



# EMPLOYMENT TRIBUNALS

**Claimant**

Ms S Kemsley

v

**Respondent**

Cambridgeshire County Council

**Heard at:** Norwich (in person and by CVP)

**On:** 17, 18, 19, 20, 21 and 24 January 2022  
23 February 2022 (In Chambers – no parties present).

**Before:** Employment Judge Postle

**Members:** Ms J Costley and Mr C Grant

**Appearances**

**For the Claimant:** In person

**For the Respondent:** Mr Lawrence, Counsel

## RESERVED JUDGMENT

1. The claimant was not unfairly dismissed.
2. The claimant's claim that she suffered victimisation and harassment on the protected characteristic of sex is not well founded.
3. The claimant's claim that she was dismissed because of the protected characteristic of age namely direct discrimination is not well founded.

## RESERVED REASONS

1. The claimant brings claims of victimisation and harassment under the Equality Act the protected characteristic being sex. The claimant also has claims for direct age discrimination relating to her dismissal.
2. The claimant also has a claim for ordinary unfair dismissal under the Employment Rights Act 1996.

3. The reason for the claimant's dismissal advanced by the respondent is the redundancy of her position as an Archives Data Inputter.
4. In this tribunal we heard evidence from the claimant through a prepared witness statement.
5. For the respondent we heard evidence from Mr Akeroyd whose role was to lead the delivery of an efficient and effective archives service for the respondent within the People and Communities Directorate. He gave his evidence through a prepared witness statement. There was also evidence again through a prepared witness statement for the respondent by Miss M Harriman whose role was that of HR Manager.
6. The tribunal also had the benefit of a bundle of documents consisting of some 655 pages and at this hearing the claimant provided a supplemental bundle consisting of 36 pages.

### **Findings of Fact**

7. The purpose of the Archives Service is to collect, preserve and make available to the public historical records for the county of Cambridgeshire. The Archives Service at the respondent began in the early 1930s where records were stored in a single room in the basement of Shire Hall in the centre of Cambridge. The respondent had long recognised that the accommodation of the archives in the basement was unsuitable and in 1994 began a search for a new site.
8. In 2004 a suitable site was identified and a new building was to be called the Historical Resource and Cultural Centre. That was to be PFI funded, planning work went ahead and the Archives Service at the time identified a need for dedicated data input work to help prepare for the move and thus two Data Inputters were recruited in or around 2006, one being the claimant. The Historical Resource and Cultural Centre project hit budget problems in 2008 and the Government withdrew the PFI credits and that project was abandoned. Despite this work continued to find new archives accommodation. In 2014 a new location was found in Ely, the building required conversion from a former bowling alley. The conversion work and archives was to move across from the Shire Hall to Ely in 2019.
9. The Data Inputter roles were fixed term and to end in 2008 because that was when the move was originally planned. These roles were clearly paid out of an Archive Service Development Budget which was a budget set up with the intention ultimately of paying for the running costs of the new archive building. The data inputters were therefore paid out of the Archive Service Development Budget. Whereas other members of staff were paid and continued to be paid out of the main Archives Service Revenue Budget. The fact that the data inputters were paid from a different budget protected them during the early restructure when other members of archive staff were made redundant.

