



EMPLOYMENT TRIBUNALS

Claimant: Miss K Buttle **v** **Respondent:** BP Exploration Operating Company Limited

Heard at: Reading **On:** 24, 25, 26 October 2017
And in chambers **On:** 27 October 2017

Before: Employment Judge Gumbiti-Zimuto
Members: Mr J Cameron and Mrs F Betts

Appearances

For the Claimant: Mr J Dawson (Counsel)
For the Respondent: Mr C Stone (Counsel)

REASONS FOR RESERVED JUDGMENT

sent to the parties on 7 November 2017

REASONS

1. In a claim form received at the employment tribunal on 10 November 2016, the claimant made complaints of unfair dismissal, automatic unfair dismissal because the claimant made a protected disclosure, direct sex discrimination and harassment related to sex. The respondent defended the claims.
2. The claimant gave evidence in support of her own case and also produced a witness statement from Chris Langdon who did not attend and did not give live evidence. The respondent relied on the evidence of Mr Rahul Williams, Mrs Herlinde Mannaerts-Drew, Mrs Emma Delaney, Mr Geir Robinson, Mr Neil Cave and Mr Edward Warren. All the witnesses produced written statements which were taken as their evidence-in-chief. The Tribunal was also provided with a trial bundle containing in excess of 750 pages of documents.
3. The issues that the Tribunal had to determine were set out in an agreed list of issues [p48A].
4. We made the following findings of fact which we considered necessary to determine the matters before us.
5. The claimant was employed by the respondent from 3 December 2012 until 30 June 2016 as a surveyor Grade H. The claimant was one of seven surveyors based at Sunbury-on-Thames (Sunbury). Other than the claimant all the surveyors were male. The claimant worked in the Reservoir Development function which is part of the Upstream division of the respondent's business.

6. In 2013, whilst working in Sunbury and Luanda, Angola, the claimant felt she was bullied and generally treated very badly by one of her colleagues. The claimant raised the matter with the respondent. The claimant did so in emails which included an email dated 17 October 2013 [p563]. The claimant did not receive a response to her email and sent a further email on 17 February 2014 asking for an update.
7. The claimant suffered continuing problems and sent further emails to HR in May and June 2014 concerning the behaviour of the colleague.
8. The claimant received an email from HR dated 29 May 2014 which indicated that some action had been taken. The claimant was told that if she still felt that there had been “no change/difference” she could raise this through “OpenTalk”, the respondent’s confidential helpline.
9. The claimant considered that the matter had not been dealt with and raised the matter on OpenTalk.
10. The claimant relies on the email of 17 October 2013 and the report to OpenTalk as protected disclosures within the meaning of section 43A Employment Rights Act 1996.
11. The claimant was part of the Reservoir Development central team of surveyors which provides survey support to regions and functions within BP which do not have their own surveyors.
12. Prior to reorganisation in 2015, surveyors had been hosted within different Upstream functions. Following the 2015 reorganisation all surveyors were moved within Reservoir Development’s reporting line. The survey disciplines moved to a regionalised model with surveyors based in or tagged to regions.
13. Prior to the 2016 reorganisation, there were 28 surveyors in Reservoir Development, five of which were in the central team. The other 23 surveyors were based in or tagged to regions.
14. The claimant worked in the Eastern Hemisphere Central Surveyor Team. There was also a Western Hemisphere Surveyor Team. The reorganisation proposed to regionalise the survey discipline with the remaining surveyor roles at Level G. This meant that the Level H role in the Eastern Hemisphere Central Survey Team would potentially be eliminated in the new organisation (the claimant’s role). The proposal meant that one Level G role and one level I role would be retained in the Eastern Hemisphere Central Survey Team and two level G roles would be retained in the Western Hemisphere Central Survey Team.
15. In 2015 there had been a reorganisation of the Reservoir Development function that resulted in approximately 45 redundancies. The claimant had been placed at risk during the 2015 reorganisation but following the selection process the claimant was placed into the new organisation. The scoring used by the respondent in that reorganisation resulted in the claimant being given an overall weighted average score of 3.4 for the

various behaviours and criteria which the respondent was considering in the selection process.

16. The respondent's group of companies began a redundancy exercise in January 2016. On 13 January 2016, a 'town hall' meeting was held with all the Reservoir Development employees to outline the restructure proposals. All employees graded Level E and below were to be placed at risk of redundancy. 300 employees in Reservoir Development were affected.
17. The new organisation was to take effect from 1 July 2016. Seven employee representatives were elected to represent different employee groups within Reservoir Development. The employee representatives were to consult with the leadership team on behalf of the employees they represented on the various matters arising in the redundancy reorganisation process, including on ways of avoiding redundancies, reducing the numbers affected and the proposed selection criteria.
18. A first collective consultation meeting took place on 27 January 2016. The proposed selection criteria scoring framework was confirmed as the same system which had been used in the 2015 reorganisation. All employees would be scored by their team leaders on the criteria of: Knowledge, Skills and Experience (KSE) which was to be given a 40% weighting; Performance and Potential (P&P) which was to be given a 40% weighting; and Values and Behaviours (V&B) which was to be given a 20% weighting.
19. There was to be an assurance process carried out by HR and Discipline Directors on each employee's scores to ensure consistency and ensure there was no bias. This involved Discipline Directors reviewing KSE scores and HR moderating P&P and V&B scores using previous performance ratings.
20. A second collective consultation meeting took place on 3 February 2016 at which the proposed selection process was outlined. A number of selection meetings would take place where employees would be placed into roles based on their score, this would be done by subject discipline one grade at a time.
21. A third collective consultation meeting took place on 10 February 2016 where it was pointed out that some of the suggestions received from employees had been incorporated into the process. Employees were to be pooled by sub-discipline and then considered by grade and job family (specialism) at selection events. VPs, Discipline Directors and VP-1s would attend the selection meeting and input into the decision making. The highest scoring employees within a job family would be placed first by grade. Specialist skills and specific role requirements would be taken into account in the event of scores being equal. The highest graded roles and employees would be considered first and then the respondent would move on to each of the lower grades in turn. After that process was complete, the respondent was to review any unfilled roles and consider whether employees in higher or lower grades may be suitable. Discipline Directors are the technical leads of their disciplines.

