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EMPLOYMENT TRIBUNALS

Claimant: Mr D Liladhar

Respondent: Barnardo's Ltd

Heard at: East London Hearing Centre

On: 24 July 2012

Before: Employment Judge Ferris

Members: Mrs S Amatuzzi
Mrs L Conwell-Tillotson

Representation

Claimant: Miss H Nettleship (Counsel)

Respondent: Mr R Hopkins (Counsel)

JUDGMENT

The unanimous judgment of the Employment Tribunal is that the complaints of unfair dismissal and age discrimination succeed. The complaint of indirect age discrimination fails. Issues of remedy (and any issues in relation to the outstanding breach of contract claim) will be resolved at a future hearing (see Directions given at the end of the Reasons).

REASONS

1 The Claimant was employed as an Internal Auditor from September 1990 until 11 February 2010 when he was dismissed. The Respondent contends that the Claimant was made redundant. A claim for unfair dismissal, age discrimination and breach of contract was presented to the Tribunal on 10 May 2010.

2 The Claimant who was born on 2 November 1949 was 60 on 2 November 2009. Two people were selected for redundancy, including the Claimant. His colleague and the Head of Audit, Mr David Fulton, aged 55, with 27 years' service at the Respondent was also selected for redundancy.

3 It is the Claimant's contention is that the redundancy was a sham. The Claimant contends in the alternative that his selection for redundancy was unfair; that the

Respondent failed to carry out proper and fair procedures in that regard; that the Respondent failed to follow its own redundancy policy; and that the consultation process was a sham in that the outcome was predetermined. The Respondent contends that there was a genuine redundancy. That is to say that following a review of the Respondent's business needs a new structure was put in place under which there was a diminished need for audit work to be carried out at its Barkingside Head Office by those without an accountancy qualification. That meant, so the Respondent contends, that its business requirements "for employees to carry out work of a particular kind in the place where the employee was employed by the employer had or were expected to diminish."

4 On the basis that the Respondent's contentions as to the genuineness of this redundancy are upheld by the Tribunal, it is the Respondent's case that the two internal auditors who are not qualified as accountants, that is Mr Fulton and the Claimant, were inevitably selected for redundancy because there was no place for them in the new business model. Accordingly, their selection was fair.

5 As to the Claimant's contention that the process was unfair the Respondent contends that the Claimant was given sufficient time, information and opportunity to understand and engage with the proposed restructure in both one-to-one and group meetings and in as much as there were job vacancies available at the material time the Respondent says that the Claimant had a reasonable and adequate opportunity to consider what was available.

6 In addition to the complaint of unfair dismissal the Claimant contends that the dismissal was discriminatory on the grounds of his age. The Claimant contends that he was treated less favourably on the ground of his age. The Claimant contends that the ostensible reason for his selection for redundancy was age. Only people over 55 were selected for redundancy, two of the three people selected were over 60, and the Claimant contends that the proposed business model adopted by the Respondent was a blatant means of removing the older generation from the workplace.

7 The Claimant has not identified any comparators, actual or hypothetical in his pleaded claim nor in the written submissions presented to the Tribunal at close of the evidence.

8 The Respondent has identified the need for a hypothetical comparator. It is the Respondent's case that the correct hypothetical comparator is someone in a different age group to the Claimant who was carrying out audit work but who did not have an accountancy qualification (neither did the Claimant). The Respondent contends that the question for the Tribunal is would such an employee have been treated in the same way as the Claimant? It is the Respondent's case that such a person would have been placed at risk of redundancy and ultimately dismissed because they lacked the necessary accountancy qualification; the Respondent was not reasonably able to wait between 18 months and three years for them to attain a qualification. It is the Respondent's case that such an outcome would not have been influenced by the age of a hypothetical comparator and thus the Respondent contends there was no "less favourable" treatment of the Claimant.

9 The Respondent contends in the alternative that even if there had been less

favourable treatment there is no basis for a finding that this was on the grounds of the Claimant's age. The Respondent contends that if one asks the question "What was the reason for this treatment?" the answer is clear on the evidence, that the sole reason for this treatment is that the Claimant did not have an accountancy qualification. That at least is what the Respondent contends.

10 Finally, the Claimant contends that there was indirect discrimination. He contends that the requirement to have a full accountancy qualification would have disadvantaged not just him but others who shared his protected characteristics. The Claimant contends that the requirement for a full qualification is indirectly discriminatory on the basis that younger members of the profession are more likely to have a full qualification whereas older members of the profession are less likely to have full qualifications and rather rely on their years of experience rather than formal qualification.

11 The Respondent contends that in order for the claim for indirect discrimination to succeed the Tribunal would have to find that people in the Claimant's age group are less likely to have accountancy qualifications than people in the younger age group, thereby giving rise to the disadvantage suffered by the Claimant in this case. It is the Respondent's contention that no evidential basis has been provided to permit such a conclusion.

12 The Tribunal heard evidence from four witnesses. The Claimant gave evidence first. The Claimant called David Fulton, his one time Head of Department now working for age concern. The Respondent's evidence was given by Mr Bob Patterson. Mr Patterson has worked for the Respondent since March 2004. He has been a qualified accountant since 1984. In March 2004 he was appointed Director of Audit and Inspection at Barnardo's Corporate Audit and Inspection Unit ("CAIU"). He was the person who made the decision to dismiss the Claimant. The last witness called by the Respondent was Mandy Haworth who works in the Respondent's Human Resources Department and has done so since April 2007.

13 The Tribunal reminds itself that pursuant to section 139 of the ERA 1996 redundancy is defined as:

- "(1) 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 –
 - (a) the fact that his employer has ceased or intends to cease –
 - (i) to carry on the business for the purposes 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
 - (b) 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."

14 By section 98(1) ERA 1996:

"In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within sub-section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held."

By section 98(4):

"(4) In any other case where the employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case."

15 By Regulation 3 of the Employment Equality (Age) Regulations 2006 which it is agreed apply in the circumstances of this case:

"(1) For the purpose of these Regulations, a person ("A") discriminates against another person ("B") if –

- (a) on grounds of B's age, A treats B less favourably than he treats or would treat other persons, or
- (b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but –
 - (i) which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and
 - (ii) which puts B at that disadvantage,

and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim.

