EMPLOYMENT TRIBUNALS

Claimant: **Ms V Stanford**

Respondent: **Lewisham Disability Coalition**
(a company limited by guarantee)

Heard at London South on:
2nd, 3rd, May 2017 and in chambers on 4th May 2017

Before: **Employment Judge Pritchard**
Mr A Kapur
Mr R Pennington

Representation
Claimant: **In person**

Respondent: **Mr A Bousfield, counsel**

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that:

1 The Claimant's complaint that she was harassed contrary to section 26 of the Equality Act 2010 is not well founded and is accordingly dismissed.

2 The Claimant's complaint that she was victimised contrary to section 27 of the Equality Act 2010 is not well founded and is accordingly dismissed.

3 The Claimant's complaint that she was unfairly dismissed is well founded and accordingly succeeds. The Respondent is ordered to pay the Claimant compensation in the sum of £957.70

4 By consent, the Respondent shall pay to the Claimant the sum of £670.89 gross as compensation for outstanding holiday pay.

REASONS

1. The Claimant claimed:

   1.1. harassment by reason of disability;

   1.2. victimisation by reason of disability;

   1.3. unfair dismissal; and

   1.4. outstanding holiday pay.

2. The Respondent admitted that the Claimant was a disabled person by reason of her epilepsy and asthma but otherwise resisted the claims.

3. At the commencement of the hearing the Respondent agreed to settle the Claimant's holiday pay, which the Claimant accepted, as recorded in the Judgment above.

4. The Tribunal heard evidence from the Claimant on her own behalf and from the Respondent's witnesses: Paul Wanogho (Trustee and Director); Simon Finaldi (Project Support Executive); and Roz Hardie (Director). The Tribunal was provided with a bundle of documents to which the parties variously referred. Further documents were provided to the Tribunal as the hearing progressed. At the conclusion of the hearing the parties made oral submissions.

5. The Claimant wished to introduce in evidence a recording, of one hour 40 minutes duration, which she had made on her telephone at the grievance and appeal hearings before Trustees on 29 April 2016. A letter dated 4 April 2017 from the Tribunal informed the Claimant of Employment Judge Martin's direction that the Claimant must bring equipment to the Tribunal to play the recording. However, the Claimant failed to do so. The Tribunal therefore gave the Claimant the opportunity to inform Mr Bousfield of the extracts she wished to refer to (in anticipation that the extracts could be agreed between the parties) or to provide Mr Bousfield with the timings on the recording to which she wished to refer whereupon Mr Bousfield told the Tribunal that he would be able to play the recording on his laptop computer on the second day of the hearing. However, the Claimant failed to do so. The Claimant told the Tribunal that the recording was relevant to the extent that the Trustees did not know of the Claimant's redundancy and the funding of members of staff. In the Tribunal's view, the recording of the grievance and appeal hearings, which took place after the alleged acts of harassment and victimisation and after the Claimant's redundancy dismissal, would be of limited, if any, relevance to the issues to be decided. The Tribunal had regard to the overriding objective, in particular dealing with cases in ways which are proportionate to the importance and complexity of the issues, and to avoid delay so far as compatible with the proper consideration of the issues. The Tribunal ruled that

it would not consider the recording. The only way in which the Tribunal could do so would be to huddle over the Claimant's telephone and listen to the entire length of the recording which the Claimant said was somewhat muffled.

Issues

6. The issues had been discussed at a Preliminary Hearing conducted by Employment Judge Freer. His Case Management Order attached the Claimant's list of issues were accepted by this Tribunal as the issues in the case. They can be more fully described as follows:

Unfair dismissal

6.1. Can the Respondent show that it dismissed the Claimant by reason of redundancy? The Claimant claimed that there was no reduction in funding for her role, the implication being that redundancy was not the true reason for her dismissal.

6.2. If the Respondent can show that it dismissed the Claimant by reason of redundancy, was it fair in accordance with section 98(4) of the Employment Rights Act 1996?

6.3. The Claimant complains in particular that:

6.3.1. the Respondent failed to consult with her about the proposed redundancy;

6.3.2. the Respondent failed to follow a selection procedure; and

6.3.3. the Respondent failed to offer her alternative roles.

