Case Number: 3201700/2017

RM

EMPLOYMENT TRIBUNALS

Claimant: **Ms Dominica George-Oppong**

Respondent: **Travelers Management Limited**

Heard at: **East London Hearing Centre**

On: **14 – 16 August 2018 and (in Chambers) 21 September 2018**

Before: **Employment Judge Barrowclough**

Members: **Mrs Kim Freeman**
Mr Matthew Rowe

Representation

Claimant: In person

Respondent: Mr J Chegwidden (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant was not unfairly dismissed, under either s.98 or s.99 Employment Rights Act 1996; that the Respondent did not discriminate unlawfully against the Claimant, whether directly because of her sex or by treating her unfavourably because of her pregnancy or maternity leave (ss. 13 and 18 Equality Act 2010); and that the Respondent did not fail to comply with the duties in either regulation 10 of the Maternity and Parental Leave Regulations 1999 or regulation 39 of the Shared Parental Leave Regulations 2014. Accordingly, all the Claimant's complaints are dismissed.

REASONS

BACKGROUND

1 By her claim, presented to the Tribunal on 9 December 2017, the Claimant, Ms Dominica George-Oppong, raises a number of complaints against Travelers Management Limited, her former employer and the Respondent in these proceedings. They include (a) automatic unfair dismissal, in breach of s.99 Employment Rights Act 1996 ('ERA'); (b)

'ordinary' unfair dismissal (s.98 ERA); (c) pregnancy and maternity discrimination, contrary to s.18 Equality Act 2010 ('EA'); alternatively (d) direct sex discrimination, contrary to s.13 EA; and (e) a failure to comply with the duty in Reg.10 Maternity and Parental Leave Regulations 2010 (the obligation to offer alternative employment if there is a suitable available vacancy). The Respondent accepts that it employed the Claimant as a service centre supervisor/team leader between 1 July 2015 and 30 September 2017, when she was dismissed: the Respondent asserts that the reason for her dismissal was redundancy, and that it acted reasonably in dismissing the Claimant, and resists and disputes all her complaints.

2 We heard the parties' evidence and submissions over the course of a three-day hearing between 14 – 16 August 2018, at the conclusion of which, and due to a lack of available time, we reserved our judgment. The Tribunal reconvened in the absence of the parties on 21 September 2018 to review the evidence and submissions we had heard and read, and to reach this judgment and these reasons. The Claimant represented herself before us, and gave evidence in support of her claim. The Respondent was represented by Mr James Chegwidden of Counsel. He called as witnesses (a) Mr Joe Copp, the Respondent's Head of Operations (Europe); (b) Ms Sarah Cornwell, one of the Respondent's HR directors; (c) Ms Geraldine Harper, the Claimant's line manager and a director of Shared Services (Europe); and (d) Mr Tim Howard, formerly the supervisor/team leader at the Respondent's service centre in Redhill, Surrey, and since October 2017 an outsourcing process controller based there.

3 The issues to be determined at this full merits hearing were agreed at the Preliminary Hearing before Employment Judge Foxwell on 26 February 2018, and are set out at paragraph 5 of the resulting order. In terms of documentation, we were provided at the outset with an agreed bundle, to which a number of pages were added by agreement during the course of the hearing; a chronology prepared by the Respondent; a skeleton argument on behalf of the Respondent prepared by Mr Chegwidden; and finally a note of, or rather script for, the Claimant's closing submissions.

FINDINGS OF FACT

4 The Respondent is part of a US-based insurance group which has a significant presence in the UK, and which operates through a number of subsidiary companies. Up until 2016, the group's UK business was divided into three segments: business insurance, bond and speciality insurance, and business written through its syndicate at Lloyds. Operations support was provided to underwriters in those segments by a number of separate or distinct teams, based in what were described as 'service centres'. The subsidiaries with which we are concerned are an insurance company called Travelers Insurance Company Limited ('TICL'), which operates from eight separate locations in the UK and one in Ireland, and which handles business, bond and speciality insurance; and secondly an underwriting company at Lloyds called Travelers Syndicate Management Limited ('TSM'), which has offices at Exchequer Court and at Lloyds in the City of London, and which handles business written at Lloyds. The Claimant was based at the Respondent's office in Alie Street, also in the City, and apparently a few minutes' walk from both the TSM bases. In all, the group employs approximately 550 staff within the UK.

5 At all relevant times, the Claimant's role and job title was as the supervisor or team leader for the service centre supporting underwriters within TSM, and a copy of her

job description is at pages 99 – 101 in the bundle. Essentially, the Claimant's role was to manage the service centre team providing post-sales support to underwriters within TSM, who are based at either Exchequer Court or at the Lloyds' building. The Claimant's team consisted of five permanent employees and up to five contractors, who were generally hired for terms of six, but occasionally twelve, months. The Respondent has another service centre at offices in Redhill, Surrey. The team there provide similar types of post-sales support to underwriters within TICL at their various locations in the UK and Ireland, and was managed by another supervisor or team leader, Mr Tim Howard. Finally, there is a third service centre or operations team, based at Exchequer Court and managed by Ms Charlotte Rose, whose job title was senior underwriting account manager ('SUAM'), whose purpose was to provide *pre-sales* support to underwriters in TSM. The Respondent contends that the role and functions of that operations team, managed by Ms Rose, was wholly different in nature to the *post-sales* back office administration and processing activities provided by members of the respective TSM and TICL service centre teams.

