EMPLOYMENT TRIBUNALS

Claimant: **Kevin Mills**

Respondent: **FP Hurley and Sons Ltd**

Heard at: **Bristol by Cloud Video Platform**

On: **22 and 23 June 2026**

Before: **Employment Judge David C. Gardner**

Representation

Claimant: **Mr Mills (representing himself)**

Respondent: **Mr Munro (solicitor)**

JUDGMENT

1. The Claimant's complaint of unfair dismissal is well-founded and allowed.

2. The Claimant's complaints of breach of contract (wrongful dismissal) and lack of written terms of employment are not well-founded and are dismissed.

RESERVED WRITTEN REASONS

Introduction

1. This case is brought by Mr Kevin Mills against FP Hurley and Sons ("FP Hurley"). Mr Mills brings complaints alleging unfair dismissal (related to redundancy), breach of contract (wrongful dismissal), and a failure to provide written terms of his employment. FP Hurley, in summary, contends that Mr Mills was fairly made redundant and was paid what he was due

under his contract of employment (save for a residual amount it accepts it owes), and thus his complaints are not well founded.

2. The final hearing of this case took place on 22 and 23 June 2026 remotely by Cloud Video Platform. I reserved judgment at the end of the hearing.

3. At the hearing, Mr Mills represented himself and also gave evidence. FP Hurley was represented by Mr Munro. Ms Andrea Thomas, Finance Director for FP Hurley also gave evidence. I also considered the evidence bundle and witness statements provided by the parties in coming to my decision. Whilst I have considered all the evidence, I will only refer to the evidence particularly pertinent to the issues I have to decide in this judgment.

Preliminary Issue – Amendment of Claim - Respondent(s)

4. I raised an issue as to whether FP Hurley is the accurate and/or only Respondent in the claim given that the Respondent's case is that Mr Mills was employed by HFM Maintenance. Both parties agreed that there was no need to add HFM Maintenance as a Respondent as, on Mr Mill's case, he was an employee of FP Hurley and, in any event, on the Respondent's case, there is no need as FP Hurley is the parent company of HFM Maintenance. I allowed Mr Munro time to consider the point further and file written submissions if he wished, but no written submissions have been received. I accept their agreed position and do not amend or add to the parties.

Preliminary Issue – Timing of the Claim

5. At the beginning of the hearing on 22 June 2026, I identified that there was an issue as to whether the claim had been brought in time and that I should resolve that as a preliminary issue. I heard oral evidence from Mr Mills on the issue. I indicated on 22 June 2026 that I had decided that the claim was brought in time and the case could proceed, but to save time in the hearing I would provide my reasons for that decision later. These are those reasons.

6. It is agreed by the parties that the effective date of termination ("EDT") was 25 October 2024, that Mr Mills started the early conciliation process with ACAS on 21 January 2025, that ACAS issued a certificate of completion of the early conciliation process on 4 March 2025, and Mr Mills filed his ET1 claim form with the Tribunal on 9 April 2025.

7. Under s.111(2)(a) of the Employment Rights Act 1996 ("the 1996 Act"), the Tribunal may not consider a complaint unless it is made before the end of the period of 3 months beginning with the EDT, but under s.207B of the 1996 Act, the clock is stopped during the period of early conciliation.

8. The parties agreed with my assessment that the latest date on which Mr Mills should have presented his claim was 3 April 2025. As such, the claim was 6 days outside the s.111(2)(a) time limit.

9. However, under s.111(2)(b) of the 1996 Act, the claim will be brought within time if it is brought within such further period as the Tribunal considers reasonable in a case where it is satisfied that that it was not reasonably practicable for the complaint to be presented within that period of three months.

10. The Employment Appeal Tribunal ("EAT") has given guidance on the meaning "reasonably practicable" in this context and discussed some potential relevant considerations to the test in the case of *Inchcape Retail v Shelton* UKEAT/0142/19/JOJ, which I have considered. I note in particular paragraphs 28-34 of the judgment of Mr Justice Richardson, and in particular the, in view, pertinent observation in paragraph 28 (citing with approval Mr Justice Brandon's judgment in *Walls Meat Company v Khan*) that it cannot justly be said to be reasonably practicable for a person to comply with a time limit of which he is reasonably ignorant.

11. Mr Mills submits I should deem his complaint in time based on s.111(2)(b). His principal reason for this is that he believed the ACAS conciliation process was ongoing after the 4 March 2025 certificate and in fact up until 26 March 2026. That is because on 17 March 2025, further he tells me in oral evidence to other earlier conversations with ACAS, left him with the

impression that early conciliation was ongoing as ACAS wrote to him as follows:

