EMPLOYMENT TRIBUNALS

Claimant		*Respondents*
Miss C M Anderson	**AND**	Shillington College Limited

Heard at: London Central **On**: 20-22 September 2017

Before: Employment Judge Norris

Representation
For the Claimant: Miss N Mallick, Counsel
For the Respondent: Mr J Crosfill, Counsel

JUDGMENT

The Claimant's claim of unfair dismissal is well-founded and succeeds.

The Respondent is ordered to pay the Claimant the agreed sum of £55,000.

REASONS

Background

1 The Claimant worked for the Respondent, a private college offering courses in graphic design, with campuses in Australia, the United Kingdom and the USA, from August 2011 until her dismissal in November 2016, purportedly on the grounds of redundancy.

The Hearing

2.1 This case was initially listed for three days from 29 June to 3 July 2017 but postponed to the actual Hearing dates of 20-22 September 2017, as a result of a professional clash of dates for the Respondent's counsel.

2.2 This is relevant because it meant the parties had in theory prepared some three months earlier for the hearing, but had nonetheless not finalised all the issues relating to the bundle and to disclosure. I return to the latter point below. Suffice to say at this stage that the pleadings were redacted

before the Hearing to remove all references to privileged matters (although references remained unredacted in the bundle itself); in any event, I have purposely had no regard to these matters and directed that that there was to be no questioning on or reference to them in the course of the evidence.

Witnesses and evidence bundle

2.3 The bundle also contained the witness statements of: Ms Sarah McHugh, UK Director, and Mr Martin Cantor, Director and Company Secretary of the Respondent; and of the Claimant (with an exhibit running to some 14 pages), Mr Nicolas Cox (formerly a part-time teacher for the Respondent) and Ms Imogen Clowes (a former student of the Respondent taught by the Claimant). I read all these statements on the morning of the first day, along with the pages in the bundle to which they referred.

2.4 We heard oral evidence from Ms McHugh and Mr Cantor on the afternoon of the first day, and from the Claimant, Mr Cox and Ms Clowes on day two, with submissions thereafter, before the parties were sent away pending my deliberations. All five live witnesses were subject to cross examination in the usual way. I do not set out the submissions in full, as they were lengthy and detailed, Ms Mallick speaking to a prepared written argument and Mr Crosfill addressing me orally only, but I do indicate my findings and conclusions and I did consider everything that was said to me by both sides.

2.5 In addition, the bundle, which totalled around 180 pages, contained witness statements from: Lallu Nykopp, Lucia Lopez and Gael Welstead, all of whom were also the Claimant's former students, and from Frances Ratford, who is now a colleague of the Claimant's. We did not hear live evidence from these witnesses, all of whose statements I read accordingly with the proviso that little weight could be placed on them.

Additional documents

2.6 At the back of the first bundle, out of order, was a small number of pages as to which the parties were in dispute. The first two, with which we were concerned during the merits hearing, were payroll documents showing the salaries of the various lecturers and members of the senior management team. The third was a letter from the Claimant's GP, with which we were not concerned in the merits hearing.

2.7 The payroll documents were contentious because they were not headed so their provenance was unclear, and they had apparently been produced shortly before the listed hearing in June; they were not dealt with in the Respondent's witness statements. Although on the file I had copies of solicitors' correspondence in which it was explained that the roles of the staff other than the Claimant had been **added** to the list (which was also redacted as to the names of the staff concerned), it seems Ms Mallick for the Claimant had not seen those letters, and she seemed to be of the view that it was the Claimant's role which had been **deleted** and she found this

suspicious. She did not however directly cross examine Mr Cantor about the pages on the first day.

2.8 On the second day, i.e. after the Respondent's case had concluded, a third page was added which suggested the evidence Mr Cantor had given about the redacted chart was incorrect; in any event, this also differed from payslips on which Mr Crosfill sought to cross examine the Claimant during her evidence. It did not assist that there were insufficient copies of the new documents, so that only I had a copy of the third payroll document, and only Mr Crosfill had copies of the payslips about which he was cross-examining the Claimant. In the face of allegations and counter allegations as to the bona fides of the documents and the way in which such an issue ought, in accordance with the parties' professional obligations, to be dealt with, I adjourned the hearing. Copies of the documents were obtained for everyone, including for the witness table, and a further payroll document was emailed to Ms Mallick and to my judicial email address, although in the event, they were not referred to again thereafter, Ms Mallick now being satisfied as to the provenance of the items in light of the previous correspondence which she had now seen.

