

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Mark Crowson
Represented by: Advocate T Crawford

RESPONDENT: CCV Risk Solutions Limited (of the Cullum Capital Ventures group of companies), t/a CCV (Gsy) Ltd
Represented by: Advocate E Gray

Witnesses:
Called by the Applicant:
Mr Mark Crowson
Mrs Isabel Duckworth
Ms Cassandra Crowther

Called by the Respondent:
Mr David Wrathall
Mr Douglas Goater

Decision of the Tribunal Hearing held on 30 & 31 March 2010

Tribunal Members: Mr Peter Woodward (Chairman)
Mr Andrew Vernon
Mr Roger Brookfield

DECISION

Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal found that, under the provisions of The Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was not constructively unfairly dismissed.

The case is therefore dismissed.

Mr Peter Woodward
Signature of the Chairman

25 May 2010
Date

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision. The detailed reasons for the Tribunal's Decision are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF.

The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended.

## **Extended Reasons**

### **1.0 Introduction**

1.1 The Applicant, Mr Mark Crowson, gave oral evidence and introduced documentary evidence (EE1 & EE2 refer) and was represented by Advocate Crawford.

The Applicant called the following witnesses:

- Ms Isabel Duckworth
- Ms Cassandra Crowther

1.2 The Respondent, CCV Risk Solutions Limited (of the Cullum Capital Ventures group of companies), t/a CCV (Gsy) Ltd (CCV) introduced documentary evidence (ER1 & ER2 refer) and was represented by Advocate Gray.

The Respondent called the following witnesses to give oral evidence:-

- Mr David Wrathall
- Mr Douglas Goater

1.3 At the outset of the hearing the parties confirmed that:-

1.3.1 The effective date of termination was 23 July 2009.

1.3.2 The salary, paid in the six month period leading up to the effective date of termination, as stated in the Applicant's ET1 was agreed by the Respondent.

1.4 The Applicant claimed he had been constructively unfairly dismissed due to the actions of his employer which he believed constituted repudiatory breaches of his contract of employment, including breaches of the duty of trust and confidence and the duty to act in good faith.

1.5 The Respondent resisted the complaint by asserting that any actions taken (individually or cumulatively and whether by its own actions or vicariously through the Managing Director of Network Insurance) did not amount to a repudiatory breach or breaches of contract whether of the implied term of trust and confidence or alternatively of the duty of good faith.

1.6 It should be noted that during the initial proceedings Mr Roger Brookfield declared he had met the witness Isabel Duckworth in a social context some six years previously. Both parties were content that this did not present any significant conflict and that Mr Brookfield need not recuse himself.

### **2.0 Facts Found**

2.1 The Applicant was employed by the Respondent from the 20 June 2008 until 23 July 2009 on which date he sent a letter to Mr David Wrathall, Regional Managing Director, resigning from his employment with immediate effect, claiming that he had been constructively dismissed by the Respondent, CCV Solutions Limited trading as CCV Guernsey. The Tribunal notes that the Applicant was not on the Board of CCV and the title of 'Director' did not mean he was an officer of the company.

- 2.2 On the 23 July, the Applicant was being paid an annual salary of £57,000.
- 2.3 CCV Guernsey was one of 50 insurance brokerages owned by the Respondent in the United Kingdom and in the Channel Islands. It had been purchased from Lockton international in February 2008 and was subsequently sold in June 2009 to Network Insurance (NI).
- 2.4 The Applicant was one of seven employees who had been transferred from Lockton in 2008 and was in charge of the day-to-day running of the business. His role was divisional director and in this capacity he reported directly to Mr Wrathall. On joining CCV he retained the same salary and contractual arrangements from his previous employment with Lockton.
- 2.5 Within a few months of this takeover, it had become clear to CCV that profitability was very low in its Guernsey brokerage and a number of actions were put in hand to address this issue, including the search for a further acquisition in Guernsey to achieve a viable business for the longer term. Talks commenced in the summer of 2008 between CCV and NI, another locally based Guernsey insurance brokerage, with the view that CCV was interested in acquiring NI. These talks took place between David Wrathall and Douglas Goater, the managing director of Network Insurance.
- 2.6 Meanwhile CCV Guernsey was still experiencing trading difficulties and the Respondent met with the Applicant on 27 November 2008. A seven point plan was agreed (ER1 Tab 5 refers) and, in this confirmatory e-mail, mention was made of negotiations with NI.
- 2.7 By late 2008, the negotiations between NI and CCV had changed and Mr Goater was suggesting a counter offer in which NI would take over the CCV Guernsey brokerage.
- 2.8 In January 2009, a discussion took place between David Wrathall and the Applicant where it was suggested that the Applicant might consider buying CCV Guernsey.
- 2.9 Mr Wrathall provided budgetary information to the Applicant in an e-mail dated the 5 February 2009 (EE1 Tab 6 refers).
- 2.10 Subsequently in February 2009 Mr Wrathall and the Applicant met again to discuss this potential Management Buy Out (MBO) and at this point the Applicant mentioned a potential local backer who might assist in with the necessary funds.
- 2.11 A meeting was then arranged to take place between Mr Wrathall and the Applicant on 3 April 2009; however this meeting was subsequently postponed until 21 April. The Applicant sent an e-mail to Mr Wrathall on 6 April containing his accountant's assessment of current business situation and together with his tentative unconfirmed offer for the purchase of CCV. (EE1 tabs 8 & 9 refer).
- 2.12 Subsequently, at the meeting of 21 April 2009, Mr Wrathall rejected this offer; however, the Applicant advised him he would still like to investigate the purchase of CCV.
- 2.13 The Applicant claimed that he had confirmed to the Respondent in May 2009 that he was still interested in purchasing CCV and that he was continuing to investigate the matter. He had subsequent discussions with his accountant and sought the possibility of a loan in the following six to seven weeks.
- 2.14 On 26 June negotiations between the Respondent and Mr Goater, Managing Director of NI were concluded with a binding agreement, effective from that date, that all CCV Guernsey business be transferred to NI by 13 July 2009. In the event this transfer was completed by 1 August 2009.

