EMPLOYMENT TRIBUNALS

Claimant:	Mrs J Eldridge
Respondent:	Independent Leisure Ltd
Heard at:	Leeds ET (via CVP)
On:	24 & 25 August 2021
Before:	Employment Judge M Rawlinson (sitting alone)

Representation

Claimant	In person
Respondent	Miss N Webber (counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The respondent did not automatically unfairly dismiss the claimant, either pursuant to s103A Employment Rights Act 1996, or pursuant to s105 Employment Rights Act 1996.

2. The claimant was not unfairly dismissed by the respondent pursuant to section 98(4) Employment Rights Act 1996.

3. The claimant's claims of automatic and ordinary unfair dismissal are not well founded and are dismissed.

REASONS

Introduction

1. The respondent operates bars and similar establishments in the Wakefield area. The claimant was employed by the respondent from 16 October 2012 until 21 August 2020. At the time of her dismissal and during the events that led up to it, she was employed as a Bookkeeper.

2. The claimant claims:

    i. automatic unfair dismissal, as a result of making a protected disclosure, pursuant to sections 103A of the Employment Rights Act 1996;
    ii. automatic unfair redundancy, as a result of making a protected disclosure, pursuant, to section 105 of the Employment Rights Act 1996.
    iii. in the alternative, the claimant claims that her dismissal was unfair within section 98 of the Employment Rights Act 1996.

3. The respondent contests the claim. It says that the claimant's role was absorbed and that the claimant was made redundant in order to save costs, in large part, due to the ongoing COVID-19 pandemic.

4. The claimant was not represented and appeared in person. The respondent company was represented by Ms Webber of counsel.

5. A number of witnesses gave sworn evidence. The claimant gave evidence on her own behalf. The claimant also adopted her witness statement in evidence, as well as adopting the factual narrative within her claim form.

6. On behalf of the respondent company, the principal witnesses were directors Mr Ashley Crecraft and his brother, Mr Bradley Crecraft. Sacha Maude, a self-employed Bookkeeper retained by the company during the relevant period, also gave evidence on the respondent's behalf. The respondent's witnesses submitted witness statements, which they adopted in evidence.

7. Each witness briefly expanded upon and clarified their statements before also then dealing with the various documents that they and the opposing party had produced. Each side was also subjected to cross-examination by the other. Each side also addressed me by way of closing submissions at the conclusion of the case.

8. As well as hearing live evidence, I also considered numerous documents that had been produced by both parties. The claimant submitted two further witness statements - one from her husband, Mr Paul Eldridge, and one from her union representative Mr Stuart Stanton. Prior to the hearing an agreed bundle comprising of 249 pages had been submitted.

9. By agreement between the parties, and in accordance with the overriding objective, I also agreed to admit some further documents produced late by both parties. This constituted a further 55 pages by way of a further bundle, some further documents on behalf the claimant authored by her which she described as diary entries (including an entry for the 27 July 2020 dealing with a significant interaction with Ashley Crecraft). I also admitted some agreed transcripts of meetings that took place on various dates, including significant meetings on 19 September 2019, and the 11 and 18 August 2020. I will refer to these documents during these reasons. References to page numbers in brackets refer to the main agreed bundle and additional bundle.

Preliminary Matters

10. At the start of the hearing, before I heard any evidence, I clarified with the respondent as to whether there was an issue regarding time limits, as expressed within the grounds of resistance submitted on their behalf. It was clarified by counsel on behalf of the respondent that this point was not to be pursued.

11. Mrs Eldridge had also produced an email raising various concerns about the composition of the bundle and raising various other complaints and matters in terms of her dealings with the representatives of the respondent prior to the hearing. It was made clear to the claimant that I had no jurisdiction to deal with those matters and that, in the circumstances, they were not relevant to the issues that had to be decided.

