EMPLOYMENT TRIBUNALS

Claimants
Mr Keith Dixon
Mr John Thomas Johnson

Respondent
South Tyneside Homes Ltd

RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT NORTH SHIELDS **ON 27th – 30th March 2017**
EMPLOYMENT JUDGE GARNON **MEMBERS Mr D Cartwright**
Ms L Georgeson

Appearances
For the Claimants **:** Ms S Brewis of Counsel
For the Respondent : Mr H Menon of Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that the claims of discrimination contrary to the Equality Act 2010 ("the EqA ") and unfair dismissal are not well founded and are dismissed

REASONS (Bold print in is ours for emphasis)

1 Introduction and Issues

1.1. Mr Dixon was born on 27th July 1953 and Mr Johnson (known as "Tom") on 23rd February 1953. Their continuous employment started on 1st February 1979 and 2nd April 1979 respectively with South Tyneside Council ("the Council") . The respondent is a non-profit making organisation created by the Council in 2006 to manage, maintain and improve the Council's homes and estates. It is owned entirely by the Council. The claimant's dismissal with notice took effect on 16th May 2016. Both worked in the Capital Investment Team (CIT) where Mr Dixon was a Building Surveyor and Mr Johnson an Asset Management Officer.

1.2. The response accepts the claimants were dismissed and asserts the reason was redundancy, which is accepted by the claimants. Both claim unfair dismissal and direct age discrimination. Slightly re-worded from those set out at an earlier preliminary hearing, the issues are :

1.2.1. Unfair Dismissal

Did the respondent carry out a fair procedure when dismissing the claimants on the grounds of redundancy namely: (a) was it reasonable for the respondent not to shortlist the claimants for interview for posts in the new structure and (b) did the respondent consider alternative employment, ie any other vacancies available, prior to dismissing?

1.2.2. Age Discrimination

(a) Were the claimants treated less favourably because of age, and thereby subjected to detriment, when they were not shortlisted for interview? Both describe as comparators colleagues all younger than them who were shortlisted .

(b) Were the claimants dismissed because of that less favourable treatment?

1.3. The respondent does not rely on justification It contends the claimants were not short listed solely due to of the contents of their applications not meeting the essential criteria . It neither admits or denies they actually met such criteria, but asserts they failed to demonstrate they did in their application forms.

2. The Relevant Law

2.1. Section 98 of the Employment Rights act 1996 (the ERA) provides:

"(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 dismissal
(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

2.2. Section 98(4) of the ERA says:
"Where an 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 all 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
(b) shall be determined in accordance with equity and the substantial merits of the case."

2.3. Redundancy is defined in s 139. Safeway Stores –v- Burrell, affirmed by the House of Lords in Murray-v-Foyle Meats explains how, if there was (a) a dismissal (b) a "redundancy situation" (shorthand for one of the sets of facts in s 139) the only remaining question under s 98(1) is whether (b) was the reason of if more than one the principal reason for the happening of (a).

2.4. Under s 98(4), the ways in which a dismissal by reason of redundancy may be unfair are (a) inadequate warning and/or consultation (b) unfair selection and (c) insufficient effort to find alternatives. There is no challenge as to fair consultation. British Aerospace –v- Green held that if an employer sets up a selection method which can reasonably be described as fair and applies it without any overt sign of bias which would mar its fairness , it will have done all the law requires. In considering what alternative employment to offer , an employer should not assume an employee will not accept a reduction in status or pay (see Avonmouth Construction –v- Shipway)

2.5. A decision to "delete" all former CIT posts, create several new ones and fill the jobs in the new structure by interviewing those existing employees who apply (otherwise called "ring fencing to internal candidates") is a method of " selection " which has become increasingly favoured in recent years especially in the public sector. There is nothing inherently unfair in such a process. Two leading authorities deal with such a process and hold in effect we must apply the same test of fairness to such a process as we would to any other selection method,

2.6. In Morgan v Welsh Rugby Union [2011] IRLR 376 , the EAT said
"… [A] tribunal considering this question must apply s. 98(4) of the 1996 Act. No further proposition of law is required. A tribunal is entitled to consider… . how far an interview process was objective; but it should keep carefully in mind that an employer's assessment of which candidate will best perform in a new role is likely to involve a substantial element of judgment. A tribunal is entitled to take into account how far the employer established and followed through procedures when making an appointment, and whether they were fair. A tribunal is entitled, and no doubt will, consider as part of its deliberations whether an appointment was made capriciously, or out of favouritism or on personal grounds. If it concludes an appointment was made in that way, it is entitled to reflect that conclusion in its finding under s. 98(4)."

2.7. In Samsung Electronics-v-Monte –Cruz at paragraph 20a of Underhill P said
We start by observing that "selection criteria" is not quite the right language. This was not, as the Tribunal itself had noted, a situation where one or more of several job-holders was being selected for redundancy: rather, the Claimant's job was being abolished but he was being offered the chance to apply for a different job.

2.8. In Samsung the claimant was dismissed by reason of redundancy following a reorganisation, having been interviewed for, but not offered, an alternative job. The Employment Tribunal found the dismissal unfair because of inadequate consultation and the criteria applied in interviewing for the potential alternative role were unsatisfactory, in particular because they were "subjective". The Employment Appeal Tribunal(EAT), allowing the appeal, held there was no basis for finding inadequate consultation; the Tribunal's criticisms of the interview process were not such as to render the dismissal unfair and it had wrongly substituted its own judgment of the claimant's suitability for the role for that of the employer .

2.9. In all aspects substantive and procedural we follow the clear rule in Iceland Frozen Foods v Jones (approved in HSBC v Madden) and Sainsburys v Hitt, that we must not substitute our own view for that of the employer unless the view of the employer falls outside the band of reasonable responses. The phrase " no reasonable employer would …" sometimes implies individual managers are unreasonable people, but that is not always so. The word reasonable has two meanings as illustrated by the phrases " a reasonable argument " and "a reasonable price " . In the former it is synonymous with "rational" , in the later with " moderate " . From time to time and for various reasons, normally reasonable people can behave irrationally or immoderately. Mr Justice Underhill in Samsung on the submission made that the Tribunal had substituted its own view said

".. a tribunal should not be convicted of substitution simply because it has expressed its own view about how the employer should have proceeded: if it is clear that expressing its own view is simply a step to answering the crucial question of whether the way the employer in fact proceeded was unreasonable, that is unexceptionable.

and at paragraph 31:

"*The fairness of a decision to dismiss in cases of this kind cannot depend on whether the minutia of good interview practice are observed. In the present case an arguable case of unfairness would only have been raised if it had been found on the basis of proper evidence that the failures in process identified had led to some serious substantial unfairness to the claimant. Subject to the particular point considered below about assessment of past performance the tribunal made no such finding and there seems to us no basis on which it could have done so*".

