

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mrs Julie Bowditch

RESPONDENT: NSPCC

Decision of the Tribunal Hearing held on 7, 8, 9, 10 & 11 February 2011 and 28, 29 & 30 March 2011

Tribunal Members: Mrs Tina Le Poidevin
Mr Norson Harris
Mr Roger Brookfield

UNANIMOUS DECISION

1. The Tribunal's ruling is that the Applicant was not dismissed within the meaning of Section 5(2)(a) of the Law.
2. All claims are, therefore, dismissed and no award is made.

Mrs Tina le Poidevin

6 June 2011

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Signature of the Chairperson

Date

NOTE: Any award made by a Tribunal may be liable to Income Tax
Any costs relating to the recovery of this award are to be borne by the Employer

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, Mrs Julie Bowditch, claimed that she had been unfairly dismissed within the meaning of Section 5(2)(a) of the Law in that the dismissal fell under the general provisions relating to fairness of dismissal under Section 6(2)(c) of the Law, and specifically that the Respondent did not follow any procedure, or any proper procedure, failed to properly consult with her and failed to offer her any proper or thought out alternative employment.
- 1.2 The Respondent, the NSPCC, disputed the claim on the grounds that the Applicant was not dismissed as she was offered continued employment but decided to opt for voluntary redundancy. The Respondent also denied that it failed to follow a proper procedure, failed to consult and failed to offer any proper or thought out alternative employment.
- 1.3 The Applicant was represented by Advocate Simon Geall.
- 1.4 The Applicant gave witness testimony in person under affirmation.
- 1.5 Mr Michael Dunbar (Children's Services Manager), Mrs Alison Wakefield (Children's Services Practitioner) and Mrs Rosalyn Priaux (Office Manager) gave witness testimony in person under affirmation.
- 1.6 Form ET1, document bundles EE1 and EE2 (containing correspondence and other supporting documents), EE3 (statements from Mr Michael Dunbar, Mrs Julie Bowditch, Mrs Alison Wakefield, Mrs Rosalyn Priaux and Ms Michaela Turner), EE4 (skeleton argument) and EE5 (submissions) were presented in evidence.
- 1.7 The Respondent, NSPCC, was represented by Mr David Christie, assisted by Messrs Martyn Priaux and Ben Havard.
- 1.8 In addition to form ET2, document bundles ER1 and ER2 (containing contractual documentation, briefing notes/packs relating to the closure of the Respondent's Guernsey office, Consultation response from staff and related documents, Consultation documents between the Respondent and stakeholders, Information regarding training programmes, emails and correspondence), ER3 (containing Respondent's cross-referenced witness statements from Messrs Philip Durban, Peter Liver and Wes Cuell, Mrs Greta Thomas, Mrs Sharon Copsey and Mrs Elizabeth Lowndes), ER4 (skeleton for Respondent), ER5 (Statement of Fitness for Work – Mrs Elizabeth Lowndes), ER6 (Redeployment Registration Form), ER7 (Redeployment Application Form), ER8 (Absence Summary – Mr M Dunbar), ER9 (Letter from Dr R E M Yates, General Practitioner for Elizabeth Lowndes), ER10 (Email correspondence dated 5 and 12 February 2010 between M Dunbar, T O'Donnell and S Copsey), ER11 (List of Authorities for Respondent: Polkey v A E Dayton Services Ltd – House of Lords [1987] IRLR 503; Digital Equipment v Clements (No 2) – Court of Appeal [1998] IRLR 134, R v British Coal Corporation ex parte Price and others [1994] IRLR 72; MDH Ltd v Sussex – Employment Appeal Tribunal [1986] IRLR 123; Vokes v Bear [1973] IRLR 363; Quinton Hazell v Earl [1976] IRLR 296; Mugford v Midland Bank plc [1997] IRLR 208 Employment Appeal Tribunal; Miriki v General Council of the Bar [2001] All ER (D) 364 – Court of Appeal), ER12 (Team Closure Plan), ER13 (Employment Manual Redundancy Policy), ER14 (Redacted Minutes of the NSPCC Board of Trustees' Meeting dated 3 December 2009), ER15 (Redacted Minutes of the NSPCC Board of Trustees' Meeting dated 28 January 2010), ER16 (Industrial Relations Law Report 298 (1976) –

