



EMPLOYMENT TRIBUNALS
London Central Region

Heard by CVP on 9, 10 and 11/11/2022

Claimant: Ms Sara Wolfson
Respondent: The Financial Reporting Council

Before: Employment Judge Mr J S Burns

Representation
Claimant: Ms G Nicholls (Counsel)
Respondent: Ms N Motraghi (Counsel)

JUDGMENT

1. The Claimant was unfairly dismissed by the Respondent with no Polkey reduction to be applied to her damages.
2. Damages will be assessed (if not agreed) at a later date.

REASONS

1. The Respondent contended that the Claimant had been fairly dismissed for redundancy during a restructuring of the HR team. The Claimant contended that her role had not been redundant and, in any event, that there had been no proper attempt to redeploy her.
2. As there was a shortage of time during the trial and after the Claimant gave late disclosure of remedy documents, I agreed to deal with liability and Polkey only at this stage.
3. I heard evidence from the Claimant and then from the Respondent's witnesses Jenny Waterman, (former Head of HR) Anthony Shivbarat, (Talent Development and Diversity and Inclusion Lead, and the erstwhile line-manager of the Claimant), Richard Davies, (current Head of HR), Claire Lindridge (dismissal appeal officer) and Mark Babington (Deputy Director of Audit policy and grievance appeal officer). The documents were in a bundle of 980 pages. I received written and oral closing submissions and reserved my judgment.

Findings of fact

4. The Claimant was employed by the Respondent at its London Wall premises from 1/11/2016 to 19/11/2021 as a Learning and Development Manager (LDM) in the HR team, at grade 3 level.
5. The Respondent is an independent regulator in the UK serving the public interest by regulating auditors, accountants and actuaries and setting the UK's Corporate Governance and Stewardship

Codes. It is a public sector body and is funded by the professions subject to or benefiting from the Respondent's regulations.

6. The Claimant's manager until July 2020 was Ms Waterman at Grade 5. At that time, Mr Shivbarat, having been appointed by Ms Waterman, joined at Grade 4 level and replaced Ms Waterman as the Claimant's line manager.
7. The Claimant claimed that her relationship with Ms Waterman had been good and that it changed for the worse only after Mr Shivbarat joined. I do not find this to be the case. Theirs' was an uneasy relationship even before Mr Shivbarat's arrival. They are markedly different characters, the Claimant being more eager to please and diffident than Ms Waterman who is assertive and confident. These differences were clear when they gave their oral evidence but the contrast between them had been previously noted in an email dated 18/5/2020 from Mr M Phillips to Sir Jonathan Thompson (the Respondent's CEO), which email praised both of them but which also noted how they "*pull in different directions*" and how "*Sara's initiatives sometimes grates against Jenny from the body language I pick up in various meetings...*" (176).
8. After Mr Shivbarat was appointed and became the Claimant's new line-manager, Ms Waterman wished to support him in his role, so she involved him in the Claimant's performance review and encouraged direct communications between them in preference to the Claimant dealing with her. This was a change from the previous situation, and the Claimant did not like it, but it was a logical step which recognized and gave effect to Mr Shivbarat's appointment.
9. The Claimant also claimed that no performance shortcomings on her part were raised by Ms Waterman until 24/11/2020, when she was told by the latter that she was failing in her performance in the current year. However, in her performance review carried out earlier for the 2018/2019 year, Ms Waterman awarded numerous "3" ratings (the mid-rating,- equivalent to satisfactory rather than good) and wrote the following in the summary.: "*Sara now has more regular admin support so this, alongside more regular meetings with ExCo members, should allow her up to spend regular time considering what needs to be delivered at a more strategic level. As she does this, she will need to strengthen her written communication skills and be more concise and precise so that she gets her message across more effectively. On occasion, she could take a more assertive, focused approach so that all key priorities are delivered without having to overly extend her working day.*"
10. I also accept Ms Waterman's oral evidence that since April 2020 and prior to November 2020 she had mentioned informally to the Claimant areas in which improvement in her performance was required.
11. Although there was some scope for improvement in her work, the Claimant was hard-working, diligent, conscientious, enthusiastic and willing to take on tasks to help others whenever she could. There are several examples in the evidence of the Claimant having been praised from various sources across the Respondent organization.
12. For example, in May 2019 the Claimant received a VIP Recognition award following a nomination which reads as follows "*Sarah is leading our training and development function in the FRC. I am a Development Champion. I nominate Sara because of her unwavering commitment to improve the development and learning experience at the FRC. During the last year she has shown innovation by*

broadening our training landscape with more non-technical training. She has developed more cost-effective training solutions. She administers the training for an increasing population of employees. Sara is seeking the input from the development Champions. Without her efforts to keep the group going it would have disintegrated by now, as many other advisory groups in the FRC"

