

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Michael Dunbar

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. In making its decision, the Tribunal considered the content of the Code of Practice in relation to redundancy and finds that the Applicant was unfairly dismissed under Section 6(2)(c) of the Employment Protection (Guernsey) Law, 1998, as amended, as the Respondent failed to adopt a fair process by excluding the Applicant from the pool for selection.
2. The Tribunal, in consideration of the Respondent's request to take into account the redundancy payment already awarded to the Applicant, has decided to dismiss this request on the basis that the Applicant did not have any influence over the decision to terminate his employment on the grounds of redundancy.
3. In considering the Respondent's request to take into account its status as a charity rather than a commercial enterprise, the Tribunal's response is that the Respondent is first and foremost an employer and, as such, its charitable status does not, of itself, justify an entitlement to a reduced award or render it exempt from the payment of an award.
4. The Tribunal's ruling is that, in accordance with Section 22(1)(a) of The Employment Protection (Guernsey) Law 1998, as amended, the Respondent shall pay to the Applicant an award of £22,983.00, this being the equivalent of six months' pay as determined by the Tribunal.

Mrs Tina Le Poidevin
.....
Signature of the Chairperson

6 June 2011
.....
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, Mr Michael Dunbar, claimed that he 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, specifically that the Respondent did not follow any procedure or any proper procedure, failed to properly consult with him and failed to offer him any proper or thought out alternative employment.
- 1.2 The Respondent, the NSPCC, disputed the claim on the grounds that the Applicant was fairly dismissed on the grounds of redundancy and 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 Mrs Julie Bowditch (Children's Services Practitioner), 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 with experience of working with children, young people and families since 1974, commenced employment with the Respondent in its Guernsey office on 15 February 1999 and occupied a property owned by the Respondent at that time under a licence issued in connection with his wife's essential employment.
- 2.3 His line manager throughout his employment with the Respondent was Mr Philip Durban.
- 2.4 Initially the Applicant was employed as a Practitioner, which required him to work both in Guernsey and Alderney to assist with the provision of services for children and young people who were at risk.
- 2.5 The Applicant was promoted to Children's Services Manager in March 2002 and was provided with an essential housing licence in connection with his employment.
- 2.6 During the Applicant's employment with the Respondent he developed a team of professional staff and volunteers who carried out work with children and families.
- 2.7 The Applicant had never been subject to any disciplinary or conduct proceedings and he had never had reason to utilise any grievance procedures during his employment with the Respondent.
- 2.8 The Applicant had received feedback in the Respondent's Annual Reviews and Branch Annual General Meeting reports that he was a positive, honest and passionate advocate for the welfare of the islands' children and young people.

- 2.9 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.
- 2.10 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.
- 2.11 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.
- 2.12 On 13 October 2009 a strategic review meeting was held in London to provide a briefing to all staff, although the Applicant was unable to attend the meeting as he was unwell.
- 2.13 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.
- 2.14 On 4 November 2009 Mr Phillip 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.
- 2.15 The team at this time consisted of the Applicant, an Office Manager, an Administrator, two Children's Services Practitioners (Level 3), two Children's Services Practitioners (Level 2) and five sessional staff.
- 2.16 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 at the commencement of the consultation process.
- 2.17 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.

- 2.18 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.
- 2.19 Also during the consultation period, the Guernsey office employees 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.
- 2.20 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.
- 2.21 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.
- 2.22 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.
- 2.23 On 8 December 2009, Mr Philip Durban spoke with the Applicant on the telephone to advise him that he was being made redundant and that two of his colleagues, namely Mrs Julie Bowditch and Mrs Alison Wakefield, would be remaining.
- 2.24 The Respondent's decision to terminate the Applicant's employment on the grounds of redundancy was confirmed in writing to him on 8 December 2009.
- 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 To the best of the Applicant's knowledge, he had enjoyed positive working relationships with all his employers.
- 4.1.2 The Respondent had never raised concerns with him about his work, attitude or behaviour.
- 4.1.3 The Applicant enjoyed his work with children and young people as well as working for the Respondent. He was also proud of his promotion to Children's Services Manager and in his work in developing the Guernsey-based team.
- 4.1.4 Prior to 1999 the Applicant's whole career had been spent working with children and families and his role as Children's Services Manager involved meeting with children and young people to evaluate the work his staff were doing.
- 4.1.5 Prior to the recession, he (along with team managers and middle managers in other offices) had been expected to expand the Respondent's services but when the recession hit they were faced with reduced financial support and a recruitment freeze. This proved to be very frustrating and stressful for him and his team as when qualified staff left, they could not be replaced.
- 4.1.6 At that time, Mr Durban asked the Applicant to chair Child Protection conferences in order to meet the terms of a Service Level Agreement. The Applicant agreed to do this but was anxious this would take him away from his team at a difficult time and this was proven when his subsequent absence led to the team being unhappy.