10. The data inputter roles were to be part time and it was considered the job would be fairly monotonous to be attractive as a single full time role. When the data inputters were recruited they reported to the Archivist Richard Anderson who in turn reported to Mr Akeroyd. The claimant was to be employed originally on a fixed term duration of 18.5 hours per week. The other inputter employed was a Michelle Mintram again of a fixed term duration. Their work was very much taking text and data from archive catalogues into Excel spreadsheets to assist the ultimate big move eventually to Ely. There were further extensions to both parties fixed term contracts and were kept on to assist with the ultimate move in mind. Sometime around 2010 the date is not entirely clear the two part time data inputters on fixed term contracts were rolled into permanent contracts until the move from Shire Hall to the time when their new premises had been completed.
11. It is clear the claimant had an uneasy working relationship with Mr Anderson and when Miss McGreechan left in October 2014 the claimant emailed Mr Akeroyd on 13 November 2014 (page 222) requesting that a different interim manager from that of Mr Anderson be appointed due to the fact that her working relationship with Mr Anderson had entirely broken down. Unfortunately the email apart from saying the working relationship with Mr Anderson had entirely broken down it did not give any specific examples or reasoning. This was the first time that the claimant had indicated that her working relationship with Mr Anderson became known to Mr Akeroyd. Mr Roberts a Cataloguing Archivist took over Miss Mintram's and the claimant's line management in January 2015 by around April 2017 there was apparently difficulty in finding work for both Miss Mintram and the claimant to do. There was apparently a suggestion at this stage whether one of the data inputters should be made redundant. At that stage the question of redundancy was not pursued.
12. In March 2018 Mr Roberts left the respondent and his replacement was not due to start until June. In the interim period it was envisaged that Mr Anderson would take over the line management of the claimant and Miss Mintram. Once again when the claimant became aware of this she made it clear she did not want Mr Anderson to manage her and threatened to raise a formal grievance if he were her line manager, this was in March (pages 258-261). The reason advanced by the claimant for her stance was that she had been treated in an unacceptable manner by Mr Anderson. Mr Akeroyd as a result of this provided a link to the grievance procedure. As a result of this Mr Akeroyd agreed to line manage the claimant, Mr Anderson was informed that he was not required to line manage the claimant. It would appear that Mr Akeroyd did not tell Mr Anderson that the claimant would be raising a grievance. Ultimately the claimant did not submit a grievance or provide any further information about her relationship (working) with Mr Anderson. It is odd that although in 2014 the claimant raised the issue of the working relationship since that period to March 2018 Mr Akeroyd had not been made aware by the claimant of issues between herself and Mr Anderson.

13. On 5 April 2018 there was a one to one between the claimant and Mr Akeroyd and it would appear no further mention was made by the claimant at this meeting of a grievance and her working relationship with Mr Anderson (page 277). The reason seems to have been the claimant had got her way in not having Mr Anderson as her line manager.
14. There was a further appraisal meeting between the claimant and Mr Akeroyd around 12 June (pages 279-281) and again no mention seems to have been made of the claimant issuing a grievance or her working relationship with Mr Anderson. Later in June the claimant's and Miss Mintram's new line manager Esther Bellamy started and it would appear that Mr Akeroyd had little contact with the claimant, Mr Akeroyd continuing to work with Mr Anderson till he left around July 2019.
15. The claimant did send Mr Akeroyd an email on 18 June (pages 286-287) in which she raised an issue about Mr Anderson jumping on and off a table close to a window and asked if she could re-arrange the tables so that the windows could be accessed without getting on to a table. But that was the end of the matter.
16. It is clear on 12 July 2018 Mr Akeroyd emailed Ms Patrickson (page 295) she was the HR Manager in which he indicated that the two data inputter roles would come to an end in the summer of 2019 when the planned move of the Archive department took place. Furthermore, in the interim period it was becoming increasingly hard to supply data for them to input. Ms Patrickson replied on the same day (page 295), confirmed they had talked about the posts and that there was a reduced requirement for them to carry out work and both roles would have to be made redundant or alternatively one role now and the other some point in the future. Ms Patrickson suggested three alternatives; they were both redundant or, alternatively if there was a need to keep one post on and make redundant at a later stage, ask for a volunteer or alternatively consider a reduction in their hours.
17. Mr Akeroyd then received an email from Mr Anderson on 10 August (page 275) in which he was suggesting the data inputter roles be deleted and set out the reasons why he felt the roles were no longer required. In that same email he also intimated that the claimant's behaviour was unacceptable and was having to apologise for her on a number of occasions and went on to set out some concerns about the claimant's work. Mr Akeroyd was clearly taken back by the contents of the email and spoke to Mr Anderson asking him to maintain a working relationship with the claimant.
18. Mr Akeroyd then sent Mr Anderson's email to Miss Clarke of HR seeking advice. A meeting took place in which the content of Mr Anderson's email was discussed, the fact that data inputters were paid from different budget and that we needed the roles to continue until the move to the new

premises and in the meantime it was hoped that Mr Anderson could maintain a working relationship with the claimant.