2.10. Especially important to the question of whether a person shortlisting for interview from several job applications on the basis of whether the application demonstrates competency to meet essential criteria some of which are not objectively measurable , are these observations in Samsung :

27. We take first the reference to subjectivity. "Subjectivity" is often used in this and similar contexts as a dirty word. But the fact is that not all aspects of the performance ***or value of*** *an employee lend themselves to objective measurement, and there is no obligation on an employer always to use criteria which are capable of such measurement, and certainly not in the context of an interview for alternative employment.. Given the nature of the Claimant's job, we see nothing objectionable in principle in his being assessed on "subjective" criteria.*

28. We see more force in the criticism that the particular criteria adopted were nebulous. We would be hard put ourselves to assign a clear meaning to some of the terms used in the assessment (itemised at para. 4 above). But lawyers must be wary of assuming that terms that look to them like mere management–speak have no meaning to their regular users. Most large modern businesses have adopted systems of appraisal, often with the active co-operation of employee organisations, which, it must be assumed, they find valuable but whose language would not score highly in an essay competition. Tribunals must not allow a disdain for such terminology to lead them into treating such systems as necessarily worthless.

2.11. Fairness as a concept applies whatever the reason for dismissal, so cases about the fairness of disciplinary process may be relevant by analogy when considering the fairness of any process. An employee should know the nature of what he is facing and be given an **opportunity** to state his case. In this instance that means a fair opportunity to show his competencies. If this process was such that the candidates **reasonably did not know** what the selectors expected to read or hear, **or when they had to set out their skills** , because of what they had been told, or not told, the result is likely to be that they did not have a fair opportunity of saving their jobs .

2.12. Section 4 EqA provides age is a "protected characteristic". Section 13 defines direct discrimination which is one **type** of discrimination

(1) A person (A) discriminates against another (B) if, **because of** a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

2.13. Unlawful discrimination requires a **type** and an **act** of discrimination. Section 39 sets out **acts** of discrimination and includes:
(2) An employer (A) must not discriminate against an employee of A's (B)—

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

The main pleaded act is dismissal but (b) and (d) may also be in play .

2.14. As said in Shamoon-v- Royal Ulster Constabulary we must look for the "reason why" treatment was afforded. Detecting direct discrimination involves a process of fact finding and inference drawing. Unreasonableness of treatment does not show "the reason why" neither does incompetence (see Glasgow City Council –v- Zafar and Quereshi-v- London Borough of Newham). But they are not irrelevant as explained in the EAT case of Law Society –v- Bahl Paragraph 100 contains:
By contrast, where the alleged discriminator acts unreasonably then a tribunal will want to know why he has acted in that way. If he gives a non-discriminatory explanation which the tribunal considers to be honestly given, then that is likely to be a full answer to any discrimination claim. It need not be, because it is possible that he is subconsciously influenced by unlawful discriminatory considerations…

2.15. Section 136 EqA includes

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

2.16. Reversal of the burden of proof is explained in Igen-v- Wong and Madarassy –v- Nomura International but the Supreme Court have recently said in Hewage-v- Grampian Health Board that where the tribunal can make clear findings as to primary fact and draw clear inferences it is rarely necessary to refer to s136 . The law is best summarised in .Ladele-v-London Borough of Islington by Elias L J

40…. The following propositions with respect to the concept of direct discrimination, potentially relevant to this case, seem to us to be justified by the authorities:

(1) In every case the tribunal has to determine the reason why the claimant was treated as he was. As Lord Nicholls put it in Nagarajan v London Regional Transport [1999] ICR 877, 884E – "this is the crucial question". He also observed that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.

(2) If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial: see the observations of Lord Nicholls in Nagarajan (p.886F) as explained by Peter Gibson LJ in Igen v Wong [2005] ICR 931, para 37.

(3) As the courts have regularly recognised, direct evidence of discrimination is rare and tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-stage test which reflects the requirements of the Burden of Proof Directive (97/80/EEC). These are set out in Igen v Wong. That case sets out guidelines in considerable detail, touching on numerous peripheral issues. Whilst accurate, the formulation there adopted perhaps suggests that the exercise is more complex than it really is. The essential guidelines can be simply stated and in truth do no more than reflect the common sense way in which courts would naturally approach an issue of proof of this nature. …

(4) The explanation for the less favourable treatment does not have to be a reasonable one; it may be that the employee has treated the claimant unreasonably. That is a frequent occurrence quite irrespective of the race, sex, religion or sexual orientation of the employee. So the mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one. As Lord Browne Wilkinson pointed out in Zafar v Glasgow City Council [1998] ICR 120 :

"it cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee that he would have acted reasonably if he had been dealing with another in the same circumstances."

Of course, in the circumstances of a particular case, unreasonable treatment may be evidence of discrimination such as to engage stage two and call for an explanation: see the judgment of Peter Gibson LJ in Bahl v Law Society [2004] IRLR 799, paras 100-101 and if the employer fails to provide a non-discriminatory explanation for the unreasonable treatment, then the inference of discrimination must be drawn. As Peter Gibson LJ pointed out, the inference is then drawn not from the unreasonable treatment itself - or at least not simply from that fact - but from the failure to provide a non-

discriminatory explanation for it. ***But if the employer shows that the reason for the less favourable treatment has nothing to do with the prohibited ground, that discharges the burden at the second stage, however unreasonable the treatment.***

(5) ***It is not necessary in every case for a tribunal to go through the two-stage procedure. In some cases it may be appropriate for the Tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the Igen test****: see the decision of the Court of Appeal in Brown v Croydon LBC [2007] ICR 897 paras.28-39. The employee is not prejudiced by that approach because in effect the tribunal is acting on the assumption that even if the first hurdle has been crossed by the employee, the case fails because the employer has provided a convincing non-discriminatory explanation for the less favourable treatment.*

(6) It is incumbent on a tribunal which seeks to infer (or indeed to decline to infer) discrimination from the surrounding facts to set out in some detail what these relevant factors are: see the observations of Sedley LJ in Anya v University of Oxford [2001] IRLR 377 esp.para.10.

