

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Miss Tracey Leggett
Represented by: Ms Rachel Richardson

RESPONDENT: A O Hall Legal Specialists
Represented by: Advocate Alison Ozanne

Tribunal Members: Mr Peter Woodward (Chairman)
Mrs Alison Girollet
Mr Andrew Vernon

Hearing date(s): 25 and 26 March, 10 and 29 April 2014

Decision of the Tribunal

The Applicant asserted that she had been unfairly dismissed, by reason of redundancy, within the meaning of the Employment Protection (Guernsey) Law 1998, as amended.

Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal concluded that the actions followed by the Respondent were those of a reasonable employer. The Tribunal therefore found that under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was not unfairly dismissed.

The complaint is therefore dismissed and no award is made.

Mr Peter Woodward

30 May 2014

Signature of the Chairman

Date

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 complaint by the Applicant Miss Tracey Leggett was one of alleged unfair dismissal as defined in section 5 (2) (a) of the Employment Protection (Guernsey) Law, 1998 as amended. The Applicant was represented by Ms Rachel Richardson. It was her contention that the primary issues in bringing this complaint were to challenge:

- (a) that the dismissal was due to redundancy
- (b) that the Respondent applied a fair process
- (c) the fairness of the dismissal in all the circumstances

1.2 The Respondent, A O Hall Legal Specialists, whilst admitting a dismissal had occurred resisted this complaint; it was the Respondent's contention that the Applicant had been dismissed fairly by reason of redundancy within the provisions of section 6(2)(c). The Respondent was represented by Advocate Alison Ozanne.

1.3 The Applicant gave witness evidence on her own behalf.

1.4 The Respondent called the following witnesses:

- Advocate Alison Ozanne
- Advocate Louise Hall
- Mrs Nicola Travis
- Mr Samuel Shires
- Advocate Sarah Brehaut
- Mrs Rosemarie Knight

1.5 The Applicant submitted a bundle of documents marked EE1 and further documentation EE2 to EE4.

1.6 The Respondent submitted a bundle marked ER1 and further documentation ER2 to ER7.

1.7 In the six months immediately preceding the Effective Date of Termination, 13 September 2013, actual pay by the Respondent to the Applicant was £8,848.64.

**2.0 Facts Found**

2.1 The Respondent provides legal advice and services in Guernsey in a number of areas including Corporate Affairs, Dispute Resolution, Employment, Fiduciary and Business Support. In September 2013 the Respondent was managed by five Partners, being

supported by eight Associates and two Paralegals; in addition the organisation numbered some 16 administrative/professional non-fee earning staff.

- 2.2 The Applicant entered into the Respondent's employment on 4 May 2010 in the role of Paralegal; and throughout the period of employment worked in the Disputes Resolution department. The Applicant, who was categorised as fee earning, was supervised throughout her period of employment by Advocate Ozanne.
- 2.3 The Applicant had a full attendance record until June 2012 when three weeks sick leave was taken for a knee operation and a further week in July 2012 for an eye infection. In December 2012 the Applicant's aunt died and compassionate leave was granted.
- 2.4 In the period 1 January to 14 June 2013 the Applicant was not in attendance for 31.5 days, this being composed of seven days compassionate leave, two days uncertified sickness, 18 days certified sick leave and four and a half days annual leave (ER2 Refers). The Tribunal notes that the compassionate leave was given due to the deaths of the Applicant's aunt, sister and her father in the period January to April 2013; the certified absences were due to stress related reactions, grief and anxiety.
- 2.5 In February 2013 Advocate Ozanne conducted a performance appraisal with the Applicant and a pay rise was authorised.
- 2.6 On 19 March 2013 a meeting took place with the Applicant, Advocate Ozanne and Mrs Travis in attendance. What took place during this meeting is much disputed and these differences are recorded in the evidence provided by these three individuals.
- 2.7 Two months later, on 7 May 2013, a report was prepared for the Respondent's Partners and detailed the Applicant's attendance record from the period 31 May 2012 until 17 April 2013 (Tab B ER1 refers). The report indicated that the Applicant's monthly salary in this period was £2,114.58 whilst her average earned fees amounted to £1,021.56. The report concluded with Mrs Travis stating to the Partners that there were some points to consider, these being recorded in Tab B ER1 as:
  - 1) *The last two periods of absence are sensitive due to the death of TL's sister and her father*
  - 2) *How to deal with TL's absences going forward*
  - 3) *How to deal with sickness absence going forward as the firm must be consistent with approach. We now have another member of staff who has exceeded the 10 days per rolling twelve months and I feel it unfair to discuss the issue of taking time unpaid when we have not resolved the issue fully and have paid another member of staff who has also exceeded the days.*
  - 4) *Performance is an issue that must be tackled once TL is back in the office and fully recovered.*
- 2.8 In the period 28 June to 9 September 2013 the Applicant did not attend work. Between these dates 10 days of annual leave were taken, one day of uncertified sickness and 39 days of certified absence (ER2 Refers). The Tribunal notes that 35 of these 39 certified days were in relation to a hysterectomy operation and the subsequent convalescence.

- 2.9 At the monthly Partners meeting 20 August 2013 Advocate Hall led an un-minuted discussion as to the Applicant's potential redundancy (ER1 Tab 4 Page 29 refers).
- 2.10 The Applicant was signed as fit to return to work on 10 September 2013. The Tribunal notes that in the period 4 September 2013 to 9 September 2013 there was some telephonic and email communication between the Applicant and Mrs Travis as to the Applicant's intended return to work; the precise dates and timing of this contact are disputed.
- 2.11 Almost immediately on her return to work on the morning of 10 September 2013 the Applicant was called to a meeting with Advocate Ozanne and Mrs Travis. A 'guidance briefing note' was provided to Advocate Ozanne and Mrs Travis by Advocate Hall as to how this meeting should be conducted (ER1 Pages 71/72 refer). What took place during this meeting is much disputed and these differences are recorded in the evidence provided by these three individuals. It is, however, agreed by the parties that a discussion did take place as to a potential Compromise Agreement. Following this meeting the Applicant was sent home. As she departed the premises the Applicant met briefly with Advocate Brehaut and advised her that she had been offered redundancy.
- 2.12 Mrs Travis prepared a contemporaneous 'attendance note' of the meeting on 10 September (ER1 Page 73 refers).
- 2.13 After the Applicant had left the premises Advocate Brehaut informed Advocate Paul Buckle, one of the Respondent's Partners, of her conversation with the Applicant and in turn Advocate Buckle advised Advocate Ozanne. Advocate Ozanne then briefed all staff via departmental briefings that the Respondent had entered into a redundancy consultation process with the Applicant.
- 2.14 On 12 September 2013 The Applicant again met with Advocate Ozanne and Mrs Travis. It is disputed as to whether the dismissal actually occurred in this meeting but on the following day a formal letter of dismissal was sent to the Applicant by email informing her she would be released with immediate effect (ER1 Page 78 refers). Thus the Effective Date of Termination was 13 September 2013. The Applicant was advised in this letter of 13 September 2013 that she had a right to appeal the decision to dismiss her and that she had a period seven days within which such an appeal could be lodged.
- 2.15 On 24 September the Applicant lodged a written appeal and this was acknowledged by the Respondent on the same day (ER1 pages 80 and 81 refer). The Respondent advised the Applicant that whilst the appeal had been lodged 'out of time' that it was accepted and would be responded to.
- 2.16 A written response to this appeal was sent to the Applicant on 3 October 2013 rejecting all grounds upon which the appeal was made and confirmed the decision to dismiss (ER1 Pages 82 to 90 refer).