13. Another example is the aforesaid email on 18/5/2020 from Mr Phillips which is fulsome in its praise for the Claimant. The period Mr Phillips describes is June 2019 to May 2020. Mr Phillips wrote that "*her role spans an incredibly large and diverse spectrum of tasks, which she tirelessly discharges with enthusiasm and good cheer*", that she had valuable "*soft skills*" and was an "*utter pleasure to work with*". The email contains a long list of her many and varied activities within the Respondent in areas such as staff training, wellness, diversity, disability, on-boarding, cultural enrichment, and staff-cohesion.
14. In response to Mr Phillip's email, the Respondent's CEO sent a reply saying that he agreed and that the Claimant was a "*great asset to our organization*".
15. The Claimant claimed that her relationship with Mr Shivbarat was problematic from their first (remote) meeting onwards, and that he had unjustly criticized her work, failed to give praise when it was due, shouted at her for sending an email to all employees, excluded her from meetings, made it difficult for her to take time off to attend the whole of a Jewish funeral, required her to take annual leave rather than make up the working time when she needed to take her elderly mother to hospital, gave her work when she had no time to do it other than at night, over weekends or when she was supposed to be on holiday, and so on. Mr Shivbarat denied any wrongdoing in this regard and stated that he managed the Claimant reasonably.
16. Allegations of bullying are serious and if they are to be upheld they must be underpinned by cogent evidence, which is lacking in this case. I have looked at the documents which the Claimant cites in her witness statement as examples of bullying and harassment - eg 239-240 (on the subject of attending the funeral) and at 530-532 in which on 18/3/21 Mr Shivbarat wrote that "*..as L3 you should be able to manage your priorities independently which is something I have mentioned previously*". On the face of it, this material does not show bullying but rather reasonable management instruction.
17. However, it is common cause that the relationship between the two was strained. There were a number of factors which contributed to this.
18. The Claimant and Mr Shivbarat never met face-to-face and all interactions between them were by phone or Teams video meetings. This itself impeded the growth of a personal friendly relationship.
19. Another cause was that since March 2020, there had been an increase in the Claimant's workload due to a combination of a 50% increase in the number of the Respondent's employees, changes in working and training practices due to the Covid 19 pandemic, and the need to provide mental health support for staff. This was further increased in July 2020 when Mr Shivbarat arrived and the Claimant was tasked to help him settle into his new role.

20. By the second half of 2020 the Claimant was exhausted and stressed by this increase in her work (but also, at least partly, as a consequence of her tendency to take on a wide variety of tasks which went beyond the ambit of her expected duties) and she was lacking in the mental resilience which would have allowed her to adapt easily to the new line management arrangement.

21. The Claimant complained about the additional work pressures and her stress in a letter on the 10th June 2020 to Ms Waterman, and in another on 27th October 2020 to Ms Waterman, Mr Shivbarat and Jacque Spiers, HR Business Partner. In response, both Ms Waterman and Mr Shivbarat tried to help relieve the Claimant's work load, by encouraging her to prioritize, and also by Mr Shivbarat taking over some of the aspects of the Claimant's role.

22. However, the Claimant felt that she was still being overworked, so she emailed the CEO, on 16th November 2020 (following his weekly note suggesting staff '*do what they can, when they can*',) raising concerns that "*there was a disconnect between the 'tone from the top' and the pressures which were placed on (the Claimant) and other employees*". In effect this was a complaint by the Claimant that she was being overworked, and that Mr Shivbarat and Ms Waterman were placing unreasonable pressure on her. There is no direct evidence that Sir Thompson told Mr Shivbarat or Ms Waterman about this complaint and they were not asked about this in cross-examination.

23. The Claimant's work on learning and development consisted mainly in her managing relationships with third-party training providers, matching individual and team-based development needs against the training courses available, booking the training, managing the training diary, and providing administrative support for trainers.

24. The Respondent received a staff survey in 2020 which suggested that its learning and teaching generally needed to be improved. Several colleagues went on record to say that they did not regard the Claimant as being to blame for this.

25. During October 2020 to January 2021 the Respondent undertook a strategic review of its human resources department to ensure it was appropriately structured to support its intended transformation to the Audit, Reporting and Governance Authority (ARGA) which is due in 2023

26. Based on the anticipated further increase in employee numbers, the training needs of the business were expected to increase considerably. At the time of the review, the Respondent outsourced a number of its key training programmes to external specialists. This would not be financially sustainable as the business grew. A dedicated Design & Delivery Manager (DMM) who designed and delivered tailored training programmes to staff was required to support the transformation process. This would

reduce the Claimant's work of identifying external training programmes and arranging training sessions for the relevant staff.