19. On 5 September Mr Akeroyd emailed Christine May Assistant Director indicating that he had made HR aware of the Richard Anderson / Sue Kemsley relationship issues and was waiting to meet with HR to discuss the matter further. The view from Ms May was the need to concentrate on organising the move to Ely and to the need for the team to work together (pages 302-303). Clearly the team were under immense pressure to get everything packed and ready for the move. It is accepted the working conditions in the basement where the archivists worked were poor and the conditions were not ideal.
20. On 7 November 2018 Mr Akeroyd received an email from Miss Tang Archivist (pages 310-311) in which she referred "This thing between Richard and Sue is getting out of hand". As a result of this Mr Akeroyd spoke to Mr Anderson and reminded him what was required by the respondent of his behaviour. Mr Akeroyd understood the "thing" between the claimant and Mr Anderson was the fact that they simply did not like each other as individuals.
21. What is clear is that Mr Akeroyd was working alongside HR and Ms May to consider the redundancy process (page 343) because in May they were talking about the possibility of redundancy for the two data inputters. At the same time preparation was underway of a consultation document setting out the changes to the archive service as a result of the move to Ely.
22. The formal consultation document (pages 375-390) sent to all members of the archive team as well as the recognised Trade Unions. The document set out the proposals which included a change of work base from Shire Hall to the new Cambridgeshire Archive Centre at Ely, removal of the two data inputter posts from the structure and four fixed term packaging assistants would terminate at the end of November without any further extension. Staff were advised that the consultation process would close on 22 July 2019 and they were encouraged to provide any thoughts on the process.
23. Mr Akeroyd became aware from the claimant's line manager Miss Bellamy that the claimant was considering not attending the formal consultation meeting as the claimant had said she was expecting bad news (page 360). Both the claimant and Michelle Mintram were invited to a pre-meeting with Ms May before the formal consultation was launched on 20 June 2019 (page 366) it is not clear whether the claimant and Ms May ever met. The claimant and Miss Mintram and other members of the archives team were invited to attend the launch of the archive staff consultation on 20 June 2019 (pages 355-356) as were the recognised Trade Unions.

24. The meeting was conducted by Ms May on 20 June in which she went through the proposals in detail, the reasons for the proposal and staff were given an opportunity to question or provide written responses to the consultation document.
25. It is clear on 20 June the claimant told Mr Akeroyd she did not wish a face to face meeting to discuss the consultation or discuss anything by phone and that any communication to the claimant must be in writing (page 372). It is clear the claimant did not attend the at risk meeting or the consultation launch which she was invited to. The claimant was emailed therefore on 20 June by Maxine Harriman of HR to formally confirm her at risk status and that the respondent was now entering the 30 day consultation period confirming that the claimant had declined to meet Ms May and the fact that the claimant had requested all future correspondence/all communication should be in writing. The claimant was reminded of the employee assistance programme and the respondent's redeployment processes contact.
26. The claimant's response was amongst other things that she had been informed over a year ago that her job was going so she did not really need to be informed in person, she appreciated the respondent had to go through the formalities (page 392).
27. The claimant then sent Ms Harriman an email on 24 June (page 391) in which she asked for clarification about when she should submit her redundancy appeal. Ms Harriman responded by saying that any appeal should be submitted at the point actual redundancy was confirmed. Ms Harriman again stressing the post was at risk at the present time and that proposals remained very much open to consultation (page 395-400).
28. The claimant then emailed Ms Harriman on 26 June (page 396) in which she advised she was now emailing about "something slightly different" and she went on to refer to an incident the morning prior involving Mr Anderson which had "reached HR". The claimant advised that his behaviour was not new, had been going back a long time and that she had been subjected to similar behaviour by Mr Anderson. This was the first Ms Harriman was aware of a problem of working relationships between the claimant and Mr Anderson.
29. Ms Harriman replied on 28 June asking for clarification as whether Mr Anderson's behaviour was ever raised formally either by the claimant or Mr Akeroyd. In the email Ms Harriman directs the claimant to the Respect at Work Policy. The claimant replied saying that Mr Anderson's behaviour went beyond Respect at Work informal resolution. The claimant went on to share an email trail from March 2018 in which she had raised concerns about Mr Anderson to Mr Akeroyd. She had originally indicated she was considering submitting a formal grievance but the claimant confirmed she never had raised a formal grievance because it had been agreed she would be managed by other persons rather than Mr Anderson.

The claimant advised that she did not require any advice she simply wanted to highlight Mr Anderson's behaviour (pages 468-475).

