

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mrs Patricia Grover
Represented by: Mr Andrew Castle

RESPONDENT: Blue Islands Limited
Represented by: Mr Derek Coates

Decision of the Tribunal Hearing held on 11 and 12 May 2011

Tribunal Members: Ms Helen Martin
Mr Norson Harris
Mr Roger Brookfield

DECISION

In making its decision, the Tribunal considered the content of the Code of Practice, *Handling Redundancy*, and finds that the Applicant was fairly dismissed, on the grounds of redundancy, under Section 6 (2) (c) of the Employment Protection (Guernsey) Law, 1998, as amended.

The claim is, therefore, dismissed and no award is made.

22 June 2011

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Signature of the Chairman

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 claimed on her ET1 (Application) form that she was unfairly dismissed by reason of redundancy because the redundancy was not genuine. She claimed that the procedure followed was not fair and did not follow the relevant guidelines because most of the work that she used to do was still being done directly by employees of the Respondent who were not included in the pool of selection for redundancy.
- 1.2 The Respondent claimed on his ET2 (Response) form that the redundancy was genuine and arose directly out of the change in strategic plan that resulted from the failed acquisition of Aurigny Airlines. The Respondent claimed that the change in strategic direction resulted in a significant reduction of marketing workload relating to the acquisition and a shift of focus to digital marketing techniques that were outsourced to two external UK agencies. The Respondent claimed that he had taken over the strategic marketing function himself as CEO and claimed that the pool for selection for redundancy included all Blue Islands employees who held a marketing role. The Respondent alleged that the redundancy process was fair and followed the Group redundancy policy.
- 1.3 The Applicant was represented by Mr Andrew Castle.
- 1.4 The Applicant gave witness testimony in person under affirmation.
- 1.5 The Respondent, Blue Islands Limited, was represented by the Chairman, Mr Derek Coates, who gave evidence under affirmation. Mr Coates was assisted by Miss Katie Vidamour of Focus HR Solutions Limited.
- 1.6 Ms Nicola Hoyland-Birch and Mr William Michael Lawther gave witness testimony in person under oath.
- 1.7 Miss Hayley Webb gave witness testimony in person under affirmation.

2.0 Facts Found

- 2.1 Mrs Patricia Grover was employed by Blue Island Limited as Head of Marketing from 13 October, 2008.
- 2.2 The Applicant's employment was terminated with effect from 31 January, 2011.
- 2.3 Mrs Grover was contracted to work 37.5 hours per week and received a redundancy payment of one month's salary or £6,470.33.

- 2.4 Blue Islands Limited is a locally owned and run commercial airline, established in 2006, operating passenger flights between the Channel Islands and parts of Europe.

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.”
- 3.6 Section 34(2) of the Law notes “For the purposes of this Law any two employers are to be treated as “associated” if –
- (a) one is a company of which the other (directly or indirectly) has control; or
 - (b) both are companies of which a third person (directly or indirectly) has control;

And the expression “associated” employer shall be construed accordingly.

- 3.7 Section 34(3)(b)(i) of the Law states: “the business of the employer together with the business or businesses of his associated employers shall be treated as one unless either of the conditions specified in this subsection would be satisfied without so treating those businesses.”

4.0 Opening statement by the Respondent (ER1)

- 4.1 Mr Derek Coates told the Tribunal that Blue Islands employs approximately 120 staff and that company decisions are made by a Board of Directors of three people.
- 4.2 Blue Islands Limited is part of the Healthspan Leisure Group and since January 2011 the three Group companies were de-merged into completely separate legal entities. They have operated independently for some time although they share office premises as well as IT functions.
- 4.3 The Respondent stated that when the potential acquisition of Aurigny airlines was declined by the States of Guernsey, the company had to review the strategic plan and introduce a series of cost saving measures which included the decision to cease to operate an internal marketing team and move to an outsourced digital marketing solution.
- 4.4 As a result of the decision to discontinue the marketing team in October 2010, Mrs Grover was made redundant.
- 4.5 The Respondent stated that the procedure followed was fair and reasonable in the circumstances and had been undertaken in a consultative and timely manner taking accepted industry practice into full consideration.

5.0 Opening statement by the Applicant (EE2)

- 5.1 Mr Castle referred the Tribunal to the Code of Practice issued by Commerce and Employment relating to Redundancy and stated that employers must demonstrate that the redundancy is genuine and that they have followed a fair and reasonable procedure.
- 5.2 Mr Castle stated that in this case the Respondent also had a contractual obligation to follow certain basic procedures in the company redundancy policy. With reference to the Applicant’s redundancy, Mr Castle told the Tribunal that the Respondent had failed to meet many of these obligations.
- 5.3 Mr Castle argued that the procedure followed by the Respondent was fundamentally flawed. He told the Tribunal that at least one more member of staff from Blue Islands should have been included “in the pool for redundancy” and that marketing staff in the associated companies should have been included in the selection. Mr Castle contended that the two week consultation period was not reasonable and that there was no mention of the right to appeal in the letter of dismissal. In addition, he stated that the appeal procedure itself was flawed and that there had been no real effort made to avoid the redundancies by natural wastage, a recruitment freeze, re-training, restructuring or by offering first refusal on internal vacancies.

- 5.4 Mr Castle told the Tribunal that the support from the company had been inadequate and the severance package was little more than they were contractually due if they had resigned.
- 5.5 Mr Castle quoted an extract from the company redundancy policy in summary to the Tribunal “the Healthspan Group is committed to the provision of job security for all members of staff” and that “the Group will make every reasonable effort to achieve reductions in staff” ...without recourse to dismissal.”

