EMPLOYMENT TRIBUNALS

Claimant: **Mr M Castle**

Respondent: **Positive Energy Limited**

Heard at: **East London Hearing Centre (by Cloud Video Platform)**

On: **13 January 2020**

Before: **Employment Judge Moor**

Representation

Claimant: In person

Respondent: Mr L Varnam (Counsel)

JUDGMENT

The judgment of the Tribunal is that the claim of unfair dismissal is not well-founded and does not succeed.

REASONS

1 The claimant began his employment with the respondent on 31 January 2017. He was dismissed by reason of redundancy effective on 29 February 2020. He brings a claim for unfair dismissal, because he argues the reason for dismissal was not redundancy and/or the procedure followed was unfair

2 At the beginning of the hearing I clarified the issues in the case. I refer to the agreed list of issues at page 31 of the trial bundle. I have incorporated this list of issues into one that conforms to the legal principles as follows:

2.1 What was the reason for dismissal?

2.1.1 The Respondent contends there was a genuine redundancy situation.

2.1.2 The Claimant contends he was moved into a non-existent role, enabling the Respondent to manufacture a redundancy situation. And that a person was moved into the role vacated by the Claimant. (And see the additional issue below about the reason for dismissal).

2.2 If the reason was redundancy, was the dismissal fair or unfair, in particular:

2.2.1 Was it unfair not to establish a pool of employees vulnerable to redundancy?

2.2.2 Had the respondent decided to make the Claimant redundant before any consultation began? The Claimant relies on the distribution of a company structure on 31 December 2019 in which he will say his role and department were missing.

2.2.3 Did the Respondent adopt a fair redundancy process?

2.3 If a fair procedure had been adopted, can the Respondent show that the Claimant would have been fairly dismissed in any event and/or to what extent and when? (The Polkey question).

2.4 Was the ACAS Code of Practice on Discipline and Grievance engaged? If so, and if the Claimant was unfairly dismissed, should the Tribunal consider whether to increase or decrease any award it makes.

2.5 Has the Claimant reasonably mitigated his loss?

2.6 Was the Respondent under a statutory obligation to issue a new statement of main terms in September 2018 when the Claimant was appointed as General Manager (Ops) and again in July 2019 when he was appointed as Communications and Compliance Manager. If so, and the Claimant is unfairly dismissed, what award should be made in respect of this failure?

3 In addition, I identified from the claim form that the Claimant may also have an argument that the principle reason for his dismissal was because he had made protected disclosures. I explored this with the parties and as a result of those discussions it was agreed at the outset of the hearing to add a further issue to the claim as follows:

3.1 Did the Claimant make the following disclosures:

3.1.1 At the 6th bullet point of his claim form (14)

3.1.2 At the 10th bullet point of his claim form (14)

3.2 Were they disclosures of fact, which the claimant reasonably believed tended to show a breach of a legal duty, namely the direct debit

guarantee, and/or a fraud and/or a breach of Ofgem licensing conditions?

3.3 Did the Claimant make those disclosures reasonably believing them to be in the public interest?

3.4 Was the principal reason for dismissal that he made one or both of those disclosures?

Late Disclosure of Documents

4 Part of the Claimant's argument was that he had been put in a soon-to-be obsolete role 6 months before his dismissal. He argued that in those 6 months two new employees were appointed who either ought to have been in the same pool as him or whose jobs he should have been considered for in the light of his impending redundancy. They were Mr M Metcalfe and Mr N Daniels. He sought disclosure of documents showing their job description and the dates of their appointment. EJ Lewis ordered this disclosure. The Respondent's solicitor then informed the Claimant the documents did not exist. (I do not accept Mr Daniel's evidence that the documents were not disclosed because of a 'clerical error': the Respondent's solicitor's response was clear and is likely to have been made on his client's instructions.) However, when Counsel, a week before the hearing asked about disclosure again, the job descriptions were disclosed. It was only on the morning of the Tribunal, upon my query about documents showing the date of the appointments, that the offer letters sent to those individuals were produced. It is clear to me that the Respondent did not take its responsibilities to comply with EJ Lewis' disclosure order sufficiently seriously, given how easy it was for Counsel and myself to ensure the production of the documents. Disclosure obligations in the Tribunal are important and not to be disregarded, whether or not a specific disclosure order has been made.