6 In 2016, the Respondent initiated a strategic review of its operations across Europe, including both TSM and TICL; and, with the assistance of external management consultants, a transformation programme was devised and started to be implemented during that year. The objective of that review was to reduce expenses and improve the focus on the customer, a key part of achieving that goal being to work out how the current business processes could be made more efficient, and including making improvements in both the underwriting and underwriting support functions. It became clear at an early stage in the review that such improvements were likely to lead to a rationalisation of roles, and inevitable redundancies. A first round of redundancies took place in October/November 2016, although only employees in the Respondent's IT Department were affected or included. However, by July 2016 or shortly thereafter, the Respondent began to consider a rationalisation of the post-sales support teams in both London (led by the Claimant) and Redhill (led by Mr Howard). That was to be achieved by (a) elimination of some of the processes currently being undertaken through enhanced technology; (b) outsourcing other processes to an offshore external provider: and (c) a reduction of the London based team and relocation/incorporation of its team members into the Redhill service centre, under a single team leader or supervisor, as being a more cost-effective location.

7 As Mr Copp, the Head of the Respondent's Operations Function for Europe, explained, one of the Respondent's main aims, as identified by external consultants during their review of the business, was to reduce their post-sales processing and administrative workload through automation and outsourcing where possible; by centralising the remaining work so that it be undertaken by one team, in order to maximise efficiency and utilise capacity in full; and to avoid the duplication involved in two teams undertaking essentially the same tasks. The Respondent considered that, whilst there were differences in some of the tasks undertaken by the TSM service centre team in Alie Street due to Lloyds' specific requirements, the post-sales work undertaken by the two service centres was broadly similar, and that it would be more appropriate to have it performed by one rather than two teams. Secondly, the volume of work actually being carried out by the TSM service centre in Alie Street was reducing in any event, due to technological automation, outsourcing some functions to an external service provider in India, and the expiry and non-renewal of the six or twelve month contracts for five 'contractor' members of the team based there. Additionally, one of the Alie Street employees was coming up to retirement, and another was on long term sick leave. Finally, the Redhill service centre had a significantly lower costs base, both in terms of premises and staff salaries, than the service centre in Alie Street.

8 As a result, Mr Copp initially recommended that, as part of the overall rationalisation process, the staff headcount in the TSM service centre be reduced to effectively none, with any remaining members of staff there being transferred to the TICL service sector based in Redhill, managed by Mr Howard. Mr Copp considered that since all of the TSM service centre roles and functions in Alie Street were either being outsourced abroad, automated, or transferred to the Redhill service centre, the role of team leader or supervisor at the TSM service centre would be redundant. As the restructuring process evolved, it was decided that the roles of the two remaining employees at the Alie Street TSM service centre who undertook post-sales work on Lloyds' business, namely Mr Hall and Mr Trepant, should relocate to Charlotte Rose's team in London, rather than to Redhill. Although their duties related to post-bind work, rather than pre-contractual support like the rest of her team, all of it related to Lloyds business, which Mr Copp thought it would be sensible and logical to combine, particularly since all Lloyds' underwriters were based in London.

9 The Claimant informed the Respondent in July 2016 of her pregnancy, which as she says came as a surprise to her, her other children having been born some years earlier, commenced her maternity leave on 23 January 2017, and her baby was born on 27 January 2017 by caesarean section. The Claimant returned to work, resuming her former role, on 10 July that year; during her maternity leave, temporary cover as TSM team leader was provided by Mr Howard, who visited the Alie Street office regularly, usually two or three times a week. None of the Respondent's rationalisation proposals, summarised above, which would or might affect the Claimant and others, had been disclosed to her or to anyone else potentially affected before the Claimant's departure on maternity leave. In fact, the Respondent's second round of collective redundancy consultation, arising out of their 2016 strategic review, commenced shortly thereafter on 3 February 2017. As can be seen from page 170, there was an *'all employees'* email on 2 February, when the Respondent notified all its staff that a period of collective consultation, which could potentially result in up to 60 redundancies, was commencing. A detailed information pack was then provided to the employee forum representatives, who had been nominated by staff across the Respondent company. The employee representatives then emailed staff potentially affected, including the Claimant, who was forwarded details of the proposals and associated information to her private email address late on February 3 (page 170). That in effect followed up the email which the Claimant's line manager had sent her at 1652 hours that same day, in which Ms Harper said that there had been some announcements at work on which she would like to update the Claimant, proposing a phone call on 7 February at 10.30am. That date was acceptable to the Claimant, and the conversation duly took place then. Neither Ms Harper nor the Claimant dealt with what was then said during their evidence; but in any event, nothing of substance seems to have happened thereafter, and neither the Claimant nor the Respondent seem to have taken matters any further, until 8 March, about a month later.

10 On that date, the Claimant was by agreement phoned at home by Ms Harper, who was accompanied by Ms Cornwell, an HR director, as part of the individual redundancy consultation process initiated by the Respondent, following earlier voicemails and messages proposing and arranging that conference call. During their phone conversation, the Claimant was officially informed that her role was at risk of redundancy. Ms Harper explained to her that it was proposed that the TSM service centre be amalgamated with and incorporated into the Redhill service centre under one team leader, namely Mr Howard, that accordingly her role as team leader at Alie Street was at risk of redundancy, and that the current phone conversation was a first meeting, part of individual redundancy

consultation with her. Ms Harper says, and it was not disputed, that she spoke to a pre-prepared script during the call, a copy of which is at page 172 in the bundle. At the conclusion of the conversation, the Claimant was invited to email Ms Harper with a list of any questions that she might have, or any proposals that she wanted the Respondent to consider, in order to mitigate her proposed redundancy, in order that those matters could be considered and then discussed at the follow up meeting (by telephone), which would take place a week later.

