



## **EMPLOYMENT TRIBUNALS**

**Claimants:** Mrs R Theisen and others

**Respondent:** Virgin Atlantic Airways Ltd

**Heard at:** London South  
(Croydon a CVP  
hearing) **Between: 3/6/2024 – 23/12/2024**  
**On various dates (see below) and**  
**then in Chambers**

**Before:** Employment Judge Wright  
Ms C Edwards  
Ms B Leverton

**Representation:**

**Claimants:** CCU – Mr S Maisey (CCU)<sup>1</sup>  
MS – Ms K Moss and Ms J Laxton – counsel  
OHP – Ms A Ahmad - counsel

**Respondent:** Mr T Brown and Mr R Fitzpatrick – counsel

## **RESERVED JUDGMENT**

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<sup>1</sup> Replaced by Ms Papantoniou between 18/6/2024 and 2/7/2024.

This hearing considered 10 test claims (see annex C), brought by 12<sup>2</sup> test claimants selected by three represented groups, out of a total of over 400 claims. The Tribunal's unanimous Judgment is:

the MS (formerly GWG) claimants' claims of unfair dismissal contrary to the Employment Rights Act 1996 (ERA) are well-founded and therefore succeed, as do the claims of Paula Lin, TC12 and Lyndsey Stevenson;

the claims under the Equality Act 2010 (EQA) fail and are dismissed;

the claims of detriment contrary to s.43C ERA fail and are dismissed; and

the claims under the Part-Time Worker (Prevention of Less Favourable Treatment) Regulations 2000 fail and are dismissed.

## REASONS

### Executive summary

1. The global pandemic of 2020 as a result of the outbreak of the Covid-19 Coronavirus hit the airline industry harder and earlier than other industries.
2. Claims were presented to the Tribunal by cabin crew who worked for Virgin Atlantic Airways (VAA). During 2020 VAA made approximately 4,300 staff redundant in two phases. That included approximately 1,692 cabin crew. The Tribunal found the need to make redundancies was justified. VAA needed to cut costs in order to survive.
3. Over 400 claims for breaches of the Employment Rights Act 1996 (for unfair dismissal and detriments following taking statutory leave); unlawful discrimination contrary to the Equality Act 2010 (for direct and indirect sex discrimination and direct and indirect age discrimination) and for breaches of the Part-Time Worker (Prevention of Less Favourable Treatment) Regulations 2000 were presented by cabin crew (some were legally represented and some were not). Some cabin crew presented more than one claim. Some cabin crew claimed monetary payments (holiday pay and notice pay; those claims were not advanced at this hearing).

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<sup>2</sup> Two of the CCU test claimants' claims did not proceed as they did not comply with the Tribunal's Order for Directions.

4. Unite the Union was recognised by VAA for cabin crew and it had entered into a Trade Union Recognition Agreement (a Collective Bargaining Agreement) in 2001. The result of that was that Unite had the right to negotiate on employees' terms and conditions of employment, regardless of whether they were union members or not.
5. Cabin crew were informed they were at risk of redundancy on 5/5/2020.
6. Selection criteria and other measures were agreed with Unite the Union following a period of collective consultation and an agreement was reached on the 19/5/2020. The Tribunal found the selection criteria agreed with Unite were fair and reasonable.
7. The Tribunal found that in respect of some senior cabin crew, the dismissals were procedurally unfair. VAA applied a computer-programme based upon the agreed selection criteria, which the Tribunal found was too complex (calculations ran to at least 15 decimal places). It could not easily be understood. It was exceptionally complicated, unwieldy and onerous for the cabin crew to attempt to replicate it and it was therefore unfair.
8. The Tribunal also criticised and found to be unfair: the timetable used (VAA should have taken more time to provide senior cabin crew with their data in an intelligible form, such that the calculation of their scores could be easily followed and checked); and the fact that VAA stated to senior cabin crew 'you have been selected for redundancy' on the 11/6/2020, meant that there was no provisional selection. That was also unfair.
9. The Tribunal found there had been no unlawful discrimination contrary to the Equality Act 2010. The Tribunal found VAA had not unlawfully selected older cabin crew or protected younger cabin crew. A cabin crew member's gender did not play any part in VAA's process. Similarly, the Tribunal found that there was no less favourable treatment due to part-time working. Although the Tribunal found the dismissal of the senior cabin crew to be unfair, it did not find that VAA had any form of ulterior motive. VAA found itself in difficult circumstances and it had to act quickly in an extremely challenging environment. In the main, most of what VAA did was agreed with Unite. There was no malicious intent on the part of VAA.
10. The first claim was presented by Rima Theisen on 19/8/2020. Over 400-claims were presented, although it appears some claimants made multiple claims under different legal headings. The claims were collectively case managed by the Tribunal and the selected test claimants' claims were heard over 30-days during

2024. The evidence and submissions concluded in mid-November 2024; the Tribunal deliberated, reached its decision and produced this Judgment.

