



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Ms. Grace Reginiano

V

Anglo Israel Association

**Heard at:** Watford, in person and by CVP      **On:** 20 and 21 April 2023

**Before:** Employment Judge Daley, sitting alone

**Appearances:**

**For the claimant:** Mr Andy Pickett -counsel  
**For the respondents:** Ms Courtney Step-Marsden - counsel

## RESERVED JUDGMENT

(i)The claimant’s claim for unfair dismissal fails and is dismissed.

## REASONS

**The claim**

1. In these proceedings, the claimant claimed that she was unfairly dismissed by the respondent.
2. The Claimant was employed as an administrator by the Anglo Israel Association (the respondent) (“AIA”) an independent charity whose purpose is to promote a wider understanding of Israel in the UK.
3. The claimant was employed from 12.05.12 to 16.03.22 for 32 hours a week. On 16 March 2022 the claimant received notice of termination.

4. The notice stated:- “Following the consultation process we have conducted, which included a first meeting with you on 28 February and thereafter the moderated process adopted on your behest, I am writing to confirm that the Company has decided to make you redundant... The Company is therefore terminating your employment with immediate effect in accordance with clause 11 of your contract of employment by reason of redundancy. You will receive your pay and benefits up to today in the normal way.”
5. The claimant’s claim was that her dismissal was unfair as she was dismissed for reasons other than redundancy within the meaning of section 139 of the Employment Rights Act 1996 (“ERA 1996”).
6. On 21 March 2022, the claimant formally appealed against the letter of dismissal. On the 16 May 2022, the claimant was informed by letter, that her appeal against the redundancy was not upheld, and the decision to make her post redundant was confirmed. The claimant had also taken a grievance against the respondents which was also dismissed by a separate letter of the same date.

### **The procedural history**

7. The claimant applied for ACAS early conciliation on 29 April 2022. On 16 May 2022 the early conciliation period ended.
8. The claimant issued her claim for unfair dismissal on 30 June 2022. On 30 August 2022, following an application being made, and granted, for an extension of time to file their ET3, the respondent filed their reply.
9. The claimant’s claim was listed to be determined on 20 and 21 April 2022. The respondent made an application to the Tribunal for the hearing to be postponed on the grounds that one of their witnesses was unable to attend the hearing due to medical reasons. The request for a postponement was denied, however the Tribunal in its order, stated that the witness could attend by video. On the morning of the hearing the tribunal had to make the administrative arrangements necessary for the hearing to be conducted as a hybrid hearing so that the witness would not need to attend in person. This meant that the hearing was delayed and started late.
10. The parties also made a request, to me that the claimant who was due to give evidence on the second day, and both counsels be permitted to attend remotely. That request was granted, and the second day of the hearing was attended by all the parties who attended by video link.
11. Due in part to the delayed start on the first day of the hearing and to insufficient time to deliberate and issue judgement. I informed the parties that the hearing was adjourned, and judgment would be reserved.

## The Issues

12. This case had not been listed for a case management hearing, and there was no agreed list of issues. However, I have set out the issues, as I understood then to be, and which I consider relevant, to reach my decision.
- What was the reason (or, if more than one, the principal reason) for the Claimant's dismissal? Was the reason for dismissal potentially fair within the meaning of s 98 ERA 1996?
  - Was the reason Redundancy (the Respondent's case); or
    - Some other substantial reason
  - If so, was the dismissal fair or unfair having regard to s 98 (4) ERA 1996?
  - The Claimant asserts that her dismissal was unfair. As she claims that her dismissal was for some other reason other than redundancy.
  - What was that other reason, and was it a potentially fair reason having regard to s 98 of the ERA or was it unfair,
13. A procedural point was taken on the respondent's behalf as at the hearing. The claimant asserted that she was dismissed because her sister, who was the managing director of the company was dismissed for gross misconduct. The claimant believed that the respondent's perception was that this would cause a conflict with the claimant continuing to work for the respondents, and that this, rather than a redundancy was the principal reason for her dismissal.
14. The respondent's position was that this was not set out in the ET1, and as such a sub issue was whether it was unfair to allow the claimant to rely on this ground or whether the respondent had sufficient information in the ET1 and the particulars of claim of this issue.
15. I have also identified the following sub-issues, whether the consultation process followed by the respondent, was unfair; having regard to the size of the organisation and administration resources of the AIA.
16. Whether if the process followed by the AIA, is found to amount to procedural unfairness. *Polkey* should be applied, and if so to what extent?

## **The Hearing**

### **Attendance**

17. The hearing (which was a hybrid hearing), was held on the two dates listed above, Ms Reginiano attended in person on the first day, and by video link on the second, also in attendance was her representative Mr Andy Pickett counsel. The respondent company was represented by Ms Step-Marsden, counsel, also in attendance was Ms Sahi, solicitor (in person) and Ms Harriet Smith (video link).
18. The following witnesses also attended on behalf of the respondent Mr Daniel Kessler (in person) Ms Beth by video link and Professor Daniel Hochhauser, also by video link for the respondent who all gave evidence on the first day.
19. The claimant gave evidence by video link on the second day. All those who attended on the second day attended by video-link.

