

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mrs Alison Wakefield

RESPONDENT: NSPCC

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

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

UNANIMOUS DECISION

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

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

(Employment Manual Redundancy Policy), ER14 (Redacted Minutes of the NSPCC Board of Trustees' Meeting dated 3 December 2009), ER15 (Redacted Minutes of the NSPCC Board of Trustees' Meeting dated 28 January 2010), ER16 (Industrial Relations Law Report 298 (1976) – J Moon and others v Homeworthy Furniture (Northern) Ltd), ER17 (Industrial Relations Law Report 55 (1985) Green v A & I Fraser (Wholesale Fish Merchants) Ltd), ER18 (Facsimile message to Ben Havard from Alison Shropshire dated 29 March 2011 attaching complete Minutes of the NSPCC Board of Trustees' Meeting dated 3 December 2009), ER19 (Closing Submissions for Respondent), ER20 (Respondent's Authorities – IRLR 386 (1990) James W Cook & Co (Wivenhoe) Ltd v Tipper and others; Mr Matthew Banton v Electrical Installations (Guernsey) Limited (2009); Mrs Vuyiswa Yoli v States of Guernsey (acting by) Health and Social Services Department (2009); Burford v Flybe Limited (2009); IRLR 55 (1985) Green v A & I Fraser (Wholesale Fish Merchants) Ltd).

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

2.0 Facts Found by the Tribunal

- 2.1 The NSPCC is a registered national charity, having been incorporated by Royal Charter, with registered charity number 216401. Its purpose is to provide services to abused and at risk children and their families.
- 2.2 The Applicant, a qualified Social Worker, commenced employment with the Respondent in its Guernsey office on 18 April 2005 as a Children's Services Practitioner.
- 2.3 A significant part of her role involved running and developing 'drop-ins' for parents and carers with children under five years old. The 'drop-ins' provided free facilities for families from a wide range of backgrounds and issues to play and interact with their children.
- 2.4 The Applicant also undertook casework involving children at risk of harm where substance misuse, mental health problems and domestic abuse had been major factors and this required a high degree of inter-agency working with organisations such as Social Services and Women's Refuge.
- 2.5 At a meeting of the Respondent's Board of Trustees on 24 September 2009, a new strategy for the period 2009 – 2016 was agreed upon, with one element being to streamline the network of offices and service units across the British Islands to free up substantial resources and provide more effective help to a greater number of children. A small number of existing services for children and young persons were identified as being too far from the proposed location of the new network of regional offices and a number were identified as being too small to be viable.
- 2.6 Just after determining the strategy, discussions took place at a senior level between NSPCC managers and third party agencies to ascertain the level of interest in taking over the services provided by the Guernsey office in the hope of retaining the physical office. Whilst initial interest was expressed by Action for Children, this was withdrawn when the charity

discovered that the Guernsey office was largely funded by the Respondent and did not attract any government funding.