J Moon and others v Homeworthy Furniture (Northern) Ltd), ER17 (Industrial Relations Law Report 55 (1985) Green v A & I Fraser (Wholesale Fish Merchants) Ltd), ER18 (Facsimile message to Ben Havard from Alison Shropshire dated 29 March 2011 attaching complete Minutes of the NSPCC Board of Trustees' Meeting dated 3 December 2009), ER19 (Closing Submissions for Respondent), ER20 (Respondent's Authorities – IRLR 386 (1990) James W Cook & Co (Wivenhoe) Ltd v Tipper and others; Mr Matthew Banton v Electrical Installations (Guernsey) Limited (2009); Mrs Vuyiswa Yoli v States of Guernsey (acting by) Health and Social Services Department (2009); Burford v Flybe Limited (2009); IRLR 55 (1985) Green v A & I Fraser (Wholesale Fish Merchants) Ltd).

- 1.9 Six witnesses, Messrs Philip Durban (Assistant Director for Midlands & West Region), Peter Liver (Divisional Director for Midlands & West Region) and Wes Cuell (Divisional Director for Children & Families), Mrs Greta Thomas (Divisional Director for Wales who was also covering the management of the Midlands & Wales Division), Mrs Sharon Copsey (Business Manager) and Mrs Elizabeth Lowndes (HR Department Professional), appeared for the Respondent. All gave witness testimony under affirmation, with the exception of Mrs Lowndes and Mr Cuell who gave their testimonies under oath.

2.0 Facts Found by the Tribunal

- 2.1 The NSPCC is a registered national charity, having been incorporated by Royal Charter, with registered charity number 216401. Its purpose is to provide services to abused and at risk children and their families.
- 2.2 The Applicant, a qualified Social Worker, commenced employment with the Respondent in its Guernsey office on 27 January 2003 as a Children's Services Practitioner.
- 2.3 Her duties were varied, with her main role being to provide a post abuse therapeutic service to children and young people.
- 2.4 The Applicant had been on maternity leave since January 2009 and was due to return to work on 19 October 2009.
- 2.5 At a meeting of the Respondent's Board of Trustees on 24 September 2009, a new strategy for the period 2009 – 2016 was agreed upon, with one element being to streamline the network of offices and service units across the British Islands to free up substantial resources and provide more effective help to a greater number of children. A small number of existing services for children and young persons were identified as being too far from the proposed location of the new network of regional offices and a number were identified as being too small to be viable.
- 2.6 Just after determining the strategy, discussions took place at a senior level between NSPCC managers and third party agencies to ascertain the level of interest in taking over the services provided by the Guernsey office in the hope of retaining the physical office. Whilst initial interest was expressed by Action for Children, this was withdrawn when the charity discovered that the Guernsey office was largely funded by the Respondent and did not attract any government funding.

- 2.7 On 12 October 2009 the Guernsey office employees (including the Applicant) were advised of the Respondent's proposal to close the Guernsey office as well as being advised that a 30 day consultation period would commence at the beginning of November 2009.
- 2.8 On 13 October 2009 a strategic review meeting was held in London to provide a briefing to all staff, although the Applicant did not attend as she was still on maternity leave.
- 2.9 On 14 October 2009 a notice was sent out by the Respondent to all local authorities and other NSPCC stakeholders advising them of the new strategy and the likelihood of a number of office closures. On the same day a similar notice went to all those local authorities and stakeholders in the specific areas where the offices were likely to close advising them of the new strategy and the likelihood of the Respondent's office closing in that area.
- 2.10 On 4 November 2009 Mr Philip Durban met with the Guernsey office employees (including the Applicant) and this marked the beginning of the Respondent's formal consultation period for all Guernsey-based employees. At this meeting the employees were advised that they had an opportunity to respond to the proposal to close the Guernsey office and were invited to put forward alternative suggestions to the proposed closure. They were also advised that, in the event that their posts became redundant, the Respondent would look for alternative employment for them.
- 2.11 The team at this time consisted of the Children's Services Manager, the Office Manager, an Administrator, the Applicant and another Children's Services Practitioner (Level 3), two Children's Services Practitioners (Level 2) and five sessional staff.
- 2.12 The Respondent had structured policies, procedures and support mechanisms in place to deal with potential redundancy situations and these were made available to the Respondent's Guernsey-based employees (including the Applicant) at the commencement of the consultation process.
- 2.13 The Respondent's Redundancy Policy noted its commitment to the application of fair, objective and non-discriminatory criteria based upon sound information and judgement when undertaking selection for redundancy. Examples of objective criteria were skills, qualifications and experience; standard of performance; disciplinary record and length of service. The Policy also stated that the assessment of employees against criteria for selection would be undertaken by the employee's line manager who would put forward recommendations to the Divisional Director/Head of Department or Functional Director who, with HR advice, would be responsible for the final decision on selection.
- 2.14 During the consultation period a number of discussions took place between Guernsey office employees and other NSPCC managers as well as discussions between NSPCC managers and third party agencies to ascertain interest in taking over the services provided by the Guernsey office.
- 2.15 Also during the consultation period, the Guernsey office employees (including the Applicant) put together a collective response to the proposal and this, together with responses from other stakeholders and users of the Respondent's services in Guernsey, were considered by the Respondent following the closure of the consultation period on 3 December 2009.
- 2.16 The minutes of a meeting of the Respondent's Board of Trustees on 3 December 2009 noted that, as a result of feedback received, an all-island service was being considered which could