27. Another part of the Claimant's role involved administrative support and management information tasks. The introduction of a new learning module (XCD) would reduce the administrative tasks being undertaken by the Claimant.
28. The Claimant was also responsible for arranging Continuing Professional Development for certain departments. It was determined that CPD could be arranged within the relevant departments themselves, so this aspect of her role also diminished.
29. The Claimant had also been involved in diversity and inclusion work and similar strategic aspects which Mr Shivbarat had taken over.
30. Hence the Claimant's LDM role would be deleted.
31. As the other departments in the Respondent grew, the need for both HR administrative support and business support would increase. In order to support this increased demand, it was decided to introduce an additional HR Analyst role, an additional HR Assistant role and an additional HR Business Partner (HRBP) role. The HRBP role was not required immediately, but was included in the structure and budget so that it could be recruited for when headcount increased.
32. In late October 2020, Ms Waterman (with the assistance of the other senior members of the HR team, namely Jacqueline Spiers and Mr Shivbarat) prepared a strategy document for the HR Team reflecting these objectives, for the upcoming financial year. Ms Waterman unveiled this plan on 18/11/20.
33. On 8th February 2021, the Claimant was placed at risk of redundancy. She was put in a "pool of one" on the basis that her work - mainly in outsourcing training for staff - was the only type of work that was diminishing.
34. She was invited to a consultation meeting on 15th February 2021 with Ms Waterman and Mr Shivbarat. The meeting was held via Teams.
35. The Claimant was advised by Ms Waterman that her LDM role was no longer needed as it would be replaced by the DDM role. The proposal was that the latter role would be advertised externally and the Claimant would have to apply for the role in the open market, unless the Claimant in the meantime could persuade Ms Waterman that the Claimant had the skills for new role. The Claimant was told she could agree to take voluntary redundancy.

36. The transcript of the meeting on 15/2/21 indicates that Ms Waterman gave direct and adequate answers to all the Claimant's questions but it is notable that there was no expression of regret or sympathy for the Claimant or other attempt to soften the blow. Ms Waterman gave the Claimant the impression that if she applied for the DDM role, she would not be successful.
37. By 8/2/21 Ms Waterman had already concluded that the Claimant's role was redundant, that the Claimant was unfit for either of the DDM and HRBP new roles, because she lacked the skills and experience, and that the Respondent would have to recruit others to fill them. If that was not so, she would not have proposed from the outset that the DDM role should be advertised externally and suggested that the Claimant take voluntary redundancy.
38. As already noted, Ms Waterman and the Claimant had "grated on each other" generally because of their different characters and this had become worse with the dislocation, pressures and additional work caused by the Covid 19 lockdowns. By late 2020 Ms Waterman took a negative view of the Claimant's style and performance and she told her in November 2020 that she was failing. This view pre-disposed Ms Waterman against accommodating the Claimant within the new structure.
39. The Claimant had had little opportunity during Ms Waterman's management since 2017 for demonstrating an ability to design and deliver internal training courses, (as would be required from the DDM). Most training had been provided by external trainers, so there had been limited opportunities for the Respondent's own employees to deliver the training. Ms Waterman herself had done most of what little work of this kind had been available within the Respondent in the previous few years.
40. The Claimant was very active in facilitating and supporting the delivery of training, for example in some cases, she provided course-content (eg case studies from within the Respondent) to enhance courses presented by others, but she did little direct course presentation - ie teaching of internal courses devised by her.
41. I accept however that she did do some work of this kind, as referred to in paragraph 48 her witness statement, and that this work had been well-received. I do not accept Ms Waterman's evidence that *"on an occasion where the Claimant had been given an opportunity to do design and delivery work this had not been fruitful"*.
42. Furthermore, in previous employments the Claimant she had done work of this kind successfully. She holds a Bachelor of Education degree awarded by the University of Cambridge, had subsequently worked as a primary school teacher for in 1985 -1987 and then, for the next 29 years before joining the Respondent in 2016, had worked at a senior level in training and development, typically for large organisations in the City such as Lloyds of London, Commerzbank, Ace European Group, London and Partners and XL Catlin Group Limited. In the course of these employments she had obtained significant experience of designing and delivering training events, courses, and L&D programmes to a range of audiences across a wide and diverse range of topics e.g. leadership and management development, professional development, diversity and inclusion, staff development, and change management. She also had had facilitation skills and was comfortable working with large groups. She had supported organisational change and development in L&D and had demonstrated this most notably

at Lloyd's of London. She had previously submitted proposals on how this could be implemented within the Respondent.