Issues for the Tribunal to Decide

12. Having dealt with those preliminary matters, I went through and agreed with the parties the issues for me to decide. The issues had been identified in a previous case management hearing held on 13 April 2021 before EJ Cox. They appear within the bundle at page 48. They can be succinctly summarised in this way:

    i. What was the reason or principal reason for the claimant's dismissal? Whilst the respondent says it was redundancy, the claimant alleges that in fact the real reason was due to acrimony that had developed due to:

        a. a grievance she had submitted in September 2019;
        b. a complaint to the company via her Union Representative, and subsequently direct to Wakefield Council via email, regarding various health and safety matters around September/October 2019. The claimant alleges that these were protected disclosures.
        c. a conversation she had with Ashley Crecraft on 27th of July 2020 regarding VAT returns potentially being completed illegally or unlawfully. The claimant alleges that this was a protected disclosure.

    ii. If the Tribunal accepts that the principal reason for the claimant's dismissal was not a potentially fair reason, or that the reason she was dismissed or selected for redundancy was a protected disclosure, that dismissal will be automatically unfair.

    iii. Conversely, if the Tribunal accepts that the claimant was not dismissed or selected for redundancy because of a protected disclosure, did the respondent act reasonably in all the circumstances in dismissing claimant for that reason? Whilst the claimant makes no criticism of the process, she alleges that the respondent acted unreasonably because it dismissed her rather than dispensing with the services of the self-employed Bookkeeper Sacha Maude.

13. I agreed with the parties that I would consider and hear evidence regarding the substantive protected disclosure, unfair dismissal and redundancy issues at the hearing held on 24 and 25 August. It was made clear to the parties that, if required, a remedy hearing would be listed in due course.

Facts

14. I make my findings of fact based on the material before me taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. I have resolved such conflicts of evidence as arose on the balance of probabilities. I have taken into account my assessment of the credibility of witnesses and the consistency of their evidence with the surrounding facts.

15. The claimant was employed by the respondent as a Bookkeeper for a period just short of 8 years from 2012 until 2020. On 3 September 2019 the claimant submitted a grievance in writing by email (pages 74 – 83 of the agreed bundle). The principal issues identified by the claimant in that grievance (in summary) were her workload and the attitude and associated behaviour of Bradley Crecraft towards her. Following submission of the grievance the claimant went off on sick leave. The company responded in writing on 10 September 2019 (page 88).

16. The grievance was thereafter investigated on behalf of the respondent by Ashley Crecraft. The claimant returned to work on 18 September 2019.

17. A meeting took place on 19 September 2019 between Ashley Crecraft and the claimant. The claimant's union representative Stuart Stanton was also in attendance. The meeting was recorded, and a transcript of that meeting appears within the papers (reference 12 Market St). Bradley Crecraft was also interviewed as part of the investigation process (page 105) and denied ever behaving in the manner described by the claimant.

18. In the interim, and before the outcome of the grievance was communicated to the claimant, on 28 September 2019 the claimant sent an email to Wakefield Council outlining various health and safety concerns (page 92). The claimant did not inform anybody from the respondent company about this complaint. The claimant asserts that this amounted to a protected disclosure.

19. The claimant was sent an outcome and a copy of the investigation report with respect to her grievance on 1 October 2019 (pages 98 -105). Whilst neither grievance was upheld, various recommendations were made at the end of the investigation report to try and improve the situation for the claimant (page 104).

20. The claimant expressed an intention to appeal grievance outcome on 7 October 2019 (page 113). The reasons given were that the claimant did not feel that the matters had been thoroughly investigated and that some of the facts stated within the investigation report were flawed. The respondent company engaged an independent external HR professional to deal with that appeal (page 128).

21. On 17 October 2019 Wakefield Council wrote to Ashley Crecraft regarding the complaints that they had received in terms of health and safety matters. These complaints were not attributed to claimant by the Council. The Council visited the company premises on 18 October 2019. In a follow-up letter dated 23 October 2019 (page 249) the Council for indicated that they had not identified any breaches of health and safety legislation and that no further action was to be taken, save for referring some matters regarding fire safety to the West Yorkshire Fire Service. The Fire Service visited the respondent's premises on 5 November 2019. Nothing of any great significance flowed from that visit.

22. A meeting took place regarding the grievance appeal on 7 November 2019. Present at that meeting were the claimant, her Union Representative Stuart Stanton, a note taker, and the external HR Consultant Janet Schofield.

23. The outcome of the appeal was notified to the claimant on 14 November 2019 (pages 130 – 134). Whilst the appeal in respect of the thoroughness of the investigation was not upheld, the ground of appeal alleging some factual inaccuracies within the original investigation report was partially upheld (page 132).

24. The claimant went off on sick leave again from 19 November 2019 until 4 February 2020. Before she returned to work, a meeting took place on 29 January 2020 between the claimant, her Union Representative and both Bradley and Ashley Crecraft to discuss her return to work. The claimant thereafter worked around 5 ½ weeks to 16 March 2020 and then took 2 weeks holiday. This was just before lockdown struck as a result of the COVID-19 pandemic, in late March 2020.

