes to the employer to show that the explanation for the variation is not tainted with sex. In order to discharge this burden the employer must satisfy the tribunal on several matters. First, that the proffered explanation, or reason, is genuine and not a sham or pretence. Second, that the less favourable treatment is due to this reason. The factor relied upon must be the cause of the disparity. In this regard, and in this sense, the factor must be a “material” factor, that is, a significant and relevant factor. Third, that the reason is not “the difference of sex”. This phrase is apt to embrace any form of sex discrimination, whether direct or indirect. Fourth, that the factor relied upon is or in a case within section 1(2)(c), may be a “material” difference, that is, a significant and relevant difference between the woman’s case and the man’s case.

When section 1 is thus analysed, it is apparent that an employer who satisfies the third of these requirements is under no obligation to prove a “good” reason for the pay disparity. In order to fulfil the third requirement he must prove the absence of sex discrimination, direct or indirect. If there is any evidence of sex discrimination, such as evidence that the difference in pay has a disparately adverse impact on women, the employer will be called upon to satisfy the tribunal that the difference in pay is objectively justifiable. But if the employer proves the absence of sex discrimination he is not obliged to justify the pay disparity.”

106. In **BMC Software Ltd v Shaikh [2019] EWCA Civ 267, CA**, Lord Justice Underhill commented in the Court of Appeal that:

“It is important not to overlook....that the burden is on the employer to prove (by sufficiently cogent and particularised evidence) that the factor relied on explains the difference in pay complained of ... If an employer is going to seek to justify a pay disparity based on a factor such as the comparator’s promotion or superior “merit” or “market forces” it needs to be able to explain with particularity what those factors mean and how they were assessed and how they apply in the circumstances of the case. It is evident from the tribunal’s findings that BMC was

simply unable to do that because of its chaotic and wholly non-transparent “employment systems”. The equal pay risks in having non-transparent systems is a commonplace of equal pay law.”

107. In **Calmac Ferries Ltd v Wallace [2014] ICR 453** Langstaff J held that:

“Where a pay disparity arises for examination, it is not sufficient for an employer to show why one party is paid as one party is. The statute requires an explanation for the difference, which inevitably involves considering why the claimants are paid as they are, on the one hand, and separately, why the comparator is paid as he is.”

108. In order to succeed in a genuine material factor defence, the employer must be able to show that the relevant factor is the genuine reason for the difference in pay.

Interest

109. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803 give employment tribunals the power to award interest on awards made in discrimination cases. The tribunal is required to consider whether to award interest, even if the claimant does not include a sum for interest in her schedule of loss.

110. Under Regulation 3 interest is calculated as simple interest that accrues from day to day, and the current rate of interest is 8%. By virtue of Regulation 6(1)(b), interest on compensation and all arrears of remuneration runs from the mid-point date to the ‘calculation date’ on which the tribunal makes its decision on remedy.

Conclusions

111. The following conclusions are reached having considered carefully the evidence, the submissions of both parties and the relevant legal principles.

Unfair dismissal

112. The respondent admits that it dismissed the claimant on 31 July 2024. It bears the burden of establishing that the reason for dismissal was a potentially fair one falling within section 98(2) of the Employment Rights Act 1996. The reason relied upon by the respondent is redundancy.

113. The claimant, in essence, asserts that there was not a redundancy situation because the work that she was doing is still needed, and is still being done, and that Mr Burke, who is now the only Engineering Administrator on site, is still working overtime.

114. Considering the three stage test set out in **Safeway Stores Ltd v Burrell**, I have no hesitation in finding on the evidence before me that the claimant was dismissed.

Turning to the second stage I have asked myself whether the requirements of the respondent's business for employees to carry out work of a particular kind ceased or diminished.