6.4. If the Tribunal were to decide that the Claimant had been unfairly dismissed, what remedy should the Tribunal award? If compensation:

6.4.1. To what extent should a Polkey deduction be made to the compensation to reflect the likelihood that the Claimant would have been dismissed in any event?

6.4.2. Has the Claimant mitigated her loss?

Harassment

6.5. Did the Respondent engage in unwanted conduct for a reason related to the Claimant's disability which had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The Claimant complained of the following matters:

6.5.1. Ms Hardie's failure to support the Claimant (which the Claimant described at the Preliminary Hearing as a feeling of hostility) whenever she went sick from June 2015 to her redundancy in April 2016;

6.5.2. The impatient and raised voice which Ms Hardie used to ask the Claimant to go home on 4 January 2016 if she felt sick;

6.5.3. Offensive comments alleged to have made by Ms Hardie on 4 January 2016 that the Claimant was a strain on the organisation;

6.5.4. Ms Hardie's subsequent denial of the allegations in her response to the Trustees dated 3 February 2016;

6.5.5. Ms Hardie's breach of the Claimant's confidence when she openly revealed in her response to the Trustees a private health problem which the Claimant had discussed with her to cause embarrassment; and

6.5.6. The Board of Trustees' failure to adequately deal with the Claimant's grievance between the end of January 2016 to the termination of her employment in April 2016.

6.6. If such conduct is found, was it intended?

6.7. If unintended, would such conduct be reasonably considered as having the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment taking into account the Claimant's perception and the other circumstances of the case?

6.8. The Tribunal noted that time issues arose with regard to some of the allegations set out above and with regard to the Claimant's allegation about Ms Hardie's conduct on 21 December 2015 which also appeared to form part of the Claimant's pleaded case. The Claimant contacted ACAS (Day A) on 8 April 2016, which was outside the primary time limit contained in section 123 of the Equality Act 2010.

6.9. In respect of those matters presented outside the time limit, the Tribunal would have to determine whether:

6.9.1. if such conduct occurred, it was conduct extending over a period such that it should be treated as done at the end of the period; and/or

6.9.2. whether the time limit should be extended on just and equitable grounds.

Victimisation

6.10. Did the Respondent subject the Claimant to a detriment because she had done a protected act? The detriments relied on by the Claimant are the Respondent's failure to adequately deal with her grievance and her dismissal. The Respondent conceded that the Claimant's grievance to the Board of Trustees on 25 January 2016 amounted to a protected act.

Findings of fact

7. The Respondent is a registered charity. It is a disability-led organisation giving disabled persons in the Lewisham community a voice. Its work includes

advocacy for disabled persons and assisting disabled persons with form-filling for welfare benefit purposes. The Respondent has a number of trustees (between about six and ten in number) and about 450 members (mainly self-declared disabled individuals in the London Borough of Lewisham), together with organisational members. The Respondent is a small employer. Immediately before the Claimant's dismissal in April 2016 the Respondent employed five individuals: a Director, a Facilitator, two Advice Workers, and an Administrator funded by way of a grant from the London Borough of Lewisham together with a separately funded Community Facilitator. In addition, the Respondent engages a number of volunteers.

8. The Claimant commenced employment with the Respondent as an Administrator on 23 September 2013, having previously worked for the Respondent as a volunteer. By time of her dismissal, she was working 3 days each week: Mondays, Wednesdays and Thursdays.

9. The Claimant suffers from epilepsy and asthma for which she takes medication. At all material times the Respondent was aware that the Claimant had these disabilities.

10. Ms Hardie commenced employment with the Respondent on 29 June 2015 in the position of Director. She found the Respondent's processes in some disarray. A few months after she started work for the Respondent, Ms Hardie discovered that it was a pre-condition of grant funding that the Respondent attained a quality benchmark "Advice Quality Standard" and she took steps to remedy the situation. Ms Hardie did not have authority to decide upon redundancies; the ultimate responsibility would be that of the Trustees.

11. In September 2015, the Claimant went off work with stress for a period of two months. Upon her return, at her discretion Ms Hardie allowed the Claimant to return on a phased basis: reduced hours but with usual pay.