- 4.1.7 The Applicant's lack of physical presence in the office for this reason coupled with absences for personal reasons were reflected in management feedback comments from the Applicant's team. The Applicant, whilst embarrassed about the feedback, fully understood their feelings and both he and Mr Durban discussed the feedback and agreed an action plan to alleviate the problems.
- 4.1.8 During this time the Applicant was also on the rota to assist with the drop in service and was working (sometimes twice a week) as a practitioner directly with children and families.
- 4.1.9 In 2009 the Respondent recruited a new Chief Executive and a comprehensive strategic review commenced, leaving the whole organisation 'up in the air and directionless' and created great uncertainty and stress for himself and the team, although, as Guernsey was an independent jurisdiction with a high need for child protection and support services, the general feeling amongst the Guernsey staff was that a Guernsey presence would feature in any new restructuring.
- 4.1.10 On 9 October 2009, following the Board of Trustees' approval of the strategy and the communication of UK-based meetings to convey the outcome, the Applicant was advised by Mrs Rosalyn Priaux that Mr Philip Durban and Mr Peter Liver would be visiting Guernsey to meet the team. They both felt that this was a bad sign.
- 4.1.11 This meeting took place on 12 October 2009, when the Applicant and his team were advised that Guernsey would be one of nine offices to close and Mr Durban would be responsible for managing the closure. There would be a 30 day consultation period starting at the beginning of November during which time the staff could put forward any alternatives to closure. The meeting was cordial and respectful.
- 4.1.12 During the meeting Mr Liver said that the Jersey office would remain open as it fitted the new strategy. However, it was later mentioned in an email from Mr Wes Cuell to the Applicant that, whilst the Channel Islands did not fit the strategy, the Jersey office would stay open due to the size of the population. The Applicant, however, felt that the decision to close the Guernsey office was political.
- 4.1.13 In an email to the Applicant dated 13 October 2009, Mr Durban clearly stated that he had known about the planned closure since 29 September 2009. Another indication that the office closure was known at that time was apparent at a meeting with the Applicant in Guernsey in late October, when Mr Durban directed him to close the drop in service by early December and not to take on any referrals for therapeutic work.
- 4.1.14 On 19 October 2009 the Applicant received media statement text from one of the Respondent's employees, Ina Price that read "The Society stresses that it remains committed to protecting children in the Bailiwick and will continue to do so. Overall the NSPCC's strategy is one of growth and our work will continue even though there is not an actual building or team based in Guernsey."
- 4.1.15 On 20 October 2009 Mr Durban emailed all Guernsey staff advising them that he wanted to meet with them individually to discuss the impact of the closure for them personally. This email also included support contacts (albeit outside of the Channel Islands) and a link to the Respondent's redundancy policy as well as a request that recipients did not share the news with staff from other agencies or service users for the time being.

- 4.1.16 This communication left the employees in a state of shock as they had been hopeful that representation during the forthcoming consultation process could result in keeping the office open.
- 4.1.17 The Applicant considered that a decision had been made to close the Guernsey office prior to embarking on a consultation process and the fact that this final decision had been made before consultation effectively rendered the consultation process a sham.
- 4.1.18 The Applicant considered that the Respondent failed to maintain effective and regular communication with him and his team and failed to provide adequate support to them during the duration of the process, which led to a feeling of isolation.
- 4.1.19 The Applicant also felt that he was used as a conduit to deliver messages to the staff and meetings were not proactively arranged but rather left open for staff to let Mr Durban know if they wanted to meet with him.
- 4.1.20 A meeting with Mr Cuell on 20 October 2009 had left the Applicant and his team a little more upbeat and determined to make a good case to keep the office open. Also Mr Cuell mentioned the possibility of the Applicant taking on a training and development role within the new strategy, although this was not mentioned again.
- 4.1.21 The Applicant had concerns about the ramifications of losing his job in that he occupied a property owned by the Respondent and his housing licence was dependent upon his continued employment. These concerns were expressed to both Messrs Cuell and Durban but only resulted in a short response from Mr Cuell.
- 4.1.22 On 11 November 2009 in a letter from Mr Durban, the Applicant was advised that if he was made redundant he would need to vacate the property he occupied by the last day of his employment which seemed particularly callous.
- 4.1.23 The Applicant considered that the Respondent failed to accurately pursue the possible transfer of services to the Health and Social Services department or other entities in addition to the pledge of financial assistance should any transfer be possible.
- 4.1.24 The Applicant chased Mr Durban for a progress report in relation to the possibility of the Health and Social Services department taking on the Respondent's Guernsey-based staff as he understood that the Respondent had an obligation to explore employment opportunities with Island agencies. It was arranged that staff could contact the Assistant Director of the Health and Social Services department regarding vacancies but the Applicant considered this to be an inadequate response.
- 4.1.25 As the Applicant's wife was a principal employer at the Health and Social Services department, the Applicant did not wish to discuss the situation with her directly for fear of compromising her position.
- 4.1.26 The Applicant considered that there was a failure to keep notes of the meetings at various stages of the process.
- 4.1.27 At a meeting of the Guernsey team with Mr Durban on 4 November 2010, the Applicant asked how the decision to close had been made, who made it and whether he could have access to those records. Mr Durban was very defensive when the Applicant asked to make a record of