### **The Background**

20. The claimant was employed by the respondent on 12.05.12 until her dismissal. At the start of her contract, in 2012 she provided day to day administrative duties; however it is common ground that by her dismissal she also performed the following duties: research for events, administration of scholarships, editorial assistance with the AIA magazine, administration of AIA events and attendance at AIA events. This included the AIA fund raising dinner, and what was described as round table events, which involved experts from Israel and the UK in discussions of the professional practices used within their respective countries.
21. The Respondent was initially one of three employees, and she was employed on a part-time basis. However, following the retirement of one of the two colleagues on 2 July 2018, the claimant's hours were increased, and she undertook a larger part of the responsibilities for administering the scholarships. At the time of her redundancy the claimant was employed on a contract of 32 hours a week.
22. At the relevant time, the AIA had two employees, the claimant, and the second employee who was the Executive Director("ED") of the AIA, Ms S, who as well as being the ED was the claimant's sister. The claimant also provided the ED with administration support.
23. The AIA is a charity run organisation which is led by volunteers, who make up the Corporate Trustees from whom the Executive committee is drawn.
24. In March 2020, due to the Covid Pandemic the activities of the AIA ceased, and the claimant was put on furlough. The claimant returned to work at the end of the furlough scheme.
25. A brief chronology of the key events leading up to the termination of claimant's employment is as follows:-

26. On 2 November 2021, a corporate trustee's meeting was held at which the trustees discussed the Executive Committee proposed strategy, amongst the matters raised was "a diminished requirement" in the workload of the claimant. The committee resolved to start a redundancy process in relation to the claimant Ms Reginiano.
27. On 7 February 2022 at a board meeting attended by Mr R Bolchover, Professor D Hochhauser, Mr Kessler and Mr Reeve. The minutes of the meeting recorded amongst other matters that "It was therefore determined to start the process of possible redundancy as soon as SK had provided the minor clarification sought in relation to its advice."
28. On 24 February 2022, Ms Dee Beth telephoned the claimant introducing herself as the honorary treasurer of the AIA, (neither Ms Beth, nor the claimant had met before in their respective capacities in relation to the AIA, as Ms Beth had been appointed during Covid). The telephone call was predominantly to inform the claimant of the possibility of redundancy. Her telephone call was followed up by a letter of the same day. The letter proposed a meeting to discuss the redundancy on 28 February 2022 at 9.30am.
29. By an email of 24.2.22 the claimant asked for the meeting to be postponed. There was subsequently a follow up email from Ms Beth, and the claimant took issue with the tone of this email.
30. On 28 February 2022 at 4.30pm the meeting took place by Zoom, this was initially attended by the claimant, and Ms S (who was also in the office when the meeting started). Also present along with Ms Beth, was Ms Dingle (who was present to take notes.) At the request of Ms Beth, Ms S left the office, and the meeting took place in her absence.
31. On 1 March 2022 a copy of the notes of the meeting were emailed to the claimant.
32. A meeting was arranged for 2 March 2022, the meeting was postponed.
33. On 9 March 2022, the claimant responded to the redundancy proposal, setting out details of her workload, she also set out that the process had affected a pre-existing medical condition, and requested that the redundancy consultation should continue by email.
34. On 12 March 2022, Ms Beth responded to the matters raised by the claimant and agreed that the consultation would continue by email. A further meeting was arranged for 15 March 2022 by zoom, the claimant indicated that she could not attend due to health reasons.
35. On 15 March 2022 Ms Beth responded to the email and replied to the matters raised by the claimant.
36. On 15 March 2022, the claimant raised a grievance in relation to the redundancy process.
37. On 16 March 2022 Ms Beth sent formal notification of redundancy

38. On 21 March 2022 the claimant appealed against the decision.
39. On 5 April 2022, Professor Daniel Hochhauser one of the trustees wrote to the claimant to let her know that he would be dealing with her appeal.
40. On 16 May 2022, Professor Hochhauser provided a response to the appeal against redundancy by email of 17.05.22.
41. On 17 May 2022 Professor Hochhauser provided a response to the grievance. The claimant's appeal and grievance were not upheld.
42. I have not set out the full details of the correspondence between the parties, neither have I included every correspondence included in the bundle in the above chronology, as I have set out the matters necessary to understand the facts. However, where I have considered the correspondence in my decision, I have set out further details below.

