EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002409/2025

Final Hearing Held in Dundee on 2 and 3 June 2026

Employment Judge A Kemp

Mrs W Henderson	**Claimant** **Represented by** **Ms A Fox** **Solicitor**
Scottish Care Limited	**Respondent** **Represented by** **Ms A Wright** **Tribunal Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant was unfairly dismissed by the respondent, and she is awarded a compensatory award of TEN THOUSAND SIX HUNDRED AND FOURTEEN POUNDS SEVENTY SEVEN PENCE (£10,614.77), payable by the respondent to the claimant.

REASONS

Introduction

1. This Final Hearing was arranged to address a claim of unfair dismissal. The respondent admitted that there had been a dismissal. It argued that it was for the potentially fair reason of redundancy, alternatively some other substantial reason, and that the dismissal had been fair. The claimant had produced a Schedule of Loss seeking a little over £48,000 in compensation, to which the respondent had provided a Counter Schedule, arguing that no compensation should be payable.

The evidence

2. The parties had prepared the documentation in the form of a Bundle of Documents, most but not all of which was spoken to in evidence. Documents were added to it by the respondent on the second day, to which no objection was taken. One detail in the Statement of Agreed Facts that the parties had concluded was I considered not in accordance with the evidence I heard, and it was agreed to be wrong. It was not included but otherwise those agreed facts are set out within the Facts section below. After discussion, about the new documents referred to above, a fact was agreed between agents regarding the funding for a role for another employee Ms Bunton.

3. For the respondent evidence was given by Ms Janice Cameron. The claimant gave evidence herself. I asked questions of both witnesses to elicit facts under Rule 41.

The Issues

4. The parties had agreed between themselves a List of Issues, which I have partially revised as follows:

   (i) What was the reason or principal reason for the dismissal?

   (ii) Was that reason potentially a fair one under section 98(1) and (2) of the Employment Rights Act 1996?

   (iii) If so, was it fair or unfair under section 98(4) of that Act, having regard to all the circumstances including (a) the procedure followed and (b) consideration of alternative employment?

   (iv) In the event that the claim succeeds to what remedy is the claimant entitled, and in that regard (a) what losses have been or will be sustained as a result of the dismissal, (b) should there be any reduction in light of the *Polkey* principle (c) what steps did the claimant take to mitigate her loss and (d) has the respondent proved that the claimant has not mitigated her loss?

The facts

5. I considered all of the evidence led, as well as the Statement of Agreed Facts, and found the following facts, material to the issues before me, to have been established:

Parties

6. The claimant is Mrs Wendy Henderson.

7. The respondent is Scottish Care. It is a charity. It is a company limited by guarantee [inferred from its being a limited company as stated on a letter

produced before the Tribunal, and a charity, although Ms Cameron did not know its status]. The respondent seeks to facilitate integration and collaboration between those providing healthcare and those providing social care, including the NHS for the former and local authorities for the latter, as well as providers of care within residential care homes and care to patients remaining at home.

8. The respondent has about 25 - 30 employees.

9. The claimant was employed by the respondent as an Independent Sector Lead (ISL). The role included co-ordination between those in the care sector, local government and other agencies.

10. The claimant was issued with a contract of employment dated 4 May 2021 for a role as ISL working with a Health and Social Care Partnership (HSCP). An HSCP is a partnership between the local authority for an area and the NHS Board for the same area to integrate and co-ordinate health and social care for adult patients. The contract stated “Your employment is temporary (subject to funding) and is expected to end on or before 31 March 2021 (sic)”.

11. After changes of position for working which included work in Dundee, and thereafter working partly for the Scottish Borders HSCP, the claimant was offered a new contract dated 21 April 2023 for a role as ISL working solely for the SCHP for the Scottish Borders for 35 hours per week. It did not have a provision that the employment was temporary. It had a provision for notice, being for one month where the service was less than five years.

Funding

12. The SCHP for the Scottish Borders (“the Partnership”) had agreed to provide funding for two posts at the respondent, one as Independent Sector Lead. The agreement to do so was not one committed to a formal written contract, but as was the practice was set out by email [the initial such email was not before the Tribunal]. The agreement as initially made was due to expire on 31 March 2024.

13. On or around 7 March 2024 the claimant had a discussion with Ms Jen Holland, Director of Strategic Commissioning and Partnerships of the Scottish Borders Council who was acting for the Partnership, about extending the agreement for funding for three years. On 7 March 2024 Ms Holland emailed the claimant stating:

> “Just to confirm our discussion. Our agreement is to commission yourself and Project Administrator for 3 years at 35 hours and 17.5 hours respectively as agreed last year in line with SBC [Scottish Borders Council} Procurement Guidance. So for clarity from 2023 - 24 to 2025 - 26. …..”

14. That agreement was concluded shortly before Ms Holland left to take up a new post. The claimant had forwarded the email to Ms Janice Cameron, National Lead for the respondent at the time of its receipt. She had then sent her own message to Ms Holland.

15. The claimant's role with the respondent was expected to last until 31 March 2026. The respondent informed the claimant that the role was funded for 3 years by the Scottish Borders Council, based on what that Council had advised.

16. In or around October 2024 the claimant was asked if she had a contractual document between the respondent and Partnership for the funding for her post but she did not, and it could not be found by the respondent when it was looked for.

17. On 14 February 2025 the claimant met Ms Holland's successor Ms Julie Glen. After that she emailed Ms Cameron and stated:

> "I thought I should let you know that the contract between Scottish Borders H&SCP and Scottish Care was discussed with me when I met Jen Holland's successor Julie Glen on Friday 14 February 2025. Julie was under the impression that the contract expired on 31 March 2024. I was able to reaffirm the commitment to funding for the period 2023/2024 to 2025/2026, using the email that Jen Holland sent to me just before she left, which I forwarded to you, which you then acknowledged directly to Jen via email. Hopefully this evidences a 3 year contractual agreement between Scottish Borders Health and Social Care Partnership and Scottish Care."