- 2.7 On 12 October 2009 the Guernsey office employees (including the Applicant) were advised of the Respondent's proposal to close the Guernsey office as well as being advised that a 30 day consultation period would commence at the beginning of November 2009.
- 2.8 On 13 October 2009 the Applicant and three colleagues attended a strategic review meeting in London which was set up to provide a briefing to staff.
- 2.9 On 14 October 2009 a notice was sent out by the Respondent to all local authorities and other NSPCC stakeholders advising them of the new strategy and the likelihood of a number of office closures. On the same day a similar notice went to all those local authorities and stakeholders in the specific areas where the offices were likely to close advising them of the new strategy and the likelihood of the Respondent's office closing in that area.
- 2.10 On 4 November 2009 Mr Philip Durban met with the Guernsey office employees (including the Applicant) and this marked the beginning of the Respondent's formal consultation period for all Guernsey-based employees. At this meeting the employees were advised that they had an opportunity to respond to the proposal to close the Guernsey office and were invited to put forward alternative suggestions to the proposed closure. They were also advised that, in the event that their posts became redundant, the Respondent would look for alternative employment for them.
- 2.11 The team at this time consisted of the Children's Services Manager, the Office Manager, an Administrator, two Children's Services Practitioners (Level 3), the Applicant and another Children's Services Practitioner (Level 2) and five sessional staff.
- 2.12 The Respondent had structured policies, procedures and support mechanisms in place to deal with potential redundancy situations and these were made available to the Respondent's Guernsey-based employees (including the Applicant) at the commencement of the consultation process.
- 2.13 The Respondent's Redundancy Policy noted its commitment to the application of fair, objective and non-discriminatory criteria based upon sound information and judgement when undertaking selection for redundancy. Examples of objective criteria were skills, qualifications and experience; standard of performance; disciplinary record and length of service. The Policy also stated that the assessment of employees against criteria for selection would be undertaken by the employee's line manager who would put forward recommendations to the Divisional Director/Head of Department or Functional Director who, with HR advice, would be responsible for the final decision on selection.
- 2.14 During the consultation period a number of discussions took place between Guernsey office employees and other NSPCC managers as well as discussions between NSPCC managers and third party agencies to ascertain interest in taking over the services provided by the Guernsey office.
- 2.15 Also during the consultation period, the Guernsey office employees (including the Applicant) put together a collective response to the proposal and this, together with responses from other stakeholders and users of the Respondent's services in Guernsey, were considered by the Respondent following the closure of the consultation period on 3 December 2009.

- 2.16 The Minutes of a meeting of the Respondent's Board of Trustees on 3 December 2009 noted that, as a result of feedback received, an all island service was being considered which could be provided from a Jersey base and to facilitate this option two Children's Services Practitioners were being retained.
- 2.17 On 8 December 2009 a meeting was convened by the Respondent (attended by Mr Wes Cuell , Ms Greta Thomas, Mr Peter Liver, Ms Nasima Patel, Ms Sharon Copsey and Mr Philip Durban) to further discuss the representations made during the consultation period.
- 2.18 As a result of the representations and following approval by the Respondent's Chief Executive Officer, a decision was taken to close the Guernsey office but retain the services of two social workers in Guernsey.
- 2.19 On 8 December 2009, whilst the Applicant was in the UK on compassionate leave, Mr Durban telephoned her to advise her that her employment would continue.
- 2.20 The Respondent's offer of continued employment was confirmed in a letter from Ms Lowndes to the Applicant dated 12 January 2010. The letter also noted that details of the role could not be provided at that time and if she decided that this was unacceptable to her and she wished to terminate her employment with the Respondent she could do so and the Respondent would view this as a redundancy and provide her with a redundancy payment.
- 2.21 After requesting details of the redundancy package on offer in a letter dated 14 January 2010, these were confirmed to the Applicant in a letter dated 22 January 2010. In this letter Mrs Lowndes asked the Applicant for a decision as to whether she wished to continue with her employment with the Respondent after 28 February 2010.
- 2.22 In a letter dated 27 January 2010, the Applicant opted for redundancy and received a termination letter on 3 February 2010.
- 2.23 The Respondent's Guernsey office closed on 25 February 2010.
- 2.24 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 The Applicant and her colleagues in the Guernsey team were passionate about promoting the Respondent's aims and was complimentary of the Respondent's training provision which had enabled her and the team to develop a successful and highly respected service on the Island.
- 4.1.2 The Applicant reflected back to July 2008 when a recruitment freeze was in place across the whole of the Respondent's organisation which prevented the Guernsey office from replacing key workers. This placed enormous pressure on her and her colleagues but they continued to provide a full service.
- 4.1.3 At a meeting on 12 October 2009 with Mr Durban and Mr Liver, the Applicant and other Guernsey office employees were advised that the Guernsey office would close as it did not align with the Respondent's new strategy and all the staff would be made redundant.
- 4.1.4 The Applicant was advised that the Jersey office would remain open as the Respondent wanted to maintain a presence in all nations.
- 4.1.5 The Applicant was shocked and saddened at this news as she could not understand why the Guernsey office could not remain open as it provided essential services to local children and families which were not available from other agencies.
- 4.1.6 Messrs Durban and Liver were sympathetic but acknowledged that the decision to keep any presence in the Channel Islands did not actually reflect the Respondent's strategy.
- 4.1.7 Following sight of media statement wording about the proposed closure, the Applicant and Mr Dunbar considered it appropriate to advise 'drop-in' users that the service would cease.