## **The Evidence**

### **The Respondent's evidence**

43. At the hearing, I heard from the Respondent's witnesses who set out the circumstances which they relied upon for the claimant's dismissal.
44. I heard from Daniel Kessler who as well as being a trustee of the AIA was the CEO of the Met Group. His evidence in chief was set out in his witness statement which was signed and dated 13 April 2023.
45. In his witness statement he explained the structure of the respondent, AIA's organisation. He set out those members who formed the corporate trustees at the relevant time, and that underneath the corporate trustee sat the executive committee, who acted as an advisory body.
46. He stated that members of the corporate trustee, were tasked with ensuring that the organisation met its objectives and remained financially viable.
47. He referred to the meeting which took place on 2 November 2021, he relied on the minutes of the meeting which stated that " It was noted that the Covid pandemic and technological changes had resulted in changes in the nature of events and other things the Association had provided, diminishing the requirements to do some of the work it previously had, whilst increasing or changing other aspects."
48. He referred to the resolution which had been agreed to start a potential redundancy process in respect of Grace Reginiano, the claimant. He stated that this was due to a reduction in the type of work grace was undertaking. He referred to the fact that there were only two employees, and, in his witness statement, he distinguished the role

undertaken by the claimant which he referred to as providing administrative support to Mrs S. As well as assisting with the annual dinner and the more complex nature of the role undertaken by Ms S, in that they did not form a pool for the basis of redundancy. In his evidence, he did not set out the full duties undertaken by the claimant, however a contract and job description were within the bundle, and there appeared to be no substantial dispute about the range of duties, although there was a disagreement about how long the duties took to perform, in relation to the scholarships.

49. In his evidence he explained that a Mr Pinto, had been a benefactor to the AIA until his death, he did not set out exactly when this occurred, however he believed that this was before the start of the pandemic, possibly in 2019. This had affected the financial position of the AIA as Mr Pinto had been a substantial contributor to the charity. Although he provided a legacy to the organisation, there were issues around this legacy and how it could be used which affected the finances of the AIA. He set out that at the time of the claimant's redundancy, the belief was that only the interest rather than the principal sum could be used to fund the work and administration of the AIA.
50. He did not accept that the redundancy situation had been a sham. He set out that since the claimant's redundancy the organisation had been effectively dormant. Additionally he stated that there had been no requirement for the role, as the organisation had not had an annual dinner or produced a magazine which he stated was the main requirements of her role.
51. In cross examination he was unable to state exactly when advise was taken concerning the potential redundancy situation. However, his evidence was that he believed that advise would have been sought prior to the meeting. He accepted that there was no consultation which occurred at that time in November 2021. He stated that this was because there was only one potential candidate for redundancy.
52. He accepted that he had not visited the offices of AIA in which the claimant worked, as meeting of the trustees were normally held in Mayfair prior to the pandemic.
53. He was asked about the decision to cancel the dinner, which was the main fund-raising event, which the claimant believed was in part responsible for the loss of income for the AIA. He stated that the demographics of those who attended the dinner was in the upper age quartile and that at that point in time, Covid had meant that they were more cautious in attending physical events such as a dinner.
54. He accepted that there were still some activities which were on-going which required administration such as the awarding of scholarships and work for conferences such as a conference on artificial intelligence. However, he did not accept that this work would have been sufficient to enable the organisation to be financially viable or to keep the claimant in a part-time role.
55. He briefly discussed the position concerning the ED, Ms. S, he accepted that she was not consulted about the claimant's redundancy. He also set out that given the ED's role it was considered inappropriate for her to attend as a friend on behalf of the claimant during the redundancy consultation.

56. He stated that there were only two employees within the organization, however, although he accepted that there was work being undertaken, such as managing the social network for the AIA and an on-going project on Artificial Intelligence, he denied that the work for this was being carried out by the claimant. He did not consider that this work would have been sufficient to justify the claimant's retention as an employee even on a part-time basis.
57. Ms Deidre Beth gave her evidence by video link, her evidence was contained in her witness statement which was signed and dated 13 April 2023. Ms Beth had dealt with the redundancy process which the AIA followed.
58. She set out that following the November meeting of the trustees, a further meeting was held on 7 February 2022, at this meeting a decision was made to cancel the annual dinner, and to begin the process of redundancy subject to receiving clarification on advice which had been sought.
59. Ms Beth set out that she was tasked with carrying out the redundancy consultation, although she had not previously undertaken a redundancy consultation, and this was why she had sought advice. However, despite her inexperience, and the claimant's ET claim, it was her belief that a fair and full procedure was followed.
60. She set out that she had telephoned the claimant on 24 February 2022, to notify her that her role was being considered for potential redundancy. In a letter emailed the same day, she invited the claimant to an initial consultation meeting which was scheduled for 28 February 2022, at 9.30 am by Zoom. Her letter set out that the claimant was the only person who was being affected, as her role focused on the administration of events, and because of this, it was her belief that there was no requirement to pool or undertake a selection criterion for redundancy.
61. Ms Beth set out that the claimant wrote in reply indicating that she was not available to attend the meeting at that time and that she was taking legal advice. Ms Beth stated that she was "taken aback" by the claimant's response as it was her view that as the meeting was being held in work hours, the claimant should have been available. In her reply to the claimant, Ms Beth set out that "...You are required to attend all matters that relate to work including this meeting...Therefore you are required to attend at 4.30pm today...Failure to do so will be considered a failure to adhere to a reasonable management instruction..."
62. The meeting was rescheduled for 4.30pm. It was her evidence that the claimant was accompanied by the Executive Director Ms S.
63. Both the claimant and the respondent raise the issue of Ms S' attendance and whether she accompanied the claimant or was in fact merely present in the office. The claimant also asserted that Ms S ought to have been allowed to accompany her. I have not set out the sequence of correspondence concerning this issue in any detail, however, Ms Beth in her email sent at 14.33 pm on the 24 February 2022, set out that the claimant had the right to be accompanied by a work colleague, and somewhat confusingly went on to state that " You are not permitted to be accompanied by any person associated with the AIA."