Termination Letter

18. On 18 March 2025 Chris Myers of the Partnership emailed and attached a letter to Ms Karen Hedge, Deputy Chief Executive of the respondent, who forwarded it to Ms Cameron and others on receipt. The letter referred to a review of budgets and the difficult decision having been taken to provide notice of termination of the contract for the support from the Scottish Care for the Partner for Integration Support, being the role performed by the claimant and her colleague as administrator. It stated that the "contractual notice term requires 4 weeks' notice to be provided by us however recognising the impact that this will have on the individuals and Scottish Care we are supporting of providing 6 weeks' notice to terminate the contract for this role and the administrative support from today. …..Please let me know if it would be helpful to meet to discuss this further, I would be happy to do this."

Notice of redundancy

19. Ms Cameron was on leave that and the following day and she read the message from Ms Hedges with the said letter dated 18 March 2025 on 20

March 2025. She was aware that the claimant was about to undertake dental surgery about 2 hours later that day from a text that she had received from the claimant asking for permission to leave work early to go to it at around the time of her reading the letter. She wished to inform her of the development before she received any detail about it from others. She replied to give approval to leaving early and stated that there was something she wished to discuss.

20. Shortly thereafter she telephoned the claimant, explained that there was bad news, that the letter of 18 March 2025 had been received, and stated that that resulted in the claimant being made redundant. She confirmed that she gave her six weeks' notice of termination of employment on grounds of redundancy effective from that date. There was a discussion between them about informing the partner organisations affected by the decision to terminate the funding for the two posts. Ms Cameron agreed that the claimant should do so. The call lasted under 13 minutes. The respondent did not hold any formal consultation meeting with the claimant before intimating the redundancy.

21. The claimant was shocked by the intimation of her redundancy. She shortly afterwards telephoned Mr Jim Armstrong and Ms Jill Summers who were the Branch Chairs for Care Homes and Care at Home working with the respondent in its partnership role respectively. She was admitted to hospital later that day for investigations into an irregular heartbeat.

22. On 21 March 2025 Ms Cameron emailed the claimant a copy of the letter of 18 March 2025.

23. On 23 March 2025 the claimant applied for another post with an organisation outside the respondent.

24. Ms Cameron called the claimant again on 24 March 2025 to check how she was, during which the claimant raised the issue of the other member of staff working for the Partnership who may also be affected by their decision.

25. On 26 March 2025 an administrator at the respondent sent an email to the claimant with a letter dated 20 March 2025 signed by Ms Cameron confirming her redundancy with effect from 1 May 2025 following a six week notice period. It referred to payment of the statutory redundancy payment with her final salary. It thanked her for her contribution. The claimant was not given a right of appeal.

Representations made to Partnership

26. Ms Cameron spoke initially with Mr Jim Armstrong and his son Niall Armstrong who operated a care home in the Borders, and were members of the respondent organisation. As the Branch Secretary for Care Homes

Mr Jim Armstrong represented the interests of care homes in matters affecting the health and care sectors. Neither Mr Jim Armstrong nor his son Niall was an employee of the respondent.

27. Ms Cameron had been undertaking the role of the claimant's line manager for around 6 months, as the line manager Mr Jim Carle was off sick. Her role was managing the west side of Scotland and Mr Carle managed the east side, including the area of Scottish Borders Council. She did not have any professional relationship with Mr Myers, and thought that an approach from someone who did, such as Mr Jim and Mr Niall Armstrong, might be more effective. They agreed to do so.

28. Ms Cameron did not respond to the letter of 18 March 2025 either in writing or orally, and nor did any other employee of the respondent.

29. Mr Niall Armstrong emailed the claimant seeking information about other HSCPs which had changed decisions to terminate funding on 15 April 2025 and the claimant replied to refer to that happening in Glasgow.

30. On 17 April 2025 Mr Jim Armstrong sent Mr Myers an email asking for the decision to be delayed until a meeting was held. He referred to the decision being reached without prior consultation, and "current Scottish Government funding for the ISL post was agreed to run until 31 March 2026".

31. On 22 April 2025 Ms Cameron sent Mr Niall Armstrong a models and costs paper that was used to seek funding. That day Mr Armstrong emailed her and asked whether the respondent could do anything to cover the cost of salary until the issue was resolved. She replied to state that she would discuss it with the Chief Officer.

32. On 23 April 2025 Mr Jim Armstrong sent an email to Mr Myers noting that there had been no reply to his earlier message.

33. On 24 April 2024 Ms Cameron replied to Mr Armstrong to state that unfortunately the respondent did not have the finances to support an extension to the contract.

34. On 25 April 2025 the claimant spoke to Mr Myers. He agreed with her suggestion that he was uncomfortable with the decision to terminate the funding. He said that there had been no response from the respondent, in respect of which he referred to what he described as their "ineptness".

35. On 1 May 2025 the claimant emailed Ms Collette Law of the respondent asking about her redundancy package. They then exchanged emails about its calculation.

36. On 2 May 2025 Mr Myers replied to Mr Armstrong. He referred to the Scottish Government funding, and that the two posts "were appointed on

a fixed term basis and the contract that was in place had come to an end." He referred to the need to find funding if it was to continue and the detriment to adult social care service delivery. He confirmed his willingness to meet providers.

Payments

37. On 7 May 2025 Ms Cameron prepared a letter to the claimant stating that she would receive a redundancy payment of £4,314, as well as accrued leave, which was sent to the claimant by email that day. Payment of that redundancy payment, which accords with the statutory entitlement, was made at or around the end of that month.