12. On 21 December 2015, because of her confusion about dates, the Claimant had cause to ask Ms Hardie if she could leave work that day to attend a hospital appointment linked to heavy periods from which the Claimant had been suffering. Ms Hardie permitted the Claimant take the time off. Ms Hardie had arranged the staff Christmas meal which was due to start at a local restaurant at 4.00 pm. The Tribunal accepts that Ms Hardie might have mentioned to the Claimant that the meal was due to commence at 4.00 pm. However, having heard the evidence, the Tribunal is satisfied that Ms Hardie made no comment to the Claimant, to the extent that the Claimant is suggesting it, to the effect that the Clamant was not therefore permitted to attend the Christmas meal. The Tribunal notes that the Claimant did attend the Christmas meal for which Ms Hardie paid.

13. Over the weekend of 2 and 3 January 2016, the Claimant had symptoms of an asthma attack. She had taken the maximum recommended dosage of inhaler medication. She called the out-of-hours doctor and was told to make an appointment with her GP on Monday 4 January 2016. She called the surgery early on the morning of Monday 4 January 2016 for an emergency appointment which she obtained for 11.20 am. The Claimant nevertheless attended work that day. When she arrived, she asked to speak to Ms Hardie in private; she told Ms Hardie what had happened over the weekend and explained that she would like to attend the appointment and then return to

work. Ms Hardie told the Claimant that she should attend the appointment but not return to work until Wednesday provided her doctor gave her the all clear. In response to the Claimant's request to attend the appointment, the Tribunal accepts that Ms Hardie might have used words to encourage the Claimant to visit her GP and not return until fit and that these words might have been perceived by the Claimant as a directive. However, having heard the evidence, the Tribunal finds that the Claimant has not shown, on the balance of probabilities, that Ms Hardie told the Claimant that she was putting a strain on the organisation or that Ms Hardie used a raised voice. There was no other evidence other than that of the Claimant and Ms Hardie who had the conversation in private. Although the Claimant alleged that Ms Hardie shouted at her, Mr Finaldi heard nothing but he was, in any event, seated some way from the board room door.

14. In the event, the Claimant's GP certificated the Claimant as unfit for work due to low mood and depression. It appears that the Claimant remained certificated as unfit for work thereafter.

15. As stated above, the Respondent organisation is mainly funded by way of a grant from the London Borough of Lewisham. The grant is not made on the basis of the specific posts or individuals employed by the Respondent; rather, funding is related to the performance of the Respondent when measured against its objectives. About 80% of the grant to the Respondent is accounted for in staffing costs. The grant has been incrementally reduced: the 2014/2015 grant was reduced by 28% in the following year; the 2015/2016 grant was reduced by a further 12% in 2016/2017.

16. In about November 2015, Ms Hardie was informed of the further grant reduction for 2016/2017. In early January 2016, Ms Hardie gave thought to how the organisation should move forward with its reduced budget and its requirement for quality assurance benchmarking and the associated requirement to put robust systems in place relating to file management and security. Ms Hardie also gave thought as to whether the Respondent should continue to employ an Administrator.

17. By email dated 25 January 2016, the Claimant complained to the Trustees of the events of 21 December 2015 and 4 January 2016 described above. She also complained of a wage payment issue which is not relevant to these proceedings.

18. Having been forwarded a copy of the Claimant's email, Ms Hardie prepared a response to the Claimant's complaints and provided it to the Trustees. Regarding 21 December 2015, Ms Hardie reported, in summary, that the Claimant had had problems with her periods, had mixed up her appointment date, that she agreed the Claimant could go to the appointment but reminded her that they were due to have the staff Christmas meal at 4.00 pm. With regard to 4 January 2016, Ms Hardie reported, in summary, that the Claimant had said she had a medical emergency over the weekend and required further urgent medical attention, that her first concern was a duty of care for the Claimant, that she had told her that she should attend her appointment, and return home after her appointment, and return to work on Wednesday if advised that she needed no further emergency treatment. Ms Hardie said that she was sitting down during her conversation with the Claimant and had not raised her voice.

19. Jose Perez Sanchez, Chair of the Trustees, wrote the Claimant on 3 February 2016 in response to her complaint. He explained to her that best practice for workplace disputes is for matters to be dealt with informally in the first instance. He enclosed a copy of Ms Hardie's response and hoped it would resolve issues. However, if it did not resolve issues, the Claimant was advised that she could lodge a formal grievance.