2.17. Anya-v-University of Oxford held we may look at evidence of events after the date of the act complained if they cast light on whether a protected characteristic played a part in earlier decisions. We will call this "Anya evidence". Evidence of several members of a group defined by a protected characteristic being treated worse than people outside that group may point to the protected characteristic being a reason for the difference (West Midlands Passenger Transport-v-Singh and Rihal-v-L.B. of Ealing)

3. Findings of Fact

3.1. Both claimants gave evidence. We heard for the respondent :
(a) Mr Brian Scott, Director of Resources since October 2015, who has worked for the Council then the respondent in various management roles for over 20 years.
(b) Mr Gary Kirsop, Director of Operations
(c) Ms Julie Wakefield, Human Resources Administration Officer.
(d) Ms Suzanne Bell, HR Advisor,
(e) Mr Paul Mains, Managing Director.
We had an agreed bundle of over 600 pages. The findings relevant to the issues can be much more briefly stated than the volume of evidence we heard and read.

3.2. On 12th October 2015 the respondent announced its intention to restructure CIT in which the number of jobs would be reduced by up to 30. A large program of refurbishing the Council's housing stock, known as "Decent Homes", during which CIT had been managing works up to an annual value of around £65 million was to come to an end in December 2016 . The annual value would drop to around £14 million and, in future, the work CIT would be required to do would be mainly maintenance, with limited refurbishment. This meant less need for surveying, Mr Dixon's work, and probably Mr Johnson's work too. There have been about 26 redundancies.

3.3. All affected employees were told they could request an estimate of what they would receive if they applied for and were granted voluntary redundancy under a scheme for that and early retirement known as ER/VR. The statutory multiplier for redundancy was to be doubled and the statutory cap on the amount of a week's pay disapplied. As both claimants had 20 years service over the age of 41 the statutory multiplier of 30 would become 60 week's pay. Both claimants requested estimates and submitted applications for voluntary redundancy well in advance of the deadline of 23rd November 2015.

3.4. The respondent told staff that if an individual did not apply for ER/VR but applied for a position in the new structure, and were unsuccessful, to quote Mr Dixon's statement, " *during* ***the application or*** *interview*," they would not qualify for the enhanced redundancy payment . Because of this, 24 staff applied. Before this neither claimant had thought of requesting early retirement and assumed they would work until retirement age of 65. The figures from HR equated to about the same as if they had worked to that age. Unsurprisingly they applied and **assumed** they would be accepted. This was the first of many unwarranted assumptions. The respondent's redundancy policy at page 192 and the application for ER/VR forms at page 373 make it clear the respondent may not accept the application. The claimants were union members and could have asked for advice if in doubt. They must have known the respondent could reject their applications. We heard a fair amount of evidence about the respondent subsequently altering the doubling of the multiplier but it is irrelevant. The two applications which were accepted were on the doubling basis and the claimants' would have been too,had they been accepted, but they were not.

3.5. A major driving force of the re-structure was the need to cut costs. The statutory redundancy scheme is such that employees with long service after the age of 41 are more "expensive" to make redundant than younger employees with shorter service. It makes no commercial sense to select for redundancy people who were likely to retire, if not at 65, then soon after when they had achieved 40 years pensionable service to obtain a maximum pension. We cannot criticise the respondent's decision to ask for volunteers or to furnish staff with figures of what they would receive if accepted. From the claimants perspective the ER/VR illustrations would have been a very attractive outcome. Due to wishful thinking, in our view, the claimants took no steps, as others did, to plan for the eventuality of their ER/VR applications being refused.

3.6. On 19th October jobs in the new structure were "moderated" which means the recommended salary bands for each role were fixed . On 20th October they were approved . On 21st October details were e-mailed to all staff .

3.7. We heard a fair amount of evidence about the respondent having set up a second e-mail account for Mr Johnson, which he did not realise existed. His long standing email address at work was 'tomjohnson@southtynsidehomes.org.uk'. In May 2015 he went from a 5 day week to a 3 day week and for some reason emails from HR went to a second account 'john t. johnson'. He says this contributed to the lack of communication from the respondent. He also says colleagues would forward emails to him so if he did

not receive all the emails from HR he still knew about them **.** E-mails sent to " all staff" would have gone to both inboxes. This evidence too was largely irrelevant because we find he got to know of relevant information despite any problems with his e-mail .

3.8. From 21st October, staff who knew how ,could have sourced the Person Specifications and Job Descriptions for each new job from a shared drive on the intranet. Mr Dixon's statement says at paragraph 8 "***During this time**, other members of staff **were applying for positions** within the proposed re-structure. It was not until a number of weeks later that all staff that had applied for ER/VR were called into a one to one meeting with the Managing Director, Paul Mains*…" That meeting was 27th November, so the period covered by "*During this time"* is 21st October to 27th November. Applications did not open until 27th November, so staff cannot have been " applying", but we find they were preparing to do so by acquainting themselves with the posts available and the criteria for appointment .

3.9. Ms Wakefield worked in close proximity to the claimants and many others affected by the re-structure. She describes being regularly accosted by staff asking for advice on how to frame their applications and recounts the advice she gave about tailoring the application to the person specification by treating the "essential criteria" as questions to be answered by the giving of examples of how they would be met. Neither claimant asked her advice. Had they been unable to source the information they needed, they could have asked their union representative too . In short, during this period when others, of all ages, were proactivly preparing for the eventuality their ER/VR applications would be rejected , the claimants put "all their eggs in the one basket" of ER/VR.