> *I have advised the respondent that I will cease conciliation by 24th March, if I do not hear back from them. Therefore, if you do not hear from me by the 24th, you should take this as an impasse and you will need to make a choice on whether you wish to proceed to the employment tribunal.*
>
> *You will normally have 3 months minus 1 day of the event your claim concerns to file your claim with the employment tribunal but the early conciliation period, from when you filed your request with Acas to the date the certificate was issued, is not counted in this time period. As long as you were in time when you filed your request with Acas you will have at least 1 month from the date of the certificate being issued to file your claim. You may have longer as it all depends on your time limit.*
>
> *Acas is not able to calculate the deadline for you so you may wish to consider taking advice on this as well as on the merits of your claim. Please remember that it is your responsibility to ensure your claim is filed in time.*

12. On 26 March 2026, ACAS followed up that email with a further one which stated:

> *There hasn't been any further communication from the Respondent since you last checked, so you must assume that at this stage they are not minded to explore a resolution. You must now decide whether to take this on to the next stage by making a claim in the employment tribunal.*

13. Mr Mills confirmed that he understood time would start to run from the end of early conciliation and thus, he considered, it started on 24 March 2026 at what he considered to be confirmation of the end of the process. He accepts that the ACAS email notes it cannot provide advice on timing and

that he may wish to take advice, but noted that he could not afford the same. He says he genuinely relied upon what he considered to be advice on the proper process from ACAS in the email and filed his claim quickly after confirmation that the process had come to an end (and thus that time had started to run).

14. I accept his evidence that he was left understanding that early conciliation was ongoing. Given the terms of the email I entirely understand why he formed that view. In my view, he was understandably and reasonably ignorant (per *Inchcape*) of the correct date on which the time limit began to run as a result of the ACAS email.

15. I note the principle in *Inchcape* that a Claimant can be expected to take advice on time limits. I understand and accept the difficulties that costs pose to the ability to take legal advice. I also do not consider it unreasonable for him to think he can rely on the advice of ACAS.

16. For completeness, I find that filing the claim within 14 days of the date on which Mr Mills understood that early conciliation had ended amounts to filing within a period I consider reasonable and thus, I find that the claim is within time, per s.111(2)(b) of the 1996 Act and I have jurisdiction to consider the case.

Agreed Background

17. The background facts are not substantively in dispute and can be summarised shortly.

18. FP Hurley & Sons Ltd (“FP Hurley”) is a company engaged in building services contracts operating within the construction industry, and operating primarily within the Healthcare, Education, Commercial and Local Government sectors. The Company has been trading since 1949.

19. FP Hurley has a subsidiary company, HFM Maintenance Ltd, which operates and runs the maintenance side of the parent company’s business. It was set up and commenced trading in January 2020 with three

employees, two undertaking the maintenance services at the Newport and Swansea sites, and a third, Mike Marten being formally appointed as a director. His role was to oversee the existing contracts keeping the client happy and to develop the customer base.

20. Mr Mills commenced employment with FP Hurley on 28 August 2019 as an Operations Manager. He signed his employment contract for that role on 25 March 2019.

21. On 1 February 2023, as Mr Marten was known to be retiring as director at HFM Maintenance, Mr Mills took on a new role in HFM Maintenance. As noted above, he was one of 3 employees at HFM Maintenance, the other two being more junior employees. His move to the new role was confirmed to him in an email from Ms Thomas and a letter from Adrian Hurley, Managing Director, both dated 1 February 2023, which also stated that the terms of his employment contract were to remain unchanged. He was thereafter responsible for maintenance operations and associated contracts with HFM Maintenance.

22. During 2023–2024, the parties agree that the business model was overall negatively affected by post-COVID reductions in demand for commercial office space (I will return to the relevance an impact of this and the Respondent's business model and decisions). The Respondent asserts that this led to a strategic decision to cease trading HFM Maintenance and refocus on larger-scale works.

23. On 28 August 2024, Adrian Hurely, under an FP Hurley letterhead, wrote to Mr Mills to inform him that "*the Company is in the regrettable position of having to make your role within the organization redundant*". The letter then invited Mr Mills to a consultation meeting to discuss whether there may be "*options available other than redundancy*" and "*any possible alternative employment within the Group*".

24. On 6 September 2024, the consultation meeting took place, attended by Mr Hurley, Ms Thomas, Mr Mills and Steve Lewis (the latter of whom attended to support Mr Mills). Minutes were taken on the meeting by both Mr Mills

and Ms Thomas. The minutes of the meeting prepared by Mr Mills confirm that at the meeting, Mr Hurley:

> *Advised that due to Reasons Outside Business Control (Namely Post Covid Commercial Impacts by Key Client "Admiral Insurance"), Revising and Reducing their Property Portfolio's and in turn Reducing Historical Maintenance Requirements from the HFMM Business.*

And

> *HFMM was no longer considered necessary to the future Business Plan Model*.

25. The meeting discussed options other than redundancy and Mr Mills proposed, amongst other suggestions, returning to his role as Operations Manager at FP Hurley. Mr Hurley informed that "*in his opinion that Role was No Longer Required*". Mr Hurely also "*Raised Option of New CEF Role within Business, but did suggest that K Mills Skill Base / Qualifications might not be Suitable*". Mr Mills agreed with this observation.