- (2) A comparison of B's case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.
- (3) In this regulation –
 - (a) "age group" means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages; and
 - (b) the reference in paragraph (1)(a) to B's age includes B's apparent age."

By Regulation 37: Burden of proof: employment tribunals:

- "(1) This regulation applies to any complaint presented under regulation 36 to an employment tribunal.
- (2) Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this regulation, conclude in the absence of an adequate explanation that the respondent –
 - (a) has committed against the complainant an act to which regulation 36 applies; or
 - (b) is by virtue of regulation 25 (liability of employers and principals) or 26 (aiding unlawful acts) to be treated as having committed against the complainant such an act,

the tribunal shall uphold the complaint unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act."

16 The most independent witness from whom the Tribunal heard was Mr David Fulton. He had been employed by the Respondent from March 1983 to July 2010. He was employed from 1983 as an Internal Auditor, rising to Chief Internal Auditor and then renamed Head of Internal Audit. He worked in that department for nearly 27 years. He told the Tribunal and it was not challenged by the Respondent that the Internal Audit Department was very successful and had been ahead of its charity peers for many years. Mr Fulton was not a fully qualified chartered accountant but he told the Tribunal that that did not in any way affect his performance as head of an efficient and successful internal audit department.

17 It was the Tribunal's view that Mr Fulton was an accurate and truthful witness doing his best to assist the Tribunal without malice. While it is correct that he had been selected for redundancy, alternative employment had been found for him and ultimately

it was his decision to leave the Respondent which he did subject to a settlement agreement, the details of which were not made available to the Tribunal. Although there might be a basis for expressing some reservations about Mr Fulton's attitude to the Respondent having regard to the circumstances of his termination, following the termination of his employment he found successful and remunerative employment as an Auditor working for the Salvation Army, and it was not suggested to him by the Respondent that his evidence was malicious or any way motivated by a grievance against the Respondent. Accordingly the Tribunal feels able to rely on Mr Fulton's evidence to make findings of fact which accord with what Mr Fulton told us.

18 It was Mr Fulton's evidence that although he was not a fully qualified Chartered Accountant that did not in any way affect his performance. Mr Fulton told us that the Respondent had employed two graduate and management trainees. He told us that their intended use was across the Audit and Inspection Department. Nylish Pandya was first employed in 2005 followed by a second graduate and management trainee, Grant Blackwell, in 2006. These additions to the Audit and Inspection Department were made by Bob Patterson who had taken over the Director role in 2004. Mr Fulton commented in his evidence:

"The respondent has stated that the Claimant raised no objection to these posts [the two graduate and management trainee posts]. The fact is the Claimant was not in a position to object and in any case these roles replaced a secretary and a management services advisor. It could also not reasonably be expected that the Claimant should have applied for such a role as he was on a far higher salary than the graduates and was given no indication by the Respondent that it was necessary for him to acquire such qualifications for his future employment. Furthermore if it had been Bob Patterson's intention to discourage his existing staff to become qualified when he took over the director role in 2004 he should have made this clear when he undertook his first restructure in that year."

19 It was Mr Fulton's evidence that Mr Patterson, as Director of Corporate Audit and Inspection, provided no encouragement for staff (other than the graduate trainees) to acquire qualifications or to undergo training. Mr Fulton told us that although there were team meetings, presumably to review performance and discuss the future, the only training budget that he was allowed had been almost entirely used up by the graduate trainee costs, for their tuition and exams and so on. Mr Fulton told us that in every annual appraisal that he had, and indeed that the Claimant had, he had raised issues about the absence of advanced IT training in Excel, (for example). Mr Fulton told us that no time was allowed or provided for his department to carry out such training because of the constraints of meeting work priorities.

20 In his evidence to us Mr Fulton said that:

"The plain fact is that the training development of existing staff was excluded because of the time constraints and at no time until 2009 was the issue of gaining full qualifications raised with myself or the Claimant... The Respondent's main emphasis was the delivery of work which in my view we did extremely well."

21 That of course has to be read subject to Mr Fulton's acknowledgement that the

two management trainees were in the process of gaining full qualifications as accountants.

22 Mr Fulton recalled that towards the end of 2007 or beginning of 2008 the Claimant asked to be included on large review team assignments (which would include exit meetings with clients) that included Mr Patterson and/or Mr Fulton and/or Ms Kate Moss, the Head of Inspection.

23 The Claimant would have seen an advantage in attending such large review team assignments, because it would have been helpful for the Claimant's management assessment development and would provide exposure to detailed performance reviews which were becoming the norm for the audit department. That point, Mr Fulton told us, was made by him to Mr Patterson. However, Mr Patterson did not permit the Claimant to attend large review team assignments. We accept Mr Fulton's evidence.

24 Mr Fulton told us that in August 2009 a peer review report into the Respondent's audit department was completed though it was not circulated by Mr Patterson until September 2009. That peer report (about which more later) was a comprehensive and in the event complementary review of the department's skills and processes. Mr Fulton gave this evidence about that report: he said:

"It was my impression that Mr Patterson was taken aback by the peer review report and [had] hoped that we would not have scored as highly. This made Mr Patterson's argument for change difficult."

25 The significance of this peer review was that it was relied upon by Mr Patterson and the Respondent as part of an engine of change to bring about a better qualified audit department. Mr Fulton told us:

"I found the suggestion by Mr Patterson that the proposed changes (i.e. in having qualified members of staff and the termination of non-qualified staff in the audit unit) was fair as it included the views of the staff in CAIU somewhat astonishing. Clearly the graduate trainees would have been in favour of the change, given their increased salaries, as were the inspection team, as this did not affect them. The consultation discussion concerning the change was minimal, extremely tight in time frames, was already decided and I believe unfair. Indeed in order to comment on the proposals in any meaningful way and so far as possible restructuring counter proposals might be made, I requested sight of financial projections and budgets on the original proposal, but this was never provided."