3.10. On 24th November 2015 the respondent's Executive Team, comprising Mr Scott ,Mr Kirsop and Mr Mains, reviewed the 24 applications for ER/VR which had been made. If every one were approved, vacancies may have needed to be filled at financial cost. Where an employee may be a fit for a post in the new structure, their application was refused. Only 2 were approved because it was considered neither applicant could, in Mr Scott's words , " *reasonably be considered to be a natural fit*" for any post in the new structure. Mr Scott agrees with Mr Johnson the best post for him would be Asset Officer, but he could have gone for Data Controller too . Mr Dixon could have applied for Contracts Administrator , Asset Surveyor and Area Surveyor.

3.11. Interview coaching and support sessions, which included a slide giving guidance on how to complete an application form and several on what to expect at interview were set up by the respondent to which all staff were invited . The sessions were scheduled for 29th October, 2nd November, 10th November, 20th November and 2nd December 2015. The final session did not go ahead, as no one had indicated an intention of attending. Ms Bell was involved in devising the power point presentation. The third slide at page 422, was all about how applicants could give themselves the best chance in their " "personal statement", the first bullet point being "*It is important that you sell yourself*". Mr Dixon may have attended a training session, Mr Johnson did not.

3.12. The second and third bullet points on the slide say applicants should "***make clear***" in their application forms evidence of their knowledge, experience and skills that relate to the criteria, both essential and desirable, which appear in the person specification. The claimants say it was not until after training sessions had been completed, that they were informed by Mr Mains they had not been accepted for ER/VR. They did not attend the training because they assumed their applications for ER/VR would be accepted. Mr Johnson worked 3 days per week and was very busy which is his other reason for not attending. We cannot accept the validity of either reason. In circumstances where others affected who had also applied for ER/VR had a fall back plan, neither claimant took any steps to cater for that contingency.

3.13. Mr Johnson adds the value of the course can be seen to be minimal. Colleagues named John Dodds, Ashley Hankinson and Helen Scott attended. One named Andy Marsh did not. Mr Marsh adapted his application form for Asset Officer from one he used for Assistant Asset Manager or vice versa. Mr Marsh later told Mr Scott he learned how to do this at university. He is 30. We are all of roughly the same age as the claimants. In our school and university years, no-one was taught what are now called "life skills" like how to make and best present a job or promotion application. Also, it was considered immodest and undignified to "blow your own trumpet" about one's abilities and past achievements. However, also in those days, appointments to local government jobs were often thought and said to be gained by "who you know not what you know".

3.14. Local authorities and other public bodies became alive to criticism of nepotism , favoritism and breaches of the good equal opportunities practice. Section 7 of the Local Government and Housing Act 1989 provided every appointment of a person to a paid office or employment under a local authority shall be made on merit. The first step to achieving that is to make vacancies known to potential applicants.The respondent's policy is to "ring fence" new posts to four categories in turn (a) those whose department is being restructured (b) others on the redeployment register (c) other existing employees, including agency workers (d) external applicants. At the first , and most relevant stage new CIT jobs were ring fenced to those already in that department. The next step is to ensure fairness and equal opportunities within that group.

3.15. Sometimes in re-structures a first phase is used, usually called "slotting in", whereby the holder of a post in the old structure which was a very close match to a post in the new structure would simply be appointed to the new post. A slight variation is a form of "ring fencing" of certain new posts to the job holders of comparable new posts. The unions asked the respondent to consider this and in an e-mail to all staff Mr Mains explained why it would be unfair to some, page 442-3. We wholly agree this was fair. While in many cases these practices are justified, the choice by managers who know the "team" of who should be slotted in or ring fenced is capable of producing unfair and discriminatory results in that managers may be accused of taking posts out of open competition and giving them to those who are their "favorites".

3.16. We accept the process of interested candidate making a written application followed by shortlisting and interviewing for jobs is well embedded in the public sector and for very good reasons. It took Lord Hope in Archibald v Fife Council to reassure

that local authority that not interviewing for every post, even when the alternative was to dismiss a disabled person, would not contravene section 7 of the Local Government and Housing Act. A common safeguard against prejudice at the shortlisting stage is to attempt to ensure prior knowledge gained in previous dealings with the candidates is not taken into account unless the candidate spells it out in his application form by not giving the shortlisters their name , or other details like race, gender or age.

3.17. The need for a process which relies only on what candidates put in their applications rather than what managers who have worked with and know them "read into" the applications can be easily illustrated. Imagine a candidate, of any age, with excellent experience gained in another local authority who had only recently come to work in South Tyneside and who spelled out in his application examples of how his past work showed he had all the required competencies. It would be unfair to him to have to compete at interview with long serving South Tyneside staff who had not taken the trouble to submit a similarly thorough application, if shortlisters simply put such people through to interview because they knew them.

3.18. Returning to the chronology, on 27th November 2015, Mr Mains told both cliamants their requests for ER/VR had been rejected as there were positions in the new structure they could apply for. All of the employees affected were sent an email, which included a link to the job descriptions and person specifications for all posts in the new structure. Due to the e-mail problem Mr Johnson did not get it but he found out what the posts were and decided there was only one for him. They were also provided with an application form which is shorter than the one used by external candidates who need to provide referees. The deadline for applying was 11th December 2015. Both claimants say they only had a short period of time to apply. We cannot accept that as two weeks was plenty of time, and everyone was treated the same .

3.19. Each claimant applied for one job, Mr Dixon for Contracts Administrator, and Mr Johnson for Asset Officer. Many affected employees applied for several jobs . Mr Scott says ***Once the applications for these two jobs had been received****, I was asked to undertake a shortlisting exercise*. We took care to check shortlisting as a stage in the process had always been part of the plan, and , more importantly, that staff could not reasonably have believed that step would be omitted and everyone granted an interview for each post in which they expressed an interest. If the evidence showed the claimants **reasonably** did not realise they had to "sell themselves " in the application form in order to get an interview we may well have found in their favour. We find their view, though genuinely held, was due to an unwarranted assumption on their part.

3.20. The claimants, perfectly properly, did not advance exactly the same arguments . The emboldened italics in paragraph 3.4 above suggest Mr Dixon knew there would be a shortlisting stage. His main argument was his application form **did show** he met the essential criteria and though he would have , in his words, "*beefed it up* " had he had more time, no reasonable employer should have missed, or wilfully ignored, indicators in his application that he did meet the essential criteria . His secondary argument ,

which we have already indicated we do not accept is he should have had more time to spell out his abilities in the application form.