22. The final collective consultation meeting took place on 17 February 2016. The employee representatives agreed that the consultation would continue over the next few days to deal with outstanding questions and issues by email and then the collective consultation would conclude.
23. Following the collective consultations, the respondent proceeded to the selection process.
24. As part of the selection process, a score of 3 meant the employee was performing to a good overall level and meeting expectations for their role. A score of 4 equated to strong performance and often exceeding the job requirements. A score of 5 meant that the employee was performing to an exceptional standard consistently exceeding job requirements.
25. The claimant was scored by her line manager, Ms Sarah Linn. The claimant received scores of 4 for KSE; 3 for P&P; and 3 for V&B giving average score of 3.4. The claimant's scores were the same in the 2015 selection process.
26. Mrs Mannaerts-Drew, as Discipline Director for Geophysics, was responsible for moderating the KSE scores of all employees who fell within the broad Geophysics discipline at Sunbury. The moderation process involved reviewing all the KSE scores ensuring that there were "no strange outliers". By this, she meant that if one team had scored much lower on average than others, she would ask the team leader to explain how they had reached the scores.
27. Discipline Directors were not to comment on KSE scores if they did not know the employee in question. Mrs Mannaerts-Drew was satisfied that the KSE scores of 4 was appropriate for the claimant. She was of this view based on her knowledge of the claimant's technical ability.
28. The claimant was a well-respected and competent surveyor who still had areas for development. The claimant was in the bottom half of the list of Level H employees in her selection pool according to her scores.
29. The claimant was included in the Level G and below Geophysics selection event.
30. Mr Williams says that the claimant's score of 3.4 is consistent with her three previous performance reviews ratings of "delivers expectations". A competency matrix, not used during the redundancy process, was provided to us [p322G]. This document was designed by Mr Walter Jardine who is the most senior surveyor in BP. The claimant's scores in the selection exercise was consistent with the competency matrix.
31. The Geophysics selection event took place on 22 February 2016 and lasted approximately three hours. The chair of the meeting was Ms Jolly, VP of Geoscience, she had the final sign off on selection decisions. Mrs Mannaerts-Drew attended in her capacity as Director of Geophysics. Mr Williams and a colleague attended to provide HR support.

32. Such notes as were taken during the selection meeting relating to Geophysicists are scant. Level G roles and employees were considered first. Starting with the highest scoring employees and the relevant job family and moving down the list until all of the Level G roles were filled. Then they moved on to the Level H roles and so on.
33. By the time they got to the claimant there were no Level H Surveyor roles available. The only other specialist Level H role which the claimant could potentially perform was the Geophysical Operations role. However, the employee placed into this role had a higher average score than the claimant and specialist skills which made him better suited to the role. The claimant was not considered for the broader Level H multi-disciplinary roles due to her scores. The employees placed into those roles had average scores of 4 and 4.4 (in contrast to the claimant's average score of 3.4).
34. The only relevant notes made at the meeting which remain from which there is some assistance read as follows:

“-GS 202 placed over Kat because of his technical skill in instrumentation and land”.

The claimant says this note indicates that there was a departure from the agreed procedure. It appears to show that the respondent considered technical skills rather than simply scores as prescribed by the agreed procedure.

35. From the information available, the Tribunal does not consider that this is a valid criticism. The situation is explained by Mr Williams. The candidate who was placed in this role had a higher average score than the claimant.
36. The respondent only considered the employees for roles in the grade above if their scores were high. The claimant's scores were not high enough for her to be considered for level G roles. There were no level H surveyor roles available. The claimant and the other remaining level H surveyor were considered for the level G Survey Solution Manager role. The level H surveyor placed into the role had an average score of 4.8 compared the claimant's average score of 3.4.
37. Following the selection events, there were two further meetings with the Reservoir Development leadership team which reviewed the overall results of the selection process across all grades. It became evident that the new organisation would potentially be top heavy and would risk losing too much junior talent. It was noted that there would be a significantly lower percentage of redundancies in the Level G population relative to the less senior roles. This was not aligned to the respondent's intention to ensure that no grade was disproportionately impacted in terms of redundancies.
38. The respondent reviewed lower scoring employees who had been provisionally placed into roles to determine if the role could be re-graded and the high scoring lower graded individuals placed instead. Level G roles were subsequently re-graded. The Angola surveyor role was regraded from Level G to level I and the surveyor initially placed in the role

was unplaced.

39. At the end of this part of the process, the claimant remained unplaced in the new organisation. She was therefore invited to participate in the individual consultation.
40. On 11 February 2016, the claimant and Mrs Mannerts-Drew had a meeting that gives rise to allegations of harassment and sex discrimination.
41. The claimant says that this meeting was arranged by her line manager, Ms Linn, and was out of the blue. Mrs Mannaerts-Drew says that she was approached by Ms Linn who asked her to have a mentoring discussion with the claimant because of an incident which had occurred at a 'town hall' meeting where the claimant had repeatedly asked questions of the presenter in an inappropriate manner. The purpose was to provide the claimant with feedback about her communication style and teamworking skills. Ms Linn felt that the claimant came across as very direct and abrasive. Ms Linn felt that the claimant had not listened to or taken on board the feedback she had given her.
42. The meeting on 11 February was an informal meeting. The claimant's version of this meeting is that it began with Mrs Mannaerts-Drew telling her that she was a great talent, one of the most competent surveyors they had, and that the claimant had a really good personality that just needed a little tweaking. Mrs Mannaerts-Drew then said that the claimant's personality would be a great asset to the company if she was a man but as she was not, she needed to learn to "curve my edges". The claimant says that she was told that she should not ask questions at meetings.
43. In her witness statement, the claimant said that she was "repeatedly" told that her personality would be an asset if she were a man and advised that she should "learn to read the room". During cross examination, the claimant conceded that this was not said repeatedly, however, her point was that it was reinforced by other comments that were made by Mrs Mannaerts-Drew. "It was not verbatim repeated, it was reinforced by the conversation". During the conversation on the 11 February, the claimant says that the subject of using humour to break tensions was addressed and she was told "that was again where I was making a mistake". The claimant says that Mrs Mannaerts-Drew told her that "Humour is a great tool to have in your toolbox but only if you're a man. Women simply aren't funny".
44. The claimant was challenged on this. It was put to her that it was not said. The claimant's account was that she remembered it so well because it was a ridiculous thing for someone to say that women are not funny. It was put to the claimant that what in fact Mrs Mannaerts-Drew was seeking to do was to tell her that humour was a difficult thing to pull off. The claimant did not recall Mrs Mannaerts-Drew saying that it was a difficult thing to pull off. The claimant denied that it was her who introduced humour into the conversation by raising the issue of using humour as a strategy.
45. The claimant says she was truly shocked by being told that if she was a man she would fit into the organisation but as she was not, she did not.

The claimant was questioned about this part of her evidence and she said that “In my interpretation, it means I would fit in if I was a man. As a woman, I would need to adjust myself to fit in”.