### **3.0 Advocate Alison Ozanne**

- 3.1 Advocate Ozanne is a founding Partner of the Respondent which was established in 2005.
- 3.2 The witness informed the Tribunal that it was her decision to employ the Applicant in 2010 and the Applicant's duties were those of assisting with legal research, preparing Court agenda, preparing Court bundles, assisting fee earners, preparing folders and delegate packs, and preparing submissions to editorials.
- 3.3 Advocate Ozanne informed the Tribunal that Miss Leggett generally performed well in her main duties and on the basis of this had been given a good performance rating and a pay rise in February 2013. However there were two particular critiques in that preparation of Court bundles was not always as accurate as required and also Miss Leggett required secretarial input to draft the indexes to the bundles and other matters requiring word processing skills.
- 3.4 Advocate Ozanne recalled the 'return to work meeting' on 19 March 2103. The witness informed the Tribunal that Miss Leggett had, by this time, exhausted her contractual sickness benefit and the purpose of the meeting was to explore ways in which the Respondent could legitimately assist Miss Leggett to claim state benefits. One option explored was that she could resign and thus seek unemployment benefit. Advocate Ozanne refuted that in suggesting such an action she had wanted Miss Leggett to resign, her only concern was how to address Miss Leggett's precarious financial situation.
- 3.5 Advocate Ozanne stated that during the Applicant's absences from the office in 2013 her workload was fully absorbed by other members of the team; specifically as follows:
- The Dispute Resolution secretaries took on responsibility of preparing Court and other bundles.
  - The Marketing Administrator prepared conference delegate packs.
  - The fee earners carried out their own legal research and note taking.
  - The HR Manager, Mrs Travis, dealt with the Court diary with the assistance of Advocate Brehaut.

Advocate Ozanne stated that this pattern of assignments continues to this day; other than the Court diary which is now dealt with by the Dispute Resolution Secretaries.

- 3.6 By the 20 August 2013 a decision had been made to enter into consideration of a redundancy process with the Applicant and at the Partners' meeting a discussion took place as to the 'pool for selection'. At that time there were two employees who undertook a Paralegal role, the Applicant and another member of staff (LP) who performed a role in the 'Corporate' section. The initial view was that the two roles did not overlap and the Paralegal in the Corporate department had a significant 'Compliance' role with which the Applicant was not involved; it was decided that Mr Shires and Advocate Ozanne should give this issue further consideration outside of the Partners' meeting.
- 3.7 In a subsequent meeting between Advocate Ozanne and Mr Shires it was decided that the two Paralegal roles were significantly different and that in their judgement it was reasonable to identify Miss Leggett in a selection pool of one.

- 3.8 Advocate Ozanne and Mrs Travis met with Miss Leggett on the morning of 10 September 2013. Advocate Ozanne stated that the purpose of the meeting was to enter into a discussion regarding possible redundancy and the redundancy consultation process. Advocate Ozanne was very concerned that a fair procedure be followed and as this was the first time in her career that she had undertaken such a consultation she was provided with a briefing note by Advocate Hall (ER1 Pages 71 to 72 refer).
- 3.9 Advocate Ozanne opened the meeting and informed Miss Leggett that her purpose was to enter into a redundancy consultation with her. It had become clear that during her absence from work her duties had been absorbed by other members of the staff and there was no further requirement for her role.
- 3.10 Advocate Ozanne continued the meeting by advising Miss Leggett that it was the first stage in the consultation process and no final decision had been made at this stage. Advocate Ozanne informed Miss Leggett that if an alternative role was identified it might be possible for her to undertake this role, but if no suitable role was identified then she may be at risk of redundancy. Advocate Ozanne told the Tribunal that throughout these discussions she frequently checked if Miss Leggett understood what was happening and invited her to respond or comment on what had been said; Miss Leggett did not choose to offer any feedback.
- 3.11 Mrs Travis then outlined two roles which the Respondent was likely to be recruiting for; a Legal Secretary and an Associate Lawyer, both in the Disputes Resolution department. Miss Leggett stated she did not have the necessary skill set for either of these roles. Miss Leggett was also asked to identify any other role that she might be able to perform; she had no suggestions.
- 3.12 Advocate Ozanne then placed the meeting on a 'without prejudice' basis and whilst restating that no decision had been taken, advised that in the event that no alternative role was identified and in the event that Miss Leggett was made redundant, a Compromise Agreement would be drawn up. This agreement would include pay in lieu of notice plus an ex-gratia payment of two months' gross salary; in addition Miss Leggett would not be required to pay back any training fees incurred by the Respondent. It was explained to Miss Leggett that should she wish to agree to a Compromise Agreement she would need to take legal advice and the Respondent would make a contribution toward any fees incurred.
- 3.13 Advocate Ozanne concluded the meeting by handing a letter to Miss Leggett headed 'Warning of possible redundancy' (ER1 Page 74 refers). This letter confirmed that the Applicant was at risk of redundancy and that during the meeting Miss Leggett had been referred to the only current vacancy, a secretarial role. The letter further stated that the Respondent would be exploring ways in which a compulsory redundancy could be avoided and invited Miss Leggett to make any suggestions which might assist in this endeavour.
- 3.14 Advocate Ozanne brought the meeting to an end and advised Miss Leggett she could leave the office for the remainder of the day and also take the following day off. Advocate Ozanne advised there would be a second 'consultation meeting' on 12 September 2013.

- 3.15 As Miss Leggett was departing from the office she informed Advocate Sarah Brehaut that she had been offered redundancy. Upon learning this Advocate Ozanne decided that as Miss Leggett had, in her words, "made matters public in this way" it became necessary to inform all staff. Advocate Ozanne met with all the staff in team meetings and informed them that the Respondent had entered into a consultation process with Miss Leggett and that no decision had been made as to the potential outcome.
- 3.16 A second meeting took place with Advocate Ozanne, Miss Leggett and Mrs Travis in attendance. Miss Leggett did not ask for this meeting to be delayed, she did not seek further time for consideration of her situation. Miss Leggett could not offer any suggestion of alternative roles and Advocate Ozanne informed her that neither could she.
- 3.17 Advocate Ozanne informed Miss Leggett that as no alternative had been identified that she would be made redundant and receive one month's salary in lieu of her contractual notice, assuming a termination date of Friday 13 September 2013, and that she would be released with immediate effect. A formal dismissal letter was sent by email and post on 13 September 2013 (ER1 Page 78 refers). This letter confirmed that Miss Leggett had the right to appeal the dismissal decision within seven days of the receipt of that communication.