3.21. Mr Johnson's statement includes at paragraphs 42 and 43 " *In previous internal restructures the shorter Application Form was used as an "expression of interest" to notify management of the Applicant's interest in the post. This was the application form that I completed. The Application Form which I submitted was primarily that which I have successfully submitted in previous restructures and therefore I could not understand why I was not successful on this occasion*". While adopting most of Mr Dixon's arguments, he is conceding his application was not good but saying it, taken with manager's knowledge of abilities gleaned over 37 years, should have got him to interview, as it had before, rather than being his only opportunity to show his suitability. The evidence did not support his assertion he had , **in the recent past**, been shortlisted **for a substantive post** , on the strength of an application which only expressed an interest. An application he made in 2004, on a form which had headings for each essential criterion , was very good. Mr Scott and Mr Kirsop both described how in 2012 they and other managers had been specifically trained in "competency based" recruitment policies. " Expressions of interest" are used when staff apply for a training or "acting up" opportunity but not , certainly in recent years , for substantive posts.

3.22. Both claimants say the respondent was influenced by age, in that as they did not have as many years left to work as younger people , the respondent saw the younger candidates as a better investment for the future. They argue this led the shortlisters, consciously or sub-consciously, into missing or ignoring evidence of their capabilities. The essential criteria are partly objective measurable criteria, like qualification, and partly subjective value judgments, so the argument advanced deserved close scrutiny. There were five members of staff, all over the age of 60, all with many years of service. Mr Dixon , Mr Johnson, Mr Brian Anderson, Mr Jack Rutherford and Ms Lynne Toner. The last two were shortlisted . Ms Toner was successful at interview . The other 4 were made redundant. So were about 20 people under the age of sixty 60. There was no evidence of a "pattern" to displace the respondent's explanations that this result had nothing to do with the age of the candidates.

3.23. Mr Dixon applied for Contracts Administrator. His application form is at pages 117 to 118. We need not decide whether he was in fact more qualified or experienced than other applicants but will assume that is true as the respondent did not challenge it. On 15th December 2017 Mr Scott and Mr Kirsop separately looked at each application form for the post and made a decision as to whether the information contained pointed to the applicant meeting each of the essential criteria set out in the Person Specification all of which candidates had to meet if they were to be shortlisted. Twelve people applied for 3 permanent and 4 fixed term posts. Of those the 9 shortlisted were aged 29 30 34 40 42 49 52 53 58 and the 3 not were aged 39 48 63. For completeness we record that after interview the 3 permanent posts were given to those aged 29 34 and 53 while 2 of the fixed term posts were offered to people aged 49 and 42 (one of whom did not take up the offer). In a second round of recruitment with which we deal later, the 3 fixed term posts went to candidates aged 35 52 and 58.

3.24. Mr Scott and Mr Kirsop used a matrix with twelve columns, one for each candidate, and nine rows each for one or more of the essential criteria. Ms Brewis said some criteria on the person specification had been omitted. We disagree. Many criteria overlapped so Mr Scott and Mr Kirsop " grouped " those together. Where they found a form had demonstrated a candidate met a criterion, they put a tick in the relevant box. Where Mr Scott found nothing in the form to suggest a particular criterion had been met, he left the box blank (Mr Kirsop put a cross). Where they were doubtful about whether a candidate had shown he met a criterion, they put a question mark. Mr Scott rejected Mr Dixon, Candidate 1 who did not meet any of the essential criteria and Candidate 11 who provided enough information about his education, the first criterion, but none of the others. Several candidates used the essential criteria as headings in their forms, a technique which makes identifying information relevant to the various criteria easier. The process took a whole afternoon.

3.25. Mr Dixon's application listed a Higher National Certificate and Higher National Diploma so had a tick for the first criterion. It then listed his work experience from 1981 to 2015, setting out the Decent Homes work he did, but in Mr Scott's words " *did not appear to show that he had any experience of working in a contract administration environment*" so Mr Scott put a question mark against this criterion. For all other criteria, he could not see sufficient evidence in the form that he met them except the final criterion of "Disposition", which comprised confidence, ability to work under pressure and a commitment to high quality customer service, amongst other things. Mr Scott felt the form did include enough information to show he met that criterion so ticked that box. Mr Scott statement says
When shortlisting, I concentrated on cross referencing the content of each application form with the essential criteria as listed in the Person Specification. I did not turn my mind to trying to identify who had completed each form, as the forms I received did not show the details of the applicants' identity, …it may have been possible for me to have identified some of the applicants from their application forms, but I made no attempt to do so, choosing instead to focus on the job in hand, before moving on to the next one.
In oral evidence he accepted he did realise when he was scoring both claimants.

3.26. Mr Kirsop has been Director of Operations since 1st September 2014. He too was provided application forms, which contained no details about identities and we accept he did not realise who he was scoring. After he had done so, he met Mr Scott to compare assessments. For this post their scoring was similar but not identical . Mr Kirsop gave the first candidate 6 ticks, 2 question marks and a cross, whereas Mr Scott gave him 9 question marks. He gave the 11th candidate two ticks, and Mr Scott gave him one, and in relation to Mr Dixon he gave him three ticks, as compared to two from Mr Scott. He identified the same three candidates as Mr Scott as those who should not be shortlisted. He says, and we accept ,
Mr Dixon's application form did not appear to me to contain enough information to demonstrate that he met the essential criteria relating to experience of working in a contract administration environment, of dealing with complex, technical tasks to high standards and to deadlines, of delivering major refurbishment schemes, or of contract

administration, tendering procedures and safety practices and legislation. In addition, I felt that his application form did not demonstrate that he had any experience of preparing tenders and controlling budgets, or that he had knowledge of the relevant legislation
I am aware that Mr Dixon claims that the reason he was not shortlisted was his age. Neither the age or the identity of any of the applicants played any part in my scoring exercise. As well as Mr Dixon, who was 63 at the time, two other candidates, numbers 1 and 11, who were aged 48 and 39 respectively, were also not shortlisted..
"*Had I attempted to work out who had submitted which form, I doubt that I would have been able to do it successfully. The reality of the situation was that the possible identity or the age of an applicant played no part whatsoever in my decisions about whether I found them to meet the essential criteria. I made no attempt to work out who completed which application form, or how old they may be.*