46. The claimant did not make a formal complaint about this meeting. What she says in her witness statement is that she needed to stay in the job. In oral evidence, she said she was trying to learn how to fit into the organisation.
47. The claimant arranged to meet with Mrs Mannaerts-Drew again on 26 February and on that occasion, she sought her advice about leadership styles and in that meeting the claimant was told by Mrs Mannaerts-Drew that she had a lot of potential and a great future in the organisation.
48. Mrs Mannaerts-Drew’s version of events differs. She recalls that the conversation opened by her asking the claimant how she was and how everything was going at work. Mrs Mannaerts-Drew then went on to mention the incident in the ‘town hall’ meeting and explained that it was fine for the claimant to ask questions but it was the manner in which she asked them which was important. Mrs Mannaerts-Drew says that the claimant asked the question why strong women were seen as negative but men who had very direct communication styles were tolerated and the conversation went on to discuss the example of Hillary Clinton’s experience in the US Presidential election campaign, how she was often negatively portrayed in the media as abrasive or cold. Mrs Mannaerts-Drew says that she contrasted this example with male world leaders who were often praised for the same traits. Mrs Mannaerts-Drew says that she explained that it was all about perception and strong women were often portrayed in a negative way. She says that she then went on to give the claimant a personal example and said that because she had been very outspoken in her early career, she had often been called “bossy” and compared to a “schoolteacher”. Mrs Mannaerts-Drew says that from her point of view the conversation was not really about being a man or a woman. It was about how as an individual you needed to be aware of how you come across and that it was important to create alignment and not alienate the people that you are working with. Mrs Mannaerts-Drew said that this applies to men and women.
49. Mrs Mannaerts-Drew says that it was the claimant who said that sometimes she used humour to try and defuse difficult situations. Mrs Mannaerts-Drew says that she was concerned by this because she had seen the claimant’s use humour before and she felt that she could often come across as cynical or sarcastic. Mrs Mannaerts-Drew says that she explained that she had experimented with using humour and in her experience, it could often fall flat and that it was a difficult communication style to pull off. Mrs Mannaerts-Drew says she did not say that the claimant should not use humour, only that she should be aware of her audience.
50. Mrs Mannaerts-Drew says that they then moved on to discussing influencing styles and that she explained that it was important when working with or leading a team to ensure that you take your audience with you and used the analogy of a tour group leader taking a group from

Brussels to Rome: "it is important to ensure that your tour group were not still on the platform at Brussels train station while you are at the Colosseum in Rome". Mrs Mannaerts-Drew says that during the meeting on the 11 February the claimant did become upset and tearful she tried to support and coach her by sharing her own personal experiences.

51. Mrs Mannaerts-Drew says that at the follow up meeting on 26 February they discussed teamwork and leadership styles again. She says that the claimant gave no indication whatsoever that she was concerned about anything that Mrs Mannaerts-Drew had said and in fact felt that both meetings had been positive.
52. Mrs Mannaerts-Drew denied that she said, or would say, that you need to be a man to succeed at the respondent. This goes against everything that she stands for in her values. As a woman who has been with the organisation for many years and worked offshore for a significant period of time, she is acutely aware of the challenges of being a woman in a man's world.
53. Mrs Mannaerts-Drew's evidence was that she did not feel that the conversation on the 11 February was really about gender at all, it was about how to work with people and being aware of how you come across. She said that the claimant did not raise any concerns with her about anything that she had said either during the conversation or subsequently.
54. On 14 March 2016, Mrs Mannaerts-Drew held a telephone meeting with the claimant in which she notified her that she was unplaced and at risk of redundancy. This was confirmed in a letter inviting the claimant to attend an individual consultation meeting on 21 March 2016.
55. The claimant and Mrs Mannaerts-Drew had the first consultation meeting on 21 March 2016. The claimant states that during the meeting, Mrs Mannaerts-Drew told her that she had plans for her "A through to Z" which the claimant took to mean that suitable jobs had been identified and that she would be offered one of them. Mrs Mannaerts-Drew denied that she said anything like this to the claimant stating that the claimant asked for her scores and they were provided.
56. At the second consultation meeting took place on 24 March 2016. The claimant indicated that she intended to apply for a role as Group Risk Advisor and confirmed that she was considering challenging her scores.
57. On 24 March, a redeployment forum where all remaining at risk employees were considered for any remaining roles took place.
58. On 30 March 2016, the claimant appealed her scores. The claimant prepared a lengthy document detailing why she thought her scores should be higher. The claimant also raised concerns about comments in her performance reviews from the preceding three years. The claimant had been rated "delivers expectations" during that period. The claimant had not previously challenged her performance reviews. Mrs Mannaerts-Drew became aware for the first time that the claimant had made a complaint

using OpenTalk, this was because the matter was mentioned by the claimant in her appeal against the scoring. Ms Linn, who was responsible for scoring the claimant, was asked to provide a response to the claimant's scoring challenge and she did so on 3 April 2016.

59. The claimant's final consultation meeting took place on 5 April 2016. At that meeting, Mrs Mannaerts-Drew acknowledged the claimant's scoring challenge and explained that having reviewed the claimant's comments and Ms Linn's feedback with HR, the claimant's scoring challenge was not being upheld and that her scores would remain the same. The claimant was told that she was to be given notice of termination of her employment on the grounds of redundancy.
60. The HR Director for Reservoir Development wrote to the claimant confirming the termination of her employment on the grounds of redundancy. The claimant was notified of her right to appeal that decision. On 11 April 2016, the claimant appealed the decision to make her redundant.
61. On 11 April 2016 Mrs Mannaerts-Drew emailed the claimant to inform her that the Oman expat surveyor role was live on TAS and open to applications and suggested that the claimant should apply if she believed it to be a suitable role for her.
62. In her role, the claimant had provided survey support to the West Nile Delta Project. The work that the claimant did on the West Nile Delta Project was moved out into the Global Projects Organisation (GPO) function where the work was being carried out by a contractor hired via a professional agency. The contractor's engagement was effective from 6 June 2016 on a flexible, as required, basis payable on a day rate.
63. The contractor went on to work on average 10 days per month. The arrangement can be terminated at will. The contractor may be required to perform services for GPO in relation to the West Nile Delta Project. The services are anticipated to be required on an as and when basis until completion of the West Nile Delta Project which is estimated to be at the end of 2018.
64. The claimant's appeal against the redundancy included three grounds. A challenge against the scoring; that she had been unfairly treated and scored because of her complaint against a senior manager in 2013; and that Mrs Mannaerts-Drew had been a party to a decision to dismiss her because of her gender.
65. Mrs Emma Delaney considered the claimant's appeal on 20 April 2017. During the hearing, the claimant led the discussion and Mrs Delaney asked questions to ensure she understood the basis of the claimant's appeal. The claimant was given the opportunity to expand on her written grounds of appeal. The scoring challenge was discussed; the claimant's performance reviews were discussed.
66. After the appeal hearing, Mrs Delaney undertook further investigations. Mrs Delaney spoke to the Ms Sarah Linn on 28 April. She spoke to Mrs

Mannaerts-Drew on the 29 April to understand the conversation that had taken place between her and the claimant when alleged discriminatory comments had been made. Mrs Delaney spoke to the claimant's managers to ascertain what knowledge they had of the OpenTalk in 2013. Mrs Delaney spoke with Mr Walter Jardine on 3 May 2016 to understand the redundancy rationale in the surveyor population.