26. Mr Hurley also confirmed in that meeting that the "*Consultation Period would run current with Redundancy Notice, which would Start from that Moment 6th Sept and be Four Weeks Long*".

27. It should be noted at this stage that it is agreed that Mr Mills was the only employee selected for redundancy and there was no pool of candidates. No other employees were identified within the Group for possible redundancy and the two other, more junior, employees with HFM Maintenance were transferred into the parent business, FP Hurley.

28. On 9 September 2024, Adrian Hurely, under an FP Hurley letterhead, sent Mr Mills a letter confirming that he was to be made redundant. The letter informed that the Respondent had been unable to identify "*any alternative post to your redundant position*" within the Group and the date of termination of his contract would be 30 September 2024.

29. On 16 September 2024, a letter was sent by Adrian Hurely, under a HFM Maintenance letterhead, which informed Mr Mills that it was still considering his redundancy and in particular it wanted to consider Mr Mills' views on HFM Maintenance's future profitability (and any figures to support the same). It arranged a meeting to discuss the same. The letter informed that it appeared agreed that Mr Mills would not be suitable for a role as CEF Bids Manager, but it informed it would consider whether there were "*further options that we can put forward for your consideration and we would ask you to do the same*".

30. On 20 September 2024, the aforementioned meeting went ahead to discuss the future finances of the Company but did not serve to cause the Respondent to reconsider its decision to cease trading HFM Maintenance.

31. On 23 September 2024, Mr Hurley sent a letter under a HFM Maintenance letterhead, which confirmed that Mr Mills would be made redundant, noted he was entitled to 5 weeks notice, and that his notice period would end on 25 October 2024 (and that would be the date his contract would terminate).

32. On 27 September 2024, Mr Mills replied to the letters of 16 and 23 September 2024 and queried some of the presumptions and decisions in the letter, principally related to the suggestion in the letters that he had 'TUPED' from FP Hurley to HFM Maintenance, the financial positions of the companies, and the availability of alternative employment. Notably, Mr Mills stated that he considered that he remained employed by FP Hurley.

33. On 10 October 2024, Mr Hurley sent a further (and it seems this time final) letter, under a HFM Maintenance letterhead, which again confirmed that Mr Mills would be made redundant and his contract would terminate on 25 October 2025.

34. Mr Mills challenged the redundancy at an appeal meeting on 22 October 2024, but the Respondent maintained its position and upheld the dismissal. Mr Mills' employment terminated on 25 October 2024, as confirmed in the final letter sent by the Respondent, dated 10 October 2024.

35. Mr Mills then began the process of bringing this claim, which I have discussed above and do not repeat here.

Findings of Fact

36. There were a number of issues on which the parties were not agreed and upon which I am required to make findings of fact which will inform my decisions in the claim.

Was the Claimant employed by HFM Maintenance Ltd?

37. There is a dispute as to Mr Mills' employer from 1 February 2023 until the end of his employment. He states he has been, for the entire period of his employment, an employee of FP Hurley, albeit he also worked for HFM Maintenance from 1 February 2023. The Respondent's case is that on 1 February 2023, Mr Mills transferred to HFM Maintenance to take on the role of director of the company.

38. In my view, the evidence provided to me suggests that Mr Mills did take on a new role for HFM Maintenance from 1 February 2023 and that it was the intention of the parties that Mr Mills work for HFM Maintenance, albeit that is a subsidiary company of FP Hurley. In particular, I note:

    a) Mr Mills received a letter from Mr Hurley, dated 1 February 2023, which informed him that he had been appointed to the new role. The letter expressly referred to the "*transfer of your employment from F. P. Hurley & Sons Ltd to the organisation's subsidiary, HFM Maintenance Ltd*" and noted that the "*reason for the proposed transfer is to reflect your new position within the maintenance sector of the F P Hurley & Sons Ltd group*".

    b) Mr Mills' own evidence suggests he undertook a substantially different role after he took on the new role from 1 February 2023.

    c) Contemporaneous emails from the time from Mr Mills used an email signature with him being named as director of HFM Maintenance.

d) Mr Mills' company website profile listed him as the director of HFM Maintenance.

e) Mr Mills' payslips confirmed that he was paid by HFM Maintenance.

39. I would make two additional observations relevant to this finding. Firstly, in my view the use of the term 'TUPED' in the Respondent's letters of 16 and 23 September 2024 is something of a misnomer and in my view represents the Respondent using incorrect terminology. This was not a case of Mr Mills' role as Operations Manager with FP Hurley transferring to a new company which had taken over from FP Hurley, as envisaged by the Transfer of Undertakings (Protection of Employment) Regulations 2006. This was a case of Mr Mills being offered and accepting a new role with a subsidiary organisation (HFM Maintenance). Secondly, Mr Mills' new role with HFM Maintenance would not prevent him undertaking work with or for the parent organization (FP Hurley), which would be consistent with his evidence that he did the same.

Was the Claimant a Director?

