



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Hunter  
**Respondent:** Essex County Council  
**Heard at:** East London Hearing Centre  
**On:** 4<sup>th</sup>, 5<sup>th</sup> & 7<sup>th</sup> February 2020  
**Before:** Employment Judge Barrowclough  
**Members:** Mr T Burrows  
Mr M L Wood

## Representation

**Claimant:** In person  
**Respondent:** Miss R Azib (Counsel)

## RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that the Claimant's complaints of (a) unfair dismissal (ss. 94 & 98 Employment Rights Act 1996), (b) direct discrimination because of her sex or gender (s.13 Equality Act 2010), (c) direct discrimination on grounds of part-time status (Regulation 5 Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000), (d) direct discrimination because of pregnancy (s.18 Equality Act 2010), and (e) for a protective award for an alleged failure to engage in collective consultation (s.189 Trade Union and Labour Relations (Consolidation) Act 1992), all fail and are themselves dismissed.

## REASONS

1 The Claimant, Miss Julie Hunter, brings a number of complaints against her former employers, Essex County Council, for determination by the Tribunal. By the time of the full merits hearing before us, they consisted of complaints of (a) unfair dismissal; (b) direct sex discrimination; (c) direct discrimination on grounds of part-time

status; (d) direct pregnancy discrimination; and (e) for a protective award for failing to engage in collective consultation. All those claims were resisted and disputed by the Respondent. The Respondent does however accept that they employed the Claimant as a Senior HR consultant, and that she was continuously employed by them from 20 April 2015 until being dismissed on 28 July 2018; and contends that her employment was then terminated fairly and reasonably by reason of redundancy.

2 We heard the Claimant's claim over the course of a three-day full merits hearing, at the conclusion of which we reserved our judgment. The Claimant represented herself, and gave evidence in support of her claim. The Respondent was represented by Ms Rehena Azib of Counsel, who called as witnesses (a) Ms Pam Parkes, the Respondent's Director of Organisation Development and People and Service Design ("ODP"); (b) Ms Alison Woods, Head of People Business Partnering and Employment Practice; (c) Mr Alexander Carlton, Head of People Insight & Technology; (d) Ms Sarah Isaacs, a Lead People Consultant; (e) Ms Emma Sayers, Employment Practice and Equalities Lead; and (f) Mr Simon Froud, Director of Local Delivery for Mid Essex.

3 We were helpfully provided by the parties with both a list of issues following the preliminary hearing of this case on 22 March 2019 (pages 52 to 55 in the agreed trial bundle), and an agreed chronology, on which we base our summary of the relevant factual background.

4 The Claimant was employed by the Respondent as a Senior HR Consultant, commencing work on 20 April 2015; and it is agreed that her employment in that role was terminated with effect from 28 July 2018. It was also common ground that the Claimant's role and work duties were in the Respondent's HR 'Case Team', which dealt with employee relations cases arising within the Respondent undertaking (described as 'casework'); that the Claimant's contractual hours were part time (29.6 hours per week); and that no issues were raised with the Claimant during her employment with the Respondent in relation to either her performance or discipline.

5 During the first half of 2016, the Respondent appointed a new chief executive, who undertook a review of the County Council's various functions and activities on completion of his first hundred days in that role. That resulted in a report dated July 2016, a copy of which is at pages 325 to 336 of the bundle. Very much in summary, that report identified the need for an 18 month programme of organisational change and restructuring covering and affecting every department within and activity undertaken by the County Council. Both the review and the resulting report had been necessitated by the need to make substantial savings in the Council's budget, due to the ending of central government financial support in 2020; and a minimum savings target of £5m per annum was identified. The whole of the Respondent's workforce of approximately 5,000 people would be affected, at least potentially if not actually, by the organisational changes being introduced. Inevitably, that process took time, and proceeded by a series of steps or phases. The first phase which is relevant to these proceedings started in September 2016 and was completed in March 2017. That related to the senior managerial level within the Respondent, and involved the creation of five new executive director roles, to whom a total of 44 new departmental directors would report. Ms Parkes was appointed to the permanent position of director of ODP on 1 April 2017, reporting directly to the Council's chief executive. The second phase of

the overall restructure programme involved changes to the ODP department itself. Due to a number of delays, those changes were not ready to be introduced until late 2017.

6 On 14 December 2017, Ms Parkes called a meeting of all staff members within the ODP department (including the Claimant) to tell them of the options and proposals for departmental reorganisation which she would recommend to the Respondent's management team for consideration during the following week. Ms Parkes explained that consultation would take place with affected staff within ODP as well as recognised trade unions concerning her proposals. In broad terms, those were for a reduction within the department from 144 to 117 full-time equivalent roles. Ms Parkes proposed re-design of the ODP department was in fact approved and accepted by the Respondent's Strategic Management Board on 18 December 2017.

7 The proposed restructure affected at least potentially all members of staff within the ODP department, as well as other departments. Unless there was deemed to be a 'job match' between an employee's existing function and the proposed new role, then all employees would have to apply for one or more of the new roles created in the re-design. As Ms Parkes explains at paragraph 34 of her witness statement, sixty new profiles for specific ODP roles had been created, and only eighteen of those were job matched with currently existing roles, job matching deemed to exist at a 75% or greater degree of similarity between the respective functions. All employees within the department who were not job matched were "ring-fenced", effectively placed into one redundancy 'pool'; and those who were unsuccessful in applying for new roles in the restructured department would ultimately be dismissed by reason of redundancy. It is in our view helpful to note and indicative of the overall process that of the Respondent's six witnesses from whom we heard, only one (Mr Carlton) had been job matched, and that the remaining five had all had to apply for and obtain new roles within the Respondent's new structure.