be provided from a Jersey base and to facilitate this option two Children's Services Practitioners were being retained.

- 2.17 On 8 December 2009, a meeting was convened by the Respondent (attended by Mr Wes Cuell, Ms Greta Thomas, Mr Peter Liver, Ms Nasima Patel, Ms Sharon Copsey and Mr Philip Durban) to further discuss the representations made during the consultation period.
- 2.18 As a result of the representations and following approval by the Respondent's Chief Executive Officer, a decision was taken to close the Guernsey office but retain the services of two social workers in Guernsey.
- 2.19 On 8 December 2009, Mr Philip Durban spoke with the Applicant on the telephone to advise her that her role as a Children's Services Practitioner was being retained.
- 2.20 The Respondent's offer of continued employment was confirmed in a letter from Ms Elizabeth Lowndes to the Applicant dated 12 January 2010. The letter also noted that details of the role could not be provided at that time and if she decided that this was unacceptable to her and she wished to terminate her employment with the Respondent she could do so and the Respondent would view this as a redundancy and provide her with a redundancy payment.
- 2.21 In a letter dated 18 December 2009 to Mr Durban, the Applicant raised various questions to obtain clarity about the role she would be expected to undertake and in an email dated 29 January 2010 to Mr Durban, the Applicant emailed Mr Durban and Mrs Lowndes asking questions and raising concerns about various issues including the practicalities of home working, storage of equipment and workbooks and the possibility of an eight week trial period. She also suggested the possibility of the Respondent renting one or two rooms for the purpose of providing services.
- 2.22 Mr Durban confirmed to the Applicant on 29 January 2010 that he could not provide her with any further clarification at that stage but reiterated the offer of continued employment as a Children's Services Practitioner with the Respondent and reminded her that she also had the option of taking redundancy.
- 2.23 After requesting details of the redundancy terms, these were confirmed to the Applicant in a letter dated 3 February 2010. In this letter Mrs Lowndes asked the Applicant for a decision as to whether she wished to continue with her employment with the Respondent after 28 February 2010.
- 2.24 The Applicant emailed Mrs Lowndes on 8 February 2010 attaching a letter dated 7 February 2010 confirming her decision to take redundancy terms rather than the Respondent's offer of continued employment.
- 2.25 The Respondent's Guernsey office closed on 25 February 2010.
- 2.26 The Applicant's effective date of termination was 28 February 2010.

3.0 The Law

- 3.1 Section 5(2)(a) of the Law notes that an employee shall be treated as dismissed by his employer if "the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice".

- 3.2 In determining whether the dismissal of an employee was fair or unfair, Section 6(1) of the Law notes that “it shall be for the employer to show (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal; and (b) that it was a reason falling within subsection (2)” and Section 6(2) notes “For the purposes of subsection (1)(b), a reason falling within this subsection is a reason which (c) was that the employee was redundant”.
- 3.3 Section 6(3) of the Law notes “Where the employer has fulfilled the requirements of subsection (1), then, subject to the provisions of sections 8 to 14 and 15I, the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case.”
- 3.4 Section 22(1) of the Law notes “Subject to the provisions of section 23, the amount of an award of compensation for unfair dismissal is a sum equal to – (a) six month’s pay, ...” and Section 23(2) of the Law notes “Where in relation to such a complaint the Tribunal considers that, by reason of any circumstances other than those mentioned in subsection (1), it would be just and equitable to reduce the amount of the award of compensation for unfair dismissal to any extent, the Tribunal shall, subject to subsection (3) and subsection (4), reduce that amount accordingly.”
- 3.5 Section 31(9) of the Law notes “A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings; but in any proceedings under this Law before the Tribunal any code of practice issued under this section shall be admissible in evidence, and if any provision of the code appears to the Tribunal to be relevant to any question arising in the proceedings (including, without limitation, any question as to whether an employer has acted reasonably or unreasonably for the purposes of section 6(3)) that provision shall be taken into account in determining that question.”