11 The Claimant certainly accepted that invitation, as can be seen from her email at page 182, sent to Ms Harper and Ms Cornwell at about 2.30pm that same day, 8 March. The questions or points then raised by the Claimant can be summarised as follows: why had it apparently been automatically assumed that Mr Howard should become the service centre team leader in Redhill, rather than both Mr Howard and herself having to apply for that role?; that it would be possible for her to assume responsibility for those reporting to Mr Howard, instead of Mr Howard continuing to manage the Claimant's reports, as he had been doing during her maternity absence; whether she, as someone on maternity leave, would have preference over other employees/workers in relation to suitable alternative work; and whether any such work would be offered to her automatically, rather than her having to apply for it. The Claimant also pointed out that, had it not been for her maternity leave, Mr Howard would not have been temporarily managing her reports at Alie Street in her absence; stated that she might well be interested in a role based at the Redhill office, depending upon the nature of that role; and that it should not be automatically assumed that working from Redhill would be unsuitable for her.

12 Also on 8 March, Ms Cornwell had followed up her phone conversation with the Claimant that morning with an email at about 5.00pm, to which were attached the Claimant's *'at risk'* letter, a list of current vacancies within the Respondent's business, and the Respondent's employee assistance programme brochure. Ms Cornwell went on to reply to the matters raised by the Claimant in her email of 8 March on 14 March, six days later. Her email is at pages 186/188. It starts by inviting the Claimant to a second individual consultation meeting by telephone on the following day (15 March) at 1.20pm. Responding to the questions raised by the Claimant, and once again in summary, Ms Cornwell stated that it was the Respondent's intention that the 'operations team' would be based in Redhill, and that the redundancy selection pool had been based upon staff members' current working locations and roles, as well as their current salaries. On that basis, given that the Claimant was based in London and Mr Howard in Redhill, and that she was paid significantly more than him, their roles had been treated by the Respondent as '*single incumbent'* roles, and had not been pooled together. Secondly, Ms Cornwell said that the Respondent's current proposed reorganisation was the result of a lengthy review process, which predated the Claimant's maternity leave, and that that fact had not influenced the Respondent's decision or the process in any way. Thirdly, the Respondent confirmed that if any suitable alternative roles existed, then the Claimant should be placed in one of those roles by virtue of her maternity status without the need for any application. Ms Cornwell went on to say that the Respondent did not in fact consider that any such suitable alternative roles currently existed. The role of 'shared services operations supervisor' in Redhill, to be undertaken by Mr Howard, was at a salary band below the Claimant's existing level, and her current salary was in fact significantly higher than the range offered for that role - approximately £10,000 p.a. For those reasons, Ms Cornwell continued, the role had not been deemed as being suitable alternative work for the Claimant, although if she was interested in it, then she was invited to apply. The Claimant was also told that if a suitable alternative role did arise before any confirmed termination

date, then it would indeed be offered to her, and that she would lose any right to any redundancy payment if she did not accept it. Ms Cornwell made clear that the Respondent considered that any change in the Claimant's work location from the City of London to Redhill would be seen as a substantial change, and that a trial period in any such new role would be offered in that event.

13 Ms Cornwell had in fact already written to the Claimant on 10 March, once again by email, on a separate but related issue. The Claimant had apparently seen from a recent update to Mr Howard's 'LinkedIn' profile that it appeared that he was assuming and taking over the Claimant's role, and had queried this with Ms Cornwell. In her email, Ms Cornwell sought to clarify the position, which, she said, was that there had been no change to Mr Howard's current role, and that as before he was simply covering the Claimant's responsibilities on an interim basis whilst she was absent on maternity leave. That situation had arisen because, as Mr Howard explained in his evidence, he was aware from about January 2017 onwards that changes were afoot within the Respondent undertaking, and he feared that he might be at risk of redundancy. Accordingly, he had amended his LinkedIn profile from then until about March that year to include his covering the Claimant's role and duties, in case he was selected and dismissed.

14 The second consultation telephone meeting took place, as had been agreed, on 15 March. During that conversation, Ms Harper, in her role as the Claimant's line manager, spoke to the script prepared for such meetings at page 173. That makes clear that the Claimant had been provisionally selected for redundancy, as being in a single incumbent role. The Claimant, Ms Harper and Ms Cornwell discussed the questions that she had raised following the first consultation meeting, to which a written response had as noted already been provided. The Claimant also asked about a payment in lieu of notice of termination. Following that call, outplacement consultation for six months was offered by the Respondent and accepted by the Claimant; and over the course of ensuing email correspondence, the details of the benefits to which the Claimant was entitled (including holiday pay and a redundancy payment) were clarified at the Claimant's request. It is agreed that more or less simultaneously the Claimant applied for two vacant roles with the Respondent which were based in London, namely a role in their claims team and also as a branch manager. Neither application was successful, since the Respondent considered that the Claimant's skills and experience were not adequate or appropriate to fulfil either role. Whilst there is no confirmatory documentation in relation to the branch manager role in the bundle so far as we are aware, page 202 relates to the Claimant's application for a role in the Respondent's claims team. The Claimant accepts that she did not apply for any vacant roles that were based in Redhill.

15 Ms Harper then wrote to the Claimant, formally terminating her employment by reason of redundancy, on 23 March 2017, a copy of which letter is at pages 197/199 in the bundle. In her letter, she confirmed that the Respondent had been unable to identify either a means of avoiding redundancy, or a suitable alternative role within the organisation, and that the Claimant's employment would terminate on 30 September 2017. The letter goes on to give details of the Claimant's entitlements; and additionally that, if she remained in her current employment with the Respondent until the specified termination date of 30 September 2017, she would be eligible for a retention bonus. The letter also gave details of a proposed ex-gratia payment if the Claimant was willing to enter into a settlement agreement confirming that she had no further claims against the Respondent (which eventuality did not, of course, arise).