8 The first formal consultation meeting with staff in the ODP department took place on 31 January 2018. A substantial consultation pack, which runs from page 79 to page 164 in the bundle was produced and provided to all members of staff in attendance, including the Claimant. There was a second consultation meeting for department members on 21 February thereafter, and the pack provided to those in attendance, once again including the Claimant, is at pages 170 to 202. The third and final consultation meeting (the consultation process being due to conclude on 21 March that year) was two weeks later on 8 March, the relevant pack being at pages 203 to 237. That in particular clarified matters. It made clear that, in place of the existing HR structure, a new '*Service Centre*' was to be created. The Respondent anticipated that the creation, evolution, and finalisation of such a Centre, and of the functions and roles or duties of those within it, would take time, probably between twelve and eighteen months. All ODP staff members who were either job matched or who successfully applied for new roles would transfer to the new Service Centre. In the third consultation pack at pages 208/209, the existing roles where it was considered a job match existed were identified, and the holders of all other roles and functions would need to participate in a selection process, if they wished to be retained. Details of that selection process were provided. Each staff member would be able to apply for a maximum of three different roles in the new structure, submitting a CV and personal statement in support. An initial short-listing panel would consider and, if deemed suitable, short-list such applications; and formal interviews and assessments for the individual roles,

including psychometric assessments where appropriate, would be conducted. Provisions was included for those (if any) who wished to apply for voluntary redundancy, and a helpful timetable for the whole process was provided for staff members at page 214.

9 An 'end of consultation' pack was provided to ODP staff at the end of March 2018, a copy of which is at pages 239 to 275. That confirms, inter alia, the planned loss in departmental head count from 143.7 to 117 FTE roles (page 242); the finalised list of job matches (page 243); and the new posts available to those within the ring-fenced selection pool (page 248). Of particular relevance to the Claimant, who was one of the staff members who had not been job matched, that provided for seven 'People Consultant' roles, and two 'Senior Service Centre Adviser' (ultimately renamed 'People Caseworker') roles. The assessment process for both such roles was identified, commencing with a "Wave" psychometric assessment, an interview (including an unplanned presentation), and the assessment of an applicant's consultancy skills and/or prioritisation and management of a multiple tasks exercise. A timeline for applications, assessments and outcomes was provided for those interested in being retained by the Respondent at page 253 of the pack. Finally, the Respondent offered and provided applicants with support courses in both CV writing and application/interview skills, both of which were taken up by the Claimant in due course.

10 On 8 April 2018, the Claimant submitted an application for one of the seven available People Consultant roles. She was interviewed for the role on 4 May, and the Claimant's resulting scoring sheets are at pages 532 to 535 in the bundle. Other candidates for the role were interviewed more or less simultaneously. It is not disputed that all candidates were asked the same questions by the same interview panel. A total of eleven questions were put to candidates, of which eight were of a technical nature and three related to behaviour; and there was an additional assessment of the candidate's presentation. In relation to those twelve items, the Claimant was marked by the panel as '*insufficiently evidenced*' in relation to eleven, with only one question being '*satisfactorily evidenced*'. The unanimous assessment of the interview panel was not to appoint the Claimant to the People Consultant role. Overall assessment sheets for all applicants for the role were completed and moderated by the panel on 9 May, and candidates were informed of their outcomes on 10/11 May. Ms Isaacs met the Claimant on 11 May to tell her of her outcome, to discuss her interview assessment, and to offer her support. When the Claimant was informed that her application had been unsuccessful, she was very upset. Ms Isaacs stayed with her for approximately an hour and a half, comforting the Claimant and providing whatever help she could. The Claimant was told that she could either stay at work for the rest of that day, or alternatively go home, whichever she wished, as was confirmed in a subsequent text. The Claimant accepts that Ms Isaacs' treatment of her on that day was 'very nice'. Successful candidates who were appointed to the People Consultant role following their interviews in early May included Mr Martin Organisciok and Ms Hannah Wilhelmy, both of whom, like the Claimant, had been Senior HR Consultants under the previous structure; as well as Ms Samantha Myddelton, another Senior HR Consultant who had been a case manager in the HR Case Team and who worked part-time (0.8 FTE.)

11 More or less simultaneously with the Respondent's People Consultant assessment and selection process, the Respondent recruited two agency workers as interim Senior HR Consultants within the ODP department, namely Mr Richard Burton,

whose assignment commenced on 30 April, and Mr Darren Bowes, who started in that role on 10 May. Their recruitment arose because three Senior HR Consultants within the ODP department had submitted their resignations following the announcement and implementation of the Respondent's restructure process.