the meeting and said he would end the meeting and leave if the Applicant took notes. The Applicant was taken aback and felt quite intimidated by his response which greatly inhibited his and the team's participation in the meeting.

- 4.1.28 On 4 December 2009 the Applicant emailed Mr Durban asking to attend a three day training course at a cost of £450 as he was keen to improve his employment prospects. His request was declined by Mr Durban on 18 December 2009.
- 4.1.29 The Applicant considered that there was an absence of fair/verifiable consultation and selection criteria adopted in this redundancy process.
- 4.1.30 When Mr Durban telephoned the Applicant on 8 December 2009 to inform him that he was being made redundant and advise him that Julie Bowditch and Alison Wakefield were being retained, he found his manner to be oppressive and insensitive. The conversation lasted approximately two minutes and was conducted in a defensive, controlling and unsympathetic manner, with no attempt to ask how he felt or offer any words of comfort or support. He was left feeling very confused, upset and drained.
- 4.1.31 The Applicant did not receive an explanation as to why Mrs Bowditch and Mrs Wakefield were being retained and he was not given an opportunity to apply for any of the positions that were being retained.
- 4.1.32 Mrs Bowditch was a Children's Services Practitioner Level 3. She was a qualified social worker.
- 4.1.33 Mrs Wakefield was a Children's Services Practitioner Level 2. She was not a qualified social worker.
- 4.1.34 There was no evidence to suggest that a fair selection process was followed; there should have been a formal evaluation process and any available posts opened up to those eligible to apply.
- 4.1.35 No-one discussed any employment opportunities with him, apart from redeployment to the UK. A redeployment form was offered to him but he did not wish to leave the Island.
- 4.1.36 The Applicant was not approached after Mrs Bowditch and Mrs Wakefield decided to reject the offers of continued employment.
- 4.1.37 The Applicant felt that being informed of his redundancy by telephone was appalling and highly distressing. There was no thought given to what might be going on in his private life and what consequences this may have had.
- 4.1.38 On 10 December 2009, a media statement text was emailed to the Applicant by Ina Price noting that two practitioners would be retained in Guernsey.
- 4.1.39 The Applicant, who was still residing in the Respondent's property at this time, asked if he could extend his stay for a further two months as he knew he would need to devote time to his team and the service to try to manage the closure but this was turned down. The Respondent did, however, say that he could take time out of work to manage his affairs. This left him with split loyalties but he did his best to give time to the team, the service and his family which was very stressful.

- 4.1.40 Despite having a good relationship and regular contact with Mr Durban prior to the commencement of the redundancy process, the Applicant noticed a considerable decline in both, even though Mr Durban continued making regular trips to Guernsey and the Applicant asked on numerous occasions if he would meet with the staff in person to provide support and any additional information.
- 4.1.41 Apart from a delayed meeting with Mr Durban on 17 December 2009, when Mr Durban presented as resentful, defensive and moody, whatever contact there was appeared to be impersonal (e.g. via email rather than telephone calls or face to face meetings) leaving staff with the feeling that they had to fend for themselves.
- 4.1.42 The Applicant wrote to Mr Durban expressing his concerns in relation to the redundancy process and Mr Durban's behaviour towards him and his team and asked for clarity as to the Respondent's expectations of him so that he could fulfil his obligations to the staff and the service.
- 4.1.43 The Applicant did not accept that the Respondent sought to minimise the impact on himself and his team. The Respondent's approach through its Assistant Director, Mr Durban, was one of insensitivity characterised by a complete disregard for the staff and himself with the most minimal and avoidant forms of communication. Staff had a sense that the closure was a 'done deal' all along and that the Guernsey office was not a priority.
- 4.1.44 The Applicant's experience of the Respondent was that it had always been open and transparent until the redundancy process commenced.
- 4.1.45 In relation to his own behaviour which was referred to by the Respondent in its ET2 response, the Applicant considered that he had a right to feel angry as he was losing the services that he and the team had invested so much time in and cared so much about. He was also worried about the children and families who were affected by the closure and also about Alderney which lacked suitable independent services. It was, therefore, perfectly understandable that emotions would occasionally run high.
- 4.1.46 The Applicant had never had his behaviour questioned before the redundancy process started and was concerned that the Respondent would choose to raise these issues only now.
- 4.1.47 The Applicant would have loved to carry on working for the Respondent given his length of loyal and dedicated service to the organisation but he was denied this opportunity and was unfairly dismissed.