40. There also appeared to be a dispute as to whether Mr Mills was appointed as a director of HFM Maintenance, but the dispute may not be quite as acute as the parties considered. Both Mr Mills and Ms Thomas agreed in evidence that Mr Mills was not a statutory director, such that he is registered a director of HFM Maintenance with Companies House. Both Mr Mills and Ms Thomas agreed that Mr Mills took on the title of Director of HFM Maintenance. Mr Mills described this as an employed director and noted he did not hold any shares in HFM Maintenance.

41. Indeed, Ms Thomas's witness statement, at paragraph 7 is clear as to the role that was taken on by Mr Mills:

> *In early 2023, the director at HFM Maintenance Limited made the decision to retire and the position was offered to the Claimant. The*

Claimant accepted the role and a commencement date of 1 February 2023 was agreed.

42. In my view, the parties are substantially agreed and I find that whilst he employed by HFM Maintenance, a subsidiary of FP Hurley, Mr Mills was employed as a non-statutory, non-shareholding, director.

The Financial Position of FP Hurley and HFM Maintenance

43. There was also some dispute as to the profitability of HFM Maintenance and the reported financial troubles of FP Hurley, which is relevant as these issues go to why the Respondent considered it needed to cease trading with HFM Maintenance and make Mr Mills redundant.

44. Mr Mills, quite understandably and fairly, points to the fact that the operation of HFM Maintenance had not led to losses but indeed to some profits in 2024. He also noted that he had outstanding enquiries with a number of businesses which may secure the services of HFM Maintenance, including the main client, Admiral, which had retained the services of HFM Maintenance for its Newport and Swansea offices, and was considering services for its main office in Cardiff.

45. Ms Thomas, also understandably and fairly, accepted Mr Mills' points, but pointed to the wider picture. She noted that the results for the year ended September 2023 reported an FP Hurley group operating loss of just under £2.3m (this was confirmed in the financial reports for FP Hurley for 2023). She gave evidence that the downturn in 2023 had resulted in a negative impact on the cash flow of FP Hurley. She was also aware of a large client which had ceased trading leading to a £750,000 debt which would not be paid. She stated that as a result FP Hurley's credit rating had taken a significant downturn and the business was as struggling to get credit. She informed me that all suppliers insure their debts and will not give credit unless insurers permit.

46. This left Ms Thomas with concerns as to how they would meet their orders and she stated the business then had to look at every aspect of the business to consider viability. She noted that HFM Maintenance's Admiral Account was 70% of its turnover. She noted Admiral had renewed its contract (until December 2025) but when looking at the renewal, she considered the Newport building contract was going to end and the Swansea building contract was likely to end in 2025. She was clear there was insufficient certainty in the future prospects and at that time, in her view, the business needed certainty. She reflected that the business meetings they held in July 2024 only appeared to set out work that <u>may be</u> secured by HFM Maintenance and not work which <u>had been</u> secured.

47. Thus, Ms Thomas' consistent written and oral evidence was that the decision to stop trading with HFM Maintenance (in the sense of as an active company rather than to wind up the company) was always about the finances of the wider company group.

48. On this issue I accept Ms Thomas' evidence and find that she did consider it was necessary to cease trading HFM Maintenance and that restructuring and redundancy was necessary due to the financial position of FP Hurley, the parent company.

49. Ms Thomas' oral evidence was not always clear, but one point on which she was consistent and clear before me was that due to the financial position of FP Hurley, action was needed quickly to ensure the company could meet its liabilities and provide stability and certainty to the parent company. She was clear that her view on the business was that whilst HFM Maintenance was, in 2024, performing adequately, in her judgment that was unlikely to continue to be the case into 2025, which was the reason that a decision to cease trading HFM Maintenance was made. That is, in my view, a view of the business and a decision I find she (and Respondent) genuinely took based on their informed view.

50. With the agreed fact and those findings of fact, I turn to the relevant law before setting out the reasons for my decisions.

Unfair Dismissal - Law

51. The relevant statute for the law on unfair dismissal is the Employment Rights Act 1996 ("the 1996 Act"). The following sections of the 1996 Act are particularly relevant to this case.

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:

…

(c) is that the employee was redundant.

…

(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.

…

139 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.

52. When considering whether redundancy is fair I have considered the lead case of *Williams v Compare Maxim* [1982] ICR 156 at 162. The following in the judgment of Mr Justice Browne-Wilkinson is particularly pertinent, having in mind the important point that not all redundancy exercises will engage all of the points made:

… the fair conduct B of dismissals for redundancy must depend on the circumstances of each case… there is a generally accepted view in industrial relations that,… reasonable employers will seek to act in accordance with the following principles:

1. The employer will seek to give as much warning as possible of ,-. impending redundancies so as to enable the union and employees *who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.*

2. The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider, with the union whether the selection has been made in accordance with those criteria.

3. Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person. making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.