5 In his closing statement, the Claimant indicated if he had received those job descriptions and offer letters earlier he would have been able to consider his position in relation to the litigation. The question whether those individuals should have been in the same pool and the date when they were offered their roles were both important aspects of his claim. He had a reasonable suspicion that both men had been offered jobs before his change in role. I will consider any application the Claimant wishes to make in relation to his Preparation Time under Rules 75-77 of the Employment Tribunal Rules 2013 to be found at Schedule 1 of The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

Findings of Fact

6 Having heard the evidence of the Claimant, Mr S Daniels, Chief Sales Officer, Mr N Bhatia, Chief Executive Officer and Miss L Rozier, HR consultant, and having read the documents I have been referred to, I make the following findings of fact.

7 The Respondent is a license supplier of gas and power. It purchases power from the grid and sells this to predominantly business customers via energy brokers.

8 There is no dispute in this case that the Claimant was a valued employee. He had excellent performance and clear commitment to his work. He was the Respondent's first member of staff in the UK and instrumental in developing the business here.

9 The Claimant began his employment as a Partner Account Manager. In those early days, the Respondent was a start-up energy company. His job was to establish and increase relationships with energy brokers. The Claimant was provided with a written statement of terms and conditions of employment.

10 The Respondent grew and gained new UK staff. In August 2018 the Claimant was promoted to General Manager (operations) a role which oversaw the running of the office including managing staff. He had already in fact started doing this work. The Claimant's written particulars of employment were not updated to reflect this new job title.

11 In about June 2019, the Claimant heard that the Respondent was in negotiations with Shell Energy Europe with a view to entering into an exclusive trading agreement. This was a big step in the company's growth. These negotiations took several months.

12 After discussions in mid-July 2019 between the Claimant and Mr Steve Daniels, one of the owners of the Respondent and its Chief Sales Officer, the Claimant's role changed so that he became Communications and Compliance manager (the C&C role). Mr Daniels gave evidence that this came about because the Claimant had told him he was unhappy in the office management role, in particular because he had to deal with staff management. The Claimant disputes this. His evidence was that he had a conversation with Mr Daniels in which he raised his unhappiness that directors were not consulting sufficiently with staff. He is clear that he did not say he was unhappy in his then role. On the balance of probabilities, I prefer the Claimant's evidence: he is more likely to remember what concerned him at the time. Further, the Respondent's ET3 asserts that the new role 'had many similarities with his old role' and therefore it does not seem plausible for Mr Daniels to state that he moved the Claimant to it because he had been unhappy in that old role.

13 In my judgment, the main reason for the move to the C&C role was probably to recognise the greater communications role that the Claimant had already taken on. From the Claimant's written and oral evidence, he already had the responsibility of overseeing partner and customer interactions. As to the compliance part of the role, it is likely that, given the company's growth, a formal compliance role was needed internally and it was perhaps obvious that this should be the Claimant, given he had already been listed as the company's GDPR Officer and Data Communications Senior Responsible Officer. But it was also agreed between the parties that the Claimant did not have extensive technical experience in this area. This is why, in the email exchange at 69-71, it was obviously Mr Daniels' intention from the start that an external consultant, Ms Thorpe, should assist the Claimant with the technical aspects of this role. It was also agreed he should receive training, but this did not happen.

14 As the content of this role is an important feature of the Claimant's case I set it out below. The key contemporaneous evidence comes from the Claimant's email and Mr Daniel's response.

14.1 The Claimant sent an email on 15 July 2019 (69-72) in which he queried

various aspects of the proposed new C&C role. In relation to compliance and any changes in it he was told by Mr Daniels that Ms Thorpe would assist him.

14.2 From this email it is clear the Claimant was to write company policies but that this work would reduce over time.

14.3 It is also clear he would continue to work on complaints. The Claimant saw this as a heavy time commitment and, to an extent, this was acknowledged because Mr Daniels informed him he could have help if required. This is the non-standard communications referred to below.

14.4 In relation to 'comms' he told Mr Daniels, again, that this was a large time commitment involving reviewing company communications, making them current and amending them. These were the standard communications referred to below.

14.5 Overall, in the email, the Claimant was concerned that the role might be too much for him, especially if the office management duties still came to him. The original plan, therefore, was that Mr Daniels would undertake those office management responsibilities.