6.0 Witness for the Respondent: Mr Derek Coates

- 6.1 Mr Derek Coates introduced himself to the Tribunal as the Chairman of Blue Islands Limited. He told the Tribunal that he established Blue Islands in 2006 following his purchase of the Rockhopper Airline. Mr Coates stated that he was also Chairman of the Healthspan Group and Vista Hotels and that Blue Islands and Vista Hotels were linked to the Healthspan Group until December 2010, but that from January 2011 they had “de-merged.”
- 6.2 In the run up to the de-merger, the companies were already operating independently of each other. Mr Coates stated that each company had its own business plan and had to survive financially on its own merits. He said that the companies shared office premises and IT functions only and that each company had its own marketing function or use of external marketing resources.
- 6.3 Mr Coates stated that Blue Islands and Vista Hotels had always worked closely together as both companies were in the leisure sector and there were synergies but that Healthspan had operated independently.
- 6.4 The terms and conditions of employment of Blue Islands had remained unchanged with the changes in the company set up and Mr Coates referred the Tribunal to the company redundancy policy in ER1 (1).
- 6.5 Blue Islands Limited had approached Treasury and Resources with a proposal to purchase Aurigny Airways during 2010. In September 2010, it was announced that discussions concerning the purchase of Aurigny would cease and the Respondent said that this had represented a “real blow” for Blue Islands.
- 6.6 The announcement that the merger of the two airlines was not to proceed meant that Blue Islands had to review its business strategy and ensure that considerable cost savings were made. Mr Coates told the Tribunal that the decision was made to move to a digital marketing strategy rather than rely on the more traditional marketing methods that had been used previously and as a result, Blue Islands could target a wider audience range, across broader locations and at a much lower cost. Mr Coates explained to the Tribunal that digital marketing is a relatively new medium and that very few marketing professionals have knowledge to operate in this field. Mr Coates advised the Tribunal that the Board of Blue Islands made the decision to outsource this function to one such provider. In doing so, Mr Coates explained that this outsourced option not only reduced the cost of employing in-house but it also saved money on traditional marketing methods such as print.

- 6.7 Mr Coates told the Tribunal that the Applicant, Mrs Grover, had joined the company in 2008 and that she had initially been recruited to work across both the hotel Group and airline but, in August 2010, she was given responsibility for the Airline only with no reduction to her salary. Mr Coates explained to the Tribunal that with the new marketing focus, he required extensive digital marketing expertise and a high level of understanding of statistics, financial yields and marketing analytics and that the Applicant did not possess these skills to a sufficient degree.
- 6.8 The Blue Islands marketing team were advised, in a meeting on 12 October 2010, of the likelihood of redundancies. Mr Coates chaired the meeting with the Blue Islands HR manager at the time, Nicola Hoyland-Birch. Each employee was issued with letters notifying them of the likelihood of redundancies (ER1, section 3 refers).
- 6.9 Mr Coates told the Tribunal that the company entered into a period of consultation with the Blue Islands marketing employees between 12 October and 26 October, 2010 during which the employees were advised of vacancies across the Healthspan and Leisure Group companies. (ER1, section 4 refers).
- 6.10 Mr Coates stated that the consultation process had not been 'easy' for the impacted employees and drew the Tribunal's attention to file notes and correspondence from the period (ER1, section 5 and 6). Mr Coates told the Tribunal that the two employees had been treated with dignity and with all of the support the company could provide in the circumstances. Mr Coates explained that he had instructed the immediate cessation of the projects that were underway in the marketing team as the immediate shift in marketing strategy meant that these projects did not need to be continued. The decision of the Board was that if no alternatives could be found the affected individuals would be confirmed as redundant on 27 October, 2011.
- 6.11 Blue Islands provided contractual paid notice, benefits and other entitlements to the impacted employees and that the Applicant received £6,470.33 as a redundancy payment.
- 6.12 Mr Coates explained to the Tribunal the differences between the disciplines of marketing and PR and confirmed that the two functions operated independently at Blue Islands. The three companies in the Group operated separately although in shared buildings and the marketing staff did not cross over between the companies because they had different needs.
- 6.13 The company considered that the redundancies were genuine and handled in the appropriate way. The decision was made to close the internal marketing department and since making the employees redundant the company had not recruited into this function in Blue Islands. Mr Coates told the Tribunal that the majority of the work that had been carried out by the marketing department prior to their roles being made redundant simply ceased on the departure of the two impacted employees and that the small amount of work that remained is now done by the senior management team.
- 6.14 Mr Coates told the Tribunal that he had assumed the role of coordinating the marketing activity in Blue Islands and that he made the strategic marketing business decisions that shaped the business.