115. Prior to the dismissal of the claimant in July 2024 there were three people working in engineering administration: the claimant, Jackie McDonald and Tony Burke. Following the claimant's dismissal and Ms McDonald's resignation, there has only been one person working in engineering administration: Tony Burke. There was no evidence before the Tribunal to suggest that there has been any recruitment to replace the claimant or Ms McDonald. Rather, all the evidence points to the claimant's work being carried out by Tony Burke and by other existing employees in the engineering department.
116. A redundancy situation can arise where there is no reduction in the amount of work carried out. It may be, for example, that technological advances mean that fewer employees are required, or that an employer decides that the work can be carried out by fewer people. The key question for the Tribunal is whether there is a reduction in the employer's requirement for employees to carry out work of a particular kind.
117. The fact that the claimant's work was absorbed in part by other employees who had not previously been involved in it, or only to a lesser extent, does not prevent a redundancy situation arising. An employer is entitled to organise its workforce in the way that it sees fit, and it is not for the Tribunal to step into the shoes of the employer and suggest that it would have run the business differently.
118. Similarly, the fact that Mr Burke continued to work overtime after the claimant's dismissal does not prevent a redundancy situation arising. He worked overtime before the redundancies, and the evidence before the Tribunal does not suggest that his overtime increased significantly after the claimant's dismissal. Even if it had done however, that would not have prevented a redundancy situation arising.
119. I find that in this case there was a reduction in the respondent's requirement for employees to carry out the work that was carried out by the claimant, namely the work of a dedicated Engineering Administrator.
120. I also find that the dismissal of the claimant was caused wholly by the respondent's decision to reduce the number of Engineering Administrators. All the evidence points to that conclusion, and no alternative motive or reason was suggested by the claimant. It is clear that what prompted the dismissal of the claimant, and of others at Valley Park, was the loss of the Aldi contract in early 2024, which resulted in a significant fall in the volume of work on the site.
121. I find that the claimant was dismissed by reason of redundancy, and that the respondent has discharged the burden of proving a potentially fair reason for dismissal.
122. The next question I have to consider is whether, in the circumstances (including

the size and administrative resources of the respondent's undertaking) the respondent acted reasonably or unreasonably in treating the redundancy as a sufficient reason for dismissing the claimant.

123. The respondent carried out both collective and individual consultation before making the claimant redundant. The collective consultation began in early April 2024, almost three months before the claimant was dismissed. There were three collective consultation meetings at which the claimant was represented by Rowan Pankhani. It is clear from the minutes of the consultation meetings that the respondent was seeking to try and minimise the impact of the loss of the Aldi contract, and to reduce the numbers of redundancies. To its credit, it was able to reduce the number of employees dismissed from approximately 185 to 44.
124. The collective consultation appears to have covered the key issues that a Tribunal would expect to be covered, including the numbers of people affected, the selection pools, selection criteria and alternatives to compulsory redundancy, including voluntary redundancy.
125. The claimant and Ms McDonald were able to challenge the selection criteria and the selection pool during the consultation period, and their challenges were considered and responded to by the respondent.
126. When the claimant suggested that qualifications were included as a selection criteria the respondent considered this and asked those in the claimant's pool to provide their qualifications for consideration. It is clear that the claimant's suggestions were not ignored or dismissed without being properly considered.
127. Once the collective consultation was complete, the respondent conducted individual consultation with the claimant. The claimant was invited to a scored, competency based interview for the combined remaining role in engineering administration. When it appeared that the claimant was confused about the interview Gillian Murgatroyd invited her and her representative to a meeting to clarify the position and postponed the interview to allow the claimant time to prepare. Following that interview the claimant was provisionally selected for redundancy and invited to two further meetings at which there was consultation about her proposed selection.
128. The claimant had the opportunity to be accompanied at the meetings but chose not to be. She had the opportunity to ask questions and the respondent provided answers to those questions. The claimant was provided with her redundancy scores and those of the others in the pool and had the opportunity to comment on them. There was also a discussion about alternative roles at both individual consultation meetings. The claimant was provided with details of all vacancies on site and asked if she was interested in jobs at other sites.
129. When choosing the pool from which the claimant was selected for redundancy the respondent decided to limit the pool to those carrying out administrative functions within the Low Risk and High Risk engineering departments. This was, in the Tribunal's view, entirely reasonable. The respondent clearly applied its mind to the

question of the pool and reached a reasonable conclusion, based upon its view that the work being carried out by the claimant, Jackie McDonald and Tony Burke was fundamentally the same.

130. The selection criteria adopted by the respondent were also, in my view, reasonable. The respondent initially, through the collective consultation process, identified objective criteria, namely length of service, attendance and disciplinary records. Those criteria resulted in a tie between the claimant and Mr Burke. The respondent was entitled to use additional criteria to try and break the tie.
131. It consulted collectively about the additional criteria, and the claimant had the opportunity to put forward her view. Her view was considered, and the respondent asked those in the pool to provide their qualifications. The qualifications did not break the tie.
132. There is no right for an employee at risk of redundancy to dictate the selection criteria applied, which is what the claimant sought to do in this case. Rather, the obligation on the employer is to consult about the proposed selection criteria and seek to agree them, which is what the respondent in this case did.
133. The respondent therefore used a scored competency based interview. Although the interview inevitably involved some degree of subjectivity, the respondent took steps to reduce that by:
1. Involving 3 people in the interview process, each of whom scored the interviewees individually before agreeing a collective score; and
 2. Asking the same set questions of both those interviewed
134. The use of subjective criteria in the context of an interview to select the best candidate for the remaining, combined role, is not in itself unfair.
135. The claimant and Mr Burke were treated the same in relation to the interviews. Both were provided with a copy of the new job specification at the start of the interview, and not beforehand. The claimant was therefore not disadvantaged in relation to Mr Burke when it came to the interview process.
136. I find that the selection criteria used by the respondent and the application of those criteria were reasonable.
137. I turn finally to the question of suitable alternative employment. It is incumbent on an employer to take all reasonable steps to avoid the redundancy dismissal by finding alternative employment for the person at risk of redundancy.
138. The respondent in this case took proactive steps to identify roles for the claimant. It provided her with details of all of the vacancies on the Valley Park site. It asked the claimant whether she was interested in travelling to work on other sites. The claimant said that she was not, so in those circumstances it was reasonable of the