16 There then followed a discussion between the parties about the possibility of the Claimant taking shared parental leave. The Claimant had originally indicated a wish to do so by means of discontinuous blocks of such leave, but the Respondent was not happy with that proposal. Following further negotiations, it was agreed that the Claimant would take a continuous block of two weeks' parental leave to cover the final two weeks of her employment, up until 30 September 2017, rather than taking that period as annual leave.

17 The Claimant then returned to work from maternity leave on Monday 10 July, resuming her former role at Alie Street, with the three remaining members of staff from her original TSM team there still reporting to her (Mr Hall and Mr Trepant, together with Mr Wallis, although he was signed off on long term sick leave due to cystic fibrosis). Ms Cornwell wrote to the Claimant on 18 August identifying and confirming her (by now agreed) shared parental leave arrangements, as well as her contractual and other entitlements, up to the conclusion of her employment. In particular, it was confirmed that the terms of the Claimant's shared parental leave would run from 18 September until 1 October 2017. Mr Howard remained as the TICL team leader in Redhill until November 2017.

18 As noted earlier, the Respondent had in fact conducted a further efficiency review, once again using external consultants, during the summer of 2017. The outcome of that review was a further simplification of their working processes. In particular, and so far as is relevant to this case, it was then proposed to amalgamate the combined post-sales service centre team, now based in Redhill, with the Respondent's core operations team. The service centre team in Redhill was to be integrated with the Respondent's 'shared services' team, which also operated from Redhill (for TICL underwriting) and Exchequer Court (for TSM underwriting). One of the consequences would be that the role of service centre team leader, then being undertaken by Mr Howard, would become redundant, coupled with the creation of a completely new and 'stand-alone' role of 'offshore specialist', once again based in Redhill, supervising the Respondent's outsourced operations, but with no staff managerial duties involved. Those proposals were accepted by Mr Copp and duly actioned by the Respondent. Ms Cornwell told us that, whilst she did not believe that this new role would be suitable for the Claimant and that it did not amount to 'suitable alternative employment', because of its location, lower salary, and a lack of managerial responsibilities, she nevertheless wrote to the Claimant to inform her of the vacancy, in case she was interested, and also provided a link to the relevant advertisement, under cover of her email of 22 September (page 273). Mr Copp, on the other hand, told us that he thought that the Claimant would have been a credible candidate for the role. In any event, however, the Claimant did not respond to Ms Cornwell's email, or apply for or express any interest in the role of offshore specialist, the details of which are set out at pages 278A – 281 of the bundle. In fact, Mr Howard and one other internal candidate applied for the new role; and Mr Howard was successful. As can be seen from the letter dated 27 October 2017 informing Mr Howard that his application had been accepted (page 281A), the salary for that new role was £44,000 gross per annum; whereas it is agreed that the Claimant's closing salary was £53,000 p.a.

19 Finally, the last two members of the Claimant's original team in the TMS service centre at Alie Street, Mr Trepant and Mr Hall, were moved to the underwriting account manager's team, led by Charlotte Rose, on 30 September 2017, the date when the employment of the Claimant and some 53 other members of staff terminated, all as a result of the Respondent's strategic reviews. Mr Trepant and Mr Hall, together with the

absent Mr Wallis, had originally been transferred to Mr Howard's team, but only for a short period of about a week or 10 days before the amended restructure plan came into effect.

20 A copy of the Claimant's CV is at pages 308 and 309 in the bundle. It is clear from that document that the Claimant is a highly qualified individual, having a MSc in business information systems from the University of London, as well as a number of Institute of Chartered Insurers qualifications. Prior to joining the Respondent in June 2015, the Claimant had worked continuously since September 2000 for a number of different undertakings in the insurance sector, all of those roles being geographically located in the City of London. Additionally, the Claimant told us that she had successfully applied for alternative employment in late August/early September 2017 with Antares, once again a firm operating from the City of London, undertaking Lloyds syndicate work. Her role with that company is as an underwriting services team leader. The Claimant's employment with Antares started on 23 October 2017, three weeks after the termination of her employment with the Respondent (albeit that, as Ms Cornwell's letter at page 254 dated 18 August makes clear, her shared parental pay from the Respondent continued until 20 October). In her new role with Antares, which the Claimant said was of a temporary nature, albeit she remained in employment at the date of the hearing before us, her annual salary was £56,000, which represents a small increase on the salary of £53,000 paid to her by the Respondent.

DISCUSSION & CONCLUSIONS

21 As noted at the outset of these reasons, the Respondent accepts that it dismissed the Claimant, asserts that its reason for doing so was redundancy, and that it acted reasonably in dismissing her. Our first task is therefore to determine what was the actual reason for the Claimant's dismissal, whether it was in fact redundancy, or alternatively whether the sole or principal reason related to or arose from the Claimant's pregnancy, or from her taking maternity leave.