- 6.15 Mr Coates stated that the two marketing departments in Healthspan and Blue Islands had always operated independently of each other with no cross over of work. Mr Coates told the Tribunal that it would have been extremely unfair and unsettling to place the marketing department of Healthspan Limited at risk of redundancy when their roles had no relationship with Blue Islands and were not affected by this change.
- 6.16 Mr Coates stated that the PR Manager, Hayley Webb had not been included in the selection pool because the functions of PR and Marketing were different and the requirement for a PR function remained.
- 6.17 Mr Coates told the Tribunal that the company had taken the view that the two week consultation period was sufficient time to discuss alternative options and enter into worthwhile discussion and that extending this period unnecessarily could have caused additional, unnecessary stress. Mr Coates stated that the Applicant could have applied for positions within the Healthspan Group or exercised her right of appeal under the redundancy policy and that neither of these mitigating steps had been taken.
- 6.18 Mr Coates told the Tribunal that the whole pool was made redundant and therefore the provision of selection criteria was considered irrelevant.
- 6.19 Mr Coates told the Tribunal that 120 jobs had depended on the survival of Blue Islands; he had a lot of responsibility to ensure that the company was viable and profitable. Mr Coates said that the new strategic plan identified the need to move to a digital marketing platform. Mr Coates said that digital marketing involves highly evolving new skills that few possessed and that a need for experts in digital marketing had been identified. Mr Coates explained to the Tribunal that the digital marketing expertise had been outsourced for Healthspan Limited and that it involved a rare skill set. Mr Coates explained to the Tribunal that traditional marketing involved TV, papers and magazines and that 96% of bookings were on line today. Mr Coates explained that the team did not have digital marketing skills and that the Applicant, although a very competent marketer who possessed traditional marketing skills, did not have these specialist skills and therefore a decision had been made to outsource the function and reduce costs.
- 6.20 Mr Coates said that the pool of selection was considered appropriate because the skill bases were different and that it would have been “immoral” to spread the risk of redundancies beyond Blue Islands.
- 6.21 Mr Coates told the Tribunal that he walked past the Applicant’s desk every morning and that she could have consulted with him if she had wished to at any time.
- 6.22 Mr Coates confirmed to the Tribunal that the Applicant had not expressed any interest in the vacancies.
- 6.23 Under cross examination by Mr Castle, Mr Coates confirmed that he was the beneficial owner and chair of the three companies and that he controlled the three companies of approximately 500 employees. Mr Coates confirmed that he had had two staff in marketing, zero in the Vista Hotels company and over twenty in Healthspan and eight in digital marketing in Bristol. In response to a question from

the Chairperson, Mr Coates confirmed that the employing entities were separate legal entities within the Group.

- 6.24 Mr Castle referred Mr Coates to Section 34, subsection 2a) and b) of the Employment Protection (Guernsey) Law (“the Law”) (EE3 refers) referencing the meaning of “associated companies” under the Law.
- 6.25 In response to Mr Castle’s cross examination about digital marketing, Mr Coates explained that it was more complex than analysing the ‘hits’ on the website and that Miss Webb wrote the content for the website. Mr Coates said that he had terminated press advertising currently and, in any case, all recent advertising had been instructed by him.
- 6.26 Mr Coates told the Tribunal that the in flight magazine had been outsourced and confirmed that some of the content was written by Miss Webb.
- 6.27 Mr Coates told the Tribunal that he took the lead in marketing decisions and that the Applicant did not fall short in her traditional marketing abilities but that a move to digital marketing had been needed with a high level of digital marketing experience and expertise and that this had been a sensible business decision.
- 6.28 In response to cross examination about the possibility of re-training the Applicant in Digital Marketing, Mr Coates said that statistics, marketing analytics and financial yields were specialist functions and that the Applicant had a degree in languages and that it would have taken her three or four years to obtain sufficient knowledge and expertise. Mr Coates confirmed that he did not ask the Applicant to be retrained.
- 6.29 Mr Coates told the Tribunal that offering early retirement was not an option as they were a very young team and that offering voluntary redundancy was not viable as they were a “very lean business.” with no taxpayer support and there was “little to trim.” Mr Coates said to the Tribunal that he had to take a number of strategic decisions to safeguard 120 jobs and that there was no natural turnover or wastage that could have influenced the decision to make redundancies. Also, the Applicant had not wished to re-train. In addition, Mr Coates confirmed to the Tribunal that there was no overtime in Blue Islands that could be reduced and no temporary staff fulfilling roles.
- 6.30 Mr Coates told the Tribunal that he had considered all the methods for avoiding redundancies and that not all were relevant for Blue Islands. The Applicant had been given the full list of vacancies across all three companies at the time and Mr Coates considered that the consultation period was a suitable length of time.
- 6.31 In response to cross examination from Mr Castle concerning whether Mr Coates had asked other staff if they planned to leave the company, the Respondent said that he had not asked people if they intended to leave as generally employees would not disclose this to their employer.
- 6.32 Mr Coates told the Tribunal that he believed that the Applicant had received a decent settlement package of one month’s salary (£6,470) plus holiday pay (£4,749) and pay in lieu of her notice period totalling £31,810.

- 6.33 In response to cross examination from Mr Castle concerning whether the consultation period could have been extended into the notice period, Mr Coates said that he had felt that two weeks was a sufficient period of time especially as the Applicant did not wish to consult. Mr Coates confirmed that Ms Hoyland-Birch had made the decision concerning the length of the consultation period.
- 6.34 Mr Coates said that Hayley Webb had continued to report to Ann Outram and not the Applicant when she relocated to Blue Islands.
- 6.35 Since the redundancies were confirmed, Blue Islands have engaged two outsourced digital marketing agencies and a digital project manager who manages the relationships and works directly with Mr Coates as a third party expert intermediary.
- 6.36 Mr Coates confirmed to the Tribunal that the Commercial Manager, Mr Rob Veron, communicated changes to routes as he understood financial yield management and that new fares were set up in a Canadian system Air Kiosk in Jersey.
- 6.37 Mr Coates told the Tribunal that he viewed the consultation process as a two way process and that the HR Manager had stayed in contact with the Applicant throughout the process to facilitate this. The redundancy policy had been in place for years and was consistently available on the company intranet.
- 6.38 The company advertised for a marketing executive because of an internal promotion in Vista Hotels and this was 27 days after the notice of redundancy to the Applicant. Mr Coates explained to the Tribunal that he operated a fast moving business and that he was not aware of this vacancy prior to confirming the roles were redundant.
- 6.39 Mr Coates apologised to the Tribunal for not advising Mrs Grover of a vacancy for a marketing executive that arose before the redundancies were confirmed and explained to the Tribunal that this was an oversight and that in any case, the role was never filled and was outsourced.
- 6.40 In conclusion, Mr Coates told the Tribunal that the company believed that a fair and reasonable process had been undertaken and that, in any event, if any further procedural steps had been taken, the outcome would have been unlikely to have been any different.