64. The claimant denies that she was accompanied by Ms. S, although she considered that she ought to have been allowed to be accompanied by her if this was her wish.
65. Ms Beth set out that the meeting was also attended by Ms. Dingle who acted as minute taker, Ms Dingle also attended by Zoom. Ms. Beth set out that the decision and the need for the redundancy was explained to the claimant. She explained that the claimant's response was that she disagreed with the decisions which had been taken by the trustees concerning cancelling the annual dinner and the decision not to publish the AIA's magazine. The claimant also asked her to confirm whether the Corporate Trustee was her employer, or whether it was the board who had made the redundancy decision.
66. In answer to questions, Ms. Beth did not accept that setting the date for the meeting to discuss the redundancy situation on 28 February was too soon. She also did not think her email of 24.2.22 at 14.33pm was overly aggressive. She also denied, contrary to the claimant's assertion, that the meeting had been chaotic. Ms. Beth stated that she considered the shortness of the meeting was due to the claimant as she did not engage further in the meeting.
67. Ms. Beth was referred to the minutes of the meeting of 28 February 2022, and was asked to explain where it was recorded that the claimant had been asked to put forward alternative proposals. Ms. Beth accepted that this was not recorded, however she was clear in her evidence that no proposals had been put forward by the claimant.
68. In her witness statement she set out the reason why the process was continued by email, and that this had been at the claimant's request. Ms. Beth accepted that the claimant had not been invited to put forward alternative proposals. She accepted she had not visited the offices of AIA, however, Ms. Beth put forward that her understanding of the role of the administrator was derived solely from what she had been told about the nature of the claimant's role from Ms. S, the ED.
69. Ms. Beth stated that there were no proposals from the claimant other than a query as to why the activities of the AIA were not continuing. She had set out that the annual dinner had been cancelled and there were no plans to reinstate it, as the demographic of the members of AIA was 60 plus, and at that time, and currently, many had not gone back to normal activities due to the pandemic. Ms. Beth also stated that in regard to the magazine the move had been away from a paper magazine to an online publication. This meant that the need for administration as provided by the claimant had been substantially reduced.
70. Ms. Beth denied that the redundancy consultation which she conducted was inappropriate, or that redundancy was not the real reason for the claimant's dismissal.
71. She did not accept that she had been wrong to disallow the claimant from being accompanied by Ms. S. although Ms. Beth was unable to say why she thought it inappropriate. However, she maintained that it had been appropriate to not permit Ms. S to accompany the claimant.
72. Professor Daniel Hochhauser also gave his evidence by video link. He set out that he was a Consultant Medical Oncologist. He was also a volunteer trustee of the AIA, and he was one of the Directors of the Corporate Trustee. In his witness statement, which was dated 13 April 2023, he also referred to the meetings on 2 November 2021, and on 7 February 2022, which he had attended. He was therefore aware of the proposal to

make the claimant redundant, and the reason for it, prior to hearing the claimant's appeal and dealing with her grievance.

73. He explained how he then been appointed to deal with a grievance which had been raised by the claimant on 15 March 2022, and also her appeal dated 21 March 2023, against her redundancy.
74. He set out the process that followed, how he wrote to the claimant on 5 April 2022 outlining that he would be dealing with both matters separately. He acknowledged that she queried his independence from the AIA given his role as trustee and as such someone who was privy to and part of the decision making.
75. In his evidence he stated that he believed at the time that he could be impartial, and that he had conveyed this to the claimant, he also maintained that he had acted impartially. He also set out that due to the size of the organization there was a limited number of people who could conduct the appeal, and that "...in addition at this time our resources were squeezed, and we had to be mindful of the AIA limited cash reserves."
76. He explained how there were a number of emails which were exchanged between himself and the claimant about the issue of his impartiality which ended with the claimant deciding to continue with the appeal despite her reservations. The decision was also made that the appeal and the grievance process should be conducted in writing. He considered her appeal, and his decision was that the appeal was not upheld, this was confirmed by a letter dated 16 May 2022.
77. He set out that the claimant's grievance concerned the way the redundancy consultation had been conducted, which included the meeting which was held on 28 February 2022, the events leading up to it and how it was conducted. Also, at issue was the short period timetabled to deal with the consultation, and the decision of the AIA, communicated by Ms. Beth that she could not be accompanied by Ms. S.
78. On the 17 May 2022, he confirmed that the grievance was not upheld as he had found no evidence to substantiate the claimant's allegation of poor treatment.
79. The claimant had subsequently appealed against his decision in respect of the grievance, and this appeal was reviewed and dismissed by Mr. Ashkenazi, one of his fellow trustees.
80. In his witness statement Professor Hochhauser stated at paragraph "31. I wish to add that I was diligent and undertook my role with sensitivity and care. I was keenly aware that this was a person losing her role, but we also had a responsibility to the donors of the Charity and to the Charity as a whole."
81. Professor Hochhauser did not accept that it had been inappropriate for him to carry out this role. In answer to a question concerning his experience, he stated that he had dealt with HR and disciplinary matters in his professional capacity.
82. He was asked about why he had stated in his witness statement that the claimant appeared to have been assisted by her sister in writing her grievance. He stated that this was something that he commented on, however, it had played no part in the reason for his decision.
83. He was asked the factors that he had considered in the appeal. He noted that he had considered the generic nature of the claimant's role, and the tasks that she carried out and he had assessed the workload and whether there was a need for the work to continue being undertaken. He had considered the consultation process which had been adopted by Ms. Beth. He acknowledged the brevity of this process; however, he