- 2.15 On 26 June 2009, Mr Wrathall telephoned the Applicant and informed him that CCV was being sold to NI and that there would be potential redundancies. As a result the Applicant made contact with all Guernsey staff on that same day advising them of this situation.
- 2.16 The Applicant subsequently met Mr Wrathall, who had arrived in Guernsey to communicate the details of the transfer to the CCV staff, on 29 June 2009.
- 2.17 During this meeting the Applicant was informed that he would be made redundant from CCV Guernsey at the end of a two-week consultation period commencing that day; at the same meeting, the Applicant asked if it was too late for him to purchase CCV and he was advised that the agreement with NI had been signed and that it was too late for any such discussion.
- 2.18 The Applicant was also advised that positions at NI were available and that he would have to go through an application process because his employment could not be transferred. The Respondent advised that there was a possibility of employment by the CCV group of companies in the UK for Mr Crowson but he declined this possibility on the grounds of family commitment in Guernsey.
- 2.19 Later on the 29 June 2009 the Managing Director of NI, Douglas Goater, and another director of NI, Jean Goater, came to the office of CCV and introduced themselves to all the staff. They advised the Applicant he needed to complete a formal application form if he wished to be considered for employment with NI.
- 2.20 Mr Wrathall confirmed in writing the situation in a letter dated 30 June 2009 (EE1 Tab 14 refers). The letter stated that the Applicant was potentially redundant, that a consultation process would start and there was a possibility of employment in the UK as well potential vacancies in NI.
- 2.21 On 2 July 2009 the Applicant received a document from CCV entitled " what if scenario" which stated that the Applicant would receive four weeks notice, payments in lieu of benefits and a redundancy payment of £969.23, these sums totalling £5,430.61 and to be paid in the event of his redundancy.
- 2.22 On 6 July 2009 the Applicant had a further meeting with the Respondent as part of CCV's consultation process. In their meeting the Respondent confirmed that the Applicant's notice period was four weeks and not the three months claimed by the Applicant.
- 2.23 Mr Goater contacted the Applicant on 6 July 2009 and arranged an interview for the following day. This interview took place on 7 July 2009 and was conducted by Mr & Mrs Goater and their son.
- 2.24 At the end of this interview the Applicant was informed by Mr Goater that NI would offer him the role of Commercial Manager with the responsibility for dealing with corporate clients and in this role he would not be required to supervise staff. The job offer was made with a salary of £38,000.
- 2.25 Returning to the CCV office on 7 July 2009 the Applicant was informed that three of his CCV colleagues had been offered jobs with the same salaries as they currently received from CCV, with an enhancement for the loss of benefits they would not receive from their NI employment.

- 2.26 The Applicant telephoned Sarah French the UK-based HR Manager later on 7 July 2009 expressing dissatisfaction; there is no written record / file note of this discussion from either party.
- 2.27 The original target date of the transfer of business from CCV to NI was changed from 13 July 2009 to 1 August 2009.
- 2.28 On 8 July 2009 the Applicant received the formal offer in writing from NI which was enhanced from the verbal offer by the inclusion of conditional bonuses of £4,000.
- 2.29 Also on 8 July 2009 the Applicant received a letter from Mrs French inviting the Applicant to a meeting with Mr Wrathall on 13 July 2009 (EE1 Tab 17 refers) confirming that the Applicant could be accompanied by a colleague or TU representative.
- 2.30 The Applicant met with Mr Goater on 13 July where the Applicant shook hands with Mr Goater on the understanding that the bonus element would be enhanced and he gave a verbal acceptance to the revised offer subject to sight of the offer in writing.
- 2.31 A meeting took place on 13 July 2009 and Mr Wrathall confirmed to the Applicant that he would be made redundant.
- 2.32 The Applicant was issued with a formal notice of redundancy on 14 July 2009 and in this notification was advised that his last day of employment would be 31 July 2009.
- 2.33 On 14 July the Applicant received from Mr Goater a proposed contract of employment with NI together with a covering letter; during this meeting Mr Goater indicated that despite a verbal commitment to improve the offer that this was not possible.
- 2.34 A further meeting occurred between the Applicant and Mr Goater on 16 July 2009 in which Mr Goater asked the Applicant to sign the proposed contract. The Applicant declined this request informing Mr Goater that he wished to see what other work opportunities were available.
- 2.35 On 17 July 2009 the Applicant found he could no longer run management reports on the Respondent's computer system due to a withdrawal of access rights.
- 2.36 On finishing work on 17 July 2009 the Applicant commenced a pre-booked holiday and was due to return to work on 27 July 2009.
- 2.37 Whilst on leave the Applicant decided he had been constructively dismissed and resigned his employment in writing on 23 July 2009.

#### Applicant's Case

### **3.0 Ms Isabel Duckworth**

- 3.1 Ms Duckworth was a member of the CCV Guernsey staff in June 2009 and in the period leading up to the sale of CCV Guernsey reported to the Applicant. She read from a witness statement (EE1 Tab C refers).
- 3.2 In early July the witness observed Mr Goater abruptly asking the Applicant into the CCV Boardroom where she heard Mr Goater addressing the Applicant in a loud tone she judged aggressive. However she could not hear what was said and that on being questioned had no idea what the topic(s) could have been.

- 3.3 Alleged abrupt behaviour was again observed by the witness a few days later. Mr Goater was abrupt in his demeanour expecting the Applicant to stop what he was doing. The Applicant reappeared after a short period of time seeming to be unhappy and flushed.
- 3.4 Mr Goater was observed giving instructions to the Applicant, however the witness was not specific as to the nature of these instructions.
- 3.5 Under cross examination, the witness stated that Mr Goater did not use swear words and that, in her personal dealings with Mr Goater, he was polite.