43. When the Claimant asked during the consultation whether she could take the HRBP role (as an alternative to the new DDM role) , Ms Waterman said it would be "*available only from mid-year*" - ie not available as a current alternative role for purposes of the Claimant's redundancy, which was then expected to conclude by about March 2021. As time went by and the Claimant's dismissal was delayed, the start date of this proposed HRBP role was pushed further backwards and in 2022 Mr Davies as the new Head of HR decided not to fill the position at all, but instead to obtain the additional required HR resources by promoting and appointing others at more junior levels.
44. In her oral evidence at the Tribunal, Ms Waterman claimed that she did not think that the Claimant would have fitted the HRBP role because the Claimant did not have recent experience in performance management and recruitment, which would be important aspects of the role.
45. Ms Waterman told the Claimant not to speak to anyone else in the Respondent organisation about the consultation. This stipulation did not prevent the Claimant seeing what vacancies were available as these are advertised on the Respondent's intranet, ATS system and its website, but it did prevent her reaching out to other senior colleagues outside the HR group who had strongly supported and commended her in the past.
46. The Claimant raised a grievance. The key issues included the following; that the new DDM role was essentially the same as the Claimant's current LDM role; she was the only person placed at risk of redundancy; there was a lack of transparency in the process; the voluntary redundancy suggestion indicated a decision had already been made; and she had concerns about her excessive workload and the way she had been supported over the preceding 9 months.
47. Given the issues raised were connected to the redundancy consultation, the Respondent paused the redundancy process to allow the Claimant's grievance to be heard and determined The grievance hearing was held on 1st March 2021 and chaired by Kate O'Neill, Director of Stakeholder Engagement and Corporate Affairs. The grievance outcome, which was issued on 5th March 2021, determined that it would be more appropriate for redundancy issues to be raised and discussed as part of the redundancy consultation process, rather than running a parallel process on the same issues. Ms O'Neill however did not uphold the complaint that the decision was a foregone conclusion and that the Claimant had an excessive workload.
48. The redundancy consultation then proceeded and the Claimant was invited to attend a second redundancy consultation meeting which occurred on 15th March 2021. The meeting was attended by Ms Waterman and Mr Shivbarat and the Claimant was accompanied by Ms Taylor. The Claimant suggested that the DDM role should be "ring fenced" and she should have been allowed to move seamlessly into this new role.
49. Notwithstanding what is written on the OH report by Dr Coolican, I find that the Claimant's view was that she did not need training for the DDM role, but rather that, if the Respondent required her to undergo this as a pre-condition, she would be amenable.

50. Ms Waterman's expressed view was that there was not sufficient time or resources to re-train her for the role, given that the need for an internal trainer was immediate.
51. However, in the event the new DMM started only in August 2021 so if necessary there would have been considerable training time available for the Claimant between February and August.
52. On 18th March 2021, the Claimant was signed off with work-related stress following her breaking down in tears during a Teams work meeting.
53. She filed an appeal in response to the grievance outcome.
54. At the request of the Respondent, the Claimant attended an occupational health assessment on 13 April 2021. The physician recommended there was a potential to return back to work subject to a risk assessment and a suitable management plan being put in place. The Respondent did not organize this assessment as it wanted to wait for the Claimant to be well enough to come back to work first. The Claimant for her part was waiting for a risk assessment to be carried out before she came back to work. No risk assessment was done and the Claimant did not return to work for the rest of her employment with the Respondent.
55. Ms Waterman retired from her employment with the Respondent on 31/3/21 and Mr R Davies became the new Chief People Officer (ie Head of HR). He agreed with the new proposed team structure and the introduction of the D&D role.
56. He inherited from Ms Waterman (with whom he discussed the ongoing redundancy process) the premises already established that (i) the Claimants role was redundant (ii) the Claimant was not a suitable fit for the DDM role (iii) the DDM role was to be advertised externally in the near future in response to which the Claimant could apply if she wished to, but on the basis that if she was not the best candidate, and no other suitable role could be found, she would be dismissed.
57. As Mr Davies had no prior knowledge of the Claimant or her abilities, and she was signed off sick when he started, it was likely that Mr Davies would rely on what he was told by Ms Waterman about the Claimant, and assume that Ms Waterman was correct in her approach to filling the new role. Once he accepted the premises, even with the best of intentions, (which I find that he had), it was highly unlikely that he would have diverted the redundancy process from running its course to what was by then already an inevitable conclusion.
58. By the time he first spoke to the Claimant on 6th May 2021, he had accepted the premises and he notified the Claimant that he would advertise the DDM role externally on 28th May 2021.
59. On 20 May 2021, Mr Davies wrote to the Claimant confirming the matters they discussed during their meeting and highlighting that the deadline to apply for the DDM role was 11 June 2021.
60. A grievance appeal hearing was held on 2nd June 2021. This was after the date the new DDM role had been externally advertised. The grievance appeal decision was issued on 24th June 2021. The Appeal Officer, Mark Babington, Executive Director of Regulatory Standards, told the Claimant he would not conduct a rehearing of the original grievance. He also did not investigate the allegations relating to the redundancy, explaining (as Ms O'Neill had done) that they were issues which fell within the remit of the redundancy consultation. The other matters raised were not upheld.