7.0 Witness for the Respondent: Ms Nicola Hoyland-Birch

- 7.1 Ms Hoyland-Birch told the Tribunal that she joined the company in June 2009 as HR Manager. Ms Hoyland-Birch told the Tribunal that initially she had managed the Healthspan Leisure Ltd (now Vista Hotels) and from December 2009 she had also taken responsibility for the HR function at Blue Islands.
- 7.2 Ms Hoyland-Birch met with Derek Coates in early October and that he advised her of the need to undertake a number of cost cutting measures to ensure the commercial viability and sustainability of the business going forward following the loss of the possible acquisition of Aurigny Limited. At the same meeting, Mr Coates outlined the idea of moving to a digital marketing approach to provide greater diversification and reduce costs.

- 7.3 Mr Coates had sought advice from Ms Hoyland-Birch concerning the appropriate redundancy procedures to follow and that she had subsequently e mailed the Group Redundancy Procedure (ER1, section 1) and the Code of Practice from Commerce and Employment to him together with some general notes about redundancy (ER1, section 2). Ms Hoyland-Birch explained that these documents were used as the basis for the procedure that was followed. As the work of the whole department was to cease, the provision of selection criteria was considered irrelevant although it was recognised as part of the normal process.
- 7.4 Ms Hoyland-Birch told the Tribunal that the PR and marketing teams had always been run as separate functions undertaking separate tasks. Although Ms Hoyland-Birch was aware of some overlap in the work, it was clear that each function had distinct roles.
- 7.5 Mr Coates chaired the meeting on 12 October, 2010 at which Ms Hoyland-Birch was present and within which he advised the marketing team that their roles had been placed at risk of redundancy and that this had been confirmed in a letter to the employees (ER1, section 3 refers).
- 7.6 Ms Hoyland-Birch told the Tribunal that the impacted employees were advised that the meeting marked the start of a two week consultation period in which the company would look to find any suitable alternatives to redundancy. Both employees were advised that vacancy lists could be made available for each of the group companies and that they could speak with Mr Coates or Ms Hoyland-Birch at any time should they wish to discuss any matter or any alternatives to redundancy.
- 7.7 Ms Hoyland-Birch said that it was made clear at this meeting that, on initial review, it appeared unlikely that alternatives could be found.
- 7.8 Ms Hoyland-Birch said that the Applicant did not contact her during the consultation period and that she had contacted her after a few days to see if there was anything she wished to discuss or if there was any information she could provide to her to support and facilitate the consultation period. Ms Hoyland-Birch told the Tribunal that the Applicant had asked a number of questions about her subordinate but initially appeared unwilling to discuss her own situation. Ms Hoyland-Birch confirmed that she had discussed the company redundancy package offer by Blue Islands and that she had provided the Applicant with a vacancy list (ER1, section 4 refers).
- 7.9 Ms Hoyland-Birch directed the Tribunal to the file note from her meeting with the Applicant as well as e mail exchanges which dealt with the necessary issues during the consultation period (ER1, section 5 refers).
- 7.10 The witness told the Tribunal that at the end of the consultation period, the decision was made that the individuals would be made redundant and notification of redundancy letters were issued on 27 October, 2010 (ER1, section 7 refers).
- 7.11 Ms Hoyland-Birch advised the Tribunal that she viewed the consultation period to be reasonable and that it would have been unreasonable to make it any longer due to the unnecessary stress that this would have caused. Ms Hoyland-Birch confirmed that the Applicant had not wished to discuss her personal situation with Mr Coates.

- 7.12 In response to cross examination from the Chairperson, Ms Hoyland-Birch said that there were no other organised formal meetings during the consultation period but that she had told the Applicant that she would be available and organise meetings by e mail if they were requested.
- 7.13 Ms Hoyland-Birch told the Tribunal that the notes in ER1, section 2, were not specific to this situation from a time table perspective and confirmed that re-training would have been made available, if any of the vacancies were of interest. In response to a question by Mr Castle, she confirmed to the Tribunal that the impacted employees would not have been offered first refusal on any vacancies that they applied for and that no consideration had been given to extend the consultation period into the notice period of the Applicant.
- 7.14 Ms Hoyland-Birch told the Tribunal that in her professional view the two week consultation period was long enough and that the inclusion of other marketing staff in Healthspan was not appropriate because the companies were operating separately.
- 7.15 Ms Hoyland-Birch told the Tribunal that the final decision about the Applicant's redundancy was made by the Board of Directors when no alternatives were found.
- 7.16 Ms Hoyland-Birch told the Tribunal that it was an oversight not to mention the right of appeal in the final letter confirming that the Applicant's role was redundant but that the right of appeal was included in the redundancy policy and that although reminders are useful, the onus was on the individual to read policies. Ms Hoyland-Birch said that the process was satisfactory in her view although not "perfect" because she had omitted the paragraph concerning the right of appeal in the final letter to the impacted employees.

8.0 Witness for the Respondent: Hayley Webb

- 8.1 Miss Webb told the Tribunal that she worked as 'PR Executive' at Blue Islands.
- 8.2 Ms Webb told the Tribunal that she had studied 'Media Studies' at Liverpool Hope University and that after completing two years of study she transferred to study a combined degree of 'Advertising and Marketing Communications and Public Relations' at London Metropolitan University because she wished to study a course with a PR focus.
- 8.3 After a period of employment at Diabetes UK, Miss Webb returned to Guernsey to work for the Healthspan Group from November 2009 as a PR and Promotions Executive reporting to Ann Outram, Corporate Communications Manager for the Group. Miss Webb said that this role provided public relations for all three businesses: Healthspan, Blue Islands and Healthspan Leisure (now Vista Hotels) and that this included producing the internal magazine 'Newspan,' writing press releases, organising events and generally assisting Ann Outram.
- 8.4 Miss Webb stated that she was offered the role of PR Executive for Blue Islands in July 2010 as part of the lead up to the proposed merger with Aurigny Airlines. Miss Webb said that initially this role had been very busy as there was a need to create a

communications plan for Blue Islands whilst dealing with a huge influx of media queries as well as the continued pro-active promotion of the airline. Miss Webb said that a lot of her time was spent managing and preparing statements for the media due to the high profile of the potential acquisition.