38. The claimant's gross weekly salary prior to dismissal was £981.73 per week, and her net salary was £707.78 per week. The respondent made pension contributions of £29.45 per week.

39. The claimant did not receive any State Benefits.

Other posts

40. East Ayrshire Council or the related Health and Social Care Partnership had agreed funding with the respondent for Ms Arlene Bunton as an ISL for the period until 31 March 2026. After Ms Bunton intimated her resignation in March 2025 to be effective in April 2025. Ms Cameron sought approval from that Council to advertise the post. In a series of emails from April 2025 Mr Sutherland of that Council stated that approval of a Director was required. He was off sick for a period until August 2025 [the date when that period started was not given in evidence]. When he retuned to work Ms Cameron emailed him seeking to ascertain the position in August 2025 and thereafter, including in December 2025 and February 2026, but permission to advertise a replacement for Ms Bunton was not provided.

41. North Lanarkshire HSCP had an agreement for funding 1.5 ISL posts, a total of 52.5 hours per week. The service was provided by three members of staff of the respondent being Angela Price who worked 14 hours per week, Bernie Campbell who worked 17.5 hours per week and Patricia Chalmers who worked 21 hours per week. That HSCP decided in March 2025 to reduce the hours funded to the equivalent of 28 hours per week.

42. Ms Cameron consulted Citation HR who advised her to consult with the post-holders about potential redundancy. Ms Chalmers did not wish to reduce her hours and agreed a voluntary redundancy.

43. On 27 March 2025 Ms Cameron wrote to Ms Bunton by email to inform her that the grant funding for the post she worked on for two days per week, being 14 hours in total, was to cease on 31 March 2025. She

referred to options of reducing to 1.5 days per week or remaining at 2 per week. Ms Bunton replied that day and stated “I know we had a follow up call on Friday and discussed the option of me increasing my current 14 hour per week contract to 28 hours per week as per the funding offer by North Lan[arkshire] HSCP.” She stated that if the offer remained open she would like provisionally to accept it. Ms Price commenced to work 28 hours per week [on a date not given in evidence]

44. Ms Campbell was made redundant [on a date not given in evidence]. Ms Price tendered her resignation by email on 20 May 2025, giving notice that expired on 20 May 2025.

45. The respondent advertised a vacancy for an ISL for 28 hours per week with a closing date for applications on 29 August 2025 [the date on which the advertisement was issued was not given in evidence].

Other matters

46. The respondent did not have a written policy regarding redundancies at the time of the termination of the claimant’s employment. It introduced a policy afterwards [which was not before the Tribunal] which provided for consultation to take place, and a right of appeal. The respondent does not have an internal HR support employee.

47. The claimant has applied for five other posts in addition to that on 23 March 2025. She has had four interviews but was not successful in any of them. She has been registered with an agency, and has had job alerts sent to her on a daily basis from online organisations which she has considered. She has been fit for work since the dismissal. One company who rejected her after interview informed her to the effect that she was over qualified for the post. She has been seeking roles commensurate with her skills, experience and qualifications. She remains not in employment but seeking work.

48. The claimant has undertaken one non-paid role for a charity.

49. The claimant has not received any State Benefits.

Early Conciliation

50. The claimant commenced early conciliation on 29 July 2025 and received the Certificate for the same on 9 September 2025. The Claim Form in this claim was presented to the Tribunal on 8 October 2025.

The respondent’s submission

51. Ms Wright very helpfully provided a written submission and did not wish to comment further orally. As it was committed to writing I do not repeat it in this Judgment, but took account of all that was said.

The claimant's submission

52. Ms Fox also very helpfully provided a written submission and did not wish to comment further orally. As it was committed to writing I do not repeat it in this Judgment, but took account of all that was said.

53. I am grateful to both representatives for their submissions, and for the helpful manner in which they conducted the hearing.

The law

54. Section 98 of the Employment Rights Act 1996 provides, so far as material for this case, as follows:

> "**98 General**
> (1) 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.
> (2) A reason falls within this subsection if it—
> (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
> (b) relates to the conduct of the employee,
> (c) is that the employee was redundant, or
> (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
> ……………
> (4) 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."………………..

55. The definition of redundancy is found in section 139. Whether or not one exists is a question of fact: ***Berkeley Catering Ltd v Jackson UKEAT/0074/20***.

56. The basic position on the fairness in the context of redundancy was set out by the House of Lords in ***Polkey v AE Dayton Services Ltd [1987] IRLR 503***, in which the following was said by Lord Bridge:

> "….an employer having prima facie grounds to dismiss for one of these [potentially fair] reasons will in the great majority of cases not act reasonably in treating the reason as a sufficient reason for dismissal unless and until he has taken the steps, conveniently classified in most of the authorities as 'procedural', which are necessary in the circumstances of the case to justify that course of action. Thus, in the case of……. redundancy the employer will normally not act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation."

57. Lord Mackay held that, as procedural regularity is only a factor, there could still be a redundancy dismissal without consultation that would be held to have been fair, but that would be because the employer took a deliberate decision at the time not to consult (for a specific reason, held to have been reasonable) not merely because of the argument that, whatever the employers state of mind at the time, it actually with hindsight made no difference. In ***Spink v Express Foods Group Ltd [1990] IRLR 320**,* the EAT suggested that this exception should be construed narrowly. However, a wider and more objective approach was subsequently taken by the EAT in ***Duffy v Yeomans & Partners Ltd [1993] IRLR 368*** (relying on Lord Mackay's speech in *Polkey* in preference to that of Lord Bridge in this regard), holding that this exception can apply not only where the employer deliberately decided with good reason not to consult, but also where a reasonable employer could have so decided in the circumstances actually known to him. The subjective approach requiring a deliberate decision by the employer that consultation would be useless was subsequently applied by the EAT in ***Robertson v Magnet Ltd [1993] IRLR 512***. When ***Duffy*** was appealed, the Court of Appeal ***[1994] IRLR 642*, *[1995] ICR 1*** expressly approved the objective approach, again applying the wording in Lord Mackay's speech and holding that such an approach is more consistent with the basic tenet that ultimately it is all a question of fact for the tribunal.