61. The Claimant applied for the new DDM role and was invited to attend a first stage interview on 29th June 2021. The panel consisted of Mr Shivbarat and Laura Warren, Head of Competition Policy. The Claimant prepared extensively and did her best but was very stressed, especially as Mr Shivbarat (against whom she had raised a grievance) was one of the assessors, and she felt that it had already been decided that she was unsuitable. As part of the interview, the Claimant was asked about her previous experience and asked to design and deliver a training session on leading hybrid working teams. The Claimant received a score of 5/10 on her training design and delivery. Two other external candidates were interviewed at the first stage and both scored considerably higher than she did.
62. The Claimant was progressed to a stage two interview and was interviewed by Richard Davies and Miranda Craig, Director of Strategy and Change, on 22 July 2021. The two other external candidates also proceeded to the second stage of the process.
63. There were six key criteria/questions forming part of the second stage interview, which included behavioural questions around experience in training, challenges faced in training and the delivery of projects. The Claimant received a rating of "not met" for four of the six criteria and a "partially met" rating for the remaining two. The successful candidate met five of the six criteria and partially met only one.
64. The final redundancy consultation was held on 9 August 2021 by Mr Davies at which he told the Claimant and she had been unsuccessful and the new DDM role had been offered to an external candidate. Mr Davies said she did "*nothing wrong*" and that the candidate who was selected had "*greater more recent experience than yours which is slightly longer ago*". On this basis, the Claimant was advised that unless another appropriate role became available within the Respondent, her employment would end by reason of redundancy following her notice period. The Claimant was encouraged to continue reviewing the intranet for suitable available roles and Mr Davies confirmed he would do the same.
65. The Claimant's dismissal was confirmed in writing on 19th August 2021.
66. The Claimant appealed her dismissal on 2nd September 2021 and the appeal hearing was held on 22nd September 2021 by Claire Lindridge, Director of Audit Market Supervision. As the Claimant had not received any outcome, she wrote to complain about the delay on 13th October 2021.
67. Ms Lindridge spoke to HR first, on 14 September, and then read the Claimant's documents. She then created a manuscript note as an *aide memoire*, encapsulating her concerns as follows : "*My concerns – restructure was designed to remove Sara's role and thus Sara; "Recruitment process may have been deliberately biased against Sara"; She acknowledged Ms Waterman's "controlling style"; "Sara, should perhaps have been give a trial – after all the role she had been recruited into had more D&D in the spec"; "Given that engaging somebody new in the role and getting to their start date would like take 4-6 months, why wouldn't giving Sara a 4-week trial have been something worth doing?"*
68. Notwithstanding this, after Ms Lindridge had consulted with HR, she dismissed the appeal by letter dated 13th October 2021.
69. On 19 November 2021 the Claimant's employment ended due to redundancy and she received a statutory redundancy payment and her contractual entitlements.
70. Subsequent to the appointment of the new DDM, (who started on 16/8/21) about two thirds of the relevant training has been moved in-house and has been carried out satisfactorily by her. She spends

about one to three days a week on this, as it is not the whole of her role. The remaining one third of the relevant training has continued to be provided externally.

Relevant law

71. As to whether the employee was redundant section 139(1) of the Employment Rights Act 1996 provides as follows:

“For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

the fact that his employer has ceased or intends to cease –(i) to carry on the business for the purpose of which the employee was employed by him, or (ii) to carry on that business in the place where the employee was so employed, or

the fact that the requirements of that business –(i) for employees to carry out work of a particular kind, or (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish”

72. Where redundancy is established by the employer as a potentially fair reason for dismissal under Section 98(1) and (2) of the Employment Rights Act 1996, then section 98(4) must be considered which provides as follows:

“Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends upon 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 shall be determined in accordance with equity and the substantial merits of the case.”

73. Where redundancy is established, the employer will normally not act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation Polkey v. A E Dayton Services LTD [1987] IRLR 503 at para 28.