22 Self-evidently, there must first be a genuine redundancy situation in order for dismissal to be on the ground of redundancy. S.139ERA sets out the various economic state of affairs which amount to a redundancy situation. These include *'that the requirements of the business 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, either permanently or temporarily'* (s.139(1)(b) & (6)). Mr Chegwidden submits on the Respondent's behalf that the requirement for a team leader of the post-sales TSM operations support service centre in the City of London was expected to and did in fact diminish over the course of the first nine months of 2017. That, he says, can most clearly be seen in that, as a result of the review and restructure undertaken by the Respondent, the Claimant's team of reports diminished from being nine or ten individuals at the start of that year to just two people by September. Secondly, with the incorporation of those two into the TSM operations team managed by Charlotte Rose on or shortly after 30 September 2017, the whole of the post-sales TSM operations support service centre was then abolished. Accordingly, there was a consequent reduction of the need for a leader (in this case the Claimant) to lead that team, which had simply ceased to exist.

23 The Claimant does not really contest this issue in her written submissions, focusing rather on the redundancy 'pool' adopted by the Respondent, what steps they took (or didn't) to identify suitable or potential alternative employment, and the

fundamental reason why she was dismissed. Nor did the Claimant dispute Mr Copp's evidence that the review undertaken by the Respondent, which resulted in an overall 10% reduction in the Respondent's headcount and a significant number of redundancies in their London offices, had started before the Claimant had announced the fact of her pregnancy in July 2016, or subsequently taken maternity leave.

24 In the circumstances, we are in no doubt that a genuine redundancy situation existed, as the Respondent contends. We consider hereafter the legitimacy of the pool of one – the Claimant- and whether Mr Howard and/or Ms Rose should have been included in it: but the simple fact is that one of the Respondent's three operations support teams or service centres disappeared, and with it went the need for a leader or supervisor of that team or centre.

25 Was the Claimant's dismissal wholly or mainly attributable to that state of affairs, namely a redundancy situation? For essentially the reasons set out above – the post-sales team leader being surplus to requirements, the major review/restructure having been initiated before the Claimant's pregnancy was known, and the fact that it was the Claimant's team that was disappearing - the Respondent submits that it was, and that the Claimant's dismissal had nothing to do with her performance, or because she was pregnant and/or would be taking maternity leave. In terms of performance, it was accepted that the Claimant had met almost all of the criteria for her role as supervisor or team leader in her last annual review, and her line manager Ms Harper's evidence to the Tribunal had been that the Claimant was an effective leader who was professional, easy to work with and supportive. Conversely, there was no evidence before the Tribunal from which we could conclude or infer that the Claimant's pregnancy or anything related to it had any bearing on her dismissal, not least because the major restructure undertaken by the respondent was independent of and mostly unrelated to her and had been commenced before her pregnancy was known. Finally, it was clear that the Claimant herself had focussed on the redundancy pool issue, rather than on whether the dismissal of any team leader or supervisor was appropriate or justified.

26 The Claimant puts forward a number of contentions in relation to this issue. First, that the alleged redundancy of the role that Mr Howard was to be exercising after September 2017 (team leader for all post-sales support for both TICL and TSM underwriters) was manufactured and a sham, simply being created because the Claimant had refused to sign up to a compromise agreement. Secondly, that it was when the Claimant made it known in about mid-September 2017 that she was unhappy that she had not been pooled with *'any of the other London team leaders',* and also that her role had been given to a man who had been brought in to cover her reports during her maternity leave, and that she thought that both amounted to discrimination, that the Claimant was informed of the new role of offshore specialist, based in Redhill. Thirdly, that some of the former members of the Claimant's team, who had initially been assigned to Mr Howard, were then re-assigned to Ms Rose, to 'disprove' any discrimination argument. Fourthly, that the Claimant was the only grade 4 banded employee who was placed in a redundancy pool by herself. Finally, that it was the prospect of the Claimant returning to work and requesting flexible working which decided Mr Copp, who apparently took the decision to dismiss her, to pick her for redundancy.

27 We find that the sole reason for the Claimant's dismissal was because of the redundancy situation arising on the Respondent's review and their decision to streamline

the administrative and support functions for their underwriters. Whilst we consider the reasonableness of adopting a redundancy pool of one in relation to the service team leader role hereafter, we accept that there is at least a degree of logic and rationality to the 'location' approach adopted by the Respondent, and that there is nothing to suggest that the Claimant's gender or pregnancy had any impact on that decision, particularly since the Respondent accepted that she was a valuable employee. The Claimant's arguments, on the other hand, we find to be unpersuasive. Many of them focus on the situation in or shortly before September 2017, at the end of which month her employment would terminate. The problem with those contentions, apart from the lack of supporting evidence and that many of the substantive allegations were not put to the Respondent's witnesses, is that by then the die was well and truly cast: the redundancy consultation meetings, and the decision to dismiss the Claimant, had all taken place in March 2017, six months earlier, there had been discussions agreeing the benefits the Claimant would receive on termination, and it is difficult to see what impact those significantly later events cited by the Claimant (assuming they could be proved) could have on a decision to dismiss her for redundancy taken much earlier. It is also not correct to say that the Claimant was singled out as a grade 4 employee for redundancy on her own. It is clear from the organogram at page 104A that a significant number of 'stand-alone' managerial roles, most at grades 5 or 6 but also some at grade 4, disappeared as a result of the Respondent's 2016/17 restructure/review, and it seems to us very likely that most if not all of those individuals were not pooled either. Two organograms showing the relevant structure after the respective reviews had taken effect, as at 1 October and 1 November 2017, are at pages 274 and 275. Finally, there is simply no evidence that the possibility of the Claimant seeking flexible working on her return from maternity leave was ever raised with Mr Copp, much less that it impacted on his decision; and that allegation was never put to him. For these reasons, we unanimously find that the Claimant's pregnancy and/or maternity leave had no impact on and were not the reason for her dismissal. For the avoidance of doubt, we also reject the suggestion that the steps taken by the Respondent in September 2017 and thereafter in relation to the service centre support team, including Mr Howard's redundancy situation, the reassignment of Messrs Hall and Trepant, and the creation of the offshore specialist role were a sham or attempts to justify or cover up the Respondent's treatment of the Claimant.