respondent not to provide details of jobs on other sites.

139. The respondent provided the claimant with the job description for the role of Technical Services Officer at Valley Park so that she could consider it. The claimant informed the respondent that she was not interested in the role because of her medical condition.
140. Whilst the respondent could have gone further and specifically enquired into whether the job could be done on a part time basis, via a job share, in circumstances where the claimant said she was not interested in the role due to medical reasons, it cannot be said that the respondent's failure to do this was outside the range of reasonable responses.
141. The respondent did, in my view, take reasonable steps to find alternative employment for the respondent.
142. For the above reasons I find that the dismissal of the claimant by reason of redundancy was reasonable. The claim of unfair dismissal therefore fails and is dismissed.

Equal pay

143. For the purposes of the equal pay claim, the claimant relied upon a named comparator, Tony Burke. Mr Burke was employed by the respondent at the same time as the claimant in a role that had the same job title as the claimant's, Engineering Administrator. He worked in the High Risk Engineering department, whereas the claimant worked in the Low Risk Engineering department. Both were based at the Valley Park site.
144. I am satisfied that as Tony Burke was employed by the respondent and worked at the same establishment as the claimant he is an appropriate comparator for the purposes of the equal pay claim.
145. I have therefore gone on to consider whether the claimant's work was the same as or broadly similar to the work of Mr Burke. The burden of proving this lies with the claimant.
146. In reaching my conclusions on the question of like work I have considered in particular the evidence of the claimant who is best placed to comment on the work that she carried out. The claimant also had good knowledge of the work of Tony Burke as she covered for him when he was on holiday, saw him regularly at lunch and in the mornings, and held the same job title as him.
147. The claimant's evidence was that her role mirrored that of Mr Burke, and that at no point had Mr Burke had a different job title to her or any authority over her. They each covered the other's work during holiday periods and were not allowed time off together. I accept her evidence on this issue.

148. Only one of the respondent's witnesses, Jack Wood, gave evidence about the work carried out by Tony Burke. By Mr Wood's own admission, he did not manage Mr Burke and was reliant on what he had been told by Mr Burke's manager. Whilst I accept that he was giving evidence genuinely and to the best of his ability, he had less direct knowledge of Mr Burke's job role than that of the claimant. Both the claimant and Mr Burke had the same job description, until the claimant asked to reduce some of her duties after going part time. It is inevitable that someone working part time will perform less work than someone working full time. That does not deprive them of the right to equal pay. The inequalities in pay between the claimant and Mr Burke were in place from the very start of the claimant's employment, well before her job description was amended.
149. Where there was a conflict between the evidence of the claimant and of the respondent in relation to the duties performed by Mr Burke, I prefer the evidence of the claimant.
150. The respondent considered as part of the restructuring, that the claimant's role and that of her named comparator could be combined into one role and carried out by the same person. The claimant was interviewed for that role. Whilst not conclusive, that is a factor supporting the claimant's assertion that the work she carried out was the same as or very similar to that carried out by Mr Burke.
151. I note in particular, that during the collective consultation process, the respondent considered that *"both roles are the same, whilst they are in different areas (Low Risk & High Risk) fundamentally the duties and responsibilities are the same."* Whilst this is not, in itself conclusive, it is in my view important evidence as it indicates the respondent's view of the two roles at a time when equal pay was not being considered.
152. The respondent adduced limited evidence of the work carried out by Mr Burke. What evidence there was, was limited to a few paragraphs in Mr Wood's statement. In contrast, the claimant was cross examined at length about the work that she and Mr Burke did. She worked alongside Mr Burke for a number of years and saw him regularly at work. Her evidence, which I accept, was that the jobs they did were basically the same.
153. Applying the two stage approach to the question of like work, I conclude in relation to the first stage that the work carried out by the claimant and her comparator is, in broad terms the same or similar to that carried out by her comparator.
154. I have then gone on to consider the nature and extent of any differences in the tasks performed and the frequency with which such differences occurred in practice. This was not an easy task due to the lack of direct evidence on this question.
155. Whilst there was some evidence of Mr Burke doing tasks that the claimant did not do, there was very little, if any, evidence as to the frequency of the additional tasks he did, or of the practical importance of them.