#### Preamble

11. The respondent (also referred to as 'VAA') is a well-known long-haul international airline predominantly operating business flights to the United States of America and leisure flights to the Caribbean, India, Nigeria and the Far East.

12. The claimants are (mostly former, some have returned to work for the respondent) cabin crew of various ranks who were made redundant as a result of the Covid-19 pandemic which started in 2020. Their claims were presented to the Tribunal over a period of time from 19/8/2020.

13. Case management hearings took place on: 30/5/2022 (EJ Hyams-Parish); 27/7/2022; 12/12/2022; 23/3/2023; 13/7/2023 (all EJ Balogun); 6/3/2024 and 24/5/2024 (when EJ Wright took over conduct of the case).

14. The test claims were selected from three represented groups. Those groups were referred to as:

'GWG' as they were originally represented by Giles Wilson Groups and latterly by Machins Solicitors LLP<sup>3</sup>;

'OHP' represented by OH Parsons LLP<sup>4</sup>; and

'CCU' represented by the Cabin Crew Union.

15. It was determined that these 12 test cases would be heard at a final hearing, which was listed at the preliminary hearing on the 27/7/2022. At that time, the hearing was to take place on CVP for:

'... 6 weeks from 3 June 2024 to 19 July 2024'

16. This listing had to be varied due to other commitments. The Tribunal could not sit on – 10/6/2024 to 14/6/2024, 17/6/2024 to 19/6/2024, 28/6/2024 and 1/7/2024 to 5/7/2024.

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<sup>3</sup> Although these claimants were referred to as the GWG claimants throughout the hearing, for the purposes of this Judgment, they have been relabelled the 'MS claimants'.

<sup>4</sup> During closing submissions Ms Ahmad stated the OHP claimants were funded by Unite the Union. It had not been apparent that was the case and certainly the respondent was under the impression that Unite had no involvement in these claims.

17. As of the 30-day listing, nine days would be lost, the Tribunal was able to add the following additional days – 4/11/2024 to 8/11/2024 and 11/11/2024 to 14/11/2024.
18. The hearing commenced on CVP (video conferencing) on the first day on 3/6/2024. It was intended that the hearing would deal with any housekeeping/ preliminary matters and then the Tribunal would commence reading into the papers.
19. There were some initial matters raised by MS, however, the parties were asked to reach agreement and if not, the appropriate application could be made at the relevant time. The Tribunal then adjourned with the intention of commencing the evidence on the 4/6/2024.
20. On the second day (4/6/2024) the hearing was in person. Save that, for personal reasons, the Non-Legal Members joined the hearing via a CVP link.
21. The hearing was unproductive in terms of beginning to hear evidence on the 4/6/2024. The microphones in the hearing room were not working and it was not possible to resolve this. The parties were sent away at 1pm. The Tribunal continued reading and the hearing resumed on CVP on the 5/6/2024. It was agreed to continue the hearing on CVP for the fourth and fifth days. Thereafter, as the CVP format was working relatively well, it was agreed to continue with the arrangement. It was however kept under review.
22. The Tribunal heard from the following witnesses:
  - 21.1. 5/6/2024 to 6/6/2024 – Claire Wood-Woolley<sup>5</sup> (MS)
  - 21.2. 6/6/2024 to 7/6/2024 – Stephen Buckerfield (VAA)
  - 21.3. 7/6/2024 – Ruth Benzal Mahon (MS)
  - 21.4. 20/6/2024 – Zoe Anderson (MS)
  - 21.5. 21/6/2024 – Paul McGill (CCU) and Julie Dilloway-Knapp (VAA)
  - 21.6. 24/6/2024 – Joanne Bunting (MS)<sup>6</sup>
  - 21.7. 25/6/2024 – Ryan Daniels (VAA)<sup>7</sup>

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<sup>5</sup> The Tribunal understands her surname is hyphenated, however, it does appear without a hyphen.

<sup>6</sup> For personal reasons, the hearing started approximately 20 minutes late on day eight. For the same reason, the hearing was adjourned after the mid-morning break until 2pm. In total, approximately 95-minutes was lost on day eight.

<sup>7</sup> On day 8 approximately an hour was lost due to: a delayed start, an opposed application and a fire drill at the witness' location.