28 We turn to consider the fairness of the Claimant's redundancy dismissal. As EJ Foxwell stated at the preliminary hearing on 26 February 2018, the Tribunal will consider *'the construction of the pool of affected workers, the basis of selection from within that pool, the adequacy of consultation and whether there was a sufficient search for suitable alternative employment'.* It makes sense to consider the first two issues identified together, since the respondent accepts that the Claimant was placed in a pool of one.

29 Mr Chegwidden relies on two authorities from the Employment Appeal Tribunal. First, **Halpin v Sandpiper Books Ltd UKEAT/0171/11** where it was held that, if there is a good reason to do so, an employer is entitled to consider a single employee for redundancy. Secondly, **Capita Hartshead v Byard UKEAT/0445/11/RN**, where the EAT held that (a) '*it is not the function of the 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*'; and (b) '*the question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind to the problem'*. Mr Chegwidden reminded us that Ms Cornwell, the HR director involved, had given specific and unchallenged oral evidence that

she and Mr Copp had considered the question of pools for the upcoming redundancy consultation in January/February 2017. They had taken into account the location of the two affected service centre teams, namely Alie Street and Redhill; and also the roles undertaken by the two team leaders/supervisors, the Claimant and Mr Howard. The Alie Street team was reducing and ultimately disappeared, with all of the continuing TSM work to be undertaken in Redhill or within Charlotte Rose's team. Mr Howard undertook TICL work, and was temporarily covering TSM work in the Claimant's absence on maternity leave, whilst the Claimant had only ever done TSM work; and there had not been much crossover in relation to their respective work areas and duties, as Mr Howard's evidence that he had to access the Claimant's job description in order to see what she actually did, prior to providing temporary cover, proved. On that basis, Ms Cornwell and Mr Copp identified the Claimant as the sole redundancy candidate at team leader level in terms of service centre support work. Mr Chegwidden submits that such a process of evaluation and consideration by the Respondent was rational, reasonable and therefore permissible; that the Respondent having applied their minds to the issue and having reached not unreasonable conclusions, it is not for the Tribunal to suggest or substitute an alternative that might seem to us to be fairer.

30 The Claimant's suggestion that it would have been appropriate to pool her with not only Mr Howard, but also Charlotte Rose was, it was submitted, even less credible. Although Ms Rose's team dealt with TSM work, as did the Claimant's, the similarities ended there. Ms Rose's team dealt with pre-bind support for underwriters, not post-sales work, and she reported within a different line manager structure. The work of Ms Rose's team was continuing and unaffected by the Respondent's review, therefore she as team leader would be particularly unsuitable to be pooled with the Claimant and Mr Howard; and the Claimant had at no stage of the redundancy process suggested that Ms Rose should be included in the pool (unlike Mr Howard). The only evidence of any overlap in terms of work between the two service centre teams was of two team members (Harry Hill and Kathy Maryon) who had provided temporary cover whilst an underwriter in Ms Rose's team was on maternity leave for some months. That was by its nature exceptional, and overall the decision not to include Ms Rose (or indeed Mr Howard) in any redundancy pool certainly did not fall outside the **Williams v Compair Maxam** range of reasonable conduct.

31 Mr Chegwidden submitted that, even if the Respondent had opted for a pool of both the Claimant and Mr Howard, it was likely that Mr Howard would have been the successful candidate for the remaining service centre team leader role, given their respective most recent performance reviews and Ms Cornwell's evidence to the Tribunal. Finally, Mr Howard's role had itself become redundant in November 2017 as a result of the second review undertaken by the Respondent. Accordingly, the best the Claimant could have achieved was to have been in exactly the same position as Mr Howard at that point in time, having to apply for the offshore specialist role to avoid a redundancy dismissal. Mr Howard had successfully applied for that role; whereas the Claimant had been given the opportunity to apply, but had failed to do so.

32 We summarise the Claimant's submissions as to pooling as follows. First, that the Respondent had changed or *'updated'* the profiles for her own, Mr Howard's and Ms Rose's roles more or less simultaneously on 29 October 2017 (pages 98,101 and 104), by which time the Claimant had already been dismissed and intimated a claim against the Respondent; and that the reason for so doing was to inflate Mr Howard and Ms Rose's

roles at the expense of her own. Such an exercise does not sit well, the Claimant suggested, with the Respondent's insistence on a redundancy pool of one. Secondly, it would have been a fair and transparent redundancy procedure to have adopted a pool of three – herself, Ms Rose and Mr Howard – and would have cost the Respondent nothing. The Claimant also makes the point that three of her former TSM team members were assigned initially to Mr Howard, before being re-assigned to Ms Rose. Thirdly the Claimant disputes that, as between herself and Mr Howard, he was the stronger candidate for the single service team supervisor role, based on their respective performance reviews; and that in any event, allowances in her favour should have been made in any such comparison, bearing in mind (a) that the Claimant was a relatively new employee, still 'learning the ropes', whilst Mr Howard wasn't; and (b) that the Claimant had become pregnant during the period covered by her last performance review, and found it difficult to get between one office and another as quickly as she had, and also missed appointments due to attending medical appointments, thereby prejudicing her performance figures. Finally, the Claimant submits that there was in fact a marked degree of overlap between the work undertaken by her TSM team and that led by Charlotte Rose, which had already been highlighted by team members and raised by the Claimant with Mr Copp: and that the reason why Mr Copp could not recall any meeting at which those matters were discussed was due to a selective memory. In fact, the Claimant submitted, there was a significant degree of similarity and equivalence between her role and team and the team led by Ms Rose and her role.