14.6 In July 2019, Mr Daniels stated in his response to the email that he did not see the role increasing whereas the Claimant was concerned it was too large a role. What struck me about Mr Daniels' oral evidence was that, in going through what this email meant, he minimised the role. From the start, Mr Daniels did not see that there was a great deal of longevity in the compliance side of the role. He saw the writing of policies as a one off and the technical aspects of compliance were always going to be covered by Ms Thorpe. Also, in my judgment, Mr Daniels already knew that much of the standard communications work was being done by the intelligent software that was already in place and, because it was a smart system, this would be developing. Nevertheless the non-standard communications/complaints work at this stage was viewed by the Claimant as being a heavy time commitment and Mr Daniels did not disagree and acknowledged that he might require help. Plainly, even from Mr Daniels point of view at the time, the role had some tasks in it that required an ongoing time commitment. I do not therefore find that he planned or foresaw, at the start of the C&C role, that it was to become obsolete.

15 The Claimant's terms and conditions were not updated to reflect his new job title.

16 What happened in fact was that the Claimant continued to deal with many aspects of the office management role, as the ET3 asserts. I find that Mr Daniels would delegate those matters to the Claimant.

17 In July 2019, the Claimant raised concerns that the Respondent had reinstated cancelled direct debit to the value of £300,000. He challenged the legality of such action

as he believed that it contravened the Direct Debit Guarantee and that it also may have been fraud. Mr Daniels accepts that the Claimant raised this concern and challenge. Both he and Mr Bhatia, Chief Executive Officer, are clear that they congratulated the Claimant for doing so. I have asked myself whether the owners of the business would have responded so gladly to this intervention, given that it cost the company a significant amount in turnover. But having heard them both, I accept their evidence, which was not strongly challenged by the Claimant. Nor is it clear from the evidence when this incident occurred in July 2019. It seems to me more likely that the Claimant raised these issues after his change in role. This is because it would have been part of his new compliance role to do so. Had he made this challenge and very soon afterwards been moved to a different role, I find he is likely to have remembered such a coincidence. In my view therefore the change in role did not relate to the Claimant, quite properly, raising the direct debit issue.

18 After the late disclosure, it is now clear that Mr Metcalfe was sent an offer letter of employment as Head of Sales on 16 September 2019. The offer letter refers to a 'recent meeting'. I therefore do not find that the Claimant's suspicions about this employment having been arranged as early as June 2019 to be made out.

19 Mr Metcalfe was not employed as office manager. He was employed because he had 19 years of specialist experience in 'flex' contracts. The late disclosure of the job description confirms this. This was not an area that the Claimant had expertise in. Mr Metcalfe would be working at home and out on the road. At that time the Claimant did not have a driving license, so would not have been able to do significant parts of this role.

20 In September 2019, the Claimant highlighted that certain of the Respondent's policies breached Ofgem licensing conditions because, in his view, they were being under-recorded. Mr Daniels denies that the Claimant raised such concerns. I have not had to decide this question because the Claimant does not consider it was the principal reason for his dismissal. In any event, it definitely came after the move to the C&C role, which he contends sealed his fate.

21 Mr Nathan Daniels was offered employment as an External Account Manager with the Respondent on 29 October 2019. Mr Steve Daniels explained that, once the deal with Shell became more certain, they decided it was necessary to have an additional external account manager in the business. This was so that they would have 2 internal and 2 external account managers: two in the office and two out in the field in the South of England. The timing of his appointment therefore suggests the Shell deal was looking much more certain in the autumn of 2019. (In his evidence on the morning of the hearing, before this letter was produced over lunch, Mr Steve Daniels stated that an offer was made to his brother in June 2019. I find that the brothers were likely to be having informal conversations about this possible role for many months as the Shell deal progressed, but that the offer was not made until October 2019 once it became more certain.)

22 On 31 January 2019, Mr Bhatia circulated a document titled 'Highlights of 2019' among the staff. This did not mention the Claimant by name. Mr Bhatia asserted that the 'team overview' (83) was not an organisation chart of the company. It does not identify everyone by name but does purport to be a chart of the team's organisation. Ms Thorpe is identified as a new member of the 'advisory team'. This is because Mr Bhatia says she was an outside consultant and the company wished to show it had good connections to

external technical expertise. I accept this evidence. Mr Metcalfe is named, although he had not yet begun at the company, but I find that is because one of the highlights of 2019 was also to have secured his employment as a specialist. Mr Bhatia's evidence was that the Claimant is counted on the overview as a 'Partner Manager'. But this makes little sense, because the Claimant had not held that role for some time and had been promoted from it. I do not accept Mr Bhatia's evidence about this. So surprising was the Claimant's omission from the Team Overview that it was commented upon by colleagues.