#### **4.0 Advocate Louise Hall**

- 4.1 Although the appeal against dismissal was received out of time Advocate Hall responded in writing on 3 October 2013 and in this letter she reviewed each ground of this written appeal.
- 4.2 Advocate Hall stated that contrary to Miss Leggett's belief, it had been a genuine redundancy. The letter stated that between 1 January 2013 and 9 September 2013 (inclusive) Miss Leggett had 81.5 days absence (14.5 days holiday, seven days compassionate leave, three uncertified days sick leave and 57 days certified sick leave).
- 4.3 Advocate Hall wrote that over the course of this period, the Firm identified that Miss Leggett's duties of employment were absorbed by other members of staff. Specifically (i) legal research, assisting fee earners with note taking, drafting letters, assisting with writing/proof reading articles and delegate notes for seminars and conferences were taken up by Associates in the Dispute Resolution department (ii) preparation of the Court agenda was taken up by Mrs Travis (iii) preparation of Court bundles and documents for Court was taken up by the Legal Secretaries and (iv) the preparation of folders and delegate packs for conferences/seminars and tender submissions to panels were taken up by the Marketing Assistant (KLB).
- 4.4 Advocate Hall stated that the above mentioned employees had continued to perform their duties of employment whilst taking on these additional tasks. It was also a fact that between 1 January 2013 and 30 June 2013 (even with July and August discounted due to authorised absences during that period) that actual fees earned against target were £5,967.38 against £49,103.34 (approximately 12 per cent).

- 4.5 The second ground of Miss Leggett's appeal was that the redundancy selection process was unfair and in her letter Advocate Hall disputed this assertion.
- 4.6 Advocate Hall stated that the employer took into account the requirements of the Commerce & Employment Department's Code of Practice on Handling Redundancy. It had genuinely addressed its mind to the issue of the appropriate selection pool from which to select for redundancy and which roles might be interchangeable with that of Miss Leggett's. Consideration had been given to the role performed by LP, also employed in the post of Paralegal. Advocate Hall noted that a material part of LP's duties (at least 50% as reflected in a reduced fee earning target) involved Anti Money Laundering compliance work. Additionally other aspects of her role involved LP in supporting the Corporate Department with transactional work which required knowledge and experience of commercial law and documentation, in particular but not limited to: drafting memorandum and articles; drafting board minutes; drafting migration documents; drafting restoration of company documents; drafting transaction enforceability legal opinions; creating client and transaction Bibles; reviewing and commenting on the documents the Firm receives from English solicitors from a Guernsey law perspective; drafting undertaking letters for delivery upon completion of transactions; printing the documents for signing by the boards; putting them in the order of the undertaking; tabbing them to show where each board needs to sign; attending completion meetings and directing signatories; and processing and circulating the documentation to appropriate parties following the completion meetings and in satisfaction of undertakings. The Employer therefore concluded that the roles undertaken by Miss Leggett and LP, by reference to job content and department, were sufficiently different as not to be interchangeable. No other roles were deemed to be interchangeable as, during her meeting with Advocate Ozanne and Mrs Travis prior to her dismissal, it had been agreed that she did not have the requisite skills to act in the role of Legal Secretary. Finally Miss Leggett had not suggested any other alternative roles which she might perform; in consequence Miss Leggett had been the only employee in the selection pool.
- 4.7 Advocate Hall wrote that in light of the appeal, the employer had given consideration to inviting Miss Leggett to state whether she would be interested in an existing position as Receptionist, Filing Clerk or Facilities and Premises Officer. The job descriptions for each of these positions were enclosed with their respective salary scales. If such interest was shown then the employer would extend the selection pool.
- 4.8 Advocate Hall rejected the final ground, that the appeal process had not been genuine and stated that no decision to dismiss was taken prior to the second consultation meeting with Miss Leggett on 12 September, at the end of which she was informed of her dismissal. Advocate Hall stated that staff were not informed of her dismissal until 16 September 2013 when an 'all staff email' was sent notifying staff of her dismissal on grounds of redundancy. Advocate Hall stated in her letter that the decision to terminate her employment was not inconsistent with the employer's decision to offer her the right of appeal.
- 5.0 Advocate Sarah Brehaut**

- 5.1 Advocate Brehaut commenced employment with the Respondent in March 2011 and is employed in the Dispute Resolution Team.
- 5.2 On the morning of 10 September 2013 Advocate Brehaut observed that Miss Leggett had returned to work after a lengthy period of absence. It was later on the same morning that Miss Leggett approached her at her work desk and with a tearful demeanour informed her that she had been “offered redundancy”. After having this conversation with Miss Leggett Advocate Brehaut felt it appropriate to advise Advocate Ozanne (via Paul Buckle) that Miss Leggett had given her this information.
- 5.3 A little later during the morning Advocate Brehaut was present on the Dispute Resolution floor when Advocate Ozanne addressed her together with the other members of Dispute Resolution and Fiduciary departments.
- 5.4 Advocate Ozanne advised the meeting that Miss Leggett had been in to the office that morning and that the Firm was entering into a period of consultation with her in relation to possible redundancy. Advocate Ozanne did not elaborate further upon the process save that she explained that there was a possibility of Miss Leggett applying for alternative roles within the Firm if it was considered that she would be able to fulfil the same. Advocate Ozanne explained that because Miss Leggett had spoken to Advocate Brehaut they felt it appropriate to advise staff as to what was occurring; Advocate Ozanne said she would keep members of staff informed.
- 5.5 On 16 September 2013 Advocate Brehaut received an email advising her that Miss Leggett had left the employment of AO Hall as she had been made redundant.

## **6.0 Mrs Nicola Travis**

- 6.1 The witness is employed by the Respondent as HR & Operations Manager and commenced employment with AO Hall in January 2005. Mrs Travis has an MSC in Personnel Management.
- 6.2 On 10 September 2013 Miss Leggett returned to the office and Mrs Travis together with Advocate Alison Ozanne had invited Miss Leggett to attend a meeting at 9.15 am.
- 6.3 The witness informed the Tribunal that a she had never been involved with a redundancy consultation process before; Advocate Louise Hall had provided herself and Advocate Ozanne with a briefing script for the meeting beforehand. This was carefully read in order that the correct procedure was followed.
- 6.4 Advocate Ozanne opened the meeting by thanking Miss Leggett for attending and went on to state that the purpose of the meeting was to inform Miss Leggett that the Firm was entering into a redundancy consultation process with her and the reason for this was that during her absences, the work she undertook had been carried out by other members of staff; that is the secretaries were preparing bundles, the fee earners were carrying out their own research and she (Mrs Travis) was responsible (along with Advocate Brehaut) for the Court diary, and that there was no longer a requirement for Miss Leggett to carry out her role. Advocate Ozanne advised Miss Leggett that this was the first stage in the consultation process and no final decision had been made at this stage.