2.9 It is worth reminding both parties' solicitors of their obligations under the overriding objective and observing that time was needlessly spent on these matters which should not have been, and would not have been, if a more professional approach to disclosure and to the preparation for the hearing had been taken, if not prior to the June hearing, certainly prior to the one in September once it was clear the June dates had been vacated. The case should most certainly have been completely trial-ready once it arrived before me and it is not to the representatives' credit that it was not.

2.10 There was a second bundle of evidence which we did not consider (save for one page, whose numbering duplicated a page in the "main", though shorter, bundle) during the merits part of the Hearing.

2.11 Following oral delivery of my Judgment with Reasons late on the morning of day three, I adjourned and the parties reached agreement as to quantum, which I have set out by consent at the end of these Reasons and in my Judgment.

The Issues

3.1 I was presented with two versions of essentially the same list of issues and it was agreed that while the Respondent's counsel did not agree with every item on the Claimant's counsel's list, this was largely in the interests of concision, rather than because he objected to me considering each of them. At the end of these Reasons, I have gone through my conclusions as to each of the issues on the Respondent's list, since in light of my findings I did not consider it necessary to address each of the numbered items on the Claimant's.

3.2 Mr Crosfill had also prepared a helpful chronology which, though not formally agreed, was not disputed by Ms Mallick.

The Law

4.1 Section 98 Employment Rights Act 1996 (ERA) at (1) provides that it is for the Respondent to show the reason (or if more than one the principal reason) for the dismissal, and (at (b)) that it is a potentially fair reason under (2) or is "some other substantial reason" (SOSR) justifying the dismissal of the employee holding the position which they held. Redundancy is one such potentially fair reason. If the Respondent shows that the reason for dismissal was potentially fair, I then turn to consider whether it was reasonable in all the circumstances, including its size and administrative resources, for the employer to treat that reason as sufficient to dismiss (s.98(4)).

4.2 Section 139 ERA provides that a redundancy situation arises where an employer's requirements for employees to carry out work of a particular kind in the place where the employee was employed have ceased or diminished or are expected to cease or diminish (s.139(1)(b)), whether permanently or temporarily (s.139(6)).

4.3 I remind myself that the civil burden of proof applies, i.e. I make findings on the balance of probabilities.

Findings of fact

5. I set out below my findings of fact, with explanations where necessary (e.g. where a fact is unclear or disputed) for my findings.

5.1 The Claimant began working as a lecturer for the Australian branch of the Respondent in Sydney in August 2011, having studied graphic design and worked as a graphic designer, including having been a student herself of Shillington College. In 2012, she moved to the Melbourne campus, where she continued to work as a lecturer. Her salary increased from A$55,000 to A$60,000 and then to A$70,000 when she negotiated a rise, having found that other lecturers, whom she was by now helping to train, were earning more than her. In a recurring theme for this case, there was no fixed way of setting salary, which was done by negotiation and was dependent on skills and experience.

5.2 In November 2013, the Claimant was approached by the Respondent's founder and CEO, Mr Shillington, and invited to work in London, the campus at which Mr Shillington was proposing to expand. On the Claimant expressing an interest, Mr Shillington flew to Melbourne and offered the Claimant the role of Head of Teaching, which, after consideration, she accepted. Mr Shillington put the Claimant in touch with Mr Cantor, with whom she spoke via Skype; Mr Cantor applied for and was granted a Tier 2 Certificate of Sponsorship (COS) for an Intra-Company transfer, which the Claimant then used to apply for a visa, which was granted. Ms McHugh was to become the Claimant's line manager in London and Skyped the Claimant to confirm that her United Kingdom

salary would be £50,000, a substantial increase on her Australian earnings. There was to be a financial contribution for what might be called a relocation package (return air ticket, shipment of some possessions and rent for the first four weeks in London) though this was not evidenced by any paperwork before me.