- 8.5 Miss Webb told the Tribunal that when the acquisition bid fell through a new business plan had been developed that required a greater emphasis on PR for implementation and that her function had become even more active as a result and the press coverage had increased for the brand in both Guernsey and Jersey.
- 8.6 Miss Webb told the Tribunal that the communications strategy was now completely focussed towards digital, to cut costs and remain in line with customer needs and that to implement this she works closely with a number of outsourced experts. Miss Webb told the Tribunal that the digital communications plan is complimented and supported by PR activity to achieve press coverage and that this provided the content and direction for the airline's website news pages.
- 8.7 Miss Webb confirmed to the Tribunal that she reported to Ann Outram and that Mr Coates led the marketing strategy of Blue Islands. Miss Webb had worked with the Applicant on press releases that were jointly proof read by the Applicant and Ann Outram. Miss Webb told the Tribunal that she had never reported to the Applicant and that her last appraisal had been carried out by Ms Outram.
- 8.8 Miss Webb told the Tribunal that her role involved liaison with the media and that as a result of new routes developing it had become necessary to develop new contacts in London, Geneva and Zurich. Miss Webb confirmed to the Tribunal that she liaised with the digital agencies with regard to PR content.

9.0 Witness for the Respondent: William Michael Lawther

- 9.1 Mr William Lawther told the Tribunal that he was the Group Finance Director of the Healthspan Group of companies and a Director of Blue islands Limited.
- 9.2 Mr Lawther told the Tribunal that he worked on the proposed acquisition of Aurigny Limited from July to September, 2010 with Mr Coates. Mr Lawther said that this was a high profile transaction that was largely carried out in the public arena through the press. Mr Lawther told the Tribunal that Mr Coates had been noted publically as stating that Blue Islands airline on a standalone basis had little future. Mr Lawther said that it had been a point of low morale for the company when Treasury and Resources announced that it had ended discussions with Blue Islands concerning the proposed acquisition of Aurigny airlines.
- 9.3 Mr Lawther told the Tribunal that he had called together all the people on his floor to inform them of the press release and to advise them that Mr Coates had no immediate plans to close the airline. Mr Lawther said that he told the Blue Islands employees at this meeting that Blue Islands had recently had a cash injection which meant that there would be no short term or 'knee jerk' reaction. Mr Lawther said that he did not keep notes of that meeting but the gist of the statements that he made were repeated to a senior banker the following day (ER1, Section 8 refers). Mr Lawther said that he did not believe that he assured staff that their jobs were safe in

this meeting and that he had never believed that there would be no job losses but that the operational model would have to change.

- 9.4 Mr Lawther stated that over the next few weeks various operational models were looked at. He said that the details of the proposed marketing initiatives and the staff requirements were not discussed with him however he was aware that Mr Coates wished to move to a digital platform for marketing and that the Group had established a relationship with an office with digital expertise in Bristol.
- 9.5 Mr Lawther said that he was not involved in the selection of the pool or the actual process for making redundancies; however his view was that if Mr Coates wished to take back more of the control himself and to move the main marketing platform to a digital/PR basis it would not have surprised him if this resulted in the total cessation of the local marketing function.
- 9.6 Mr Lawther told the Tribunal that he had advised Ms Hoyland Birch to consult with the HR Manager of Healthspan, Caroline Shakerley who had experience of making people redundant and the processes involved and that Ms Hoyland Birch had earlier obtained some draft procedure notes from Caroline. These notes covered procedures for some earlier redundancies that had been carried out in Alderney and Ms Hoyland Birch had issued some redundancy procedures based on Caroline Shakerley's drafts together with a draft letter to Mr Coates and that Ms Hoyland Birch had also circulated two employment guidelines as several months earlier Ms Shakerley had consulted with Mourant Ozannes to ensure that the correct procedures were used as part of another possible process.
- 9.7 Mr Lawther told the Tribunal that Mr Coates had drafted the 'likelihood of redundancy' letter that he was proposing to send to marketing personnel in Blue Islands and sent it to Ms Hoyland Birch, Graham Case (the other Board director) and himself. In summary the letter notified staff that following the Aurigny decision their expansion strategy would no longer be pursued and that the business would restructure including most marketing activities. The letter stated that there was a likelihood of redundancy and that there would be a period of consultation and the business would look to see if alternative employment could be made available.
- 9.8 Mr Lawther told the Tribunal that Mr Coates had issued an e mail on 11 October, 2010 inviting the marketing personnel to a meeting at 3.00 pm the next day to discuss the future of the business.
- 9.9 Mr Lawther told the Tribunal that he did not attend the meeting on 12 October, 2010 but that when he returned from holiday on 28 October, 2010 he had discussed the redundancy process with Ms Hoyland Birch and she had advised that the confirmation of redundancy letters had been issued on 27 October, 2010.
- 9.10 Mr Lawther told the Tribunal that, since the redundancies were confirmed, he had witnessed that the marketing function had been carried out by the senior management team and Mr Coates, with input from specialist digital outsourced agencies.

- 9.11 Mr Lawther advised the Tribunal that it was clear that a different marketing strategy was needed and that the nature of the aviation business meant that there were lean margins and that there were no other alternatives to redundancy
- 9.12 With regard to the Healthspan marketing team, the nature of the marketing was very different to the traditional marketing roles in Blue islands and that it would have severely disrupted the Healthspan business to include the Healthspan marketing employees in the pool.
- 9.13 Mr Lawther told the Tribunal that employees were employed in the group in separate legal entities.