25. The claimant next returned to work on 13 July 2020 having been furloughed in the interim period.

26. On 27 July 2020 there was a conversation regarding VAT and associated matters as between Ashley Crecraft and the claimant. The nature and content of that conversation is disputed as between the parties. It is during this conversation that the claimant alleges that she made another protected disclosure that ultimately contributed to later dismissal.

27. On 31 July 2020 Bradley Crecraft contacted the claimant by telephone to arrange a meeting to discuss work. During that conversation claimant was told that the role of bookkeeper was at risk of redundancy. On the same day the claimant contacted Sacha Maude by telephone. As well as the issue of potential redundancy, the issue of VAT processes was also discussed. Ms Maude's account of that conversation as recorded the same day appears within the papers (pages 217 – 218).

28. Following the exchange of several emails between the parties (pages 142 – 145) an initial consultation meeting between the parties was arranged for 11 August 2020 regarding the potential redundancy. That meeting was largely recorded, save for the last 20 minutes or so, and a transcript appears within the papers (reference Velvet Bar and Velvet Bar 2). Present at the meeting were the claimant and her Union Representative Stuart Stanton, Bradley Crecraft, and an independent HR Consultant named Catherine Kirkland from an outside HR agency.

29. During that meeting is accepted by all parties that the claimant raised the possibility of continuing in her role in a reduced capacity as an alternative to redundancy (see page 146).

30. A second such consultation meeting took place on 18 August 2020. Again, that meeting was recorded, and a 15-page transcript appears within the papers (reference 2 – 8 Market Street).

31. During this meeting it is accepted by all parties that the claimant was formally offered a reduced role of 1 days work a week (i.e. 8 hours) as a direct alternative to redundancy. Despite her reduction in hours the claimant was to continue to receive her existing pay via the furlough scheme. It is also agreed between the parties that the claimant agreed at that meeting, at least in principle, to accept that new arrangement with respect to her role. At 0.20.07 the transcript records the claimant as stating:

    "Obviously (laughter) in principle, yes, I accept the terms because nothing's changed for me, right? But obviously, until I see a copy of a new contract is when I can actually make a…."

    And then at 00.30.11:

    "No. I'll wait for the contract. That's all I can do, really. [inaudible]"

32. Following the conclusion of that meeting Bradley Crecraft wrote to the claimant on 18 August 2020 (page 168) The letter stated that:

    "As per clause 2.2 in the contract "the employment is continuous with any previous employment". Your service to the company and your previous contract will therefore remain continuously from the 16th October 2012."

    and,

    "This letter, along with the attached statement, will form part of your new contract for reference purposes."

33. A revised contract was sent to the claimant the following day, 19 August 2020 (see pages 169 – 186).

34. On the 20 August 2020 the claimant emailed Bradley Crecraft stating that she was not prepared to sign the contract submitted to her but that she would "*continue working under the present conditions*" (page 187).

35. On 21 August 2020 the claimant was sent a letter by Bradley Crecraft on behalf of the respondent company via both post and email (page 189). The letter stated that:

> "*As you have refused all of the options put to you we unfortunately have no alternative but to give you notice of redundancy."*

36. The claimant sought thereafter to appeal her redundancy. On 28 August 2020 the claimant emailed Bradley Crecraft to appeal (page 190) and attached various grounds in that respect (page 191 – 196). Bradley Crecraft considered and responded to those matters in writing on 7 September 2020 (pages 204 – 205). The claimant's appeal was rejected, and the company stood by the original decision as made previously.

37. The claimant was therefore dismissed as of 21 August 2020.

38. I have heard and seen some evidence concerning various matters that allegedly occurred after the dismissal (for example, see the "*anonymous*" letter sent to the respondent's insurers and matters referred to therein at pages 215 – 216). These are of no relevance to the issues I have to decide in this case.

39. Thereafter, and in due course, the claimant presented her claims to the Tribunal on 5 February 2021.

The Relevant Law

Protected Disclosures

40. An employee who makes a "*protected disclosure*" is given protection against his employer subjecting him to a detriment, or dismissing him, by reason of having made such a protected disclosure. A protected disclosure is defined in *s 43A of the Employment Rights Act 1996 (ERA 1996)*:

> *"In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."*

41. "*Qualifying disclosures*" are defined by s *43B ERA,* which provides,

> "*43B Disclosures qualifying for protection*
>
> *(1) In this Part a 'qualifying disclosure' means any disclosure of information*

> *which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
>
> > *(a) that a criminal offence had been, was being or was likely to be committed; or*
> > *(b) that a person had failed, was failing or was likely to fail to comply with a legal obligation;*
> > *…*
> > *(f) that information tending to show any matter falling within any one of the preceding paragraphs had been, was being or was likely to be deliberately concealed*."