5.3 Towards the end of 2013, the Claimant went to stay with her parents in Sydney prior to her relocation, and while there, in common with all the Australian staff, attended the global AGM for the College. I accept the Claimant's evidence that during that week, Mr Shillington called her into a meeting with himself and Ms McHugh and told her that she would not in fact be Head of Teaching when she came to the United Kingdom but Senior Lecturer, with, as one might expect from that role, a teaching component, although the salary would remain at the promised £50,000. The Claimant, while disappointed that the role would not be exactly as described, was mentally already "on her way" to the UK, and she enjoyed teaching; therefore, she agreed to take up the alternative post.

5.4 I accept this evidence from the Claimant for a number of reasons. First, she was a credible and consistent witness generally. She used her recollection of staying with her parents in this instance to place events in their correct chronology. Ms McHugh, by contrast, initially said she had not been involved in the Claimant's recruitment, then accepted in cross examination that there had been the meeting with the Claimant and Mr Shillington in Sydney in January 2014 and that there had indeed been discussions about the role in London. Ms McHugh accepted that it was not "black and white" but that the Claimant would be a senior member of the "team" (though it is not clear what she meant by that – I do not consider it meant the management team as the Claimant was not, according to my findings below, but was more likely the lecturing team). Ms McHugh accepted also the possibility, put to her in cross-examination, that the Claimant's role was of Senior Lecturer. We did not hear from Mr Shillington.

5.5 I have had to rely in this instance, as in several others, on the Claimant's memory to a large extent because there is an appalling lack of paperwork by any standards, let alone that of a business with £2 million turnover as I heard this Respondent has in the United Kingdom. There are no notes of any of these meetings as one would expect. There are no written communications between Mr Shillington and Mr Cantor in the bundle, and indeed, Mr Cantor could not remember receiving any. I do not conclude from that, as I am invited to by Ms Mallick, that there is anything sinister in the lack of paperwork, because I accept that this is the way the Respondent worked or possibly still works, but it does not make it a professional or compliant way to go about HR administration.

5.6 There are however two documents which do tend to corroborate the Claimant's recollection and they are the COS application in which the Claimant is described as Head of Teaching (although someone has handwritten the word "Delivery" at the end of the title in the printed copy in

the bundle); this is what the Claimant's visa was initially based on. However, her contract of employment, issued in March 2014 when she had arrived in the United Kingdom, gives her job title as Senior Lecturer. I find that this was not an error on Mr Cantor's part but an accurate reflection of the role that had changed. Her duties were set out in a job specification which expressly formed part of her contract. There is no suggestion by the Respondent that the Claimant was required to or was doing all the duties of a Head of Teaching, but both parties agree that she was doing those of a Senior Lecturer/Teacher (those words are used interchangeably by the parties).

5.7 Further, in the limited correspondence, including emails before me, the Claimant's sign off is "Lecturer". Ms McHugh signs off as "Director" in emails, but (in a later letter) "Director, Head of Teaching". In the Claimant's performance review, which was conducted by Ms McHugh in February 2016, the Claimant had completed the form and described herself as holding the position of lecturer, with the job title of Senior Lecturer. Ms McHugh did not amend that, and I am confident that she saw the form because she has completed it after the Claimant had carried out a self-evaluation. Finally, and out of chronological order but pertinent to the question before me, in October 2016 when the Claimant's grievance was rejected, Mr Cantor told her that she could appeal to a Director or to the UK Head of Teaching. Clearly, if the Claimant was the Head of Teaching, she could not have appealed to herself, so I conclude that she was not.

5.8 At first, the Claimant and Ms McHugh had had to establish the parameters for the Claimant's new role and it is clear that the London campus was understaffed. The Claimant's arrival did coincide with increasing numbers of students, and later the move into larger premises. After the Claimant had been in the United Kingdom for about a year, Ms McHugh went on maternity leave and the Claimant reported to a Mr Wood in Australia and to Mr Shillington himself. Ms McHugh returned, first on "KIT" days and then fully in September 2015. By then, however, the Claimant and Mr Shillington had encountered some difficulties in their working relationship.

5.9 In July 2015, when it appears that Ms McHugh was working from the Manchester campus at least part of the week and visiting London as required though still notionally on maternity leave, there is a rare email from Mr Shillington to the Claimant. This email headed "More poor decision making" and dated 3 July 2015 refers to Mr Shillington's extreme annoyance at the Claimant's alleged behaviour. It alleges that the Claimant failed to complete work set by Mr Shillington in accordance with a deadline he had set; she then failed to meet the extended deadline that they had agreed. On a separate occasion, on 30 June 2015, the Claimant had met Mr Shillington and Ms McHugh to discuss changing the Claimant's role to include a "more part-time teaching component". The Claimant had discussed this proposal with colleagues shortly afterwards. Mr Shillington said this was not the first time she had discussed confidential matters with others, nor the first time he had reprimanded her

for so doing. He did not say to what historic issues he was referring. He concluded "I am considering the college's position".