- 4.1.8 On 20 October 2009, the Applicant attended a meeting with Mr Cuell and other Guernsey office staff where they were given an opportunity to ask questions. At this meeting Mr Cuell said that the Guernsey office would definitely close but the staff (including the Applicant) should use the consultation process to put forward their ideas on maintaining a presence in Guernsey.
- 4.1.9 In a staff meeting on 23 October 2009 Mr Dunbar advised the Applicant that her work with children and families had to end by the end of December 2009 and the drop-ins had to close by 31 December 2009.
- 4.1.10 The Applicant was upset as the consultation process was not due to start until 4 November 2009 and she had understood that, until this process had ended, the services would continue and this did not fill her with confidence that she and her colleagues were being given a fair chance by the Respondent to challenge the closure.
- 4.1.11 The Applicant was concerned about her pension with the Respondent in that she had an entitlement to a personal pension from her commencement date but the Respondent had been unable to agree to pay into a RATS scheme in Guernsey even though it was the only scheme available to her. She was owed a considerable amount of money by the Respondent and she needed to find the funds to make backdated contributions.
- 4.1.12 The Applicant was advised on 30 October 2009 that the closure was planned to take effect by 31 March 2010 and remote assistance was available from an HR Advisor, Mrs Lowndes, who could offer support on the process and help to identify suitable employment alternatives.
- 4.1.13 The Applicant's understanding was that the Respondent would look to other agencies to possibly take on the services and the team.
- 4.1.14 The Applicant and her colleagues met with Mr Durban on 4 November 2009 where he 'tossed' a copy of the strategy onto the table and said that the consultation process started today and would end on 4 December 2009. He also advised that all Children's Services Practitioners would leave on 20 January 2010, with the Office Manager leaving on 28 February 2010 and internal training opportunities would be provided together with some funding for external training to assist in the redundancy process. The whole team was shocked and upset.
- 4.1.15 The Applicant (following agreement from her Manager, Mr Dunbar) advised Child Protection Case Conference attendees of the 'drop-in' closure at the end of December 2009.
- 4.1.16 The Applicant was provided with an Employee Support Pack by Mr Durban at an individual meeting with her on 4 November 2009.
- 4.1.17 On 17 November 2009 whilst preparing the staff response to the proposed closure, the Applicant read a document entitled 'Determining Our Future Locations' which contained the phrase "We are committed to a single presence in the Channel Islands, so we are not asking for location feedback as part of this exercise." As the consultation period had not yet expired, this indicated to her that firm decisions had already been made.
- 4.1.18 On 23 November 2009 the Applicant was copied in on an email from Mr Durban to Mr Dunbar concerning possible redeployment opportunities with the Health and Social Services Department.