23 The Claimant relies on his omission from the 'team overview'. It came two weeks before he was warned he was at risk of redundancy. He reasonably questions whether this means a decision had been reached about his departure before the consultation began. I will go on to set out the remaining evidence before reaching a conclusion on whether there was a pre-decision.

24 On 6 January 2020, the Shell contract was signed. This was worth £250 million and was a very significant step for the Respondent. One of the last documents agreed was Shell's corporate governance terms, which stated the Respondent had to adhere to Shell's ways of working. The compliance picture therefore significantly changed. The Respondent had to adhere to Shell's licensing conditions. Mr Daniels and Mr Bhatia concluded it would be better simply to outsource this work to a specialist, particularly as the Claimant did not have the expertise to do this more specialist compliance work.

25 Also on 6 January 2020, the Respondent contacted Miss Rozier, an HR consultant, to advise them on the Claimant's position. Mr Daniels explained to her that the C&C role had reduced because of the new deal with Shell, which required the input of an expert. And because communications were now more and more automated through a computer system. Miss Rozier advised Mr Daniels on the redundancy consultation process to follow but took no part in it. She queried whether information could be given on planned cost savings.

26 The Respondent prepared a rationale for potential redundancy (98) that makes three main points:

26.1 The Shell contract made a significant difference to compliance. The team had '*come to the decision that as a company we do not have the skills and experience to adhere to those… standards internally and as such feel the best course of action … might be to outsource these obligations to a third party who understands what is required'*. This would also reduce risks.

26.2 The board was considering outsourcing the creation of communications to a third party and the system would autogenerate messages, reducing the need for communications to be manually generated.

26.3 This outsourcing would also lead to significant cost savings. These were not estimated in any way.

27 Mr Daniel's evidence to me, which I accept, was that the computer system they used for communicating with partners was a machine learning system that meant that

more and more of its communications could be automated. With this in mind, the board had considered that the creation of communications' content could be outsourced, which was part of what the Claimant did. The Claimant contended and I accept that part of his role was to deal with non-standard communications like complaints. He explained in some detail what this involved. I therefore do not accept Mr Daniel's evidence that this amounted to only a handful of emails a month: it was occasionally a feature of Mr Daniel's evidence to make broad-brush remarks.

28 The Claimant argues that Mr Daniels' rationale for the proposed redundancy was not new in January 2020: rather at the time Mr Daniels created the new C&C role, he would have foreseen that it would soon become obsolete because of those reasons. This is because the intelligent system used internally by the company was constantly being updated to automate communications as well as ensuring that they were compliant with the relevant licensing provisions. This had not changed. It was also because he contends Mr Daniels knew that the agreement with Shell was soon to be in place, which would reduce the need for internal compliance manager. As much as I have sympathy with this view, I accept that was likely only near to the time of the signing of the corporate governance agreement that the impact on all of the Respondent's compliance work became obvious to the Respondent. I accept their evidence that the commercial aspect of the deal was the issue uppermost in their minds during 2019, rather than the corporate governance aspect of it. It was only once the corporate governance issues became clear, likely in late in 2019, that it became clearer that outsourcing compliance as a whole might be the best approach. This makes sense, because it had been accepted that the Claimant could already rely on technical consultancy for compliance and, after Shell this would become more so. While at the time of the change of role Mr Daniels expected the compliance part of the role to diminish, then it was not to nothing. I also accept that the idea to outsource communications followed on from the proposal to outsource the compliance work fully and a realisation of how much could now be done by the automated system. This is not to say that the Claimant was not doing the non-standard communications, but rather that the proposal was that they were to be outsourced. At the time of the change in role there had been Mr Daniels had not thought of outsourcing either standard or non-standard communications this came later.