- 21.8. 26/6/2024 – TC12 (OPH) and Paula Lin (OPH)<sup>8</sup>
- 21.9. 27/6/2024 – Tony Mayo (VAA)
- 21.10. 8/7/2024 – David Gloster (VAA)
- 21.11. 9/7/2025 – Gemma O'Hara (CCU) and Albert Thomas (VAA)
- 21.12. 10/7/2024 – Samantha Ryder (CCU), Lyndsey Stevenson (CCU) and Andrew Maughan (VAA)
- 21.13. 11/7/2024 – Andrew Maughan (VAA), Jenny McGowan (VAA) and Sven Sharpe (VAA)
- 21.14. 12/7/2024 – Sven Sharpe (VAA)
- 21.15. 15/7/2024 – Sven Sharpe (VAA)
- 21.16. 16/7/2024 – Sven Sharpe (VAA) and Shelley Pleydell (VAA)
- 21.17. 17/7/2024 – Jonathan Borsberry (VAA)
- 21.18. 18/7/2024 – Jonathan Borsberry (VAA), Nick Diesel (VAA) and Suzanne Roddie (VAA)
- 21.19. 19/7/2024 – Sarah Ollerenshaw (VAA)
- 21.20. 4/11/2024 – Thomas Barber (VAA)
- 21.21. 5/11/2024 – Amber Wilson (VAA) followed by oral submissions from all parties save for CCU

#### Other matters arising

- 23. There was a 3614-page bundle, to which documents were added during the hearing. The index ran to 52-pages. The Tribunal had an electronic copy. A copy of the bundle was available for the public to review in the hearing room during the hearing.
- 24. There were unnecessary and disruptive applications during the course of the hearing, to add in further documents. On some occasions, the application was made without seeking agreement from the other parties and where the documents had not been disclosed prior to the application being made. The result of that was even if ultimately there would be no objection to the document being admitted, it was not possible for immediate agreement to be given, as the representative had not seen the document in question. This wasted time unnecessarily.
- 25. Case Management Orders were made during the hearing. To avoid disrupting the hearing, some matters were dealt with in writing. Other matters were dealt with orally. Reasons for decisions made were provided.

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<sup>8</sup> Ms Ahmad attended on day 10.

26. The conduct of the CCU test claims was chaotic. The CCU's lack of substantive preparation led to Unless Orders being made at the preliminary hearing on 6/3/2024. During a non-sitting break from the hearing (10/6/2024 to 19/6/2024) the CCU claimants instructed De Jure Chambers on 18/6/2024. De Jure Chambers were then dis-instructed on the 2/7/2024; its involvement did not assist the Tribunal.
27. Samantha Ryder (CCU) was scheduled to give evidence in the afternoon on the 27/6/2024. After lunch, Ms Moss drew to the Tribunal's attention that Ms Ryder was currently on a cruise ship in the Mediterranean. It was established that she was heading for Greece and it was confirmed that the Greek State had not given permission for evidence to be giving from its jurisdiction. Furthermore, it did not appear that permission had been sought from the Taking of Evidence Unit of the Foreign, Commonwealth and Development Office. In addition, it was not clear why Ms Ryder was outside of the jurisdiction and/or not in a location from where she could give evidence; when this final hearing had been listed on 27/7/2022 and when she was called to give evidence on the 26/6/2024. Furthermore, Ms Ryder was on a final written warning at the date of dismissal. As such, it is not clear why she was selected as a test claimant.
28. Lyndsey Stevenson (CCU) contacted the Tribunal on the 5/7/2024 to say that she was due to give evidence the following week, but that she had been unable to contact her representative for three weeks.
29. In addition two witness statements were presented late. A reminder of the need for an application to be made in respect of a late document/statement was made on the 14/5/2024. Eventually, on the 7/7/2024 an application was made in this respect. Mr Maisey referred to extremely unfortunate personal circumstances having occurred in the previous few days. The Tribunal was entirely sympathetic. The need for an application had however been flagged almost seven weeks earlier. Furthermore, the CCU had been represented by De Jure Chambers for a brief period of time and Ms Papantoniou was asked if an application was going to be made; and she indicated it would be. She did not however make such an application.
30. The CCU test claimants' representation was in further disarray when at 9.18am on the 12/7/2024, Mr Maisey emailed the Tribunal to report that he would not be attending that day and the following day (Monday 15/7/2024) 'due to having to make the last arrangements surrounding' the funeral emanating from the situation referred to above. Mr Maisey had clearly referenced this on the 7/7/2024 and the Tribunal is aware that funerals are not arranged at short notice. The issue was not Mr Maisey's lack of attendance, but the lack of notice of the funeral. Mr

Sharpe's evidence had started on the previous day (Thursday 11/7/2024) when Mr Maisey was present and when at the outset, the Tribunal indicated that it anticipated that there would be time to make a start on Mr Sharpe's evidence that afternoon. Mr Sharpe was under a restriction over the weekend (13/7/2024-14/7/2024) and his evidence continued on the 15/7/2024 and 16/7/2024 (he remained under a restriction during the course of his evidence, so over several days). The Tribunal was sitting in this session until the 19/7/2024. It was not practical, without any notice, to reschedule Mr Sharpe's evidence. It may well have been possible to do so, had earlier notice of Mr Maisey's difficulty been given.

