

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

**APPLICANT:** Mrs Rosalyn Priaulx

**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 – 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.
2. The claim is, therefore, dismissed and no award is made.

Mrs Tina Le Poidevin  
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6 June 2011  
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Signature of the Chairperson

Date

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

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF

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

## **Extended Reasons**

### **1.0 Introduction**

- 1.1 The Applicant, Mrs Rosalyn Prialux, claimed that she had been unfairly dismissed within the meaning of Section 5(2) (a) of the Law in that the dismissal fell under the general provisions relating to fairness of dismissal under Section 6(2)(c) of the Law, specifically that the Respondent did not follow any procedure, or any proper procedure, failed to properly consult with her and failed to offer her any proper or thought out alternative employment.
- 1.2 The Respondent, the NSPCC, disputed the claim on the grounds that the Applicant was 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 Mr Michael Dunbar (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 Prialux 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 Prialux 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 commenced employment with the Respondent in its Guernsey office on 1 September 2004 as an Office Manager.
- 2.3 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.
- 2.4 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.
- 2.5 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.
- 2.6 On 13 October 2009 the Applicant and some of her Guernsey colleagues attended a strategic review meeting in London which had been arranged for all staff.

- 2.7 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.
- 2.8 On 4 November 2009 Mr Philip Durban met with the Guernsey office employees (including the Applicant) and this marked the beginning of the Respondent's formal consultation period for all Guernsey-based employees. At this meeting the employees were advised that they had an opportunity to respond to the proposal to close the Guernsey office and were invited to put forward alternative suggestions to the proposed closure. They were also advised that, in the event that their posts became redundant, the Respondent would look for alternative employment for them.
- 2.9 The team at this time consisted of the Children's Services Manager, the Applicant, an Administrator, two Children's Services Practitioners (Level 3), two Children's Services Practitioners (Level 2) and five sessional staff.
- 2.10 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.
- 2.11 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.
- 2.12 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.
- 2.13 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.
- 2.14 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.
- 2.15 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.

- 2.16 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.
- 2.17 On 8 December 2009, Mr Philip Durban spoke with the Applicant on the telephone to advise her that she was being made redundant.
- 2.18 The Respondent's decision to terminate the Applicant's employment on the grounds of redundancy was confirmed in writing to her on 8 December 2009.
- 2.19 The Respondent's Guernsey office closed on 25 February 2010.
- 2.20 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 A typical working day for the Applicant involved health and safety risk assessments, monitoring budgets, tape work and taking notes. The Applicant was also the first point of contact for children when they came into the reception area and she would talk to them until the Children's Services Practitioners were ready for them. In the later years, she assisted with the 'drop-ins' when they were short staffed.
- 4.1.2 In 2009 the Respondent recruited a new Chief Executive and a comprehensive strategic review commenced, resulting in an operational support review that commenced in December 2008, being put on hold.
- 4.1.3 The summer of 2009 was a very difficult time for the Respondent's Guernsey branch as two staff left to take up alternative employment and a further two took maternity leave. At this time there was a recruitment freeze so the vacant positions were not filled, resources were limited and some referrals had to be turned away.
- 4.1.4 On 10 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 Mr Durban that he and Mr Liver would be visiting Guernsey to meet the team but could give no reason why the meeting was being called.
- 4.1.5 This meeting took place on 12 October 2009, when the Applicant and her 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 during which time the Respondent would consider proposals from affected staff. Mr Durban also advised the staff that they should start looking for alternative employment and that funds would be made available by the Respondent for any training requirements to assist the staff in their search for new employment.
- 4.1.6 On 13 October 2009 four of the Guernsey team (including the Applicant) attended the Respondent's strategic presentation in London. The strategy was presented as an expansion programme with no official announcement made about the nine office closures. When the Guernsey delegates questioned why the Respondent's Guernsey office was closing and the Jersey one was remaining open, the reply was that it was thought to be politically wrong to close the Jersey office. Also the Respondent's Head Office was of the opinion that the population of Guernsey was not large enough to sustain an NSPCC office under the new strategy.
- 4.1.7 On 20 October 2009 Mr Cuell visited the Guernsey office to meet with the staff and listen to what they had to say about the importance of continuing a service on the Island. After the meeting it became clear to the Applicant that, as a team, they would be unable to fight to retain the services on the Island.
- 4.1.8 The Applicant received an email from Mr Durban which was a follow up to the 12 October 2009 meeting. The email all but stated that the Guernsey office would close.
- 4.1.9 The Applicant helped out many times at the 'drop-ins' to cover staff who were on sick leave or times when sessional staff were unavailable.