5.10 On 6 July Mr Shillington sent another email with the same subject line/header. Both this and the previous one were sent to the Claimant and copied to Ms McHugh, Mr Wood and Mr Cantor. This email was shorter and erroneously referred to a conversation on Friday 3 June. Having checked the calendar, this must have meant 3 July, which was a Friday (3 June was not) and was the date of his initial email. It stated, "The letter confirmed the three official warnings I have given you. This conduct is unacceptable and you are on notice [sic]. Please acknowledge via email your receipt and acceptance of the above".

5.11 This email paid scant regard to the Respondent's disciplinary policy, which in the usual way provides for full investigation before any disciplinary action is taken and the provision for the employee of an opportunity to state their case before any decision is made, leaving aside any statutory and ACAS provisions that might also pertain. Neither Ms McHugh nor Mr Cantor could explain exactly what was meant in the email by the Claimant being "on notice" or what level of warning (indeed, three warnings) she had received. Had Mr Shillington conducted any sort of investigation, he might have heard what the Claimant told the Tribunal, which was that she did not complete the work initially because of her workload coupled with the timing for the students, and nor did she meet the revised deadline because both her parents had been hospitalised in Australia. She also fully accepted that it was an error of judgment on her part to have discussed the potential expansion of her role, which she explained she had done because she was excited about it. It might have meant, she said, that she would now be in the role that had been offered to her before she came to the United Kingdom.

5.12 It would be entirely speculative to consider whether following even the vestige of a fair procedure might have made a difference to the outcome and I do not do so; but the way Mr Shillington behaved in his communications entirely justifies, in my view, the Claimant's finding him, as she put it, "scary". It is clear that he is not a man who is troubled by following any sort of procedure. In the circumstances, I also find on the balance of probabilities that the Claimant did speak to him and he told her she had been dismissed, but that he subsequently recanted from that and she returned to work after the holiday. I accept her evidence that this point, which was significant to and for her, was also embarrassing and that is why it was not referred to in her written witness statement.

5.13 On 21 July 2015, Mr Shillington wrote a more formal letter, which said that the Claimant was at the first stage of the disciplinary procedure and that she needed to pay attention to improve aspects of her role. The Claimant was given the option of an appeal to Mr Shillington himself or to Ms McHugh, clearly neither of whom would have been appropriate (the latter indeed still being on maternity leave), and she did not take up this option. She was not subject to any further disciplinary or performance-related

issues whether formally otherwise. Indeed, her performance review in February 2016 appears to have been largely very positive, although the copying of the document in the bundle is particularly poor and it is very hard to see the exact grades.

5.14 In May and October 2016, the Claimant chased Ms McHugh for an update as to her visa which was due for renewal in February 2017. Ms McHugh told the Claimant to leave it with her, and did not correct the Claimant's assertion that in May, Mr Shillington had agreed her visa would be extended, which evidence I accept. Again, the Claimant's recollection of this was that she had gone home to open a bottle of champagne to celebrate, which certainly has the ring of truth to it. The Respondent however did nothing to look into the terms on which her visa might be extended nor whether the Claimant was in fact fulfilling the existing remit of the COS.

5.15 By now the Claimant was reporting not only to Ms McHugh but also to a Ms Wheldon, who was the Head of Part-Time Teaching. This is further corroboration of my earlier finding as to the Claimant's role because it offends logic that the Head of Teaching should report to the Head of Part-Time Teaching. In early September 2016, the Claimant had a discussion with Ms McHugh and Ms Wheldon, in which they told her that duties which had added to her virtual remit by Ms McHugh on 5 September were not in fact to be fulfilled by the Claimant and that she would be required to focus more on part-time teaching and the training of full- and part-time staff. The Claimant was unhappy with this, combined with the lack of progress on her visa, and on 21 October 2016, raised a grievance to Ms McHugh. She referred back to the previous year's warning from Mr Shillington and required confirmation of her role. She requested a meeting.