58. After reviewing authorities in relation to consultation the EAT in ***Mugford v Midland Bank [1997] IRLR 208*** summarised the state of the law as, summarising it so as to be relevant for this case:

> "(1) Where no consultation about redundancy has taken place with either the employee the dismissal will normally be unfair unless the tribunal finds that a reasonable employer would have concluded that consultation would be an utterly futile exercise in the particular circumstances of the case.

> …….
>
> (3) It will be a question of fact and degree for the tribunal to consider whether consultation with the individual was so inadequate as to render the dismissal unfair. A lack of consultation in any particular respect will not automatically lead to that result. The overall picture must be viewed by the tribunal up to the date of termination to ascertain whether the employer has or has not acted reasonably in dismissing the employee on the grounds of redundancy."

59. In ***Langston v Cranfield University [1998] IRLR 172***, the EAT held that so fundamental are the requirements of selection, consultation and seeking alternative employment in a redundancy case that they will be treated as being in issue in every redundancy unfair dismissal case [the issue of selection is not directly of relevance in the present case].

60. Two more recent cases have commented on the issue of fairness in the context of redundancy. The first is ***de Bank Haycocks v ADP Pro Ltd [2023] EAT 129***, which contains a summary of the law as follows, with the full case citations set out in the decision:

> "a. The employer will normally warn and consult either the employees affected or their representative; ***Polkey***.
>
> b. A fair consultation occurs when proposals are at a formative stage and where adequate information and adequate time in which to respond is given along with conscientious consideration being given to the response; ***British Coal***.
>
> c. Whether in collective or individual consultation, the purpose is to avoid dismissal or ameliorate the impact; ***Freud***.
>
> d. A redundancy process must be viewed as a whole and an appeal may correct an earlier failing making the process as a whole reasonable; ***Lloyd v Taylor Woodrow***.
>
> e. The ET's consideration should be of the whole process, also considering the reason for dismissal, in deciding whether it is reasonable to dismiss; ***Taylor v OCS***.
>
> f. It is a question of fact and degree as to whether consultation is adequate and it is not automatically unfair that there is a lack of consultation in a particular respect; ***Mugford.***……."

61. The second is ***Mogane v Bradford Teaching Hospitals NHS Foundation Trust [2023] IRLR 44***, in which the EAT held that the requirement for consultation is particularly important in a case where the employer has used a pool of one when making that particular employee redundant; it was further stressed that, not only can it not be assumed that consultation would have no effect, but also that in such a case it is

important that the consultation takes place at a formative stage, before the decision is taken to operate that pool.

62. A separate strand to the fairness of a dismissal is the consideration of alternative employment. The EAT reviewed the authorities in this area and confirmed in ***Hendy Group Ltd v Kennedy [2024] EAT 106*** that consideration of whether there might be an alternative role for the employee at risk of redundancy remains an element of the overall fairness test.

63. It is in my view not clear that in law there is a requirement for a right of appeal in the context of a redundancy.

Remedy

64. In the event of a finding of unfair dismissal, the tribunal requires to consider a basic and compensatory award if no order of re-instatement or re-engagement is made (the claimant did not seek either order), which may be made under sections 119 and 122 of the Employment Rights Act 1996, the latter reflecting the losses sustained by the claimant as a result of the dismissal. The basic award is here subsumed within the statutory redundancy payment, such that no basic award would be payable. The amount of the compensatory award is determined under section 123 and is "such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer".

65. Guidance on the amount of compensation was given in ***Norton Tool Co Ltd v Tewson [1972] IRLR 86***. It may be appropriate to make a deduction under the principle derived from the case of ***Polkey***, if it is held that the dismissal was procedurally unfair but that a fair dismissal would have taken place had the procedure followed been fair. That was considered in ***Silifant v Powell 1983 IRLR 91***, and in ***Software 2000 Ltd v Andrews 2007 IRLR 568,*** although the latter case was decided on the statutory dismissal procedures that were later repealed.

66. There is a duty to take reasonable steps to mitigate loss. The principles were set out in ***Cooper Contracting Ltd v Lindsay UKEAT/0184/15***. Although that set out the position in a case from England, and the statutory test refers to Scots Law as to mitigation in section 123(4), there are no material differences between Scots Law and the principles there set out. The onus to establish that there has not been mitigation of loss is on the respondent, and includes that what the claimant has done to mitigate is unreasonable. What is reasonable is a question of fact, dependent on the circumstances. The matter was addressed by the EAT sitting in Scotland, referring to the principles under Scots Law, in ***Hakim v Scottish Trades Unions Congress UKEATS/0047/19***.

Discussion

67. Both Ms Cameron and the claimant were clearly seeking to give honest evidence. There was little factual dispute, where the focus of the difference lay was on the context of what happened, and what should have been done, as well as the facts relevant to the ***Polkey*** issue. The claimant made certain concessions in her evidence during cross examination, which I consider was to her credit. Ms Cameron maintained her position that, in effect, there was no alternative other than to dismiss given the letter received, which I address in more detail below.