67. On completing her investigations, Mrs Delaney considered the claimant's grounds of appeal and upheld the decision to terminate the claimant's employment.
68. In relation to the scoring process and challenge, Mrs Delaney was satisfied that the claimant's scores were appropriate and that the scoring criteria had been correctly applied. She was satisfied that the claimant's scoring challenge had been considered by Mrs Mannaerts-Drew and Ms Linn, and that Ms Linn had provided detailed feedback to support her view that the scores should be upheld.
69. In relation to the ground of appeal relating to the bullying complaint, Mrs Delaney took into account that the manager who was the subject of the 2013 OpenTalk complaint had not been involved in the redundancy process; and that Ms Linn, who was responsible for scoring the claimant, had not been the claimant's line manager at the time that the OpenTalk complaint was made and only had limited knowledge of it based on what the claimant herself had told her.
70. Mrs Delaney states as follows in her witness statement:

“It was clear to me that Sarah had approached the scoring process in a fair and systematic manner based on her assessment of Kathryn's performance. I was, and am confident that Kathryn's OpenTalk complaint didn't feature in Sarah's mind when she was scoring Kathryn and it seemed implausible to me to suggest that it would. I could see no reason why it would have influenced her approach in any way and Kathryn had not suggested any reason why it would have.”

Mrs Delaney goes on to say that she took into account the fact that the claimant's scores were moderated by HR and Mrs Mannaerts-Drew who were not aware of the full details of the OpenTalk complaint and she was satisfied that the OpenTalk complaint had no bearing on the scores that had been given to the claimant during the redundancy process. Mrs Delaney was satisfied that the OpenTalk complaint raised by the claimant in 2013 had no bearing whatsoever on her redundancy and she dismissed this ground of complaint.

71. The claimant's third ground of appeal concerned the issue of gender impacting the decision to dismiss the claimant. This part of the appeal related to the conversation between the claimant and Mrs Mannaerts-Drew on 11 February 2016. Mrs Delaney did not believe that Mrs Mannaerts-Drew used the words alleged by the claimant in the way that the claimant alleged. Mrs Delaney was satisfied that Mrs Mannaerts-Drew's comments about leadership styles and humour were reflections of her own experience made with the intention of supporting the claimant, to help the claimant develop her own style of teamworking. Mrs Delaney considered

that the conversation was intended to be supportive where Mrs Mannaerts-Drew shared her own experiences in the spirit of coaching and development. Mrs Delaney agreed that the discussion was not about gender but about helping the claimant understand how she was perceived by others. The comments were not intended to discriminate against the claimant. Mrs Delaney did not find the claimant's assertion that the conversation was discriminatory to be credible.

72. Mrs Delaney was satisfied that the discussion between the claimant and Mrs Mannaerts-Drew on 11 February 2016 did not have any impact on the claimant's scores or her eventual redundancy. Mrs Delaney did not uphold the claimant's appeal. Mrs Delaney stated that she took the claimant's allegations of discrimination seriously when investigating the claimant's appeal and was entirely satisfied that the claimant's allegations of discrimination were unfounded.

73. The Tribunal has not been able to agree in relation to this part of the case and the role played by Mrs Delaney. The majority consider that Mrs Delaney's evidence should be accepted and was not successfully challenged by the claimant notwithstanding the cross examination.

74. The minority view however is that whilst Mrs Delaney's evidence should be accepted, Mrs Delaney presenting as a clear and thoughtful witness, the approach that she adopted was fundamentally flawed and as a result of the approach that she adopted, in fact Mrs Delaney failed to discharge the role that she was required to do in considering the appeal.

75. The minority view of the evidence Mrs Delaney gave was that she considered that Ms Linn very systematic, appropriate and professional. Mrs Delaney said she had no reason to believe that she would not follow the procedure. At one point in her evidence, Mrs Delaney talking about the allegations made by the claimant about Ms Linn, stated that:

"It would be preposterous for me to have something like that happen. It did not even enter my head at the time. She was very level headed. It is unthinkable to me she could have incorporated that to make it part of the My Plan discussion."

Mrs Delaney appears to the minority to dismissing the possibility of Ms Linn acting outside the bounds of what would be expected. Whilst it is clear that Mrs Delaney spoke to all the people that she should do and appears to have discussed the issues that required discussing. However, her approach to this task did not permit the possibility of a critical conclusion which was dismissed as preposterous because Ms Linn was systematic, appropriate and professional. This approach leads the minority to conclude that Mrs Delaney approach made the appeal process nugatory. In approaching her task, Mrs Delaney did so with the view that certain things could not possibly have happened. That mindset casts doubt on the entire appeal conducted by Mrs Delaney.

76. The view of the majority is that these criticisms of Mrs Delaney are unfair and that a fair perusal of her witness statement shows the care and attention that she took in considering the appeal. The majority view is Mrs

Delaney was properly able to conclude as she did on the appeal.

77. In March 2016, a Group Risk Advisor position was advertised on the respondent's internal online job portal TAS. This was a level G role. The claimant's application required her to provide her performance review documents for the previous two years.
78. The claimant flagged in her application her 'at risk' status. The respondent makes decisions based on merit. However, candidates who are at risk of redundancy and who meet the criteria for a role will be given preference over other candidates. This does not apply in respect of roles which are advertised at a higher or lower grade to that held by the at-risk employee. In such circumstances, the roles are not considered to be suitable alternative roles. As the claimant was a level H and the Group Risk Advisor role was a level G role, the claimant was not given preference over other applicants on the basis of her at risk status.
79. There were 14 applications. The claimant was not selected for an interview due to her lack of experience in corporate enterprise and financial risk management. On 8 April, the claimant was notified that she was unsuccessful in her application. The successful candidate for the Group Risk Advisor role was a level G employee from Commodity Risk, a team within the upstream function of Integrated Supply and Trading.
80. The claimant requested feedback on her application. Mr Geir Robinson agreed to provide this over the phone. Mr Robinson reviewed her application in detail. On doing so, it was evident to him that the claimant's background as a surveyor meant it was highly unlikely that she would have been suitable for the Group Risk Advisor role because of her lack of experience in corporate risk management.
81. There were comments in the claimant's performance review documents which gave Mr Robinson cause for concern. The comments in the 2014 and 2015 performance review documents led Mr Robinson to consider that the claimant had difficulty building relationships and managing her frustrations with others. Mr Robinson was particularly concerned that feedback appeared consistently in performance review documents and did not appear to have been acted upon.
82. Mr Robinson spoke to the claimant over the phone on 11 April 2016. During that call, he relayed the comments in the performance review documents which had given him cause for concern and suggested that in order to be successful in future applications the claimant needed to reflect on the feedback which her line managers had given her about communication style and demonstrate to future hiring managers that she had taken steps to address the feedback.
83. Mr Robinson does not recall referring to the claimant's personality during the call and said he would have used the words 'personality flaw' as the claimant alleged. The conversation about the comments in the performance review documents were about the claimant's interpersonal skills and why they represented red flags to Mr Robinson. He stated that the claimant did not raise any concerns with him about the conversation

and reacted positively to the feedback saying she was grateful that he had taken the time to provide her with feedback.