12 Following the conclusion of the People Consultant role interviews and appointments, Ms Isaacs and Ms Sayers arranged 'next steps' meetings with all affected ODP employees who had either chosen not to apply for roles within the new structure, or who, like the Claimant, had been unsuccessful in their applications. Ms Sayers sent an email to the Claimant on 18 May (p.596) enclosing a list of currently vacant ODP roles, together with a link to an expression of interest form, the Claimant responding the same day and expressing her gratitude for what she described as a 'second opportunity'. Five days later, on 23 May, Mr Carlton circulated to all potentially interested parties details of an additional opportunity, namely in the role of a People Information Analyst, which would be part of a job share arrangement. That was passed to the Claimant on 24 May, as can be seen from page 599a. The Claimant also met Ms Isaacs on that day in order to discuss other potential roles within the new structure for which she might wish to apply, the Claimant subsequently showing a strong interest in the role of Senior Service Centre Adviser ('SSCA'). The Claimant was encouraged to seek feedback from Ms Sayers on her unsuccessful interview for the People Consultant role and also to meet her to discuss the SSCA role. Such a meeting took place on 30 May, when Ms Sayers did indeed provide feedback on the Claimant's interview, and also identified tools and assistance to help the Claimant in any future interviews.

13 Formal notice of redundancy had been sent to the Claimant by the Respondent on the previous day, 29 May, and a copy is at page 608/609. That was in the form of a letter from Ms Woods, in her capacity as Head of People Business Partners, which notified the Claimant that her contract of employment with the Respondent would terminate by reason of redundancy on 28 July 2018, including the two months' notice which was then given. The Claimant was also informed in Ms Woods' letter that if a vacancy arose during her notice period which was considered to be 'suitable alternative employment', it would be necessary to withdraw the notice of redundancy. Finally, the Claimant was told of her right of appeal against the decision to terminate her employment, and given details of how to proceed should she wish to exercise that right.

14 On 7 June 2018, the Claimant was interviewed for one of the two vacant SSCA roles. One other candidate was also interviewed, a Ms Leigh Tenner, who had been a Senior HR Consultant in the Respondent's HR Projects Team, working part-time (0.56 FTE) hours. Whilst the Claimant was again unsuccessful, Ms Tenner was appointed to fill one of the SSCA vacancies, her hours being marginally increased to 0.6 FTE. The interview panel for both the Claimant and Ms Tenner consisted of Ms Sayers, Mr Carlton, and Ms Roberts, and once again it is accepted that the same questions were asked of both candidates. The Claimant's overall scoring sheets (which consist of the unified comments and assessments of all three panel members) are at pages 614 to 617. Of the ten interview questions asked (eight of which were of a technical nature, with two behavioural) the Claimant was marked as having '*insufficiently evidenced*' answers to eight, with the remaining two being '*satisfactorily evidenced*'. The panel's assessment was that the Claimant was not appointable to the role. Ms Tenner's overall

scoring sheets are at pages 613g to 613i. In her case, eight out of ten answers were marked as being *'fully evidenced'*, with the remaining two *'exceeding evidence requirements'*. The panel's conclusion in relation to Ms Tenner reads as follows: *'A very strong and enthusiastic performance from the candidate, demonstrating a broad and deep understanding of the role and how it differs from the current role and will deliver a different and improved service to customers. The candidate had undertaken additional external research and assimilated this within the ECC (Essex County Council) context to evidence their thinking as to how they could carry out the role and the development they would need.'*

15 The remaining SSCA role remained vacant until filled by Mr Darren Bowes (the agency worker who had been appointed as an interim Senior HR Consultant with effect from 10 May 2018) in October 2018, by which time the role had been retitled as 'People Caseworker', his appointment being made by Mr Graham Lennon, the Respondent's new Head of People Operations. The vacancy had been advertised externally, and a copy of the job advertisement is at page 759. We were not told how many (if any) other people then applied for the role; but there is no dispute that the Claimant did not.

16 The Claimant was informed that her application for the SSCA role had been unsuccessful by Ms Sayers later on 7 June, the day of her interview, in a private meeting room since it was correctly anticipated that the Claimant would be upset at the news. Four days later on 11 June, the Claimant wrote to Ms Woods by email, indicating her intention to appeal the Respondent's decision to dismiss her by reason of redundancy, and asking for an extension of five working days within which to submit her appeal. That request was allowed, and in the early hours of 18 June the Claimant submitted her appeal by email. As is not disputed, it was later on that same day that the Claimant informed the Respondent for the first time that she was then pregnant.

17 The Claimant's grounds of appeal are clearly set out in the three page attachment (621 to 623) to her letter which is dated 11 June (page 620). The four stated grounds of appeal were: (a) failure to comply with the statutory duty to offer her suitable alternative employment; (b) failure to comply with the Respondent's reorganisation and redundancy/ redeployment policy; (c) that the interview on which the Respondent's panel based their decision had *'very low predictive validity in assessing my capability to perform the role'*; and (d) that as a pregnant employee, her unfair dismissal put the Claimant at a substantial disadvantage.

18 The Claimant's employment with the Respondent duly came to an end, as foreshadowed in the notice of termination, on 28 July 2018. Her appeal hearing took place on 4 September thereafter. The appeal was chaired by Mr Simon Froud, who is a director in a different department of the Respondent (Local Delivery of Adult Social Care for mid-Essex) and who had not previously come across the Claimant. Mr Froud was assisted by Ms Julie Temple, a solicitor with a firm of employment lawyers called *Quantrills*, acting in the capacity of an HR adviser. The Respondent had taken the view that it would be inappropriate for anyone within the ODP department to advise and assist Mr Froud in relation to the Claimant's appeal, since most if not all of them had themselves had to undergo a competitive selection process and might themselves be personally affected by the outcome of the Claimant's appeal.