30. On 4 July 2019 the claimant submitted her response to the formal consultation, in it the claimant set out how she felt her role of data inputter had been mis-represented in the consultation document that much of her recent work was unrelated to the move. The claimant also sought clarification as to when it was likely she would be issued with Notice of Redundancy.
31. It seems to be the case that Ms May spoke to Mr Akeroyd to clarify the claimant's and Miss Mintram's roles and to understand the nature of the work they were doing. Based on those discussions Ms May determined that both the claimant's and Miss Mintram's roles were still very much data entry and that whilst the claimant might have carried out additional tasks that was not sufficient to demonstrate that she was doing an entirely different job. Furthermore, the budget that funded the two data inputter roles would no longer be available once the archive service moved to the new building (pages 420-430 and 437-440).
32. On 31 July the formal response to the consultation process was issued (pages 447-455). In that document the two data inputter roles that had been put at risk were now placed under formal Notice of Redundancy. Furthermore, the packaging assistant roles would also end. In order to mitigate redundancy both the claimant and Miss Mintram were given redeployment status to assist them in finding suitable alternative roles within the organisation. On the 31 July both data inputters were issued with the Notice of Redundancy (page 442-444 and 632-641) and advised of the Redundancy Appeals Process.
33. The claimant submitted an appeal against her redundancy on 31 July (pages 409-417). The claimant then added an addendum to her appeal on 2 August (pages 446-456). The claimant set out in her appeal that in her view it was not a genuine redundancy situation, that she had been victimised, and that data input work in recent years was only a small proportion of her work.
34. On 5 August Ms May emailed the claimant to acknowledge receipt of her appeal advising the claimant that the appeal did not meet the criteria under the respondent's redundancy policy. Particularly the criteria under which an appeal can be lodged is as follows:
  - "a) Appeal against selection (there were two data inputter posts that have been selected for redundancy so there has been no selection process between the two roles).
  2. Failure to ....
  3. Failure to consider application for suitable alternative employment."

35. Notwithstanding that, Ms May offered to meet the claimant regarding the claimant's correlation between her being placed at risk of redundancy and Mr Anderson's behaviour and that equated to victimisation. Ms May offered to meet the claimant on at least two or three occasions to understand the issues the claimant was raising. Notwithstanding this the claimant declined the offers and asked for everything to be put in writing (pages 459-462). Ms May advised the claimant if she was not prepared to meet then the respondent/Ms May would not progress matters any further because at that stage the respondent had received communications from ACAS which then resulted in the claimant agreeing to meet Ms May.
36. A meeting did take place between Ms May, the claimant and Ms Harriman of HR on 17 September. The full details of what was discussed at the meeting and the meeting notes (pages 478-482) in summary the following was discussed:
- a) The claimant had never been told her post was temporary or that it was linked specifically to Archive Service move.
  - b) Ms May was clear in her mind that the data inputter roles were originally temporary having been extended a number of times due to the delay in identifying an appropriate new facility for the archive to be based in.
  - c) The claimant discussed Mr Anderson's behaviour and its impact on her. She did confirm that she had not raised any of her concerns on a formal basis.
  - d) The claimant's concern about an email between Ms May and Mr Akeroyd dated 5 September 2018 questioned why Ms May had felt it necessary to meet with Mr Akeroyd. Ms May had confirmed she could not remember the exact details of the conversation with Mr Akeroyd other than she had been informed about the breakdown of the relationship between the claimant and Mr Anderson and did not know the full details.
  - e) The claimant felt there was a link between her making a complaint about Mr Anderson and being made redundant. Ms May confirms she had not been made aware of Mr Anderson's email to Mr Akeroyd or that the claimant had intended to raise a grievance. Even if she had it would have had no bearing on the redundancy process.
  - f) The claimant confirmed she had a log of incidents against Mr Anderson.
  - g) The claimant confirmed there was no resolution that the respondent could offer and the claimant was seeking redress outside the respondent namely Employment Tribunal proceedings.



37. Ms May gave a detailed letter to the claimant on 27 September following the meeting on 17 September (pages 483-485) summarising the meeting.
38. The claimant's employment terminated by reason of redundancy at the end of October. It was also the case that neither the claimant or Miss Mintram had any interest in alternative roles within the respondent's organisation.