26 As to the central beam in the Respondent's justification of the re-organisation of the department so that the Claimant and Mr Fulton were made redundant and the two graduate accountants were appointed to do the work which they had previously done he said this:

"I will also add that in my experience a substantial number of peer charities and all local authorities maintain a mix of qualified, part qualified and trainee posts. The graduate trainee posts were taken on to replace a non productive secretary and the management services adviser who are not auditors or inspectors [this

refers back to the original recruitment of these trainees back in 2005 and 2006]. The Respondent's argument comes down to wanting to retain recently trained and qualified accountants and in order to do so they had to find costs savings from those who were not qualified. The budget would not have enabled the unit to meet the newly qualified accountant's salary expectations otherwise. The peer comparison with the selected charities enabled the excuse that their provision was all fully qualified and in order to put the respondent on a par with these other charities who only employed CCAB qualified accountants, Barnardo's should do the same. The fact is there are other charities that have a range of qualifications. For example, NSPCC employ a range of staff with varying qualifications and the charities recruit Institute of Internal Auditors (IIA) as well depending on complexity and turnover levels. I now work at the Salvation Army where the mix of the audit team does not include any CCAB qualified accountants currently but has a mix of part qualified fully qualified IIA trainees on CIMA and others with years of experience etc. The turnover of the Salvation Army as at last year's published accounts (2010) is greater than Barnardo's.

Finally, Mr Fulton told us that:

"Both the Claimant and I could have qualified as Accountants before retirement if the Respondent had given any intimation that he was going to require fully qualified CCAB accountants, but given that notice of this need was only first raised in September 2009, this did not allow us time to study for the professional qualification."

27 Given the Tribunal's view of the reliability of Mr Fulton's evidence, his clearly and strongly expressed views point the way towards other evidence of significance in this case.

28 It was common ground between the parties that the historic performance of the Claimant was always at least competent (within a well-run department reliably achieving its targets from year to year). Any reference to the background for decisions made about reorganisation and redundancy must take account of the Respondent's policy manual which was current at least from 1 July 2007. In that document in the section headed: "Managing Change and Redundancy Policy", the "general principles" are identified in a bullet pointed list. Those bullet points include the following:

- "Members of staff affected by change and/or at risk of redundancy are treated fairly and consistently in accordance with employment law and best practice.
- Barnardo's will engage in meaningful and effective consultation with UNISON and members of staff affected by change and/or at risk of redundancy.
- **Where it is established that members of staff are at risk of redundancy management will take steps to seek alternative solutions. However where redundancy is necessary every attempt will be made to avoid compulsory redundancy. [Tribunal emphasis]**

- Efforts to seek out alternative employment will begin as soon as the member of staff is informed that their job is at risk of redundancy and continue during the period of notice.
- Members of staff at risk/under notice of redundancy will be given priority status for new and vacant posts over other staff not at risk of redundancy ...
- Support will be provided to members of staff affected by change and/or redundancy.”

And in the examination of the concept “Managing Change” it was the Respondent’s policy that:

“Redundancy will only apply where

- (i) Barnardo’s has ceased or intends to cease to carry on the business
 - For the purpose of which the employee was employed or
 - In the place where the employee was employed or
- (ii) The requirements of Barnardo’s for employees to carry out work of a particular kind
 - Have ceased or diminished (or are expected to cease or diminish) or
 - Have ceased or diminished (or are expected to cease or diminish) in the place where they were employed.”

29 At reference 7.3.3 of the policy:

“Ring-fencing

The process of ring-fencing posts is to ensure that members of staff affected by redundancy with a team/section have the first opportunity to be considered for the new post or those that had become vacant, within that team. Each vacancy will be considered by the manager and HRM/AD people to identify whether it is appropriate for ring-fencing. There may be some vacancies that are not appropriate for ring-fencing for example because it is known that members of staff at risk do not have the appropriate qualifications.”

30 From 6 April 2009, the 2007 policy document was to be read alongside the new section in the policy manual entitled: “Managing Change and Redundancy – Guidelines for Managers”. In that document under the heading “Compulsory Selection Criteria”, the Respondent expressed its policy as follows:

“Selection for compulsory redundancy will be considered when the necessary reduction cannot be achieved through voluntary redundancy or some other

alternative means. During consultation the manager should consider the criteria to be used for making redundancies. No single selection criteria should be used in isolation. It is vital that any criteria is non discriminatory, used in an objective way and applied consistently. Examples of criteria include:

- Level of skills, qualifications and experience. Such criteria will ensure the retention of a balanced workforce appropriate to the future needs of the organisation. Formal qualifications and advance skills should be considered but not in isolation..”

Under the sub-heading “Redeployment” Barnardo’s policy continues:

“In order to ensure that Barnardo’s meets its legal obligations it is necessary that management, in conjunction with the local people, make every effort to seek out alternative employment for staff and that the onus for finding alternative employment is not placed on the member of staff. Vacancies will be considered by management and their people representative to identify whether employment may be deemed as suitable alternative employment or alternative employment. Case law has established that it is not sufficient simply to ensure that members of staff receive copies of the internal vacancy bulletin.”

31 On 16 July 2009, Mr Patterson presented the annual report of the Corporate Audit and Inspection Unit to the Respondent’s Council. That report was a favourable account of the work done by the department in the year 2008/2009. Towards the end of the report in a table analysing performance against prior targets it is clear that the department had very largely exceeded targets set before the year end and indeed the same targets were identified for the next year 2009/2010. Mr Patterson recorded in that document that:

“During the year one of our two graduate accountancy trainees qualified with a CCA.

It is good practice to undertake a review of an internal audit function once every five years. As such during the current year we have commenced such a review of both our audit and inspection functions including bench marking and scrutiny with a cluster of voluntary and public sector bodies and consultation with our key stakeholders. The aim of this review is to continue to develop a “cutting edge” audit and inspection function and we will report back to the October Audit and Compliance Committee with the outcome.”

32 That peer review was also presented in August 2009 although it was not circulated by Mr Patterson until the end of September 2009. In that peer review it is clear that the audit department scored very highly. Thus in introducing a table summary the text of the report was:

“The overall summary below shows that CAIU achieved a high score across all elements with very few areas identified for action to ensure that the unit complies fully with the Standards, Code of Ethics and Definition of Internal Auditing. The overall score was 38 out of a possible 45 or 84%.”

33 Under "Areas where we identified potential opportunities for best practice improvement" there is no suggestion of a need for greater professional qualification in the senior members of the audit team (i.e. Mr Fulton and the Claimant). However, the following points relevant to the training were identified:

- "The extent of IT knowledge in CAIU to be improved in the longer term.
- Training plans for CAIU staff are to be developed."