5.16 Mr Cantor held a grievance meeting (of which there are no notes) with the Claimant on 28 October, and on 31 October wrote rejecting the grievance. He did not believe the Claimant in her assertion about the assurances given by Mr Shillington and Ms McHugh as to the visa renewal and as there was no written confirmation, rejected this element, despite knowing that it was highly unlikely in this arena that there would be any such written evidence. As to the responsibilities allegedly allocated and then removed, he did not uphold this because he said he accepted Ms McHugh's evidence that they were only proposals and had not been formally allocated. In the circumstances, the suggestion that Ms McHugh should hear the appeal against his findings might appear somewhat astonishing. However, that is what subsequently happened.

5.17 In his outcome letter Mr Cantor also informed the Claimant that because the issues were affecting her health, she should not come into work again until she was signed as fit to do so by her doctor. In a separate letter, also dated 31 October, the Claimant was warned that she was at risk of redundancy because the college no longer had the need for her services in the Head of Teaching Delivery role that they sponsored her for,

although as I have found, was not the role she had ever performed. She was told she was entering a period of consultation.

5.18 There was no paperwork before me of any analysis of business need, and no evidence of who had discussed what and when. Ms McHugh said that she thought the conversation was "probably" started by Mr Shillington and that they looked at the team members they had and "how that was working". She could not remember even whether Mr Shillington was in the United Kingdom when they had that discussion. Her recollection of what led the Respondent to believe the Claimant's role was at risk was that she, Ms McHugh, was having to spend more time in meetings and to be "more hands-on than she should have been". She said it was taking more of her own time just for the team dynamic to work. She said she had discussed this with the Claimant and in particular the relationship between the Claimant and Mr Judd, another lecturer, and noted that in order for the other lecturers to succeed, they needed to be enabled to stand on their own feet rather than relying on the Claimant.

5.19 Ms McHugh was unable to clarify what, if anything, she had done about the visa issue or what stage she had reached in the potential redundancy discussions with Mr Shillington when the Claimant raised her grievance.

5.20 On 10 November 2016, the Claimant wrote a long letter setting out her concerns and seeking assurances from the Respondent. Mr Cantor replied on 11 November and said that she was now free to return to work on 14 November and the Claimant responded on 12 November saying that she would do so. On 15 November Mr Cantor wrote saying that Ms McHugh would hear her grievance outcome appeal, and, separately, confirming the outcome of their redundancy consultation meeting the previous day, at which no notes were taken. He maintained that the Claimant had been employed as Head of Teaching Delivery and said in the circumstances she could not be pooled with the other lecturers despite having "from time to time carried out lecture duties" because it would not be lawful, and nor were there any appropriate alternative vacancies that would comply with the Migrant Sponsor scheme.

5.21 On 18 November Ms McHugh met the Claimant to hear her grievance appeal, the outcome of which was sent in writing on 22 November rejecting it. A brief note, compiled later and incorrectly dated 18 October, broadly reflects their conversation at the hearing. Ms McHugh said she took notes but has not produced those for this Hearing. On 23 November, Mr Cantor wrote terminating the Claimant's employment with immediate effect on purported grounds of redundancy.

5.22 On 28 November, the Claimant emailed her appeal to Mr Shillington, who forwarded it to Mr Cantor with the words "FYI – Boring!". There is no evidence of any appeal hearing taking place but Mr Shillington then wrote back to the Claimant on 5 December 2016, rejecting her appeal, maintaining that Head of Teaching Delivery was her role and that the description of Senior Lecturer was a mistake in the contract; and that the

Claimant was not eligible for other lecturing roles. He also said that the Respondent was fully in compliance with good employment practice.

6. Conclusions

6.1 The burden of showing the reason for dismissal lies with the Respondent. In this case, the Respondent has asserted throughout that the reason or principal reason was the Claimant's redundancy. I am unable to find that this has been shown on the balance of probabilities.

6.2 Mr Crosfill urged me to find that the Claimant's exact job title was a red herring. He said that the issue according to case law is not whether the Claimant might understandably look at what of her role was still being done by others, and find it unfair that she would lose her job nonetheless, but whether the Respondent had concluded as a matter of fact that her role had diminished or ceased. He submitted that it had diminished and that that had been the Respondent's conclusion on the facts. He submitted that if I found in its favour on that point, I should only then go on to consider whether that conclusion on the Respondent's part was reasonable.