74. Proper consultation involves consultation when proposals are in a formative stage, adequate information on which to respond, adequate time in which to respond, and conscientious consideration of the response. R v British Coal Corp ex parte Price 1994 IRLR 72 at para 24.

75. Unless there is a customary arrangement or agreed procedure the employer has a good deal of flexibility in defining the pool from which he will select employees for dismissal. He need only show that he has applied his mind to the problem and acted from genuine motives. Thomas Betts Manufacturing Ltd v Harding 1980 IRLR 255 CA. However, in choosing the pool the employer must act reasonably and must have a justifiable reason for excluding a particular group of employees from the selection pool where the excluded category do the same or similar work to those who are up for selection. British Steel PLC v Robertson EAT 601/94.

76. It is not the function of the (Employment) Tribunal to decide whether it would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted. Thus the tribunal should not

impose its own views as to the reasonableness of selection for redundancy but should ask whether the selection was one which an employer acting reasonably could have made. Drake International Systems Ltd v O'Hare EAT 0384/03

77. The Tribunal has discretion as to whether the employer can lead evidence as to damages to show that breach of procedure would have made no difference and employee would have been dismissed anyway. Can one sensibly reconstruct the world as it might have been or would this mean embarking on a sea of speculation? This depends on whether omission is merely procedural or more fundamental and substantive. King v Eaton Ltd no 2 1998 IRLR 686

Conclusions

78. There is no contemporaneous documentary evidence to directly support the Claimant's accusations that Mr Shivbarat bullied her, or that Ms Waterman raised performance shortcomings with the Claimant in November 2020 simply in retaliation for the Claimant's complaints about overwork, or that Mr Shivbarat and Ms Waterman "ganged-up" to concoct a sham plan simply for the purpose of removing the Claimant from the Respondent. I dismiss these aspects of the Claimant's case.

79. However, Ms Waterman, in reaching her conclusion that the Claimant was failing in her performance in November 2020, did not give adequate consideration to the fact that the Claimant was exhausted and stressed from overwork at that time; or to the fact that many others in the organization took a diametrically opposed view to hers, about the Claimant's performance and contribution - as described above.

80. The new structure itself was proposed and implemented for genuine and reasonable business reasons.

81. The relationship between the Claimant and her managers from mid-2020 onwards was strained and cool. This strain contributed to Ms Waterman's view that the Claimant would have no part in the new structure, which view she displayed in the first and second redundancy consultation meetings.

82. It is a legal requirement for a fair redundancy procedure that consultation should be at the formative stage and should not take place after the essential and determining decisions have already been made. I find that this requirement was breached in this case.

83. Furthermore, Ms Waterman's direct style did nothing to mitigate the stress and upset which the redundancy process caused to the Claimant.

84. The Claimant felt completely unsupported by the seniors in the HR team, whom she felt were simply trying to get rid of her. From the outset she was told to keep the process confidential, thus preventing

her from reaching out to others outside the HR team who, if informed, would have supported her, and who might have intervened to try to prevent her dismissal.

85. I dismiss the Claimant's submission that Ms O'Neill and Mr Babington should have taken up the redundancy issues by way of grievance determination and grievance appeal. It is not practical to allow an employee to challenge the redundancy process by means of a parallel grievance procedure. It is probably for this reason that the ACAS Code on Grievance Procedures (2015) does not apply to redundancy situations. The proper way for a dismissed employee to challenge internally the redundancy process is by internal appeal against the dismissal.
86. However, this case does illustrate the problem that when it is an HR team itself which is carrying out a redundancy within its own ranks, there is no independent HR to ensure fairness and support the vulnerable employee along the way.
87. Ms Lindridge's manuscript note (referred to in paragraph 67 above) summarizes the concerns which any objective and informed observer would be likely to have about the events under examination.
88. There was a reduced need for work of a particular kind, namely arranging external training courses, and certain other parts of the Claimant's role had been moved elsewhere. Hence there was a genuine redundancy situation.
89. Placing the Claimant in a selection pool of one was within a reasonable range of responses as she was the only one whose role was reducing. Mr Shivbarat's role was different so it was reasonable to exclude him from the pool.
90. Acting reasonably, the Respondent should have offered the Claimant the new DDM role and not required her to compete with external candidates. Even if she was not the best candidate that could be found on the open market, the Claimant was a capable, hardworking and enthusiastic employee, who was popular outside the HR team at least, and whose contribution and value had been recently recognised at the highest level within the organisation. She also had the necessary skills and experience.
91. The "accountabilities" (ie job responsibilities) for the various roles which are referred to in these Reasons are set out in the Schedule.