4. The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.

5. The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.

The lay members stress that not all these factors are present in every case since circumstances may prevent one or more of them being given effect to. But the lay members would expect these principles to be departed from only where some good reason is shown to justify such departure. The basic approach is that, in the unfortunate circumstances that necessarily attend redundancies, as much as is reasonably possible should be done to mitigate the impact on the work *force and to satisfy them that the selection has been made fairly and not on the basis of personal whim.*

53. The *Compare Maxim* guidelines are also reflected in a simple and accessible way in the ACAS Guidance on Redundancy, which is available on the ACAS website and which I have also considered.

54. The list of considerations for me, as suggested in *Compare Maxim* and as relevant to this case were imported into the list of issues in the case which I agreed with the parties at the outset of the hearing. I turn now to consider that list of issues and my findings accordingly.

What was the reason for dismissal and did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

55. The Respondent asserts that the reason for Mr Mills' dismissal was redundancy, which is a potentially fair reason for dismissal under s.98(2) of the 1996 Act. Mr Mills, however, suggests that this was a 'sham redundancy' and that the real reason was that Mr Hurley wanted him removed from the business to ensure that he did not have to pay him profit share to which he was entitled under his employment contract.

56. I have reviewed Mr Mills' statement and evidence and considered the contemporaneous evidence of the meeting minutes. I can find no contemporaneous evidence in the bundle which suggests that Mr Mills raised as a concern at that time that Mr Hurley was motivated to remove him from the business for any reason other than as a financial decision based on the difficulties FP Hurley was facing at the time.

57. As I observed above, Mr Mills, quite understandably, was dubious as to the decision given his views on the financial viability of HFM Maintenance and the profitability of FP Hurley. That said, and as I observe above, Ms Thomas took an alternative view and was, in my view, in a better position as finance director to assess the state of both businesses and to make

judgement calls, with the Managing Director, on the direction in which the businesses should progress.

58. It is not the role of the Employment Tribunal to decide how a business is managed. If financial difficulties and/or anticipated business difficulties mean that restructuring is needed or roles must be eliminated, provided that decision is within the band of reasonable responses available to the employer then such a decision will be lawful. In making such a determination I must, as was observed in *Aberbethy v Mott, Hay and Anderson* [1974] ICR 323, consider the facts and beliefs of the employer and consider the mental processes of the person who made the decision.

59. On this issue I accept Ms Thomas' evidence and find that she did consider restructuring and redundancy was necessary. Ms Thomas' oral evidence was not always clear, but one point on which she was consistent and clear before me was that due to the financial position of FP Hurley, action was needed quickly to ensure the company could meet its liabilities and bring stability and certainty to the parent company's operations. She was clear that her view on the business model was that whilst HFM Maintenance was, in 2024, performing adequately, in her judgement that was unlikely to continue to be the case into 2025. I accept there is an element of prediction in her judgement, but unless it falls outside the band of reasonable responses, it is her business decision to make, not mine.

60. I find that it did fall within the band of reasonable responses open to the Respondent to consider that its financial position meant that action to cease trading with HFM Maintenance was necessary at the time of the decision to make Mr Mills redundant and that whilst two more junior employees within HFM Maintenance could transfer over to FP Hurley, Mr Mills' role was distinct and was at that time a necessary cut to stabalise cash flow.

61. Thus, it is my conclusion that the reasons for dismissal was indeed redundancy, not a 'sham'. However, that finding does not necessarily mean that the dismissal was fair if an unfair process was followed.

Was the Dismissal Fair?

62. As I confirmed with the parties at the outset of the hearing, Mr Mills' make three discrete complaints to suggest that, in line with s.98(4) of the 1996 Act, his dismissal was unfair. They are:

a) The consultation was inadequate.

b) A fair pooling exercise was not undertaken

c) Suitable alternative employment was available and not considered.

<u>Consultation</u>

63. It is well established that an employer acting fairly will generally consult with an employee before making them redundant (see *Williams v Compare Maxim* above).

64. What fair consultation requires will depend on the size of the business, the number of employees being made redundant, and the circumstances of the case. The ACAS Guide on Redundancy gives useful guidance on what a fair consultation will generally involve and says the following:

> *Before your employer selects anyone for redundancy, they might need to follow a consultation and selection process.*
> *…*
> *If your employer is proposing to make fewer than 20 redundancies, they should inform and consult with you individually.*
> *…*
> *The consultation is a chance for your employer to talk about the changes they're proposing and why you're at risk of redundancy.*
>
> *You can ask them questions and make suggestions on how redundancies could be reduced or avoided altogether.*

You could discuss:

- *ways to avoid or reduce redundancies*
- *how people will be selected for redundancy*
- *any issues you have with the process*
- *time off to look for a new job or training*
- *how the organisation can restructure or plan for the future*

What your employer should do

Your employer should hold a genuine and meaningful consultation with you. This means they must:

- *listen to your ideas*
- *try to come to an agreement with you*

They do not have to agree to any ideas you suggest, but they should seriously consider them.

…

During individual consultation, your employer should hold a meeting with you in private at least once.