84. Mr Robinson also stated that he had never met or had any dealings with the claimant prior to her application for the role as they worked in completely different parts of the organisation and he had no knowledge whatsoever of her bullying complaint and as far as he was aware neither did those in his team who had screened the applications.
85. The Tribunal heard evidence from Mr Edward Warren who is the Oman New World Delivery Manager. He managed the recruitment process for a Project Surveyor role based in Oman which the claimant applied for while she was at risk. The claimant complained that the job description for the role was changed before the interview stage to suit the skillset of a male colleague who was also at risk and in due course the successful candidate.
86. Mr Warren met the claimant in 2014 whilst they both worked on an assignment in Luanda, Angola. The claimant was working a different team providing service support to New World delivery. Mr Warren came across the claimant again at the beginning of his assignment to Muscat in August 2015 when the claimant was performing a survey and positioning assessment of the Oman region's capabilities. The claimant's work identified a number of gaps. Subsequently, Mr Warren and the claimant worked together over the next few months to develop an action plan to fill those gaps including holding weekly phone meetings between Sunbury and Muscat until the claimant moved to a new project in February 2016.
87. Partly as a result of the claimant's work in December 2015, Mr Warren was given approval to advertise a Project Surveyor role in Oman. In April 2016, the position was advertised on TAS. The job description set out the required qualifications and experience as well as the role responsibilities.
88. Shortly after the role was posted on TAS, the claimant contacted Mr Warren. She told him she was unsure about whether to apply for the role because she was concerned about being a single woman in Oman. After being able to reassure herself about Oman lifestyle, the claimant did apply. Mr Warren states that he was pleased that she had applied because he knew she was a competent surveyor. They received five internal applications for the role and one external application from an Omani national. Three candidates were chosen for interview including the claimant. They all met the required qualifications.
89. Prior to the interview stage, one of the internal applicants contacted Mr Walter Jardine, the surveying position segment engineering technical authority, for information on the role. Mr Jardine sent him an email outlining the key aspects of the role and copied it to Mr Warren. Mr Warren sent Mr Jardine's note to all the other candidates, he thought it would be helpful for all the candidates when preparing for interview. The claimant complains that the email shows that the job description for the role was changed to better suit the skillset of the successful male candidate.
90. The claimant was interviewed on 10 May 2016. Mr Warren's overall

assessment of the claimant was that she scored reasonably well but her scores reflected her limited experience in land survey and GIS. On the same day, a male candidate Level G surveyor who was also at risk of redundancy was also interviewed. This male candidate had worked with Mr Warren previously in Angola and from a technical knowledge and skills perspective he was a superior candidate to the claimant with many more years' experience and his interview scores reflect that. The claimant demonstrated strong skills on survey generally but admitted weaknesses in land surveying and GIS, she showed enthusiasm and willingness to learn which impressed at interview but ultimately the successful candidate was the stronger candidate. On 25 May, Mr Warren informed the claimant that she had been unsuccessful.

91. Mr Warren denied that the job description was changed before the interview to make it less of a match for the claimant and more aligned with the skills of the successful male candidate by adding responsibilities for GIS. Mr Warren states that the original job description expressly referred to responsibilities for GIS. The email did not change the job description, it simply added detail and more specific information. The email was sent to all candidates in order to ensure transparency and a level playing field.
92. The claimant states that she informed her friend and colleague, Mr Neil Cave, about her failure to succeed in getting the Oman job and informed him about the job description to which he commented "well you know they can't give you the job because you are a woman".
93. Mr Cave was called by the respondent to give evidence in the case and he denied that he had said that. He accepted that he had a lot of wide ranging discussions with the claimant outside about the potential redundancy and roles that she was considering applying for. He accepted that the subject of the Oman role was raised and discussed between him and the claimant on a few occasions. He could not recall exactly when these conversations took place.
94. On 30 June 2016, the claimant's employment with the respondent terminated.

Law

95. Section 13 Equality Act 2010 provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. Sex is a protected characteristic. On a comparison of cases for the purposes of section 13 there must be no material difference between the circumstances relating to each case. An employer (A) must not discriminate against an employee of A's (B), by dismissing B or by subjecting B to any other detriment.
96. A person (A) harasses another (B) if, A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether conduct has that effect each of the following must be taken into

account: (a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect.

97. In any proceedings relating to a contravention of the Equality Act 2010, if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. This does not apply if A shows that A did not contravene the provision.
98. Section 43A Employment Rights Act 1996 provides that a “protected disclosure” means a qualifying disclosure (as defined by section 43B which is made by a worker to his employer. A “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show, relevant for the purposes of this case, that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.
99. A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure or by another worker of his employer in the course of that other worker's employment, on the ground that the worker has made a protected disclosure. Where a worker is subjected to detriment by anything done by another worker of his employer that thing is treated as also done by the worker's employer. It is immaterial whether the thing is done with the knowledge or approval of the worker's employer.
100. An employee may present a complaint to an employment tribunal that he has been subjected to a detriment because she made a protected disclosure. On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
101. An employee has the right not to be unfairly dismissed by his employer. An employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.
102. In determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason set out in section 98 (2) Employment Rights Act 1996 or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. That the employee was redundant is a reason within section 98 (2).
103. Where there is a potentially fair reason the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case.

Conclusions

104. There is no dispute that there was a genuine redundancy. The claimant says that the dismissal was unfair because there were several procedural flaws. The claimant criticises the pool for selection.
105. The claimant argues that there was an inconsistency as to whether the selection for redundancy was to be done according to the employee's grading matching jobs in the new structure or whether the best person for the new job was to be appointed.
106. The Tribunal rejects the argument that there was such an inconsistency. The evidence has shown that the respondent followed the process set up and explained to the employees in the collective consultation process.
107. The claimant contends that there was a departure from the agreed procedure and that the respondent when scoring the claimant considered factors other than the agreed criteria. The claimant makes several criticisms including that the respondent failed to keep notes including demonstrable examples of the scoring. The claimant says that the scoring exercise carried out by Ms Linn was inadequate. For example, it was not possible to know how the document at page 328 translates to the scores given. It is further said that it is not possible to use the document to check the scores given to the claimant. The claimant also says that Mr Jardine's competency matrix, showing technical competency amongst surveyors [p322i], when set against the claimant's redundancy scoring raises questions as to whether the claimant was fairly marked.
108. The competency matrix document was not used in the redundancy process. It did not cover all aspects of the scoring criteria used in the redundancy process. The respondent relied on the evidence of Mrs Mannaerts-Drew and Mrs Delaney. Ms Linn (who scored the claimant) did not give evidence. The way the respondent arrived at the claimant's scores and the redundancy is not supported by notes. However, the respondent produces [page 328]. The claimant criticises this document on the basis that there is no evidence to support how the document was used in the scoring process or what it tells us about how the claimant was scored.
109. There is no evidence from Ms Linn but there is evidence which tends to support the marking of the claimant. The claimant was marked with a score of 4 for KSE. This is in keeping with the results of the competency matrix although the redundancy scoring and competency matrix do not overlay exactly. The claimant being given higher marks for KSE is in keeping with the competency she had shown, in turn that is recognised is the competency matrix.
110. The Tribunal has not been persuaded that the evidence supports a conclusion that the claimant's performance review documents were corrupted by retaliation for making protected disclosures. In the scoring appeal, Mrs Delaney considered the scores and concluded that they were in keeping with the performance review documents. Mrs Mannaerts-Drew

considered the claimant's challenge to her scoring and concluded that it was appropriate. She took account of all the detailed points the claimant made. The Tribunal has been unable to conclude that the scoring was unfair.