42. The disclosure must be a disclosure of information, of facts rather than opinion or allegation (although it may disclose both information and opinions/allegations), *Cavendish Munro Professional Risk Management v Geldud* [2010] ICR [24] – [25]; *Kilraine v LB Wandsworth* [2016] IRLR 422.

43. The disclosure must, considered in context, be sufficient to indicate the legal obligation in relation to which the claimant believes that there has been or is likely to be non-compliance, *Fincham v HM Prison Service* EAT 19 December 2002, unrep; *Western Union Payment Services UK Limited v Anastasiou* EAT 21 February 2014, unrep.

44. In determining whether the reason for the claimant's dismissal was her alleged disclosure, it is not sufficient for the disclosure to be "*in the employer's mind*" or for it to have influenced the employer. The Tribunal must consider whether that disclosure was the "*sole or principal reason*" for her dismissal, *Eiger Securities LLP v Korshunova* [2017] IRLR 115).

Automatically Unfair Dismissal

45. A '*whistleblower*' who has been dismissed by reason of making a protected disclosure is regarded as having been automatically unfairly dismissed (see section 103A):

> *"An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."*

46. For an employee to have been automatically unfairly dismissed under s103A ERA, the reason or principal reason for dismissal must be that the claimant had made one or more protected disclosures.

Redundancy

47. It is generally not open to an employee to claim that his dismissal is unfair because the employer acted unreasonably in choosing to make workers redundant, *Moon v Homeworthy Furniture (Northern) Ltd* [1976] IRLR 298, *James W Cook & Co (Wivenhoe) Ltd v Tipper* [1990] IRLR 6. Courts can question the genuineness of the decision, and they should be satisfied that it is made on the basis of reasonable information, reasonably acquired, *Orr v Vaughan* [1981] IRLR 63.

48. Redundancy is defined in *s139 ERA*. It provides:

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

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or
(ii) to carry on that business in the place where the employee was so employed, or

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

(i) for employees to carry out work of a particular kind, or
(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.
…

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

49. According to *Safeway Stores plc v Burrell* [1997] IRLR 200, [1997] ICR 523, 567 IRLB 8 and *Murray v Foyle Meats Ltd* [2000] 1 AC 51, [1999] 3 All ER 769, [1999] IRLR 562 there is a three-stage process in determining whether an employee has been dismissed for redundancy. The Employment Tribunal should ask, was the employee dismissed? If so, had the requirements for the employer's business for employees to carry out work of a particular kind ceased or diminished or were expected to do so? If so, was the dismissal of the employee caused wholly or mainly by that state of affairs?

50. In *Safeway Stores Plc v Burrell* [1997] ICR 523 EAT, Judge Peter Clark said that the question for a Tribunal is not whether there has been a diminution in the work requiring to be done; it is the different question of whether there has been a diminution in the number of employees required to do the work. Where "*one employee was now doing the work formerly done by two, the statutory*

test of redundancy had been satisfied", even where the amount of work to be done was unchanged, *Carry All Motors Ltd v Pennington* [1980] ICR 806.

51. The manner in which a redundancy situation arises may be relevant to the fairness of a dismissal, but not to whether a redundancy situation exists in the first place. In *Berkeley Catering Ltd v Jackson UKEAT/0074/20/LA(V)*, the employer admitted arranging matters so that its Director took over the Claimant's duties in addition to his own duties. Those facts established a redundancy situation under section 139(1)(b). Bourne J said at para 20:

"… A redundancy situation under section 139(1)(b) either exists or it does not. It is open to an employer to organise its affairs so that its requirement for employees to carry out particular work diminishes. If that occurs, the motive of the employer is irrelevant to the question of whether the redundancy situation exists."

52. If the employer satisfies the Employment Tribunal that the reason for dismissal was a potentially fair reason, then the Employment Tribunal goes on to consider whether the dismissal was in fact fair under s98(4) Employment Rights Act 1996. In doing so, the Employment Tribunal applies a neutral burden of proof.