10.0 Witness Trish Grover: the Applicant

- 10.1 The Applicant told the Tribunal that she was employed as Head of Marketing at Blue Islands since October, 2008. Mrs Grover stated that she had a background in marketing and had worked in a number of industries including tourism, finance and in the public sector. Mrs Grover told the Tribunal that she is a member of the Chartered Institute of Marketing and that she had been involved in all aspects of modern marketing strategies during her career.
- 10.2 The marketing department of Blue islands consisted of herself as departmental head and Michelle Teed, a part time Marketing executive and Kate Gifford, a Business Analyst who had already transferred to the accounts team at the time of the redundancies.
- 10.3 Mrs Grover outlined her role to the Tribunal as broadly involving the following activities:
- Preparation of the annual marketing budget
 - Planning and overseeing above the line advertising campaigns
 - Development and launch of 2 hotel websites
 - Overseeing the outsourced digital marketing campaign (including PPC; SEO; and e mails)
 - Member of the Blue Islands Commercial team
 - Tactical campaigns and activities
 - Airline website
 - Attendance at the monthly management meetings
 - Management of 2 staff
 - PR planning and implementation with the Group PR department
- 10.4 Mrs Grover told that Tribunal that she had enjoyed working with Mr Coates very much and that she had never received any criticism about her work or any disciplinary sanction in the first two years following her appointment.
- 10.5 Mrs Grover said that there had been initial optimism about the bid for Aurigny Airlines and that in anticipation of this and to help out with the additional work, Mr Coates had moved Hayley Webb into the Blue Islands marketing team in July, 2010. Mrs Grover told the Tribunal that Miss Webb had previously worked in a Group Public relations role.

- 10.6 Mrs Grover told the Tribunal that she was very disappointed when she was advised that the acquisition of Aurigny airlines would not go ahead and that this was a lost opportunity for her.
- 10.7 Mrs Grover stated that the Group Finance Director, Mr Lawther had announced to staff that a cash injection had been arranged for Blue Islands to support the company for at least 12 months and that he had said that all jobs would be safe.
- 10.8 Mrs Grover told the Tribunal that she had been invited to attend a meeting with Mr Coates and the HR Manager on the 12 October to discuss the future of the business.
- 10.9 Mrs Grover said that at the meeting on 12 October, 2010 Mr Coates had told them that all roles in the marketing department were at risk of redundancy and that any redundancies were a direct result of the failed Aurigny bid. Mrs Grover alleged that Mr Coates had said in the same meeting that there was no longer any need to proactively market Blue Islands and that as a result there needed to be some cost savings. Mrs Grover said that the Respondent told her that the decision had not yet been finalised but that they were entering the two week consultation period during which they could have meetings with himself and/or the HR Manager. Mrs Grover told the Tribunal that in the meantime it would be business as usual and that there would be good redundancy terms and that if redundancies were not made the company would "go down."
- 10.10 Mrs Grover said that Mr Coates gave each employee in the department a letter at the end of the meeting headed "Notification of the Likelihood of Redundancies" and a copy of the Group Redundancy Policy was included. Mrs Grover said that the letter confirmed what Mr Coates had said verbally in the meeting.
- 10.11 During the consultation period there had not been any real effort to avoid the redundancy situation nor to review marketing roles elsewhere in the group to see if she could be fitted in. There had not been a freeze of other posts or recruitment blocks within the Group and impacted employees were not given first refusal on any vacancies. Mrs Grover told the Tribunal that there was no offer of re-training and that it had been assumed that only a full time marketing post at a similar grade would have been acceptable to her and that no-one had enquired that a lower graded post or part time post might appeal to her.
- 10.12 Mrs Grover stated to the Tribunal that she gained the impression that the consultation period was a "sham" and that the decision that the roles were to be made redundant had already been made. Mrs Grover said that she gained this impression because a meeting took place on 13 October attended by all the Blue Islands team. Mrs Grover said that she understood that the purpose of the meeting was to discuss new marketing initiatives and that Miss Hayley Webb, the PR Executive had been included but the three marketing staff had been excluded. Mrs Grover said that on 20 October, 2010 a monthly management meeting took place and she was told that she did not need to attend.
- 10.13 Mrs Grover told the Tribunal that she was not surprised when she received a letter from Ms Hoyland-Birch advising her that no other job was had been found for her and that she was to be dismissed. Mrs Grover said that the two week consultation

period was evidence that a meaningful effort to avoid redundancies had not been made.

- 10.14 Mrs Grover said that there were further aspects in which the procedure followed fell short of what she expected. She said that she was not made aware of the criteria for selection or who was in “the pool.” Mrs Grover said no-one explained why Hayley Webb was not included nor was it ever explained why other marketing posts within the group had not been included.
- 10.15 Mrs Grover told the Tribunal that she thought it would have been fairer if there had been a policy paper of some kind that set out what marketing would be required in the future across the whole Group which and explained how it was going to be delivered.
- 10.16 Mrs Grover told the Tribunal that there was no proactive effort from the company to arrange meetings either to assist her in finding alternative employment or to discuss how the redundancy process was going.
- 10.17 Mrs Grover said that she was not told until the letter of 27 October what the severance package would be and that although an appeal procedure was mentioned in the redundancy policy there was no further reference to it in any of the letters or the meetings.
- 10.18 In summary, Mrs Grover said that in her view the redundancies were not genuine because in spite of what Mr Coates has said about out-sourcing marketing to 3rd party companies there was still marketing activity taking place within Blue Islands. Mrs Grover told the Tribunal that in her view the consultation process followed was far too short and did not include all the elements that are in the company redundancy policy or the Code of Practice issued by Commerce and Employment.
- 10.19 Mrs Grover told the Tribunal that she had been taken on to work for Blue Islands but that she had assumed responsibility for the marketing for Vista Hotels after two or three months following the resignation of the Vista Hotels marketing manager. Due to the high volume of work her role had moved back to work for Blue Islands only.
- 10.20 Mrs Grover said that the digital marketing activity at Blue Islands prior to her redundancy was managed by Healthspan initially with some contact with marketing support in Healthspan.
- 10.21 Mrs Grover told the Tribunal that the skill sets of PR and marketing were not identical but that there were synergies and some overlap. Mrs Grover said that she had not been asked if she was willing to undergo re-training and that she had not been asked if she would be interested in part time work or if she was willing to take a pay cut and that she would have considered both.
- 10.22 Mrs Grover said that the relocation of Miss Webb had been because of the Aurigny bid and that Miss Webb had daily liaison with Derek Coates as a result. However, she contended that she had approved her work and therefore that Miss Webb had had two line managers. In addition, it had been planned that Miss Webb would report to her and that Miss Webb had relocated to Blue Islands only five days before the redundancy consultation process was initiated.