Reason

68. The first issue is what the sole or principal reason for dismissal was. That is for the respondent to prove. I was satisfied that the sole reason for dismissal was redundancy. That was in light of the understanding on the part of Ms Cameron that the decision by the Partnership to intimate the cessation of funding six weeks from 18 March 2025 led to the need for the staff that had been employed to carry out work under that funding arrangement being ended or reduced. That was a genuine belief, and was the sole reason for the dismissal. I therefore reject the argument for the claimant in this regard, which was made under reference to ***Safeway Stores Ltd v Burrell [1997] ICR 523***.

69. Redundancy is potentially a fair reason, in respect of the second issue.

Fairness

70. The third issue is therefore whether or not the dismissal was fair, applying the test in section 98(4) of the 1996 Act. There is no onus on the respondent to prove a fair dismissal, or the claimant to prove that it is unfair. It is neutral.

71. To assess that, I take account of all the evidence before me. The claimant argued that the dismissal was substantively unfair as well as procedurally so. I consider that the issue is one of procedural fairness. Funding for two roles had been withdrawn on notice, and although arguments could have been made about that as I shall come to, the focus appears to me to be on how that issue was handled by the respondent as the claimant's employer.

72. The respondent accepted that it had not had consultation with the claimant as that is normally understood, and that rather than warn about the possibility of redundancy and arrange a formal consultation meeting the respondent had intimated dismissal for redundancy on 20 March 2025 on six weeks' notice because of the letter received on 18 March 2025 terminating the funding for two posts, one being that of the claimant, also on six weeks' notice. The submission for the respondent was that as

funding was removed and knowing that there were no other vacancies consultation would have been a tick box exercise which would only have delayed the inevitable. Had there been consultation it would have ended with the same outcome, at the same time.

73. I considered the size and resources of the respondent. Here the employer was a small one, in the charity sector. No accounts were before me and Ms Cameron was not aware of some financial details. That is a little surprising as the claimant in Further Particulars provided on request by the respondent made reference to the respondent operating a reserve. Nevertheless, it appears to me from what I heard that the respondent was largely dependent on funding from third parties such as the Partnership, as well as other HSCPs. Other funding was on the evidence provided by the Scottish Government.

74. The failure to warn and consult does not mean that the dismissal is inevitably unfair. The authorities I refer to above were not cited by Ms Wright but I take her submission to be in essentials an argument that in the circumstances a reasonable employer could have decided not to consult. The case of ***Polkey*** itself uses the word "normally", an issue addressed in other cases above, and I consider that an objective approach is to be followed when assessing whether the failure to consult was within the range of reasonable responses. The question for me becomes whether a reasonable employer in the position of the respondent could have concluded either that consultation would be futile or that the funding being terminated in such circumstances meant that there was no other reasonable option available to Ms Cameron than to decide on termination at the time that she did.

75. I have concluded that the answer to that question is in the negative and that the act of the respondent in terminating the employment of the claimant by notice given on 20 March 2025 with no prior warning or consultation was not within the range of acts of a reasonable employer.

76. There are a number of reasons for that. The first is that there had been an email exchange in 2024 which confirmed a three year funding arrangement. The second is that when the letter of termination of funding was sent on 18 March 2025 that came in effect out of the blue, with no prior warning to the respondent itself, or discussion with them. Thirdly that letter ended with an invitation to discuss matters at a meeting, which Ms Cameron did not act upon herself leaving it to a third party, Mr Armstrong. Fourthly no attempt was made by the respondent to inform the writer of that letter, Mr Myers, of the email from 2024 which on the face of it was funding for a fixed period of three years. It is possible that the decision was reached in ignorance of that, or if it was known about its significance was not addressed, and that either it constituted a binding contractual obligation or was a binding unilateral obligation that the Partnership did

not have the right to terminate on the notice it gave. The correspondence from Mr Armstrong did not refer to it at least directly, and the message from him was from a provider not the respondent itself.

77. Fifthly in February 2025 the claimant had emailed Ms Cameron about a conversation with Ms Julie Glen of the Partnership about the issue of funding, such that Ms Cameron had been aware that the claimant believed that the funding was secure on such a basis. As Ms Cameron was the representative of the employer it was I consider reasonable to have expected her to have raised the question of what obligation was owed to the respondent directly with Mr Myers herself. She was aware of all of the material required for such an argument to have been made, and was the more obvious person to have done so.

78. Sixthly as the claimant said in her evidence there was a possibility that the decision had been taken by the Partnership not in full compliance with its own procedures including for example an equality and human rights audit, and raising that with them might have had an effect. Seventhly the claimant was prepared to discuss variations in her role, her hours and the like, to reduce cost. It is possible that the Partnership might have been prepared to discuss that option.

79. Eighthly it does appear that at least some of the basis on which Mr Myers, or the Partnership, decided to terminate the arrangement was based on inaccurate information. That was a matter Mr Armstrong had commented on, but it was not clear whether he was aware of all of the material. Although the email of 2 May 2025 was sent after the effective date of termination it follows Mr Armstrong's arguments, and responds to them. He alleges that there was a fixed term agreement. The claimant's contract was not such, and if he meant an agreement between the Partnership and respondent it was not before me, and could at the least have been asked for. He also alleges that the agreement had terminated. What was meant by this is not clear, as the arrangement had been at least arguably in force at the point of the letter of 18 March 2025 given the terms of the email from Ms Holland, and was being adhered to.

80. It appears to me, and is the inference I draw, that he had proceeded on the same basis as Ms Glen, that the arrangement was thought to have terminated on 31 March 2024. But it had arguably been extended by the emails with Ms Holland. If it had terminated on 31 March 2024 one wonders how it was being funded for the period of a year from then. These are issues that could, and in my view obviously should, have been raised by the respondent with Mr Myers, and all reasonable employers would have done so in relation to one of their employees independently of any arguments Mr Armstrong was to put forward. Mr Armstrong's email did not address these issues in any detail at all, which I infer to be because they were not provided to him as arguments to be made.