53. The case of *Williams v Compair Maxam Ltd* [1982] IRLR 83, sets out the standards which guide tribunals in determining the fairness of a redundancy dismissal. The basic requirements of a fair redundancy dismissal are fair selection of pool, fair selection criteria, fair application of criteria and seeking alternative employment, and consultation, including consultation on these matters. In *Langston v Cranfield University* [1998] IRLR 172, the EAT held that so fundamental are the requirements of selection, consultation and seeking alternative employment in a redundancy case, they will be treated as being in issue in every redundancy unfair dismissal case.

Automatically Unfair Redundancy

54. Selection for redundancy may be automatically unfair under s105 Employment Rights Act 1996. S105 provides (in material part):

"(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,
(b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
(c)it is shown that any of subsections (2A) to (7N) applies.

> […]
>
> (6A)This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103A."

55. Dismissal is automatically unfair under this section if the principal reason for dismissal was redundancy - a potentially fair reason – but the employee was selected for redundancy because he made a protected disclosure.

Unfair Dismissal

56. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that he was dismissed by the respondent under section 95, but in this case the respondent admits that it dismissed the claimant.

57. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

58. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend 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 shall be determined in accordance with equity and the substantial merits of the case.

59. In determining whether the dismissal was fair, the Tribunal's task is to consider all of the relevant circumstances including any process followed by the respondent.

60. In coming to these decisions, the Tribunal must not substitute its own view for that of the respondent but to consider the respondent's decision and whether it acted reasonably by the standards of a reasonable employer.

Conclusions and Findings of Fact

61. There is no dispute that respondent dismissed the claimant on 21 August 2020.

What was the reason or principal reason for the claimant's dismissal?

62. In this case, I must consider in turn each of the issues raised by the claimant in order to decide the principal reason for the claimant's dismissal.

i. A grievance the claimant had submitted in September 2019

63. It is self-evident, and I find as a fact, that the grievance was raised by the claimant a significant period before she was ultimately dismissed i.e. 11 months. I also accept the evidence of Mr Ashley Crecraft that the grievance was fully and properly investigated, including, at one stage, the engagement of an independent external HR professional.

64. Further, I am also satisfied as per the documentary evidence (see pages 132 and 133) that the respondent at least attempted to put in place measures designed to deal with the claimant's concerns. Whilst the claimant was plainly not fully satisfied with the measures, and whilst some of the recommendations may not have been fully actioned thereafter, I find that such action as was taken behalf of the respondent, allied to the claimant's continued employment for a considerable period afterwards, and indeed an offer of alternative employment, were not compatible with what the claimant alleges in terms of the respondent's alleged attitude towards her due to the grievance.

65. In general, I prefer the evidence of Mr Ashley Crecraft and Mr Bradley Crecraft with respect to this issue. Whilst I have seen and considered purported diary entries from the claimant from around this period regarding this, and indeed a variety of other matters (e.g. see page 73) I remind myself that source of these is the claimant herself and, in that sense, they are both a subjective view of what occurred and provide no further independent corroboration for the matters alleged.

66. In short, I find that the respondent formally dealt with the claimant's grievance, fully and properly investigated it, and thereafter attempted to deal with the issues surrounding it. I conclude therefore that the grievance the claimant raised in September 2019 played no part in the subsequent decision to dismiss the claimant some 11 months later.

ii. A complaint to the company by the claimant via her Union Representative, and subsequently to Wakefield Council, regarding various health and safety matters – alleged to be protected disclosures

67. Whilst the claimant raised the issue regarding complaints via her Union Representative, I heard very little evidence regarding that matter during the hearing. It was dealt with in the briefest of terms in the claimant's witness statement. The Union representative did not give evidence before me and the statement that was submitted by the claimant from her Union Representative did not deal with the matter at all.

68. In those circumstances I find that there is insufficient detail and insufficient evidence for me to conclude that any such disclosures that may have been made amounted to a protected disclosure.

69. In any event, it is worthy of note that during her closing address, the claimant explicitly stated that she felt that the issue raised by her Union Representative did not contribute to her dismissal. She stated, effectively that the real issue was the disclosure made to Wakefield Council.

Did the disclosures made to Wakefield Council amount to protected disclosures?

70. It was not disputed on behalf of the respondent that these disclosures amounted to a protected disclosure. On the evidence I have seen and heard, I also find that they did. I find that the claimant reasonably believed these disclosures were in the public interest. They tended to show a relevant failure by the respondent in terms of their legal obligations regarding health and safety legislation.