33 It seems to us that there were in fact considerable similarities between the roles and the work undertaken by the Claimant and Mr Howard and their respective teams. After all, Mr Howard was able to provide cover for the Claimant as TMS team leader during her maternity leave absence without requiring any particular training, so far as we were told. Additionally, there was certainly a degree of overlap between the Claimant's team in Alie street and Ms Rose's team in Exchequer Court, in that both dealt exclusively with TMS support and assistance for Lloyds underwriters, two members of the Claimant's team were able to provide cover during the maternity leave of one of Ms Rose's reports, and Messrs Hall and Trepant ultimately ended up in Ms Rose's team, since the Respondent considered that to be the logical place for them. We do not think that there can have been that much of a substantive difference between the Claimant and Ms Rose's respective roles; and we can understand why the Claimant asserts that it might have been fairer for the Respondent to have adopted a redundancy pool including at least herself and Mr Howard, as well perhaps as Ms Rose. Had the Respondent chosen to do so, then we do not consider that could have been described as an unreasonable decision. That, however, is not the appropriate test, as Mr Chegwidden correctly reminded us. We find, and in fact it was not contested, that the Respondent, in the shape of Mr Copp and Ms Cornwell, specifically considered and addressed the issue of whether or not the Claimant should be placed in a redundancy pool of more than one. They decided not to do so, for legitimate and objectively justifiable reasons: the significant difference in locations and salaries between the Claimant and Mr Howard, and that it was the Claimant's team, rather than those of either Mr Howard or Ms Rose, which had ceased to exist. Accordingly, in our judgment the Respondent's decision not to pool the Claimant with Mr Howard and/or Ms Rose, but rather treat her role as being that of a single incumbent, was a reasonable one, and falls within the range of reasonable responses.

34 In relation to the procedure adopted by the Respondent, in terms of consultation and the overall redundancy process, two individual consultation meetings with the Claimant, which with her agreement took place by phone, were on 8 and 15 March 2017,

in accordance with the timetable provided by the Respondent and with no objection from the Claimant. Additionally, it is clear that the Claimant was kept *'in the loop'* by the Respondent as the consultation progress progressed, the Claimant retaining her work laptop during her maternity leave and communicating with the Respondent when she wished to do so. The Claimant was able to and did participate fully in the process, raising detailed queries on at least two occasions (pages 182 and 186), from which it was plain that she understood both her rights and the mechanics of the Respondent's restructure and redundancy process. Finally, the Claimant was provided with written notification both of being at risk, and of her redundancy dismissal. Overall, it is submitted, the process adopted was a fair one. The sole challenge concerning this issue raised by the Claimant is that she was not informed of her right to appeal the decision to dismiss her by reason of redundancy, and that accordingly her dismissal might be unfair on procedural grounds. However, we remind ourselves that the decision to dismiss the Claimant was notified to her by letter dated 23 March 2017, but did not take effect until 30 September, over six months later. During that period, the Claimant, a highly educated individual, had the opportunity to take advice on her position, if she wished, and also to make representations to the Respondent concerning the termination of her employment and their restructuring plan, which opportunity she certainly took. We are satisfied that, had the Claimant wished to present a formal appeal against the decision to dismiss her before it took effect, she would have been able to and would in fact have done so; and overall, that the Respondent adopted a reasonably fair redundancy consultation process.

35 Did the Respondent take reasonable steps to search for or identify suitable alternative employment for the Claimant, which might thereby have avoided her redundancy dismissal? The uncontested evidence is that the Claimant was provided with a then current list of all potentially suitable vacancies within the Respondent undertaking with Ms Cornwell's letter of 8 March, and that she was then put in touch with one of the Respondent's recruitment managers to assist her during the last six months of her employment. As already noted, the Claimant did in fact apply for two vacant positions with the Respondent, namely as a branch manager and within the claims team, both of which were London based, but was unsuccessful due to her deemed lack of appropriate experience. The Claimant did not apply for any vacant roles which were based at Redhill. She expressed an initial interest in the shared services operations supervisor role there, a band 3 position, but did not pursue it or submit an application; and did not respond when Ms Cornwell sent her details of the new offshore specialist position at Redhill (which Mr Howard in fact filled) in September 2017. By that stage, the Claimant had already successfully applied for the role of underwriting services team leader with Antares, which she started on 23 October. Mr Chegwidden submits that in these circumstances, the Respondent had plainly taken reasonable steps to try to identify suitable alternative employment.

36 The Claimant submits that the Respondent, and Ms Cornwell in particular, failed to continue to monitor potentially suitable alternative employment between March and September 2017, and in fact Ms Cornwell neither met her nor raised with her the two roles for which the Claimant unsuccessfully applied. Secondly, the Claimant says that in fact a role in Redhill might have suited her, particularly one without line managerial responsibilities in the light of her new baby; and that the salary bands can and do occasionally overlap, so that a band 3 role was not necessarily out of the question. Thirdly, the Claimant asserts that the communication to her of the offshore specialist role on 22 September was only after she had refused to enter into a settlement agreement with the Respondent, and at a time when she had told Mr Abramson (though not Ms Cornwell)

that she believed that she had been discriminated against because of her pregnancy and maternity leave.

