THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		*Respondent*
Ms N Mollart	**AND**	**Scientia Limited**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: **North Shields** **On: 27 February 2017**

Before: **Employment Judge Hargrove**

Appearances

For the Claimant: **Ms J Callan of Counsel**
For the Respondent: **Mr C Coghlin of Counsel**

RESERVED JUDGMENT

It is adjudged as follows:-

1 The principal reason for the claimant's dismissal was redundancy.

2 The dismissal was procedurally unfair.

3 If a fair procedure had been followed there was a 40% chance that the claimant's employment would have continued in the post of Project Management Officer working remotely from home.

4 The respondent is ordered to pay to the claimant a compensatory award of £2924.72 net and £1200 tribunal fees.

REASONS

1 By an ET1 received on 12 October 2016 the claimant complained of unfair dismissal from her post as Business Consultant Manager with effect from the receipt of a letter of dismissal dated 4 July 2016 with a payment in lieu of notice. The respondent submitted a response asserting that the claimant was fairly dismissed for redundancy.

2 The issues, which have been agreed between the parties and approved by the Tribunal are:-

2.1 Was the reason, or if more than one, the principal reason for the claimant's dismissal a potentially fair reason within the meaning of section 98(2) of the Employment Rights Act 1996, namely:-

(a) redundancy, or

(b) a business reorganisation carried out in the interests of economy and efficiency constituting some other substantial reason justifying dismissal?

Alternatively, were neither of those reasons the reason or principal reason for the claimant's dismissal?

2.2 If the respondent establishes either of the reasons set out in paragraph 2.1(a) or (b) as being the reason or principal reason for dismissal, was the dismissal of the claimant fair under section 98(4) of the Employment Rights Act 1996?

In particular:-

(a) was the consultation fair and reasonable?

(b) did the respondent genuinely apply its mind to who should be in the pool in respect of the claimant's redundancy?

(c) did the respondent fairly consider the possibility of alternative employment for the claimant?

2.3 To what compensation is the claimant entitled, if any, taking into account:-

(a) the period for which the employment would or might have continued; and

(b) whether the respondent has established that the claimant has failed to comply with her duty to mitigate her loss.

2.4 If the Tribunal finds that the dismissal was procedurally or otherwise unfair, what are the chances that the claimant's employment would have continued, and if so, in what role, and at what rate of pay if a fair procedure had been carried out;

What are the chances that the claimant would have been fairly dismissed in any event and when if a fair procedure had been carried out?

3 **Salient background facts**

These are taken from the witness statements and evidence given by the two witnesses; Mr Peter Loomes (PL, Board Director and Company Secretary of the respondent) who made the decision to dismiss the claimant; and the claimant:-

3.1 The respondent Scientia is engaged in the business of providing software products and a consultancy service primarily to higher education establishments within the UK but also operating worldwide. In the UK it has as customers or clients about 60% of the universities.

3.2 The provision of this service is supported by a consultancy division which is divided into two parts; the business consultancy team (of which the claimant was Manager) and the technical consultancy team of which, latterly at least, Matthew Finney (MF) was the Manager. The initial technical installation is done by the respondent's Technical Consultants and then the business consultancy team work with the new client to train the users. If there is a problem with the interface between the respondent's software and the client or customer's IT systems, the Technical Consultants will be called in to advise. In general, the technical team have IT and technical qualifications which the Business Consultants do not have. The differences between the two Managers' roles are identifiable from their job descriptions, at page 34 in the job description for the Technical Consultancy Manager and page 36 for the Training and Consultancy Manager, the claimant's job.

3.3 There are three organograms within the bundle which illustrate the position of the two consultancy teams within the respondent's management structure, and the members of the teams in **2012** (page 38C) and **April and May 2016** (pages 87A and B). The claimant was appointed Consultancy Manager to the business team on commencing her employment on **1 October 2012**. Most of the business team members, including the claimant, were engaged in home working and travelled to meet clients in the UK and Europe. One of the Consultants was however based on Holland. An exception was Toni Ayadeji, who was not a Business Consultant and was engaged to work normal hours at the respondent's head office in Cambridge from 9:00am to 5:00pm Monday to Friday.