#### **4.0 Ms Cassandra Crowther**

- 4.1 Ms Crowther was a member of the CCV Guernsey staff in June 2009 and in the period leading up to the sale of CCV Guernsey reported to the Applicant. She read from a witness statement (EE1 Tab B refers).
- 4.2 She had observed Mr Goater being abrupt and a bit “rude” toward the Applicant.
- 4.3 The witness stated that, whilst being aware of the takeover by NI, none of the staff had been advised as to how this would take place or whether the responsibilities of CCV Guernsey staff had changed.
- 4.4 The witness thought it strange that Mr Goater was giving instructions to CCV staff after 29 June, and found it “difficult” and “discomforting” that Mr Goater was addressing her as if he were the “boss”.
- 4.5 The witness observed Mr Goater giving instructions to the Applicant and talking to him in loud tones in the Boardroom. If the Applicant queried instructions then Mr Goater would lead him into the Boardroom and address him in a loud tone. However, the subject of these discussions was not known.
- 4.6 The witness made two phone calls to Sarah French, the CCV Solutions HR Manager based in the UK, to complain of unfair treatment, however her complaints were apparently not acted on.
- 4.7 The witness overheard Mr Goater asking the Applicant to supply him with a list of commercial clients and saying that he did not want any “Jiggery Pokery” from the Applicant.
- 4.8 Under cross examination the witness agreed that Mr Wrathall had told her to cooperate with Mr Goater.
- 4.9 The witness also stated that she had no idea as to what discussions had passed between Mr Goater and the Applicant prior to the point when Mr Goater had used the expression “Jiggery Pokery”.
- 4.10 The witness confirmed that Mr Goater had neither sworn nor shouted in the CCV office, but that he did have a loud voice.
- 4.11 The witness agreed that in a previous employment with Mr Goater that there had been issues of some discord between them.

#### **5.0 Mr Mark Crowson**

- 5.1 The witness read from a witness statement to be found in EE1 Tab A.

- 5.2 Mr Crowson stated that he had first been informed by David Wrathall in June 2008 that CCV Solutions were seeking to takeover NI; however he was never made aware of the counter offer by NI for CCV Guernsey.
- 5.3 In January 2009, a meeting took place between the Applicant and Mr Wrathall where he was asked whether he would be interested in purchasing CCV Guernsey. This surprised the Applicant as he thought CCV Solutions was in the process of purchasing NI.
- 5.4 In the following weeks the Applicant confirmed his interest and contacted an accountant, a bank and a prospective business partner.
- 5.5 Discussions continued between the Applicant and Mr Wrathall on the subject of his potential purchase of CCV Guernsey (EE1 Tabs 3 to 10 refer). A lack of audited accounts hampered the Applicant, however, by 21 April he had decided that he could make an offer. This offer was rejected by CCV Solutions as being too low.
- 5.6 Despite this setback the Applicant communicated to Mr Wrathall in May 2009 that he was still interested in purchasing CCV Guernsey. The Applicant was led to believe by Mr Wrathall that he was the sole negotiator. The Applicant continued to liaise with his accountant and sought loans for the potential purchase (EE Tab 11 refers).
- 5.7 On Friday 26 June the Applicant was informed by Mr Wrathall that CCV Solutions had signed an agreement with NI for the sale of CCV Guernsey and that there was the potential for redundancies in CCV Guernsey. Mr Wrathall confirmed he would be present in the office on Monday 29 June.
- 5.8 The Applicant stated he felt very let down by the sale of CCV Guernsey to NI.
- 5.9 When he met with Mr Wrathall on 29 June, he was informed that he would be made redundant after a two week period of consultation and that this consultation was only taking place because CCV had to follow guidelines. Mr Wrathall informed him that there were opportunities in the UK, however the Applicant felt it would be "unreasonable and unrealistic" for him to make a decision as to a transfer to the UK in this timescale.
- 5.10 Mr Wrathall subsequently confirmed his discussion with Mr Crowson in a letter dated 30 June 2009 (EE1 Tab 14 refers). This letter confirms a "potential redundancy" and a period of consultation in which alternatives can be explored.
- 5.11 On the 2 July 2009, the Applicant received a letter from Mr Wrathall entitled "What if Scenario" (EE1 Tab 14 refers); Mr Crowson did not think it was fair, in that the notice element was four weeks rather than the three months he expected, this opinion was based on prior discussions with his previous employer "Locktons".
- 5.12 It was his opinion that CCV & NI were far more concerned with the transfer of the business than dealing with the needs and anxiety of the CCV Guernsey staff.
- 5.13 The "consultative" meeting with Mr Wrathall on 6 July 2009 seemed to be done for forms sake. His dissatisfaction was compounded when Mr Wrathall informed him that he was not eligible for three months notice. It was also Mr Wrathall's view that Mr Crowson had lost interest in a Management Buy Out some months previously, which Mr Crowson contested.