In further elaboration of this point the peer review identified:

"Other actions for consideration [in its section entitled "People, Knowledge and Skills"]

As the graduate trainee has recently qualified this would be a good time for the unit to review its resource requirements, including any skills gaps to develop a more formal training plan for the team and to develop a succession plan. **The main skills gap identified during the review, which is well know to CAIU, is IT.** This is being bridged through call off from Deloitte.

Once a training plan has been drawn up the audit plan could specifically earmark training time. To note that the Standards require internal auditors to enhance their knowledge skills and other competencies through continuing professional development." [Tribunal emphasis]

34 There is nothing in the peer review of the Respondent's CAIU that expresses or implies any criticism of Mr Fulton's lack of professional qualification (in his capacity as Head of Internal Audit) or indeed the Claimant's lack of a professional qualification as one of its most experience internal auditors.

35 On 1 October 2009, less than a week after the circulation of the peer review (on 25 September 2009 by Mr Patterson) the Respondent published:

"Report of a review on Barnardo's Corporate Audit and Inspection Unit and consultation document."

In that report Mr Patterson wrote:

"It is good professional practice to undertake a review of an internal Audit function every five years. As I have been in post as Director for five years now is an appropriate time. It is also appropriate that such a view should wherever practical embrace the inspection as well as the audit sides of CAIU. Such a review is also timely to ensure CAIU have the skills to support Barnardo's as it continues to improve. Much has changed in Barnardo's over the past five years, and indeed CAIU has played a key role in identifying and facilitating some of these improvements. It is important that as change continues and increases momentum the unit has the competencies and capacity to meet the new challenges."

36 In paragraph 7.2 "Internal Audit" of this consultation document Mr Patterson

wrote:

"Consistency and quality of product

It is clear from the results of the peer review that although generally positive the audit product is inconsistent in a number of areas including standards ranging from working papers, structure and lines of enquiry, through to reporting. There are also no basic audit procedures to govern the audit product.

Audit Information and Data Interrogation

Although the unit is "cutting edge" in a lot of work it undertakes it is hampered by a lack of expertise on data interrogation and manipulation to streamline and make more effective sampling and reviews of volumes of data. This is a weakness that will worsen with IT enhancements in data processing and reporting in future years. There is a danger that the unit could be considerably undermined in being unable to effectively review data set in the future. Products are available to do this. What we lack is the expertise to undertake this work."

37 It is ironic that the evidence we heard from Mr Fulton (and also the Claimant) and which we accept, identified a persistent demand from the department for further training opportunities in IT in particular. In this consultation document Mr Patterson wrote, in a section sub titled: "Implications – staff affected":

"Internal Audit

There is a need to maintain/increase the number of CCAB qualified accountants in the unit. There is a need to recognise that the Director already undertakes much of the strategic planning and management of the internal audit unit therefore duplicating these elements of the role of the Internal Audit Manager (informally designated Head of Audit) [Mr Fulton]. A more effective structure would be the creation of two qualified audit posts (Senior Auditors) responsible for the delivery of the plan. Outline job descriptions are attached in Appendix C. Each senior auditor post will embrace a different specialism. One would also embrace the management of the IT audit function together with data interrogation and the other the risk management specialism and the audit of retail. Each senior auditor would also manage a graduate management trainee training for a CCAB qualification thereby ensuring succession planning. The implications are:

- The role of Internal Audit Manager (Head of Audit) will cease to exist [Mr Fulton]
- The roles of internal auditor will cease to exist [the Claimant]
- The role of auditor and support co-ordinator will remain unchanged. It is proposed that roles of senior auditor are ring-fenced to staff at risk of redundancy. If this fails to lead to an appointment then the roles will be advertised internally and externally following conclusion of the consultation."

38 It is apparent from these words that Mr Fulton and the Claimant were to be made redundant and because neither of them were CCAB qualified they would not be eligible for appointment as senior auditors, and therefore their roles would not be ring fenced in any way. There were other staff within the department who had recently become CCAB qualified (the ex-graduate trainees) who would be eligible for those ring fenced roles.

39 Mr Pandya and Mr Blackwell, the one time graduate trainees, had both by now qualified as CCAB staff and were eligible to be appointed as senior auditors. In due course that is what happened.

40 The "person profile" for the senior auditor job title said as follows:

"All criteria is [sic] essential unless otherwise stated

Knowledge or skills

- Recognised professional accountancy qualification (CCAB)
- At least three years of audit or financial experience
- IT skills particularly in Microsoft Word/Excel
- Driving licence."

The Claimant did not have a recognised professional accountancy qualification, and neither did Mr Fulton. In this context it is pertinent to refer back to the Respondent's policy manual which in relation to "compulsory selection criteria" had said that:

"No single selection criteria should be used in isolation. It is vital that any criteria is non discriminatory, used in an objective way and applied consistently."

Examples of requirements were given in the policy manual:

"Level of skills qualifications and experience ... Formal qualifications and advanced skills should be considered, but not in isolation."

That appears to have been ruled out in the specifics of the re-arrangements made in the autumn of 2009 when a process was taking place which resulted in the dismissal of the Claimant. No account seems to have been taken of his more than adequate performance and considerable experience as a senior auditor notwithstanding the absence of any CCAB qualification when these re-arrangements were put in train by Mr Patterson and the Claimant was considered for redundancy.

41 The CAIU responded to the consultation document and its responses are noted in a fairly summary form in the Respondent's "Final Consultation Document on Review of Barnardo's Corporate Audit and Inspection Unit". The comment received from CAIU (drafted by Mr Fulton) was: "The need for ring fencing the senior auditor posts to qualified accountants is challenged" The "Response/Action" (written by Mr Patterson)

to that CAIU comment was:

"The structure is a continuation of the current policy of investing in qualified staff that started four years ago. The business case for this policy is still valid. The structure also allows for potential success from management across the internal audit side including Director level. Posts of this seniority, expertise, level of supervision and remuneration in other organisations would naturally lead to the need for a qualified accountant."

And then further comment received was:

"Benchmarking numbers of qualified accountants with similar charities is meaningless without considering outcomes"

And the Response/Action was "agreed that benchmarking such as this is the start of the process not the end. However the results do question the distribution and content of qualified staff and lead to the issues raised above."