37 The difficulty with those submissions is that it was not put to Ms Cornwell that she failed to continue looking for alternative roles after March 2017, and there was no evidence before the Tribunal that any such potential roles became available in the period before September, or that the Claimant was not informed of them. Secondly, whilst it is possible that a position in Redhill might have been suitable for the Claimant, the plain fact is that she did not apply for any of the vacancies there of which she was informed. Finally, it was not suggested that the Claimant ever raised any allegation of discrimination with Ms Cornwell, or indicated that she was not applying for the offshore specialist role in September 2017 because of that; and the Claimant had by then already obtained better paid alternative employment in the City of London. We find that the Respondent took all reasonable steps to avoid the Claimant's redundancy through possible alternative employment. For the avoidance of doubt, we should make clear that the possibility of the Claimant moving to Exchequer Court as a member of the TMS team reporting to Charlotte Rose was never raised or considered, so far as we are aware, by either the Claimant or the Respondent.

38 The Respondent accepts that the Claimant was in a protected period at the time the decision to dismiss her for redundancy was taken; and also, as the Claimant effectively argued during the course of the hearing, that she was taking shared parental leave at the time her redundancy took effect, and that therefore both regulation 10 of the Maternity and Parental Leave Regulations 1999 and regulation 39 of the Shared Parental Leave Regulations 2014 apply, which are in near-identical terms. Accordingly, the issue to be determined is whether there was a suitable alternative vacancy at the Respondent undertaking which she was obliged to be offered at the time of the redundancy decision and thereafter, or when it came into effect. We bear in mind that, pursuant to both those sets of Regulations, the provisions of the contract for any such suitable alternative employment must be that the capacity, place of work and the other terms and conditions of employment are not substantially less favourable than those the employee would have continued to enjoy under his or her previous contract.

39 From the evidence we heard and read, the only potential *'suitable alternative vacancy'* was, as Mr Chegwidden submits, the new role of offshore specialist which arose on about 22 September 2017, the terms and conditions of which were notified to the Claimant thereafter. Notwithstanding Ms Cornwell's doubts, the Respondent accepts that the role would have been suitable and appropriate for the Claimant, in terms of the work and duties involved; but submits that three significant features of the role were substantially less favourable than her existing position, namely (a) location; (b) capacity/managerial seniority; and (c) salary. The new role was based in Redhill. The Claimant lived and lives in East London, and it was accepted that travelling from her home to the Redhill office would take up to two hours each way, very substantially more than her journey to and from Alie Street. Additionally, it was clear from the Claimant's employment history that her clear preference has been for jobs located in the City of London. Thus, even if the Claimant was prepared to consider and agree to commuting to Redhill, such a location would be substantially less favourable, viewed objectively, which is what the regulations require. In terms of capacity, the Claimant's existing role had had about 10 direct managerial reports, whereas that of offshore specialist had none. Finally, the annual salary for the offshore specialist role was confirmed in evidence as being £44,000, a figure

20% lower than the Claimant's base salary of £54,600, with of course significantly higher travelling costs. Mr Chegwidden submits that we should focus on the actual terms and conditions and salary for the new role, rather than the potential pay range, since that was neither a term nor a condition; and that for essentially those three reasons, the offshore specialist role was not a 'suitable alternative vacancy', although the Claimant might have wished to apply for it.

40 Secondly, Mr Chegwidden submits that the Claimant's suggestion that she should have been offered the role of team leader or supervisor of the Redhill service centre is misconceived, since Mr Howard continued to undertake that role until November 2017, when he became the offshore specialist and his former role became redundant. Accordingly, there was never a vacancy to be offered or filled; and that the same reasoning applies equally to any suggestion that the Claimant should have been made the 'SUAM' team leader in place of Ms Rose. Finally, since by the time the offshore specialist role was created and notified to the Claimant, she had already accepted alternative employment with Antares, which commenced three days - effectively a weekend- after her pay and benefits from the Respondent concluded, and which had the advantages of being a managerial position, in the City of London, and at a higher salary than she had been receiving in her former role. Accordingly, the Redhill offshore specialist role was significantly less favourable to the Claimant, which may well explain why she did not apply for it; and it must be likely that the Claimant would have refused the position had it been offered to her, although that would have imperilled her redundancy payment.

41 We have already summarised the Claimant's overall submissions in relation to the issue of alternative employment, whether as being a necessary part of a fair redundancy dismissal or under the combined Maternity and Parental Leave Regulations, and nothing would be served by repeating them here. Overall, and fundamentally for the reasons Mr Chegwidden puts forward, we find that in fact there was no suitable alternative vacancy in the Respondent undertaking on terms and conditions that were not substantially less favourable to those enjoyed by the Claimant in her role as TSM team leader or supervisor.

42 Finally, and as we have made plain in our findings concerning whether redundancy was the sole or principal reason for the Claimant's dismissal, in our judgment there was no evidence or material before the Tribunal from which we could conclude that her selection for redundancy or the decision to dismiss her was because of her pregnancy and/or maternity leave. As already noted, the Respondent's review and restructure of its operations team support was wide-ranging, independent of the Claimant, and commenced before her unexpected pregnancy was known. Whilst in our experience unusual, it is lawful for an employer to dismiss an employee on the ground of redundancy during her maternity leave, and there is no requirement to extend the consultation period during which suitable alternative vacancies should be sought (although in this case that period exceeded six months). We accept that there was a genuine redundancy situation, that redundancy was the reason for the Claimant's dismissal, and that the Respondent acted fairly in dismissing the Claimant for that reason. Accordingly, the Claimant's complaints under ss.13 and 18 of the Equality Act must be dismissed.

43 It therefore follows that, for these reasons and in our unanimous judgment, all the Claimant's complaints fail and are dismissed.

Employment Judge Barrowclough

9 November 2018