- 6.5 Advocate Ozanne advised Miss Leggett that if an alternative role for her was identified, it may be possible for Miss Leggett to undertake that role, but if no suitable role was identified, then she may be at risk of redundancy. Throughout the conversation Advocate Ozanne checked that Miss Leggett understood what was happening and Miss Leggett confirmed she did. She was also asked if she wished to respond/comment on what had been said so far. She said she did not. It was communicated that there were two roles which the Firm were likely to be recruiting for shortly. These roles being that of Legal Secretary and of Associate Lawyer both in the Dispute Resolution department. Miss Leggett stated she did not have the necessary skill set to undertake these roles. The witness asked Miss Leggett if she could think of any other roles in the Firm which she may be able to undertake; Miss Leggett replied she could not.
- 6.6 Advocate Ozanne then requested for the meeting to be placed on a 'without prejudice' basis. She stated that although no decision had been made, she wanted to make Miss Leggett aware of the severance terms which would apply in the event that no role could be identified and she was made redundant. Advocate Ozanne went on to explain that a Compromise Agreement would be prepared, the terms of which would be pay in lieu of notice along with two months' salary ex gratia. Advocate Ozanne also confirmed that Miss Leggett would not be expected to reimburse the training fees that had been incurred in relation to her ILEX study. Advocate Ozanne advised that should Miss Leggett wish to agree to a Compromise Agreement, she would need to obtain independent legal advice and that the Firm would make a contribution towards these fees. Again Advocate Ozanne asked if Miss Leggett understood and if she had any comments to make; Miss Leggett did not indicate any misunderstanding or offer any comment.
- 6.7 At the end of the meeting Advocate Ozanne again explained to Miss Leggett that no decision had yet been made and Mrs Travis repeated this. Advocate Ozanne added that as the news must have come as a shock, Miss Leggett could leave the office for the day, take the following day off, and return for a second consultation meeting on Thursday 12 September. Miss Leggett agreed to return for the second meeting.
- 6.8 As the meeting concluded Advocate Ozanne handed a letter to Miss Leggett which set out the terms of the meeting which had taken place. Miss Leggett left the meeting room and Mrs Travis remained in the room with Advocate Ozanne.
- 6.9 Not long after Miss Leggett had left the meeting room, Paul Buckle, Group Partner, entered and advised both her and Advocate Ozanne that Miss Leggett had approached Advocate Sarah Brehaut as she left the office and had said "they've offered me redundancy" (or words to that effect). After some consideration it was decided to advise all staff members that the Firm was entering into a consultation process with Miss Leggett but to stress that no decision had yet been made.
- 6.10 Mrs Travis was present when Advocate Ozanne spoke to the secretaries based on the third floor. Advocate Ozanne explained that the Firm had entered into a redundancy consultation process with Miss Leggett; that she had been asked to think of alternative roles she may be able to fill and that she would return to the office on Thursday for a further meeting. Advocate Ozanne had been clear that no decision had been taken at that time when she and Mrs Travis spoke to the

Receptionists on that day and explained that the Firm had entered into a consultation process with Miss Leggett regarding a possible redundancy, but no decision had been made.

- 6.11 On Wednesday 11 September, at 11.23 pm, an email was sent to Mrs Travis by Miss Leggett asking for confirmation of a meeting time for the second meeting as, although the date of 12 September 2013 had been set for the meeting, no time had been specified. Mrs Travis did not see the email until the morning of 12 September but replied at 7.56 am asking her if 10.30 am would be convenient to attend the office (see exhibit 'NT1'). Mrs Travis told the Tribunal that she heard nothing further from Miss Leggett before she arrived at the office.
- 6.12 At 10.30 am on 12 September a second consultation meeting between Advocate Ozanne, Miss Leggett and Mrs Travis was held. The witness stated that at no point during the meeting did Miss Leggett ask for extra time or further information. Advocate Ozanne asked Miss Leggett if she had been able to identify any roles in the Firm which she could undertake. Miss Leggett replied that she could not. Advocate Ozanne then explained that, as no alternative had been identified, the Firm had no choice but to make Miss Leggett redundant. Miss Leggett was advised she would receive one month's salary in lieu of notice and would be released with immediate effect.
- 6.13 Advocate Ozanne asked if Miss Leggett had thought about the Compromise Agreement, to which Miss Leggett replied she had not, but that she would contact the Firm on Monday 16 September 2013. On 13 September 2013, a letter was sent to Miss Leggett by email and post advising her that her employment had been terminated by reason of redundancy and enclosing a cheque representing payment in lieu of one month's notice and salary relating to the period 10-13 September 2013 (Miss Leggett having exhausted her sick pay entitlement prior to her return from extended sick leave). The letter also set out Miss Leggett's right to appeal the decision in writing within seven days of receipt of the letter.
- 6.14 On Monday 16 September 2013, Advocate Ozanne sent an email to all staff advising them of Miss Leggett's redundancy. Advocate Hall advised Mrs Travis that she had received an undated letter from Miss Leggett on 24 September stating that Miss Leggett had decided to appeal the decision.
- 6.15 Mrs Travis was surprised to see that in Miss Leggett's email to Advocate Hall, dated 10 October 2013, that she had stated that she contacted her by telephone to re-arrange the second consultation meeting. Mrs Travis had no recollection of this telephone call and stated that, as could be seen by her email dated 12 September 2013, the time of 10.30 am was offered 'if convenient'. (ER1 Page 76 refers).
- 6.16 The only telephone conversations that Mrs Travis recollected with Miss Leggett that week were firstly on Monday 9 September 2013, when she telephoned Miss Leggett as she had not arrived in the office as had been expected. Miss Leggett explained that the doctor had signed her off until Tuesday 10 September 2013 so she would not be in until then. Mrs Travis recalled a second conversation with Miss Leggett on Friday 13 September when she asked Miss Leggett to confirm her personal email address so she could send a letter to her; and also confirm what time would be convenient for her to attend the office to collect her personal belongings. It was

agreed Miss Leggett would meet Mrs Travis on Saturday the 14 September 2013, which she did.

## **7.0 Mr Samuel Shires**

- 7.1 Mr Shires is employed by AO Hall Group Services Limited as Group Partner, Corporate. He regularly attended the monthly Partners' meeting and recollected that on 20 August 2013 the Partners discussed the potential redundancy of Miss Leggett and the potential selection pool for redundancy. It was acknowledged in the meeting that while the Firm had two Paralegals their roles were very different and did not apparently overlap. Advocate Shires was requested to give further consideration to this issue and came to a decision with Advocate Ozanne that the roles were so different that that Miss Leggett would be in a pool of one.
- 7.2 After a subsequent discussion with Advocate Ozanne he confirmed to Advocate Louise Hall that while LP's job title was Paralegal and therefore her role might be assumed to be similar to that of Miss Leggett there were many substantial differences in their roles.
- 7.3 His rationale for this judgement was that LP's time, and accordingly her budgeted targeted hours, were dedicated to acting as a junior Compliance Officer supporting the Partners and management in discharging the Firms Anti Money Laundering (AML) obligations. Further, of the remaining work she carried out in her Paralegal capacity; this was almost exclusively for the Corporate Team in supporting them on transactions for their main property fund client and other work such as company migrations and restorations. This work involved tasks such as drafting corporate board minutes and resolutions, company forms, undertakings, and attendance at board meetings and signing meetings and fulfilment of undertakings regarding delivery of documents post-completion of a transaction. It was discussed and agreed that this type of work was far more specialised than the Paralegal work carried out by Miss Leggett for the Dispute Resolution team such as legal research, keeping the Court diary and preparing litigation bundles.
- 7.4 It was also observed that these two individuals never filled in for each other when one was sick or on holiday; other than the fact that Miss Leggett would occasionally carry out company and Court searches for Mr Shires and other members of his team if LP was absent. Accordingly it was agreed that LP's and Miss Leggett's roles were in reality so different that it was neither appropriate nor fair to LP to include her.
- 7.5 On the day that Advocate Alison Ozanne announced the redundancy consultation process it was the witness's recollection that she came to his departmental floor and gathered the staff together. She informed them that because Miss Leggett had taken the decision to tell certain people downstairs that she was being "offered redundancy", she thought it appropriate to advise all staff that a redundancy process was, in fact, underway, although no decision had, in fact, yet been made.