- 4.1.10 Whilst the Applicant was not present at the time, Mr Dunbar advised members of the Guernsey team on 23 October 2009 that the 'drop-ins' would be closing before Christmas and no more referrals for a therapeutic service would be accepted. The consultation period had not even begun but it appeared to the Applicant that the whole process to close the Respondent's Guernsey office was a foregone conclusion.
- 4.1.11 On 4 November 2009 Mr Durban visited the team in Guernsey when they were told that there would be a business plan giving the reasons for the closure of the Guernsey office, to which they could respond. This business plan was fairly insubstantial and was just a copy of the strategic review with an additional A4 sheet stating the Guernsey's population was too small to fit in with the Respondent's overall strategy. Mr Durban got angry at questions being posed of him by Mr Dunbar and threatened to leave the meeting on at least one occasion.
- 4.1.12 The Applicant met individually with Mr Durban on 4 November 2009 and was verbally provided with a finish date of 28 February 2010 and an estimated redundancy amount. Mr Durban also advised the Applicant to plan any training that would help her secure future employment and said he thought she was very angry which was not a good attitude to take to any future interviews.
- 4.1.13 The Applicant said it was very difficult to start looking for alternative employment until the outcome of the consultation period was known as she could be placed in a difficult position if she had committed to another employer in the meantime.
- 4.1.14 Mr Durban also asked the Applicant if she would consider relocation but, as her family were locally-based, she had lived on the Island all her life and administrative roles were still under review, this did not seem to be a sensible option for her.
- 4.1.15 After leaving the meeting, the Applicant checked the figure provided to her by Mr Durban with the Redundancy Policy and realised that the market adjustment had not been included. She raised this with Mr Durban who said he would arrange for her to have the correct figure in writing but the Applicant considering that giving the incorrect figure demonstrated an uncaring attitude as redundancy was quite a scary prospect at her age and particularly given the current economic climate.
- 4.1.16 The Applicant did not recall seeing a redeployment form. The forms may have been in the room when she met with Mr Durban but she did not look at them because she did not wish to leave the Island. If there was an option for redeployment with the ability to stay on the Island, she had presumed that Mr Durban would have told her.
- 4.1.17 On 23 November 2009 Mr Durban advised the Guernsey staff by email that they could contact the Deputy Director of the Health and Social Services Department if they were interested in any vacancies. The Applicant thought that the Respondent was supposed to assist in this process but, whilst the States of Guernsey agreed that Children's Services Practitioners were able to apply for internal vacancies for a period of six months, this facility was not negotiated for the admin staff.
- 4.1.18 On the afternoon of 8 December 2009 the Applicant received a telephone call at home from Mr Durban informing her that she would be made redundant and would have to leave her employment with the Respondent by 28 February 2010. He also asked her to keep that information to herself and not contact any other staff. The Applicant asked if she was the only

person being made redundant but Mr Durban said he could not tell her. The Applicant was very shocked and angry when Mr Durban asked her what progress she had made in looking for alternative employment so she said goodbye and put the telephone down.

- 4.1.19 Despite Mr Durban's request, the Applicant contacted Mr Dunbar who confirmed that he was also being made redundant.
- 4.1.20 The Applicant waited for an hour to enable Mr Durban to make his calls to other members of staff before texting one of her colleagues who had two young children and was likely to be on her own as her partner worked in the evenings as she was concerned how she might be feeling. This colleague, Michaela Turner, had not yet been contacted by Mr Durban and the Applicant was unable to tell her what the decision was about her job.
- 4.1.21 The following day the Applicant was still angry about the way she had been told of her redundancy. HR staff members were employed by the Respondent but none were made available to the staff at that time. No-one from the NSPCC came to the Island to meet them face to face to explain why some employees were being retained and how the decision had been made and the Applicant felt totally unsupported.
- 4.1.22 No job descriptions had been provided and no explanation as to why the two members of staff were chosen for the retained posts. One was for a qualified worker and one was an unqualified post and the Applicant wanted to know why there was not a proper process in place to offer the jobs to anyone who wanted to apply for them.
- 4.1.23 On 17 December 2009 Mr Durban was expected to be in the Guernsey office but the Applicant only saw him in the hall when she was on her way out of the office to go home around 3.15 pm. The Applicant asked if he wanted to talk to the staff and his response was that it was entirely up to her. His attitude was completely unapproachable and he was very reluctant to talk. She, therefore, went home but telephoned later to ask if a meeting had taken place. She discovered that Mr Durban had spoken with Mrs Bowditch on a one to one basis and had asked her what it was like working with a 'steaming kettle', referring to the Applicant.
- 4.1.24 The Applicant and Mr Dunbar decided to email John Lambert, a training officer, asking for assistance in the preparation of their cvs and they were hoping that the job situation would pick up after the Christmas period. As one of the Applicant's colleagues had had a funding request for training turned down, the Applicant felt that there was no point in applying for any training herself.
- 4.1.25 There was no contact from Mr Durban or any of the Respondent's HR personnel during the Christmas period.
- 4.1.26 The last contact the Applicant had with Mr Durban was during a telephone conference call on 12 January 2010 when Mr Durban explained the roles of the Applicant and Mr Dunbar in closing down the Guernsey office. The Applicant later discovered that Mr Durban had had an accident and was not at work.
- 4.1.27 The Applicant was not contacted and offered the opportunity to apply for a position with the Respondent even after Mrs Wakefield and Mrs Bowditch declined the offers of continued employment.