The next comment received was:

"The proposals and the potential redundancy of the staff concerned is a means of removing an older generation who have lacked relevant training."

The Response/Action was:

"Firstly as the current Director is 51 [Mr Patterson] he has a vested interest in defence against any ageism. The way the restructure has panned out is to do with business needs not the age of staff. CAIU also has one of the most generous training budgets in Barnardo's and the current Director has not refused any training demands over the past five years. However the training issue does highlight the current deficiency of formal training and development plans for staff and this will be addressed in the new structure."

42 It is clear from the annual appraisals for the Claimant conducted in years prior to 2009 that he had wanted further IT training, but that had not been provided (save for one very basic day of Excel training provided in late 2008). The Claimant told us and we accept that:

"Barnardo's had a limited budget available for training courses. There were 10 members in the CAIU which comprised of an internal audit section and an inspection unit. If everyone in the internal audit team had requested to go on training courses this would not have been possible ... The fact of the matter is most of the training budget was in fact used for meeting the graduate trainees course fees."

The Claimant also told us in connection with the two graduate trainees:

"Both Mr Pandya and Mr Blackwell were allowed time off from work to attend college during the week. Barnardo's paid for their course fees and their examination fees. Barnardo's in their ET3 states that I did not express any

interest in these posts but I was never consulted over any of the appointments. Moreover the trainees were paid on a much lower salary and did not have any supervisory responsibilities. If Barnardo's wanted me to have completed by qualifications I would have expected them to have offered me the opportunity to do so nor was I told I needed any further qualifications."

43 Mr Patterson in his evidence confirmed what is recorded in the final consultation document cited above that he had never refused any training demands made by members of staff in the CAIU. That is demonstrably incorrect having regard to the persistent requests made by the Claimant alone for further and better IT training as recorded in the performance appraisal documents, and asserted by the Claimant and by Mr Fulton in their oral evidence to the Tribunal. The Tribunal prefers the evidence of Mr Fulton and the Claimant to the evidence of Mr Patterson. We find that the Claimant had asked for relevant IT training in the five years prior to 2009 but it had effectively been denied by Mr Patterson. The obvious reason for that denial is that the Claimant was then regarded as too old for training to be an effective investment, and Mr Patterson was concentrating the Respondent's training resources on the two younger graduate trainees.

44 On 2 October 2009, the Respondent wrote to the Claimant:

"... to take this opportunity of writing to confirm what was discussed in a meeting held on 1 October 2009. I explained that because of the five year review of the Corporate Audit and Inspection Unit, Barnardo's is proposing to restructure the unit so as to modernise it for future business needs. As a result of this I informed you that we are considering deleting your current post from the establishment as detailed in the consultation paper and the formal consultation period regarding this has now commenced... We will meet again on Tuesday 13th October to discuss your particular situation and ensure you have ample opportunity to participate fully in the consultation process. At this meeting you will be able to raise any queries over the proposal, put forward any alternative proposals you may have, discuss any suitable alternative employment which you feel could be found for you... Upon taking account of comments and suggestions from all parties involved I will lend aside whether the proposed changes will go ahead. At the end of the consultation period I will inform you of my decision in line with the current timetable."

45 On 13 October 2009, the "step 2 meeting" took place attended by the Claimant, his companion Val Singh, Mandy Howarth from Human Resources and Mr Patterson. The meeting last 30 minutes. In introducing the meeting Mr Patterson is recorded as having said:

"Auditors is affected more than most. Want to say this is not about people's performance, it is about the future. What we need in tandem with the business of Barnardo's is moving forward and we need to restructure to do that. Allows for proper succession management. Will put us on par with other charities i.e. accountants and I'll need to be streamlined. Key thing not to do with performance. In terms of options Mandy Howarth will go through that but two new proposed posts of senior auditors is to have accountants in post. As you are not qualified this would mean your role is potentially at risk as you will not be

able to apply for the senior auditor role.”

That meeting identified to the Claimant that if the proposal went ahead it would mean compulsory redundancy.

46 On 9 November 2009, Mr Patterson produced the final consultation document on the review of Barnardo's Corporate Audit and Inspection Unit to which the Tribunal has already referred in paragraph 41 above.

47 On 9 November 2009, on the same day as the publication of that document, there was a CAIU consultation outcome meeting to introduce the document. The point was made at that meeting (to the Respondent) that requests for training had been made on appraisals but had never materialised. It is also clear that at that meeting the point was made that opportunities for qualification (as an accountant) had never been offered to the Claimant or Mr Fulton. The Claimant also made the point that if the Respondent's vision for the future required qualified accountants, that view had never been broadcast. It only came to light when the structural re-arrangements were announced in the autumn of 2009 and it became clear that the two new posts of Senior Auditor which were to be ring-fenced required an accounting qualification.

48 At a next steps meeting on 19 November 2009, Mandy Howarth met the Claimant and his companion and said according to the note:

“My role here is to find you alternative employment if that is your wish and also to issue you with this letter and the facts. The letter today clearly states 12 weeks notice so I am more than happy to change that within the previous minutes. Clare will also after today send you the form regarding your interest in any suitable alternative employment ...”

On the same day a letter was dispatched to the Claimant from the Respondent headed: “Re notice of impending redundancy”:

“Following the recent consultation period it is with regret that I have to tell you that due to the outcome of the CAIU consultation your position as internal auditor CAIU will become redundant with effect from 11 February 2010 after a 12 week period of notice commencing on 19 November 2009. Although we have tried to find alternative employment for you in Barnardo's I am sorry to say that currently there are no suitable jobs available. During the notice period we shall continue to do our best to identify an alternative post which may be suitable for you and to assist with this it would be helpful if you could complete and return to me the redeployment – expression of interest form which has been emailed to you. If such a post becomes available before the end of the notice period I shall of course contact you again and discuss it with you...”

49 On 25 November there was a further meeting between Mr Patterson and the Claimant in which outstanding flexi leave due to the Claimant was discussed. The Tribunal has several versions of notes of that meeting. Mr Patterson said that he had made two versions of the note; one made by him in the afternoon following that meeting. The second was made by Mr Patterson approximately two weeks later from memory and before he had rediscovered the original note which he made. The

Tribunal also had notes made by the Claimant which, like one edition of Mr Patterson's notes, was said to have been made on the same day of the meeting.