4.0 Summary of Parties’ Main Submissions

4.1 Applicant

- 4.1.1 Whilst on maternity leave, the Applicant’s Manager, Mr Michael Dunbar, had advised her that a strategy was being formulated by the Respondent.
- 4.1.2 At a meeting on 12 October 2009 with Mr Durban and Mr Liver, the Applicant and other Guernsey office employees were advised of the proposal to close the Guernsey office as it did not align with the Respondent’s new strategy. The Applicant became upset at this news as it came as a complete shock.
- 4.1.3 On asking if the staff could have any influence on the decision to close so that the service could be retained in Guernsey, it was made clear by both Mr Durban and Mr Liver that a decision to close had been made but legally there had to be a consultation period.
- 4.1.4 The staff were advised that the Jersey office would remain open in view of the island’s larger population.

- 4.1.5 Suggestions were made for staff to start looking for job opportunities and any training requirements to make it easier to find alternative employment.
- 4.1.6 On 20 October 2009 the Applicant attended a meeting with Mr Cuell and other Guernsey office staff where they were given an opportunity to ask questions. At this meeting Mr Cuell reiterated that a decision had been made to close the Guernsey office and the decision would not be altered as it had been approved by the Chief Executive and the Trustees.
- 4.1.7 Mr Cuell stated that the Respondent wanted to withdraw from the Channel Islands but, as it was considered to be politically incorrect, they had chosen to remain in Jersey due to its size.
- 4.1.8 In a staff meeting on 23 October 2009 Mr Dunbar advised the Guernsey staff that no new therapeutic work would be taken on (as instructed by Mr Durban). This left the Applicant with no caseload and other social work practitioners with minimal work. Mr Dunbar also confirmed that the Drop Ins would close by the end of December 2009. The Applicant felt that this gave a clear message that the Respondent was already planning the closure before the consultation period commenced so deemed the consultation process to be a sham.
- 4.1.9 At a meeting of all Guernsey staff including the Applicant (with the exception of sessional workers) on 4 November 2009 Mr Durban said that the Guernsey NSPCC office would close by 31 March 2010.
- 4.1.10 At this meeting Mr Durban also confirmed that he was discussing the possibility of the Health & Social Services department taking on any or all of the Respondent's Guernsey services.
- 4.1.11 During the meeting Mr Durban seemed frustrated and angry with staff responses and threatened to end the meeting on more than one occasion.
- 4.1.12 After being offered the opportunity to meet with Mr Durban with or without a representative, the Applicant met him alone and was given the Employee Support Pack. Mr Durban talked about the possibility of working for the Respondent if they maintained a presence in Guernsey and asked if she had looked for alternative employment.
- 4.1.13 Mr Durban told the Applicant about the Respondent's redeployment policy but she confirmed that, as she was not planning to leave Guernsey, it was not worth her taking the redeployment form with her. She felt that this was another indication that the Respondent was just 'ticking boxes'.
- 4.1.14 When the Applicant asked what work she was meant to do as she had been instructed not to take on any cases, Mr Durban suggested that perhaps secondment opportunities at the Health and Social Services department in the Duty Team should be investigated but the Applicant declined as she wanted to remain with the team and fight the proposed closure and the work in the Duty Team did not fit in with her childcare arrangements.
- 4.1.15 The Applicant had very little contact with Mr Durban after 4 November 2009.
- 4.1.16 The Applicant was disappointed with the Employee Support Pack as it was based on UK legislation. Also when the Applicant telephoned the Employee Assistance Programme for support she could not specify exactly what advice she needed and, without this information, the service seemed unable to assist her. She felt that making an Employee Assistance Programme available to staff who were in distress was not enough.