3.4 Both the claimant and MF, at least from **13 April 2016**, reported to John Gooch (JG) when he was appointed to a post following external advertisement, renamed as Head of Delivery Services. Prior to that date, Managers had reported to a Mr Harrington who had left on **4 January 2016**. The post was then advertised internally but the only applicant was Mr Jim Warder. He had been ill for sometime with cancer. He took over the post temporarily as Global Delivery Manager **from January 2016**, while the post was advertised externally, but went off sick in early March

until JG took over the renamed post in the April. There was then effectively a new tier of management in place between the two team managers and the directors who were on the executive committee, from the appointment of JG. In the early April 2016 organogram (page 87A) prior to JG's appointment, Andrew Lau, a member of the executive committee of Directors, was shown as being Global Delivery Manager pro tem.

3.5 The claimant complains of bullying behaviours towards her by JG almost from the date of his appointment. Having failed to resolve it informally, she raised a formal grievance on **6 May** which was referred to Andrew Lau. He had a hearing with the claimant on **12 May** and rejected the grievance in a grievance response and findings sent out on **15 May**. For these documents, see pages 104-116 of the bundle. The claimant was notified of her right of appeal and there was an exchange of e-mails between her and Joe Austin, an HR Manager, on **18 May**. The latter indicated that if she did not agree with the points covered in the grievance findings she should appeal to PL as per the company handbook. He indicated that he had arranged a meeting with PL to review performance on Wednesday, **25 May.** PL responded on **18 May** at 6:43pm in the following terms:-

> "Nina (the claimant) called me very soon after receiving your e-mail to say she didn't think there was a need for me to meet with her, and that she wasn't making a formal appeal against AL's decision".

He went on to say that despite her reluctance he had insisted that he wished to speak with her and had confirmed an arranged meeting on Wednesday, 25 May. Although the claimant does not say that she raised a formal grievance appeal to PL, she claims she raised issues about JG's conduct towards her at the meeting on **25 May 2016**, and that she did not receive any response or outcome. PL agrees that she did raise issues about JG's conduct with him at the meeting but that since she had indicated that she did not wish to proceed with an appeal he did not respond. As stated above a contemporaneous e-mail supports the contention that there was no formal grievance appeal. However, PL agrees that JG had earlier copied him into some of the e-mail traffic between the claimant and JG concerning their differences. He (PL) was aware of the grievances raised by the claimant against JG. The significance of this is that the claimant asserts that the existence of the grievance formed the motive for what shortly followed; namely the process beginning on **20 June 2016** when JG notified the business consultancy team of the beginning of a redundancy consultation process, which ended after two consultation meetings/discussions (one by telephone) between PL and the claimant; and the claimant's dismissal on **4 July 2016** with a month's payment in lieu of notice.

3.6 PL claims that he commenced a review of the consultancy services in early **June 2016**. He says that it was instigated by profit and loss figures for the consultancy division as a whole (including the technical

consultancy) which showed a loss from 2015 due to a reduction in new orders. He produced to the Tribunal the following documents to support the contention as described in paragraphs 12-14 of his first witness statement:-

1 January-30 June 2015 – page 52A;
30 June 2015 to end of December 2015 – page 55;
December 2015-30 June 2016 – page 119.