- 4.1.19 The Applicant had to ask the Health and Social Services Department for special access to internal vacancies as she would otherwise be excluded from applying until the positions could be advertised externally. No real efforts seemed to be made by the Respondent to investigate the possibility of a transfer of the service to the Health and Social Services Department.
- 4.1.20 On 3 December 2009 the Guernsey office staff's collective response to the proposed closure was submitted. None of the suggestions raised home working as a possibility.
- 4.1.21 On 8 December 2009 the Applicant received a telephone call at home from Mr Durban advising her that, as a result of the consultation process, her role would be retained and he wanted her to take up therapeutic work as soon as possible. When the Applicant asked if she would receive confirmation in writing, she was told by Mr Durban that she would receive this confirmation but he was not sure when.
- 4.1.22 The Applicant subsequently discovered that one of her colleagues, namely Mrs Julie Bowditch, was also remaining but all other staff were being made redundant.
- 4.1.23 The first time the Applicant was aware of the home working condition in relation to her employment was in a statement about the decision to close the Guernsey office. The statement said that the Respondent would "retain two practitioner staff for the time being, who will work from home, with a view to developing our approach to future services in Guernsey over the course of the next few months".
- 4.1.24 This was a sad time for the team as their direct work with children and families had ended and some people were remaining whilst others were not but it was agreed that whatever the team's individual circumstances, they would support each other in closing the Guernsey office.
- 4.1.25 No Head Office assistance was offered to make the process easier and the Applicant likened it to organising her own funeral, digging the grave and eventually climbing in.
- 4.1.26 In a meeting with Mr Durban on 17 December 2009 he suggested that perhaps the Applicant could be seconded to Health and Social Services Department for three months until things were sorted out as this would give her work to do and keep her out of the team/office closure but she declined saying that she would rather find out more about the role, talk to the Respondent's teams in the Schools' Service and Childline (which had been suggested as a possible role) so that she could make a considered decision about the proposed role. This was accepted by Mr Durban who also put forward the offer of training, although no details were provided.
- 4.1.27 When asked by Mr Durban as to how the team was coping, she said that they were pleased that the consultation process had produced a positive result but it was very unsettling for everything to be so unclear.
- 4.1.28 The Applicant told Mr Durban that she was unhappy about home working, it was not what she joined the NSPCC for and not a choice she would make. He reassured her by saying that it would just be a base, with most of her time being spent out and about.
- 4.1.29 The meeting raised more questions than answers and the Applicant had the impression that Mr Durban was struggling to understand where this was all going.

- 4.1.30 Further discussions and communications still did not provide the answers the Applicant wanted from Mr Durban who apologised he was unable to do so as the whole organisation was in a state of change.
- 4.1.31 In a telephone conference call with Mr Durban and Ms Lowndes on 8 January 2010, the Applicant found Ms Lowndes' approach to be petulant, she was not prepared to listen to her issues and her manner was confrontational. This left the Applicant feeling that she had a complete lack of respect and understanding for the position the Applicant found herself in and inferred that the Applicant was ungrateful in not being happy with the offer of continued employment.
- 4.1.32 The Applicant did not know what to do at that stage and, as much as she wanted the work to continue on the Island, she was not sure that she could personally cope with the uncertainty over a long period as the Respondent could not give her the answers she needed. Her health had also suffered over the last few months and she was no longer sure that she wanted to continue 'fighting'.
- 4.1.33 After requesting details of a redundancy package before making a decision about her future, the Applicant became aware from a roadshow transcript that a service would be provided for the whole of the Islands from a Jersey base. This had not been mentioned in relation to her future role and she was still considering her options at that stage.
- 4.1.34 At that stage, the Applicant had had enough and on 27 January 2010 the Applicant wrote to Ms Lowndes opting for redundancy, requesting that her pension situation be resolved before she left.
- 4.1.35 The Applicant felt that the decision to close the Guernsey office had already been made on 24 September 2009 and the consultation process was a sham. This, coupled with a lack of the most basic information about her retained role demonstrated the shoddy and unfair manner in which the process was carried out and, in the circumstances, she believed that she had been unfairly dismissed.

4.2 Respondent

- 4.2.1 The Channel Islands did not fit on a population basis at all but a decision was made that the Respondent wished to retain a presence in the Channel Islands and unhappily the decision was to retain the presence in Jersey with the intention that the remaining Channel Island would be serviced from a centre on that island.
- 4.2.2 At the outset of the process, the Applicant was provided with details of redeployment within the NSPCC and the need to complete redeployment forms in order to be considered for employment. Despite being given access to these forms, she did not complete them as she did not wish to leave Guernsey.
- 4.2.3 Following consultation and consideration of the submissions made by the Applicant and her colleagues, a decision was taken by the Respondent on 8 December 2009 to retain the services of two Children's Services Practitioners in Guernsey, albeit working from home so that savings could be made on buildings.
- 4.2.4 At the time of making the decision, there were only two children's services practitioners in Guernsey, namely the Applicant and Mrs Bowditch, and the offer of continued employment

was made to them on the basis of home working although it was likely that further details of this would not become apparent for some months.