65. In this case, the employer sent a letter, dated 28 August 2024, which warned the Claimant that his role was being made redundant. A consultation meeting took place on 6 September 2024 at which the state of the business, options to improve business, and alternatives to redundancy were discussed (see agreed facts above). On 9 September 2024, the Respondent confirmed that Mr Mills was to be made redundant, but on 16 September 2024, a letter was sent which informed Mr Mills that it was still considering his redundancy and in particular it wanted to consider Mr Mills' views on HFM Maintenance's future profitability. It arranged a meeting to discuss the same and invited "*further options*. On 20 September 2024, the aforementioned meeting went ahead, but it did not lead the Respondent to change its mind. The Claimant also had the opportunity to and did appeal the decision, to no avail.

66. Whilst I note that the aforementioned letters of 28 August 2024 and 9 September 2024 refer to Mr Mill's role being made redundant rather than being at risk of redundancy or still subject to consideration, it is my view that there were genuine attempts being made to explore business viability and other options to redundancy with Mr Mills. Better wording could be used in the letters to make it clear that the matter had not been predetermined, but it does not suggest to me that there was predetermination, just that the Respondent found it difficult to see other options. That is in line with Ms Thomas's evidence, which I accept. She summarised the position in her oral evidence as follows: "*I wanted to know if there was any information which would change our view. There was not*."

67. I also consider that the issues discussed at the meetings show it was a meaningful consultation in that it invited views and options from Mr Mills, the Respondent simply did not agree that the options put forward were in the best interests of the business (as it is entitled to do).

68. There were two meetings and, in my view, the key features of the consultation were representative of a fair consultation. However, there was one element of oversight in the consultation which is more problematic and which goes to consulting on potential alternative roles. I will consider this point later in this judgment.

<u>Fair Pool</u>

69. Mr Mills observes that he was the only person being considered for redundancy and submits this suggests an unfair procedure.

70. The selection of the pool is a matter for the employer, subject that selection being within the range of reasonable response open to the employer (see for example, *Kvaerner Oil and Gas Ltd v Parker* EAT/0444/03 RN and *Family Mosaic Housing Association v Badmos* UKEAT/0042/13/SM).

71. As noted in *Capita Hartshead Ltd v Byard* [2012] ICR 1256, a selection pool of a single person does not necessarily mean the redundancy process will

be unfair, as long as the Respondent has genuinely considered whether a wider pool may be applied and the decision not to do so is within the range of reasonable responses. Ms Thomas confirmed in evidence that they did consider pooling with the wider FP Hurley group but did not consider it appropriate to pool with anyone at FP Hurley given their distinct roles in the parent company and Mr Mills' distinct role as Director of HFM Maintenance. She was clear in her oral evidence that no other persons in FP Hurley who do the same role as Mr Mills did for HFM Maintenance.

72. On the facts of this case, I do not consider it to be outside the range of reasonable responses for the Respondent to come to the view that it would confine the list of persons at risk of redundancy to be a pool which just included Mr Mills. I note, as the Respondent did and as confirmed in Ms Thomas' evidence, that:

a) HFM Maintenance was to cease trading.

b) The Claimant was the only director level role in HFM Maintenance.

c) The two other roles in HFM Maintenance were more far more junior and the nature of those roles was substantially different. They would not be comparable roles for redundancy.

d) There were no equivalents to the Claimant's director role in the parent company in FP Hurley and his old role of Operations Manager was no longer in existence.

e) There were no other appropriate, incumbent employees in FP Hurley whom it would be appropriate to consider including in the pool (per *Byrne v Arvin Meritor LVS (UK) Ltd* EAT/239/02/MAA).

73. With those points in mind, in my view, there was no unfairness in not selecting a wider pool for redundancy.

Alternative Roles

74. As I have found above, Mr Mills was a director of HFM Maintenance. It was this role and Mr Mills' position which was the subject of redundancy.

75. On the evidence I have, I consider that the Respondent was making efforts to identify a suitable alternative, equivalent role to the director role. It concluded that there was no such role available. Ms Thomas confirmed in evidence, which I accept, that there were no open director roles in FP Hurley and the Operations Manager role had been removed from the FP Hurley structure after Mr Mills vacated it. I also note that the Respondent explored the alternative role of CEF Bids Manager with Mr Mills, but both agreed it was not a suitable role for him. In my view, the Respondent did fairly and reasonably investigate and come to the conclusion that there were no roles of an equivalent level to Mr Mills' director role in FP Hurley.

76. The residual question is whether there were more junior roles which may have been available and suitable, which should have been considered for Mr Mills. In my view it is more likely than not that there were because the Respondent, on 20 December 2024 (less than 2 months after the EDT), added an advertisement for a Mechanical Project Engineer to its website (as established by the screen shots of posts from the Respondent's website which were provided in evidence) and, as Ms Thomas confirmed in oral evidence, by Spring 2025 FP Hurley had hired a new Mechanical Project Engineer (albeit they left the role soon thereafter).