111. The respondent's procedure provides that scores for KSE should be reviewed by Discipline Directors. HR was to carry out an assurance check for other scores. The claimant states that there is no evidence at all of moderation being carried out by HR as there is no record of the moderation taking place. This is because of the respondent's policy of not keeping notes. The claimant also criticises Mrs Mannaerts-Drew on the basis that her moderation of the KSE scores only involved looking at outliers and she is further criticised on the basis that she failed to produce any documents relating to this process.
112. Replying to the specific criticism made in this regard, the respondent states that what the claimant has through the cross examination of witnesses put forward a counsel of perfection. The respondent says that a reasonable redundancy process is not necessarily perfect and that is what the Tribunal is required to consider. The respondent said that the Tribunal should consider the process that was undertaken, the number of positions under review, and accept that these were not meetings where a note of everything is made. This was a process which involved an overview of the skills of the employees and matching them to roles. It is said by the respondent that it is a process in respect of which no detailed notes were made but having regard to the process that was being followed by the respondent this was not a realistic expectation. The respondent relies on the fact that the selection process agreed by the employee representatives was followed through into the selection meeting. It is regrettable but not unfair that the claimant was not selected.
113. The respondent's position is that the KSE scores were assured by Mrs Mannaerts-Drew. She looked for systematic bias and instances where scores did not match her knowledge of a team member and that she raised any anomalies with HR. It is further said that the P&P and V&B scores were assured by HR comparing the P&P scores against previous performance review documents, any anomalies were raised with team leaders. It was emphasised that this was an assurance check and not a process which required HR to re-mark the scores.
114. The Tribunal was able to hear from Mr Williams and Mrs Mannaerts-Drew, both of whom played a part in this selection process. Mr Williams' evidence was general but Mrs Mannaerts-Drew's evidence was specific when it comes to how the claimant was marked.
115. Having heard their evidence of the process and how the respondent approached matters, the view of the Tribunal is that the respondent did follow the process it agreed and whilst it is possible to identify points in the process which give the appearance of a departure from the details written down in the various documents outlining the process, we are satisfied that overall what is described by the witnesses was evidence of the respondent faithfully following the process which had been agreed, even if not always doing things in precisely the way described in the various consultation

documents and agreed processes.

116. One of the ways in which the process followed by the respondent appeared not to match precisely with the detail recorded was the fact that in the claimant's case the VP-1 manager and the Discipline Director were the same person, Mrs Mannaerts-Drew. The claimant's case is that as a result the claimant lost an important check in the process. Further criticism identified by the claimant is the fact that at the claimant's selection meeting, Mrs Mannaerts-Drew's position was meant to be that of not only Discipline Director but also representing the employees.
117. The claimant makes complaints about the preparation of Mrs Mannaerts-Drew for the selection meeting. The claimant also makes complaints about the fact that only shortly before the selection meeting did Mrs Mannaerts-Drew have a brief meeting with Ms Linn, all of which was not recorded in notes. There is also criticism made of the selection meeting itself and the fact that there were no notes made of the selection meeting and the only notes appear to be the document at page 302e. This does not show any record of discussion as to scoring or why people were slotted into particular roles.
118. Although the respondent refers to there being discussion about various roles at the meeting, the claimant criticises the process on the basis that there are no notes produced as to what was discussed and reliance is placed upon the principles which emerged from the case of John Brown Engineering v Brown [1997] IRLR. The claimant also makes a number of complaints relating to what appeared to be inconsistency in the process she refers to the scoring relating to other candidates NW and also PH.
119. It is said on behalf of the claimant that such evidence as there is of the selection meeting is chaotic. Having regard to all the matters referred to it is said that the selection for redundancy of the claimant was therefore unfair.
120. The lack of notes in this case allowed the claimant to cross examine the respondent's witnesses in a way which exposed a potential flaw in the process adopted. However, the evidence given by the respondent's witnesses was not shaken by the cross examination. The evidence was that at the selection meeting all the available roles and staff were reviewed and the persons with the highest grades placed in the roles. The outcome of the selection meeting was recorded in the spreadsheet which was prepared during the selection meeting. What is absent is notes recording any discussions that took place. The witnesses were however able to explain clearly the process that they followed in arriving at the selections made at the selection meeting. The case of PH was explained in the evidence and whilst the claimant was able to point to what appeared to be anomalies in the scoring of NW, the Tribunal is unable to conclude that this is something which would have impacted upon the fairness of her dismissal on the grounds of redundancy. It was explained how the claimant was considered for a specialist level H role but was unsuccessful and there was further evidence given by Mr Williams relating to the redeployment forum which followed the selection meeting.

121. This evidence given by the respondent in our view remained intact even after challenge in skilful cross examination on behalf of the claimant. Based on that evidence, we are satisfied that there was no unfairness to the claimant arising from the selection meeting or the way that it was conducted by the respondent.
122. It is in respect of the search for alternative employment that the Tribunal has concluded that the respondent has failed to act fairly.
123. As part of its process, the respondent had indicated in the collective consultation that contractor roles would be given over to employees in order to avoid redundancy.
124. At the time of her dismissal for redundancy, the claimant's work principally revolved around the West Nile Delta Project. As part of the reorganisation carried out by the respondent, the work that the claimant did on the West Nile Delta Project transferred from the central team to GPO and then GPO through the respondent's North Africa entity engaged a contractor surveyor via an agency to carry out the work that had exclusively been carried out by the claimant.
125. The engagement was effective from 6 June 2016 on a flexible as required basis payable on a day rate. The contractor now works on average approximately 10 days per month. 10 days a month equates to about 120 hours a month which equates to 30 hours per week approximately which can be compared to the claimant's standard hours of work of 36.35 hours a week. While the hours do not overlay precisely, it can be borne in mind that the contractor's sole work is the West Nile Delta Project and the claimant's work would not only have included the West Nile Delta Project but also other administrative work in her role. It is the view of the Tribunal that the contractor has effectively taken over the work that would have formed the substance of the claimant's employment with the respondent before the reorganisation was effected.
126. The claimant was never considered for the West Nile Delta Project as a way to avoid redundancy. What the respondent says in its answer to the claimant's case is that the West Nile Delta Project was not raised in the appeal as a failure of the respondent to search for alternative employment for the claimant. It is also said that the claimant did not ask the respondent if she could carry out the West Nile Delta role on an employed basis. The claimant's position is that no consideration was given to appointing her to the West Nile Delta role and she contends that she raised it in her appeal against selection.
127. The Tribunal rejects the evidence given by Mr Williams in relation to the West Nile Delta Project to the extent that it is suggested that the role did not align with the claimant's skillsets. The Tribunal is satisfied from the evidence we heard that this was a role that the claimant could have performed had she been given the opportunity to do so.
128. The claimant also complains about the recruitment to the surveyor role in Oman. Having heard the evidence of Mr Warren and also having heard the evidence of the claimant, we are unable to identify any aspect of

unfairness in relation to this role. Whilst there was clarification of the job description, the Tribunal rejects the claimant's evidence that the job description was changed in order to better align with the skillsets of a male employee.