29 When did this proposal for redundancy come about? Miss Rozier was contacted on 6 January 2020. The Shell deal was signed on that day. In my view it is more than likely that the corporate governance aspect will have been known before the signature day, in late 2019. There is a Team Overview dated 31 December 2019 that does not include the Claimant whether by name or job role. That Team Overview mainly looks back at 2019 but it does look forward by including Mr Metcalfe who had not yet started. But it did not include everyone by role or name, and therefore I cannot infer too much in an omission from it. It may well be that the Claimant was omitted from the Team Overview because Mr Bhatia had discussed redundancy of the Claimant with Mr Daniels. But I cannot infer from the omission that they had reached a decision about this. They discussed the matter on the phone, as they were used to doing. It is odd that there is no correspondence internally at all about the proposal until the rationale but not so odd, given their practice, that I can draw inferences from this. From what Mr Daniels told Miss Rozier she was still able to advise him that a redundancy consultation process should take place. Weighing all of these matters in the balance, I find that no firm decision to make the Claimant redundant was made before the consultation process began.

30 On 15 January 2020 the Claimant met with Mr Daniels and Mr Bhatia, Chief Executive Officer, he was handed a rationale for potential redundancy (98). The Claimant was too emotional to respond sensibly at this meeting and said he needed time to go away and consider the matter.

31 The Claimant sent the Respondent an email in which he suggests he asks questions (104). But I agree he does not ask questions of the Respondent. He made the following points:

31.1 He stated it is 'nigh on impossible' 'to make a counter argument to the 'perceived cost savings' of outsourcing the communication part of his role. By using the word 'perceived' he was querying that there might be cost savings, but this was not clear and in my view it was probably reasonable for the Respondent not to pick up on this unless the Claimant had made his position clear or had asked in terms about cost savings, which he did not.

31.2 On communications, the Claimant argued in his email that no third party would be able to offer his experience and insight. This was an important point: he was doing non-standard communications and he was making the argument that standards may fall through outsourcing his work to individuals without his internal knowledge.

31.3 He acknowledged his lack of expertise to fulfil the compliance role, partly due to lack of training.

31.4 He asked about alternative job roles.

32 I therefore do not accept Mr Bhatia's evidence that the Claimant had accepted the rational: he made one significant point about the loss to the company of his internal experience.

33 The parties met again on 22 January 2020. The only evidence of any response to the Claimant's response is the notes at page 108. There the Respondent noted that it had reviewed *'outsourcing comms and number of actual comms that go out i.e. several and some will be/could be automated and outsourced'*. The Claimant asked no further questions and made no further points.

34 A further meeting took place on 27 January 2020 and at this the Claimant did not raise anything further. He felt that a decision had been reached.

35 Unfortunately, the only available employment with the Respondent was as a customer service representative and both parties agree this would not have been suitable to the Claimant.

36 The Claimant was dismissed by reason of redundancy by letter of 28 January 2020. He was given the right to appeal but did not take up this opportunity.

37 The Claimant suggests, the Respondent ought to have been considered for the two

roles that were appointed to in 2019, Mr Metcalfe and Mr Nathan Daniels. But I accept the Respondent's contention that these roles were not ones that were suitable for the Claimant. He could not drive so could not do the external partner manager; and he was not a flex contract specialist.

Law

38 A redundancy situation exists where an employer's requirements for employees to do work of a particular kind cease or diminish. It is not therefore a question of whether the work ceases but whether as many employees are needed to do the work. Beyond whether it was a genuine redundancy, it is not for the Tribunal to question the business rationale for, for example, a decision to outsource or a decision to save costs even in a time of profit.

39 If a genuine redundancy situation is the reason for redundancy, section 98(4) of the Employment Rights Act 1996 requires me to consider whether the dismissal was fair or unfair. In assessing fairness, I cannot substitute my own view of what I would have done: I apply the test of reasonableness. I must consider whether the procedure adopted fell within a range of procedures a reasonable employer could have adopted.

40 A fair procedure in a redundancy situation generally requires before a final decision is made: warning the employee that he is at risk of redundancy, and genuine consultation. Genuine consultation is the making of proposals and giving an employee an opportunity to respond to those proposals and genuinely considering that response.

41 In assessing fairness I must consider the procedure as a whole. Thus an early failure to consult might be overcome by an opportunity for the matter to be given further consideration later on, for example in an appeal.

42 In relation to remedy, I have to consider whether the employee has reasonably mitigated his loss. I also apply the *Polkey* question, which means that I consider, if a fair procedure had been followed, whether there was a chance the dismissal would have occurred in any event.

43 If I find unfair dismissal then I can consider increasing the award in respect of any failure to provide written particulars of employment. But this is not a stand-alone head of claim: an award only follows if there has been an unfair dismissal.

44 The ACAS Code of Practice on Discipline and Grievance does not apply to genuine redundancy situations.

Application of facts and law to issues

What was the reason for dismissal?