3.27. Mr Dixon says at paragraph 17 of his statement "*The decision by the Respondent is that I did not meet the essential criteria for the position of Contracts Administrator, this is something I wholly disagree with" . .. I feel I did meet the criteria by confirming the following on my application form*" He then sets out nine bullet points over one page to show how a person should **read into** his application, which he agreed could be described as " his mini CV" that he did meet the essential criteria. Why not do this in the form? Mr Scott accepted Mr Dixon probably had more skills than his form exhibited but when our Employment Judge asked him whether it ever crossed his mind either to supplement what Mr Dixon had written by his own knowledge or tell Mr Dixon to submit a more thorough form he responded, fairly in our view, that would be improper and unfair to others who had already put in fuller applications. Mr Dixon's statement says "*I am of the view that I met the essential criteria and that the Respondent was fully aware due to my many years of experience and employment with them that I had the full remit of knowledge, skills and experience to be able to do the job".* This shows to us that he expected his qualifications and experience to " carry him thorough" the shortlisting stage without him having to spell out how he would meet the essential criteria. As will be seen we reach the same conclusion for Mr Johnson.

3.28. Despite able cross examination by Ms Brewis, comparing Mr Dixon's form with those of others who were shortlisted, we see exactly why Mr Scott and Mr Kirsop did not see in Mr Dixon's application matters which " leapt from the page" of the best applications and were discernable even in the worse ones. Mr Kirsop put it well, thus *Whilst Mr Dixon's application did* ***mention some of the classes of criteria****, it did not provide* ***information about each essential criterion****.*

3.29. On 7th December 2015 Mr Johnson applied for Asset Officer only. There were 2 permanent and one fixed term roles to be filled. The other 3 applicants were aged 30 34 and 53. Mr Johnson's statement says " *I submitted an application form that I had used in the past for previous successful job applications that had always secured me being shortlisted for interview***".** He used the phrase "expression of interest" to describe his application which prompted us to enquire whether he thought the application stage was a mere formality. He said he did.

3.30. The Person Specification listed 19 essential criteria. For the purposes of shortlisting, only 6 criteria were assessed again to eliminate duplication and focus on the most important. All four applicants included relevant information about their education so Mr Scott gave all a tick. The third applicant, Mr John Dodds had a City & Guilds qualification, as well as subsequent training undertaken which Mr Johnson says did not meet the criterion . Mr Dodds is 53. This discrepancy required an explanation.

3.31. Throughout the process consultation with unions took place. They pointed out an essential criterion which specified particular qualifications could be indirectly discriminatory. Many cases have shown that to be so in relation not only to the protected characteristic of age but also race . They suggested if a candidate had a qualification less than that stipulated but was prepared to "work towards" the stipulated one within a fixed timeframe, he or she should not be excluded. The respondent agreed to this. On that basis, Mr Dodds earned a tick. Mr Dixon's statement at paragraph 19 says he believes there are instances where staff have applied for other positions, did not meet the essential criteria in the job specification, yet were shortlisted. The examples he gives are all lack of qualifications and ignore the "working towards" concession the unions persuaded the respondent to apply

3.32 All candidates other than Mr Johnson received ticks against the other criteria and were shortlisted . Mr Scott's statement says at paragraph 28
"Nowhere in Mr Johnson's application form, which comprised just over half a page of text, did he mention anything to do with regeneration projects on estates. In fact, there was insufficient information in Mr Johnson's form to demonstrate that he met any of the other criteria. Much of what he put in his form was rather general, and he did not tie any of the experience which he listed, to any of the essential criteria." We wholly agree.

3.33. We also agree with Mr Kirsop's statement where he says
With regard to Mr Johnson, his application form contained only around half a page of information, which was presented in very general terms The person specification relating to the Asset Officer job clearly set out the essential criteria which applicants needed to meet, in order to have a chance of securing one of the posts. Whilst Mr Johnson's application form did include information about his education, that was the only criterion that I found to be met" and *"Mr Johnson appeared to have had little regard to the criteria when he completed his form".*

Mr Kirsop's scoring for Asset Officer was identical to that of Mr Scott. So far, we find age played no part in the decision not to shortlist . We next look to "Anya" evidence.

3.34. A number of days after the shortlisting Mr Dixon heard fellow members of staff talking to each other regarding having received notification of dates for interviews. He realised he had not been shortlisted. The respondent did not tell him. He visited HR and was informed verbally he had not been shortlisted as he did not meet the criteria. He did not ask for details. Ms Bell says *It is not usual practice to notify candidates for jobs that they have not been shortlisted for an interview. It is usual to notify those who*

have been interviewed whether they have been successful or not. If feedback about application forms was requested it would have been given, but it was not given without a request being made. We accept this is true but will comment in our conclusions.

3.35. Interviews for those shortlisted took place on 22nd December 2015. Three were appointed to the permanent posts, two to the fixed term posts, and the other two fixed term posts were unfilled, as none of those interviewed demonstrated they were capable of doing the job. One of the fixed term appointees secured another job which left three unfilled fixed term positions. They were re-advertised, and three people applied including two from the first round, together with a new candidate, aged 35. All were interviewed, and appointed to fixed term roles until 31st December 2016. Mr Scott says Mr Dixon could have made a second attempt at securing a fixed term post, and he could have done so after seeking feedback on his original application. He did neither. In a grievance he raised he said trying again would be "pointless" and we accept that was his main reason .

3.36. Even before this exercise re-applying was an option for a non shortlisted candidate but not for one who had been interviewed once and failed to show the " competencies". Ms Bell said the change of policy was a popular topic of conversation at the time. Had either Mr Dixon or Mr Johnson been in any doubt about whether there were any vacancies remaining, or whether they could re-apply, their colleagues and/or the union and/or, any member of the HR team, especially Mrs Wakefield who worked in the same office as them , would have been able to tell them. Neither claimant made such enquiries nor did they did apply for a second time.