81. In my opinion this all means that there was a possibility at the least that consultation with the claimant may have led to an informed discussion being held between the respondent and Mr Myers, and the possibility of the decision being changed in some way. Consultation looked at objectively would not have been futile, and no reasonable employer would have considered that it would be. I therefore reject the argument for the respondent that consultation would have been a tick box exercise. The whole point of it is that it is not – as the authorities above make clear. It is a means of discussing whether there might be alternatives to it.

82. My conclusion is in my view fortified by the evidence that after the dismissal the respondent introduced a Redundancy Policy. It was not before me but its elements included consultation with the employee and a right of appeal. It is not clear to me that a right of appeal is a requirement under the law of unfair dismissal given the state of the authorities, but the issue of consultation is subject to the exceptions set out above. It is not always required, but normally is, and the circumstances where it is not are restricted.

83. There was no evidence before me that the respondent was at imminent risk of financial collapse if the redundancies of the claimant and a colleague were not acted upon. Ms Cameron could not say what reserve the respondent operated. Mr Macaskill the Chief Executive of the respondent she raised the issue of funding the claimant's post with, and who had said that that could not be supported as she then reported to Mr Armstrong by email, did not give evidence. The reasons for that decision were not explained by Ms Cameron in her evidence beyond the reference to that email. It is one thing to say that an open-ended commitment to fund a post was not affordable, which one can infer from that email, but it is something very different to say that funding it for the fairly short period to allow appropriate discussion with the Partnership, as well as about other internal roles if they might exist, as well as consultation with the claimant, was not affordable. If that was the case there was no evidence to make a factual finding to that effect.

84. This is also a matter I address in the context that it would appear from the evidence that the statutory redundancy payment was funded from the respondent's resources. The funding arrangement from the Partnership was not simply the claimant's salary and that of her colleague but included an extra 10% presumably for other related costs. Where a person is employed the financial liabilities can extend beyond the salary, and I consider that all reasonable employers will take account of that in their financial planning.

85. The funding from the Partnership continued for the six week period referred to. The cost of the claimant's salary for the period of any consultation beyond that, for a relatively brief period to ascertain if the

decision could be changed or there might be another alternative role for the claimant, would not have been particularly high. If successful it would have saved the cost of the redundancy payment that was in fact made.

86. In the absence of evidence that a short period of time to consider these matters and consult with the claimant and the Partnership costing an amount that the respondent did not have, a matter uniquely in the knowledge of the respondent, I consider that failing to do so is not within the range of reasonable responses.

87. The possibility of alternative employment was never discussed with the claimant. I accept from the evidence that there was in fact no vacancy that was possible at East Ayrshire HSCP. Although an employee had resigned, the evidence was that in order to recruit the approval of a director was required, which did not happen. But that is a conclusion reached with hindsight. During late March 2025 and the following month the position was not so clear. It was a matter on which consultation could and I consider should have taken place at that time, although it would not have been successful. In all the circumstances it does not therefore materially affect the outcome of this case.

88. The position in relation to North Lanarkshire HSCP is however different, and much clearer given the situation at the relevant time. There the position had been of three employees carrying out the work over 1.5 full time equivalent staff, and the volume of that work was to reduce to 0.8. One person took voluntary redundancy. Of the other two, one was offered a doubling of her hours from an email dated 31 March 2025. That was very shortly after the dismissal letter was sent to the claimant, and well within the notice period. It was well within the period during which consultation with the claimant could and should have taken place in my view.

89. It seems to me that the claimant was simply ignored in relation to that aspect of matters. Ms Price, to whom the additional hours were offered having regard to the email the respondent latterly produced from her, was not the only person to be considered. Consultation with the claimant, as well as those three other staff, in relation to such a matter was I consider obviously required. It might have led to the claimant accepting the 14 hours rather than being redundant, and Ms Price may well have accepted remaining on her then contract also of 14 hours. It would have been difficult for Ms Price to have complained about remaining on the contract she had. Not to explore that possibility in consultation with the claimant was I consider not within the range of reasonable responses.

90. The claimant was prepared to discuss reduced hours in her current role, and it is not impossible that an agreement for the funding of that by the Partnership could have been concluded, but I regard that as very unlikely

to have been successful in light of the terms of the message from Mr Myers of 2 May 2025.

91. I then considered all of the evidence in the round. I appreciate the constraints of those working in the circumstances of the respondent, and that Ms Cameron genuinely thought at the time that she had no alternative but to act as she did. But it appeared to me that what happened was a form of panic reaction to the letter of 18 March 2025. That reaction considered matters solely from the perspective of the respondent and not to any extent at all from the perspective of the claimant. It went very far indeed, to dismissal, so fast as to be in effect immediate. The letter of dismissal sent on 26 March 2025 referred, wrongly, to the "funding for your post will cease on 31 March 2025." But the funding had not ended then, it was to do so after the six weeks of notice and therefore on 29 April 2025. That was to happen unless the decision to do so could be changed.

92. The letter of termination invited a meeting and that at least opened the possibility of a discussion. There was I consider no objective basis on which such speed of dismissal could be said to be reasonably required. For the reasons set out above, consultation with the claimant may have had a positive outcome of some kind and was not reasonably regarded as futile. I concluded that the dismissal was not fair, applying the words of section 98(4) to all the circumstances of the case.

Remedy

93. I then considered remedy. Firstly, no basic award is due as a statutory redundancy payment in the appropriate amount had been made.