## **8.0 Mrs Rosemarie Knight**

- 8.1 Mrs Knight works as a Legal Secretary for the Respondent and her primary role is to support Advocate Ozanne; she has been in post since February 2006 and worked with Miss Leggett when she joined the Dispute Resolution team in May 2010.
- 8.2 Mrs Knight recounted that on the morning of 10 September 2013 Advocate Ozanne came into the secretarial room and told the staff, including herself, that a decision had been made to review the Dispute Resolution Paralegal role as during Tracey's absences the work she had been carrying out had been spread out between other people within the department and it had become apparent this had been absorbed without a problem, so in effect the role of Paralegal as such no longer existed. Advocate Ozanne told the meeting that she had met with Miss Leggett earlier in the day and had explained the situation to her. Miss Leggett had been asked to go away and think if there was any other role within the Firm that she might be able to move to.
- 8.3 Advocate Ozanne explained that she would be meeting with Miss Leggett again together with Mrs Travis. In the meantime it had become necessary to brief all staff on the situation as Miss Leggett had discussed this issue with at least one other member of staff before leaving the building.
- 8.4 During this meeting someone did comment that the only role which might be available to her was in the secretarial department but people in the room expressed the opinion that Miss Leggett did not have the necessary skills to do this. Mrs Knight was in full agreement with this opinion as whilst working with Miss Leggett she had observed that her word processing skills were limited and Miss Leggett was prone to making typographical mistakes in some of the documents she prepared.
- 8.5 Mrs Knight also recalled a previous discussion with Miss Leggett during which she stated she had not undergone all her academic studies to perform a secretarial role; it was her opinion that Miss Leggett would not have been disposed to consider such a role.
- 8.6 Mrs Knight heard no more of the matter until an 'all staff' email was circulated on 16 September 2013 by Advocate Ozanne informing everybody that Miss Leggett had left the Firm.

## **9.0 Miss Tracey Leggett**

- 9.1 Miss Leggett applied for employment in February 2010 with the Respondent for a role which had been advertised in the Guernsey Press as a Paralegal to assist across all departments (Tab 3 EE1) refers; this application was accompanied by a CV (Tab 4 ER1 refers). During her interviews and prior to her job offer Miss Leggett was informed her role as Paralegal would span all departments.
- 9.2 Prior to the commencement of her employment Miss Leggett was provided with an offer letter and an employment contract (copy documents contained at Tabs 8 and 9 of ER1). Each of these documents stated her role simply as 'Paralegal' and made no distinction as regards any team that she worked for. Her understanding at all times was that she was to assist all the fee earners across all departments.

- 9.3 Miss Leggett commenced her employment as a Paralegal with the Respondent on 4 May 2010 and at the time was the only Paralegal on the staff. Miss Leggett sat in the Dispute Resolution team but assisted all fee earners in the various departments. Throughout her employment her day to day duties varied greatly. They included:
- Assisting with debt claims.
  - General legal research (across all departments).
  - Ecclesiastical Court dealings.
  - Accompanying fee earners to Court.
  - Assisting with negligence claims.
  - Court clerk duties.
  - Preparing bundles for Court proceedings.
  - Preparing documents for corporate transactions.
  - Carrying out company searches.
  - Assisting with secretarial duties when necessary (Tab 11 EE1 refers).
  - Typing Court transcripts.
- 9.4 In November 2010 Miss Leggett commenced long distance learning with the Chartered Institute of Legal Executives with the intent to become a Legal Executive Lawyer (EE1 Tab 13 refers). Also in November 2010, LP commenced employment at the Respondent as a Paralegal. LP had been employed by the Respondent a couple of months earlier as a temporary receptionist to cover annual leave.
- 9.5 In April 2012, following the departure of a Partner and a Legal Secretary some of the Legal Secretary's duties, for example Court Clerk and various administrative duties were passed to Miss Leggett. It was at that time that Miss Leggett noticed that her job description didn't include tasks such as her Court Clerk duties but it seemed to Miss Leggett that the HR Manager Mrs Travis was not worried about this issue as she responded by telling Miss Leggett that she had the same job description as LP. A copy of this job description provided to both LP and Miss Leggett is in Tab 15 of EE1.
- 9.6 In mid to late February 2013 Miss Leggett had an appraisal with Advocate Ozanne. During this appraisal Miss Leggett was told that by Advocate Ozanne that she was happy with her performance and that she would receive a pay rise that month. It was also proposed by Miss Leggett in this appraisal discussion that she should do all the Court Bundles to which Advocate Ozanne happily agreed. Miss Leggett informed the Tribunal that at no stage during her employment did any of the Partners or HR ever criticise her performance; she only ever received praise and appreciation for the work she undertook.
- 9.7 Miss Leggett informed the Tribunal that prior to June 2012 she took little to no sick leave; then in June 2012 she took three weeks leave for a knee operation and complications following that operation. The first two weeks of this leave exhausted her sick pay entitlement from the Respondent which stood at 10 days only. Miss Leggett received no further sick pay throughout her employment other than for two days leave in January at the specific request of Paul Buckle, a Partner.
- 9.8 In July 2012 Miss Leggett took five days sick leave due to an eye infection and then took no further days off work until 29 November 2012 when her cousin Mailea was

killed suddenly in a car accident. Miss Leggett took one day of holiday to attend her funeral.

- 9.9 In January 2013 Miss Leggett's aunt died and she took one day's holiday on 9 January to attend her funeral. On Saturday 2 March 2013 Miss Leggett's sister died and a week later she was told that she had tested positive for a cancer causing virus and that she would need to have a full hysterectomy as soon as possible. Miss Leggett took a mixture of compassionate and certified sick leave from Monday 4 to Friday 15 March 2013 (10 days).
- 9.10 On Monday 18 March 2013 Miss Leggett returned to work and was asked to meet with Mrs Travis and Advocate Ozanne the following morning at 10.00 am. On Tuesday 19 March she attended this meeting and her recent absences were discussed. Mrs Travis said that she had taken 31 days sick leave in three years and Advocate Ozanne asked Miss Leggett if she wanted to resign and return to work when she was feeling better.
- 9.11 Miss Leggett informed the Tribunal that she was distressed as to a suggestion she should resign. Miss Leggett responded by saying that she loved her job and that she needed it; she explained she could not afford to resign.
- 9.12 Mrs Travis and Advocate Ozanne then began to talk about how she might be able to improve her finances. Mrs Travis offered to phone the Housing Department for her to see if they could offer a reduction in rent and she also offered to call Social Security to see what sickness benefit she might be entitled to given she was not receiving sick pay from the Respondent.
- 9.13 Miss Leggett told the Tribunal that she was embarrassed and upset at her financial situation but rather than feeling supported by the Respondent she felt as though the main concern was the fact that she was going to be absent again due to her upcoming hysterectomy. Miss Leggett made a contemporaneous note of this meeting (EE1 Tab 17 refers).
- 9.14 Miss Leggett remained confused and upset by the 19 March meeting and on 22 March 2013 she wrote to Mrs Travis requesting a copy of the minutes that she had taken during the meeting (EE1 Tab 18 refers). Mrs Travis replied saying that it had not been a formal meeting and there were no formal minutes.
- 9.15 On 5 April 2013 Miss Leggett's mother, who has lung cancer, was rushed to hospital with pneumonia; as a result of her meeting with Advocate Ozanne and Mrs Travis on 19 March Miss Leggett felt constrained from taking any time off to visit her mother in the hospital. On Saturday 13 April 2013 after visiting her mother in hospital she found her father had collapsed from a heart attack; she attempted to resuscitate him but he had already died.
- 9.16 Miss Leggett telephoned Mrs Travis to tell her what had happened and in response Mrs Travis was very understanding and told her to take as much time as she needed. Miss Leggett took two days compassionate leave and then was signed off by her doctor on 17 April for two weeks with acute stress reaction from grief and worry about her forthcoming hysterectomy.