50 The Tribunal listened carefully to the cross-examination of both witnesses about these notes. The Claimant told the Tribunal that his note was made immediately after the meeting but not during the meeting. In that note he recorded that Mr Patterson had told the Claimant that:

"I will not pay you for your outstanding leave. The cost of your redundancy is costing the organisation £120,000. If you had not chosen the option to stay on until you are 65 that would have been the end of the matter because you are 60 now. You didn't ask my permission that you wanted to work beyond 60."

According to the Claimant's note he said in response to that observation from Mr Patterson:

- (i) Under the organisation policy and procedures all members of staff are entitled to work until the age of 65.
- (ii) The decision to work to the age of 65 was sold to us following the 2003 pension scheme valuation which revealed a big deficit. A case was made out to all the employees that in order to safeguard our jobs and help Barnardo's address the pensions deficit we would have to either agree to retire at 65 or accept a lower accrual of our pension entitlement.
- (iii) Indeed examples were given which clearly gave a message that it was beneficial for Barnardo's and members of staff to work until the age of 65 years. Members of staff were told that any reduction in the pension accrued would be 'recouped' within approximately two years. In addition it was also brought to our attention that by agreeing to work until 65, would be better off than previously in terms of the pension that we would have been able to accrue up to the age of 60."

51 Mr Patterson's note of that meeting (made immediately after the meeting according to his evidence) records that:

"BP reminded DL that Barnardo's was a charity and that he had to protect the interest of that. The redundancy was a considerable cost to the charity."

And in the note prepared by Mr Patterson a couple of weeks later he records himself as saying:

"BP reminded the Claimant what redundancy was costing Barnardo's (£120k) that it was a charity. As a Director he had a fiduciary duty to protect the interest of the charity and was most reluctant for any more payments."

But there is nothing in Mr Patterson's notes to corroborate what the Claimant's note says to record Mr Patterson's gripe that there would have been no problem if the Claimant had retired at 60 and which implies that Mr Patterson had not known that the Claimant wanted and intended to work beyond the age of 60. This is an important discrepancy between the evidence given by the Claimant and the evidence given by Mr Patterson. The Tribunal has already noted that the Claimant reached his 60th

birthday on 2 November 2009, in the middle of the redundancy process.

52 In cross-examination the Claimant explained that in about 2004 and because of problems with the Respondent's pension fund, members were given the option of extending their retirement age. Until that time the expectation and requirement had been that members of the pension scheme and employees of the Respondent would retire at 60. Sixty was the normal age for retirement. An extension beyond the age of 60 had, according to the Claimant whose evidence we accept, required the permission of the Respondent. As a result of the pension problems the Claimant had extended his retirement age by agreement with the Respondent in about 2004 to 65. That had all been arranged the Claimant told us (and the Tribunal accepts) prior to the arrival of Mr Patterson as a "new broom" in the CAIU.

53 Having seen both the Claimant and Mr Patterson give evidence about what happened at the meeting on 25 November, and having considered the background to that meeting, and having had an opportunity to study the three sets of notes of that meeting, it is the Tribunal's conclusion that:-

- Until 2004 the expectation and requirement of the Respondent had been that the Claimant would retire at the age of 60 in November 2009.
- As a result of a deficit on the pension scheme identified in or about 2003 by a date in 2004 the Claimant had been given permission to extend his employment to the age of 65.
- After that arrangement Mr Patterson was hired by the Respondent.
- Mr Patterson had not known of that rearrangement until it was brought to his attention by the Claimant in the autumn of 2009.
- There was a discussion about the cost of the Claimant's redundancy at the meeting on 25 November 2009.
- Mr Patterson did say at the meeting: "If you had not chosen the option to stay on until you are 65 that would have been the end of the matter because you are 60 now".

54 In the Tribunal's judgment this evidence is significant. There were two people who were affected by Mr Patterson's restructuring of the CAIU internal audit department: Mr Fulton the chief of that department, and the Claimant. Mr Fulton was offered alternative employment and for a limited period of time stayed on with the Respondent (until July 2010). The Claimant was not offered any alternative employment. In the judgment of the Tribunal the approach of Mr Patterson to the restructuring of this department was informed in part at least by the understanding that the Claimant was to retire in November 2009 at the age of 60.

55 The Tribunal has no doubt that Mr Patterson's strategic aim was to effect a long term improvement in the CAIU. The problem for Mr Patterson and the Respondent however is that the current state of the CAIU in 2009 was one of high competence, and

a target achieving department, well run and well staffed. Moreover, there is ample evidence to persuade the Tribunal that although training opportunities were made available for the two young graduate trainees, the desire of older members of the department, particularly Mr Fulton and the Claimant, to have relevant IT training (later acknowledged by the peer group review to be an unusual element of deficiency in the department) was effectively denied by Mr Patterson and the Respondent over a period of years.

56 In these circumstances, Mr Patterson's misunderstanding about the Claimant's date of retirement (because that is what the Tribunal has found) assumes considerable significance. What one sees being arranged in the autumn of 2009 is the replacement of two long time auditors, Mr Fulton and the Claimant by two relatively young but well qualified auditors who it was anticipated would no doubt serve the Respondent well in future years.

57 It may well have been Mr Patterson's judgment that the needs of the business over the next five years moving forward from 2009 could best be served by an increase in the vocational qualifications among the auditors employed in the CAIU. But it is hard to understand how that could justify ignoring the Respondent's own policies in relation to redundancy and the requirement that every attempt will be made to avoid compulsory redundancy and the directive that: "no single selection criteria should be used in isolation. It is vital that any criteria is non discriminatory, used in an objective way and applied consistently". Thus in the very example given in the policy document the directive expects a balanced view to be taken of formal qualifications and advanced skills acquired through experience. In the case of the Claimant his audit skills applied with a high level of competence over several decades within this organisation should not have been set on one side as indeed they were in the job specification for the new senior auditor role in which experience was ignored in preference for the single criterion requirement that the prospective senior auditor should be CACB qualified.