94. As to the compensatory award, the position is not simple. There are a number of issues. The first is the extent of loss. I consider that the claimant has established that the losses resulting from the dismissal are those essentially set out in her Schedule of Loss if she had been able to remain in her existing role, but that is subject to consideration of the ***Polkey*** deduction, and arguments over mitigation, as I shall now address.

95. The ***Polkey*** deduction involves a degree of informed speculation, in my view. The nature of this exercise has been addressed in a number of cases. In ***King v Eaton (No. 2) [1998] IRLR 686*****,** the Inner House distinguished between the procedural and the substantive failures, and that in the case of the former it may be easier to say what would have happened with a fair procedure. That speculation if involved is no reason for the tribunal not to grapple with the question.

96. In ***Gove v Propertycare Ltd [2006] ICR 1073***, the Court of Appeal held that the ***Polkey*** principle was of wide application. In ***Thornett v Scope [2007] ICR 236*****,** the Court of Appeal held that the mere fact of the exercise involving a degree of speculation did not disqualify a tribunal

from undertaking the task of predicting for how long the employment would have lasted.

97. It is true that an attempt to persuade Mr Myers to change the decision could have been made, but there is not a great deal of evidence before me as to whether that had good prospects of success or not. There were arguments to be made, but it is within judicial knowledge that local authorities, and NHS Boards, each of whom form part of HSCPs, are under funding pressures. That was the reason given for the decision to terminate the funding for the two roles on 18 March 2025. Money would have had to have been taken from other funding for adult care, it was said. No evidence was put before me about how that decision had been made, although the claimant indicated what questions about it could have been asked, and it may have been made competently and with all necessary documentation, or not.

98. There is certainly at the least a material risk that the discussion would have not succeeded, and that risk is exemplified by the email of 2 May 2025 which in effect rejected all of Mr Armstrong's arguments. The terms on which that message was framed do not suggest that the decision would have altered.

99. Those arguments made by Mr Armstrong did not include the ones that would have been made had there been consultation with the claimant, as on the face of the message from Mr Armstrong it did not detail the email from Ms Holland or make an argument as to its effect that could have been made, separately the argument was not made directly by the respondent as the claimant's employer. If Ms Cameron did not feel comfortable in making it, one would have thought that the deputy Chief Executive to whom Mr Myers wrote, or the Chief Executive, could have done so. There was no evidence before me that that could not have been done.

100. The response from Mr Myers on 2 May 2025 is nevertheless an indicator that having an argument and succeeding with it are different things. The arguments that the claimant may have made in consultation, and then Ms Cameron or another manager of the respondent could have raised with Mr Myers, were that the contract was not ended as he apparently had thought, that the emails from Ms Holland were sufficient to bind the Partnership to fund until 31 March 2026, and that the proposed termination was not effective in law. I address the possibility of that succeeding below.

101. So far as alternative employment is concerned there could have been more done to consult on that, and in effect try and assist the claimant into another role, such as one that may have been created after a resignation, but the evidence was that the Partnership in question, at East Ayrshire, did not agree to do so at that time, and that did not effectively change.

With the benefit of hindsight it appears to me that that possibility should be discounted.

102. The possibility of a vacancy at North Lanarkshire was complicated as it required initial discussions with three employees then in post, with potentially at least changes to some of their roles or redundancy, and at best involved 14 hours per week for the claimant for a period, until in around June 2025 it may have become a 4 day per week role, and therefore 28 hours per week. It seems to me once again that there was a material risk that the attempts at finding another solution may not have succeeded, or would have required a period of time of the respondent paying the claimant’s salary that would have been beyond what may reasonably be required of them.

103. I consider a reasonable period for the respondent itself to have funded the claimant whilst she was being consulted over alternative roles, in particular that related to North Lanarkshire, and also to allow Ms Cameron to make direct representations to Mr Myers as to funding, was of four weeks. That was reasonable in my view given the claimant’s service, and that there was a prospect of avoiding redundancy. It would have delayed the dismissal by that period, assuming that it did not succeed.

104. It is not impossible that such consultation might have succeeded. The claimant’s position however requires not only a measure of speculation but that a number of matters would have happened reasonably quicky within that period of funding for her role.

105. Against that background I require to consider what such a fair consultation process would have resulted in. It seems to me firstly that I should consider the possibility that the Partnership might have been persuaded to change their mind on funding the roles. The evidence before me was limited. The onus of proof is on the respondent in relation to whether to make a ***Polkey*** deduction.

106. It seems to me that although there is an argument that could have been made that the notice of termination of the arrangement was ineffective the evidence is against that being accepted. Whilst the 2 May 2025 email from Mr Myers could be challenged on accuracy in some respects it sets out his position, and it in effect dismissed all the arguments for delay and otherwise that had been made to him. Had the argument been made on the basis of the Holland email exchange from 2024 I consider that it was very unlikely that that argument would have successfully led to the termination being withdrawn, or funding for lesser hours being offered. It appears to me that the prospect of persuading the Partnership to agree to change their mind is therefore very low.

107. If they had not agreed to change their position the only next step could have been an action in the civil courts for breach of contract, or breach of

a unilateral obligation, but it seems to me most unlikely that the respondent would have done so given the expense and risk of that, together with an obvious concern of reputational damage with other HSCPs, and it was not something that could be said to be required of them in general or would fall within the band of reasonable acts required of a reasonable employer. The Chief Executive’s message to Ms Cameron about not funding her role suggests that the respondent would not have considered the expense and risk of litigation to be appropriate to take.

108. It would clearly have taken time for the discussion with Mr Myers about the decision made to have taken place after a meeting was set up to do so, and it seems to me that that is likely to have taken a period of about two weeks to arrange and hold.