## The Law

### Equality Act 2010, Section 27 ("EqA") – victimisation (sex)

39. Victimisation claims under the Equality Act 2010 are subject to the shifting burden of proof set out in s.136 of the Act. That provides that the initial burden is on the Claimant to prove the facts from which the Tribunal could decide in the absence of any explanation, that the Respondent has contravened a provision of the Act, known as "a prima facie case". The burden would then pass to the Respondent to prove that discrimination did not occur. It is absolutely clear in this case, the facts which the Claimant has to prove as part of her prima facie case include that the alleged victimiser had knowledge of any protected act. That means that means that the detriment cannot be because of a protected act in circumstances where there is no evidence that the person who allegedly inflicted the detriment knew about the protected act. In the absence of clear circumstances from which such knowledge can be inferred, a claim for victimisation will inevitably fail.
40. That approach was confirmed by the Court of Appeal in Scott v London Borough of Hillingdon [2001] EWCA 2005 CA; the Court ruled that knowledge of a protected act is a precondition of a finding of victimisation and that as there was no positive evidence that the Respondent knew of the Claimant's previous complaints, there had been no proper basis for the Tribunal to infer that the Claimant had been victimised.
41. It is correct that it is not enough for a Claimant to show that the alleged victimiser knew that the Claimant had made a complaint of some nature. The Claimant has to show that the alleged victimiser knew that the complaint was an allegation of discrimination, or otherwise a contravention of the legislation. It would not be sufficient that the Claimant wanted a different line manager.

### Detriment

42. For the purposes of s.27 EqA, a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to her disadvantage. An unjustified sense of grievance does not amount to a detriment and whether or not a Claimant's sense of grievance is justified is a matter for the Tribunal to decide in all the circumstances.

## Conclusions

### VICTIMISATION

43. In relation to the allegations against Mr Anderson, the Claimant has completely failed to make out a prima facie case in support of any of her claims that Mr Anderson subjected her to detriments because of any protected act, or indeed the email of 29 March 2018. The burden is on the Claimant to show that Mr Anderson had knowledge of that protected act in the email. The Claimant has also to demonstrate to us not just that Mr Anderson knew of her emails to Mr Akeroyd at 1522 and 1530 on the 29 March 2018, that those emails contained an allegation of discrimination relating to a protected characteristic. There is no evidence before this Tribunal from which it could properly conclude, in the absence of any other explanation, that Mr Anderson had such knowledge. In those circumstances, the Claimant has completely failed to discharge the burden of proof.
44. Furthermore, the Claimant agreed under cross examination, that Mr Anderson never mentioned her protected act to her for the whole of the year in which the Claimant alleges Mr Anderson was subjecting her to detriments. Furthermore, Mr Akeroyd's evidence, under cross examination, was that after the Claimant's protected act he was, "*fairly certain*" that he did not tell Mr Anderson about the Claimant's email, or her stated intention to raise a grievance. The Tribunal noted that the Claimant did not challenge this evidence. Furthermore, the documentary evidence strongly supports Mr Akeroyd's recollection. The key email is the email in which Mr Akeroyd sent to Mr Anderson at 0933 on 5 April 2018 (page 276) one hour before he contacted the Claimant, to arrange a time of their one to one meeting the following day, in which some eight days had passed since the protected act.
45. The email reads as follows.
- "Hi Richard, for your info HR have advised me that I can have line manager Sue directly until Kevin's replacement starts (Sue asked for this)".*
46. The clear implication is that this is the first time that Mr Akeroyd had informed Mr Anderson of the Claimant's objection to Mr Anderson being her line manager. That objection appears to be the thrust of the protected act. It is clear, therefore, that Mr Akeroyd had not informed Mr Anderson of the protected act before 5 April 2018 and Mr Akeroyd gave evidence to that effect. Thereafter there would have been no reason for Mr Akeroyd to inform Mr Anderson of the Claimant's protected act because after his one to one meeting with the Claimant on 6 April 2018, Mr Akeroyd was under the impression that the issue had now "*blown over*" (page 267).

47. It is therefore correct that the oral evidence and documentary evidence demonstrate that Mr Akeroyd never told Mr Anderson about the protected act. Furthermore, the Claimant accepted that she never heard Mr Anderson mention the Claimant's allegation of discrimination or show any awareness of it whatsoever. The Claimant accepts her view that Mr Anderson knew of the protected act is a mere assumption. Therefore the Tribunal's only conclusion is that there is no evidence that Mr Anderson knew about the Claimant's protected act. The Tribunal therefore repeats the Claimant has patently failed to make out a prima facie case of victimisation in respect of her allegations against Mr Anderson.