He claims that on the basis of these figures he wrote a written restructure proposal which is to be found at pages 120-122. This however is undated. He says that he produced it in **early to mid June**. Ms Callan for the claimant pointed out that the figures for the six months ending **30 June 2016** could not have been available at the date upon which PL claims he wrote the proposal. This is true, but PL says that he saw the monthly figures in the period up to and including May 2016, which he reported on a monthly basis to the executive committee of Directors. The restructuring proposal is a highly important document which, if genuine, sets out in summary the following propositions or options:-

(a) that the current structure should continue in the hope of sales improvements, which he rejected on the basis that the reduction in fee income would place too great a burden on the respondent's finances;

(b) whether the restructure should affect the Technical Consultants as well as the Business Consultants. It was decided that it should affect only the Business Consultants upon the basis that there was likely to be a drop in the number of new clients, in particular in the UK and European sectors, which he described as saturated, and there was thus a lesser need for business consultants; and that the more technically qualified Technical Consultants would continue to be needed to resolve ongoing problems with existing clients;

(c) whether, notwithstanding the former considerations, the respective Managers of the two teams (the claimant and MF) should be pooled together. For reasons specified in paragraph 21 of the first witness statement he decided that they should not both be pooled. The principal reason may be summarised as follows:-

Technical Consultants have computer qualifications which Business Consultants do not have – MF had a degree in Advanced Computing and delivered his expertise worldwide. Business Consultants did not have that expertise. Technical Consultants could perform many of the functions of Business Consultants, but the opposite was not true. If the claimant and MF were pooled together MF would have scored higher than the claimant on objective criteria such as qualifications and skills.

3.7 PL claims that on this basis, he proposed that the claimant's role as Business Consultancy Manager should be placed at risk and that five of the Business Consultants should be placed at risk of redundancy, from which one should be selected for redundancy.

3.8 The five Business Consultants at risk are identifiable in the organograms for April and May 2016 at pages 87A and B. The relevant box in the organogram included first Toni Ayadeji who, it is agreed, was not a Business Consultant but whose job title was Project Manager Administrator or Advisor based at the Cambridge office working normal working hours Monday to Friday and not at home. She was line managed by the claimant and had a flexible working agreement allowing her on occasions to clock off early to care for young children. The claimant claims that she was undermined by JG who went behind her back and withdrew the flexible working arrangement. In fact, as I find, it was PL who instigated the removal of flexible working from Toni Ayadeji having received complaints about her abusing the system. In consequence, she resigned and subsequently her job duties were incorporated into a new job, that of Project Management Officer, subsequently filled by Brendan Hoare with effect from **4 July 2016.** The Tribunal will return to the circumstances of the filling of this vacancy later in this judgment.

The second person included who was not put at risk was Jim Warder. It is now accepted by the claimant that special arrangements were made confidentially by PL to keep him in employment in a different capacity (as a Support Application Specialist – see page 138) because he was terminally ill and it was agreed, either then or subsequently, that he would retire in **September 2016**.

3.9 I am satisfied that the restructured document at pages 120-122 was prepared by PL in **early June** and did represent his thinking at the time. Its contents are entirely consistent with the letters he sent out on **21 June 2016** to four our of the five remaining Business Consultants, Ian Brown (page 125), Jeannie Carter (page 127), Tristram Harding (page 129) and Kim Moulding (page 131). The remaining Business Consultant was permanently based in Holland. The upshot of those letters was that Jeannie Carter subsequently volunteered for redundancy and left.

The letter sent to the claimant on that date was in slightly different terms – see page 123 – however it did cite the budgetary figures for 2015/16, stated that the current income could not "support or justify two layers of management above the business consultancy team …"; and indicated that PL had considered and rejected the proposition that the claimant's job should be pooled with MF's job as Technical Consultancy Manager. The letter stated that the removal of the management layers was "only a proposal" and that consultation would take place "to try to identify ways in which your redundancy can be avoided". The letter identified two specific jobs "a grade below your current position"; a German speaking Business Consultant to assist with growing business interests in Germany; and a lower level project management role based in the Cambridge office. The

former job was a non starter for the claimant who is not a German speaker. The latter job was that described in more detail in paragraph 3.8 above and occupied the attention of the Tribunal during the evidence.