stated that the process had been accelerated as the AIA did not have the funds to continue paying the claimant's salary and although there was an obligation to listen to the suggestions made by the claimant, the AIA was not in a position to host the annual dinner and did not have the money to continue paying salaries. He stated that it was his position that the trustees would have ended up being personally responsible.

84. He was asked whether it was reasonable or fair to have reached a conclusion about redundancy prior to consulting with the claimant.
85. In answer to the question, Professor Hochhauser stated that the AIA had already decided not to have the dinner and the reasons for the redundancy were made clear. He accepted that the email sent by Ms. Beth to the claimant on 24.2.22 at 2.33pm was "not the friendliest email". However, he stressed that it was reasonable given the financial position of AIA. He also considered that the whole process had been carried out in good faith.
86. Professor Hochhauser was asked about the scholarships which the claimant had previously processed as part of her role. Professor Hochhauser stated that he currently undertook the role of administering the scholarships and that this took him about 6 hours in total. Given this, he did not consider that the work on the scholarships would have been sufficient to engage the claimant even on a part-time basis.

### **The Claimant's evidence**

87. Ms. Reginiano confirmed that she was content with her statement standing as her evidence in chief and that there were no changes that she wished to make. She dealt with her job description as administrator, and what the position was prior to and after Covid.
88. The claimant set out the duties which she had undertaken and stated that they had expanded to include extensive research for the annual roundtable conferences, administering the two educational trusts including assessing and compiling each application in preparation for Professor Colin Shindler to award the scholarships. She set out that this involved corresponding with the student applicants, and that the process ran from March until September when the awards were made. She set out how the preparation for the annual dinner included correspondence with members, identifying official guests, sending out invitations, table and menu planning. She also assisted with design, content and editing of the annual magazine which was distributed at the annual dinner.
89. She referred to her furlough due to the Corona virus (Covid), and that on her return to work she set out that the executive director had begun working on three events for which she provided administrative support. This included the AIA annual fund-raising dinner. The claimant disagreed with the reasons which were advanced by the witnesses for the AIA and to her for the cancellation of the annual dinner.
90. She accepted in answer to a question, that Mr. Pinto, who had died had been one of the main benefactors of the AIA. However, the claimant was aware that he had left a substantial financial endowment to the AIA. She stated that although the Dinner was normally held in November each year, after furlough, on her return to work the intention had been to postpone the dinner until May of the following year. She was unaware and did not accept that the AIA were taking stock as to whether to have the dinner at all.

91. In cross examination she attributed the lack of the funds normally raised by the dinner as one of the reasons for the financial predicament of the AIA. The claimant agreed that she was aware of on-going discussions as to whether the capital which was part of the legacy could be used for day-to-day expenses or whether it was just the interest. However, she considered that there were funds which would have enabled the payment of salaries and that the Dinner would have assisted with the fundraising.
92. The claimant did not accept Professor Hochhauser's evidence in relation to the scholarships. She explained that she had taken over working on the scholarships when the other employee had left, and her hours had been extended by the AIA.
93. The claimant stated that the trustees did not understand the work involved in the scholarships. The claimant set out that this involved dealing with 60-70 scholarship applications a year. She set out the detailed process which was followed by her in relation to this work
94. The claimant also referred to extensive research that she had undertaken as part of her role for the round table conferences which AIA carried out. In her evidence she referred to at least three round tables which were planned prior to her redundancy. She had been working on one of the conferences, which was on Autism. She was asked what this involved, and she explained that this involved liaising with experts from both the UK and Israel and researching who to invite. She said that there had been a lot of interest in this conference, and she believed that there had also been a donation to fund it. Given this, she stated it was not correct, that there "were no events in the pipeline."
95. The claimant referred to the telephone call from Ms. Beth, which she stated was completely unexpected. She explained that it was the first time that she had spoken to Ms. Beth, since Ms. Beth's appointment as a trustee.
96. The claimant then dealt with the consultation procedure which was followed and why she considered it to be unfair.
97. She stated that she had received a telephone call at 9:57am and that was the first occasion on which she was aware of the possibility of redundancy. Ms. S, who was the chief executive and her line manager, was unaware of the potential redundancy situation as she had not been informed about it by the Trustees. The claimant had tried to telephone Ms. Beth, to ask her to speak to Ms. S, however, she had been unable to reach Ms. Beth by telephone. The claimant then contacted Ms. Beth by e-mail, to ask her to postpone the meeting scheduled for the 28 February 2022. The claimant believed that she had not been given sufficient time to take advice, she did not consider that it was fair to merely put the meeting back to 4.30pm on the same date.
98. In her cross examination, the claimant stated that if you read through the emails, "you would see that they were threatening and forceful". However, her evidence was that she had not been "referring specifically to one email", and that in order to understand her position, "you must look at the whole series of emails".
99. The claimant explained why she characterized the consultation meeting on 28 February as "chaotic". The claimant stated that at the beginning of the meeting Ms. Beth seemed primarily concerned with whether her sister, Ms. S, was in attendance. She stated that she shared an office with Ms. S who had been working at that time, and as such had been present in the office. However, when Miss Beth raised her concern