77. I note Ms Thomas' oral evidence when presented with the December 2024 adverts in cross-examination where she informed me that she did not know those roles were being advertised and she would have advised against it. That suggested to me an awareness both that such a move may not have been financially prudent, but also that it may have been a role which could have been made available to Mr Mills. I also take note that whilst Mr Mills raised these adverts in his case ("*FP Hurley Portishead have Engaged New Project Engineering Staff to Run Projects Well Within K Mills Skill Set*") and witness statement (see pages 11-12, section 8), no evidence was called by

the Respondent which could address the identified business need and timing behind these adverts to provide them with context. As such, I must consider them on their face and I find that the inference I would draw is that a business need for a Mechanical Project Engineer arose and at or around the time of Mr Mills' dismissal and would have been available in FP Hurley at that time or very soon thereafter.

78. I should pause here to note that Mr Munro's submissions on the 20 December 2024 advert was that the screenshots did not evidence when the advert was placed on the website and so cannot be relied upon as evidence of suitable alternative employment at the relevant time. I do not accept that submission. Whilst the advert does not have a year on it as it is labelled "20 Dec", either side of it are two more adverts which are labelled as "17 Dec" and "23 Jan". Mr Mills provided screenshots of the contents of those latter two adverts (without objection from Mr Munro) which state, for the "17 Dec" advert, "*Adrian Hurley offers insightful reflections on a tumultuous 2024*", and for the "23 Jan" advert, "*Adrian Hurely… shares his vision for the priorities of 2025*". In my view, this establishes that the adverts were in date order and that the content of the adverts either side of the 20 Dec advert show that the 17 December advert was posted in 2024 and the 23 January advert was posted in 2025. Thus, the advert in the middle, dated 20 December, must have been posted on 20 December 2024.

79. I have also considered Mr Mill's oral evidence on this issue. He explained that his background is mechanical engineering, but his role at FP Hurley was as operational manager which was to manage the mechanical engineers. Thus, he was sufficiently qualified for a role as a Mechanical Project Engineer, albeit if he was not managing the engineers then the role was a more junior role. Nonetheless, if he was made aware of this role at the time, even though it was more junior, he would have accepted it (if offered).

80. Whilst a more junior role was in my view available, it does not appear from the minutes of the various meetings that this option was either considered by the Respondent or suggested by Mr Mills. That leads to the crucial

question, in my view, which is whether the Respondent acted unfairly, given its size and resources, in not considering or offering alternative, more junior roles in the parent group of FP Hurley to Mr Mills before making him redundant.

81. In *Thomas and Betts Manufacturing Co v Harding* [1980] IRLR 255, CA, the Court of Appeal ruled that an employer acting fairly should do what it can so far as is reasonable to seek alternative work for an employee it is making redundant. It is generally accepted that an employer with sufficient resources to take reasonable steps to ameliorate the effects of redundancy, including giving detailed consideration to whether suitable alternative employment is available, should take such steps.

82. As noted in *Stanco Exhibitions Ltd v Wright* UKEAT/0291/07/RN, the EAT confirmed that the Tribunal is entitled to enquire into the options open to the employer in terms of the Claimant remaining employed by it.

83. I also note that the IDS Employment Law Handbook refers to (with approval) the unreported case of *Euroguard Ltd v Rycroft* EAT 842/92 in which the Employment Appeal Tribunal held that it may be appropriate for employers to consider the availability of alternative employment not only within the company in which the employee is employed but also within other companies in the same group.

84. In my view it was appropriate for the Respondent to consider alternative employment in the wider company group in this case because the affairs of the FP Hurley and HFM Maintenance are closely integrated. They have the same statutory directors. Staff move from one to the other, as is shown by Mr Mills moving to HFM Maintenance, and when HFM Maintenance was due to cease trading, his two staff moved to FP Hurley. Whilst FP Hurley was struggling financially at the time, it is not a small business, it has a multi-million pound turnover which suggests that it would be reasonable to be exploring roles in the parent group. In my view it would have had sufficient staffing and resources to consider its wider business needs and whether, after it became clear that HFM Maintenance was to cease trading,

there were suitable roles in the parent group which may have been more junior and should at least be offered to Mr Mills.

85. It will not always be unreasonable for an employer to assume that an employee would not wish to accept a more junior position (per *Barratt Construction Ltd v Dalrymple* [1984] IRLR 385). However, in my view the authorities have developed to suggest that the fact that the employee did not volunteer willingness to take on a more junior role is not determinative as to whether fairness required the employer to consider and offer the same.

86. In *Lionel Leventhal Ltd v North* UKEAT/0265/04/MAA, Mr Justice Bean (sitting in the EAT) at paragraphs 11 and 12 held:

> [11] … *it is not necessarily the case that employers can rely on a failure by the employee to raise the question of the subordinate job as being a defence to an allegation of unfair dismissal.*
>
> [12] *Whether it is unfair or not to dismiss for redundancy without considering alternative and subordinate employment is a matter of fact for the Tribunal. It depends as we see it on factors such as (1) whether or not there is a vacancy (2) how different the two jobs are (3) the difference in remuneration between them (4) the relative length of service of the two employees (5) the qualifications of the employee in danger of redundancy; and no doubt there are other factors which may apply in a particular case.*

87. In this case, I have come to the view that it was unfair for the Respondent not to consider the junior role as one which may be suitable for Mr Mills, and not to discuss it as an option with him as part of the consultation on redundancy.