71. Having made that finding, I turn next as to the question of what role, if any, those matters played in the claimant's subsequent dismissal.

72. In similar terms to the findings I have already made with respect to the grievance, I note the significant time period between these disclosures and the claimant's ultimate dismissal.

73. I also find as a fact that there was a significant change in circumstances as between the disclosure of these matters by the claimant to the Council and the date of the claimant's dismissal, namely, the significant economic impact upon the respondent's business of the COVID-19 pandemic.

74. I accept the evidence given by both Ashley Crecraft and Bradley Crecraft in that regard. I find that the respondent's businesses were closed for several months from March 2020 which severely impacted upon both its profitability and potential viability. When they did reopen, in July 2020, they were subject to severe restrictions and I accept the evidence tendered on behalf of the respondent's regarding the position in terms of debt and cashflow, and that general discussions regarding potential cost-cutting measures had already

begun within the business as early as late 2019 and were ongoing in July 2020 after they had reopened.

75. I find as fact that these pressing financial matters were of much greater concern to the business throughout the relevant period rather than the claimant's disclosures. I also accept the evidence given on behalf of the respondent to the effect that it was not even definitively known by company that it was the claimant was responsible for the disclosures to the Council. In any event, even if the respondents suspected it to be the claimant, I find that the issues were effectively raised in September 2019 and fully dealt with to a conclusion by the Council by October 2019 at the latest, I also find, with no great consequence or detriment to the company in terms of either reputation, inconvenience or indeed cost. The later visit by the Fire Service in November 2019 can be characterised in the same way. I have seen no convincing evidence which leads me to conclude that the issues were ever substantively raised again by either party after that time. The extent to which they are raised again even within the claimant's own diary entries are limited to a passing reference in an entry for 19 November 19 (see page 124).

76. I also reiterate my previous findings above that the actions of the respondent towards the claimant after September 2019, in a general sense, were simply not compatible with what the claimant alleges, both in terms of the respondent's alleged attitude towards her, and the suggestion that that her ultimate dismissal was in any way attributable to these disclosures.

77. It follows that for these reasons, I conclude that the protected disclosures made by the claimant to Wakefield Council in September 2019 played no part in her subsequent dismissal in August 2020.

iii. A conversation the claimant had with Ashley Crecraft on 27 of July 2020 regarding VAT returns

Did the conversation amount to a protected disclosure?

78. While the fact of a conversation taking place is accepted by both parties, the exact content and nature of it is disputed between them. The claimant's version of the exchange appears at paragraph 19 of her witness statement. Ashley Crecraft' s version appears at paragraph 15 of his witness statement. I have also seen a diary entry produced by the claimant for 27 July 2020 which gives an account of the conversation.

79. I note that to the extent the claimant's witness statement states that "*I told AC that it was illegal and that I couldn't and wouldn't do things illegally*" this is not reproduced within the diary entry.

80. The diary entry suggests that the conversation took place in the context of a conversation about streamlining and the effect that this had had upon workloads. To the extent it describes the conversation and what the claimant

said to Ashley Crecraft, it states, "…. *I said that this is not how it's done for HMRC VAT we take the VAT from the system*." The entry later goes on to state "*I told AC… She (Sascha) has no formal qualification to lose. I must do things right by the letter of the law."*

81. There is clearly a distinction to be drawn between how things are or are not done for HMRC, and indeed doing things right "*by the letter of the law*", and an express allegation or the conveyance of information or facts the effect that something being done is unlawful or illegal.

82. On balance, in general, and also given these differences between the claimant's accounts of this conversation on different occasions, as well as the context in which it took place, I prefer the account given by Ashley Crecraft as to the events of 27 July 2020.

83. I find that the primary content of the conversation surrounded potential inefficiencies in the VAT process that was being utilised. I accept the evidence given and behalf of the respondent that was no suggestion by them of doing VAT in an unlawful way whatsoever, and instead, the conversation was about finding better ways to work. To the extent there may have been a disagreement between the parties, I find that this was borne out of a misunderstanding as to the best way to deal with VAT, and not because the claimant was effectively refusing to do something illegal.

84. Given that I prefer and accept the evidence of Ashley Crecraft with respect to this issue, it follows that I do not find that the conversation on 27 July 2020 amounted to a protected disclosure.