129. In respect of the appeal, it is said by the claimant that Mrs Delaney conducted it based on an assumption that everyone would follow the process and did not ask any questions of Ms Linn about whether the original disclosure affected her decisions on either the scoring or the performance review and as the claimant's appeal concerned that very issue, the failure to ask any questions meant that the appeal may as well not have happened and that there was no investigation by Mrs Delaney of those matters.
130. The majority view is that that argument is unsustainable. It is noted that Mrs Delaney's evidence was that she spent a lot of time discussing comments in the claimant's three previous years of performance review documents which she felt were unfounded and unfair, that she discussed comments in the performance review documents which had been allegedly impacted on by the OpenTalk complaint which the claimant contended affected her scores during the redundancy process and Mrs Delaney found no evidence that this was the case. She considered that the performance reviews contained comments that were intended as constructive feedback to assist the claimant to develop her communication style and responding to a variety of situations which she could face during her career. She noted that the claimant's performance reviews showed that the claimant received 'delivers expectations' as part of her P&P score which is consistent with the majority of the respondent's employees.
131. The minority view as stated above was that Mrs Delaney's approach to the appeal was such as to in effect derogate from the duty that she was required to perform in the appeal. She failed to test and challenge the assumptions of propriety, and in fact made them, when what she was required to do is test whether the claimant's criticisms were justified.
132. The Tribunal has gone on to consider whether the sole or principal reason for the claimant's dismissal was that she had made protected disclosures and was therefore unfair because of section 103A Employment Rights Act 1996.
133. The claimant points to the scoring according to Mr Jardine's competency matrix and says that she should have been scored higher in the redundancy process than Grade H colleagues. The Tribunal however reject the point made about the scoring contained in the competency matrix. In our view properly analysed the claimant's scores in the redundancy process align with the scoring in the competency matrix. While the scores do not overlay exactly, insofar as they do there is a consistency between the redundancy scores and the scores from the competency matrix.
134. The claimant also contends that one of the problems with the respondent's approach of not minuting the briefings and meeting is that it allows subconscious antipathy to creep in. The claimant says that Ms Linn and

Mrs Mannaerts-Drew saw the claimant as someone who would not listen and could not resolve differences and that view of her had arisen since the claimant had made her protected disclosures.

135. The Tribunal accepts the evidence given by Mrs Mannaerts-Drew in respect of scoring of the claimant. We are unable to conclude there was conscious bias and nothing from the evidence before us points us to a conclusion of subconscious bias arising from the alleged disclosures.
136. The claimant's contention is that the performance review scores affected the scoring of the redundancy and were therefore detrimentally affected by her disclosures. The Tribunal has not been persuaded that the evidence shows that the claimant's performance reviews were affected by the disclosures.
137. The Tribunal has concluded that the reason for the dismissal was the selection for redundancy. It was not affected by considerations arising from the disclosures.
138. Having regard to the reasons for dismissal we have gone on to consider whether the claimant's dismissal was fair. The Tribunal has unanimously concluded that it was not.
139. The failure to consider the claimant for the West Nile Delta Project role in our view makes this dismissal unfair. The claimant's work on the West Nile Delta Project continued and was carried out by a contractor. The claimant could have carried out the work in the section where the work was moved to. Had that occurred that would have been a way of avoiding her redundancy at that time.
140. The respondent is a very large organisation in this way could have found a means to keep the claimant in employment consistent with the need to make the redundancies the reorganisation created. The claimant could have been offered a role matching that which the contractor was carrying out. What was a significant part of the claimant's work was shifted to another part of the respondent's operation and resulted in a contractor being employed to carry out the work.
141. Had the contractor role been advertised on TAS, the claimant could have applied for the West Nile Delta Project and the Tribunal can see no reason why she would not have been a frontrunner for appointment to the post subject of course to the possibility of there being a better candidate for the role. However, in view of the fact that all the respondent's witnesses attest to the claimant's technical competence, we see no reason why she would not have been successful in competing for a role which in effect amounted to the work that she had been doing.
142. In all the circumstances, we find that the dismissal for redundancy in this case was unfair and we consider that had any kind of offer been made to the claimant relating to the West Nile Delta role as a way of avoiding dismissal, she would have accepted it even if it meant a transfer to another part of the respondent. We also consider that it was something that could have been done and had it been done it would have been consistent with

the respondent's stated aim of releasing contractors where possible to save employee jobs.

143. The claimant makes a complaint that she was subjected to a detriment in not being called to an interview for the role of Group Risk Advisor. We have heard no evidence from the persons who did the shortlisting for the role. We have however heard evidence from Mr Robinson. Mr Robinson provided the claimant with feedback at her request following her unsuccessful application.
144. The claimant's case is based on the suggestion that the feedback Mr Robinson gave to the claimant suggested that he had been told about the claimant making a bullying complaint in 2013, a protected disclosure, and because of this she had not been shortlisted for the role. The claimant points to the nature of the feedback that Mr Robinson gave her and says this indicates something adverse to her was said to Mr Robinson. From this she infers that the bullying complaint made in 2013 was the matter.
145. Mr Robinson's evidence was that he had never met or had any dealings with the claimant prior to her application for the role. He had no knowledge of her bullying complaint and there is no evidence from any matter that has been presented before us that those people in his team that carried out screening on the applications had any knowledge of the bullying complaint either. Mr Robinson had no knowledge of the OpenTalk complaint or any matters raised in it. Mr Robinson's evidence was that the comments that he made to the claimant in feedback arose out of concerns that he observed from considering her performance review documents for 2014 or 2015. The Tribunal accepts the evidence which was given by Mr Robinson in this regard.
146. Insofar as it is put forward by the claimant that she was subjected to a detriment because of making a protected disclosure in not being called for interview for the role of Group Risk Advisor, the Tribunal reject that complaint. We do not consider that the fact that she made any protected disclosures, bullying complaints or OpenTalk complaints was in any way an influence in the decision not to call her for interview for that role.
147. The claimant makes complaints of direct discrimination on the grounds of her sex. She also complains that she was subjected to harassment related to sex in respect of some of the allegations which she complains of as direct discrimination.
148. The first matter that the Tribunal is required to consider relates to the meeting that the claimant had with Mrs Mannaerts-Drew on 11 February 2016. The claimant complains that on this occasion she was told by Mrs Mannaerts-Drew that her personality whilst beneficial to men was not beneficial for women.
149. The claimant and the respondent are at odds as to what took place at this meeting. What Mrs Mannaerts-Drew says is that the conversation that she had with the claimant was not about gender at all but about how to work with other people. There is a conflict between the version of events that she gives and the version of events given by the claimant.