- 4.1.17 On 17 November 2009, whilst preparing the staff response to the proposed closure, the Applicant read a document entitled 'Determining Our Future Locations' which contained the phrase "We are committed to a single presence in the Channel Islands, so we are not asking for location feedback as part of this exercise." As the consultation period had not yet expired, this confirmed her belief that the consultation exercise was a sham.
- 4.1.18 On 23 November 2009, the Guernsey staff (including the Applicant) were asked by Mr Durban to contact Anita Harrild, Deputy Director of the Health and Social Services Department if they were interested in any of their vacancies.
- 4.1.19 On 3 December 2009, the Guernsey office staff collective response to the proposed closure was submitted. None of the suggestions raised home working as a possible avenue.
- 4.1.20 On 8 December 2009, the Applicant received a telephone call at home from Mr Durban advising her that, as a result of the consultation process, her role would be retained and he wanted her to take up therapeutic work as soon as possible. When the Applicant asked if she would receive confirmation in writing, she was told by Mr Durban that she would receive this confirmation but he was not sure when this would be provided.
- 4.1.21 The Applicant subsequently discovered that one of her colleagues, namely Mrs Alison Wakefield, was also remaining but all other staff were being made redundant.
- 4.1.22 The first time the Applicant was aware of the home working condition in relation to her employment was in a statement about the decision to close the Guernsey office. The statement said that the Respondent would "retain two practitioner staff for the time being, who will work from home, with a view to developing our approach to future services in Guernsey over the course of the next few months".
- 4.1.23 In a meeting with the Applicant, on 17 December 2009, Mr Durban confirmed that the Applicant would not be expected to undertake direct work from home and the Respondent would have to find her a location for this. The Applicant expressed her concerns about home working and asked how much direct work she would do and what it would be. Mr Durban said there would need to be flexibility in the roles and skills but could not give her a direct answer.
- 4.1.24 Whilst the Applicant had sight of communications noting general progress, she could not get further information relating to her own position.
- 4.1.25 Mr Durban confirmed to the Applicant that management would be undertaken from outside the island but he could not confirm who this would be. This did not present a problem for the Applicant.
- 4.1.26 Mrs Lowndes told the Applicant that she needed to make a decision as to whether she wanted to accept the offer of employment or not by 28 February 2010 as that was when the Guernsey office would close. If she did not wish to accept the offer, she would be provided with a redundancy package.
- 4.1.27 Both Mr Durban and Mrs Lowndes confirmed that that if the Applicant decided not to stay, her position would remain but they would not be advertised until the new roles had been decided, probably later in the year. This was later retracted by the Respondent when the Applicant decided not to accept continued employment.

- 4.1.28 The Applicant felt that she had no choice but to take redundancy as she did not have solutions to the queries she had raised or sufficient information in relation to her employment terms.

4.2 Respondent

- 4.2.1 The Channel Islands did not fit on a population basis at all but a decision was made that the Respondent wished to retain a presence in the Channel Islands and unhappily the decision was to retain the presence in Jersey with the intention that the remaining Channel Island would be serviced from a centre on that island.
- 4.2.2 At the outset of the process, the Applicant was provided with details of redeployment within the NSPCC and the need to complete redeployment forms in order to be considered for employment. Despite being given access to these forms, she did not complete them as she did not wish to leave Guernsey.
- 4.2.3 Following consultation and consideration of the submissions made by the Applicant and her colleagues, a decision was taken by the Respondent on 8 December 2009 to retain the services of two Children's Services Practitioners in Guernsey, albeit working from home so that savings could be made on buildings.
- 4.2.4 At the time of making the decision, there were only two children's services practitioners in Guernsey, namely the Applicant and Mrs Wakefield, and the offer of continued employment was made to them on the basis of home working although it was likely that further details of this would not become apparent for some months.
- 4.2.5 The Applicant was clearly a person who had impressed Mr Durban with her professionalism as a social worker although her motives in making this claim were questionable.
- 4.2.6 The Respondent considered that it provided good notification at each stage of the redundancy process. It gave as much warning as it could of the prospect of redundancy and explained the position clearly.
- 4.2.7 The extensive consultation exercise was plainly genuine as evidenced by its change of position in offering continued employment to the Applicant and her colleague, Mrs Wakefield.
- 4.2.8 The concept of twin tracking was explained as this bore relevance to the consultation exercise, i.e. social workers working with a family to rehabilitate a child in care to their natural birth parent(s) may also be working towards long term adoption. This process took place on a twin track basis to achieve the objective of regularly reviewing any necessary decision-making for an affected child. The consultation exercise could also be similarly viewed whereby the Respondent had determined a strategy to close the Guernsey office but was giving employees and other interested parties the opportunity present alternative strategies that could avoid or minimise that position.
- 4.2.9 The support offered and provided by the Respondent was far in excess of that normally provided by Guernsey employers in the commercial sector in that this included access to an independent Employee Assistance Programme, offers of training, assistance with alternative job applications and access to Human Resources personnel.