- 10.23 Mrs Grover told the Tribunal that she felt that the consultation process was “superfluous” and a “farce” and that this influenced her later behaviour during the process. Mrs Grover said that she felt the company was paying “lip service” only to the consultation process.
- 10.24 Mrs Grover told the Tribunal that she did not appeal against the decision to make her role redundant because of the way Mr Coates ran the business and his strength of character. She said the appeal would have been to one of the other two Directors in all probability and she felt that it was all pre-decided.
- 10.25 In response to a question from the Chairperson, Mrs Grover confirmed that she did not ask for further details of any vacancies and that none had appealed to her. In addition, she needed time to think about her future and that she was not ready to do so in the two week consultation period. Mrs Grover said that she didn’t feel “encouraged” to look at any of the vacancies.
- 10.26 The Applicant told the Tribunal that she had already been involved in managing a contract with a third party digital marketing agency prior to her role becoming redundant. The Applicant said that she could not ask the outsourced agency about technical issues in depth because she was not a technical expert but that she was competent at setting objectives.
- 10.27 Mrs Grover told the Tribunal that she had not been required to attend the monthly management team meeting on 20 October and that she had wanted the option to do so.
- 10.28 Mrs Grover told the Tribunal that she had attended two informal meetings with Nicola Hoyland-Birch during the consultation period but that she had discussed the situation of her subordinate and enquired about the redundancy package only.

11.0 Closing statement by the Respondent: Mr Derek Coates

- 11.1 Mr Coates told the Tribunal that he took his role as Chairman very seriously and that many families were dependent on his businesses for their livelihood. He stated that his prime focus had been to secure the viability of Blue Islands as an airline. He told the Tribunal that he deeply regretted making Mrs Grover redundant but that it was in the interests of the company to do so and that all due procedures and policies had been followed with integrity.
- 11.2 Mr Coates said that he had had to look at many options and cost cutting measures that have collectively resulted in significant cost savings and efficiencies to aid the long term future of Blue islands. Mr Coates told the Tribunal that he had made a decision to change the marketing strategy and outsource the function and that this resulted directly in the redundancies. Mr Coates explained that at the point of Mrs Grover leaving the company the digital outsourced agency was changed and became managed by a third party project manager with the required experience.
- 11.3 Mr Coates told the Tribunal that Blue islands and Healthspan are associated companies but that in this respect so were a number of other companies across Guernsey and the UK that he controlled. Mr Coates told the Tribunal that the

decision to limit the selection pool to Blue Islands marketing staff was because only Blue islands was impacted by the change in business strategy and the marketing roles within Blue Islands and other associated companies had no crossover. In addition, Mr Coates stated that the roles of the PR team and the marketing team were different and they were not a combined team. Mr Coates said that Miss Webb had always reported to Ms Outram and still did and Miss Webb and the Applicant were only 'working together' and that although emphasis had been placed on Miss Webb's role in the Tribunal, any small administrative marketing tasks had been picked up by a number of people, including the Respondent himself.

- 11.4 Mr Coates explained that once the selection pool had been established and the decision made to place all the roles within Blue islands marketing team at risk the need to identify selection criteria was irrelevant. The whole pool was to be made redundant if no other alternatives were found.
- 11.5 Mr Coates told the Tribunal that the Applicant had not entered into the consultation period fully and that had she expressed an interest in any of the vacancies regardless of salary, level or role type then Blue islands would have been in a position to discuss re-training options with her. In addition, Mr Coates told the Tribunal that the Applicant had chosen not to exercise her right of appeal despite being aware that it was available to her.
- 11.6 In conclusion, Mr Coates told the Tribunal that the redundancy had been a difficult decision but that he felt that the Applicant had been treated in a fair and dignified manner.

12.00 Closing statement of the Applicant

- 12.1 Mr Castle told the Tribunal that the procedure followed was flawed to the point of being unreasonable and unfair.
- 12.2 In summarising, Mr Castle told the Tribunal that Mrs Grover was already managing an outsourced relationship with a digital marketing agency at the time of her redundancy and that Miss Webb was clearly fulfilling some of the functions that Mrs Grover had fulfilled previously. Mr Castle told the Tribunal that there was a clear synergy between the roles and that the skill sets between the Applicant and Miss Webb seemed to be complimentary. Mr Castle told the Tribunal that aspects of traditional marketing were still undertaken by the company and that on the basis of all these points he contended that the redundancies were not genuine.
- 12.3 With regard to the procedure followed, Mr Castle told the Tribunal that Blue islands was not a small employer and had access to in-house HR advice and external legal advice and that as a result the procedure followed should have been faultless.
- 12.4 Mr Castle reminded the Tribunal that the Respondent had control of a Group of companies that were associated in terms of the Law and that as a result marketing staff from Healthspan should have been included in the pool of selection.
- 12.5 Mr Castle told the Tribunal that that much more effort should have been made to find vacancies in the other Group companies and that voluntary redundancy could have been offered to other marketing staff or a "trawl" done to ascertain any other

members of staff who were planning to leave. In addition, redundant staff could have been told that they would have first refusal on any vacant posts.