- 4.1.28 As the closure was getting closer and no contact had been received from any member of staff in the UK, the Applicant telephoned Mrs Thomas, Mr Durban's line manager, to ask what arrangements were being made to support the Guernsey team through the final days. She left messages for Mrs Thomas to call her but she did not. When the Applicant finally reached her by telephone she said she was unable to talk to the Applicant because she was dealing with Mr Durban. She said she was aware of why the Applicant was calling her and the Applicant said she did not know why she was calling as she had not told her yet. Mrs Thomas' response was that she categorically would not talk to her and put the telephone down.
- 4.1.29 The Applicant later received an email from Mrs Thomas saying that following her call, which highlighted concerns about reporting and liaison processes during Mr Durban's absence, she had reviewed arrangements with Mrs Copsey who would take on the role of directly overseeing the Respondent's Guernsey office closure process until Mr Durban returned to work.
- 4.1.30 Mrs Copsey contacted the Guernsey office staff shortly afterwards and was apologetic about the way that they had been treated.
- 4.1.31 From what the Applicant had seen and heard, she believed that the decision to close the Guernsey office was made before the consultation period was over.
- 4.1.32 No explanations were given to the staff about how the decision was made to keep some people in employment, why job descriptions were not issued and why all members of staff were not given an equal opportunity to apply for these positions. Lack of support from senior management and HR left the staff feeling disappointed, badly treated and thoroughly let down by the whole process and she believed she had been unfairly dismissed by the Respondent.

## **4.2 Respondent**

- 4.2.1 Following consultation and consideration of the submissions made by the Guernsey office team (including the Applicant), 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 would not become apparent for some months.
- 4.2.3 The Applicant was an Office Manager. She did not hold any relevant professional qualifications that would enable her to undertake the role or train in sufficient time and she was not an experienced social worker. The contact she had with children attending the 'drop-ins' and her experience of working with children during her involvement with the St John's Ambulance Brigade and Badger Set did not qualify her for a Children's Services Practitioner role.
- 4.2.4 The Applicant's assistance at the 'drop-ins' contravened the Respondent's policy which should have been enforced by Mr Dunbar.

- 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 she was an Office 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 was either experienced in or qualified to undertake.
- 4.2.7 The Applicant did not at any stage express an interest in a Children's Services Practitioner role or seek redeployment with the Respondent.
- 4.2.8 The Applicant was aware from earlier correspondence that the Respondent wanted to advise her 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 her with the news.
- 4.2.9 Mr Durban's communication by telephone in advance of the Applicant receiving her redundancy notice was done out of courtesy in as personal a manner as he could.
- 4.2.10 Mrs Thomas' response to the Applicant's telephone call was entirely appropriate.
- 4.2.11 At the outset of the process, the Applicant was provided with details of redeployment within the NSPCC and the need to complete redeployment forms in order to be considered for employment. Despite being given access to these forms, she deliberately did not complete them as she 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.
- 4.2.12 No other employment opportunities were available within the Respondent's Guernsey office due to the closure of the operation.
- 4.2.13 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 (4 months) and explained the position clearly.
- 4.2.14 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.
- 4.2.15 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.
- 4.2.16 The Applicant received and read the Employee Support pack that was provided to her.

- 4.2.17 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 her.
- 4.2.18 The Applicant wrongly sought to expand the obligation on the Respondent to attempt to find her alternative work in Guernsey outside the Respondent's organisation as there was no requirement for it to do so.
- 4.2.19 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 Guernsey office team.
- 4.2.20 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.
- 4.2.21 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.
- 4.2.22 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.
- 4.2.23 Mr Durban was wholly professional in his approach although perhaps not as 'touchy feely' as the Applicant would have liked him to be.
- 4.2.24 The Respondent did its best to apply a fair and reasonable redundancy process.
- 4.2.25 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.
- 4.2.26 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.
- 4.2.27 The Applicant was plainly made redundant as the Respondent's entire Guernsey office was closed and it followed a fair and reasonable procedure.
- 4.2.28 A generous redundancy package was provided to the Applicant.
- 4.2.29 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 was 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; the pool for selection in this case should have included all social workers
- 5.4.5 Whilst flaws in the pool selection process have been identified, this particular Applicant was not, in any event, a Social Worker so it was reasonable to exclude her from the pool.
- 5.4.6 Whilst the selection criteria applied to the pool, in selecting those for continued employment, was not objective, fair or consistently applied, the process as a whole was not sufficiently flawed to justify an unfair dismissal in circumstances where the Applicant would not, in any event, have been included in the pool, as she was not a social worker, did not hold any relevant professional qualifications nor have the experience to justify selection for one of the retained roles.

## **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 fairly dismissed on the grounds of redundancy under Section 6(2)(c) of the Employment Protection (Guernsey) Law, 1998, as amended.
- 6.2 The claim is, therefore, dismissed and no award is made.

Mrs Tina Le Poidevin

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**Signature of the Chairperson**

6 June 2011

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**Date**