109. The same time period would have applied to whether the Partnership might agree to fund a reduced hours role for the claimant. I consider that such a possibility was highly unlikely to have been accepted, particularly given the terms of the original letter of termination and that of 2 May 2025.

110. Consultation would then have been required with the claimant to discuss that, in effect to tell her the outcome of the discussion with the Partnership and that the funding for her role was indeed to end at around the end of April 2025, and to consider what alternative roles within the respondent there may be. Arranging that meeting with her may have taken a period of about a further two weeks, partly as the respondent would separately have been having discussions with the three existing North Lanarkshire HSCP work employees, such that the total period of consultation before giving notice of termination would have been the four week period referred to above.

111. At the consultation meeting with the claimant there would have been two realistic possibilities as to alternative employment to discuss. So far as the East Ayrshire potential role is concerned the prospects of that opening up for the claimant in a timeframe within which it would be reasonable for the respondent to wait is, with the benefit of hindsight as noted above, effectively none, and are to be discounted.

112. In relation to North Lanarkshire there were three incumbents, hours were being reduced, and how that impacted the staff working on that matter and what they were each to do was not initially clear. Although the claimant should have been considered in that context if only as matters were not initially clear it does not seem to me at all likely that with adequate consultation with her and those other employees she would have been appointed. Patricia Chalmers had been working 21 hours per week and was offered a reduced role of 14 hours per week. She did not accept that, and took the option of redundancy by email on 27 March 2025. The position of Bernie Campbell was not clear – the evidence was that she

was dismissed for redundancy after consultation, but when it was not stated in evidence, nor was a document produced about her position. That dismissal may have been as she had less service than required to claim unfair dismissal, but there was no direct evidence as to that. Such evidence was in the hands of the respondent, and could have been produced by them if they considered it helpful to them. I infer from that that absence of detailed evidence that Ms Campbell was made redundant relatively quickly.

113. That left the question of how to address the position of the claimant as against Ms Price. The best outcome for the claimant initially at least was for 14 hours per week, but I consider that the prospects of the claimant being offered such a position within the timeframe were low. Ms Price was working on the North Lanarkshire matter, and a reasonable employer was I consider very likely to have decided to invite her to undertake additional hours if the other two staff were to be leaving so that there was someone with existing knowledge of that area of work. That the claimant could undertake such a role is not I consider in dispute, but whether appointing her to the role of 14 hours per week in what would be a new role in North Lanarkshire and within the further period for reasonable consultation with her is I consider unlikely, but it is there.

114. I then considered how to assess the impact of ***Polkey*** on loss. They were each I consider very unlikely, but not so unlikely that they should be entirely discounted and the reduction made to nil as the respondent argued for.

115. I have dealt with the former aspect above, and consider that the prospects for the claimant are very low. I assess them at 10%. For the latter the claimant might possibly have reached agreement at a much reduced level of hours worked at 14 hours per week, until Ms Price resigned when it might have increased to 28 hours per week, however I consider that the prospect of the claimant securing that initial role within the timeframe I have outlined for the consultation that ought to have taken place, when the other employee who was already working for that area of the business which required to be considered, is also very low, although somewhat less so. I assess that at 20%.

116. The period of loss from the date of termination to the date of this Judgment is 58 weeks. Given all the circumstances I do not consider that an award beyond that date is just and equitable.

117. The first four weeks of that period is the additional time that consultation would have taken, and that if assessed at the pre-dismissal rate. The total of the net earnings and pension contributions is £737.23 per week. For 4 weeks the sum is £2,948.92.

118. For the balance of 54 weeks the figure is £39,810.42 and 10% of that figure for the prospect of remaining working in the Partnership role leads to reduced loss of £3,981.04.

119. I then considered the position in relation to alternative employment. That is complicated firstly by the fact that the work available was of 14 hours per week, secondly that the incumbent then resigned with effect from 20 June 2025, and thirdly that the prospect of the claimant obtaining the work was assessed above at 20%. I do not have detailed figures for what 14 hours per week would lead to pay for, and can only use pro-rata'd figures. For 14 hours per week on such a basis the total is £294.89. Applying that rate to 54 weeks produces £15,924.06. Reducing that to 20% produces a net figure of £3,184.81.

120. There are two further aspects to the assessment. The first is the possibility that had the claimant received the position, she may then have been able to increase her hours to 28 from Ms Price's resignation. That could have been considered around the date that took effect on 20 June 2025. The other however is that simply adding the two figures for the different possibilities, one to remain in her existing role and the other about a new role, leads to an element of over recovery. The claimant would not have had both roles at the same time. These are different aspects each pointing in the opposite direction. I consider that, on a broad brush basis, it is just and equitable neither to increase nor reduce the figure to take account of these aspects, which I consider broadly cancel each other out.

121. I therefore added the three sums above of £2,948.92, £3,981.04 and £3,184.81 together, producing a sum of £10,114.77.

122. There were arguments made by the respondent as to the claimant not mitigating her loss, but overall I consider that she has done, just, sufficient in that regard, given all the circumstances. The onus is on the respondent to establish that what the claimant did in this regard was unreasonable, it is not for the claimant to prove that what she did was reasonable. Given the claimant's evidence, which I accepted, I did not consider that the respondent had discharged the onus it had. I do not therefore consider that a failure to mitigate loss has been established and I take no account of that in the assessment.

123. The claimant further seeks an award for loss of statutory rights of £500. I consider that to be reasonable given her length of service and salary level.

124. The total sum on that basis is £10,614.77, which is I consider the amount that is appropriate under the terms of section 123 of the Act, and is the amount that I award.

Conclusion

125. I find that the claimant was unfairly dismissed and make the award set out above.

Date sent to parties **16 June 2026**