3.10 Prior to the sending out of those letters and the first general consultation meeting on **20 June**, the claimant asserts that on **16 June** in a meeting with the Business Consultants, the claimant was further bullied and shouted at by JG. She does not say that she reported this event to PL, and PL denies any knowledge of the event. The first consultation meeting with the claimant had been notified to her in PL's letter of **21 June** to take place on **Friday, 24 June.** There are no notes of the meeting supplied by either party, but PL wrote referring to the meeting by letter of **30 June,** at page 140A. In particular PL stated:-

> "In our discussion, you indicated that you understand this rationale behind the business proposal (that there was no longer a need for the role of business consultant manager)".

The letter continued:-

> "You said that the German speaking Business Consultant role or the project management role in Cambridge would not be of interest to you".

The letter continued:-

> "There was to be a further consultation meeting on Monday, 4 July to discuss the proposed restructuring in further detail".

He suggested that to save long drives to the Cambridge office this could be conducted by telephone.

Prior to that letter however on **28 June** the claimant e-mailed PL:-

> "I've got an appointment with my barrister on Friday to follow up our meeting on 24 June. I'll let you know the outcome from that as soon as I can".

The claimant accepts that the two vacancies were raised by PL in the meeting on **24 June** but says that PL stated the job was to be office based in Cambridge; and gave no indication that it might be considered for remote working from the claimant's home in County Durham. This was at least a possibility because project management would have required visits to clients' premises throughout the UK.

It is also important to consider what had already happened to the Project Management Officer post at that time. In the bundle beginning at page 88 there is a draft employment contract bearing the date **24 April 2016** between the respondent and Brendan Hoare which states in paragraph 1.2, "Your employment under this agreement shall begin on **4 July 2016**".

At page 91 the document describes the normal place of work as being the company's premises in Cambridge. The salary is blanked out but information given to the Tribunal indicates that it was £40,000 per annum. This compares with the claimant's 2016 salary of £60,384 per annum plus £4,800 car allowance. By coincidence or not, the respondent had written to Mr Hoare on **24 June 2016**, the same day as the claimant's first consultation meeting with PL, confirming that following recent interview the respondent's offer of employment for the position of Project Management Officer was confirmed, and the contract of employment was attached to the letter for him to sign and return.

On **4 July** JG announced by e-mail that BH was to start that day as the Project Management Officer. It was also on that day that what was described as the second consultation meeting took place by telephone call between the claimant and PL. The only note of that meeting is at page 191A and it states, "I conducted a consultation meeting with Nina today, and she again acknowledged that she was not applying for the two positions which we identified and had no other suggestions". The claimant was not notified of the outcome on that day and on **5 July 2016** the claimant wrote to PL stating:-

> "There is a project management course running in Newcastle next week that I would like to attend in order to gain an industry standard practitioner certification. It is a four day course with the Knowledge Academy costing £1,189 plus VAT. Whilst I do not want to pre-empt the outcome of the current consultation process this is an essential qualification in modern IT project management that will be important as I renew my status as a practicing PM".

When asked if the respondent would allow her to attend the training from 11 July and would pay for the course upfront if she paid it back via salary sacrifice.

In a letter dated **6 July,** received by the claimant on 7 July, PL wrote to the claimant providing notice to terminate her employment by reason of redundancy "with effect from today". She was notified of the right to appeal but did not appeal. The letter notified her of the amounts that she would receive namely one month's basic salary in lieu of the contractual notice period; the amount of accrued annual leave days and a statutory redundancy payment.

4 That concludes the chronology except to summarise what subsequently transpired with the business consultancy team. JG had only been with the respondent for some two and a half months before the proposed reduction in the management structure, which his appointment had been designed to alleviate by an increase in sales. PL did not commence any redundancy consultation exercise with him but did investigate a client's complaint against JG about his abrasive conduct. JG was suspended and dismissed in **September** on notice expiring in **December 2016.**

Neither his job, nor the claimant's job, have been replaced by the respondent, and it is to be presumed that they would no longer appear on an up to date organogram.

The claimant did undertake a project management course following her dismissal, the cost of which she claims as compensation, prior to her successful application for a project management post for which she was interviewed on **10 October** and commenced on **13 October**. Her current salary is less than her salary with the respondent.