3.37. On 8th January 2016, Mr Scott informed Mr Johnson he had not been shortlisted . This was the first time in his career he had not been shortlisted. He said he was not interested in any other posts. Mr Scott said unless he was redeployed, he would be made redundant. The three shortlisted candidates aged 34, 53, and 30 were interviewed on 13th January 2016, but only the permanent post was offered to Andy Marsh, aged 30. The other two candidates did not satisfy the interviewers they could do the job. Mr Marsh declined the offer, as he had secured another position. All 3 posts were re-advertised internally on the respondent's intranet.

3.38. Mr Johnson was informed by his union the reason given by HR for not shortlisting him , was that he had not mentioned "options appraisal" in his application form. This was not a part of the essential criteria on the application form, but listed as something to be assessed at interview. Mr Johnson names other candidates who do not refer to options appraisal but were still interviewed . This illustrates the dangers of information being transmitted by a chain of people may not fully understand it. Mr Scott and Mr Kirsop had written "*skills—option appraisals*" on their matrix as a "catch all " for several items on the person specification which related to ability to assess which of several options should be pursued . The form submitted by Mr Johnson does not, on any objective reading show he has , or could, do that. He is an intelligent articulate man and probably could, but the form does not show that. Mr Scott and Mr Kirsop explained in cross examination how the other forms did.

3.39. On 15th January 2016, Mr Scott sent an email to Mr Johnson saying he would remain on the redeployment register until 19th February 2016 and if no redeployment opportunities were identified by then which he would be given his 12 weeks' notice of termination. He was advised of the redundancy payment he would receive. Interviews for the 3 re-advertised Asset Officer jobs took place on 24th March 2016. There were four candidates, aged 35, 44, 46, and 49. Those aged 44 and 46, who had been unsuccessful in competitions for other posts in the new CIT, were appointed . One vacancy was not filled. Mr Johnson did not try again.

3.40. Mr Dixon's Anya evidence relates to the third applicant, Hayley Welsh aged 35, and an agency worker on a fixed term contract as a Technical Co-ordinator, which did not involve site working or involvement with external contractors, and had no relevance to the Contracts Administrator role. Mr Dixon says " *Again I feel strongly that I was more qualified and experienced and should have been told of these vacancies so that I could have applied. I believe strongly that had I been given the opportunity I apply, I would have been successful with my application due to my extensive experience*" This was Mr Dixon's "own goal". Ms Welsh has an HND. The fact she is doing one job as an agency worker does not mean she lacks the **potential to** do another job . If she demonstrated that potential to meet the competencies in her application, she would get an interview . Had she been rejected but Mr Dixon not just because had been doing a similar job for years , she would have an arguable claim for age, and maybe sex, discrimination .

3.41 . In his thorough witness statement , Mr Johnson, especially at paragraphs 23 and 27 , lists several people aged below 60 who fared better than he did . Again, despite able cross examination by Ms Brewis, the respondent's witnesses had an answer which was wholly credible and logical for their comparative success. No-one is saying they **necessarily were better** than Mr Johnson, but in the different circumstances applicable to each , they **demonstrated better** than he did their ability to meet the "competencies" for each of , often several, posts for which they applied. This will be a point of particular relevance when we come to the fixed term Data Co-ordinator post shortly. Having set out why the claimants failed even to be interviewed in the only competition in which they participated, we now turn to the issue of re-deployment.

3.42. Ms Wakefield has managed the redeployment register for years . All on it are sent details of **every** vacancy which becomes available, so they can apply before it is opened up to other employees. She sent 16 vacancies to Mr Dixon and 14 to Mr Johnson. We accept most were unsuitable, eg. welfare workers or housing support, where there was no possibility of either of them meeting the essential criteria for the position. The starting point is these were existing employees with a right not to be unfairly dismissed. In reality, if they did not get one of the new CIT jobs, such was the paucity of any other chance of employment within the respondent , certainly within an area of work they were able and wanted to do, they were almost certain to finish up unemployed. The redeployment issue is really all about the unfilled vacancies in CIT.

3.43. Ms Wakefield says

When I emailed the claimants about vacancies which were available, I did not email them about the jobs which they had already applied for, as they clearly already knew about them. Any vacancies which existed were shown on the Company's intranet – the internal website used by the Company. Everybody knew where to look to see what jobs were available, and if anyone was in any doubt about a particular vacancy, many people would ask either their manager, or me.

3.44. Mr Dixon and Mr Johnson remained on the redeployment register and in Ms Wakefield's words," *they would have subsequently received an email* ***every time a vacancy arose*****".** New vacancies would be notified once only. Other candidates interviewed who were not appointed **found out** some vacancies had not been filled and made a second application. Ms Wakefield says It would be usual for managers to notify their staff of any remaining vacancies after a round of interviews, and she would expect that to have happened after the interviews for Contract Administrator and Asset Officer.

3.45. Mr Dixon argues when he made redundant there was 2 fixed term Contract Administrator roles still available , he was not told about them and if he had been he would have applied. He says
I have been informed that 2 of the applicants, Steve White who is 53 and Graham Adams who is 56 who applied for the roles for Contract Administrator, were shortlisted and interviewed but were unsuccessful, ***were later told verbally to re-apply****. Even though they had been informed earlier by the respondent that they were at risk of redundancy. Despite me being in the same position, as I was also at risk of redundancy,* ***I was not told to re-apply****. I was also not told that these vacancies had arisen and therefore I could not apply for jobs that I did not know existed. If I had been told of these jobs then I would have applied.*

Mr Johnson says
As I was at risk of redundancy, I should have been notified of all vacancies to assist in redeployment. Unfortunately this did not happen The job of Asset Officer I had applied for was re-advertised and I was not informed. The re-advertisement was not emailed to myself or any of the other at risk colleagues. I have checked with others who only became aware of the re-advertised post through ***word of mouth from management or continually checking on line f****or any vacancies in an effort to continue employment no matter the post. I feel strongly that I should have been informed that this job was being re-advertised so I could have applied for it. I also feel I should have had feedback on my original application so I could have submitted a stronger application the second time.*

Mr Johnson also says "*the relisting of the Asset Officer or the fixed term Data Co-Ordinator were not distributed to those at risk. Had I been told, along with feedback as to why I was unsuccessful in the first place, I would have applied again and submitted a stronger application There would also have been less competition for these posts as most had been filled. Also, the jobs were still available at the time I was made redundant and I feel strongly that I should have been informed of them*."