- 5.14 Mr Crowson took the opportunity at this meeting on 6 July 2009 to complain about the short timescales which had been imposed and his frustration at the slowness of the NI interview process.
- 5.15 The interview with NI took place on 7 July 2009 with Mr and Mrs Goater and their son. The Applicant thought that they were far more interested in his CCV clients than him, he also felt grilled by questions such as “you do not seem to be the type capable of developing a business” and observations such as “the business you manage is in trouble”.
- 5.16 The subsequent job offer from NI was a base salary of £38,000, far lower than his current CCV Guernsey salary; though the written offer did increase the overall potential remuneration by including a potential £4,000 in added bonuses. The Applicant’s concerns were heightened by the fact that three other CCV colleagues offered new jobs at the same salary levels and doubted NI motives toward him.
- 5.17 During the week of the 6 July 2009 Mr Crowson contacted Sarah French HR Manager for Cullum Capital ventures LTD at head office to express his concerns. Her responses were sympathetic but left the Applicant with feelings of dissatisfaction.
- 5.18 The Applicant alleged that during a number of visits to CCV, Mr Goater was very abrupt in his manner and was putting great pressure on him to accept the offer from NI. Mr Goater reminded him in allegedly aggressive terms that he would have to abide by the “non-solicitation” terms in his CCV contract if he did not join NI. To put a stop to this pressure Mr Crowson gave a verbal acceptance to this offer and shook hands with Mr Goater, but stating this was conditional on seeing the final written terms of the offer.
- 5.19 The Applicant stated that Mr Goater asked inappropriate and very personal questions as to his relationship, after his recent divorce, with one of the female members of CCV Guernsey.
- 5.20 During the meeting on 13 July with Mr Wrathall which confirmed his redundancy the Applicant was asked if he would be accepting the offer of employment from NI. He responded that he was still uncertain and that he was distrustful of Mr Goater’s motivation in offering the role, that it was a tactic to reassure his current clients. It was his view that during a recessionary period Mr Goater was offering far less to him than his market worth and that he might not retain him very long with NI. Mr Wrathall rebutted this, believing the offer to be genuine.
- 5.21 On receipt of a contract of employment and a covering letter from NI on 14 July 2009 Mr Crowson noted that it had not increased the salary offer and that his post-termination obligations re. clients were being set at 24 months, rather than the 12 months in his current contract with CCV. Mr Crowson decided to defer signing it for the time being.
- 5.22 On the same day the Applicant was instructed by Mr Goater to help with the folding and packing of clients letters. He alleged Mr Wrathall had made him sign them with a different job title and give the appearance that he would be definitely joining NI. He had queried this change with Mr Wrathall and he was told it was acceptable and it was too late to change the letters.
- 5.23 On 15 July 2009, Mr Goater visited the CCV office he was again abrupt with Mr Crowson and looked cross. He gave Mr Crowson a “to do” list of apparently menial tasks which Mr Crowson assumed he would have to carry out (EE1 Tab 20 refers).
- 5.24 The pressure for Mr Crowson to sign the NI contract was maintained by Mr Goater, however, on 16 July 2009 Mr Crowson stated he would not sign and he would look for other

opportunities. In response to this Mr Goater told him that he would have to clear his desk on 17 July 2009 and would be placed on 'garden leave'.

- 5.25 Despite this conversation Mr Goater required Mr Crowson to attend the NI office on 17 July and again tried to pressurise Mr Crowson into signing the contract.
- 5.26 Mr Crowson contacted Ms French and related his concerns, however, later in the day an e-mail from Mr Wrathall was sent to Mr Crowson stating that it was in the best of interests of all staff to co-operate fully with NI. Mr Crowson e-mailed back again stating his issues (EE1 Tabs 21 & 22 refer).
- 5.27 Mr Goater rang again ordering Mr Crowson to tell clients he would be joining NI. The Applicant felt forced to comply given Mr Wrathall's e-mail and the tone of Mr Goater's voice.
- 5.28 Later on 17 July Mr Crowson realised he had been denied access to computer report generation and was very surprised given he was still an employee of CCV and had not been informed of this change in computer access rights.
- 5.29 Mr Crowson commenced a pre-booked holiday on June 17 and then read in the Guernsey Press of 23 July that there was an article re the NI takeover stating that four employees would move from CCV to NI. To him it constituted clear evidence that NI had advised the newspaper that he was joining NI when he had not signed a contract of employment. However under cross examination he accepted the press release might have been developed after his oral acceptance to Mr Goater of a new role with NI.
- 5.30 He decided on that date to resign immediately and communicated this to CCV in a letter alleging unfair constructive dismissal.

#### Respondent's Case

### **6.0 Mr David Wrathall**

- 6.1 The witness read from a witness statement to be found in ER1.
- 6.2 Mr Wrathall stated that he had acted as prime negotiator with NI for the sale of CCV Guernsey.
- 6.3 The need to dispose of CCV Guernsey had high priority as it was judged in financial terms as the worst performing subsidiary of the fifty businesses owned by the parent group.
- 6.4 Prior to the disposal of CCV Guernsey, Mr Wrathall had given priority to cost control measures and building revenues. In November 2008 he met with Mr Crowson and requested that the Applicant produce an action plan to address these issues. Such a plan was developed later in the year. In subsequent discussions over the year end and into January Mr Wrathall asked the Applicant if he had given consideration to purchasing the business himself, or put in other words a Management Buy Out; this option was pursued by the Applicant.
- 6.5 In subsequent meetings the Applicant was provided with budgetary data and concluded that CCV Guernsey was not making any profits. However, it was the view of Mr Wrathall that the current client base had market value.
- 6.6 In April, during a discussion with Mr Crowson, the Applicant indicated a possible purchase sum which Mr Wrathall considered very low and far apart from the possible worth of the client base. He formed the view that Mr Crowson was never likely to be a credible purchaser and believed that this was an end to this discussion. At no time did Mr Wrathall tell the

Applicant, or give him to understand, that he was in sole discussions for the sale of CCV Guernsey or that he was entitled to a “first option”.