- 9.17 On Monday 6 May 2013 Miss Leggett returned to work and had a meeting with Advocate Ozanne and Mrs Travis to discuss her sick leave, Social Security benefits, time off for her hysterectomy and her recovery plan. At this time her hysterectomy was due to take place on 16 July 2013; her doctor had suggested that she was to rest and to prepare mentally for the operation; Advocate Ozanne and Mrs Travis agreed that she could take two weeks annual leave prior to the operation. The operation was subsequently postponed to 23 July 2013; Miss Leggett telephoned Mrs Travis on 15 July 2013 to let her know and asked if she should come back to work but she was told by Mrs Travis to stick to the plan and return to work after the operation. The hysterectomy took place on 23 July 2013.
- 9.18 Miss Leggett telephoned Mrs Travis on 6 September 2013 to update her and to inform her when she should be able to return. Miss Leggett telephoned Mrs Travis again on 9 September 2013 to discuss her return to work the following day. At no point during either of these telephone calls (or prior to them) did Mrs Travis warn her of a potential redundancy situation.
- 9.19 On the morning of 10 September 2013 Miss Leggett attended a meeting with Advocate Ozanne and Mrs Travis. Miss Leggett assumed that they were going to discuss her return to work and the tasks she would undertake. Miss Leggett was asked as to the state of her health and then almost immediately was told she was being offered voluntary redundancy. Miss Leggett was also informed by Advocate Ozanne that a Compromise Agreement had been drafted and it was suggested to Miss Leggett that she should see an Advocate. Miss Leggett's recollection was that there was no mention of a redundancy process, nor mention of a selection pool or any selection process. There was no mention of any steps that had been taken prior to arriving at the decision to offer redundancy.
- 9.20 Advocate Ozanne said that the Respondent had allocated the work previously undertaken by Miss Leggett to other staff and that they did not need her anymore. Advocate Ozanne informed her that the Respondent was going to advertise for a Legal Secretary and an Associate but that Miss Leggett did not have the skill set for either role. Miss Leggett stated she was not asked her opinion or whether she might like to apply for either role. Miss Leggett believed that the redundancy was proposed to her as though it had already happened.
- 9.21 Advocate Ozanne concluded the meeting by suggesting that Miss Leggett take a couple of days to consider if she could suggest any other options to enable her to remain in the Respondent's employment. Miss Leggett had the recollection that the meeting was short, somewhat rushed and lasted approximately 10 minutes; she informed the Tribunal that neither Advocate Ozanne nor Mrs Travis took any notes during this meeting.
- 9.22 Prior to leaving the Respondent's premises she returned to her desk and met Advocate Brehaut. Miss Leggett confided to Advocate Brehaut that she had been offered redundancy.
- 9.23 On the morning of 12 September Miss Leggett was in contact with Mrs Travis by telephone regarding the scheduled meeting for that morning. Miss Leggett asked for more time to think things through and explained that it had all been a shock to her and that she needed time to consider other positions. Mrs Travis had said that

Advocate Ozanne had a very busy schedule and that this was the only available time for the meeting to take place.

- 9.24 On 12 September 2013 Miss Leggett arrived at the Respondent's offices at 10.30 am. She was met by the Receptionist and the Messenger, both of whom said they were sorry to hear that she was leaving. Miss Leggett asked the Receptionist how they knew that she was leaving and was told that Mrs Travis had informed them
- 9.25 On meeting Advocate Ozanne and prior to Mrs Travis joining them Miss Leggett expressed concern that Mrs Travis had already told people she was leaving. Miss Leggett told the Tribunal that it felt as though she had done something wrong. Advocate Ozanne apologised and said that was definitely not the case, Mrs Travis, on joining the meeting, agreed with Advocate Ozanne. Advocate Ozanne then reminded Miss Leggett about the Compromise Agreement and, because she was in a rush, asked Miss Leggett if she wanted to stay on after her and Nikki had left the room to read the agreement. At this point Mrs Travis commented that the agreement was not yet ready and consequently Advocate Ozanne suggested that Miss Leggett take the weekend as a period of reflection. Miss Leggett thought the meeting was short, lasting approximately 10 minutes, and was confusing for her. She told the Tribunal she was still not sure what exactly had occurred; Miss Leggett observed that neither Advocate Ozanne nor Mrs Travis took any notes.
- 9.26 On or around this time Miss Leggett told the Tribunal that she was given a letter by Mrs Travis (dated 10 September 2013) stating that the Respondent was committed to consulting with her to explore alternatives to redundancy and that no final decision had been made. The letter made little sense to her considering that it felt as though the decision to make her redundant had already been made. A copy of this letter is reproduced at Tab 20 of the Applicant's bundle.
- 9.27 On Friday 13 September 2013 at 2.45 pm Miss Leggett received a telephone call from Mrs Travis asking if she had had time to think things through. Miss Leggett said that she had not and reminded Mrs Travis that Advocate Ozanne had said to think about things over the weekend. Mrs Travis asked Miss Leggett if she could come in that day to collect a cheque for payment in lieu of notice and a letter from the office; Mrs Travis did not specify what the letter would be about. Miss Leggett told the Tribunal that she apologised and said that she could not. Mrs Travis then asked for her private email address so that she could send an email copy. Miss Leggett and Mrs Travis then agreed it would be necessary for her to collect her remaining belongings from the office. Mrs Travis offered to meet her at the office the following morning (a Saturday) so that she could collect them. Miss Leggett made a contemporaneous note of the telephone call (EE1 Tab 21 refers).
- 9.28 On Friday 13 September 2013 at 3.02 pm Miss Leggett received an email from Mrs Travis attaching a letter of termination signed by Advocate Hall. A copy of this email and attachment can be found at Tab 22 of the Applicant's bundle. A cheque for payment in lieu of one months' notice period arrived in the post on Monday 16 September.
- 9.29 Miss Leggett informed the Tribunal that by this stage she had lost all trust and faith in the Respondent's Law Firm. It was abundantly clear to her that the Respondent had made up its mind to dismiss her and she felt that there was little she could do

about it. However, upon seeking legal advice, she exercised her option to appeal, by letter to the Respondent, sent on 24 September 2013. A copy of this letter can be found at Tab 23 of the Applicant's bundle.