88. At the time of the redundancy the new role was not being advertised, and thus Mr Mills was not aware of the efforts or intention to employ a

Mechanical Engineering Manager in FP Hurley and so could not have raised it as a possibility.

89. It appears that Ms Thomas may also not have been aware of the need for the role, but of course Ms Thomas is not the whole Respondent, and given my findings, the Respondent as a whole will have been aware that it was about to advertise for a mechanical project engineer.

90. As the employer did not raise the question as to whether Mr Mills would be prepared to return to FP Hurley under a more junior role it removed the employer's opportunity to consider whether, as it was about to start advertising for a mechanical project engineering role, to interview or appoint Mr Mills to such a role, and, further, Mr Mills had no opportunity to consider such an offer.

91. Of course, there was no one in post and so it was not a case of unfairness to an incumbent being considered as part of the assessment of fairness. As Mr Mills was, on the evidence, an employee of some 5 years continuous employment and was qualified to undertake the role, an employer acting reasonably and fairly, should have considered him for the role. In my view, based on the size of the company and the material facts of the case, this failure renders the dismissal unfair.

Conclusion on Unfair Dismissal

92. In conclusion, for the discrete reasons above, I find that Mr Mill's dismissal was unfair and his complaint of unfair dismissal is well-founded.

If the Respondent did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

93. I have considered whether the Claimant would have been dismissed anyway if the Respondent had acted fairly, applying the well-known principles in *Polkey v AE Dayton Services Ltd* [1988] ICR 142.

94. I have come to the conclusion that I cannot say he would have been. Indeed, on the evidence I have he would have been qualified for the junior role and could have moved into it. There is no evidence that redundancy (or any other reason for dismissal) would have taken place in those circumstances. Accordingly, any award will not be reduced on the basis of the *Polkey* principles.

Wrongful Dismissal

95. This matter can be dealt with quickly. The crux of Mr Mills' complaint is that he as he was a director in HFM Maintenance, he should have been entitled to 3 months notice pay in line with the industry standard for directors.

96. Ms Thomas gave evidence that no other directors in FP Hurley have contracts which provide for a 3 months notice period. She also pointed to the fact that Mr Mill's employment contract, dated 25 March 2019 expressly states his notice period is 1 month, rising by 1 week for every year of service after 4 years. Mr Mill's accepted that the contract states 1 month, rising after 4 years, but considered it would have been updated after he became a director to include the industry standard 3 months.

97. Ultimately, whether or not 3 months is industry standard, Mr Mill's notice period will be that set out in his employment contract. His employment contact states the notice period is 1 month rising after 4 years.

98. To confirm that remained the position after he took on the director role, the Respondent produced an email from Ms Thomas, dated 1 February 2023 and letter from Adrian Hurley of the same date, both of which informs Mr Mills that he has transferred to HFM Maintenance, but that the terms of his employment contract remain the same. Both documents expressly state; "*There is no difference to any of your terms and conditions of employment*".

99. I have no hesitation in concluding that the notice period was 1 month as per Mr Mill's employment contract. Accordingly, his complaint of wrongful dismissal is not well-founded and will be dismissed.

Lack of Written Terms

100. Mr Mills also complains that he was not provided with written terms of his contract after he moved to HFM Maintenance. That overlooks the aforementioned letter, dated 1 February 2026, which confirms to Mr Mills that the terms of his employment remain those in his original contract. Whilst I accept that good practice would have been to issue Mr Mills with a new contract at the point that he did move, in my view written confirmation that older written terms remain applicable suffices to meet the Respondent's legal obligations.

101. Accordingly, his complaint of a lack of written particulars is not well-founded and will be dismissed.

Conclusion and Final Decision

102. The Claimant's complaint that he was unfairly dismissed by the Respondent is well-founded.

103. The Claimant's complaint of breach of contract / wrongful dismissal is not well founded.

104. The Claimant's claim of failure to provide written terms of his contract is not well- founded.

105. I will now arrange for a 3 hour remedy hearing to be listed and the parties will receive notice of the date of the hearing in due course. In the meantime, with the benefit of my judgment, I would invite the parties to discuss remedy and if at all possible come to an agreement on remedy. If they do, they may write to the Tribunal to inform it and no hearing will be required. I would caution the parties that offers of settlement on the issue of remedy should be reasonable with a view to coming to an agreement if at all possible. The parties will also need to factor into their offers that the consequence of my findings above is that if Mr Mills were to have continued to be employed by the Respondent in a more junior role, it likely

would have been for a lower salary, which in itself will mean the compensatory element of any award will be lower.

Approved by
Employment Judge David C. Gardner
Date: 16 July 2026

SENT TO THE PARTIES ON
4 August 2026