- 6.7 Subsequent to April 2009, the Applicant failed to communicate in any way his continuing intention to possibly purchase CCV Guernsey.
- 6.8 Mr Wrathall would have preferred to have had initial communications with CCV Guernsey staff on a face to face basis on 29 June 2009, however as he believed some of the staff would be on vacation that day he thought it better to make initial contact with Mr Crowson on 26 June 2009 by phone. He requested the Applicant to inform the staff and subsequently confirmed the sale of the business to NI by an e-mail to all CCV Guernsey staff.
- 6.9 Under cross examination Mr Wrathall stated that to brief staff earlier than the 26 June 2009 would have created uncertainties to the staff without an agreed outcome and would risk courting major instability such that the fundamental viability of the business could have been threatened.
- 6.10 On meeting the Applicant on 29 June 2009, Mr Wrathall recalled that he had expressed disappointment that discussions for the MBO had not progressed further. Mr Wrathall stated there were no further discussions after this date.
- 6.11 Mr Wrathall denied that he had carried out a redundancy “consultation period” just to follow “guidelines” and that his offer to Mr Crowson to consider him for UK opportunities was genuine. He also informed Mr Crowson of potential vacancies with NI, it was his understanding that NI genuinely needed a number of the CCV staff to take up employment with them.
- 6.12 Under cross examination Mr Wrathall stated he had attempted to negotiate transfer of CCV employees to NI with continuing employment however this had been rejected by NI.
- 6.13 Mr Wrathall facilitated the NI interview process by inviting Mr Goater and fellow NI directors to meet with CCV staff on 29 June 2009. However, no evidence was given that CCV had any influence over what contracts or salaries might be offered, neither was this challenged by the Applicant.
- 6.14 Mr Wrathall visited Guernsey again on 6 July 2009 to again apprise Mr Crowson of CCV opportunities in the UK and to be available to answer any issues being raised. At this meeting he confirmed that Mr Crowson was contractually entitled to four weeks notice and not three months as previously claimed.
- 6.15 A third consultation meeting took place on 13 July 2009, during which redundancy was confirmed, in discussion, the Applicant confirmed that he had not yet decided to accept the offer from NI. Mr Wrathall informed the Applicant that if he chose not to accept the offer then he might decide to put him on “Garden Leave” and he also reminded Mr Crowson that CCV would enforce the post contractual restraints in his employment contract. Mr Crowson confirmed that he accepted this.
- 6.16 Mr Wrathall stated that at no time did Mr Crowson raise any concerns with him as to the conduct of Mr Goater towards him.
- 6.17 The Applicant had indicated to Mr Wrathall that he was “uncomfortable” with signing the client letters which advised transfer of the business from CCV to NI. Mr Wrathall understood this hesitation to be premised on the Applicant’s uncertainty as to whether he would be

accepting the role with NI. Mr Crowson thought that this signing of the document would be unhelpful if clients were to call him and discuss the transfer of the business. Mr Wrathall advised the Applicant that as he ran the branch on a day to day basis that he should sign the letters. The Applicant did not subsequently object to signing the letters nor did he raise the issue of a changed job title in these letters at any time.

- 6.18 Mr Wrathall denied that the reduction of the Applicant's access to the CCV computer system was unreasonable. Mr Wrathall stated that the Applicant was well aware that a client list was provided to NI on 10 July 2009. Other than to comply with a request from Mr Goater that he provide a list of client renewals for July/August 2009 the Applicant had no reason to draw down reports from the system. He still had the ability to use the computer for normal day to day client information. Given the Applicant had still not agreed to accept the job offer with NI it was prudent to withdraw certain computer access rights in the event the Applicant left for a competitor.
- 6.19 Mr Wrathall denied that he gave inadequate support to Mr Crowson in the period 29 June 2009 to 17 July 2009. He physically visited three times and was readily available by telephone or e-mail. It was his recollection that the Applicant had contacted him over that period re. a range of issues from use of office keys to upcoming renewals and expenses. In addition, the CCV Group's HR Manager, Sarah French, was readily available for telephone or e-mail contact in that same period.
- 6.20 The Applicant had complained via Sarah French that Mr Goater was in the CCV office giving orders. However, Mr Wrathall formed the view that the presence of Mr Goater was necessary to ensure an effective transfer of the business. He recalled making it clear to Mr Crowson that the business had been sold to NI and he should comply with requests from Mr Goater to ensure a proper handover. He had formed the view that Mr Crowson was only complying reluctantly and was not freely giving his support.

## **7.0 Mr Douglas Goater**

- 7.1 The witness described his business, Network Insurance, as a local family based enterprise run by himself, his wife and his son. (ER1 tab 3 refers).
- 7.2 He confirmed the purchase of CCV Guernsey on 26 June 2010 and stated that after that date he was irrevocably committed to complete the takeover.
- 7.3 The witness confirmed that he visited the offices of CCV Guernsey on 29 June 2009 to meet with staff; he was accompanied by his wife, a fellow director of NI. He observed that the Applicant was somewhat shocked by the announcement of the sale of CCV Guernsey. He stated that during this visit Mr Wrathall had told the CCV Guernsey staff that Mr Goater and others from NI would be visiting the CCV Guernsey offices on a daily basis to oversee the transfer of the business and ensure a smooth transition. It was his recollection that Mr Wrathall requested all the CCV staff to facilitate the buyout / transfer process in whatever way necessary.
- 7.4 Early in July, Mr Goater requested that the Applicant provide him with a list of his scheduled client appointments for the next three weeks, however his request was met with some resistance and was not complied with. During a subsequent visit to the CCV office the witness denied that he had accused the Applicant of "Jiggery Pokery", however he had expressed the hope to the Applicant that he was not "playing games" with him.
- 7.5 Mr Goater also requested during this period that the Applicant should provide him with his personally managed client list. He stated this list was a major part of the CCV Guernsey

portfolio. He was justified in wishing to understand in some detail how the Applicant was managing relationships with them. It was his opinion that the Applicant was resistant to this request despite the express wish of CCV Solutions that the Applicant cooperate with him during the transfer process. He also stated that whilst appropriate "due diligence" had been undertaken by NI that he needed as much detailed information as to how CCV Guernsey had conducted its working relationships.