19 At her appeal, the Claimant attended and was accompanied and assisted by her colleague Mr Martin Organisciok, who had successfully applied for one of the People Consultant vacancies. Agreed notes of the appeal hearing are at pages 796 to 804, the hearing lasting from 9:30 until 10:45am. At its conclusion, Mr Froud in effect reserved his decision. A draft outcome letter on the basis of Mr Froud's conclusions was subsequently prepared by Ms Temple, which was sent to him for amendment and approval on 16 October (page 754). About two weeks later, and before any finalised outcome letter had been sent or received, the Claimant submitted further representations on 29 October, based on matters which she said had come to her attention since her redundancy appeal. The Claimant's letter is at page 758, and included amongst the enclosures then provided is a helpful schedule setting out the relevant individuals within what had been the Respondent's HR team prior to the restructure, identifying those like the Claimant herself who had predominantly dealt with casework arising within the Respondent's organization (for example staff grievances and disciplinary matters), and others in the team who had predominantly dealt with HR projects. Mr Froud conducted further investigations into the additional matters raised by the Claimant; and Mr Lennon, who was by then the Respondent's Head of People Operations, was sent a number of questions on 31 October, to which he replied on 12 November (pages 776 to 778). Mr Froud's finalised appeal outcome letter, dismissing the Claimant's grounds of appeal for the reasons therein set out, was apparently completed and dated on 6 December (pages 816 to 821), but was not sent to the Claimant until his email of 12 December 2018. Thereafter, the Claimant commenced these proceedings.

20 Finally, and as already noted, Mr Darren Bowes was interviewed by Mr Lennon for the outstanding vacancy for a People Caseworker (the role previously known as SSCA), that interview taking place on 5 October 2018. Mr Lennon's notes of interview are at pages 729 to 729b. Whilst we did not hear from Mr Lennon, the Respondent accepts that all the questions that Mr Bowes was then asked relate to casework, rather than to HR projects or other matters.

21 Turning to the agreed List of Issues at pages 52 to 55 in the bundle, it is convenient to first of all consider and determine the Claimant's claim for a protective award for the Respondent's alleged failure to engage in collective consultation, albeit we are taking it out of order in that list. The Respondent contends that as a matter of fact the Claimant is not entitled to seek such an award, since she was not an employee representative at the time of the Respondent's restructuring and organisational changes. Secondly, and in any event, the Respondent asserts that they fully discharged their statutory responsibilities to engage in collective consultation, as can be seen by their letter dated 2 February 2018 at pages 164A to 164D in the bundle. That letter was sent to identified representatives of Unison, Unite and the GMB, informing them of the proposed changes within the ODP department, and sets out the Respondent's reasons for the proposed redundancies, the number of affected employees, the number and description of employees who are proposed to be made redundant, the method of selection to be adopted, and the resulting dismissal of those deemed redundant, subject to successful applications for new roles within the new structure, whilst honouring their contractual and statutory entitlements, together with an approximate timeframe. The Claimant's contentions in relation to this complaint are set out in the written closing submissions, which she helpfully prepared and handed up. The Claimant submits that (a) the Respondent failed to consult on its use of agency

workers and their number, pursuant to s.188(4)(g) of the Trade Union and Labour Relations (Consolidation) Act 1992; and (b) that there was no formal union recognition agreement between the Respondent and any trade union(s).

22 It is common ground that the Claimant was not a member of any trade union at the time she was in the Respondent's employment. Accordingly, it is difficult to see how any alleged failure on the Respondent's part in recognition of any particular trade union, or in the election or identification of employee representatives during the organisational changes undertaken by the Respondent, would affect her. In any event, no such matters or allegations were put to or explored with any of the Respondent's witnesses by the Claimant in cross examination; and we are satisfied from the letter dated 2 February 2018 referred to above, as well as from the document at page 115 of the bundle which identifies the relevant unions' representatives, that there was due consultation with the trade unions recognised by the Respondent. All the specific details concerning the proposed restructure contained in that letter are consistent with the Respondent's other evidence, whether oral or written, before the Tribunal; and none of them were disputed in cross-examination, or in the Claimant's own evidence. Secondly, we are satisfied that there was as a matter of fact full consultation by the Respondent with the Claimant herself about the proposed changes and how they would affect her, in the meetings which it is not disputed that she attended, and the various consultation packs with which the Claimant and others were provided; and in fact that was accepted by the Claimant herself in her evidence. It is relevant in our view that the Claimant, who was after all an experienced HR consultant, did not raise any alleged failure to consult fully or at all as one of her grounds of appeal, or indeed any failure to comply with ss.188 & 189 of TULR(C)A 1992. Nor did the Claimant then complain about any failure to consult about the Respondent's use of agency workers, and in particular Messrs Burton and Bowes, whose roles and duties within the ODP department, as agency workers acting as interim Senior HR Consultants, were well known to her. Whilst it is correct to note that the Respondent's letter of 2 February 2018 to the representatives of the three trade unions involved does not specifically mention agency workers, nothing relevant turns on that or arises as a result. We are satisfied that there is no merit in this complaint, subsequently advanced by the Claimant, and it must be dismissed.