92. The accountabilities for the new DDM role are very similar, although not identical, to those included in the Claimant's old LDM role, against which the Claimant had been recruited in 2016, and which included "*Identify, initiate and co-ordinate learning, development and policy work/projects in liaison with the Head of HR to deliver the business objectivesDesign and deliver bespoke learning events to internal within budget, time, and quality standards*". The Claimant would not have been recruited in 2016 unless she had demonstrated then her ability and experience in this regard.
93. It did not follow from the fact that the Claimant subsequently had not done much design and delivery of internal training, within the Respondent, that, if given the opportunity, she would not have succeeded again. What work of this kind the Claimant had done for the Respondent had been well-received and in previous employments she had done much work of this kind successfully.
94. This was not a case of her having no experience of design and delivery, but rather, as Mr Davies recognized, a case in which she was unable, (because of the manner in which the Respondent had chosen to provide its training in the period 2016-2020), to demonstrate as much recent experience of it than the successful external candidate.
95. The Claimant is well-educated, with long and wide experience in HR work, and also a formally trained and experienced teacher with considerable people skills. Notwithstanding her performance in the competitive interviews, which she had to undergo while stressed and on sick leave, all the indications were that she would have succeeded in the DDM role, without the necessity of additional training, and which vacant role would have been suitable alternative employment for her.
96. Once Ms Waterman decided at a very early stage, that the Claimant would have to compete against external candidates, including those who were able to show considerable recent relevant experience, it was inevitable that the Claimant would not succeed in obtaining the role.
97. The DDM role was rendered unavailable to the Claimant by being opened to external competitors who, however well-skilled and recently-experienced they may have been, did not have the history of hard work and enthusiastic loyal service to the Respondent which the Claimant had, and which should have been recognized and valued.
98. Acting reasonably the Respondent should also have offered the Claimant the HRBP role as an alternative to the DDM role, if she preferred it. She also had the necessary skills and experience for that role.

99. There was also a considerable overlap between the accountabilities of the HRBP role and (i) the Claimant's LDM role as described in the 2014 job description and (ii) what the Claimant had been actually doing in the period 2016 - 2021.
100. The Respondent's official HR Career Pathway document indicates that the specified natural progression of an L&D Manager was to become an HRBP.
101. While it is true that the Claimant, while under Ms Waterman's management, had not been responsible for performance management and recruitment, (this being the claimed reason why Ms Waterman did not think that the Claimant was suitable for the HRBP role) the Claimant had many years of wide-ranging HR experience in previous employments, and while working for the Respondent she had facilitated the "on-boarding process" and the work experience programme, as well as demonstrating strong interpersonal and relationship-management skills as evidenced through the various VIP awards and commendations she had received from senior colleagues. Again, all the indications were that she was suitable for and would have succeeded in that role also.
102. It is no answer to this to say that HRBP role was only available in mid-2021. A reasonable employer in the circumstances as they existed in early 2021, would, if for some reason the DDM role was unavailable for the Claimant, have offered the Claimant the HRBP role to start from mid-2021, which was in fact earlier than the new DDM role started, and allowed her to make the transition during the interim.
103. It is also no answer to this to say that that job opportunity was pushed back from mid-June 2021 and eventually withdrawn. The reasonableness of the Respondent's conduct must be judged in the light of the circumstances as they existed at the time - ie when the Claimant was being told that although these new roles were being created, and would be available either immediately or in a few month's time, they were not deemed to be suitable for her.
104. The Claimant should not have been put at risk of redundancy at all. Instead, when the need to restructure became apparent, she should have been invited to take up the DDM role or, failing that, the HRBP role, both of which were obviously suitable alternatives and both of which, with a reasonable amount of goodwill, could have been made available within a reasonable timescale.
105. Had the relations between the Claimant with her managers not been strained and cool at that time, this is probably what would have happened. Instead, Ms Waterman embarked on an unfair course which the formal consultations, grievance and appeal process were unable to divert.

106. In the circumstances, the Respondent's treatment of the Claimant fell outside the range of reasonable responses and the dismissal was therefore unfair.

107. If the Claimant had been offered the DDM role I find that she would have taken it up and would have succeeded in it and would still be employed by the Respondent. There is therefore no basis for a Polkey reduction in her damages for unfair dismissal.

