

# Failure to dispel an employee's confusion and offering sham alternatives meant redundancy dismissal was unfair

The Employment Tribunal's reserved judgment in *Crawford-Thomas v Collinson (Central Services) Limited* offers a useful reminder that a genuine business case for redundancy is not, on its own, sufficient. Where the consultation process is inadequate, a finding of unfair dismissal will follow.

## What happened in this case?

The Claimant, Mr Crawford-Thomas, was employed as Financial Crime Manager by Collinson, a global travel benefits company, from February 2009 until his dismissal on 14 March 2024. He had approximately 40 years' employment history in financial crime and fraud work.

In October 2023, Ms Smith joined as Vice-President of Risk and Compliance and became the Claimant's new line manager. She was tasked with evaluating the company's safeguarding strategy to protect against cyber-crime and emerging artificial intelligence (AI) risks (including anticipated compliance obligations under the EU's AI Act) and she conducted a "gap analysis" of her team's competencies.

As part of that exercise, she asked the Claimant to set out what elements of his role he currently performed. She concluded that of his 11 listed activities, seven could be handled by the company's existing Refinitiv automated system, two could be absorbed into her own role, and two were already performed by other colleagues. She determined that a new higher-grade role of 'Head of Risk and Assurance Manager' was required to address future AI and cyber risk and ensure compliance with the EU AI Act. She formed an early view that the Claimant was not qualified for this role.

The Claimant was placed at risk of redundancy on 31 January 2024.

The first consultation meeting was held on 7 February 2024. The Claimant said he did not understand how his role was at risk of redundancy. Ms Smith referred him to selected slides from a business-facing slide deck. She also said he would be sent the job description for the new Head of Risk role and that he could apply for any suitable roles on the company's website. The Head of Risk role was then advertised externally before the Claimant had fully considered whether to apply, and he discovered that Ms Smith had also invited a former colleague to apply for it. This discovery made the Claimant suspicious about the authenticity of the process.

The second consultation meeting was held on 26 February 2024. At the meeting, the Claimant said he was still unsure why there was a need to make him redundant and little was said or done to address that concern. He also said he was interested in the Head of Risk role and asked whether he could have a trial period. Ms Smith did not agree to this (without explaining why) but said that he was at liberty to apply for the role.

The third and final consultation meeting was held on 7 March 2024. The Claimant said he was still struggling to understand why his role was at risk of redundancy and why aspects of it were no longer required. Ms Smith attempted to clarify the position, but the Claimant disagreed with her rationale. He asked further questions about the restructure but did not understand the answers given. Ms Smith referred him back to the slides he had previously been given. He asked to see the gap analysis, but Ms Smith refused and said the rationale had already been explained. He also asked whether he could be “mapped” into the new role with additional training and support. This was also refused.

The Claimant was dismissed on 14 March 2024, and his appeal was rejected. He brought claims for unfair dismissal and direct age discrimination.

### **What did the Employment Tribunal decide?**

#### *Unfair dismissal*

The Tribunal had little difficulty finding that a genuine redundancy situation existed. The Claimant’s core functions had been substantially automated by the Refinitiv system, remaining tasks had been redistributed, and there was a credible business need for a differently skilled role. The requirements of the business for work of the Claimant’s particular kind had diminished within the meaning of s.139 Employment Rights Act 1996.

The Tribunal found that the Respondent had attempted a genuine redundancy consultation process: three meetings were held, HR

was present throughout, and the Claimant was offered access to job search support. However, the Tribunal identified two areas where the process fell critically short.

First, Ms Smith had formed an early view, following her very first one-to-one with the Claimant, that he lacked the skills and qualifications needed for the new Head of Risk role. Given that she was new to the company, she had little independent knowledge of his broader career or competencies. Although she reviewed his Linked In profile, the Tribunal notes that this was *“not a satisfactory way to obtain a full picture of the abilities of an employee within her own team.”* The Tribunal found that once that view was formed, subsequent meetings became meaningless in respect of alternative employment. Ms Smith was holding out the Head of Risk role as a potential alternative while having already concluded that the Claimant was unsuitable for it.

However, the Tribunal accepted that the Respondent reasonably believed the new role required urgent filling by a suitably qualified candidate, and that an upskilling period was not a viable option. That was a reasonable business position. The problem was not the decision itself, it was that the consultation presented a false choice.

Second, Ms Smith's only method of explaining the restructure was to refer the Claimant back to slides that he had already said he did not understand. This was not adequate or meaningful. She made no attempt to find an alternative explanation when it became clear the slides were not adequate. She concluded that the Claimant was merely trying to elongate the process, and she effectively disengaged. As a consequence, the Claimant did not fully understand the process he was going through and this detrimentally impacted his

ability to suggest ways to mitigate the risk of his role being made redundant.

Despite upholding the unfair dismissal complaint, the Tribunal accepted the Respondent's submission that a fair process would ultimately have resulted in redundancy. A *Polkey* reduction to compensation will, therefore, be made, though remedy has not yet been determined.

### *Age discrimination*

The Tribunal held there was no evidence suggestive of the Claimant's age being the reason for the difference in treatment compared to a hypothetical comparator. Therefore, the burden of proof did not pass to the employer. If wrong about that, the Respondent had provided reasonable and adequate explanations for its treatment of the Claimant and none of them indicated discriminatory conduct on grounds of age.

### **What does this mean for employers?**

This decision makes it clear that managers must not approach consultation processes with a fixed mindset, particularly in respect of alternative roles. Redeployment searches based solely on a self-reported job description and a quick look at the employee's LinkedIn profile are unlikely to be sufficient, particularly for a long-serving employee.

In this case, a trial period with support and training was not viable due to the urgency involved, but in a non-urgent case

then a reasonable approach may be to allow a trial period plus training. Alternatively, where there are reasonable grounds to consider that an alternative vacancy would not be suitable for an employee, then it should not be put forward as an option during consultation.

HR and managers must also take care to ensure employees understand the process. Where an employee repeatedly says they do not understand the rationale for their redundancy, the answer is not to keep referring them back to the same document. Employers must find alternative ways to explain the position (even if where they are cynical about the employee's motives for pleading ignorance).

[Crawford-Thomas v Collinson \(Central Services\) Limited](#)

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