4.2 Respondent

- 4.2.1 Following consultation and consideration of the submissions made by the Applicant and his team, 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.
- 4.2.2 At the time of making the decision, there were only two children's services practitioners in Guernsey, namely Mrs Bowditch 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 it would not become apparent for some months.

- 4.2.3 The Applicant was a Children's Services Manager and, as such he had risen well above conducting day to day social work at a Children's Services Practitioner level and had been principally involved in managing the Respondent's Guernsey centre.
- 4.2.4 Independent chairing of child protection conferences had become quite a large part of the Applicant's job.
- 4.2.5 The extensive consultation exercise was plainly genuine as evidenced by its change of position in offering continued employment to two practising social workers, whereas the Applicant had not been offered continued employment as he was a manager.
- 4.2.6 An important part of the work of a Children's Services Practitioner was to provide therapy for victims of abuse, both physical and sexual. That was not work that the Applicant had carried out in the preceding eight years.
- 4.2.7 The Applicant would not have satisfied the requirements of being in active social work practice to be considered for the role, it would have been a substantial demotion and he did not at any stage seek redeployment with the Respondent.
- 4.2.8 The Applicant was aware from earlier correspondence that the Respondent wanted to advise him of the outcome of the consultation process as soon as possible after the decision was made and could not understand the Applicant's complaint about Mr Durban telephoning the Applicant with the news.
- 4.2.9 The Applicant was a Manager and, as such, he understood and knew perfectly well that Mr Durban was going to speak to other members of staff to warn them about what was going to be received the next day. Communicating by telephone in advance of receiving the redundancy notices was done out of courtesy in as personal a manner as he could in recognition of all the years they had worked together.
- 4.2.10 Mr Durban expected the Applicant to assist him as Manager, not act as shop steward.
- 4.2.11 The Applicant had become angry and aggressive in his dealings with Mr Durban and had threatened to take legal action when he was advised that the Respondent required vacant possession of its property, even though the Applicant had more than 4 months' warning of the need to vacate.
- 4.2.12 Because of the Applicant's reaction to the news of his redundancy, he was given the option of taking gardening leave so that he did not have to conduct any more work. It was understood that he took that option although he may have chaired some Child Protection meetings.
- 4.2.13 From this time onwards, the Applicant's attention was on his personal circumstances and this was the reason why communication between him and Mr Durban declined because of his attitude and absence.
- 4.2.14 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, he deliberately did not complete them as he did not wish to leave Guernsey. As the Applicant did not take advantage of the services offered, there was nothing more that the Respondent could do.

- 4.2.15 No other employment opportunities were available within the Respondent's Guernsey office due to the closure of the operation.
- 4.2.16 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.
- 4.2.17 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.
- 4.2.18 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 as well as access to a member of the HR team, Louise Roberts, with responsibility for the South West area.
- 4.2.19 It was noted that the Applicant had had some contact with Louise Roberts during the redundancy process but had not taken advantage of other support offered to him.
- 4.2.20 The Applicant was specifically advised of a training session entitled 'Looking for a Job after Redundancy' by Chris Morrell in Guernsey on 26 January 2010 and the availability of an on-line career management service accessible for a three month period from any PC (within or outside of the NSPCC), both of which he did not take up.
- 4.2.21 The Applicant did not apply to attend any training programmes that were advertised on the Respondent's 'FirstStop' link to support change and manage uncertainty or consider other areas for personal development.
- 4.2.22 The Applicant received and read the Employee Support pack that was provided to him.
- 4.2.23 The Applicant knew that he could get additional support through union membership but had not pursued this.
- 4.2.24 The ability to obtain support is a two way process, requiring acceptance and willingness on the Applicant's part to take up all of the various services offered to him.
- 4.2.25 The impact of the Applicant's absences were commented on by members of his team within a management feedback document prior to the redundancy process commencing.
- 4.2.26 The Applicant did not cope well with the idea that his job was under threat. His emotions took over and he was unable to stay objective.
- 4.2.27 The Applicant wrongly sought to expand the obligation on the Respondent to attempt to find him alternative work in Guernsey, outside the Respondent's organisation, as there was no requirement for it to do so.