about this, Ms. S had left the office. She recalled that periodically during the short meeting, Ms. Beth would seek reassurance that Ms. S had not remained or returned to the office during the meeting.

100. The claimant denied that the meeting had been short because of her not wanting to continue, as the discussion had centered on her being given time off to look for work. The claimant accepted that she had not put suggestions to Ms. Beth as an alternative to redundancy. She said that this was because the redundancy appeared to be “a fait accompli”. As a result, she had been trying to get information and advice. However, the claimant did recall suggesting that she could work part-time. The response had been that the nature of the work had changed due to Covid and the cancellation of the dinner.
101. The claimant stated that the consultation process, and the issues surrounding her being made redundant, had affected a pre-standing medical condition. This had resulted in her needing to take time off work, due to her health. To deal with this, she had requested a modified redundancy process be carried out by email.
102. The claimant had then set out why she considered that the process followed to deal with her appeal and also her grievance was unfair. She stated that Professor Hochhauser had been one of the trustees, and that the trustees had decided that there was a need for her redundancy. She suggested that it was unfair and did not feel right that he had considered her appeal as he was not impartial. The claimant stated that one of the wider members of the executive committee should have heard the appeal.
103. She was asked whether there was anything to suggest that Professor Hochhauser had been anything other than impartial and fair, she did not accept this assertion on behalf of the AIA.
104. The claimant was asked why she considered the decision had been made to make her redundant. She referred to the fact that her sister, the, ED, had been suspended for gross misconduct on the same day that she had been made redundant. Accordingly, the claimant considered that the redundancy had been a sham, an excuse to get rid of her. As the trustees perceived her employment, given the suspension and possible dismissal (at that stage) of her sister as creating a potentially difficult situation.
105. The claimant also considered that the redundancy had been engineered, in her view this was supported by the fact that all the events of AIA had been cancelled prior to her meeting with Ms. Beth to discuss the redundancy.
106. On the conclusion of the oral evidence, I was provided with written submissions and also heard from Ms. Step-Marsden and Mr. Pickett. Both Counsel asked and were provided with the opportunity to expand on their written submissions by providing supplementary oral submissions.

## The issues and the relevant case law

### The issues

107. The issues in this case were as set out above. For the respondent, the additional issues were the scope of the claimant's case in respect of the principal reason for the dismissal and further arguments as to whether issues concerning procedural fairness had been set out in the ET1.

### The Law

I have also considered the Law concerning redundancy:- Section 139 of the ERA 1996 states:- (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...**

... (4) Where—

(a) the contract under which a person is employed is treated by section 136(5) as terminated by his employer by reason of an act or event, and

(b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment,

he shall be taken for the purposes of this Act to be dismissed by reason of redundancy... if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in paragraphs (a) and (b) of subsection (1).

(5) In its application to a case within subsection (4), paragraph (a)(i) of subsection (1) has effect as if the reference in that subsection to the employer included a reference to any person to whom, in consequence of the act or event, power to dispose of the business has passed.

(6) ~~OB~~ In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily

(7) In subsection (3) “local authority” has the meaning given by section 579(1) of the Education Act 1996.