23 Before considering the Claimant's other complaints, it is appropriate to record a number of matters which were conceded during the course of the hearing, or were otherwise not in dispute. The Respondent accepted that no performance issues had arisen during the course of the Claimant's employment, and that her skills and experience as an HR consultant on casework arising from day to day within the Respondent undertaking were clear and well-established, amounting to a recognised fact in her applications for alternative roles. In addition, and as mentioned above, the Respondent accepted that all the questions raised with Mr Bowes at his interview in October 2018 for the People Caseworker/SSCA role focused on casework. The Claimant in turn accepted that, in addition to a continuing volume of such casework, there were additional and new elements in the roles for which she applied, which had not been part of her role as a Senior HR Consultant. These included data analysis, marketing, and liaising with external and third party providers. The Claimant also accepted that the interview process adopted by the Respondent was a legitimate method or means of testing for the existence of such skills or aptitudes; and also that there were other female Senior HR Consultants who were, like her, made redundant



following unsuccessful applications for roles in the new Service Centre concept, for example Ms Kerry Bazely. It was not disputed that the Claimant's existing role of Senior HR Consultant was deleted as part of the Respondent's restructure; that the Claimant had participated in the full consultation process which the Respondent undertook with ODP staff members, and had been provided with all the relevant packs or documents, including a list of 'Frequently Asked Questions'; and that there was no straightforward 'job match' between the roles of Senior HR Consultant on the one hand and People Consultant or SSCA/People Caseworker on the other hand - had there been such a match, it would have applied to all Senior HR Consultants undertaking casework, and not simply the Claimant. Finally, the Claimant did not dispute the Respondent's stated need to make substantial savings, their aim of increasing efficiency and reliance on technology, that the process was applied to all their employees, and that there were relatively few deemed 'job matches', for example Mr Carlton alone of the witnesses called by the Respondent.

24 In relation to the Claimant's complaint of unfair dismissal, the overall context is that the Claimant contends that there was no genuine redundancy situation and that her role was not redundant; but that if such a situation did in fact exist, that she should have been '*slotted into*' the People Caseworker/SSCA role due to similarities with her existing role, or alternatively redeployed to it as being suitable alternative employment. Neither the List of Issues nor the Claimant's ET1 particulars raise the same issues concerning the People Consultant role for which the Claimant originally applied unsuccessfully, but we will consider and determine that matter in any event, since it formed at least part of the evidence we heard. The Claimant's primary contention, in relation to this and other complaints, is that the real reason for her dismissal was because she is a woman and because she worked part time hours. The Respondent rejects those allegations, and submits that there was a genuine redundancy situation, that there were significant differences in the roles for which the Claimant unsuccessfully applied to that of Senior HR Consultant, and that they acted reasonably in treating that situation as a sufficient reason for dismissing her, their reason being redundancy, or as amounting to 'some other substantial reason'.

25 Accordingly, the first question is whether or not there was in fact a redundancy situation in relation to the Claimant's role. We find that such a situation did exist, in that the requirements of the Respondent's business for employees to carry out work of a particular kind had ceased or at least diminished: Senior HR Consultants working more or less solely on HR casework, as the Claimant agreed she had done, were no longer needed by the Respondent. Whilst HR casework remained an important element of both the new People Consultant and SSCA/People Caseworker roles, it was a diminished part of those roles which, as the Claimant herself accepted, involved additional duties – in effect, the creation of new roles. In case we were wrong in coming to that conclusion, we make plain that we would find that the Claimant was dismissed for some other substantial reason, namely that her existing role ceased to exist as a result of the Respondent's reorganization due to the need to make substantial costs savings, and the associated requirement for increased efficiency and modernisation.

26 Did the Respondent act reasonably in treating the Claimant's redundancy situation as a sufficient reason for dismissing her? To answer that question involves consideration of all the various issues raised at item 2 in the agreed list. First of all, we

reject the Claimant's contention that she should have been '*slotted into*', with or without an interview, either the role of People Consultant or that of SSCA/People Caseworker, or that either amounted to suitable alternative employment which should have been offered to the Claimant when her existing role of Senior HR Consultant disappeared. Whilst there was certainly some overlap in terms of day to day casework between the respective roles, the Claimant herself put that as being approximately 75% of the SSCA/People Caseworker role in her ET1; but in her evidence she accepted, as noted, that no 'job match' (for which at least a 75% overlap was required) existed in her case, as well as that the interview process adopted by the Respondent was legitimate. Furthermore, adoption by the Respondent of the Claimant's approach would presumably have resulted in the transfer of most if not all the existing staff within the Respondent's HR Case Team to the new roles created in the restructuring process, thereby at least partially undermining its *raison d'être*.

27 Secondly, in our judgment the consultation exercise undertaken by the Respondent in relation to the restructuring of the ODP was extensive, and certainly satisfies any test of reasonable fairness. As summarised by Ms Azib, it lasted 45 days, involved three trade unions on behalf of their members, and included three consultation meetings (all of which the Claimant attended), for each of which substantial explanatory information packs were provided, as well as a final 'end of consultation' pack. Detailed responses were provided to all questions and issues raised by staff members, as well as a collection of 'Frequently Asked Questions', at pages 337 to 384 in the bundle. That made clear, at page 345, that the possibility of part time working would be considered on a case by case basis, with the respective needs of the individual and of the Respondent service being balanced: it was certainly not ruled out. So far as individual consultation with the Claimant was concerned, there were a number of additional meetings with managers, at which advice and feedback was provided concerning interviews, as well as assistance with new software which the Respondent was introducing; and the Claimant was provided with access to programmes giving help on interview skills and CV writing. The Claimant was also sent details of all vacancies within the ODP, and details of specific vacancies which might be of interest to her were forwarded (for example page 596). There was no failure to consult fairly, either collectively or individually.