- 9.30 Miss Leggett received a letter from Advocate Hall on 3 October 2013. This letter stated that the Respondent had considered her selection for redundancy carefully taking other members of staff and other potentially interchangeable roles into account; however Miss Leggett said that none of this had ever been discussed with her. Advocate Hall had enclosed job descriptions for apparent vacancies within the Firm, none of which had been discussed with her prior to receiving this letter.
- 9.31 Miss Leggett responded to this letter on 10 October 2013 (ER1 Page 106 refers). In this response Miss Leggett claimed that at no time did Advocate Ozanne explain the consultation process to her and despite her appeal to Mrs Travis for more time to consider her options she had been given no choice to but to attend the meeting on 12 September 2013.
- 9.32 Miss Leggett also informed the Tribunal that the notes of the meetings on 10 and 12 September (prepared by the Respondent) were not a fair summary of what had been said and at no stage during either of the meetings were the words 'without prejudice' used.
- 9.33 Miss Leggett queried whether vacancies in the Active Group during autumn 2013 should have been offered as alternative employment as she knew that the Partners of the Respondent's Firm work closely with the Directors of Active Group; and have a common joint venture 'AO Active'. In the event, nothing was said to her about the roles and she was dismissed prior to discovering that Active Group was recruiting.
- 9.34 Miss Leggett told the Tribunal that she had thoroughly enjoyed her job at the Respondent's Firm; she was training to become a Legal Executive and felt that she had good working relationships with her employer and her work colleagues. She appreciated that she had taken an unusually high amount of sick leave and compassionate leave between June 2012 and September 2013 but reminded the Tribunal of the family bereavements and her personal issues which were out of her control. She had not been paid for her absences. It seemed to Miss Leggett that it was her sickness absence and not a genuine redundancy situation that caused the Respondent to dismiss her. Furthermore the dismissal process itself involved little more than being sent home and told that she was being offered a Compromise Agreement.

## **10.0 The Law**

- 10.1 The Employment Protection (Guernsey) Law, 1998, as amended, gives the right not to be unfairly dismissed. Section 6 of the Law governs the fairness of a dismissal. The employer must show the reason for the dismissal and sets out the potentially fair reasons for a dismissal including that of redundancy.
- 10.2 For the purposes of this Law an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to:-

- (a) the fact that his or her employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was so employed; or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or
- (b) the fact the requirements of that business for employees to carry out work of a particular kind, or 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.

10.3 The Commerce and Employment Department Code of Practice, issued under the Employment Protection (Guernsey) Law, 1998, as amended, provides guidance on good practice in handling redundancy situations. The Tribunal in coming to a conclusion may consider the relevance of this Code including whether a genuine redundancy situation existed in a dismissal and whether or not any redundancy procedure was followed and whether or not in the circumstances an employer acted reasonably and fairly.

10.4 The Tribunal takes account of the influential UK ruling in *Polkey v Dayton Services Ltd* In *Polkey v A.E. Dayton Services Limited* [1988] AC 344, HL, Lord Bridge stated that "... in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair decision on which to select for redundancy and takes such steps as may be reasonable to minimise a redundancy by redeployment within his own organisation".

The judgement included four basic principles of fairness 'which should always be considered' in situations of redundancy:

1. *The duty to consult the employee.*
2. *The duty to warn of redundancy.*
3. *The duty to establish fair criteria for the selection of employees.*
4. *The duty to explore alternatives to redundancy.*

*"Accordingly consultation should begin in good time and be completed before any redundancy notice is issued. Consultations must be conducted with an open-minded approach; the employer must not only have this approach but display it too".*

## **11.0 Conclusion**

11.1 The Tribunal turned its attention in the first place as to whether it considered there had been a genuine redundancy dismissal; the Applicant argued that either her absences from work during 2013 and/or some unspecified performance deficiencies were the whole or main cause of her dismissal.

11.2 Advocate Ozanne gave evidence that the Applicant's performance had met requirements and indeed a pay rise has been granted on the basis of this in February 2013; this was corroborated by the Applicant. The Tribunal notes that if the 2013 performance appraisal, which seems to have been lost in the Respondent's filing system, could have been produced as part of the bundle, this evidence could have been handled more expeditiously.

- 11.3 However this view of the Applicant's performance was not universal and in a memo dated 7 May 2013 to the Partners meeting Mrs Travis made the point that performance was an issue and that it must be tackled once the Applicant had returned to the office and was fully recovered. Whether this view had substance, the fact remains that there appears to have been neither any oral or written warnings of underperformance whilst Miss Leggett was in the Respondent's employment.
- 11.4 The Respondent argued that any concerns that Mrs Travis might have had about the Applicant's level of performance were overtaken and subsumed by the absorption of all of her duties by other members of the Respondent's staff. Further it was argued that this occurred without the Respondent needing to take on new staff; it was their contention that this was prima facie evidence that the same amount of work was being undertaken by fewer employees and the Respondent could rely on the argument that the requirement for Miss Leggett to carry out work of a particular kind had so greatly diminished that in fact it had ceased. An inspection of the Respondent's organisation charts combined with evidence from a number of the witnesses confirmed that this in fact had occurred.
- 11.5 The Respondent drew the attention of the Tribunal to a judgement, *Mcrae V Cullen*, this complaint being dealt with in the Northern Ireland Court of Appeal, where an issue of 'over-manning' had been deemed to be a redundancy within the meaning of the Law. It was held that the definition of redundancy in their legislation was not just directed towards diminution in particular work but to the diminution in the Company's requirements for employees to do that particular work. Whilst this judgement cannot be binding in any way in the Guernsey jurisdiction it is however persuasive that this could be the correct way to view a similar situation in Guernsey under the Employment Protection Law, 1998, as amended. In this case the Tribunal has taken this view.
- 11.6 The Applicant also argued that as early as 19 March 2013 the Respondent had in mind that the Applicant should cease her employment with the Respondent. A meeting took place on that date attended by Miss Leggett, Advocate Ozanne and Mrs Travis. Miss Leggett had returned to work after a combined period of compassionate and certified sick leave. In this 'return to work' meeting Advocate Ozanne had suggested that by ceasing her employment with the Respondent Miss Leggett might obtain enhanced State benefits for the anticipated period of her illness, necessary medical interventions and subsequent convalescence. Having heard the evidence from both parties the Tribunal is persuaded that this was a rather ill-judged and hasty suggestion by the Respondent to assist in resolving the Applicant's monetary difficulties rather than a deliberate attempt to engineer the Applicant's resignation from the Firm. In the view of the Tribunal it is unwise for employers to make such suggestions in such circumstances as they may generate additional issues of insecurity for employees.
- 11.7 Thus in summary the Tribunal was persuaded that this was a genuine redundancy within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended.
- 11.8 The Tribunal gave significant consideration to the multiple breaches of fair process alleged by the Applicant.

The Respondent concluded that Miss Leggett was in a pool of one and there were no other employees who should be included in this pool.

The principles established in the English jurisdiction from the relevant case authorities include:

- (i) that the question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied its mind to the problem;
- (ii) an Employment Tribunal is entitled, if not obliged, to scrutinise very carefully the reasoning of the employer to determine if it has 'genuinely applied' its mind to the issue of who should be in the pool for consideration for redundancy; and
- (iii) even if the employer has genuinely applied its mind to this issue, it may be difficult, but not impossible, for an employee to challenge the employer's choice in this regard.

These principles are relevant to the Guernsey jurisdiction and have been generally observed in previous decisions by the Guernsey Employment and Discrimination Tribunal.

- 11.9 Miss Leggett argued forcefully that the other Paralegal who was currently employed by the Respondent in September 2013 should have been included in the pool for selection. There is a seeming logic to this argument, to some extent supported by job descriptions included in the bundle, however whilst Miss Leggett was hired as a 'generalist Paralegal' her role and that of the other Paralegal had apparently become very significantly differentiated by September 2013. The other Paralegal, LP, worked in another department with 50% of her role defined as an 'Anti-Money Laundering' (AML) specialty and from evidence given there was only the most minimal overlap between the two roles when issues of holiday/absence cover arose. The evidence supported a view that whilst Miss Leggett might have eventually performed the role held by LP it would have taken at least six to nine months for her to become competent in the AML role.
- 11.10 The Tribunal notes that the issue of the 'Paralegal' pool was consciously addressed by the Respondent in both their August monthly management meeting and in a subsequent meeting between LP's Manager and Advocate Ozanne. The Tribunal is critical of the Respondent in that no contemporaneous notes were made of these discussions and the subsequent decision not to include LP in the pool. It required very significant testimony from the Respondent to persuade the Tribunal that the Respondent had genuinely applied their mind to this issue prior to the decision to dismiss. Thus in summary the Tribunal does not challenge the 'pool of one'.
- 11.11 The Tribunal had to decide whether the Applicant had been given a fair and proper opportunity to understand fully the matters about which she was being consulted and to express her views on those subjects, and whether the employer had thereafter considered those views properly and genuinely.

- 11.12 The Applicant argued that the two day period between the initial communication of risk of redundancy and the finally communicated decision to dismiss on the grounds of redundancy was too brief and was not a genuine consultation. The Tribunal was also concerned that two days was a relatively short period, however in the view of the Tribunal it is important to understand the workload situation within Miss Leggett's department of 10 September 2013.
- 11.13 Evidence given by Advocate Ozanne and Mrs Travis confirmed that all work previously undertaken by Miss Leggett had been absorbed by other staff by 10 September 2013; in simple terms the same work was being performed by one less person. For Miss Leggett to continue in her role some or all of these tasks would have had to have been reallocated back to her and all recent productivity gains to be set aside, a seemingly counter-intuitive action for any employer.
- 11.14 It is also important to understand what alternatives were available to Miss Leggett; she was a generalist studying for qualifications in a team which was mostly made up of specialists with significantly higher levels of qualification and professional standing. The role of 'Associate' was available but required a far higher level of professional and academic attainment. The only other role offered during the consultation was a 'Legal Secretary'; evidence given by the Respondent was very persuasive that whilst Miss Leggett had some word processing skills/PA experience she had not displayed the technical secretarial skills, during her employment with the Respondent, required for the apparently very demanding role of 'Legal Secretary'. In addition evidence from Mrs Knight demonstrated that Miss Leggett had apparently been dismissive of such a role by informing team members that she was not studying law to become a secretary. It would seem that Miss Leggett did not demur when during the meeting of 10 September 2013 she was advised that her past track record with her employer suggested she was not suited to this role. Thus in summary the alternative roles considered were limited by the Applicant's current educational attainment and her own competencies.
- 11.15 The Tribunal was persuaded that it was open to Miss Leggett to delay the meeting of 12 September 2013 if she had asserted the need for more time; however her email of 11 September 2013 (ER1 Page 76 refers) lacked any such demand; apparently her primary concern in this communication was to confirm that the meeting was to proceed and its scheduled timing. During this meeting on 12 September 2013 Miss Leggett could not offer any other possible alternatives; the Respondent's evidence supported the view that further delay held little merit.
- 11.16 The Tribunal had to consider whether the time scale and the nature of the discussions on 10 and 12 September were so limited that no reasonable employer would have conducted themselves in this manner. The evidence on the length and content of these two meetings is much contested by the parties The Respondent claims that it followed a carefully crafted procedure, explained why it needed to take action and genuinely sought Miss Leggett's views on any possible alternatives; it asserted it would have delayed the second meeting if requested. The Applicant described very short and confusing meetings, her opinions not being sought, no genuine alternatives being offered and in summary the dismissal seemed inevitable from the start; in her opinion this fell very short of any genuine consultative process.

- 11.17 The Tribunal also notes that certain telephone discussions between Mrs Travis and Miss Leggett were disputed, even to the point that they never took place. After careful consideration the Tribunal puts little weight on this evidence. The fact which is not disputed is that the two meetings did take place.
- 11.18 The Tribunal is of the opinion that the Respondent might have been advised to give Miss Leggett more time to digest some very unwelcome news, however on balance the Tribunal prefers the Respondent's account of these meetings and the subject matter covered. The Tribunal has formed the view that in the circumstances their actions were not outside the band of reasonableness expected of a reasonable employer.
- 11.19 An appeal against Miss Leggett's dismissal was conducted by the Respondent despite an apparently 'out of time' submission (ER1 Pages 82 to 90 refer). It would seem to the Tribunal that this appeal was thorough and dealt with each element of Miss Leggett's appeal in detail. On receipt of this letter Miss Leggett should have been in little doubt as to why the Respondent acted as they did.
- 11.20 The Applicant was suspicious that only at this point were more junior roles offered to give a possibility of continuing employment and thought that such possibilities had little merit; however in redundancy dismissals it would seem to the Tribunal that employers have a duty to consider offering satisfactory employees other work, even where it involves demotion.
- 11.21 Throughout these proceedings the Tribunal has given consideration as to the Respondent's adherence to the Commerce and Employment Code of Practice which they informed the Tribunal they had used as their primary guide. One particular concern was whether the Respondent had the ability to avoid the redundancy by taking any of the actions suggested in the section 'Minimising or Avoiding Redundancies'. The Tribunal is satisfied, on the basis of evidence heard, that there was no obvious action that might have been pursued by the Respondent to avoid this redundancy in September 2013.
- 11.22 In summary when applying the test of reasonableness in a dismissal the members of the Tribunal have to consider the objective standards of the hypothetical reasonable employer rather than imposing their own subjective views of what they would have done as an employer in the same circumstances. The actions of the Respondent in this case have been hotly disputed and it would seem to the Tribunal that if full and contemporaneous notes had been made at critical points in the redundancy process it would have clarified why they acted as they did. It was also notable that the Respondent had no written redundancy policy; whilst not required in law it might have been advisable that the Respondent had informed employees that if such a situation was to occur they would follow the Commerce and Employment Code of Practice.
- 11.23 The Tribunal has also given much time and consideration as to whether it was a genuine redundancy or merely a smokescreen for a performance dismissal and has concluded that by the 10 September 2013 any issues of perceived poor performance had been subsumed by a genuine redundancy situation. The Tribunal concludes the decision and the process adopted by the Respondent in making the Applicant

redundant were within the band of reasonable responses by a reasonable employer and thus the complaint is dismissed.

11.24 Finally the Tribunal would wish to add two riders to this judgement. Firstly throughout these proceedings the Tribunal has been conscious that Miss Leggett has experienced a most unfortunate series of personal family losses combined with a most concerning period of ill health.

11.25 Secondly the Tribunal has a concern that, at times during the progress of this complaint, the legal representatives of both parties have alleged that professional standards have not been mutually observed. It was not within the power of the Tribunal to address these concerns other than to give guidance and rulings on objections as they arose. It would respectfully comment that if representatives make every attempt to maintain objectivity during proceedings it assists the Tribunal in discharging its duty under the Law.

Mr Peter Woodward  
.....  
Signature of the Chairman

30 May 2014  
.....  
Date