20. Ms Hardie prepared a brief report for the Trustees in which she recommended the deletion of the post of Administrator. Ms Hardie reported that this was a part-time clerical post and, due to changes in working ways, including improved use of technology and the use of electronic diaries, there was no longer a need for Administrator work. Ms Hardie's report was considered by the newly elected Trustees at a meeting on 16 February 2016 and her recommendations ratified.

21. On 23 February 2016, the Claimant formally raised her grievance.

22. By letter dated 3 March 2016, Ms Hardie wrote to the Claimant, implementing the decision of the Trustees, giving her notice that she was to be made redundant with her employment to terminate on 1 April 2016. The Claimant was told she could appeal the decision.

23. By email dated 17 March 2016, the Claimant appealed against the decision to make her redundant. She complained that the Respondent had not followed the correct redundancy procedure, she had not been offered alternative employment, that her disabilities had not been taken into consideration and that she had been discriminated against, and that the believed that it was a "revenge redundancy" because of the grievance she had submitted.

24. The Trustees held both grievance and redundancy appeal meetings on 29 April 2016. The Claimant's grievance was not upheld and the decision to make her redundant was confirmed.

Applicable law

Time limits

25. Section 123(1) of the Equality Act 2010 provides that a complaint may not be brought after the end of (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the Tribunal thinks just and equitable. Under section 123(3) conduct extending over a period is to be treated as done at the end of the period; and failure to do something is to be treated as occurring when the person in question decided on it. Under section 123(4) in the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something (a) when P does an act inconsistent with doing it; or (b) If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

26. In Robertson v Bexley Community Centre [2003] IRLR 434 the Court of Appeal stated that when Employment Tribunals consider exercising the discretion under section 123(1)(b) there is no presumption that they should do so unless they can justify failure to exercise the discretion. A Tribunal cannot

hear a complaint unless the Claimant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.

27. In accordance with British Coal Corporation v Keeble [1997] IRLR 336 a Tribunal may have regard to the following factors: the overall circumstances of the case; the prejudice that each party would suffer as a result of the decision reached; the particular length of and the reasons for the delay, the extent to which the cogency of evidence is likely to be affected by the delay; the extent to which the Respondent has cooperated with any requests for information; the promptness with which the Claimant acted once she knew of facts giving rise to the cause of action; the steps taken by the Claimant to obtain appropriate advice once she knew of the possibility of taking action. The relevance of each factor depends on the facts of the individual case and Tribunals do not need to consider all the factors in each and every case; see Department of Constitutional Affairs v Jones [2008] IRLR 128.

Harassment

28. Section 40 of the Equality Act 2010 provides that an employer must not, in relation to employment by him, harass an employee. The definition of harassment is set out in section 26(1) of the Equality Act 2010. A person (A) harasses another (B) if:

    (a) A engages in unwanted conduct related to a protected characteristic (diability in this case); and

    (b) the conduct has the purpose or effect of : -

        (i) violating B's dignity, or

        (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

29. Section 26(4) provides that whether conduct has the effect referred to in subsection 1(b), each of the following must be taken into account:

    (a) the perception of B;

    (b) the other circumstances of the case;

    (c) whether it is reasonable for the conduct to have that effect.

    Thus, the test contains both subjective and objective elements. Conduct is not to be treated as having the effect set out in section 26(1)(b) just because the complainant thinks it does. The Tribunal is required to take into account the Claimant's perception, the other circumstances of the case, and whether it is conduct which could reasonably be considered as having that effect.

30. In Richmond Pharmacology v Dhaliwal [2009] IRLR 336, the Employment Appeal Tribunal held a Tribunal should address three elements in a claim of harassment: first, was there unwanted conduct? Second, did it have the purpose or effect of either violating dignity or creating an adverse environment: Third, was that conduct related to the Claimant's protected characteristic?

31. When considering whether conduct is related to a protected characteristic, the Employment Appeal Tribunal in Warby v Wunda Group plc UKEAT/0434/11 relied upon the judgments of the House of Lords in James and Nagarajan and held that alleged discriminatory words must be considered in context. In Warby the Employment Appeal Tribunal upheld the decision of the Employment Tribunal which found that a manager had not harassed an employee when he accused her of lying in relation to her maternity because the accusation was the lying and the maternity was only the background.