To what extent did the VAT conversation play a role in the claimant's dismissal?

85. Having made that finding, as before I turn next as to the question of what role, if any, those matters played in the claimant's subsequent dismissal.

86. The claimant relied heavily upon the timing of the discussion surrounding VAT compared to when the issue of potential redundancy was first raised with her i.e. 30/31 July 2020. She also raised the issue in the redundancy consultation meeting of 11 August 2020.

87. Nevertheless, I have already found as a fact that discussions surrounding cost-cutting had been occurring within the business throughout the period prior to this date, given the effect on the business of the COVID-19 pandemic. Given that the business reopened on 4 July 2020, I find that it would have taken the respondent to at least around the end of July 2020 to fully appreciate and to digest the financial effects of the ongoing restrictions upon their levels of trading and the viability going forward. The consideration of potential redundancies at that stage, I conclude, was a natural and logical extension of those earlier discussions.

88. I also accept the evidence of Bradley Crecraft and find as a fact that he knew very little about the VAT conversation until he took a call from Sascha Maude on 31 July 2020. I further accept his contention that, at the time, he thought the whole thing was nothing more than a trivial conversation between the claimant and Ashley Crecraft, and that when he later took the decision to dismiss in August 2020 (see page 189) he did not even know that the claimant was alleging that VAT returns were being, or that she was told they should be, completed illegally.

89. To the extent there was reference to issues of '*gross misconduct'* as within the meeting of 11 August (transcript: Velvet Bar/Velvet Bar 2) I accept the company's contention and the evidence as contained within that transcript (see from 29mins - 35mins) that this related to the claimant's telephone call to Sascha Maude on 31 July 2020, and not to the events of 27 July 2020. I conclude that, in any event, and as explicitly stated in the transcript, this issue was regarded by the company as a quite separate consideration from the issue as to whether the claimant's role should be absorbed or made redundant.

90. It follows from the above findings that I conclude that the conversation regarding VAT between the claimant and Ashley Crecraft on 27 July 2020 played no part in the decision by the respondent to dismiss the claimant subsequently.

Conclusions regarding the reason or principal reason for dismissal

91. The claimant contended that the real reason for her dismissal related to one or more of the issues discussed above i.e. that she had made protected disclosures or, (regardless of the exact status of the above matters, as protected disclosures or otherwise) that the matters relied upon by her had bred a hostile attitude on the part of the respondent towards claimant which had led to her dismissal.

92. The onus was on the respondent (by reason of section 98(1) ERA 1996) to show the reason for the claimant's dismissal. The respondent consistently claimed (in both correspondence to the claimant and before me) that there was a genuine redundancy situation.

93. On the evidence that I have heard and read, I am satisfied that the principal and indeed the only motivation of the respondent was a financial one. I find that they genuinely decided that, given the effects of the COVID 19 pandemic, there was a need to cut fixed and ongoing costs.

94. I further find, especially given Ashley Crecraft' s progressively increased role in bookkeeping matters throughout the period, that the respondent genuinely thought it may be possible to absorb the claimant's role.

95. Whilst I accept that the claimant may well subjectively, and perhaps even genuinely, believe that she was dismissed for the reasons that she relies upon in this claim, for the reasons outlined above, I find that there was no other evidence to suggest that one or more of those was the real reason for her dismissal.

96. I find that there is much force in the submission made on behalf of the respondent to the effect that the claimant was (as a matter of fact) offered an alternative role in August 2020, albeit on reduced hours. This fact alone is not consistent with the claimant's characterisation of the respondent company as, effectively, wanting her out of the company from September 2019 onwards and using all such means to achieve that aim.

97. In conclusion, in the circumstances, I find that at the material time, there was a genuine redundancy situation (per section 139 ERA 1996). Viewed objectively, I find that the most likely reason for the dismissal was redundancy.

98. For all those reasons, I was unable to conclude that the Claimant's dismissal was for any reason other than redundancy. There can be no dispute that redundancy is potentially a fair reason for dismissal.

99. I conclude therefore that the respondent has established, on the balance of probabilities, a potentially fair reason for dismissal in the form of redundancy. It was the principal reason for the claimant's dismissal pursuant to section 98 (2) (c) ERA.

100. It follows that I find that the claimant was not unfairly dismissed, or automatically unfairly dismissed, based upon any of the reasons alleged or relied upon by her (as identified as issues i.) a., b . and c. in the agreed list of issues, reproduced above).

Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

101. I remind myself that it is not for me substitute my own view at this stage. It is agreed between the parties that the claimant makes no criticism of the wider redundancy consultation process, or the process generally. I have of course already found that a genuine redundancy situation existed at the material time.

102. The claimant's sole contention in this regard is therefore that Sascha Maude, employed by the company on a self-employed, part-time basis, should have been the primary focus of any cost-cutting exercise that was undertaken by the respondent company. It is contended by the claimant that it was her (Ms Maude) that should have been dismissed/her services dispensed with, rather than either reducing the claimant hours or ultimately making her redundant.

103. In essence, in this regard the claimant claims what is sometimes called 'ordinary' unfair dismissal pursuant to s98(4) of the Employment Rights Act 1996 (rather than automatic unfair dismissal, as per her alternative claims pursuant to sections 103A and 105 Employment Rights Act 1996, already dealt with above).

104. I also remind myself that even if I conclude that dismissing and/or dispensing with the services of Ms Maude may have been an option, this does not necessarily render the claimant's dismissal by way redundancy unreasonable. It may be the case that both options were in fact reasonable in the circumstances.

105. The evidence regarding the respective positions, salaries and roles of the claimant and Ms Maude is not disputed. Ms Maude was contracted by the company on a self-employed basis for a total of 4 hours a week at £14 per hour i.e. £56 per week. She was contracted by a different entity rather than the respondent company, albeit it was accepted that it was still a cost to be borne by the business in a wider sense.The claimant was an employee rather than self-employed, and it follows that employing her also involved the payment of both pension contributions and national insurance. She was engaged for 21 hours week at a rate of £14.25 per hour, working hours an annual salary of £15,561 per annum.

106. It is obvious on even a cursory analysis, and I conclude and find as a fact, that the financial burden of employing Ms Maude cost the respondent company substantially less than employing the claimant. I find that a reasonable employer in the respondent company's position was entitled take that factor into account when considering what any cost-cutting measures should look like, and indeed where they should fall. I also accept the evidence of Bradley Crecraft, given in answer to questions put to him by the claimant, that letting Ms Maude go would not have had a significant financial impact upon the company in terms of reducing costs. Conversely, if it retained the claimant on her existing hours once furlough had ended, it would still be liable thereafter for the substantial cost of the claimant's wages.

107. I also note that the alternative contract that was offered to the claimant (and, in due course, was rejected by her) was for more hours than Sascha Maude was contracted for in any event i.e. 8 hours as opposed to 4.

108. It is also of some significance that during the furlough period at least, it was the respondent company's intention that the claimant was still to be paid for her full 21 hours as originally contracted. I accept the evidence of the respondent company that the purpose of the proposed new contractual arrangement was that 8 hours was simply a minimum, would be kept under review, and was effectively a mechanism to give them control over fixed costs and some flexibility once the furlough scheme had ended.

109. Whilst the claimant indicated in evidence that dispensing with Ms Maude's services could or may have led to the claimant being offered a 12 rather than 8 hours by way of an amended contract, I note that she fairly accepted this was never raised with the respondent company by her at the material time.

110. Further, on any view 12 hours would still have represented a significantly reduced contract in any event, with the claimant's principal contention with regards to her reduced hours (i.e. the reasons she gave for refusing them and the amended contract itself) being related not to that issue, but instead to issues surrounding continuity of service and the absence of those matters being expressed within the contract itself (instead, being contained within a letter of 18 August 2020 - see page 168).

111. I find as a fact that, as explicitly stated within the letter of 18 August 2020, the matters stated within that letter were intended by the respondent company to form part of the amended contract offered to the claimant. I further find that they did indeed did form part of the amended contract of employment offered to the claimant subsequently.

112. I find that in the circumstances, the respondent company fully and properly considered alternatives to immediate redundancy, which led to them offering the claimant reduced contracted hours - notably (and as evidenced by transcripts of the meetings of 11 and 18 August 2020) a suggestion initially made by the claimant herself.

113. I conclude that once the claimant rejected those amended hours and the associated amended contract, her dismissal by way of redundancy was within the range of reasonable responses. For all those reasons I consider that the respondent acted within the broad band of reasonable responses when they decided to dismiss the claimant by making her redundant on 21 August 2020.

114. It follows that I find claimant was not unfairly dismissed when she was made redundant by the respondent.

Employment Judge Rawlinson

15 September 2021