150. The Tribunal had the opportunity of hearing the evidence given by Mrs Mannaerts-Drew and also hearing the evidence given by the claimant in relation to this incident. The Tribunal had the opportunity of seeing both witnesses tested in cross examination by experienced Counsel.
151. Ultimately, this incident turns on whether we accept the explanation which was given by Mrs Mannaerts-Drew as to what she was intending to do in the conversation that took place between her and the claimant. The Tribunal has come to the view that Mrs Mannaerts-Drew was intending not to have a conversation about gender at all but a conversation about communication and how to work with other people. The Tribunal therefore has not been able to come to the conclusion that the description of events on 11 February 2016 as related by the claimant gives an accurate reflection of what was intended to be conveyed by Mrs Mannaerts-Drew or what she in fact said.
152. The claimant complains that this incident was also harassment related to her sex. For the matters to give rise to a complaint under section 26 Equality 2010, not only has the Tribunal to be satisfied that matters occurred as the claimant says but those matters also can amount to harassment taking into account the perception of the claimant, the other circumstances of the case, and whether it is reasonable for the conduct to have the effect which is claimed.
153. The Tribunal preferring the version of events given by Mrs Mannaerts-Drew has not been able to conclude that the conduct on 11 February 2016 had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. To the extent that the events on that occasion had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, the Tribunal taking into account the perception of the claimant and the other circumstances of the case does not consider that it is reasonable for the conduct of Mrs Mannaerts-Drew on this occasion to have had that effect.
154. In relation to the complaints arising out of the meeting on 11 February 2016, the conclusion of the Tribunal is that the claimant's complaints of direct sex discrimination and harassment related to sex are not well founded and are dismissed.
155. The claimant complains that on 4 May 2016, Mrs Delaney failed to take the claimant's concerns regarding the discriminatory comments made by Mrs Mannaerts-Drew seriously and disregarded them as coaching. The Tribunal is unable to conclude that the claimant had made out this complaint. The unanimous view of the Tribunal is that Mrs Delaney did take the claimant's complaint seriously. She considered what the claimant had said and she discussed the nature of the matters discussed between her and Mrs Mannaerts-Drew with Mrs Mannaerts-Drew. Having spoken to her in detail about these matters, she formed a view which she was entitled to form and which coincides with the view that the Tribunal has formed that in making the comments that she did to the claimant, Mrs Mannaerts-Drew had no regard to discriminatory factors at all.

156. The Tribunal has therefore come to the conclusion that the claimant has failed to establish that there was any conduct by Mrs Delaney regarding the discriminatory comments in a way which was not serious. We do not consider that the complaint of less favourable treatment has been established by the claimant.
157. The claimant contends that the scoring that she received in the redundancy selection process was artificially low. The Tribunal has not had the opportunity of hearing the evidence from Ms Linn. The Tribunal has heard the evidence of Mrs Mannaerts-Drew and has also heard the evidence which was given by Mrs Delaney as to how she viewed the marks given by the claimant in the redundancy selection process. The Tribunal has also had the opportunity of considering the competency matrix and for the reasons that we have already expressed, we are of the view that insofar as the competency matrix is able to align with the redundancy process, the two are consistent.
158. We also take into account that Mrs Mannaerts-Drew and Mrs Delaney both consider that having regard to the claimant's performance review ratings, the scoring of the claimant in the redundancy process was appropriate. The Tribunal has not been able to conclude that in the preparation of the performance reviews that there was discrimination on the grounds of sex infecting the process of scoring as a whole. The conclusion of the Tribunal is that we are unable to conclude the claimant was artificially low in the scoring that she received during the redundancy exercise.
159. The claimant complains that her role was subjected to a false redundancy and the claimant was replaced by a man. Paragraph 78 of the claimant's claims and submissions includes the following passage:
- “It is not disputed that a genuine redundancy situation existed. It is the claimant's case that because perceptions about personality her face did not fit within the organisation and therefore there was no attempt to avoid placing her in a pool of one or find alternative work for her.”
160. The Tribunal has not been able to conclude that the claimant has established that there were perceptions about her personality which meant that her face did not fit within the organisation and that she was therefore not found a place in the redundancy process. We do not consider that this complaint was borne out by the evidence that we have accepted.
161. The claimant complains that the job description for the Project Surveyor role was amended to be better aligned with a male skillset. For the reasons that we have set out above, we accept the evidence which was given by Mr Warren in relation to this role and the Tribunal's conclusion is that there was no amendment of the job role in the way that the claimant complains. There was not a change in the role for it to better align with a male skillset. We accept the explanation which was given by Mr Warren that as a result of an enquiry, more information was given to a candidate about the role and that information was subsequently shared with all the applicants for the post. There was no change in the criteria or the job description. The Tribunal concludes that the claimant has failed to

establish that this matter occurred as alleged.

- 162. The claimant complains that she was not considered for alternative roles. The Tribunal has not been able to find evidence from which we could conclude there was a failure to consider the claimant for a suitable alternative role save for the West Nile Delta Project moved from the claimant's region to another region.
- 163. We are satisfied that the decisions made in relation to the West Nile Delta Project were unconnected with the claimant's sex but were concerned solely with the way that the reorganisation was carried out by the respondent. It was explained that decisions on redundancy were consider within 'silos', that is confined within regions and functions. The process operated in a way which was unfair to the claimant in respect of the West Nile Delta Project but we are satisfied that this was not in any sense related to her sex or connected with it.
- 164. The claimant complains that she was informed by Mr Cave that she would not be successful in an application for the Project Surveyor role because she was a woman due to anticipated visa issues. Mr Cave denies that this conversation took place. Mr Cave was a supporter of the claimant. He was somebody who had assisted her during the course of the redundancy process and acted as her supporter attending meetings.
- 165. The Tribunal accepts the evidence that was given by Mr Cave. There may have been a comment made which the claimant has misunderstood. However, the Tribunal was satisfied that Mr Cave had no intention of making a comment along the lines that the claimant suggests. We accept his evidence to the extent that it conflicts with the evidence given by the claimant. If the claimant had been correct as to the view that Mr Cave held, bearing in mind that he had supported the claimant throughout this process, we do not consider that he would have felt any need to go back on it just because he was giving evidence before the Tribunal.
- 166. This complaint is also an allegation of harassment. The Tribunal does not accept that there was any conduct which had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.
- 167. The conclusion of the Tribunal is that the claimant's complaints of direct discrimination on the grounds of sex and the claimant's complaints of harassment related to sex are not well founded and are dismissed.

Employment Judge Gumbiti-Zimuto
Date: 6 December 2017
Reasons sent to the parties on
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For the Tribunal office