28 The Claimant alleges specific failures by the Respondent to comply with its own reorganisation & redundancy policy, which we address individually. First, the Claimant asserts that she should not have been expected to take part in a competitive selection process for the SSCA/People Caseworker role. We do not agree. As already accepted, there was no job match between that and the Claimant's current role, and there were additional elements in the new role on which applicants were properly assessed by way of competitive interview, in an environment where new and higher demands were being placed on most if not all employees within the Respondent undertaking. The other applicant for one of the two vacancies in June 2018 was Ms Leigh Tenner, like the Claimant a Senior HR Consultant and a female part time employee. Applying the logic of the Claimant's argument, she too should have been appointed without any interview, which would thereby undermine, at least in part, the purpose of the reorganisation. We find that it was fair, reasonable, and appropriate to conduct an interview based selection process for the roles of People Consultant and SSCA/People Caseworker, and to require all applicants including the Claimant to participate. Whilst the Claimant contended that more weight should have been given to the written

materials that she (and presumably other applicants) presented, in particular her CV with supporting notes and her written submissions concerning the SSCA/People Caseworker role (pages 603 to 607 and 702 to 720 respectively), that we find is a matter which falls within an employer's discretion; and it was certainly not unreasonable for the Respondent to attach greater significance to and reliance on how applicants responded to the pre-prepared and focussed questions put to them in interview. In our view, the Respondent was perfectly entitled to determine that applicants' answers and explanations were indicative of how they would perform in the role: the interview panel's recorded comments on Ms Tenner's presentation at interview, mentioned above, is a good example of their approach.

29 Secondly, there is simply no evidence to suggest, as the Claimant alleged, that the interview questions on either of her applications '*were designed to set the Claimant up to fail and make her seem incapable*'. The Claimant accepts that the same questions were put to all applicants for both roles (in particular to Ms Tenner for the SSCA/People Caseworker role); it is clear from the respective scoring sheets that the questions asked focussed on the role itself, rather than the individual candidate; and the Claimant's allegation was not put to any of the Respondent's witnesses. Nor is there any merit in the Claimant's suggestion that she should have been offered prompts during her interview for the SSCA/People Caseworker role. The Claimant herself accepted in evidence that they would not have made any difference to the outcome, and this was the Claimant's second competitive interview within a relatively short timeframe, for which she had been provided with specific training and assistance. Finally in relation to that interview, there is once again no evidence to support the Claimant's allegation that the outcome was predetermined. That suggestion was not put to Ms Isaacs when she gave evidence; the allegation was not raised by the Claimant as part of her appeal; and the successful applicant on that occasion was, like the Claimant, a female Senior HR Consultant who worked part time. Darren Bowes was appointed to the remaining vacancy some months later following a subsequent competitive interview process, which was advertised by the Respondent both internally and externally, and for which the Claimant could have applied.

30 There was certainly some delay in promulgating the outcome of the Claimant's appeal. The appeal hearing itself took place on 4 September 2018, and the Claimant was not informed of the outcome until 12 December thereafter, over three months later. The unchallenged evidence of Mr Froud, who heard the Claimant's appeal, was that he was more or less simultaneously dealing with Ms Karen Wiseman's appeal; that he had a pre-booked holiday following the Claimant's appeal hearing, as well as urgent work commitments; and that as part of the appeal he had to raise a number of questions or points with both Ms Isaacs and Ms Sayers. Nevertheless, it is clear from page 737 in the bundle that a draft outcome letter had been prepared by 16 October, which had been sent to Mr Froud for amendment and/or approval. However, the Claimant then submitted further representations on 29 October, which she accepts required additional questions to be raised with and answered by Graham Lennon, thereby giving rise to a further hiatus. In our view, whilst the delay in providing a reasoned outcome of the Claimant's appeal hearing is both considerable and regrettable, there were legitimate explanations for most if not all of it, both parties contributed to it, and there is no evidence that any such delay affected or undermined the substantial fairness of the appeal decision.

31 We do not accept the contention that Mr Froud failed to undertake a thorough investigation into the issues raised by the Claimant, either at her appeal hearing or thereafter, or to consider the matters advanced before him. The evidence we heard points in the opposite direction. Mr Froud held a lengthy appeal hearing, at which the Claimant was accompanied and had every opportunity to raise all the points that she wished, as can be seen from the appeal notes, which were sent to the Claimant thereafter and agreed. He was assisted in the process by an external employment lawyer, in order to avoid the very real possibility of any conflict of interest arising. In the light of the issues raised by the Claimant, either at her appeal hearing or thereafter, Mr Froud sought and obtained answers and explanations from Ms Woods, Ms Isaacs, Ms Sayers and Mr Lennon. It is clear from Mr Froud's lengthy and fully reasoned outcome letter (pages 816-821) that he considered and took into account all the relevant evidence, including the Respondent's redundancy and redeployment policy, job descriptions for the Senior HR Consultant and SSCA/People Caseworker roles, and the relevant interview questions, answers and scores; together with the information provided by the witnesses that were contacted, and the Claimant's own contentions and submissions. In our judgment, there is nothing in the criticism raised by the Claimant, nor in her suggestions that the appeal outcome was predetermined and that the evidence provided by the Respondent's managers was *'dishonest'*. There was no evidence before the Tribunal to support either allegation; it was never put to any of the Respondent's witnesses that either that the appeal was bound to fail, or that any of their evidence was not truthful or in any way misleading; no examples of allegedly dishonest evidence were identified by the Claimant; and the issue is not mentioned or touched upon in her witness statement.