- 4.2.28 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 his team.
- 4.2.29 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.
- 4.2.30 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.
- 4.2.31 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 and this was a classic case of redundancy.
- 4.2.32 Mr Durban was wholly professional in his approach although perhaps not as 'touchy feely' as the Applicant would have liked him to be.
- 4.2.33 The Respondent did its best to apply a fair and reasonable redundancy process.
- 4.2.34 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.
- 4.2.35 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.
- 4.2.36 The Applicant was plainly made redundant as the Respondent's entire Guernsey office was closed and it followed a fair and reasonable procedure.
- 4.2.37 A generous redundancy package was provided to the Applicant.
- 4.2.38 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 It was clear in this case that the Applicant had been dismissed on the grounds of redundancy.
- 5.2 In order to determine whether a redundancy (within the meaning of the Law) is fair or unfair, an employer must first demonstrate that the requirements of the business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.

- 5.3 There is also a need to establish whether or not the employer made all reasonable attempts to minimise or avoid redundancies, that adequate consultation took place before any final decision was made and that a pool of employees for selection were clearly identified.
- 5.4 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:
- 5.4.1 A strategic decision was clearly made by the Respondent prior to the commencement of the Guernsey consultation process to reduce the number of operational NSPCC offices, with the Guernsey office being proposed as one of nine potential sites for closure.
 - 5.4.2 A final decision in relation to the closure of the Guernsey office was not made until after the consultation process had ended and this was evidenced by the Respondent's decision to maintain a presence on Guernsey as a result of staff and public representations rather than completely withdrawing its services from the Island. This, in itself, demonstrated a genuine and effective consultation process.
 - 5.4.3 The Respondent acted reasonably in its attempts to minimise redundancies, communicate support mechanisms and find alternative work for those faced with potential redundancy.
 - 5.4.4 The Respondent did not, however, provide written evidence of the pool for selection or established selection criteria and offered continued employment to two out of its three qualified Children's Services Practitioners, dismissing the viability of retaining the Applicant on the basis that, as a Manager, he had not been actively involved in social work activities and would require retraining to qualify for continued employment.
 - 5.4.5 As the Applicant had worked as a Children's Services Practitioner and was an experienced and qualified social worker, albeit requiring refresher training to satisfy any CPD requirements (for which there was no clear evidence as to the requisite timeframe), it would have been reasonable for him to have been included in the pool for selection.
 - 5.4.6 Retraining could have reasonably been provided to the Applicant, given his social work qualification and previous relevant experience (perhaps in the form of a Jersey or UK secondment) and particularly as there was some uncertainty in relation to the timeframe for the resumption of local services.
 - 5.4.7 The selection criteria applied to the pool of social workers in selecting those for continued employment was not, therefore, objective, fair and consistently applied.
 - 5.4.8 It was disappointing to note the lack of file notes by the Respondent evidencing group/individual meetings/discussions with its Guernsey-based employees from the outset of the consultation process, particularly given the considerable resources available within the organisation.

6. Decision

- 6.1 In making its decision, the Tribunal considered the content of the Code of Practice – Handling Redundancy and finds that the Applicant was unfairly dismissed under Section 6(2)(c) of the Employment Protection (Guernsey) Law, 1998, as amended, as the Respondent failed to adopt a fair process by excluding the Applicant from the pool for selection.
- 6.2 The Tribunal, in consideration of the Respondent's request to take into account the redundancy payment already awarded to the Applicant, has decided to dismiss this request on the basis that the Applicant did not have any influence over the decision to terminate his employment on the grounds of redundancy.
- 6.3 In considering the Respondent's request to take into account its status as a charity rather than a commercial enterprise, the Tribunal's response is that the Respondent is first and foremost an employer and, as such, its charitable status does not, of itself, justify an entitlement to a reduced award or render it exempt from the payment of an award.
- 6.4 The Tribunal's ruling is that, in accordance with Section 22(1)(a) of The Employment Protection (Guernsey) Law 1998, as amended, the Respondent shall pay to the Applicant an award of £22,983.00, this being the equivalent of six months' pay as determined by the Tribunal.

Mrs Tina Le Poidevin

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Signature of the Chairperson

6 June 2011

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Date