#### DETRIMENT

48. The Tribunal, when considering the list of the detriments, took the view that the allegations against Mr Anderson do not amount to allegations of detriment. Particularly, (following the list of issues):
- 2a. the email from Mr Anderson to Mr Akeroyd on 5 April 2018;
  - 2m. Mr Anderson's email to Mr Akeroyd about the Claimant on 10 August 2018;
  - 2o. the psychiatrist incident involving the Claimant and Mr Anderson on 28 August 2018; and
  - 2x. Mr Anderson's comment to the Claimant about her jumper on 16 November 2018.
49. The Tribunal repeats, an unjustified sense of grievance cannot amount to a detriment. Most of the alleged detriments are interactions between the Claimant and Mr Anderson showing that both parties disliked each other, but it could not reasonably have been said that this had disadvantaged the Claimant. The Tribunal were of the unanimous view that they were ordinary exchanges between colleagues, at work, who have a different relationship.
50. Dealing with the allegation against Mr Akeroyd, the Tribunal notes that the Claimant did not put the allegation that Mr Akeroyd subjected her to any detriment because of a protected act, if this is correct therefore, it would not be open to the Tribunal to find that Mr Akeroyd treated the Claimant in the way that he did because of her protected act.
51. Even if that were wrong, none of the allegations against Mr Akeroyd can amount to a detriment, these being (following the List of Issues):
- 2a. Mr Akeroyd not telling the Claimant about this email in their one to one on 6 April 2018 and not taking advice from HR;
  - 2c. Mr Akeroyd informing Miss Patrickson that it "*might have blown over*" on 9 April 2018;

- 2d. Mr Akeroyd informing the Claimant on 12 June 2018 that she would be dismissed when the Respondent's Archives Services moved premises;
  - 2e. Mr Akeroyd hiding the reason why the Claimant refused to work with Mr Anderson in his email to Miss May on 14 June 2018;
  - 2h. Mr Akeroyd circulating the Respondent's Respect at Work Policy in response to the back pack incident, rather than taking advice from HR;
  - 2j. Mr Akeroyd emailing Miss Patrickson about the Archive Data Inputters on 12 July 2018;
  - 2p. Mr Akeroyd's email to Miss Clarke on 28 August 2018 about the relationship between the Claimant and Mr Anderson having broken down;
  - 2q. Mr Akeroyd's emails to Miss May and discussion with her on 5 September 2018 which convinced Miss May that she did not need to meet with the Claimant;
  - 2w. Mr Akeroyd telling Miss Tang that it was up to the Claimant to report Mr Anderson to HR;
  - 2cc. Mr Akeroyd's email to Miss Reid on 22 May 2019; and
  - 2hh. Mr Akeroyd's email to the Claimant on 15 October 2019, staying at home.
52. Again, the Tribunal were of the unanimous view that these were acts by Mr Akeroyd who was conflict averse and simply doing his job. There is no evidence that they were motivated by the fact that the Claimant had done a protected act.
53. With regard to the allegations against Miss May, the last victimisation allegation takes aim at the redundancy process and the redundancy decision and they are as follows, (using the List of Issues):
- 2dd. the Claimant being bracketed together with Miss Mintram in the formal consultation on the Archives Service;
  - 2ff. the Respondent not considering the Claimant's Appeal, although she did not have that valid criteria in any event, there was specific criteria required to launch an appeal which the Claimant failed to advance; and
  - 2ii. the Claimant's dismissal.

54. The Tribunal is clear that Miss May did not know about the Claimant's protected act until their meeting on 17 September 2019. Concerns were, for the first time, raised at this meeting between the parties (page 478) by which time all the alleged detriments had already taken place.
55. Insofar as the Claimant's allegation that she should not have been bracketed with Miss Mintram in the redundancy process, the Claimant whilst working in the Shire Hall, whereas Miss Mintram was working from home. It is clear the Claimant's employment as it went on, was allocated data entry tasks which were perhaps more complicated than those that were given to Miss Mintram.
56. The fact of the matter remains, data entry remained. The Claimant's job title remained throughout her employment and at no time during her employment was the status of her job or title amended.
57. Miss May found that the Claimant had not presented a valid redundancy appeal as it did not fit the criteria required to launch an appeal, page 462. Notwithstanding this, Miss May held the meeting with the Claimant on 17 September in order to address the concerns contained within the Claimant's appeal document, pages 409 - 412.
58. Finally, it was patently clear the Claimant's position was always tied to the move of the Archives Service. In the documentary evidence Mr Akeroyd spelt it out on several occasions long before the Claimant's protected act. The Claimant's position was funded from a different costs centre to that of the Archives Team, namely the Archives Service Development Fund. The funding of the Claimant's position came to an end when the Archive Service moved to its new site.
59. The Claimant's dismissal, therefore, had nothing to do with any protected act.