32 It therefore follows that we find that the Respondent undertook an appropriate consultation process concerning the proposed restructure of their ODP department, both generally with the staff affected and in particular with the Claimant; and that the redundancy selection process which they adopted was fair, in accordance with their own policy, and fell within the range of reasonable procedures open to them. The Claimant was unable to identify any act or omission on the Respondent's part which breached or contradicted its own reorganisation and redundancy policy, save perhaps the delay in providing her with a reasoned outcome of her appeal, for reasons we have already set out. The Claimant's complaint of unfair dismissal, in breach of ss. 94 & 98 Employment Rights Act 1996, fails and is itself dismissed.

33 We turn to consider the Claimant's complaint of direct discrimination on grounds of her sex or gender. The question posed in the List of Issues is: *'Did the decision to make the Claimant redundant amount to less favourable treatment because of her sex, in comparison to a hypothetical male full-timer who was not dismissed, contrary to s.13 Equality Act 2010?'* The approach we adopt is to ask ourselves whether the Claimant has proved facts, on a balance of probabilities, from which we could conclude, in the absence of an adequate explanation, that the Respondent has committed an act or acts of discrimination. If the Claimant has failed to do so, then her complaint must fail. Conversely, if there are primary facts from which inferences could properly be drawn that the Respondent treated the Claimant less favourably than it treated or would treat a comparator, then the burden of proof shifts to the Respondent. It is then for the Respondent to prove, on a balance of probabilities, that their treatment of the Claimant was in no sense whatsoever on the protected ground (in this case, her sex); and if they fail to do so, the complaint must succeed.

34 It is clear, and was not disputed by the Claimant, that virtually all the Respondent's workforce of about 5,000 people were 'ring-fenced', or put into a single redundancy pool as part of the comprehensive restructure which the Respondent was undertaking, unless a particular employee was considered to be 'job matched' with a newly created role, which would only arise where there was a degree of similarity of 75% or more between the respective roles. That was not common, and did not apply in the Claimant's case, as she accepts. The majority of the Respondent's employees who were ring fenced were all required to go through a selection process in applying for new roles if they wished to be retained. There was no evidence before us that the Claimant's sex or gender had anything to do with, or had any impact on, her applications for the roles of People Consultant or that of SSCA/People Caseworker. There is nothing to suggest that the Respondent's competitive selection procedure was not then applied in a straightforward manner in the Claimant's case, and no reason or motive advanced as to why it should not have been – the Claimant was an experienced and capable HR professional with CIPD qualifications and no disciplinary record during her time with the Respondent. In relation to the seven People Consultant vacancies, three of the Claimant's Senior HR Consultant colleagues in the HR Case Team applied for the role and were appointed following interviews: Mr Organisciok, Ms Wilhelmy, both of whom were full-time employees, and Ms Myddelton, who, like the Claimant, worked part time and was also then pregnant. The Claimant's scoring sheets from her interview for the role are at pages 532 to 535. They reveal that the interview panel found that the Claimant had only answered one of their twelve questions satisfactorily; and we have already found that there was no evidence to suggest that the Claimant's interview outcome was predetermined, or slanted against her; nor were any such suggestions put to the Respondent's witnesses. In relation to the two SSCA/People Caseworker vacancies in June 2018, the successful candidate was Ms Leigh Tenner, a part time female employee, who had previously been a Senior HR Consultant in the Respondent's HR Projects Team. The clear evidence before us was that she was deemed to have performed very well at interview, whereas unfortunately the Claimant had not, as demonstrated in their respective scoring sheets (pages 613G to K and 614 to 617). The other SSCA/People Caseworker vacancy was not then filled, and remained open until a further competitive interview process took place in October 2018, conducted by Mr Lennon, the incoming Head of People Operations, which resulted in Mr Bowes' appointment. The Claimant's employment with the Respondent had terminated on 28 July 2018, and she did not re-apply for the role, having obtained alternative employment in September 2018, as we were informed. In our view, there are simply no facts from which we could properly conclude that the Respondent directly discriminated against the Claimant in treating her less favourably because of her sex. Accordingly, this complaint must be dismissed.

35 We next consider the complaint of direct discrimination on grounds of part-time status. The Claimant asserts that she was treated less favourably than a comparable full-time worker, in breach of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, in being made redundant. Ms Azib correctly reminded us that, as the EAT found in **Carl v University of Sheffield [2009] ICR 1286**, claimants must be able to point to a real life, rather than a hypothetical, comparator. In relation to the People Consultant role, the Claimant compares herself to Mr Organisciok and Ms Wilhelmy, both of whom were like her Senior HR Consultants undertaking casework, and who were full-time employees who successfully applied for that role. In relation to the SSCA/People Caseworker role, the comparators selected by the Claimant were Ms

Helen Simpson and Mr Darren Bowes. We deal with those in order.