Victimisation

32. Section 39(4) of the Equality Act 2010 provides that an employer must not victimise an employee by dismissing her or subjecting her to a detriment.

33. Section 27 provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act.

Unfair dismissal

34. Under section 98(1) of the Employment Rights Act 1996 it is for the employer to show the reason for the dismissal and that it is either for a reason falling within section 98(2) or for some other substantial reason of kind such as to justify the dismissal of the employee holding the position she held. Redundancy is a potentially fair reason falling within section 98(2).

35. Section 139(1)(b)(i) of the Employment Rights Act 1996 provides that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the employer's business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.

36. In Murray v Foyle Meats Ltd [1999] ICR 827, Lord Irvine approved of the ruling in Safeway Stores plc v Burrell [1997] ICR 523 and held that section 139 of the Employment Rights Act 1996 asks two questions of fact. The first is whether there exists one or other of the various states of economic affairs mentioned in the section, for example whether the requirements of the business for employees to carry out work of a particular kind have ceased or diminished. The second question, which is one of causation, is whether the dismissal is wholly or mainly attributable to that state of affairs.

37. It is the requirement for employees to do work of a particular kind which is significant. The fact that the work is constant, or even increasing, is irrelevant; if fewer employees are needed to do work of a particular kind, there is a redundancy situation. See McCrea v Cullen and Davison Ltd [1988] IRLR 30. Thus, a redundancy situation will arise where an employer reorganises and redistributes the work so that it can be done by fewer employees. There is no requirement for an employer to show an economic justification for the decision to make redundancies; see Polyflor Ltd v Old EAT 0482/02.

38. Where the employer has shown the reason for the dismissal and that it is for a potentially fair reason, the determination of the question whether the dismissal was fair or unfair 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 must be determined in accordance with equity and the substantial merits of the case.

39. In Williams v Compair Maxam Ltd [1982] ICR 156 the Employment Appeal Tribunal laid down the matters which a reasonable employer might be expected to consider in making redundancy dismissals:

    39.1. Whether the selection criteria were objectively chosen and fairly applied;
    39.2. Whether the employees were given as much warning as possible and consulted about the redundancy;
    39.3. Whether, if there was a union, the union's view was sought;
    39.4. Whether any alternative work was available.

40. Indeed, in Polkey v AE Dayton Services 1988 ICR 142 it was held that an employer will normally not act reasonably unless he warns and consults employees affected by a potential redundancy and takes steps as may be reasonable to avoid or minimise redundancy within the organisation. However, in determining the question of reasonableness, it is not for the Tribunal to impose its standards and decide whether the employer should have behaved differently. Instead it has to ask whether the dismissal lay within the range of conduct which a reasonable employer could have adopted. The Tribunal must also bear in mind that a failure to act in accordance with one or more of the principles set out in Williams v Compair Maxam will not necessarily lead to the conclusion that the dismissal was unfair. The Tribunal must look at the circumstances of the case in the round.

41. In R v British Coal Corporation [1994] IRLR 72, the Divisional Court endorsed the test proposed by Hodgson J in Gwent County Council ex parte Bryant [1988] Crown Office Digest 19 HC, namely that fair consultation means (a) consultation when the proposals are still at a formative stage (b) adequate information on which to respond (c) adequate time in which to respond (d) conscientious consideration by an authority of the response to consultation. Also see Rowell v Hubbard Group Services Ltd [1995] IRLR 195; and King v Eaton Ltd [1996] IRLR 199.

42. If the issue of alternative employment is raised, it must be for the employee to say what job, or what kind of job, she believes was available and give evidence to the effect that he would have taken such a job: that, after all, is something which is primarily within her knowledge: Virgin Media Ltd v Seddington and Eland UKEAT/0539/08/DM

43. The procedures to be applied and the criteria to be applied when selecting an employee for redundancy cannot be transposed to the process for deciding whether a redundant employee should be offered an alternative position. The principal test when examining the fairness of the process of selection for a new role is that set out in section 98(4) of the Employment Rights Act 1996. The criteria set out in Williams v Compair Maxam do not apply. See Morgan v Welsh Rugby Union [2011] IRLR 376.