#### 108. Case law concerning claims of dismissal

- I. I was referred by the parties to the following cases
- II. Chandok v Tirkey UKEAT/0190/14/KN
- III. Gilham and Ors v Kent County Council (No. 2) [1985] ICR 233, CA,
- IV. James W Cook and Co (Wivenhoe) Ltd v Tipper and Ors 1990 ICR 716, CA
- V. Boys and Girls Welfare Society v Macdonald [1997] ICR 693, EAT).
- VI. Union of Construction, Allied Trades and Technicians v Brain [1981] ICR 542, CA: Iceland Frozen Foods Ltd v Jones [1983] ICR 17, EAT
- VII. R v British Coal Corp and Secretary of State for Trade and Industry, ex p Price [1994] IRLR 72
- VIII. R v Gwent County Council ex parte Bryant ... [1988] Crown Office Digest p 19
- IX. Mogane v Breadford Teaching Hospitals NHS Foundation Trust [2022] EAT 139, [2023] IRLR 44
- X. Polkey v AE Dayton Services Ltd [1987] 3 All ER 974, HL, [1987] 1 All ER 984, CA, [1987] IRLR 503, [1987] ICR 142
- XI. Lloyd v Taylor Woodrow Construction [1999] IRLR 782, EAT

109. I was grateful to the parties for the cases which I have considered, however I have only referred to cases below which I specifically applied in reaching my decision.

#### **Whether issues which were not set out in the ET1 ought to be included in the claimant’s claim?**

110. The first issue was whether the scope of the claimant’s case was set out in the claimant’s ET 1, and if not whether the issues raised by the claimant ought to be considered by me as part of the claimant’s case.

111. I was referred by Ms. Step-Marsden on behalf of the AIA to *Chandok v Tirkey*; in which it was stated in reference to the ET1, that -: “It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1”.

112. I have carefully considered the claimant’s ET1 and whether on the face of it, the issues that the claimant sought to rely upon during the hearing were set out in such a way that the respondent could understand what the claimant’s complaint was and respond to the complaint. Or whether as was referred to by Ms. Step Marsden they were taken by surprise and prejudiced in their ability to respond to the claim.

113. I am mindful that in paragraph 11 of the particulars of claim which accompanied ET 1 the claimant stated that “no fair procedure was followed in dismissing the claimant. Including but not limited to 12. No proper consideration of the alternatives to dismissal; 13. Failing to acknowledge that the claimant still had existing roles to perform. 14. Failing to consider the claimants offer to work part-time until events were running again.”
114. I have considered that this did not list all of the complaints of the claimant, concerning the redundancy consultation and subsequent grievance and appeal. However, I consider that what was listed was sufficient to put the respondent on notice that the redundancy consultation and subsequent process was being complained about as being unfair. Accordingly, I find that the claimant’s claim was about the whole process followed and I have considered this issue as part of my decision.
115. I also considered the issue concerning whether the claimant was made redundant for a reason other than redundancy, that is in relation to Ms. S, the ED, and whether in all the circumstances it would be fair to require the respondent to give a detailed response to this issue.
116. Having carefully considered the ET 1, I do not consider that the claimant set out her case concerning this issue. Accordingly, I have decided that the claimant is not permitted to rely on this allegation as it is outside of the scope of the ET1, and that this issue was not set out in a way in which the respondent could fairly deal with as part of the claimant’s claim.
117. However, as part of my decision I was mindful of the need to make a finding on the reason for the claimant’s dismissal and whether it was for a reason other than one set out in section 98 (2) (c) of the ERA 1996, so notwithstanding my decision concerning the submissions on this point, there is a burden of proof even if it is a somewhat neutral burden that a redundancy situation existed at the time the decision was made. Given this, if I am not satisfied that this was the position, then I am mindful that I would need to consider the reason for the dismissal, whether it was within Section 98(4) and whether it amounted to some other substantial reason, or whether it was outside the scope of the legislation.

**What was the reason (or, if more than one, the principal reason) for the Claimant’s dismissal?**

**(a) Redundancy or (b) some other substantial reason**

118. I heard, and accepted the evidence from the AIA witnesses, concerning how even as early as November 2021 the trustees had become concerned about the finances of AIA. It appeared to be an agreed fact, that the trustees of AIA had received some advice which appeared to indicate that only the interest from the legacy could be used to provide funds for the AIA. In his evidence Professor Hochhauser referred to his belief that the Trustees could be placed in a position where they were liable for the expenses of the AIA. The picture that was painted was of potentially dire financial consequences for the AIA. The claimant did not accept that this was the position. In his submissions, Mr.



Pickett, referred to the fact that the respondent had not provided proof of the AIA being in a dire financial position, and referred to funds which had been used by the AIA to pay redundancy and pay in lieu of notice to the claimant. He also referred to the cost of obtaining legal advice, and the employment of a chief executive, and the engagement of a strategic consultant.