J S Burns Employment Judge
London Central
15/11/2022
For Secretary of the Tribunals
Date sent to parties: 16/11/2022

Schedule of "Accountabilities"

The Claimant's role for which she was recruited in 2016 was "Learning and Development Manager". The 2014 job description against which she was recruited in 2016 included the following as "Accountabilities"

1. Identify, initiate and co-ordinate learning, development and policy work/projects in liaison with the Head of HR to deliver the business objectives
2. Design and deliver bespoke learning events to internal within budget, time, and quality standards
3. Develop and/or review and update policies, reports, written guidelines, handbooks and other relevant materials, documents and policies as appropriate
4. Develop new and promoted managers within the Business helping to create a clear talent pipeline and succession planning process
5. Assist with the development of the HR People Plan and make recommendations for change
6. Analyse and manage complex HR data, information resources and organisational issues to inform learning, development and diversity/equality decisions; and appropriate actions and intervention
7. Overall responsibility for management, design, delivery and evaluation of learning and development strategy resulting in high quality and cost effective organisational change initiatives and including championing, embedding and monitoring
8. Monitor people development activities and equality and diversity initiatives and provide reports as required by Head of HR
9. Maintain knowledge and expertise of best practice and national developments in people development and diversity
10. Actively contribute to the HR business planning process

The Job Description for the Lead - D and I and Talent Development role into which Mr Shivbarat was appointed in July 2020 included the following as "Accountabilities"

1. Regularly review and refresh the FRC Diversity & Inclusion Strategy to ensure that it is fit for purpose and sets out the FRC's ambitions to promote diversity and inclusion in the corporate world and to improve representation at all levels within the organisation and to create an inclusive culture
2. Implement the FRC's Diversity & Inclusion Strategy to develop and publish an ambitious D&I action plan following analysis of cross-sector best-practice and benchmarking against other government departments and provide subject matter expertise on equality, diversity and inclusion issues
3. Develop and Implement workable internal HR policies to improve internal diversity by working with HR, the Executive Committee and the Diversity and Inclusion Committee. This will include looking at ways to improve talent acquisition strategies including recruitment, development and secondment programmes, liaising with other regulators and public sector bodies as appropriate

Measure success of the strategy on external policy initiatives by working with others across the FRC to:-
-track progress on the implementation of the Corporate Governance Code and improve diversity and reporting in Annual Reports

- monitor Responsible Supervisory Bodies and firms to increase diversity and inclusion and improve data collection
-organise a programme of awareness raising events with business stakeholders and the accountancy profession

-develop and deliver an analysis and research programme to improve transparency and openness and track progress on diversity so as to build a stronger evidence base and narrative for the economic case for diversity and inclusion that can be used across the FRC for operational work and policy making

4. Monitor and evaluate actions and change internally by working with HR and the D&I Committee to:-
-track that the actions are having a tangible impact and can be measured and benchmarked-

-advise on, track and publish pay gap analysis
-Develop an internal communications plan to raise awareness and embed equality, diversity and inclusion within the FRC
-ensure that the FRC is compliant with the Equality Act and the FRC's responsibilities under the Public Sector Equality Duty

5. Provide effective leadership for the Learning and Development function to ensure that L&D interventions fully support the diversity and inclusion strategy and the resourcing and development demands of the FRC's business strategy by working with L&D colleagues and the wider business.

The Job description for the new role of Design and Delivery Manager produced in February 2021 for purposes external recruitment included the following as "Accountabilities"

1. Promote and embed a culture of learning across the FRC
2. Design, deliver and evaluate training courses, learning events and L&D programmes for the organisation
3. Lead on corporate induction and oversee the divisional induction process for the FRC

4. Ensure consistent standards for learning delivery across the organisation
5. Manage the learning and development budget, forecasting process ensuring value for money
6. Develop FRC learning curriculum ensuring it is meeting business outcomes and FRC's strategic objectives

The job description for the HR Business Partner Role which was produced in March 2021 for purposes of external recruitment included the following as Accountabilities :

1. Working with the Senior HRBP, provide strong HR support and coaching to designated teams within the organisation. Developing strong relationships with those teams and enabling/coaching managers to be effective managers of people
 2. Working with the Talent Development & Diversity and Inclusion Lead to ensure these areas are promoted in designated teams.
 3. Alongside the HR team, ensuring a smooth employee lifecycle experience for FRC employees.
 4. Provide designated teams with guidance on policies, procedures, and best practice.
 5. Ensuring that all FRC policies and procedures are applied in a consistent and fair manner.
 6. Management of any Employee Relations activities that may arise in your designated teams.
 7. Supporting with resourcing activity within your designated teams and working with Resourcing Advisers where appropriate.
 8. Partner with the Design and Delivery manager to ensure L&D activities are deployed across designated teams,
 9. Partner with communications teams to ensure employee messaging is frequent and appropriate.
 10. Ad Hoc general employee queries from your designated teams .
 11. As a part of the HR team, work on projects which will enhance the employee proposition and help the organisation.
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