Compensation and the Polkey principle

44. Section 122 of the Employment Rights Act 1996 provides for certain circumstances in which reductions shall be made to the basic award. This includes where the employer has made a statutory redundancy payment.

45. Section 123 of the Employment Rights Act 1996 provides that the amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that loss is attributable to the action taken by the employer.

46. The Polkey principle established by the House of Lords is that if a dismissal is found to have been unfair then the fact that the employer would or might have dismissed the employee anyway had the employer acted fairly goes to the question of remedy and compensation reduced to reflect that fact. In Hill v Governing Body of Great Tey Primary School UKEAT/0237/12/SM the Employment Appeal Tribunal held that a "Polkey deduction" has these particular features. First, the assessment of it is predictive: could the employer fairly have dismissed and, if so, what were the chances that the employer would have done so? The chances may be at the extreme (certainty that it would have dismissed, or certainty it would not) though more usually will fall somewhere on a spectrum between these two extremes. This is to recognise the uncertainties. A Tribunal is not called upon to decide the question on balance. It is not answering the question what it would have done if it were the employer: it is assessing the chances of what another person (the actual employer) would have done. The question as to what a hypothetical fair employer would have done is not the test: the Tribunal has to consider not a hypothetical fair employer, but has to assess the actions of the employer who is before the Tribunal, on the assumption that the employer would this time have acted fairly though it did not do so beforehand.

Conclusion

Time limits in relation to the allegations of harassment falling outside the primary limitation period

47. The length of delay in respect of each such allegation is relatively short. There was little or no risk that the cogency of evidence was affected by the delay. The allegations made against Ms Hardie on the dates alleged formed the overall context of the case. The Respondent came to the hearing ready and prepared to deal with the allegations and it cannot be said that they are unduly prejudiced. In the Tribunals' view, it is just and equitable to extend time such that it can consider the Claimant's complaints of harassment which would otherwise fall outside the primary limitation period.

Harassment

48. The Tribunal will consider the allegations of harassment in the order set out in the list of issues above.

    48.1. The Claimant gave no evidence of specific failures on Ms Hardie's part to support the Claimant save for the events of 21 December 2015 and 4 January 2016. The Claimant conceded in any event that the events

of 21 December 2015 did not relate to her disabilities of asthma or epilepsy; rather, the events related to her visit to hospital for a scan for other reasons. The Tribunal is unable to identify unlawful harassment in relation to this issue.

48.2. With regard to the events of 4 January 2016, the Claimant has not persuaded the Tribunal that, on the balance of probabilities, Ms Hardie raised an impatient and raised voice or that she told the Claimant that she put a strain on the organisation. The Claimant has not shown that the alleged harassing conduct took place.

48.3. The Tribunal is unable to conclude that Ms Hardie's denial of the Claimant's allegations amounted to unlawful harassment; Ms Hardie was perfectly entitled to put forward her version of events. It cannot be said that Ms Hardie's denial of events violated the Claimant's dignity, or created an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.

48.4. Notwithstanding that Ms Hardie might have been told in confidence of the Claimant's personal health problems, those particular problems did not relate to the Claimant's disabilities of asthma and epilepsy. There was no unlawful harassment in this regard.

48.5. The Tribunal concludes that the Trustees have shown some failings in adequately dealing with the Claimant's grievance in the first instance. Although the Respondent's own policy encourages staff to use an informal method of resolution, a written complaint of the kind raised by the Claimant was, properly construed, a formal grievance about Ms Hardie. Although the Claimant was off sick at the time, in the Tribunal's view the Respondent should have sought the Claimant's views as to her willingness and fitness to attend a grievance meeting. Nevertheless, this failing does not amount to unlawful harassment as defined in law. The Tribunal is satisfied that the Respondent's conduct, to the extent that the Claimant might have perceived it as having the harassing effect described in section 26(1) of the Equality Act 2010, did not have such a purpose. To the extent that it might have had such an effect on the Claimant, it was not reasonable for the conduct to have that effect. The Claimant was not unlawfully harassed in this regard.