#### SEXUAL HARASSMENT

60. It would appear that the Claimant's only allegation under this head of claim is Mr Anderson's reference to the Claimant as a "*sour and bitter individual*" in his email to Mr Akeroyd on 10 August 2018, page 275.
61. The Tribunal concluded this was an isolated criticism of the Claimant contained within an email which the Claimant simply did not see. Therefore it could not possibly have had the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.
62. The Tribunal also concluded, in any event, that such a comment is not related to the Claimant's sex. The word 'individual' refers to men and women equally. Either a man or a woman can be described as a sour and

bitter individual. Therefore this comment does not relate to the Claimant's sex.

#### AGE DISCRIMINATION

63. This is advanced on the basis that the Claimant's dismissal was due to her age. The first point to make here was this was never put to the Respondent's witnesses that the Claimant was dismissed because of her age. It is clear to the Tribunal that the only reason for the Claimant's dismissal was redundancy, along with another Data Inputter who was 20 years younger than the Claimant. The suggestion that the Respondents recruited an Archives Assistant after the Claimant's dismissal from a younger age must be irrelevant to the claim for age discrimination, simply because the Claimant was not an Archives Assistant.
64. The Claimant, therefore, has failed to make out a prima facie case of age discrimination and that claim fails.

#### UNFAIR DISMISSAL

65. Redundancy is potentially a fair reason to dismiss under the Employment Rights Act 1996. The Tribunal then have to consider Section 98(4),
- 98(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-
- (a) 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
- (b) shall be determined in accordance with equity and the substantial merits of the case.
66. There has to be adequate warning of the redundancy. There has to be meaningful consultation and the process adopted throughout must be a fair process and where appropriate a pool of candidates be considered for selection for redundancy.
67. It is fair to say that a number of the Claimant's arguments that she was dismissed were because of her protected act.
68. The Tribunal took the view that there clearly was meaningful consultation and warning of the redundancy. Indeed, the Claimant indicated that she knew some time before that her role as a Data Inputter was likely to be made redundant, a year or so before it took place. There were two Data Inputters, the Claimant and Miss Mintram, both were selected as requirements for them to carry out work they were employed in had ceased and they were no longer required after the move.

69. The consultation process was clearly thorough and meaningful. The Tribunal noted that the Claimant patently failed to engage in that process. Particularly, she failed to attend the 'at risk' meeting on 20 June 2019, the Claimant being invited on 18 June 2019. The Respondents made an offer of a telephone meeting to the Claimant to which the Claimant did not reply. In fact the Claimant made it clear she did not wish to meet face to face or discuss anything by telephone with the Respondents, page 372. The Claimant then received the benefit of a written consultation response for the Claimant's feedback, the Claimant was then informed of redeployment status and was told how to access vacancies several times in the 'at risk' letter (page 777), in the email from Miss Harriman on 20 June 2019 (page 391) and in the 'redundancy notice' meeting and the 'redundancy notice' letter (page 442).
70. The Claimant never sought any advice from the Respondents about the redeployment process and in fact the Claimant attended the 'redundancy notice' meeting, rather than engage or listen to Miss May and Miss Harriman, she simply decided in her words to, "*give them a piece of her mind*", page 583.
71. The Tribunal were unanimous in the view, the process adopted for the Claimant's redundancy was an entirely fair process. There clearly was a genuine redundancy and the Claimant had adequate warning and consultation in circumstances where the Claimant did not wish to engage in such consultations. There was a redeployment process and the Claimant simply was not interested.
72. The dismissal, by reason of redundancy, is therefore fair.

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Employment Judge Postle

Date: 04 August 2022

Sent to the parties on: 11/8/2022.

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For the Tribunal Office