The only other matter which the Tribunal has not mentioned in the chronology is an internal e-mail from the respondent's HR Manager, Joe Austin, to PL and AL dated **6 May** (at the time of the claimant's grievance against JG) where Mr Austin enquired whether the company was open to a settlement agreement with the claimant at that stage. The claimant relies upon this communication to indicate that the respondent must have been contemplating offering the claimant terms to leave their employment six weeks before any redundancy issue was raised. PL dismisses this e-mail as the actions of an inexperienced HR Officer who had been only recently appointed.

5 **The respondent's submissions**

The primary submission was that the claimant's dismissal for redundancy was the genuine reason. He referred to the financial figures; the fact that the claimant's role had not been filled following her dismissal even after Mr Gooch had left. Mr Hoare, who had taken up the project management post in Cambridge resigned in November and his post was not filled. The other potential post mentioned in the consultation process with the claimant, that of the German speaking consultant, had also not been filled and was not required. It is to be noted that not only the claimant's job had been made redundant but that another Business Consultant Jeannie Carter had volunteered for redundancy and her post had also not been filled. Mr Coghlin, anticipating the claimant's submission that the consultation process had been unduly hasty, pointed to the fact that the claimant had had the opportunity at two meetings to propose alternatives to redundancy but had not expressed any interest in any alternative post. As to the fact that the respondent had elected to pay in lieu of notice, so that the claimant's employment had in fact ended only about a fortnight after the consultation had commenced, he referred the Tribunal to the case of **MPI v Woodhead EAT/3011/7** that an election to pay in lieu of notice is not unfair. As to the pooling argument, he referred to paragraph 31 in the judgment of the Employment Appeals Tribunal in **Capita Hartshead Limited v Byard [2012] ICR page 1256 at paragraph 31**:-

> "Pulling the threads together, the applicable principles where the issue in an unfair dismissal claim is whether an employer has selected a correct pool of candidates who are candidates for redundancy are:-
>
> (a) it is not the function of the employment tribunal to decide whether they would have thought it fairer to act in some other way; the

question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted …

(b) the courts were recognising that the reasonable response test was applicable to the selection of the pool from which the redundancies were to be drawn …

(c) there is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employer to challenge it where the employer has genuinely applied his mind to the problem …

(d) the employment tribunal is entitled, if not obliged, to consider with care and scrutinise carefully the reasoning of the employer to determine if he has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy;

(e) even if the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy then it will be difficult, but not impossible for an employee to challenge it".

Mr Coghlin submitted in this case there were rational and exceptional reasons why Mr Warder had not been placed in the pool and the same applied to the job of MF whose position had been specifically considered for pooling but PL had recognised that his specialist abilities remained needed and the claimant did not have them. As to the consultation there had in effect been three meetings if the collective meeting on 20 June was included but adequate opportunity had been given to the claimant to challenge the necessity for redundancy, which she did not do, the rationale having been explained to her in writing. She had elected not to respond in writing and had not appealed although given the opportunity to do so.

6 **The claimant's submissions**

Ms Callan for the claimant referred to the well known principle in **Abernethy v Mott, Hay and Anderson**. She also referred to the well known authority of **James W Cook Withenhoe Limited v Tipper [1990] IRLR page 386** as authority for the proposition that the tribunal only concern themselves to whether the reason for the dismissal was redundancy and not what were the economic or commercial reasons for the redundancy itself. However she asserted that the principal reason for the claimant's dismissal was not redundancy in this case and she referred in that connection to the following matters. First the proximity of the claimant's dismissal, allegedly for redundancy, to the claimant's raising of an unsuccessful grievance against JG, about which PL was admittedly aware. Very shortly after the claimant's meeting with PL on **25 May**, within three weeks a decision had been made to make the claimant's post