- 4.2.5 The Applicant had impressed Mr Durban who wanted to retain her services on Guernsey.
- 4.2.6 The Respondent considered that it provided good notification at each stage of the redundancy process. It gave as much warning as it could of the prospect of redundancy and explained the position clearly.
- 4.2.7 The extensive consultation exercise was plainly genuine as evidenced by its change of position in offering continued employment to the Applicant and her colleague, Mrs Bowditch.
- 4.2.8 The concept of twin tracking was explained as this bore relevance to the consultation exercise, i.e. social workers working with a family to rehabilitate a child in care to their natural birth parent(s) may also be working towards long term adoption. This process took place on a twin track basis to achieve the objective of regularly reviewing any necessary decision-making for an affected child. The consultation exercise could also be similarly viewed whereby the Respondent had determined a strategy to close the Guernsey office but was giving employees and other interested parties the opportunity present alternative strategies that could avoid or minimise that position.
- 4.2.9 The support offered and provided by the Respondent was far in excess of that normally provided by Guernsey employers in the commercial sector in that this included access to an independent Employee Assistance Programme, offers of training, assistance with alternative job applications and access to Human Resources personnel.
- 4.2.10 Support and assistance was provided by the Respondent, albeit remotely, but inevitable given the charity's mainland base.
- 4.2.11 The Applicant received and read the Employee Support Pack that was provided to her.
- 4.2.12 The Applicant had substantial contact with Mr Durban, Mrs Lowndes and others during the process.
- 4.2.13 There was no requirement for the Respondent to attempt to find alternative work for the Applicant or other members of the Guernsey team outside of the Respondent's organisation.
- 4.2.14 The Respondent did liaise with other agencies but none wished to take the service over. The Health and Social Services department requested that individuals contact them and this information was passed on to the Applicant and other members of the Guernsey team at the outset of the consultation process.
- 4.2.15 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.
- 4.2.16 Employers are not obliged to continue to operate an entity on the basis of its staff's wishes and are entitled to reorganise their affairs to concentrate their limited resources in the most appropriate manner.

- 4.2.17 Mr Durban was wholly professional in his approach although perhaps not as 'touchy feely' as the Applicant would have liked him to be and it appeared that her real criticism was that Mr Durban was emotionally withdrawn from the team.
- 4.2.18 Ms Lowndes described the Applicant as combative in the January telephone conference call and the Applicant's allegations against Ms Lowndes do not seem to fit with her personality and was contrary to Mrs Bowditch's experience of her dealings with her.
- 4.2.19 The Applicant breached the Respondent's request not to inform service users of the proposed closure of the 'drop-in' service.
- 4.2.20 The Applicant's lack of understanding as to why the Respondent could not be more specific about a role which was in the planning stage displayed a lack of mature appreciation of the difficulties in formulating and putting into operation new support roles in such an organisation.
- 4.2.21 The Respondent did its best to apply a fair and reasonable process.
- 4.2.22 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.
- 4.2.23 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.
- 4.2.24 The desire to want something concrete so far as the continuing offer was understandable as are all the problems associated with home working.
- 4.2.25 The Applicant knew that she would not be required to see service users at home.
- 4.2.26 Mrs Wakefield was an applicant for voluntary redundancy. Her reasoning was understandable and the Respondent as a very good employer, allowed her this option when it could have argued that she had been offered suitable alternative employment. The Respondent did not subject the Applicant to a compulsory redundancy and her claim is inherently at variance with the facts.
- 4.2.27 The Respondent also acted entirely in keeping with the Code of Practice on Handling Redundancy in trying to retain her as an employee pending a vacancy and a defined role becoming available. She opted not to take this leap of faith and took voluntary redundancy. She was not dismissed by the Respondent.
- 4.2.28 The Respondent requested that, should the Tribunal decide in favour of the Applicant, it consider reducing any award by taking into account the redundancy payment already awarded to the Applicant and the Respondent's charitable status.

5.0 Conclusion

- 5.1 In any claim of unfair dismissal, the Tribunal has to firstly establish whether or not there has been a dismissal and, in circumstances where there has been a dismissal, whether that dismissal is fair or unfair.

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

6. Decision

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

Mrs Tina Le Poidevin
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6 June 2011
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Signature of the Chairperson

Date