58 When one also adds to this the Claimant's experience over a number of years (confirmed by Mr Fulton) that his attempts to procure relevant training through the Respondent had been denied and Mr Patterson's misunderstanding about the date for the Claimant's retirement, the true reason for the Claimant's selection for compulsory redundancy becomes clearer.

59 The Respondent's case is that the Claimant was dismissed for a permissible reason, namely redundancy: following a review of its business needs it implemented a new structure under which there was a diminished need for audit work to be carried out at its Barkingside office by those without an accountancy qualification.

60 In the judgment of the Tribunal the work which the Claimant had been doing to a high level of competence for more than a decade continued to be done in his office. The imposition of an accountancy qualification was an entirely self imposed constraint adopted by the Respondent. Nothing in the peer review in the judgment of the Tribunal justified such a constraint. It was an invented reason for getting rid of the Claimant and Mr Fulton. In that sense there was not a genuine redundancy situation.

61 Even if the Tribunal is wrong and the Respondent is able to spin from the facts as found by the Tribunal a sufficient scenario to come within the definition of

redundancy in section 139(1)(b)(ii) of the ERA, it is the Tribunal's judgment that the Claimant was unfairly selected for redundancy. In contravention of the Respondent's own policies a single criterion (the CACB qualification) was adopted by the Respondent in the full understanding that it would result in the compulsory redundancy of the Claimant. That criterion was adopted in defiance of the Respondent's own employment policy cited above in this judgment. No adequate reason for ignoring that written policy was given to the Tribunal in the evidence of Ms Howarth or Mr Patterson. In the absence of any lawful and persuasive reason for adopting a single criterion in defiance of its own written policy, the Tribunal concludes that the selection of the Claimant for redundancy was unfair.

62 We do not want to pull any punches against Mr Patterson but at the same time we want to emphasise that he was misguided rather than wicked. This is a case where Mr Patterson no doubt believed that the end justifies the means; this is a case of Mr Patterson doing his best for his employer, a charity, and not a case of him doing his worse for the Claimant. Nevertheless, the Tribunal concludes that the Claimant was unfairly selected for redundancy.

63 In the light of the Tribunal's decision that there was here no redundancy but if there was the Claimant was unfairly selected, it may not be necessary to reach conclusions about the procedure which was adopted. However, the Tribunal feels that it is important to comment upon and reach conclusions about the procedure for consultation which included or should have included pursuant to the Respondent's own policy reasonable efforts to find alternative employment for the Claimant. It was clear from Ms Howarth's evidence that all that was done in connection with finding the Claimant alternative employment within the Respondent was to draw his attention to and possibly to send him copies of the list of available jobs recorded on the Respondent's intranet.

64 There was a disagreement in the evidence between Ms Howarth and the Claimant as to whether the "redeployment expression of interest form" was or was not completed by the Claimant timeously. The evidence cited above at the meeting on 19 November records that Ms Howarth gave that form to the Claimant on the 19th and the evidence on the form itself suggests that it was faxed back to the Respondent on 20 November. The Tribunal prefers the evidence of the Claimant in relation to this form and finds that it had been returned to the Respondent by 20 November. Thereafter whether it was lost, overlooked or de-prioritised, in the event the Respondent did nothing to identify for the Claimant and to prioritise the Claimant's interest in any vacancies which might have been available. The Claimant was left entirely to his own devices and was unable to make progress.

65 In the judgment of the Tribunal having regard to the size and administrative resources of the Respondent's undertaking, the exceeding length of the Claimant's service to the Respondent, the rather artificial nature of the "redundancy", and the vulnerability of the Claimant as a 60 year old unqualified accountant in the general labour market, it is the Tribunal's view that judgment that the Respondent did not act reasonably in assisting the Claimant to find alternative employment within the Respondent's organisation.

66 The Claimant was unfairly dismissed.

Age discrimination

67 The Claimant was one of four employees carrying out audit duties, the others being David Fulton who was also selected for redundancy, and the newly qualified auditors Nylsh Pandya and Grant Blackwell (who were not dismissed). The Respondent admits that Messrs Pandya and Blackwell are significantly younger than the Claimant and Mr Fulton (the former were in their late 20s at the time of the Claimant's dismissal).

68 The Respondent contends that it would be an error to use Messrs Pandya and Blackwell as the comparator for the purposes of the Claimant's age discrimination claim. Their "relevant circumstances" (the language of Reg. 3(2)) were materially different: they had accountancy qualifications while the Claimant and Mr Fulton did not. The need for an accountancy qualification was the whole thrust of the Respondent's restructured business model for its internal audit function. In these circumstances the Respondent submits it would be wrong to use those with qualifications as the comparator. The Tribunal agrees with this analysis.

69 That means that the correct comparator in this case is a hypothetical one, namely someone in a different age group to the Claimant who is carrying out audit work and who did not have an accountancy qualification. The question for the Tribunal is, the Respondent submits: would such an employee have been treated in the same way as the Claimant? The Respondent submits that the answer to that question is plainly "yes". It is the Respondent's case that such a hypothetical comparator would also have been placed at risk of redundancy and ultimately dismissed because they lacked the necessary accountancy qualification and because the Respondent was not reasonably able to wait between 18 months and three years for them to attain a qualification. The outcome the Respondent says would not have been influenced by their age and thus the Respondent contends there was no "less favourable treatment" for the purposes of regulation 3(1)(a).

70 The problem with this model for the Respondent is that the Respondent dealt differently historically with on the one hand the young graduate trainees and on the other hand its long term employed but unqualified auditor, the Claimant (unqualified that is save by his long experience). Very considerable training resources were offered to Messrs Pandya and Blackwell from the dates of their appointment in 2005 and 2006 through until their respective qualification. Those resources were not made available to the Claimant. The Claimant was not even permitted the indulgence of IT training.

71 What does this tell the Tribunal about the Respondent's attitude to staff and training? The obvious inference to be drawn from this differential treatment over a period of years is that an investment in the Claimant for training purposes probably seemed unattractive to the Respondent having regard to the likely duration of the Claimant's future employment with the Respondent. On the other hand, a younger person in whom such an investment was made would have ample opportunity to achieve a relevant qualification and make use of it in a productive context in the continued employment of the Respondent.