- 7.6 During the week of the 13 July 2009 the witness expressed his concerns to the Applicant as to certain CCV staff members not performing their duties diligently, for example extended personal phone calls.
- 7.7 Mr Goater stated he had been frustrated when he realised that the letters due to be dispatched from CCV advising clients of the changes had not been prepared. He arranged for additional support to prepare these letters and personally worked with his wife, son and other NI employees for extended hours on two evenings to ensure this task was completed. This letter bore the electronic signature of Mr Crowson and he stated that he had not asked the Applicant to change his job title to read that he was an employee of NI.
- 7.8 The witness denied he had shouted at Mr Crowson or rudely interrupted him in the CCV Boardroom. On one occasion he found the Applicant on a mobile phone and let him know that he had arrived, after a further 15 minutes he had found it necessary to disturb Mr Crowson to advise him of time passing.
- 7.9 Mr Goater had continued concerns that CCV staff were not undertaking the tasks necessary, however, at no time did he recall the Applicant expressing any concerns as to the tasks he and his staff were being asked to perform, nor that his staff were too busy to assist.
- 7.10 As time passed the witness did ask the Applicant if he had made a decision as to whether he would join NI and confirmed that he had told the Applicant that in the event of his declining the role he would recommend to CCV that he be placed on garden leave; he stated that he only had the power to recommend this action as Mr Crowson was not in his employment. It was his opinion that in a small market such as Guernsey other employers would agree this to be a correct course of action to protect future business.
- 7.11 Mr Goater denied that he ever instructed the Applicant to advise clients that he would be moving to NI.
- 7.12 In response to questions as to why his company did not seek to transfer all CCV Guernsey employees and give them continuity of employment the witness gave two primary responses. Firstly he could absorb some of the transferred business within his existing staff structure and secondly that he was not obliged to offer continuity of employment.
- 7.13 Mr Goater stated that he adopted a standard practice in relation to all of the CCV Guernsey staff in the event they wished to work with NI. He required them to submit Application forms prior to an interview. This same process was offered to the Applicant.
- 7.14 In the subsequent interview of the Applicant, conducted on 7 July it was denied that he was given a "grilling", rather that the NI interviewing team were asking legitimate questions as to the Applicant's capabilities. The witness confirmed that he had verbally offered the Applicant a job with NI at the end of this interview and subsequently issued a formal written offer on the following day. (Tab 12 ER1 refers). The annual salary in this offer was initially £38,000 per annum; however this was improved to include two conditional bonuses of £2,000 which would be paid if certain performance requirements were met. The offer letter indicated the

possibility in the future for a directorship of the company together with the opportunity to purchase shares in NI.

- 7.15 In response to questions the Respondent explained that this offer was competitive for this role in Guernsey, particularly with reference to the qualifications held by the Applicant; also to pay more would adversely affect the internal pay equity with other employees within NI.
- 7.16 The Respondent denied that this was an offer with a limited timescale during which valuable information would be obtained with the intention to dismiss the Applicant prior to him gaining legal employment protection rights to unfair dismissal.
- 7.17 Mr Goater had no further contact with the Applicant after 17 July and was subsequently advised of his resignation from CCV Guernsey.
- 7.18 Mr Goater informed the Tribunal that in the final outcome four of the CCV staff took new employment with NI.

## **8.0 The Law/Code of Practice**

- 8.1 The Tribunal considered the complaint under The Employment Protection (Guernsey) Law, 1998, as amended, and with particular reference to Section 5 (2) which states *....an employee shall be treated as dismissed by his employer if, but only if- .....and Section 5 (2) c ...the employee terminates that contract, or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct.*

In considering the above a tribunal will wish to establish that the employee has done nothing to suggest that he accepted his employer's alleged breach of his employment contract; and that he acted in a timely manner in response to the alleged actions or conduct of his employer.

- 8.2 As the Applicant was also subject to a redundancy process in the period leading up to his ending of his employment by an alleged constructive dismissal the Tribunal also took note that whilst not legally binding, it may take into account the "Code of Practice on Handling Redundancy" which indicates principles to be observed including:-

- prior consultation well before a decision is made
  - a fair and objective basis for redundancy selection
- and
- taking all reasonable steps to avoid or minimise redundancy

## **9.0 Closing statements**

### **Advocate Crawford**

- 9.1 It was the Applicant's position that CCV had been accountable for Mr Goater's actions whilst he was on CCV premises and that there had been multiple complaints as to Mr Goater's behaviour.
- 9.2 CCV had also acted unfairly in a number of other ways.
- 9.3 Both individually and cumulatively the above constituted breaches of the implied duties of trust, confidence and good faith, they are detailed as follows:-

- 9.4 It was submitted that CCV had betrayed Mr Crowson's trust by selling CCV Guernsey "behind his back"; Mr Crowson had been deceived into thinking he was the sole negotiator and incurred significant costs in exploring the purchase option.
- 9.5 Mr Crowson, as Divisional Director of CCV Guernsey, should have been consulted in advance as to the sale of the business to NI rather than a peremptory notification on 26 June 2009.
- 9.6 Mr Wrathall had told the Applicant on 29 June 2009 that he was redundant and that the period of consultation had only been invoked to follow "Guidelines". It was a charade and Mr Crowson's concerns had been cast aside.
- 9.7 The timescale of the redundancy process was very short, from notification on 26 June 2009 to confirmation of redundancy on 13 July 2009. During this period the Applicant was expected to run the business, manage the transfer of the business to NI and make important decisions as to his future employment. This put intolerable pressure on the Applicant and colleagues have stated that he was "shell shocked" and disorientated.
- 9.8 It was significant that, whilst the transfer of the business was delayed until the 1 August 2009, the consultation period for the redundancy was not extended beyond 13 July 2009; which implies that employees were not a priority.
- 9.9 It was the opinion of the Applicant that Mr Wrathall neither cared about the transfer of the business nor wished to be involved.
- 9.10 Mr Goater had conducted a very uncomfortable interview and made disparaging remarks such as the Applicant was not the type of person capable of running a business. The outcome of the interview was unsatisfactory with the applicant being demoted in terms of salary, benefits, and role. In addition the NI contract extended the "non-compete clause" from 12 months to 2 years duration.
- 9.11 The Applicant was harassed and pressured by Mr Goater to sign the new employment contract and threatened that if he did not he would have to abide with his non-solicitation clauses in the CCV contract.
- 9.12 Throughout the period from 29 June to 17 July 2009 Mr Goater was rude and abrupt toward the Applicant and accused him of dishonesty using the phrase "jiggery-pokery"; he also pried into the private life of the Applicant asking him about his personal relationships and humiliating him.
- 9.13 Mr Goater instructed him in writing to perform menial tasks such as collating stationery; he also instructed the Applicant to state that he would be moving to NI even though this was not the case.
- 9.14 When the Applicant sought to make his concerns clear to Mr Wrathall and Sarah French he was told he was making a fuss and that he should just co-operate with Mr Goater. This effectively meant that CCV had sanctioned these tasks and also the change of job title.
- 9.15 On 17 July 2009 the Applicant realised his access to the client database had been blocked without warning and without explanation. He needed access in the course of his employment and to comply with the request from Mr Goater for a client list.
- 9.16 It is evident in the letter of resignation of 23 July 2009 that it was in direct consequence of the above that the Applicant resigned and in doing so he made his resignation timely and unambiguous; he did not affirm his contract by staying too long. In summary the CCV