- 4.2.10 The Applicant received and read the Employee Support Pack that was provided to her and, whilst she experienced difficulties in her attempt to obtain information through the Employee Assistance Programme, she could have spoken with Human Resources personnel for assistance.
- 4.2.11 The Applicant had substantial contact with Mr Durban, Mrs Lowndes and others during the process.
- 4.2.12 There was no requirement for the Respondent to attempt to find alternative work for the Applicant or other members of the Guernsey team outside of the Respondent's organisation.
- 4.2.13 The Respondent did liaise with other agencies but none wished to take the service over. The Health and Social Services department requested that individuals contact them and this information was passed on to the Applicant and other members of the Guernsey team at the outset of the consultation process.
- 4.2.14 Out of the nine centres earmarked for closure, the total number of redundancies approached 30 and the only complaint about the redundancy procedure, which was followed in precisely the same manner in each of those centres, had been in Guernsey.
- 4.2.15 Employers are not obliged to continue to operate an entity on the basis of its staff's wishes and are entitled to reorganise their affairs to concentrate their limited resources in the most appropriate manner.
- 4.2.16 Mr Durban was wholly professional in his approach although perhaps not as 'touchy feely' as the Applicant would have liked him to be and it appeared that her real criticism was that Mr Durban was emotionally withdrawn from the team.
- 4.2.17 The Respondent did its best to apply a fair and reasonable process. The Applicant's claim that the process was a sham was based on a 'feeling'.
- 4.2.18 The Respondent rejects the claim of unfair dismissal, not least in circumstances where it gave extra contractual pay and generous redundancy terms in a jurisdiction where there is no statutory right to redundancy pay.
- 4.2.19 The Respondent believed that the heat generated in this case was wholly misconceived and resulted from the personal disappointment of those involved and their strongly felt opposition to the new strategy.
- 4.2.20 The desire to want something concrete so far as the continuing offer was understandable as are all the problems associated with home working with a young family.
- 4.2.21 Mrs Bowditch was an applicant for voluntary redundancy. Her reasoning was understandable and the Respondent as a very good employer, allowed her this option when it could have argued that she had been offered suitable alternative employment. The Respondent did not subject the Applicant to a compulsory redundancy and her claim is inherently at variance with the facts.
- 4.2.22 The Respondent also acted entirely in keeping with the Code of Practice on Handling Redundancy in trying to retain her as an employee pending a vacancy and a defined role

becoming available. She opted not to take this leap of faith and took voluntary redundancy. She was not dismissed by the Respondent.

- 4.2.23 The Respondent requested that, should the Tribunal decide in favour of the Applicant, it consider reducing any award by taking into account the redundancy payment already awarded to the Applicant and the Respondent's charitable status.

5.0 Conclusion

- 5.1 In any claim of unfair dismissal, the Tribunal has to firstly establish whether or not there has been a dismissal and, in circumstances where there has been a dismissal, whether that dismissal is fair or unfair.
- 5.2 Many documents were produced in evidence, all of which have been read and considered even if they have not been specifically referred to within this document and, based on all the evidence presented, the Tribunal has concluded that:
- 5.3 Whilst many questions remained unanswered, the Respondent clearly offered continued employment to the Applicant and the decision to terminate the employment relationship was determined by the Applicant in her decision to take voluntary redundancy.
- 5.4 The Tribunal has, therefore, concluded that this was not a dismissal as defined under Section 5(2)(a) of the Law.
- 5.5 As there was no dismissal, all other claims are irrelevant and are, therefore rejected.

6. Decision

- 6.1 The Tribunal's ruling is that the Applicant was not dismissed within the meaning of Section 5(2)(a) of the Law.
- 6.2 All claims are, therefore, dismissed and no award is made.



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Signature of the Chairperson

6 June 2011

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Date