72 In considering a hypothetical comparator who is much younger than the

Claimant but does not have an accountancy qualification, it is the Tribunal's judgment that such an employee would not have been treated in the same way as the Claimant. On the basis of what the Tribunal has heard about the Respondent's management of the CAIU over a period of years, a younger auditor unqualified but with say 10 or 15 years audit experience with the Respondent would almost certainly have been encouraged to achieve a relevant accountancy qualification. If there had been any period of delay in achieving such an accountancy qualification, say in excess of three years, the judgment of the Tribunal is that the rules for appointment as a senior auditor would have been adjusted in advance of the appointment exercise so as to permit the job specification to entertain an application from someone who was qualified considerably by experience even if in the short term he or she did not have an appropriate accountancy qualification. That of course was an opportunity which was denied to the Claimant.

73 In short, the Claimant was a person who had all the experience necessary to continue in the role, he was someone who had been denied the opportunity for any training, he was a person for whom the level of training support and resources available for Messrs Pandya and Blackwell had been withheld, and in considering the hypothetical comparator the Tribunal reaches the conclusion that the Respondent would probably not have treated such an employee in the same way as the Claimant.

74 The Respondent contended that the treatment of another employee (Manel Dissanayake) demonstrates that the redundancy exercise was not a means of removing an older generation which lacked relevant training. Manel Dissanayake was aged 55 at the time of the Claimant's dismissal. The evidence showed that the Respondent had supported her in her training to obtain an accountancy qualification during 2008 and 2009, and that she was not dismissed.

75 The part time nature of her employment made it easier (and probably cheaper) for the Respondent to support her in obtaining an accountancy qualification, than it would have been to support a full time employee in the same. The fact is that she was supported while the Claimant was not. There was no evidence that the Claimant had asked to be supported in qualifying as an accountant, but as the Claimant told the Tribunal, he had asked for much more limited training in IT expertise and it had been refused, and refused over a period of years. In those circumstances, it was the Claimant's evidence which the Tribunal accepts that it was hardly in his mind to ask the Respondent to support him to obtain an accountancy qualification, particularly as neither he nor the Respondent had ever, prior to autumn 2009, identified such a qualification as being of any practical or other significance in the work which the Claimant had been doing more than satisfactorily for the Respondent for a period of decades.

76 In these circumstances the Respondent's decision to support Manel Dissanayake (a part time employee) who was employed in a different role from the Claimant's is not regarded by the Tribunal as significant. A major difference between Manel Dissanayake and the Claimant is that the Claimant was not only full time (as compared with the part time employment of Manel Dissanayake) but the Claimant made the point, which was not challenged in his evidence, that a significant constraint on his ability to pursue any training at all was the constant pressure of work upon him and upon the audit department during the relevant years from 2005. In other words,

Manel Dissanayake who was a part timer in a support role could spend sufficient time to complete an accountancy qualification, without detriment to the Respondent and was therefore supported; but the Claimant whose role and work was essential to the Respondent and who was a competent and productive employee could not be released by the Respondent because of the demands of the work for which the Claimant was employed.

77 The Tribunal concludes that the Claimant was treated less favourably on the ground of his age in that his experience was set on one side in favour of a qualification he had not been encouraged or permitted or supported to obtain, and he was selected for and dismissed on the ground of redundancy.

Indirect discrimination

78 We accept the Respondent's submission that there is no basis on which the Tribunal can properly conclude that there had been indirect age discrimination. The "provision criterion or practice" complained of is the requirement that the internal auditors have accountancy qualifications. The Claimant's case is that this: "puts or would put persons of the same age group as the Claimant at a particularly disadvantage when compared with other persons" and that the Claimant suffered that particular disadvantage.

79 In order for this claim to succeed the Tribunal must accept that people in the Claimant's age group are less likely to have accountancy qualifications than people in a younger age group, thereby giving rise to the disadvantage suffered by the Claimant in this case. The Claimant has, however, not put forward any evidential basis for that contention. The Claimant accepted in evidence that he had no such evidence to offer. Mr Patterson's experience is that younger people are not necessarily more likely to have accountancy qualifications than older people.

80 In the acknowledged absence of any specific evidence whatsoever in support of the Claimant's indirect discrimination contentions, it is the Tribunal's judgment that it would be wrong simply to accept that the requirement for an accountancy qualification puts people of the Claimant's age group at a disadvantage.

81 In the absence of such evidence, even of compelling anecdotal evidence, the Tribunal must dismiss the claim for indirect age discrimination.

Remedy

82 The Tribunal proposes to hold a short hearing for the purposes of resolving the issues of remedy. That will be a two day hearing but the second day will be held in chambers. At the end of this judgment the Tribunal will give directions for that hearing. The Tribunal has of course already heard some evidence about remedy. The Tribunal additionally has had the submissions of the Claimant and Respondent in relation to remedy. The preliminary view of the Tribunal is that the Claimant is likely to face some discount in loss of earnings as a result of his less than fully focused attempts to find alternative employment. It may well be that the Claimant will be required to take into account the pension which he is now receiving, in the calculation of his net loss of earnings. The Claimant may well have to take these matters into account when

formulating his net loss of earnings. The preliminary view of the Tribunal is that the injury to feelings award will be in the middle band of *Vento*. The Tribunal's preliminary view is that no award of aggravated damages would be appropriate in this case. The Claimant's claim for interest at 8% is an exaggerated one in the present financial climate and the figure of 2% would be more realistic. The Tribunal is unclear about the status of the breach of contract claim.

83 The Tribunal makes the following directions for the remedies hearing.

DIRECTIONS

- 1 First any further disclosure should be made by sending copies of documents (for example job applications and correspondence) to the other side within 21 days of the date of promulgation of this judgment.
- 2 The Claimant and the Respondent are limited to one new witness statement if so advised to deal with issues of remedy to be exchanged not later than 14 days before the date fixed for the Hearing.
- 3 The parties are to file details of dates to avoid from 1 September 2012 to 31 January 2013, those dates are to be filed within 14 days of the promulgation of this judgment
- 4 On receipt of those dates to avoid the Tribunal must immediately fix a two day hearing (before this Tribunal, second day in chambers) to resolve the issues of remedy.

.....
Employment Judge J Ferris

J Ferris
27/8/12

JUDGMENT, REASONS & BOOKLET SENT TO THE PARTIES ON

28th August 2012

Nicholls

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS