



EMPLOYMENT TRIBUNALS

Claimant: Ms Venetia Raval

Respondents: Peabody
Peabody Trust
Mr Francois Mounier
Mr Steve Rose

Heard at: London South Employment Tribunal

On: 08th November 2018, 09th November 2018 (reading days), 12th to 16th November 2018, 19th to 22nd November 2018, 23th November 2018 (in chambers), 31st January 2019 and 01st February 2019 (in chambers)

Before: Employment Judge Martin
Ms V Blake
Ms C Edwards

Representation

Claimant: Ms Omambala - Counsel
Respondent: Mr Caiden - Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The Claimant's claim of discrimination for the protected characteristic of race is dismissed
2. The Claimant's claim of discrimination for the protected characteristic of sex is dismissed
3. The Claimant's claim of detriment for having made a protected disclosure is dismissed
4. The Claimant's claim for unfair dismissal is dismissed

RESERVED REASONS

1. By a claim form presented to the Tribunal on 28 July 2017, the Claimant brought claims of discrimination on the protected characteristics of race and sex, whistleblowing and unfair dismissal. All claims were resisted by the Respondent in its response dated 1 September 2017.
2. The Tribunal had before it six full lever arch files and a seventh smaller file. The bundles of documents were agreed. The parties provided a list of agreed issues as appended to this judgment. The Respondent provided a chronology.

Witnesses

3. The Tribunal heard from the Claimant on her own behalf. There were three witness statements on her behalf from Mr Alexander Church, Mr Anthony Palmer and Mr Faran Butt. The Respondent did not want to cross examine Mr Palmer or Mr Church, so they were not called, and their statements were taken as read. Mr Butt did not attend and therefore the weight that could be attached to his statement was diminished as the Respondent did not have the opportunity to challenge his evidence which it wanted to do. The Claimant alleges that the Respondent managed Mr Butt out of the business because he is Asian. The Respondent disputes this. Mr Butt joined as a programme Manager in January 2016. He was appointed by and reported to Mr Mounier.
4. The Tribunal heard from several witnesses for the Respondent as follows:
5. **Francois Mounier** – Mr Mounier was appointed as Head of Business Engagement and Solutions as part of the IT leadership team. He no longer works for the Respondent. His grade was 1A, a very senior role within the organisation. He was a key IT budget holder. He joined on 15 June 2015 shortly after the Claimant had been recruited. Mr Mounier had previously worked for Camden Council for ten years. Mr Mounier did an online Equal Opportunities training course in Autumn 2015 with the Respondent and said he had undertaken extensive training whilst working for Camden Council. Mr Mounier signed the non-disclosure agreement (NDA) (see below) on 16 August 2016 as he needed to deputise for Mr Rose as Mr Rose was going on leave.

6. **Steven Rose** – Mr Rose joined the Respondent as Director of IT on 3 February 2015 and implemented the newly agreed IT strategy which included as key elements the IT structure and recruitment of staff. He had end to end accountability for the delivery of all IT services. On behalf of the Respondent he (together with his counterpart at Family Mosaic) worked on the proposal for the future structure of the combined organisation which was put to the Board of Directors for approval. He reported to David Lavarack, Executive Director of Corporate Services. Mr Rose did not conduct the redundancy consultation or terminate the Claimant's employment as he was the subject of a grievance submitted by the Claimant and was involved in parts of the protected disclosure issues. Mr Rose undertook eLearning for Equal Opportunities while at the Respondent. Mr Rose was a party to the NDA from an early stage in the negotiations.

7. **Mark Nicholls** – Mr Nicholls is employed as Head of Information, Security and Governance and has been employed since September 2015. He was previously Head of Quality and Assurance from September 2015 to February 2016 and Head of Technical Solutions and Security from March 2016 to July 2017. Mr Nicholls undertook immersive equal opportunities training with the use of actors in or about November 2015. Mr Nicholls signed the NDA from 22 September 2016 as he was the creator of the data room for document drops for the shared site and his input was required from that date.

8. **Shabana Waka** – Ms Waka is employed by the Respondent as HR Business Partner. She works for Human Resources sitting within the Corporate Services team. She reports to Mr Harrison. She is CIPD qualified and was the key HR lead for various business service areas covering employee relations, employee wellbeing, resourcing, change management, policy and procedure, organisation development and performance management. She was HR lead for the IT department from May 2016 until mid-August 2018 and worked closely with Mr Rose and his team. She undertook equality and diversity training in 2010 and unconscious bias training in August 2018. Ms Waka was involved in the Claimant's grievance, protected disclosure, redundancy consultation and termination of the Claimant's employment. Ms Waka shares the same protected characteristics as the Claimant.

9. **Joe Joseph** – Mr Joseph was from 30 November 2010 to 20 July 2018 Director for Resident Services and was responsible for frontline housing services. He reported to the Executive Director of Housing, Ms Skeete, and had 7 direct reports. He undertook the redundancy consultation process with the Claimant at the same time as consulting with his own department which was similarly affected by the Family Mosaic merger. He left the Respondent by reason of redundancy in July 2018. He has had equality and diversity training - the last training being on 28 July 2010. He was not involved in the grievance or whistleblowing procedures although

he was aware that they existed. He took the decision to terminate the Claimant's employment on 30 June 2017.

10. **Laurence Harrison** – Mr Harrison is the Senior HR Business Partner and line managed Ms Waka. He was employed from August 2008 and has 42 years' experience in HR. He was responsible for the business partnering section of the HR group from 1 May 2014 to 24 June 2018. He was the grievance and whistleblowing decision maker.
11. **Deborah Walthorne** – Ms Walthorne is Director of Programme Management and has been employed by the Respondent since June 2017 following a period of working for the Respondent for three years as a consultant, which included working on the merger with Gallions until 2016 and returning in 2017 to work on the 'day one' planning relating to the Family Mosaic Merger. Ms Walthorne heard the Claimant's appeal against the termination of her employment by reason of redundancy. Ms Walthorne delivered equality and diversity training in her role as consultant from 1998 to 2011/2.
12. **Susan Hickey** – Ms Hickey is a tier one employee and Chief Finance Officer. She reports to the Chief Executive and has four direct reports. She has had equality and diversity training. Ms Hickey decided the Claimant's grievance and whistleblowing appeal.
13. There are other key people who did not give evidence but are named in the issues. As this judgment will be posted online, their full names have not been used.
14. **RH** – RH was interviewed and appointed by the Claimant (with the involvement of Mr Mounier) as a contractor. His involvement is that the Claimant says he treated her in a discriminatory manner and her case is that the Respondent did not address this when she raised issues relating to RH but did when a white male employee (SC) also raised issues.
15. **AB** – AB was interviewed and appointed by the Claimant as RH's replacement as a contractor. His involvement is that the Claimant says he treated her in a discriminatory manner and her case is that the Respondent did not address this when she raised issues relating to RH but did when a white male employee (TV) also raised issues.
16. **SC** – SC is employed as Delivery Manager for CRM (Customer Relationship Management) and had work issues with RH after which the Claimant says RH's contract was ended.

17. **TV** – TV is the IT Project Management Officer. His involvement is that the Claimant said AB had been rude to TV in an email resulting in AB's contract not being renewed.
18. **TH** – TH is no longer employed by the Respondent. At the relevant time she was employed as Head of IT Operations. Her involvement is in relation to the Claimant's protected disclosure relating to the use of a Microsoft owned Surface computer and an allegation in the Claimant's grievance that Mr Rose told TH that it was the Claimant who had complained about her putting on makeup and doing her hair in a meeting. The Claimant's case is she did not raise this, and it was Mr Rose setting TH against her.
19. The case was listed for twelve days. The first two were spent by the Tribunal reading the witness statements and documents referred to. The Claimant gave evidence over three days and the Respondent's evidence was completed in six days. The Tribunal spent the remainder of the time in chambers. Submissions were given orally at an additional hearing on 31 January 2019 with the Tribunal deliberating on 1 February 2019.

The Tribunal's approach

20. Where the Tribunal refer to Respondent this refers to the Peabody/Peabody Trust, the named Respondents are referred to by their names. The Tribunal heard a substantial amount of evidence during the hearing and was referred to many documents. The findings of fact set out below are limited to those matters which are relevant to the agreed issues and necessary to explain the decision reached. Even though not everything is set out below, all evidence was heard and considered by the Tribunal in coming to its conclusions.
21. Large parts of the evidence were the Claimant's word against the Respondent's with little or no corroboration. In these circumstances the Tribunal made its findings on the balance of probabilities, i.e. whose evidence it considered more likely to be true.
22. In summary the Claimant's claim is that she was subjected to discrimination on the protected characteristics of race (Asian) and gender (female) during her employment, that she raised a grievance which amounted to a protected act and was victimised for so doing by being selected for redundancy, and that she similarly raised protected disclosures and received detrimental treatment namely being selected for redundancy as a result. The Respondents accept that the grievance was a protected act and the disclosure was a qualifying disclosure but deny detrimental treatment, discrimination or unfairly dismissing the Claimant.

Background

23. The Respondent is a community benefit society and is a registered charity. Mr Rose set out the details of the organisation in his witness statement:

“Peabody is one of the oldest and largest housing associations in London. Following the merger with Family Mosaic (another large housing association in London) in June 2017, the Peabody Group now owns and manages more than 55,000 homes across London and the South East housing over 111,000 residents. We also have 8,000 care and support customers.”

24. The Respondent employs approximately 2,200 staff. Following the merger there were about 3,200 staff. The Respondent's premises are split over several sites and the uncontested evidence was that teams were often split up across the various sites. There is a multifaceted management structure which was described by Mr Mounier and Mr Rose who explained that teams were project based so an individual can report to more than one person: their normal line manager and their operational reporting lines. Who they reported to depended on their particular project, task and activity.

25. For example, Mr Rose described in his witness statement the management structure relating to RH. Overall leadership was provided by the leadership team, RH's day to day activity was managed by the Business Excellence project manager, the Claimant was responsible for sign off of deliverables and Mr Mounier was responsible for delivery of the technology elements of the projects and had responsibility for project delivery.

26. The Respondent recognises the union UNITE and has an employee assistance programme, employee supporters and makes use of external mediators.

The Claimant's recruitment

27. In 2014 there was merger between the Respondent and another housing organisation, Gallions, resulting in a totally new IT department with a new structure. The Claimant was employed under this new structure on 13 April 2015. The Claimant was employed as a Head of IT Architecture which was a new role within the organisation. The Claimant said her role included solution architecture however this was disputed by Mr Nichols in his witness statement: *“I can see from the claim form that Venetia has said that solution architecture fell squarely within her job description. I don't agree with this. To give an example in the building sector, Venetia would be the architect, Andrew the Structural engineer and Francois [Mounier] the builder. The Structural engineer doesn't report to the architect but to the builder because the engineer sits closest to the person laying the bricks.”*

28. The Respondent received 15 CV's for this post and interviewed two people, one being the Claimant. Mr Rose conducted the interview and told the Tribunal that the Claimant was exceptional in her first interview which was competency based but did not perform so well in her second interview which consisted of a presentation. However, he gave her the benefit of the doubt and interviewed her for a third time resulting in her appointment.
29. As part of the pre-contract negotiations the Claimant's job title which was initially 'Enterprise Architect' was discussed and agreed. Her salary was substantially increased at her request, (resulting in her being the highest paid of Mr Rose's direct reports) and the contract term, which was initially offered on 9-month fixed term, was changed to a permanent contract, also at the Claimant's request.
30. After the Claimant was appointed, she was asked and agreed to take on the Project Management Function and hired and created the Project Management team.

Family Mosaic merger

31. In 2016 the Respondent agreed a merger with Family Mosaic, another housing association which resulted in the two organisations being assimilated. This was a complex and sensitive merger and initially only a selected number of individuals were part of the negotiations and they signed a non-disclosure agreement (NDA) pending the public announcement. The negotiations had been ongoing since at least July 2016 when Mr Rose signed the NDA. The Claimant was not part of this group. Individuals were added to the group from time to time on an as needed basis and signed the NDA. On 7 December 2016 Mr Rose shared the news of the merger with staff. There had been a leak about the merger to some staff a few days prior to the announcement but Mr Rose did not consider it necessary that those staff told early should sign the NDA as it was so close to the announcement being made.
32. One of the consequences of the merger was the integration of the IT department and systems which were very different both technically and structurally in each company. This process was undertaken by Mr Rose and his counterpart at Family Mosaic, Mr Saul Stevens. Ultimately the roles in the Claimant's level within the organisation (tier 4) were deleted and a new structure, with new job descriptions, was put in place with all affected staff having to apply for the new roles. The structure was designed in relation to the posts needed rather than around the people who were employed by the two organisations. The legal date for the merger taking effect, and when the new structure had to be in place was 3 July 2017.

33. The restructure created a redundancy situation. The Respondent has a redundancy policy and an assimilation policy. The assimilation policy has a detailed process setting out the process and steps that employees need to undertake. It describes that *“All posts affected by the creation of the new combined organisation will be categorised ... based upon the duties and responsibilities of the post and not the skills and abilities of the individual post-holders. In making these categorisations, existing job descriptions for posts will be used and compared to the job descriptions for the posts proposed for the new structure”*. Staff were matched or ring fenced to the new positions, but this did not necessarily mean that they would be appointed into them. Staff had to apply and go through an interview process and were selected based on that interview. If no position was found their contract would have been terminated by reason of redundancy.
34. There were three categories of posts: Category 1 – new posts; category 2- ring-fenced posts and category 3 – matched posts. New posts were those that were completely new or contained very few similarities to posts that currently existed with no existing employee having any claim to them.
35. Ring-fenced posts contained some elements of existing posts without them containing substantially similar duties. The policy states that *“In effect it is the existing posts (and therefore their post-holders) that are ring-fenced for potential selection to the ring-fenced post(s) in the combined structure. There will be no automatic appointments to ring-fenced posts in the combined structure. If none of the employees holding an existing post within the ring-fenced pool meets the requirements of the post as measured through the selection procedure, the post will remain open”*.
36. Matched posts were those that were *“substantially similar to posts that currently exist within the participating organisationsPosts initially categorised as matched may be re-designated as ring-fenced, in the event other existing post-holder ‘claimants’ are recognised following a successful appeal.....”*.
37. The Claimant did not apply for any position in this process (further details are set out below) despite being ring-fenced to two positions in the new structure. As a result, the Claimant’s employment terminated on 30 June 2017.

The process leading to termination of the Claimant's employment

38. As set out above the negotiations regarding the merger with Family Mosaic were highly sensitive and the personnel involved were restricted and signed an NDA agreement. The Claimant's view is that she should have been involved in the negotiations given the role she played in the organisation and that her involvement was, in her view, necessary. This was not a view endorsed by the Respondent who said that the number of people involved was initially limited to very senior employees only. This is confirmed by Mr Mounier, who was not part of these negotiations despite his seniority in the business, only becoming involved when he was required to deputise for Mr Rose. Other employees were brought in where and when needed.
39. The intention was that all staff would be notified of the merger at the same time. However, as sometimes happens, there was a third-party leak resulting in some staff being informed in advance of the public announcement which was made in December 2016.
40. When considering the merger of the two IT departments the Respondent decided to deal with high level appointments first and then move on to consider the tier 4 appointments. A business decision was made to delete all the tier 4 posts and create new posts to which staff would be matched and ring fenced. The Claimant's job title "Head of Architecture" did not exist in the new structure with the work done in that post spread out between others in the team. Head of Architecture was not a job in the Family Mosaic structure and was not a job common in all housing organisations.
41. The consultation process in relation to the merger and alternative posts was more complicated for the Claimant than for other tier 4 staff, as she had raised a grievance against Mr Rose (see below). Mr Rose was pivotal in the merger/redundancy process. The Respondent adjusted its process and Mr Joseph who was in a different department, undertook the consultation with the Claimant. Mr Joseph was also involved in the same consultation with members of his team who were similarly affected by the new structure. Mr Rose met with Mr Joseph only to discuss the rationale behind the new structure and that was the extent of his involvement. Mr Joseph was aware that the Claimant had raised a grievance against Mr Rose (that being why he was asked to do the consultation with the Claimant) but not what the substance of that grievance was. Mr Joseph's direct involvement with the Claimant began on 17 May 2017 when he had the consultation meeting with the Claimant. He was given the script sometime before that date.
42. All staff at tier 4 level were put at risk of redundancy and the Claimant acknowledged in cross-examination that this included men and women,

and staff from different ethnic backgrounds including Asians and Non-Asians. As stated above the Assimilation Policy sets out a detailed process to be followed.

43. Mr Joseph held a consultation meeting with the Claimant on 17 May 2017. To ensure consistency across the organisation, a script was prepared for use in consultation meetings. The script covered: the purpose of the meeting; an outline of the IT structure changes at Tier 4; the rationale behind the changes; the implications of the changes; the redundancy process; the categorisation process, which posts have been ring-fenced/matched and the timetable. The script sets out that the employee could comment on the categorisation agreement by 4 pm 23rd May 2017 with a right of appeal being given against the categorisation and should apply for an available post by 10 am 30th May 2017.
44. The Tribunal was taken to the script for the Claimant which includes that she was ring-fenced for two posts: Head of Information Security and Governance and Head of Business Solutions and Delivery. Mr Joseph said that he followed this script in the consultation meeting he had with the Claimant. The Claimant says he did not, and the matters contained were not discussed in full. Given that Mr Joseph was also carrying out consultation meetings with his own team, and his evidence, which the Tribunal found to be credible, the Tribunal find on the balance of probabilities that Mr Joseph did use this script and covered all points in his consultation meeting with the Claimant. There were no notes or other documents relating to this meeting produced by the Claimant. The Tribunal also find that he showed the Claimant the new organisation chart and discussed in full the implications for the Claimant namely that as the new structure did not have the post of Head of Architecture that it was proposed that those activities would be subsumed into the other available roles in the new structure.
45. That day Ms Waka sent a letter to the Claimant setting out:
- The positions she had been ringfenced to;
 - A deadline of 4 pm 23 May 2017 for confirmation of the categorisation or objections and appeal against categorisation;
 - Application for positions no later than 10 am 30 May 2017 setting out the post applied for, relevant skills and experience and priorities for the next 6-12 months if successful in the application;
 - Confirmation that if unsuccessful in applications that the Claimant would be at risk of redundancy and
 - Arrangements for individual consultation meetings if required.

46. The time table and processes were the same for all affected staff.
47. The Claimant responded to Ms Waka's letter on 23rd May 2017 saying she had concerns about the process as Mr Rose was the interviewer and decision maker for both ring-fenced roles. Ms Waka noted her concerns in a letter that day, reminding the Claimant that the grievance was being handled separately. Ms Waka advised that if the Claimant wanted to be considered for either or both posts, then the Respondent would give consideration as to how the selection panel should be constituted.
48. On 23rd May 2017 the Claimant informed the Respondent that she had been signed off work by her doctor and was not able to attend any work-related meeting. She complained about the time line which she considered to be unreasonable. The Respondent's position is that the time line was reasonable given that the new structure had to be in place by 3 July 2017.
49. In response Ms Waka rearranged the meeting for 13th June 2017 explaining that no decision would be made at that meeting and saying that whilst the Respondent wanted to support her, if no position was applied for or could be found for the Claimant, her job was at risk of redundancy. Ms Waka also asked the Claimant to confirm if she was too unwell to attend meetings so that alternative meeting arrangements could be made for her or alternatively the Claimant could give written submissions.
50. The next communication was on 9th June 2017 from solicitors appointed by the Claimant who proposed that the consultation process should be put on hold as the Claimant was off sick and had an outstanding grievance. Ms Waka replied on 13 June 2017 saying that she felt the Claimant's absence from work was related to the consultation and it was in her and the organisation's best interest for the consultation to proceed. Ms Waka rescheduled the meeting to 21 June 2017 and advised that as she was on holiday, Mr Harrison would attend that meeting in her place. Ms Waka said she would consider the meeting being held at an alternative location and time to accommodate the Claimant's needs and made it clear that if the Claimant did not attend then a decision would have to be made in her absence (subject to the Claimant being able to give written submissions). Ms Waka confirmed the date the new organisation had to be in place, namely 3 July 2017. A letter confirming this was also sent to the Claimant's solicitors.
51. The Claimant's solicitors wrote again on 14th June 2017 again complaining about the proposed restructure and said that the potential redundancy was connected to the Claimant's grievance. Ms Waka responded on 16th June 2017 repeating the points she made before and saying that the potential redundancy was not connected to the Claimant's grievance against Mr Rose.

52. The Claimant sent written submissions via her solicitor on 20th June 2017 but did not apply for any post. Mr Joseph did not discuss the submissions with anyone else. Having read them Mr Joseph wrote to the Claimant asking if there were any posts that the Claimant wanted to apply for. He asked her to respond by 23rd June 2017.
53. The Claimant responded, again via her solicitor, querying collective consultation and again complaining about the process and what she says is the relationship with her grievance but still not applying for a post. Mr Joseph summarised her concerns, namely that Mr Rose had deliberately removed her role to target her and that he was part of the interview process for the ring-fenced roles. Mr Joseph considered these points and concluded that Mr Rose undertook the task of the reorganisation relevant to the roles that needed to be done and he did not believe Mr Rose had set out to target the Claimant for personal reasons as this would put the viability of the whole new structure into question. He also noted that had the Claimant applied for the new roles, then the Respondent would have considered the appropriate selection process given her grievance against Mr Rose.
54. Mr Joseph decided that as the Claimant had not applied for the ring-fenced roles and there were no alternatives to redundancy that the Claimant's employment would be terminated by reason of redundancy. Four other tier 4 employees were dismissed as redundant at the same time. As the Claimant was not at work her employment was terminated on 30 June 2017 and she was paid in lieu of notice. Other redundant staff worked their notice period.

The Claimant's Grievances and appeal

55. The wording of the Claimant's issue in this matter is whether the Respondent "*Fail to deal with the grievance and whistleblowing complaints and appeals reasonably and in line with the First Respondent's own procedure*". These findings are limited to this issue only.
56. The Claimant raised a grievance against Mr Mounier and Mr Rose on 26th April 2017 alleging that they had discriminated against her on the protected characteristics of race and sex. On 23rd May 2017 the Claimant made disclosures which she says are protected. The issues in these two documents overlapped to some extent and the Respondent decided to consider both the grievance and the whistleblowing allegations together. Given that the grievances were against Mr Mounier and Mr Rose who were very senior employees, the Respondent decided that it would instruct external consultants to investigate the two matters. The grievance outcome was communicated to the Claimant on 31st May 2017. Her grievance was not upheld. The Claimant appealed against the decision on 6th June 2017.

57. The grievance investigation was carried out by an external consultant. The investigation into the appeal was carried out by the same company but by a different consultant.
58. The Tribunal considered the Respondent's procedures for grievances and whistleblowing. They do not refer to the use of external consultants to conduct investigations, however Mr Harrison confirmed that external consultants had been used previously. The Tribunal takes judicial notice that organisations will from time to time use external investigators if it considers it necessary and the use of external investigators per se is not necessarily unreasonable.
59. In this instance the Claimant's complaints were very serious and questioned Mr Rose's and Mr Mounier's continued employment by the Respondent. If the Respondents had conducted the investigations in house, then they would have appointed a non-executive director (given the seniority of Mr Rose and Mr Mounier) who would not necessarily be experienced in this type of investigation. The Tribunal, having read the allegations made by the Claimant and the senior positions that Mr Rose and Mr Mounier held find it was reasonable to appoint an external investigator. The policy is not contractually binding in any event.
60. The Tribunal has looked to see what other aspects of the grievance and whistleblowing procedures the Claimant alleges were unreasonable. The Claimant's pleading does not specify other matters simply referring to the details of the decision being "*deeply flawed*". She refers to a failure to investigate relevant evidence, a failure to interview relevant witnesses and a failure to follow the first Respondent's own Grievance Procedure. She says she set out the details in her appeal letter of 6th June 2017. The Tribunal has considered the appeal letter.
61. The appeal letter is very long (15 pages, single spaced) and lists numerous matters the Claimant says was wrong in the original report in numbered points. There are well over 150 individual points in total. The Respondent's position as set out in its response is that the grievance officer adequately investigated all the points and made reasoned findings in respect of them. Its position is that the decision was reasonable with reference to the evidence and information before the person considering the grievance. It referred to several the witnesses the Claimant referred to having left the organisation and who were not available to be interviewed.
62. In respect of the Claimant's appeal, the Respondent's position in its response is that the appeal officer was satisfied that the grievance officer acted reasonably in determining who should be interviewed and that

sufficient investigation was done in light of the points raised by the Claimant.

63. The issue as agreed, refers to the grievance being conducted 'reasonably'. A reasonable grievance investigation does not have to be forensically perfect. In most investigations more or different things could have been done, but it does not follow that the failure to do those additional steps renders a process unfair. The Tribunal notes that the Claimant did not allow the investigator to share her grievance with those people she interviewed, and the Tribunal share the view in the Respondent's submissions that this would make the investigator's task very difficult.
64. Apart from the use of external consultants to investigate the grievance and the appeal, there is little indication from the Claimant as to what she says were defects in the procedure save for saying that it took longer than the policy indicates and of course, that she disagreed with the outcome. Neither Mr Harrison who was the decision maker on the grievance or Ms Hickey who was the decision maker on the appeal were cross examined about procedural failures.
65. The Tribunal's conclusions are that whilst the Claimant considers the outcome of the grievance, whistleblowing and appeals were unfair, there is no reason to find that the reason for that unfairness was because of the Claimant's race or sex or that she made a protected disclosure. The Tribunal must distinguish between the nature of the allegations themselves and the processes undertaken by the Respondent. For the Claimant to succeed she would have to show that the reason the proper processes (in her eyes) was not followed and the decision was wrong was because of her sex, race or that she made a protected disclosure.
66. The Claimant has not shown that she was treated less favourably than a hypothetical comparator who was male and not Asian.

The working environment

Desks

67. There was no written policy whereby staff had their own desk. The evidence from the Respondent witnesses were that staff hot-desked, although many had a preference where they sat, and many sat in the same area for most of the time. The Tribunal finds that although the Claimant may have used the same desk for a time, there was no policy or practice that staff had a permanent workstation, especially given that the IT staff worked across the organisation on various projects and normally sat where the project team was located.

68. The Respondent's premises are split over several locations and the layout of their premises in Westminster Bridge Road is not helpful in allowing all members of a department to sit together. There are enough desks overall for staff, except at peak times, when particularly in the IT area there may be a shortage of desks.
69. The Claimant said that she had a permanent desk and Mr Mounier told her she had to give it up to make room for new operational staff. Mr Mounier denied this. His evidence was that TH was informally made responsible for the allocation of desks in IT because her role was focussed on the service operation and they wanted to keep all those people together. Mr Mounier said no one had a permanent desk in the time he worked for the Respondent, although he recognises that before he was hired the Claimant may have had a desk she used on a regular basis. His evidence was that people tended to sit in the same place if it was available, however, there was no expectation that they would be able to sit there. There was no formal hot-desking policy in place. He said his team was separated over five locations and explained that IT work was predominantly project based and therefore IT staff would sit close to stakeholders and the technical solution teams rather than within the IT department.
70. The Respondent employed 30 new IT staff over a six-month period and Mr Mounier wanted them to sit together. Mr Nicholls' evidence was that he did not have a fixed desk. He explained that they used tablets and laptop computers, so they could sit anywhere. Mr Rose's evidence was that between June and December 2015 he asked the Claimant and others to hot desk as there were not enough desks in one area. Mr Rose appreciated that having a desk was important to the Claimant and therefore made enquiries on her behalf to see if a permanent solution could be found. This proved not to be possible. The Claimant located a desk in finance (away from others in the IT department) and chose to sit there.
71. The Tribunal's finding is that all staff were expected to be flexible in where they worked and even if the Claimant had a permanent desk in the past this was simply personal preference rather than in line with any policy. All staff, save for service operation staff, were required to hot-desk.
72. The Tribunal does not find the failure to find an alternative permanent desk for the Claimant to be unfavourable treatment on the protected characteristics of race or sex. All staff of whatever gender or ethnicity were treated the same. The Tribunal also does not find that the Claimant was excluded from the IT department as the evidence from Mr Mounier was that there were desks available, just not the same one each day. His evidence was that the Claimant chose to sit with the Finance department which was apart from the IT department.

Allegations of harassment

73. The Claimant alleges that Mr Mounier told her that she did not understand solution architecture and failed to respond when she asked whether she was not valued and did not have a job on 7 February 2017. Mr Mounier denies saying this. In submissions the Respondent says that Mr Mounier was not cross-examined on this. The Tribunal have checked their notes of evidence and cannot find that this was asked of Mr Mounier. The Claimant's submissions do not address this. In any event, even if it had been said, there is no reason linking the reason for it to the Claimant's sex or race.
74. The Claimant alleges that Mr Mounier smirked - this is dealt with by the Tribunal below.
75. The Claimant alleges that Mr Rose told her that he '*did not want to know*' when she told him she felt excluded on 6 March 2016. Mr Rose denies saying this and there was no other evidence to substantiate that this happened. Even if it was said there was nothing to substantiate the Claimant's claim that it was said for a reason relating to her sex or race.
76. The Claimant's allegation is that Mr Rose and Mr Mounier had managed FB out of the business and FB is Asian. FB did not attend to give evidence. The record of the Claimant's grievance interview when this was discussed records the Claimant talking about a meeting she had with him that "*it was like they had he and Francois had managed [FB] out*". This issue boils down to one person's word against the other: The Claimant's and Mr Rose's.
77. Even if FB had attended the Tribunal to give evidence, his witness statement, whilst being critical of the Respondent, does not say that the Respondent managed him out of the business or that this was because of his race. This issue was not put to Mr Rose in cross-examination and the Claimant does not say directly that Mr Rose said this is what was happening. It is an assumption made by the Claimant which has not been substantiated.

Head count

78. In the summer of 2015, savings were required because the Government had made a 1% reduction in social housing rents which significantly affected the overall financial situation of the Respondent. The Respondent was unable to make any significant savings on frontline services and

recognised that employment was its biggest cost. The Respondent had to make 'Value for Money' savings (VFM savings).

79. Mr Rose was on leave for the last two weeks of October 2015 and Mr Mounier was asked to run an extended Management Team meeting to establish a budget proposal for 2016-17. Mr Rose sent an email to his direct reports explaining the context and expected outcome of that meeting. Mr Rose asked each of his direct reports to identify savings within their operational expenses to meet the target and the team members were to attend the meeting with a prepared set of options for discussion. Mr Rose set out the following principles and priorities: focus on vacancy reductions rather than existing employees and protect the delivery of IT operational services and associated headcount.
80. Mr Rose was briefed by Mr Mounier when he returned from leave about what happened at that meeting and Mr Rose made the final decision as to the headcount and what positions would be redundant.
81. The Claimant accepted in cross-examination that she received the email from Mr Rose and that the organisation had to make significant savings. The Claimant accepted that an organisation chart was used in the meeting but said that this was not for "*driving costs savings, but to drive headcount reduction*". The Tribunals find this to be one and the same thing. She maintained in cross examination that whilst reducing headcount could lead to costs savings this was not the driver and that it was something different. The Tribunal did not understand the distinction the Claimant was making as the focus of the email sent by Mr Rose was that the Respondent needed to save money and he was proposing this was done by reducing headcount. The Claimant accepted that the chart shows four posts which were vacant posts with one of them being in her team. She accepted that the other three were in Mr Mounier's management team but said these posts were not discussed at the meeting on 19 October 2015.
82. Mr Mounier chaired the meeting on 19 October 2015. His witness statement records that the Claimant's opening comment was "*you can delete my entire service including my role*" and that she said this with conviction. Mr Nicholls, who was also at this meeting, confirmed this comment in evidence in chief although it did not appear in his witness statement. The Claimant denies saying this.
83. The outcome of the meeting was that the Claimant's management team was recommended to lose the one position which was at that time vacant. Notwithstanding the Claimant's evidence that she was later told that Mr Mounier had his three vacant posts deleted during this exercise, she still maintained that she was targeted due to her sex and race in this meeting and that only she was required to make a reduction in headcount. Mr

Mounier's evidence was that his team and the reduction in headcount were discussed at this meeting.

84. The Tribunal finds on the balance of probabilities that Mr Mounier discussed all management teams including his own, and that the outcome of the meeting was that the Claimant would lose the one vacant post in her team and that Mr Mounier would lose three. Whether or not the Claimant knew at that meeting or later is irrelevant. What is relevant is that Mr Mounier also lost members of his team in this process.

Issues relating to RH

85. RH was a contractor who was engaged to work for the Respondent between 13 July 2015 to 26 February 2016 and he was line managed by the Claimant. The Respondent has submitted that there is no evidence of a specific incident or incidents either in the Claimant's particulars of claim or in her witness statement, rather there were generalised criticism about how he did things. The Claimant's submissions do not address this issue specifically. The Tribunal has considered the Claimant's particulars of claim, her witness statement and her evidence in cross-examination.
86. The Claimant's particulars of claim (paragraph 9) state that RH would exclude her from discussions that she should have been part of and was rude and dismissive towards her. She states that she raised this with Mr Mounier who said it was Mr Rose's responsibility. She says that Mr Mounier dismissed her concerns and belittled her despite her repeatedly raising RH's conduct towards her. Mr Mounier denies this. The Tribunal accept his evidence particularly when taking into account the Claimant's evidence that she was "*ashamed to admit I did not want to write in there the manner I was spoken to*" and, "*I spoke to SR [Mr Rose] on 1:1 to say conduct issue, ashamed to say I did not repeat what how I was spoken to*". This supports the evidence given by Mr Rose that the Claimant did not give specific examples so he could not investigate or act.
87. Paragraph 14 of her particulars of claim sets out the Claimant's contention that when SC, the IT delivery Manager experienced issues with RH, Mr Mounier and Mr Rose immediately acted on his complaints and said that his contract would be terminated. She says this is because SC is male and white. In cross-examination the Claimant gave no further insight or detail.
88. The Respondent's evidence shows that it did take her concerns seriously in that there was an agreement to find a replacement for him so that his

work could be covered, and the Claimant terminated RH's contract. The Respondent says that the difference with the complaint made by SC is that SC was specific in his complaints which meant that Mr Mounier and Mr Rose could act on them.

89. In cross-examination, Mr Mounier said: *"My witness statement mentions that the Claimant multiple times raised with me in course of discussions, that RH not doing what she asked him to do or being naughty. Very difficult for me to assess based on those statements the specifics of his shortcomings"*.

90. The Tribunal is satisfied that the named Respondents acted as they did because SC gave specifics and the Claimant did not. The Tribunal accepts that the Respondent agreed to exit RH based on the Claimant saying he did not do what she wanted him to do, and the timing was based on when a replacement could be found to ensure continuity for business needs.

Issues relating to AB

91. The allegation as set out in the agreed list of issues is that the Respondent failed to take any steps to address AB's inappropriate conduct towards the Claimant (para 21, 24, 27, 34, 35 ET1) and excluded the Claimant from discussions about AB's contract extension and agreed their own arrangement with him without her knowledge (para 26-30 ET1).

92. AB was RH's replacement. The Claimant did not make any specific allegations against AB. Mr Rose was clear in his evidence that the Claimant had not raised specific matters with him.

93. The Tribunal was taken to the Claimant's 1:1 meeting note from the meeting she had with AB. This does not raise any issues with AB's conduct. The issues raised relate to his performance and ability to do the work: *"lack of skills being able to do the technical design work"*.

94. It seems that AB's behaviour was not good and that his general conduct caused offence to many people. This is exemplified in a complaint from a non-Asian male. Although AB was not specifically mentioned, it refers to *"language and conduct towards members of staff from members of your team. The language has at times been personal, referring to peoples size, verging on the lewd, referring to what people wear in bed and at times uncomfortable and unnecessarily confrontational....."*. This email went on to say that the

¹ Taken from EJ Martin's notes of evidence

complainant had raised this with Mr Rose who said it was for the Claimant to deal with as she was their line manager.

95. The Claimant says that when TV complained about AB his complaint was taken seriously. Mr Rose distinguished his complaint from the Claimant's assertions as TV made specific complaints that could be addressed rather than generalisations. This echoes what happened with RH. At the time the Claimant raised her issues with AB (which were general in nature) there was a pressing business need for AB to continue with his work. Later when TV raised his specific complaint, that business need had passed, and Mr Mounier decided to move AB to a different project which required someone with his skills for a limited period of four weeks. At that time the Respondent were unable to increase its headcount, so it was expedient that AB moved into this role by way of a contract extension.
96. The Tribunal has had some difficulty in understanding the Claimant's case in relation to AB's contract extension. Her allegation is that she was excluded from this process whereas the evidence was that she was very much included and indeed was instrumental in trying to secure the extension to his contract even though the final agreement was concluded by Mr Rose.
97. What is clear is that the Claimant did not agree with Mr Rose that AB's contract should be extended. Mr Rose decided it should be for business efficacy reasons as AB was the only person with the relevant skills to work with the Integration/Shaping team (which the Claimant was not involved with) and there were limitations in hiring staff. Both Mr Mounier and Mr Rose thought this the practical thing to do and as the Respondent submitted, the Claimant was outvoted.
98. The Claimant was AB's line manager and was therefore asked to secure the extension to his contract. Mr Rose was to be told if there were any issues as he viewed the extension as being critical to the business. The evidence was slightly confusing. On Friday 3 March 2017 the Claimant was in communication with the agency about renewing AB's contract which expired that day. The Claimant was not able to secure the extension and did not refer to Mr Rose as requested. Mr Mounier switches his phone off over the weekend and was therefore not involved in the negotiations via the agency although he did have a discussion with AB at about 5.30 – 6 pm on 3 March about the contract renewal to facilitate the process and make sure the extension happened.
99. On the one hand, the Claimant's evidence is that AB's contract expired on Friday 3 March and she did not expect him to be at work on Monday 6 March. On the other hand, she contacted the agency on Sunday 5 March and was told that AB's contract had been extended so presumably would

have realised he would be at work the following day. Mr Rose was anxious that the contract be extended and when the Claimant told him that the contract had not been extended, he stepped in and concluded the agreement.

100. The evidence from both the Claimant and the Respondents was that the Claimant was included in the discussion about extending the contract, she attempted to extend the contract but failed and Mr Mounier and Mr Rose stepped in to conclude it.

101. The Claimant's evidence is that she was upset when she discovered AB was at work on Monday 6 March. The Tribunal cannot understand why this would be the case when she was told by the agency that AB's contract had been extended on the Sunday. In any event, AB was not working under the Claimant's line management at that time having been moved to the Integration/Shaping team.

102. The Claimant alleges that Mr Mounier 'smirked' when she raised issues with AB being back at work. Mr Mounier denies this. Mr Nicholl, who was at this meeting, says he did not see anything. The Tribunal, having heard from Mr Mounier and finding his evidence to be measured and credible, prefers his evidence that he did not smirk.

Issues relating to TH

103. During a meeting on 19 October 2015 TH put on makeup and did her hair in anticipation of going out after the meeting. This was behaviour that was clearly inappropriate. The Claimant says that Mr Rose raised this with her, whereas Mr Rose says the Claimant raised it with him. Mr Rose went to talk to TH about it and TH Harris accused the Claimant of complaining to Mr Rose. The Tribunal accepts Mr Rose's evidence that he believed that the Claimant had complained and went to see TH to talk about this which is his style of management.

Exclusion from meetings

104. The Claimant alleges that the Respondent excluded her from meetings relating to the merger on 6 December 2016, 7 December 2016, February 2017 and 7 March 2017. The Claimant thought that she should have been part of the management group who signed the NDA and managed the merger. This is notwithstanding that the process was Director and Executive led and that others more senior to her (including Mr Mounier until he stood in for Mr Rose) were not part of the NDA and only, along with other staff brought into the process on an as needed basis. As the Claimant was not part of this small group of management, she was not invited to the meetings. It maybe that the Claimant's real complaint (not

articulated in the agreed list of issues) is that she was not invited to be part of the planning group and offered the NDA. Even if this was the case the evidence was that women and those of Asian ethnicity were asked to sign the NDA.

105. The Claimant accepted in cross examination that she attended the meeting on 6 December 2016 but that she was not initially invited. She was not therefore excluded from this meeting.

106. The meeting on 7 December 2016 was for those who were party to the NDA. This did not include the Claimant.

107. The Claimant was unable to specify what meetings she was excluded from in February 2017. The Respondent's position is that the meetings that the Claimant refers to in her ET1 and witness statement were not meetings relating to the merger.

108. The Claimant's case is that she should have been invited to a meeting on 7 March 2017. This was a meeting of the Shaping Team which the Claimant was not a part of. Only those who were on this project attended. The Claimant said in cross-examination that the reason she felt she should be attending was that AB was attending and she still had line management responsibility for him. The Tribunal accept that the reason the Claimant was not invited was because she was not part of the Shaping project.

Removal of job responsibilities

i. Status of job description

ii. C's perception of status and role

iii. R subs p36.

iv. Business needs very busy and complicated times with the merger.

109. The Claimant complains that the Respondent took away her responsibilities and allocated tasks that feel within her remit and experience to others on 7 February 2017, 21 February 2017, 3 March 2017, 6 March 2017 and March 2017.

110. The Respondent has given detailed submission on this issue which the Tribunal has taken into account together with the witness statements and

evidence given at the Tribunal. The Tribunal looked to see how the Claimant put this issue in submissions but there was nothing specific to assist the Tribunal.

111. The Tribunal does not accept the Claimant's evidence that in a meeting on 7 February 2017 Mr Mounier said the Claimant did not understand solution architecture and attacked her performance. The Tribunal accept his evidence that this did not happen. The Tribunal finds that this meeting was a meeting to discuss strategic matter and nothing was actually taken away from the Claimant.
112. The Claimant complains that Mr Cooper asked to see capability maps as they needed to be updated. The Tribunal find that this was part of his remit and therefore thing was taken away from the Claimant. Mr Cooper reported to the Claimant. This was work undertaken for the shaping team which the Claimant was not part of.
113. Similarly, the allegation relating to 3 March 2017 relates to matters concerning the shaping team. The Claimant was not part of that team.
114. The other allegation relates to AB being offered a one-month extension to his contract to work on the shaping team as set out above. The Claimant would not be working with him as she was not part of the shaping team.
115. For the avoidance of doubt, the Tribunal finds that the shaping team was a specially created team set up to for a specific project and different staff from different areas worked in this team under the matrix management system described above.

The Tribunal's conclusions

116. Having found the factual matrix above, the Tribunal has come to the following conclusions on the balance of probabilities. The Tribunal has set out each issue in turn as it appears in the agreed list of issues. The numbering has inevitably departed from the agreed list so to avoid any confusion, the agreed list as provided to the Tribunal is put as an appendix.

Direct Discrimination

117. ***Did the Respondents do the following acts and/or omissions:***
- a. Fail to take any steps to address RH's inappropriate conduct towards the Claimant (paras 9 and 14 ET1);***
- i. The Tribunal does not find this allegation to be proven. The Tribunal has found that the Claimant complained about RH in terms of his performance and ability to do work to the standard required. It has found that the Claimant did not complain about any inappropriate behaviour relating to the Claimant's sex or race. This part of the Claimant's claim is dismissed.

b. Target the Claimant's team when looking to reduce headcount (para 10 ET1);

- i. The Claimant says it was an act of direct discrimination that the Respondent targeted her in relation to making reductions in the number of people in her team. The Tribunal does not find that the Respondent targeted the Claimant when looking to reduce headcount. The Tribunal accepts that the Respondent was forced to make cuts due to the loss of income following a reduction in social housing rents. The Tribunal accepts the Respondent's evidence that Mr Mounier had to lose three posts from his headcount. These losses were made from vacant positions so did not result directly in any staff being made redundant. The Claimant only lost one post. The Tribunal does not find this allegation to be proven.

c. Seek to turn TH against the Claimant (para 12 ET1);

- i. The Tribunal has found that Mr Rose did not seek to turn TH against the Claimant. This part of the Claimant's claim is dismissed.

d. Physically exclude the Claimant from the IT department by taking her desk and failing to find her an alternative desk in the department for 9 months (para 13 ET1);

- i. The Tribunal has found that the Claimant did not have the right to a permanent desk and that the Respondent did not exclude the Claimant. The Claimant decided to remove herself from the IT department and sit within the finance team. No staff had a permanent desk. This part of the Claimant's claim is dismissed.

e. Exclude the Claimant from meetings and from discussions relating to the arrangements for the merger (paras 18, 19, 21, 32 ET1);

- i. The Claimant was not party to the NDA and not party to discussions relating to the arrangements for the merger. She was not treated differently to other staff who were not female or Asian. For example, Mr Mounier was not invited to all

meetings and only became involved to cover Mr Rose when Mr Rose went on holiday. Mr Nicholls only became involved as he was responsible for the data room, and only became involved when this part of the project arose. This part of the Claimant's claim is dismissed.

f. Take away the Claimant's responsibilities and allocate tasks that fell within her remit and experience to others (para 20, 22, 25, 30, 31 ET1);

i. The Tribunal has not found facts to support this allegation and this part of the Claimant's claim is dismissed.

g. Fail to take any steps to address Mr Buchan's inappropriate conduct towards the Claimant (para 21, 24, 27, 34, 35 ET1);

i. The Claimant did not say that the behaviour of AB was related to her sex or race. This part of the Claimant's claim is dismissed.

h. Exclude the Claimant from discussions about Mr Buchan's contract extension and agree their own arrangement with him without her knowledge (para 26-30 ET1);

i. This part of the Claimant's claim is dismissed. The Tribunal has found that the Claimant was involved in the contract extension and that the extension finalised was the same as what the Claimant was trying to achieve.

i. Unfairly put the Claimant at risk of redundancy on 17 May 2017 (para 39 ET1);

i. The Claimant was put at risk of redundancy in the same way as all other tier 4 employees. She was treated in line with the Respondent's redundancy and assimilation policy. This part of the Claimant's claim is dismissed.

j. Refuse to put the consultation process on hold whilst the Claimant was signed off sick or until the conclusion of the grievance process (para 43 ET1);

- i. This part of the Claimant's claim is dismissed. As set out in the facts above, the Respondent had to have its new structure in place by 3 July 2017. The Respondent made many adjustments to its policy to enable the Claimant to participate in the Consultation process. She was given more time, was offered alternative locations and offered the opportunity to make written representations in lieu of a face to face meeting. The Respondent could not put the consultation process on hold just for the Claimant. To do so would mean that the whole consultation process would have to be halted which was not possible. Given the time frames the Respondent was unable to halt the process. If the consultation for the Claimant only had been put on hold, then the inevitable result would be that the two roles she was ring-fenced for would have been appointed to in the process for the other candidates.

k. Follow an unfair process in respect of filling two new roles (para 41 and 46 ET1);

- i. The Tribunal has found that the two new roles that the Claimant was ring-fenced to were filled using a reasonable process which was applied equally to all staff. As already found the process as applied to the Claimant was modified and, had the Claimant applied, the Respondent would have considered an alternative interview process which did not include Mr Rose. The Claimant did not apply for either position, so this did not arise.

l. Unfairly terminate the Claimant's employment (para 47 ET1);

- i. The Tribunal finds that the termination of the Claimant's employment was reasonable. The Claimant had been given the opportunity to apply for the two positions and modifications to the procedure were made to enable her to participate. The Tribunal is satisfied that Mr Joseph who was the decision maker was not involved in the Claimant's grievance or whistleblowing complaints and had no knowledge of the content.

ii. The Claimant complains that she was hurried out of the business by her employment being terminated without notice. The Tribunal does not find this to be unreasonable, given that the Claimant was off work for stress related reasons and it was unlikely she would have been fit to return during her notice period. Given she received a payment in lieu of notice the Claimant was not prejudiced by this.

m. Refuse to consider the relationship between the issues raised in the grievance and the decision to dismiss;

i. As already found, Mr Joseph was not involved with and did not know the substance of the allegations the Claimant had made in her grievance and whistleblowing allegations. The Claimant was dismissed as part of a wider restructuring following the merger of the Respondent with Family Mosaic and did not apply to be part of the new structure. This was not to do with her complaints. This part of the Claimant's claim is dismissed.

n. Fail to deal with the grievance and whistleblowing complaints and appeals reasonably and in line with the First Respondent's own procedures.

i. The Tribunal has found that the Respondent did act reasonably and in accordance with their procedures. The use of external consultants was a reasonable decision in the circumstances and one which the Respondent had done before. This part of the Claimant's claim is dismissed.

118. *Did the acts set out at paragraph 3 (points a-n) above amount to less favourable treatment of the Claimant compared to:*

- ***In respect of paragraph 3(a) above, Simon Cooper;***
- ***In respect of paragraph 3(g) above, Tim Veale;***
- ***In respect of each act/omission set out at paragraph 3 above, a hypothetical comparator?***

i. The Tribunal has not found the above acts to be less favourable treatment than the comparators referred to. This part of the Claimant's claim is dismissed.

119. *Were the acts set out at paragraph 3 above because of the Claimant's sex and/or race?*

i. The Tribunal does not find that the acts were because of the Claimant's sex and/or race. This part of the Claimant's claim is dismissed.

Harassment

120. **Did the Second Respondent do the following acts/omissions:**

a. Tell the Claimant that she did not understand solution architecture and fail to respond when she asked whether she was not valued and did not have a job (para 20 ET1);

ii. The Tribunal has found that this was not said. This part of the Claimant's claim is dismissed.

b. Smirk when the Claimant expressed how excluded she felt (para 29 ET1);

iii. The Tribunal has found this did not happen. This part of the Claimant's claim is dismissed.

121. **Did the conduct set out at paragraph 6 above amount to unwanted conduct towards the Claimant? / Did the conduct relate to the Claimant's sex and/or race? / Did the conduct have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? / Was it reasonable for the Claimant to regard it as having that effect?**

v. iv. As the Tribunal has found these allegations did not happen, issues 111-120 are unfounded and are dismissed.

122. **Did the Third Respondent do the following acts/omissions:**

Inform the Claimant that he 'did not want to know' when she informed him she felt excluded (para 30 ET1); / Inform the Claimant that the Respondents had managed FB out (para 33 ET1) / Did the conduct set out at paragraph 11 above amount to unwanted conduct towards the Claimant? / Did the conduct relate to the Claimant's sex and/or race? / Did the conduct have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? / Was it reasonable for the Claimant to regard it as having that effect?

- i. In light of the Tribunal's findings that these two events did not happen and the issues in 121 - 125 are dismissed.

Victimisation

123. ***Did the Claimant's submission of a grievance on 26 April 2017 amount to a protected act within the meaning of Section 27(2) Equality Act 2010?***

- i. The Respondent accepts that this was a protected act.

124. ***Was the Claimant subjected to the following detrimental treatment because she had done the protected act:***

- ***Being put at risk of redundancy on 17 May 2017 (para 39 ET1);***
- ***The Third Respondent being given responsibility for appointing individuals to two new roles and no alternative arrangements being made for the Claimant (para 41 ET1);***
- ***The grievance decision being deeply flawed (para 42 ET1);***
- ***The Respondents' refusal to put the consultation process on hold whilst the Claimant was signed off sick or until the conclusion of the grievance process (para 43 ET1);***
- ***The First Respondent following an unfair process in respect of filling two roles (para 41 and 46 ET1);***
- ***The termination of the Claimant's employment (para 47 ET1);***
- ***The appeal against dismissal decision being flawed and failing to address several key points (para 49 ET1); and***
- ***The decision in respect of the appeal against the grievance and whistleblowing complaint outcome being deeply flawed and failing entirely to address the Claimant's whistleblowing concerns (para 50 ET1).***

- i. Given the factual findings made above these claims are dismissed. The reasons for all these matters was not related to the Claimant's whistleblowing complaint.

Detrimental treatment under section 47B Employment Rights Act 1996

125. ***Did the Claimant make disclosures under the First Respondent's Whistleblowing Policy on 2 May 2017 regarding the Claimant's failure to comply with its legal obligations, including obligations under the Equality Act 2010, obligations regarding a Microsoft Surface device and breaches of OJEU process?/ Were the above alleged disclosures "qualifying disclosures" within the meaning of s. 43A and ss. 43B(1)(a) or (b) ERA 1996?***

In particular:

a. In the Claimant's reasonable belief, did the issues raised tend to show that the Respondent had failed or would fail to comply with a legal obligation to which it was subject?

b. Did the Claimant reasonably believe that her disclosures were in the public interest?

i. The Respondent accepts that the disclosure was a protected disclosure.

126. ***Was the Claimant subjected to the following detrimental treatment because of her disclosures:***

- ***Being put at risk of redundancy on 17 May 2017 (para 39 ET1);***
- ***The Respondents' failure to properly investigate or deal with the protected disclosures;***
- ***The Respondents' refusal to put the consultation process on hold whilst the Claimant was signed off sick or until the conclusion of the grievance process (para 43 ET1);***
- ***The First Respondent following an unfair process in respect of filling two roles (para 41 and 46 ET1).***

i. The Tribunal has found that the Claimant was not subject to detrimental treatment because of her disclosures. The Tribunal has found that the Claimant was reasonably put at risk of redundancy along with all other tier 4 employees, that the disclosures were reasonably investigated, that it was reasonable for the Respondent not to put the consultation period on hold and that the process for filling the two roles was reasonable and fair. This part of the Claimant's claim is dismissed.

Automatically unfair dismissal / Ordinary unfair dismissal

127. ***Was the reason or principal reason for the Claimant's dismissal the fact that she had made the protected disclosures referred to at paragraphs 18-19 above?***

128. ***Was her dismissal therefore contrary to Section 103A of the Employment Rights Act 1996 and automatically unfair?***

129. ***In the alternative, was the reason or principal reason for the Claimant's dismissal her race and/or sex and/or the fact she had raised a grievance regarding the discrimination she had been subjected to?***

i. The Tribunal finds that the reason the Claimant's employment was terminated was redundancy. The Claimant's protected disclosure and/or grievance had no bearing on the decision to terminate her employment. The Claimant was not unfairly dismissed whether automatically or otherwise. This part of the Claimant's claim is dismissed.

130. ***Was the Claimant's dismissal contrary to Section 94(1) of the Employment Rights Act 1996?***

131. ***Was the Respondents' procedure unfair in that they:***

- a. ***Failed to consult with the Claimant properly or postpone the consultation process until such time as the Claimant was fit to engage in work-related discussions;***
- b. ***Failed to postpone the consultation process until the grievance process had been completed;***
- c. ***Failed to choose a reasonable pool for selection or inform the Claimant of the selection criteria;***
- d. ***Failed to give the Claimant a reasonable opportunity to challenge the selection criteria;***
- e. ***Unfairly selected the Claimant for redundancy and failed to adequately explain why the Claimant's role was deleted;***
- f. ***Failed to make appropriate arrangements to enable the Claimant to apply for the two new Heads of Service roles;***
- g. ***Failed to warn the Claimant that she may be dismissed on 30 June 2017; and***

h. Failed to fairly or reasonably deal with her appeal against her dismissal.

136. Was the Claimant's dismissal fair and reasonable in all the circumstances, especially given the size of the Respondent and the resources available to it, and therefore in compliance with section 98(4) Employment Rights Act 1996?

- vi. In relation to paragraphs 130 -136, the Tribunal finds that the Claimant was fairly dismissed by reason of redundancy. The Respondent carried out a fair procedure which warned of the risk of redundancy, invited comment on the new structure, invited the Claimant to redundancy consultation meetings, modified its procedure as the Claimant was on sick leave. Ultimately the Claimant did not apply for the two roles she was ringfenced for, and the Respondent therefore had no alternative but to dismiss her as redundant. This part of the Claimant's claim is dismissed.

Jurisdiction

137. To the extent that any of the acts and/or omissions complained of occurred prior to 31 October 2016, do these, together with the later acts and/or omissions amount to a course of conduct extending over a period within the meaning of section 123(3)(a) Equality Act 2010?

138. To the extent that any of the acts and/or omissions do not amount to a course of conduct extending over a period within the meaning of section 123(3)(a) Equality Act 2010, would it be just and equitable in the circumstances for the Tribunal to extend time under section 123(1)(b) Equality Act 2010?

- vii. Given the findings the Tribunal has not gone on to consider the question of jurisdiction.

Employment Judge Anne Martin
Date 09 April 2019

Appendix 1

AGREED LIST OF ISSUES

Jurisdiction

132. *To the extent that any of the acts and/or omissions complained of occurred prior to 31 October 2016, do these, together with the later acts and/or omissions amount to a course of conduct extending over a period within the meaning of section 123(3)(a) Equality Act 2010?*
133. *To the extent that any of the acts and/or omissions do not amount to a course of conduct extending over a period within the meaning of section 123(3)(a) Equality Act 2010, would it be just and equitable in the circumstances for the Tribunal to extend time under section 123(1)(b) Equality Act 2010?*

Direct Discrimination

134. *Did the Respondents do the following acts and/or omissions:*
- b. Fail to take any steps to address Mr Holt's inappropriate conduct towards the Claimant (paras 9 and 14 ET1);*
 - c. Target the Claimant's team when looking to reduce headcount (para 10 ET1);*
 - d. Seek to turn Ms Harris against the Claimant (para 12 ET1);*
 - e. Physically exclude the Claimant from the IT department by taking her desk and failing to find her an alternative desk in the department for 9 months (para 13 ET1);*
 - f. Exclude the Claimant from meetings and from discussions relating to the arrangements for the merger (paras 18, 19, 21, 32 ET1);*
 - g. Take away the Claimant's responsibilities and allocate tasks that fell within her remit and experience to others (para 20, 22, 25, 30, 31 ET1);*
 - h. Fail to take any steps to address Mr Buchan's inappropriate conduct towards the Claimant (para 21, 24, 27, 34, 35 ET1);*
 - i. Exclude the Claimant from discussions about Mr Buchan's contract extension and agree their own arrangement with him without her knowledge (para 26-30 ET1);*
 - j. Unfairly put the Claimant at risk of redundancy on 17 May 2017 (para 39 ET1);*
 - k. Refuse to put the consultation process on hold whilst the Claimant was signed off sick or until the conclusion of the grievance process (para 43 ET1);*
 - l. Follow an unfair process in respect of filling two new roles (para 41 and 46 ET1);*
 - m. Unfairly terminate the Claimant's employment (para 47 ET1);*
 - n. Refuse to consider the relationship between the issues raised in the grievance and the decision to dismiss;*
 - o. Fail to deal with the grievance and whistleblowing complaints and appeals reasonably and in line with the First Respondent's own procedures.*
135. *Did the acts set out at paragraph 3 above amount to less favourable treatment of the Claimant compared to:*

- p. *In respect of paragraph 3(a) above, Simon Cooper;*
 - q. *In respect of paragraph 3(g) above, Tim Veale;*
 - r. *In respect of each act/omission set out at paragraph 3 above, a hypothetical comparator?*
136. *Were the acts set out at paragraph 3 above because of the Claimant's sex and/or race?*

Harassment

137. *Did the Second Respondent do the following acts/omissions:*
- s. *Tell the Claimant that she did not understand solution architecture and fail to respond when she asked whether she was not valued and did not have a job (para 20 ET1);*
 - t. *Smirk when the Claimant expressed how excluded she felt (para 29 ET1);*
138. *Did the conduct set out at paragraph 6 above amount to unwanted conduct towards the Claimant?*
139. *Did the conduct relate to the Claimant's sex and/or race?*
140. *Did the conduct have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?*
141. *Was it reasonable for the Claimant to regard it as having that effect?*
142. *Did the Third Respondent do the following acts/omissions:*
- u. *Inform the Claimant that he 'did not want to know' when she informed him she felt excluded (para 30 ET1);*
 - v. *Inform the Claimant that the Respondents had managed Faran Butt out (para 33 ET1).*
143. *Did the conduct set out at paragraph 11 above amount to unwanted conduct towards the Claimant?*
144. *Did the conduct relate to the Claimant's sex and/or race?*
145. *Did the conduct have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?*
146. *Was it reasonable for the Claimant to regard it as having that effect?*

Victimisation

147. *Did the Claimant's submission of a grievance on 26 April 2017 amount to a protected act within the meaning of Section 27(2) Equality Act 2010?*
148. *Was the Claimant subjected to the following detrimental treatment because she had done the protected act:*
- w. *Being put at risk of redundancy on 17 May 2017 (para 39 ET1);*
 - x. *The Third Respondent being given responsibility for appointing individuals to two new roles and no alternative arrangements being made for the Claimant (para 41 ET1);*
 - y. *The grievance decision being deeply flawed (para 42 ET1);*
 - z. *The Respondents' refusal to put the consultation process on hold whilst the Claimant was signed off sick or until the conclusion of the grievance process (para 43 ET1);*

- aa. *The First Respondent following an unfair process in respect of filling two roles (para 41 and 46 ET1);*
- bb. *The termination of the Claimant's employment (para 47 ET1);*
- cc. *The appeal against dismissal decision being flawed and failing to address several key points (para 49 ET1); and*
- dd. *The decision in respect of the appeal against the grievance and whistleblowing complaint outcome being deeply flawed and failing entirely to address the Claimant's whistleblowing concerns (para 50 ET1).*

Detrimental treatment under section 47B Employment Rights Act 1996

- 149. *Did the Claimant make disclosures under the First Respondent's Whistleblowing Policy on 2 May 2017 regarding the Claimant's failure to comply with its legal obligations, including obligations under the Equality Act 2010, obligations regarding a Microsoft Surface device and breaches of OJEU process?*
- 150. *Were the above alleged disclosures "qualifying disclosures" within the meaning of s. 43A and ss. 43B(1)(a) or (b) ERA 1996? In particular:*
- 151. *In the Claimant's reasonable belief, did the issues raised tend to show that the Respondent had failed or would fail to comply with a legal obligation to which it was subject?*
- 152. *Did the Claimant reasonably believe that her disclosures were in the public interest?*
- 153. *Was the Claimant subjected to the following detrimental treatment because of her disclosures:*
 - ee. *Being put at risk of redundancy on 17 May 2017 (para 39 ET1);*
 - ff. *The Respondents' failure to properly investigate or deal with the protected disclosures;*
 - gg. *The Respondents' refusal to put the consultation process on hold whilst the Claimant was signed off sick or until the conclusion of the grievance process (para 43 ET1);*
 - hh. *The First Respondent following an unfair process in respect of filling two roles (para 41 and 46 ET1).*

Automatically unfair dismissal / Ordinary unfair dismissal

- 154. *Was the reason or principal reason for the Claimant's dismissal the fact that she had made the protected disclosures referred to at paragraphs 18-19 above?*
- 155. *Was her dismissal therefore contrary to Section 103A of the Employment Rights Act 1996 and automatically unfair?*
- 156. *In the alternative, was the reason or principal reason for the Claimant's dismissal her race and/or sex and/or the fact she had raised a grievance regarding the discrimination she had been subjected to?*
- 157. *Was the Claimant's dismissal contrary to Section 94(1) of the Employment Rights Act 1996?*
- 158. *Was the Respondents' procedure unfair in that they:*

- ii. *Failed to consult with the Claimant properly or postpone the consultation process until such time as the Claimant was fit to engage in work-related discussions;*
- jj. *Failed to postpone the consultation process until the grievance process had been completed;*
- kk. *Failed to choose a reasonable pool for selection or inform the Claimant of the selection criteria;*
- ll. *Failed to give the Claimant a reasonable opportunity to challenge the selection criteria;*
- mm. *Unfairly selected the Claimant for redundancy and failed to adequately explain why the Claimant's role was deleted;*
- nn. *Failed to make appropriate arrangements to enable the Claimant to apply for the two new Heads of Service roles;*
- oo. *Failed to warn the Claimant that she may be dismissed on 30 June 2017; and*
- pp. *Failed to fairly or reasonably deal with her appeal against her dismissal.*
- qq. *Was the Claimant's dismissal fair and reasonable in all the circumstances, especially given the size of the Respondent and the resources available to it, and therefore in compliance with section 98(4) Employment Rights Act 1996?*

Remedy

Financial Losses

- 159. *If the Claimant succeeds in any part of her claim, what is the extent of the Claimant's losses arising from such of the alleged breaches as are established? In particular:*
- 160. *What remedy is it just and equitable for the Claimant to receive by way of compensation for her financial losses?*
- 161. *Has the Claimant mitigated her losses, in whole or in part?*

Other

- 162. *Should the Tribunal make an award for the Claimant's injury to feelings? If so, at what level?*
- 163. *What interest, if any, should the Claimant be awarded?*
- 164. *Should the Tribunal make any declarations?*
- 165. *Should the Tribunal make any recommendations?*
- 166. *Should the Tribunal make any award in respect of legal costs?*