6.3 I do not disagree with Mr Crosfill's legal analysis, but in light of the findings of fact that I have made, I have concluded that the decision to make the Claimant redundant was, as Ms Mallick says, a sham in the sense that it was not a decision made because the Respondent legitimately had a reduced need for someone to do the work of the particular kind that the Claimant did, but was instead a reaction by the Respondent to the Claimant raising a grievance. Before I have to get into the question of whether the statutory definition of redundancy is met, I have considered the context and surrounding facts that pertain to that element of the Claimant's case.

6.4 The repeated assertion that the Claimant was the Head of Teaching, or Teaching Delivery, is not sustainable. That may have been the original intention, and I do not go so far as to find that the role was set down as such as a cynical attempt to meet the COS requirements, but the Respondent cannot hide behind its own lack of paperwork or inconsistency to blur the issues in this regard. It is clear to me that Head of Teaching was not the role that the Claimant was in fact fulfilling, even though that could have placed the Respondent in breach of its obligations under the COS, as to which I am expressly not making any findings. The Claimant fulfilled the job description of a Senior Lecturer. She did not fulfil the job description of Head of Teaching, nor, I find, was she given that as a relevant document when she started. Given that the job description formed part of her contractual conditions, had she fallen short of it, particularly in light of what happened in July 2015, I conclude that Mr Shillington, if nobody else, would have been quick to point that out. I also have no doubt she was the highest paid lecturer, but with her higher level of experience, she was training the others and had, as she notes, moved halfway round the world to work here. Her salary was negotiated on that

basis and does not signify, without more, that she was in fact Head of anything.

6.5 That there is such a complete lack of paperwork as to any restructure is striking, particularly where the protagonists who were discussing it were based on different continents, and Ms McHugh herself did not even work permanently out of the London campus. The suggestion that neither Ms McHugh nor Mr Shillington would have put anything at all in writing – not even a diary entry to organise a conference call - in those circumstances is not plausible.

6.6 Even if it were so, the Respondent has sought to suggest that the lecturers were now in a position to stand on their own two feet, as Ms McHugh put it. But in fact one of the more senior lecturers (Alyson Pearson) had just resigned and another, a new lecturer referred to before me only as Will, had been dismissed after just a couple of months in post. They would have to be replaced, and that would inevitably have been the Claimant's role based on what she had been doing since she came to the United Kingdom.

6.7 Further, the Respondent was already advertising for part-time lecturers to cover, on what I have interpreted as an "as and when" basis, and it was not disputed that 70% of what the Claimant was doing was lecturing. That is not, by any stretch of the imagination, lecturing "from time to time". Lecturing was clearly a very large part of her role, as all the witnesses appeared to agree. The meeting in September 2016 had concluded that she should spend more time doing it. She also had a continuing role to fulfil in helping new teachers find their feet, which again is something she had been doing since coming to the United Kingdom; she notes in the appeal letter of 28 November 2016 that a new teacher had desperately asked for help when the Claimant had recently been able to come into work.

6.8 In any case, what Ms McHugh described was an issue whereby she was having to get more involved in dealing with issues that had arisen between the Claimant and some of the other teaching staff, leading to the Claimant being taken out of some of her previous duties. That is not the same thing as having a reduced need for someone to do them, either temporarily or permanently. It reinforces my findings that Ms McHugh was the Head of Teaching; she was acting in that role to step in when the Claimant was having some conflict with the rest of the team. It does not form the basis of a SOSR dismissal and nor does it meet the statutory definition of redundancy. The Respondent has failed to show a fair reason for dismissal and accordingly the claim is well founded and succeeds.

6.9 I have however gone on to consider the other issues as set out in the parties' lists. Even if I am wrong that the redundancy was the cloak thrown over the decision to dismiss the Claimant because she had raised a grievance, there was a striking lack of consultation at the formative stages. In reality, the Respondent had firmly concluded that the Claimant

would be dismissed, by 31 October when it first wrote informing her she was "at risk". If redundancy was first contemplated in September, not informing her until the last day of October would, even without more, appear to be very late in the process and apparently (according to the letter of that date from Mr Cantor) only once a re-organisation had already been carried out, although I do not in fact see any evidence that it had been; and Mr Cantor had closed his mind to the possibility that there were any alternatives.