36 With respect to the assertion of less favourable treatment on part-time grounds concerning the People Consultant role, Ms Azib makes the valid point that this allegation is not raised or mentioned at all in the Claimant's ET1 particulars, nor was it put forward as a ground of appeal against her redundancy dismissal by the Claimant. In fact, the ET1 focuses exclusively on the Respondent's failure to offer or appoint the Claimant to the SSCA/People Caseworker role; and it was only at the preliminary hearing of this case on 22 March 2019 that this further allegation was raised. In any event, in our view the Claimant's contention is undermined by the accepted fact that Ms Myddelton, like the Claimant a part time Senior HR Consultant, was then appointed to one of the People Consultant vacancies along with Mr Organisciok and Ms Wilhelmy. We have already made clear that we find that the Claimant's interview for this role was conducted legitimately and in good faith, and we accept that the Respondent was justified in coming to the conclusion that the Claimant had not demonstrated sufficient aptitude for the new role to warrant its' being offered to her. There are no facts that suggest that the Claimant was unsuccessful because she was a part-time employee.

37 In relation to the complaint of less favourable treatment concerning the SSCA/People Caseworker role, the Claimant effectively abandoned her claim that Helen Simpson was an appropriate comparator during the course of her closing remarks, and having handed up and adopted her written closing submissions. That was probably sensible, since the evidence before the Tribunal was that Ms Simpson works part time, in fact on the same working pattern as the Claimant had chosen as a Senior HR Consultant. Additionally, her role and skills were different to the Claimant's. Ms Simpson had been working as a chartered legal executive in Essex Legal Services, a department outside the ODP directorate at the time of the Respondent's restructure. She had been unsuccessful in applying for new roles in the reorganisation, but had appealed successfully against her redundancy selection, and it was as a result that she had been appointed to the SSCA/People Caseworker role. She is not an appropriate comparator. Mr Bowes was appointed to the same role on a full-time basis, as already noted, by Mr Lennon in a subsequent competitive process in October 2018, after the Claimant's employment had come to an end but whilst her appeal was still pending, having until then been an agency worker interim Senior HR Consultant. In fact, it was largely as a result of Mr Bowes' appointment that the Claimant had advanced further representations in her appeal, which had led Mr Froud to raise questions with Mr Lennon.

38 Ms Azib submitted that, as had been made clear from the outset, the Respondent's wholesale restructure of effectively their entire undertaking was an evolving process, which was expected to take months to reach its final form, rather than a fixed and finite revision, so that the Respondent's needs and requirements for this particular role might have changed between June and October 2018, particularly with a new Head of People Operations in post, who was entitled to make his own assessment of the skills then called for. Secondly, the role had initially only been advertised internally, to 'ring fenced' employees, whereas the second competitive process was also advertised externally. Accordingly, whilst 'casework' experience would have been a known quantity or 'given' at the interviews conducted in June 2018, that would not have been the case in October that year; and so it was legitimate and

appropriate to ask 'casework' questions, as Mr Lennon had done, particularly since it was acknowledged that 'casework' comprised a significant proportion of the SSCA/People Caseworker role. Had the Claimant chosen to re-apply for the role in October 2018, she would have been asked the same questions as Mr Bowes and any other interviewees, and the outcome might have been different; but she had not done so. Finally, at the time of the Claimant's application and unsuccessful interview for the role, the successful candidate was also a woman who worked part time, as was the case with Helen Simpson.

39 We accept those submissions. Once again, we find that there are no facts that suggest that the Claimant was unsuccessful in her application for the SSCA/People Caseworker role and that she was made redundant because she was a part-time employee.

40 Did the Respondent's refusal to uphold the Claimant's appeal and take action to avoid her dismissal, and/or the delay in progressing and resolving the Claimant's appeal amount to unfavourable treatment because of the Claimant's pregnancy? It is agreed that the Claimant first informed the Respondent of the fact of her pregnancy on 18 June 2018, the same day on which she presented her redundancy appeal. We do not propose to repeat or rehearse our findings and conclusions, set out at paragraphs 30 and 31 above, in relation to Mr Froud's hearing and his determination of the Claimant's appeal, or the reasons why his comprehensive outcome letter was delayed; albeit they also apply in this context. There was no evidence before the Tribunal that the fact of the Claimant's pregnancy had any impact on or made any difference to Mr Froud's conduct of her appeal, the conclusions and outcome he reached, or the delay in finalising and concluding the Claimant's appeal; and in fact no such suggestions were ever put to Mr Froud during the course of his evidence. Finally, it is worth noting that Ms Myddelton was successful in her application for one of the People Consultant vacancies in May 2018, at a time when she was pregnant and a Senior HR Consultant; so there is no surrounding evidence to suggest that the Respondent, which is self-evidently a large organisation, struggled or failed to cope with employees becoming pregnant. We find that there are no facts that suggest, or from which we could conclude, either that the Claimant's appeal was unsuccessful or that any delay in progressing or resolving her appeal was attributable to or because of the Claimant's pregnancy.

41 For these reasons, it is our unanimous conclusion that all the Claimant's complaints fail and must be dismissed.

Employment Judge Barrowclough  
Date: 17 April 2020