redundant. Secondly she referred to the fact that PL apparently relied upon the history of the consultancy teams failing to meet targets in 2015/16 and incurring losses and the increase in the management team by the appointment of JG in April, only two months before the redundancy process began. She also referred to the immediate response to the claimant's raising of a grievance on 6 May with mention from the HR Manager of a possible settlement agreement being entered into. She asserted that the whole process was unfair in particular because there was no consultation with the claimant as to the proposal to make her post redundant which was said to be contrary to the principles laid down in **R v BCC Ex Parte Price** in relation to a collective consultation, which required that the consultation should occur when proposals are still at the formative stage. As to the pool issue, she referred to the fact that there was no legal requirement that a pool should be limited to employees doing the same or similar work. She submitted that there was no proper consultation about the alternative project management role and she referred to the fact that although PL had asserted in paragraph 33 of his witness statement the respondent would have considered allowing the claimant to work from home in that role, this had never been mentioned as a possibility by PL during either of the meetings, but he had referred to the fact that it was a Cambridge based role on regular daytime hours.

7 **Conclusions**

The reason for dismissal

In **Abernethy v Mott, Hay and Anderson** Lord Justice Cairns said:-

> "The reason for dismissal in any case is the set of facts known to the employer or maybe the beliefs held by him which caused him to dismiss the employee. The reason for the dismissal must be established as existing at the time of the initial decision to dismiss and at the conclusion of any appeal hearing.
>
> It is common ground that the burden lies upon the respondent to establish its reason for dismissal throughout. However it is not in itself sufficient to prove that there was a redundancy situation affecting employees – that must be the reason or principal reason for the dismissal of the particular employee. The Tribunal has considered some passages from what may be described as the leading case on this causation issue, **ASLEF v Brady [2006] IRLR page 576** per Elias J:-
>
> Even where the employer adduces some evidence which tends to show that the reason was a statutory reason, that is not necessarily enough. If the employee puts this reason in issue by adducing evidence which casts doubt upon the alleged reason, the burden lies on the employer to satisfy the tribunal the reason it relied upon was indeed the true reason.
>
> This principle was established in **Maund v Penwith District Council**, (in which the employee alleged that he had been dismissed for trade union

activities. The industrial tribunal held that he had the burden of proving that but the EAT and the Court of Appeal disagreed). Griffiths LJ said this:-

> 'If an employer produces evidence to the tribunal that appears to show that the reason for dismissal is redundancy, as they undoubtedly did in this case, then the burden passes to the employee to show that there is a real issue as to whether that was the true reason. The employee cannot do this by merely asserting an argument that it was not the true reason; an evidential burden rests upon him to produce some evidence that casts doubt upon the employer's reason. The graver the allegation, the heavier will be the burden. Allegations of fraud or malice should not be lightly cast about without evidence to support them.
>
> But this burden is a lighter burden than the legal burden placed upon the employer; it is not for the employee to prove the reason for his dismissal, but merely to produce evidence sufficient to raise the issue or, to put it another way, that raises some doubt about the reason for the dismissal. Once this evidential burden is discharged, the onus remains upon the employer to prove the reason for the dismissal".

Useful passages continue at paragraphs 68 with a particular reference to the case of **Timex Corporation v Thompson**, where the tribunal found that although there was a redundancy situation they were not satisfied that the employee was dismissed for that reason rather than that being a pretext for dismissing for another reason namely his performance, at 77 to 79.

I accept that the claimant has done sufficient in this case to raise the issue whether redundancy was the real or principal reason for the dismissal rather than her raising only a short time before her grievance concerning the conduct towards her of JG (who was subsequently dismissed for abrasive conduct towards a client). However, I have accepted the evidence of PL as to the reasons for the dismissal as being broadly truthful: the circumstantial evidence does support the proposition that the respondent did have a business case for reducing the management structure of the business consultancy; the redundancy process was one which put all of the Business Consultant jobs at risk, not merely the claimant's job; and if Jeannie Carter had not volunteered for redundancy, I accept that a selection process would have followed involving all four or five of the Business Consultants. The history of the Business Consultants' team after the claimant's dismissal is consistent with an overall reduction on the requirements of the respondent's business for Business Consultants. Both tiers of Managers – the claimant and JG went, albeit JG went for a different reason. Neither has been replaced; Brendan Hoare went and was not replaced, the same applies to Jeannie Carter. I do not accept that all of these actions are part of an elaborate plot to conceal a sham reason for dismissing the claimant. The reference in Joe Austin's e-mail to a possible settlement agreement does not demonstrate that the respondent was "out to get" the claimant for a clandestine reason.