156. In its response to the claim the respondent wrote that the High Risk Engineering Department is more complex and three times bigger than the Low Risk area, therefore requiring more complex administrative support. It did not however adduce evidence of that at the hearing. Moreover, the evidence of Gillian Murgatroyd was that operatives in the High Risk Department and the Low Risk Department were paid the same, and there was no evidence to suggest that anyone else working in High Risk was paid more than anyone working in Low Risk. Mr Wood was specifically asked if his counterpart in High Risk was paid more than he was and he did not know.
157. I therefore find, on the evidence before me, that the claimant was employed on like work with Tony Burke throughout the period of her employment with the respondent.
158. I also find, on the evidence before me, that she was paid less than Tony Burke was paid throughout the course of her employment. Her hourly rate was consistently lower than that of Mr Burke.

Material factor defence

159. Once the claimant has established that her work was like work with that of Tony Burke and that she was paid less than he was, there is a presumption that the difference in pay is due to the difference in gender. It then falls to the respondent to prove an alternative reason for the difference in pay, i.e. the respondent is required to prove why the claimant and Mr Burke were paid the sums that they were.
160. The burden is not discharged by witnesses who had no involvement in setting rates or pay speculating as to what the reasons might have been in order to try and justify the difference after the event. An employer can not simply rely on assertions made in pleadings to discharge this burden.
161. The claimant does not have to prove that the difference in pay was due to gender. Nor is it appropriate for the Tribunal to speculate as to the reason for the difference.
162. The factors relied upon by the respondent in this case are length of service and additional duties and responsibilities.
163. Whilst there was evidence before the Tribunal that Mr Burke's employment began in 2006 and the claimant's in 2017, the difficulty for the respondent in this case is that no one involved in setting pay rates for the claimant and Mr Burke gave evidence to the Tribunal.
164. There was no evidence before the Tribunal in support of the respondent's assertion that the difference in pay was due to Mr Burke's service and additional duties and responsibilities. There was some evidence to suggest that the respondent takes length of service into account when setting the pay rates of other employees, but there was no direct evidence that that was the case when it came to setting the pay of the claimant and her comparator.

165. The respondent has not shown that the factors relied upon in its defence were the genuine reason for the difference in pay. None of the witnesses called by the respondent to give evidence were involved in setting Mr Burke's pay rate, so they could not explain why it was higher than the claimant's. There was a marked lack of evidence as to the factors used to determine pay rates for the claimant and her comparator. There was a brief paragraph in Mr Wood's witness statement, but that was prefaced by the words 'I cannot speak to why the Claimant was not offered the same rate of pay as Tony when she started'.
166. The respondent's arguments on length of service were undermined by the fact that when Jackie McDonald was taken on in January 2023 she was paid the same hourly rate as the claimant, who had at that time been employed for almost 6 years.
167. There was no evidence whatsoever to suggest that additional duties and responsibilities were a factor in setting pay rates. On the contrary, the respondent's own evidence in the form of the collective consultation meeting minutes, were that the respondent considered the claimant and Mr Burke to have fundamentally the same duties and responsibilities.
168. The respondent has therefore failed to establish a genuine material factor defence to the equal pay claim. It has failed to discharge the burden on it under section 69(1) of the Equality Act 2010 and to rebut the presumption of sex discrimination that arises when the claimant proved that her work was like Mr Burke's work and that she was paid less than him.
169. The equal pay claim therefore succeeds, and the sex equality clause applies to the claimant's contract for the period of six years ending in the date upon which the claimant's employment terminated.
170. Upon reconsideration, the Tribunal finds that the compensation to be paid to the claimant for breach of the equality clause was £16,808.48. This sum did not include interest, and the claimant asked the Tribunal to award interest.
171. Interest was calculated as follows:
1. The number of days between the date upon which the discrimination started (18 November 2018) and the calculation date (22 January 2026) is 2,622.
 2. The mid point between the start of the discrimination and the calculation date is 1,311 days (2,622 divided by 2)
 3. Interest is awarded at the rate of 8% for the period of 1,311 days
 4. $0.08 \text{ times } 1,311 \text{ times } 1/365 \text{ times } 16,808.48 = 4,829.79$
172. The claimant is awarded the sum of £4,829.79 interest on the award of compensation, resulting in total compensation payable to the claimant of £21,638.27.

173. The respondent is therefore ordered to pay the sum of £21,638.27 to the claimant.

Approved by:

Employment Judge Ayre

Reconsideration Date: 20 March 2026

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