6.10 Further, on 31 October, the Claimant was told by a Mr Simkin over text message that he had been informed she was not coming back and that nobody could give her colleagues any more details. Mr Simkin reiterated "they didn't say anything, just that u will be no longer teaching". On 6 November, the Claimant received an email from a former student saying that her email at the Respondent was not accepting incoming emails.

6.11 This was not a consultation; the Claimant's dismissal was a concluded fact notwithstanding the Respondent's solicitors' assertion on 9 November that the Respondent would be progressing to "consult formally" with the Claimant.

6.12 I accept that it is for an employer to determine the correct pool in a redundancy exercise, but that is something to which the employer must first have reasonably turned its mind; in this case, I find there was no consideration at all to whether there should be a pool and if so who might be in it, even if I am wrong about the decision to dismiss having been made before the Claimant was placed at risk and about the reason for the dismissal in the first place.

6.13 There was, similarly, no investigation whatsoever by Mr Cantor, who accepted in cross examination that he had not looked into the guidelines around the extension of tier 2 sponsorship. There were several possibilities for alternatives, e.g. whether the COS could be extended or amended, whether the Claimant could change her status (as she has done since), whether the Respondent would be unable to fill the vacancies from the resident labour market and continue to appoint the Claimant in her role, or even whether the Claimant could fulfil another role either in the United Kingdom or elsewhere such as in Australia, again notwithstanding the Respondent's solicitors' assertion on 9 November that their client would consider whether there were any suitable alternatives. That would have been the overwhelmingly obvious thing to do, if Mr Cantor genuinely believed that the COS was no longer valid as the Claimant would have to return to Australia. Any reasonable employer knowing that would have made an enquiry as to vacancies in Australia. Mr Cantor however looked neither at varying the COS nor varying the Claimant's status, nor did he check the guidance or take legal advice from his retained solicitors. He cannot argue that he carried out reasonable consultation judged by the standards of a reasonable employer.

6.14 However, in light of the strained relationship between the Claimant and Mr Shillington, it is scarcely surprising that Mr Cantor did not do so. Mr Shillington had made his views very clear in his pithy "Boring" email. I have no doubt that this reflected his disparaging view of the Claimant and that she was entirely justified in finding him "scary". He is mistaken if he believes in this instance he has correctly observed United Kingdom employment legislation and good, let alone best, practice. While Mr Cantor fairly accepted when I asked him about the email that he hoped that Mr Shillington would consider facts presented to him and come to a sensible judgment, he also acknowledged that he could not say that with certainly. He said that Mr Shillington is the sort of person who will fire off something and then perhaps repent at his leisure. That does indeed appear to be what has occurred here.

6.15 For completeness, I conclude the following on the list of issues:

i) can the Respondent establish a potentially fair reason for dismissal? No;
ii) if it had established redundancy as a fair reason, did it act reasonably in applying the test under s.98(4) ERA? No;
iii) did it adequately warn the Claimant about its proposals? No;
iv) did it adequately consult her before it came to its decision to terminate her employment? No;
v) did it act reasonably in forming the selection of a pool of one? No;
vi) what role was the Claimant actually employed to undertake? Senior Lecturer;
vii) was she engaged on terms and conditions that differed from others? No, save as to her salary, which in all the circumstances was not unusual;
viii) did the Respondent give reasonable consideration to some other suitable alternative employment? No;
ix) if the reason for dismissal was the Respondent's understanding of the Claimant's immigration status was that SOSR and was the dismissal fair? That was not the Respondent's understanding, or could not reasonably have been; it was not SOSR and it was not fair.

7. Remedy

7.1 I make an Order by consent that the Respondent shall compensate the Claimant in the sum of £55,000 in full and final settlement of this matter including as to costs; that is an agreed sum following the adjournment. This is broken down as to the first £30,000 being compensation for the unfair dismissal and the balance of £25,000 being the Claimant's legal fees incurred in dealing with this matter including presenting her claim before the Employment Tribunal.

7.2 I record that I considered making an employer penalty under section 12A Employment Tribunals Act 1996 but concluded, without having heard from Mr Crosfill, that the aggravating features that are the threshold for such a penalty were not present in this matter.

Employment Judge Norris

Dated: 22 September 2017