48.6. The Trustees did invite the Claimant to a formal meeting once she made it clear that she wished to raise her complaint as a formal grievance. The Claimant gave evidence that the chair of the Trustees had walked out towards the end of the meeting and that matters were therefore not successfully resolved. She also gave evidence that Mr Wanogho told her that a further meeting would take place to which she would be invited. Notwithstanding Mr Wanogho's denial that he had said this, and his evidence that he had no memory of the chair of the Trustees walking out at the end of the meeting, even on the Claimant's version of events, it would not amount to unlawful harassment as defined. In any event, this particular complaint did not form part of the list of issues the Tribunal was required to determine.

49. The Claimant was not unlawfully harassed and her claim accordingly fails.

Victimisation

50. The Tribunal has considered this complaint very carefully, not least because of the short time between the Claimant's written complaint and Ms Hardie's recommendation to the Trustees that the post of Administrator should be deleted. The Claimant told the Tribunal that she did not believe this was a coincidence. The Tribunal concludes that Ms Hardie's recommendation was not influenced by the Claimant's written complaint. It was clear that there would be budgetary constraints and that reorganisation would have to take place to ensure quality assurance requirements. Ms Hardie's evidence was clear in relation to these matters. The Tribunal has found that Ms Hardie considered her proposal for deletion of the post of Administrator before the Claimant made her written complaint. The Tribunal concludes that the Claimant was not dismissed because she had raised her complaint. The Claimant was not victimised in this regard.

51. Nor does the Tribunal conclude that the Respondent failed adequately to deal with the Claimant's grievance because she had made her complaint. There was simply no evidence before the Tribunal to support such a conclusion. The only reason presented to the Tribunal as to why the Trustees initially wrote to the Claimant and did not invite her to a meeting was because the Claimant was off sick at the time and it was presumed she might not be well enough to attend.

Unfair dismissal

52. The Tribunal is satisfied that the Respondent has shown the reason for the Claimant's dismissal and that it was for redundancy. The Tribunal does not accept that Claimant's assertion that there was no reduction in funding (which, in any event, is not a prerequisite for a redundancy situation to arise). The Respondent, for business reasons, no longer required an Administrator and was entitled to reach this business decision.

53. The Claimant was given no advance warning about her redundancy. The Claimant was not consulted about her redundancy and she was not given the opportunity to put forward any suggestions as to how her redundancy might be avoided. The Tribunal is mindful that the Respondent is a small employer. Nevertheless, a fair procedure is an integral part of the fairness test in section 98(4) of the Employment Rights Act 1996. The Tribunal does not accept Mr Bousfield's submission that the Morgan case applies or that such a small employer should be excused what are basic steps of procedural fairness that should reasonably be applied in a redundancy situation.

54. The Tribunal does not find it unreasonable that the Respondent did not discuss with the Claimant the new post of Project Executive which was proposed at the time (and subsequently filled by Mr Finaldi) because the Respondent was entitled to find that the Claimant was insufficiently qualified or experienced to do that job. Nevertheless, this did not negate the Respondent's obligation to consult with the Claimant.

55. The Tribunal concludes that the Claimant was unfairly dismissed.

Compensation and Polkey

56. The Claimant was paid a statutory redundancy payment and is not therefore entitled to a Basic Award.

57. The Claimant's schedule of loss, about which the Respondent neither made submissions nor challenged the Claimant in cross examination, seeks a compensatory award in the sum of £2,792.35 for loss of earnings in the period from her dismissal to the date upon which she obtained fresh employment, plus compensation for loss of statutory rights in the sum of £450.00. However, Mr Bousfield submitted that a reduction should be made of 100% under the Polkey principle because the Claimant said in evidence, when questioned by the Tribunal, that the only suggestion she would have made to avoid her redundancy, had she be en consulted at the time, would have been to become an unpaid volunteer. The Tribunal accepts that had the Respondent acted fairly, the Claimant would have been dismissed in any event. However, had fair consultation taken place the Tribunal concludes that this would have taken two weeks and the Tribunal accordingly awards the Claimant two weeks' net pay. The Claimant's Schedule of loss shows net weekly earnings of £253.85 and the Tribunal accordingly awards the sum of £507.70 plus £450 for loss of statutory rights. This is a total award of £957.70.

Employment Judge Pritchard

Date 4 May 2017