45 The main thrust of the Claimant's case is that there was no genuine redundancy situation here but that he was manoeuvred into one by the change in his role in July 2019. He contends, at that point, the Respondent could foresee that soon, because of automation and the Shell contract, his role would be diminished. I have every sympathy

with why the Claimant has reached that view. But, having carefully considered the matter, I have reached the conclusion that Mr Varnam is right in his intelligent submission that this is a view reached with the benefit of hindsight.

46 I repeat my findings of fact about this issue at paragraph 28. As far as compliance goes, it was indeed likely the role would reduce, but not as much as once the Shell deal had been concluded. In July 2019, it was not certain that the Shell negotiations would be successful and, even if the company was optimistic about them, so as to let some staff know, at that stage Mr Daniels was focussed on the commercial aspects of the deal. Further, that Mr Nathan Daniels was not employed until October 2019 supports the conclusion that there was not sufficient certainty about the deal. In relation to the communications part of the role, the Respondent changed its view of how those were to be managed once it had decided to outsource compliance, not before. It is also a factor in my judgment that the Claimant himself, at the time the role was created, thought it was a job that might be too large for him to undertake.

47 I have found as a fact that the direct debit intervention and the concern raised about complaints were not the reasons for the Claimant being moved to a new role. Nor do I consider that they were the principal reason for the dismissal. My findings of fact show that in my view the Respondent did decide, for genuine reasons, to outsource two important features of the Claimant's role: compliance and communications and it was for this reason that he was made redundant.

48 There was a genuine redundancy situation here because, by outsourcing parts of the role, the Respondent had a diminished need for employees to do work of a particular kind. This is so even if parts of the job remained to be done internally.

49 I therefore conclude that there was a genuine redundancy situation here and redundancy was the reason for dismissal.

Protected Disclosures

50 It follows from my decision about the reason for the dismissal that the alleged disclosures were not the principal reason for dismissal. I do not therefore need to make findings as to whether they were protected and qualifying disclosures.

Was the dismissal fair or unfair, section 98(4)

Pool?

51 I conclude that it was reasonable for the Respondent to adopt a pool of one here. This is because the Claimant was in a specific role. No one else undertook that role. I refer to my findings of fact at paragraph 37: for the same reasons it would not have been reasonable to include Mr N Daniels or Mr Metcalfe in the pool: they had different jobs.

Pre-decision?

52 I have found as a fact that no firm decision to make the Claimant redundant was made prior to consultation.

Consultation

53 I have had more trouble in deciding whether the process adopted was a reasonable one or whether it merely showed the Respondent 'going through the motions'.

54 Certainly the Respondent warned the Claimant he was at risk of redundancy and told him there would be a period of 'consultation'. But consultation is more than a meeting or meetings given that label. Here the Claimant was given the rationale for the redundancy and several opportunities to respond to it. However, did the Respondent genuinely consider his response?

55 While the Claimant did not say much at the meetings, he had provided his response to the proposal in writing. He made a significant point about the loss of his internal experience and insight. The response to this point at the second meeting was short but meaningful: the Respondent had reviewed communications and was still of the view that many could be automated. This at the very least shows that the Claimant's point had been considered albeit rejected.

56 Unfortunately, in my view, the Claimant had not worded his query about cost savings sufficiently well for it to be reasonably understood as a query. And the Claimant had plenty of opportunity to make further representations about cost savings whether verbally or in writing which he did not take up: at the second and third meetings and at the appeal. If he had wanted more information about cost savings he could have asked.

57 Overall, therefore, the process was reasonable. A good employer might have wanted to provide more detailed information about proposed cost saving, but some rationale was given and the Claimant asked no more about it. The Respondent had shown that it had read his email and made points, albeit briefly, in reply to it which shows that they had considered his response. A good employer might have wanted to respond in more detail. The further limited nature of the consultation was because the Claimant did not involve himself in it after his first email. He had plenty of opportunity both verbally and in writing to do so: he could have sought further information or pressed the Respondent on why his internal expertise was not still needed to deal with complaints. He chose not to do so. Overall, therefore albeit with some reservation, I conclude that the procedure was one a reasonable employer could have adopted.

58 It follows that the unfair dismissal claim is not well-founded and does not succeed.

59 I do not therefore need to decide the other issues.

Employment Judge Moor
Date: 18 January 2021