Next I consider the pool issue. There were rational reasons for not including MF in the pool with the claimant which PL clearly had in mind prior to the consultation process which was demonstrated not only in the document at pages 120-121 also in the letter of 21 June 2016 to the claimant. This is not a case of an argument being raised for the first time after the event.

As to the adequacy of the consultation I have relied upon the well known passage in Lord Bridge's judgment in **Polkey v A E Dayton Services**:-

> "In a case of redundancy, the employer will not normally act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation".

I accept that the consultation process only took a fortnight or so, but there were two meetings or discussions to consider the claimant's case. The fact is that she did not challenge the need for the removal of her role. She did not allege that the reason was a sham. It is true that she did not actively pursue any interest in the project management role and the reason why she did not raises a number of possible conclusions. In the end, I have decided that PL was less than frank in his approach to the claimant in respect of that job. A contract had been issued to Brendan Hoare two months earlier. On the day of the first consultation meeting he had already been accepted for the role. I find that he had given the clear impression that the role could only be Cambridge based, knowing that the claimant would not be interested in it for that reason. Since he now says that he would have considered offering her the post if she had enquired whether it could be filled remotely, I have doubts about his reasons for not having explored that with her. Consultation is a process which must be started by the employer and must give the employee information about possible alternatives to dismissal. I have considered whether the claimant's absence of enquiry in fact demonstrates that she was not interested in the job even if it had been indicated that it might be available to work remotely, but I have concluded that that was not the position. I have also concluded that the reason for her not making the enquiry was not affected by considerations that she would have to continue to work under the management of JG. On this limited basis I find that the dismissal was procedurally unfair. I recognise however that there was a substantial risk that the claimant would have refused the role even if it had been offered, it being at a significantly lower rate of pay. Nonetheless, it would have been an alternative to immediate unemployment.

8 I accordingly find that there was only a 40% chance that if proper consultation had taken place in respect of this job the claimant would have taken it at the rate of pay that it was offered to Mr Hoare; and accordingly the claimant is entitled to compensation representing the loss of earnings from the date of expiry of the notice pay on or about 4 August 2016 and the date upon which the claimant took up alternative employment at a higher rate of pay. The parties have now provided some figures as to the earnings in the Project management jobs, and other information as to the

Polkey reduction (nil according to the claimant; 90% according to the respondent). The period of loss is 10 weeks taking into account the PILON, at £598.98 per week. To that there is to be added pension loss based upon the value of the contributions amounting to £111.99; and loss of statutory rights in respect of which I award £400. There remains however one further discrete issue as to whether or not the claimant is entitled to the cost of the post employment attendance at a project manager refresher course, upon the basis that the claimant had already indicated an intention to attend such a course on 5 July before she was notified of her dismissal. Section 123 refers to the compensatory award as being "such amount as the tribunal considers is just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer". The claimant recognised, even before she was dismissed although clearly recognising that she could be, that she lacked a necessary or at least desirable qualification. The dismissal clearly made her immediately vulnerable on the labour market. It was wholly reasonable of her to undertake the course at her own expense. It improved her chances of finding further employment, which she found relatively quickly. I am surprised that the respondent even raised any dispute about it. She is accordingly also entitled to the cost of £960. The total comes to £7311.79, which reduced by 40% amounts to £2924.72. The Tribunal fees of £1200 must also be paid by the respondent to the claimant.

EMPLOYMENT JUDGE HARGROVE

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
7 March 2017
JUDGMENT SENT TO THE PARTIES ON

14 March 2017

AND ENTERED IN THE REGISTER

G Palmer

FOR THE TRIBUNAL