treatment was not only rash but seemed to have an element of intention. The behaviour was designed to push and intimidate the Applicant into joining NI so that financial targets could be achieved that had been committed by CCV to NI during their negotiations. It had been critical for the Applicant's personal clients to move to NI with him.

### **Advocate Gray**

- 9.17 Advocate Gray noted that in an alleged constructive dismissal that the conduct being complained about has to be objective whereas in this case it seemed to be the Applicant was expressing a series of minor gripes.
- 9.18 The Tribunal was invited to consider each issue from the viewpoint of the quality of the issue, the length of time between incidences, and balancing factors which might apply.
- 9.19 It was the Respondent's position that they together with Mr Goater had acted in good faith and had reasonable and justifiable grounds to ask the Applicant to assist in the transfer of the business.
- 9.20 It was refuted that Mr Goater's conduct was in any ways bullying or harassment and the only substantial evidence of such concerns that the applicant can demonstrate is the e-mail of 17 July 2009 which alleges interruptions and personal questions by Mr Goater. There was no specific request by the Applicant for action to be taken.
- 9.21 In her evidence Mrs Duckworth accepted that she was given instructions by CCV to cooperate with Mr Goater and whilst she might have heard raised voices between the Applicant and Mr Goater she had no idea of what the Applicant was being asked to do. Miss Crowther could add little beyond this; in her evidence she stated that Mr Goater was a little bit rude and he raised his voice a bit.
- 9.22 Given the business performance of CCV Guernsey it was clear that CCV Solutions needed to take action. At the end of the previous year Mr Wrathall had instituted regular meetings with the Applicant to attempt to improve the business performance and these are documented in the written submissions.
- 9.23 It would not seem that the Applicant asked for exclusivity in his negotiations or for third parties be excluded and the terms of the offer that he made CCV Guernsey were roundly rejected by the Respondent in April 2009; he accepted that he did not tell CCV Solutions what his accountant and banker had done after that discussion.
- 9.24 The Applicant was not informed of the sale of the business before 26 June 2009 for good business reasons. They were concerned that the Applicant might leave if he had been informed earlier and that the deal might fall through at the last hurdle.
- 9.25 Mr Wrathall understood his duties towards CCV Guernsey in the event of redundancy. He gave evidence that he sought advice from Human Resources and legal counsel prior to communicating redundancy. As part of this process he advised the Applicant on potential alternatives available in the UK. The evidence illustrates that Mr Wrathall discharged his duty in following a fair and established redundancy procedure.
- 9.26 The Respondent was fully justified in rejecting the request by the Applicant that he be paid three months notice as part of his redundancy settlement. The contract of employment was clear that the express term was for four weeks notice.

- 9.27 In the meeting of the 29 June 2009, the Applicant agreed that he would cooperate with the transfer and with Mr Goater.
- 9.28 The interview by Mr Goater and his co-directors was conducted appropriately and the Tribunal has been offered clear evidence that Mr Goater did wish him to join NI. For example, the original offer was improved and included long-term plans such as potential share ownership and directorship of NI. It should also be noted that there was no obligation by NI to offer him any kind of employment.
- 9.29 It is the Respondent's position that the Applicant was not forced to sign the client letters as he alleged; in fact there is an e-mail presented in evidence where the applicant used the expression that he had no objection and would proceed.
- 9.30 Mr Goater gave evidence that he was always polite and courteous toward the Applicant and that the to-do list was not intended to demean the Applicant. He fully expected the Applicant to delegate these tasks as he thought fit to the rest of the CCV team.
- 9.31 The Respondent refutes the allegation that Mr Goater had asked the Applicant to lie and say that he was going to join NI.
- 9.32 Mr Wrathall would have responded to concerns and it should be noted that when he received a complaint on the 17 July from the Applicant he responded within hours. If the Applicant had other concerns then he failed to communicate them to the Respondent.

## **10.0 Conclusions**

- 10.1 The Applicant alleged that the actions and inactions of the Respondent toward him and the behaviour of Mr Goater which took place on CCV premises toward the Applicant constituted repudiatory breaches of contract of employment including breaches of the implied duties of trust and confidence and the duty to act in good faith.

The Tribunal in considering the above has concluded that there were three primary elements to be considered in coming to a judgement as to whether a constructive dismissal occurred within the meaning of The Employment Protection (Guernsey) Law, 1998, as amended.

- Firstly, what weight should be given to the conduct of negotiations between the Applicant and the Respondent as to the purchase of CCV Guernsey in the period leading up to 26 June 2009?
  - Secondly, what weight should be given to the interview and subsequent job offer process conducted by Network Insurance in relation to the Applicant?
  - Thirdly, how was the Applicant treated at the time of his notification of redundancy on 26 June 2009, and how did the employer conduct himself toward the Applicant during the period between that notification and the date on which the Applicant decided that he had been constructively dismissed?
- 10.2 The Tribunal believes that in considering the Respondent's behaviour it should focus on how the Applicant's employment was conducted. It would seem to the Tribunal that the potential purchase of CCV by the Applicant was not an act in the normal pursuit of his employment. Apparently the Applicant's contract of employment did not contain any express term that indicated the potential for the Applicant to purchase CCV Guernsey. It would seem to the Tribunal that without such an express term a reasonable employer would consider such negotiations as outside of any employment contractual considerations. From the evidence it

would seem that the Applicant and the Respondent had markedly different views as to the potential to progress such a purchase. There is also disputed evidence as to the expectations expressed by each party during these discussions, especially as to sole negotiating rights. This led to the Applicant being very disappointed when he was informed that NI would purchase CCV Guernsey; however the disappointment and resentment felt by the Applicant cannot be considered a breach of any of the implied contractual duties of the Respondent under the contract of employment.

- 10.3 It is plainly evident that the role offered by Mr Goater was at a salary significantly below that which the Applicant received from CCV and that it posed a considerable problem for the Applicant. Many individuals in this situation might well consider it reasonable to decline this offer. The Tribunal also sympathises with the Applicant in having to make a decision in a limited time scale during a period of significant change. Additionally the Applicant doubted the Respondent's motives toward him and whether this job offer would result in long term employment with NI. It is quite understandable the Applicant should feel under considerable pressure and that discussions with Mr Goater might be pressured and somewhat fraught. The Tribunal does note however that the Applicant did give Mr Goater a verbal acceptance, conditional on seeing written terms.
- 10.4 The evidence presented was very persuasive that whatever role the Applicant might take with NI he would not have continuity of employment from CCV. There was to be a total rupture involving a redundancy payment from CCV. In summary this was to be a totally new, unique and separate contract of employment with NI. The question for the Tribunal is whether the offer of employment by NI was in any way the responsibility of CCV. The evidence clearly illustrates that NI was taking its own independent view of the salary it could offer and CCV (Solutions) had no part to play in the determination of this offer. The Tribunal has come to the conclusion that neither the level of the NI salary offer nor the behaviours allegedly adopted by Mr Goater in pressing for acceptance by the Applicant could be considered a breach of any of the implied contractual duties of the Respondent under the contract of employment.
- 10.5 Given these findings the Tribunal turned to the third element of this complaint and considered amongst other issues:
- The conduct of the redundancy process
  - The vicarious responsibility of CCV for the alleged behaviour of Mr Goater when acting as an agent for CCV
  - Whether the employer acted in any other such way that there had been a significant breach of contract
  - Whether any of the above went to the root of the contract or demonstrated the employer did not intend to be bound by one of the essential terms of the contract i.e. a "repudiatory breach".
  - Did the Applicant react promptly in relation to the alleged breach
- 10.6 The Tribunal preferred the evidence of the Respondent that they had genuinely sought to consult the Applicant. This was demonstrated by the possibility of a UK based role being considered, together with a series of scheduled face-to-face meetings dedicated to consultation. The Tribunal puts little weight on the length of the consultation period given an apparently well managed process of consultation. The Tribunal also notes that the Applicant had the opportunity to telephone or email a UK based HR professional for advice and support during the consultative period. Finally, the Tribunal considers that the Respondent met the three primary criteria in the Commerce and Employment Code of Practice on Redundancy. Namely that there was appropriate communication, consultation and a reasonable time allotted to the process.

- 10.7 The Tribunal gave significant consideration to the alleged behaviour of Mr Goater. The evidence illustrated that Mr Goater and Mr Wrathall relied heavily on the Applicant to assist in the transfer of the business. Mr Wrathall gave a clear expectation to the Applicant on 29 June 2009 that he was expected to cooperate with Mr Goater.
- 10.8 Mr Crowson gave evidence that he was very aggrieved by the sale of CCV Guernsey without his knowledge; and in the opinion of the Tribunal this was not likely to make for the best possible relationship between himself and Mr Goater during the handover period.
- 10.9 The alleged abrupt interruptions by Mr Goater would seem to have been motivated by his need to achieve a business transfer by 1 August 2009. Whilst he might have displayed some impatience on the CCV premises there is no objective evidence to illustrate that he went further.
- 10.10 Nor is there any objective support for behaviours beyond reasonable impatience from the evidence given by Mrs Duckworth and Miss Crowther. They could not recall any specific discussions between the Applicant and Mr Goater, only a loud voice heard at a distance.
- 10.11 The Tribunal accepts that the Respondent owed the Applicant a duty of care in ensuring that Mr Goater did act appropriately whilst on CCV premises. However it prefers the evidence of Mr Goater that for example his "to do list" was not intended to demean the Applicant and that objectively there were CCV staff to whom the Applicant could delegate such tasks. It would also seem that CCV Solutions had sound business reasons to allow Mr Goater free access to the CCV Guernsey office during July 2009.
- 10.12 When Mr Crowson did raise concerns on 17 July 2009 they were of limited extent, The Tribunal has reviewed the e-mail exchange between Mr Wrathall and the Applicant; they would not appear to reflect an objective and fundamental breach of the employment contract. Also, on inspection, the Guernsey Press announcement of 23 July 2009 on the transfer of the business, made no specific reference to Mr Crowson, which is in marked contrast to the submissions from the Applicant.
- 10.13 The Tribunal was not persuaded that an express term was breached. There was no substantive evidence to support the proposition that the Applicant was entitled to more than four weeks contractual notice.
- 10.14 In summary, the Tribunal cannot find any alleged breach by the Respondent which , when viewed objectively, was of such a nature that it went to the root of the contract or demonstrated the employer did not intend to be bound by one of the essential terms of the contract.

## **11.0 Decision**

- 11.1 Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal found that, under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended, that the Applicant was not constructively dismissed as alleged and the case is therefore dismissed.

Mr Peter Woodward

.....  
Signature of the Chairman

25 May 2010

.....  
Date