- 12.6 Mr Castle told the Tribunal that management should have driven the communication of the situation and that the Applicant would have considered other options if she had been asked.
- 12.7 Two weeks was not enough time for effective communication and that the one measure that the company had taken in circulating the vacancy list was flawed because at least one vacancy was not shown on the list and several others came to light within 6 weeks of the end of the consultation process. Mr Castle said that he did not believe that these vacancies were not known about before.
- 12.8 Mr Castle said that it was not surprising that Mrs Grover did not feel able to engage wholly in the process and that how could she have faith in the appeal process when the Board had already made its views known and it was an appeal against a decision that the Chairman and HR had already been closely involved in.
- 12.9 In conclusion, Mr Castle said that the company should not be entitled to use a non-genuine redundancy to achieve their outsourcing plans, misrepresent the abilities of staff to justify the redundancy and then ride 'rough-shod' over fair and reasonable procedures.

13.0 Conclusion

- 13.1 It was clear that the Applicant had been dismissed on the grounds of redundancy.
- 13.2 The Tribunal heard considerable oral evidence during the Hearing and considered all the written evidence before it, whether specifically referenced in this judgement or not.
- 13.3 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.
- 13.4 There is also the 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 was clearly identified.
- 13.5 The Tribunal was persuaded that there had been a clear change in strategic direction following the failed acquisition of Aurigny airlines that resulted in the need to make cost savings and increase diversification of the business by utilising the highly specialised field of digital marketing. As a corollary to this, the Tribunal was convinced that the change in strategic direction led directly to the resulting redundancies and cessation of the Blue Islands internal marketing function. As a result, the Tribunal concluded that the redundancies were "genuine."
- 13.6 The Tribunal took the view that it was an employer's choice who to include in the redundancy selection pool providing that the decision was based on genuine, sound

business reasons and the decision was within the range of reasonable responses. It was therefore considered not sufficient for the Tribunal to identify factors that were not taken into account but to consider what a reasonable employer would have concluded. Therefore the Tribunal was persuaded that it was for the employer to select the appropriate pool and the selection would only render the dismissal unfair if the Tribunal considered that no reasonable employer would have used that particular pool of selection.

- 13.7 The Tribunal was persuaded that the determination of the pool of selection had been determined by Blue islands based on genuine motives and sound decision making. The Tribunal gave weight to the differentiation that was outlined between the two functions of PR and Marketing and concluded that it was not inappropriate to exclude the PR Executive, Miss Webb from the pool of selection.
- 13.8 The Tribunal gave careful consideration to the contention that Healthspan marketing employees, although employed by a different legal entity, should have been included in the pool of selection. The Tribunal took the view that the skill sets required by the two companies were sufficiently different that it was not unreasonable to exclude Healthspan from the pool of selection and was within the range of reasonable responses open to an employer. In reaching this conclusion, the Tribunal took into account that the businesses were sufficiently different; operating in unrelated sectors in the market and had been run independently for some time.
- 13.9 The Tribunal took the view that the Respondent could have engaged in the consultation process in a more proactive manner but also gave weight to the evidence that the Applicant had disengaged largely from the redundancy consultation process herself. Whilst the Tribunal understood that the situation was stressful for the Applicant, the Tribunal felt that Applicant fulfilled a senior marketing role at Blue Islands and was in a unique position to understand the required change in strategic direction. With regard to the length of the consultation period, the Tribunal was persuaded that two weeks was appropriate in the circumstances and that to extend the consultation for a longer period may have resulted in undue stress and anxiety for the impacted employees.
- 13.10 The Tribunal noted that there had not been evidence put before the Tribunal of attempts to minimise redundancies but in assessing the evidence presented concluded that those options were not available to Blue Islands at the time. The Tribunal accepted that the company was run with tight margins by necessity. The Tribunal was not persuaded that it was reasonable that the Respondent ask staff if they planned to leave or that the consultation process was extended into the contractual notice period because the act of serving notice on an employee could in itself render the extended consultation process as unfair. In addition, the Tribunal was not persuaded that it was reasonable to offer impacted employees the first refusal on any vacancies as such action could render the company recruitment and selection process as unfair.
- 13.11 The absence of selection criteria was considered appropriate in the light of the evidence that the change in strategic direction resulted in the cessation of the Blue Islands internal marketing function.

- 13.12 The redundancy appeal process was not 'tested' by the Applicant and therefore the Tribunal declined to consider whether the process was flawed.
- 13.13 Whilst the Tribunal held the view that the redundancy consultation process on behalf of the Respondent could have been more proactive and involved more formal steps, the process as a whole was not considered sufficiently flawed to justify an unfair dismissal in circumstances where there was a 'genuine' redundancy situation and the actions of the Respondent fell within the range of reasonable responses. In addition, the Tribunal felt that that any lapse by the Respondent in following the company redundancy policy was not substantive and on the balance of probabilities would have made no difference to the outcome.

14.00 Decision

- 14.1 In making its decision, the Tribunal considered the content of the Code of Practice – Handling Redundancy and finds that the Applicant was fairly dismissed on the grounds of redundancy under section 6 (2) (c) of the Employment Protection (Guernsey) Law, 1998, as amended.
- 14.2 The claim is, therefore, dismissed and no award is made.



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Signature of the Chairman

22 June 2011

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Date