119. However, I consider that regardless of the financial position of the AIA the starting point was 'had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished or whether they were expected to cease or diminish'. It was agreed that the cancellation of the dinner meant that a major part of the claimant's role was no longer necessary at this time.
120. It was accepted that part of the claimant's role as set out in her contract of employment was the administration and attendance at AIA events and to provide editorial assistants for the AIA magazine. The claimant was also employed to carry out research for roundtable events, administer the scholarships and carry out administrative duties. Although this was not set out within her contract, I heard and accepted the evidence that she also provided support to the ED.
121. I heard and accepted the evidence that two factors were at play, the Covid pandemic brought about a change in the manner in which key aspects of the business of the AIA were undertaken, this had led to the decision to no longer publish a paper magazine and to provide a magazine on line. The second major factor was the death of a major financial donor to the AIA. This brought about a change, or at least a degree of uncertainty in the available finances.
122. I accepted that the preparations for the scholarships had been a substantial part of the claimants role, however, I heard from Professor Hochhauser that he had taken over the administering of the scholarships in his voluntary capacity and that he had streamlined the process, which may in part have been as a result of the applications being submitted online.
123. For a dismissal to be by reason of redundancy a redundancy situation must exist. The relevant test is as set out in *Safeway Stores plc -v- Burrell* 1997 1CR 523, EAT. That is:- (i) Was the employee dismissed? (ii) if so, had the requirements of the employer's business for the employee to carry out work of a particular kind ceased or diminished or were they expected to cease or diminish? (iii) if so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution? I find that all limbs of the test were engaged, and that the claimant was dismissed by reason of redundancy.
124. The respondent having established that the claimant's dismissal was due to redundancy, meant that I must then move on to consider the issue of the reasonableness of the claimant's dismissal.
125. I accepted the submissions on behalf of the respondent that the burden of proof, in assessing the fairness of a redundancy dismissal, is neutral. The fairness is assessed by a consideration of Section 98(4) ERA 1996, " The determination of the question

whether the, dismissal is fair or unfair ( having regard to the reason shown by the employer) (a) depends on whether in the circumstances ( including the size and administration, resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case...”

126. In making this assessment I have born in mind that it is not the place of the Tribunal to substitute its opinion for that of the employer. The question is not whether the Respondent’s actions were correct. An employer is provided with considerable managerial discretion in the running of its business. The employer’s decision to dismiss the Claimant, and the process followed, is thus assessed by whether it falls within the band of reasonable responses (Iceland Frozen Foods v Jones [1982] IRLR 439).
127. Having found that the claimant was dismissed by reason of redundancy, I have not found it necessary to set out specific findings in relation to the issues of the claimant’s assertion that her dismissal was for some other reason. And what that other reason was, as my minding was that her dismissal was because of redundancy.

### **Was the decision unfair?**

128. I have considered the following factors as relevant to the fairness or unfairness of the decision. The AIA was a small charity, with a limited number of staff, each who had distinctive roles, and the charity was managed by trustees who were volunteers. I find that as such there is no criticism of their decision to take a cautious and prudent approach to the finances of the AIA.
129. I consider that the respondent is a small charity with limited administrative resources, and as such is not expected to reach the same standards as a large, well-resourced business or charity. Having taken this as the starting point, I then went on to consider whether the dismissal was unfair regarding procedural fairness including the consultation and the way the redundancy dismissal of the claimant was implemented.

### **Was a fair consultation procedure followed by the Respondent?**

130. I heard and accepted the claimant’s evidence, that the telephone call informing her of the potential redundancy, came as a shock to her. Given that initial discussions amongst the trustee’s concerning the redundancy started in November, other than the need to take advice, no explanation has been advanced by the respondent as to why the claimant was not informed about this until 24 February 2022 as nothing would have prevented her being pre-warned about the possibility of redundancy.
131. I also find that the approach adopted by Ms Beth could be characterised as unfair, in rigidly sticking to a date for the meeting and citing the claimant’s attendance as “a reasonable management instruction”, in circumstances where the claimant had asked for the meeting to be delayed to enable her to take advice. Given the delay between November 2021 and February 2022, whilst the respondent sought advice, insisting that

the meeting go ahead on the 28 February 2022, was not a reasonable approach to adopt as part of the consultation.

132. I also accepted that although the respondent had offered the claimant the right to be accompanied by a work colleague or trade union representative, then by stating that the claimant was not permitted to be accompanied by a person associated with the AIA, this was contradictory and unfair.
133. I then considered whether the claimant's complaint that her appeal and grievance were not fairly considered, given Professor Hochhauser's role as a trustee. However, I accepted his evidence that the AIA had limited resources in terms of who could deal with the appeal and the grievance. That he understood the sensitivity of what he was being asked to do and did his best to carry out his role, and that in determining the appeal and the grievance he did so objectively and impartially.
134. However, I am satisfied that any unfairness in the consultation process, arose because the AIA was a small charity with trustee's who were volunteers, and as such in considering Section 98 (4), I find that any unfairness in the process was not such that the dismissal was rendered unfair.
135. Even if I had found that the procedure was so unfair as to render the decision to dismiss as amounting to unfair dismissal, pursuant to the Polkey principle, I would have then considered whether to reduce any award having regard to the chance that, even if the redundancy procedure had been fair, the claimant would have been dismissed in any event.
136. On the evidence before me and given that I am especially satisfied that the selection of the claimant was fair and no other roles were available, I would then have considered making a reduction of 100% such that there would be no compensatory award.
137. The claimant's claim for unfair dismissal fails and is dismissed.

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Employment Judge Daley  
Date: 9 June 2023

Sent to the parties on:  
13 June 2023  
GDJ  
For Secretary of the Tribunals