3.46. Ms Bell says ".. *both Claimants worked in very close proximity to Mrs Wakefield, who is responsible for sending out details of vacancies to those on the redeployment register. Given their length of service, and the length of time that Julie has been doing her job, I fully expect the Claimants to have known that had they any queries about redeployment or about what jobs may have been available, they could have asked her.* We accept Ms Wakefield would not volunteer information unless asked partly because she was busy with payroll, sickness and leave management and other matters

3.47. The respondent says no-one in authority did or would **tell** someone to re-apply. We accept that. but not just because they say so. In recent times the word used for any process which results in one or more of several persons being appointed to one or more fewer jobs than are available, whether by way of recruitment, transfer or promotion is a "competition". In the context of a redundancy situation like this, the inescapable truth is that those who did not win the competition would be out of a job. If some people have learned of and applied for a job by regularly scouring the intranet or asking managers and/or HR , thereby showing initiative and drive to stay in employment in some role, any act by HR or a manager to "steer" another employee towards re-applying would be met with protests of favouritism by those who had taken the initiative themselves.

3.48. One area of evidence affecting only Mr Johnson remains. The original Data Co-Ordinator post was one permanent vacancy. We accept the desirable criteria show it was asbestos related, for which Mr Johnson was not qualified, and based at Middlefields, South Shields . The fixed term post was not asbestos related and based at Strathmore, Jarrow where Mr Johnson worked . The posts for which he had a realistic possibility of success were this and Asset Officer . The fixed term Data Co-Ordinator post was given to John Dodds without the need to complete an application form. He is still carrying out the role, originally fixed for 12 months but extended for another 3 months. This too required explanation.

3.49. Mr Dodds had applied for the permanent post in the first round of interviews . He was appointable but came second to a better candidate. The managers in CIT then realised they needed a second Data Co-Ordinator for some time. They decided, as is often done to save recruitment costs in the public sector, to offer the job without competition to the second placed interviewee. Mr Johnson says they should have begun the competition afresh . We are satisfied age had nothing to do with their choice not to and though some employers would have done as Mr Johnson suggests, it was well within the band of reasonableness to do as the respondent did.

4. Conclusions

4.1. Neither claimant had been in this situation before. People of their, and our, age grew up when qualifications and experience did " carry one thorough" shortlisting without one having to spell out how one would meet the essential criteria in "competency based" recruitment processes. Our Employment Judge put to Mr Scott the proposition that the " competency based" model may mean the person appointed to a job was not the best person to do it, but the one who could write the best application

and perform best at interview. He agreed though he added hopefully the winner would be both. He said people who filled out the best applications normally performed best at interview because they put effort into both. His philosophy was that if everyone is given the same opportunity to show their suitability and is assessed in the same way, the respondent is acting fairly and in accordance with good equal opportunities practice. The point is the same when considering the duty of HR and managers to notify unfilled posts. The view this respondent takes is that if it disseminates the information in the same way to everyone via its intranet , it is for them to find it. If they want to know why they have failed at shortlisting , it is for them to ask. As Ms Bell says *If feedback about application forms was requested it would have been given, but it was not given without a request being made.*

4.2. Mr Scott says of Mr Johnson " *It did appear from his application form for the Asset Officer job, that he had not put a great deal of effort into trying to secure that job, and he had not attended any of the coaching sessions which may have enabled him to improve his chances*", and of Mr Dixon that he "*appeared **disinterested** in seeking advice on how to give himself the best chance of securing a job, as he failed to attend any of the coaching sessions*", and of both "*he did not request any feedback after he had not been shortlisted. He did not make any other applications during his time on the redeployment register, or during his period of notice*".

4.3. We find both claimants did **wish** to continue in employment. All the respondent's witnesses, who have become familiar with modern recruitment, and those who, whether at school, university or training given by the respondent, have learned about it , think it perfectly natural to show one can meet essential criteria, not simply by stating what qualifications and experience one has, but by giving examples of situations which have arisen , objectives one sets oneself , actions one took to achieve them and the result obtained. Even if the situation is not related to the work it may be used to demonstrate potential to reach each "competency". People who "coach" these techniques emphasise it is necessary to keep using the word "I" eg "*I did this . I achieved that* ". To many of the claimant's generation, and ours, this comes across as **boasting**. However, to the respondent's witnesses the claimants' applications appeared **complacent** by not giving more thorough answers. A reasonable employer could attribute that to them not caring less whether they got the job, but we do not .

4.4. We accept it is within the band of reasonableness to expect every employee to look after himself. If that means keeping one's job at the expense of someone else losing theirs, so be it. If it means looking at the intranet to find out what is available rather than waiting for someone to tell one to re-apply, again , so be it.

4.5. We conclude the respondent did carry out a fair procedure , it was reasonable not to shortlist the claimants for interview , and it did enough to " offer" other vacancies available, prior to dismissing. The claimants were not treated less favourably because of age, than younger colleagues who were shortlisted and/or re-deployed .

4.6. Mr Dixon best expresses the feelings of both claimants during this process which was mechanistic, impersonal, expected every one to look after himself but treated everyone exactly the same to ensure no appearance of bias :
… both the atmosphere and the attitude within the working areas, and the guidance from management was not good to say the least, and was by far the worst working environment that I have worked within. Especially when a company like South Tyneside Homes puts a high emphasis on working as a team and was hard to describe with morale being very low and I believe still is.
To find that after over 37 years' service, working with some members of staff and management for most of that time, your memories consist of leaving the place of work on your last day without a handshake, a thank your or good luck in the future from management. No thoughts of the good, the ups and downs within the type of work environment I was in, the praise from the customers and in a strange way the team work when things did not go as well as planned.

4.7. We empathise. However we cannot in a redundancy dismissal case allow sympathy for the claimants to lead us into inferring discrimination where the respondent's explanations prove there was none, nor into substituting our own view for that of the employer rather than strictly applying section 98 of the ERA and s136 of the EqA.

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T M Garnon EMPLOYMENT JUDGE

SIGNED BY EMPLOYMENT JUDGE ON 3rd APRIL 2017

SENT TO THE PARTIES ON

4 April 2017

G Palmer
FOR THE TRIBUNAL