31. From the outset, the Tribunal had been clear that there would need to be flexibility and that the parties needed to be prepared for unexpected events which may disrupt the timetable; the particular example given was of a funeral. The compromise was that Mr Maisey sent to Ms Moss and the Tribunal his list of questions for Mr Sharpe and they were put to him via the Judge. Ms Gosal of the respondent's solicitors kindly agreed to share her note of Mr Sharpe's answers with Mr Maisey.
32. On the 11/7/2024 the MS test claimants withdrew some of their claims; namely direct sex discrimination and indirect sex discrimination. They withdrew in respect of the following claims on the list of issues: 41.4; 45; 46; 47; 56; 57; and 58.
33. Detailed written submissions were provided. They were provided towards the end of the break over the summer and were updated once the evidence concluded. The MS claimants provided written submissions of 91-pages which were then updated to 97-pages. The respondent provided written submissions of 74-pages, with a supplementary 26-pages. The OPH claimants provided part one submissions of 11-pages and then part two of four-pages. The CCU claimants provided a five-page submission. In addition, on the 23<sup>rd</sup> day of the hearing, the Tribunal heard oral supplementary submissions from Mr Brown, Ms Moss and Ms Ahmad.
34. Mr Maisey did not take the opportunity to address the Tribunal. Instead he sent an email on the 5/11/2024 after the hearing had started and when the Tribunal was hearing evidence; to say that he was unable to attend as he was ill due to a disability which had flared up the previous day and which had left him incapacitated. There was no detail provided of the illness and no medical evidence. Furthermore, there was no explanation as to why Mr Maisey waited until the hearing had resumed before informing the Tribunal he was unable to attend. If his illness had flared up the previous day, it would have been courteous

to have informed the Tribunal (and the other parties in accordance with Rule 92) that he did not intend to attend that day, prior to the hearing starting.

What these claims are about

35. The affect of the global pandemic/Covid-19 Coronavirus (as declared by the World Health Organisation (WHO)) on 11/3/2024) had an earlier and more immediate impact upon the respondent than on other businesses at this time (as can be seen from the chronology). The respondent suspended its Heathrow to Shanghai operation on 30/1/2020.
36. The respondent also put in place cost saving measures on 4/3/2020 and had asked staff to take unpaid leave, prior to the UK Government announcing the Coronavirus Job Retention Scheme (CJRS) on 20/3/2020 (page 1701).
37. The respondent needed to make urgent and extensive cost savings, certainly from March 2020 onwards, whilst at the same time, complying with its legal obligations (including its employment obligations). Nick Diesel gave evidence regarding refinancing from late February/early March 2020 which culminated in solvent recapitalisation on 4/9/2020. Unfortunately, the respondent had forecasted for a recovery which did not materialise. Travel restrictions and the closed US border remained in place for longer than anticipated.
38. These claims arise out of the termination of cabin crew's role by reason of redundancy (in the alternative some other substantial reason (business reorganisation) in two phases during 2020. The first phase arose in May 2020 and the second on 4/9/2020 when the respondent announced a second 45-day consultation period and a loss of a further 1,150 roles across all functions (page 1409).
39. The test claims mainly focused on phase one of the redundancy process. The Tribunal heard little evidence from the test claimants in phase two.

What these claims are not about

40. Some test claimants gave evidence about matters which they were dissatisfied with, which pre-dated the global pandemic.
41. That evidence is not relevant to the issues which the Tribunal had to determine. For example, an alleged bias against older and long serving cabin crew in 2014.
42. These claims are not about what other airlines did or did not do in 2020 and beyond.

43. The Tribunal does not have jurisdiction in respect of the Data Protection Act 2018 and therefore, any complaints in respect of that are not relevant.
44. Matters which post-dated the presentation of the claim forms, were not issues which the Tribunal had to determine.
45. These claims are not about dissatisfaction with or failings by Unite.

#### Appendices

46. The following documents are appended to this Judgment:

- 46.1. A Chronology
- 46.2. B Agreed List of Issues
- 46.3. C Annex 1 of 17/5/2024
- 46.4. D Agreed Facts
- 46.5. E List of Abbreviations
- 46.6. F Copy of the Karen normalisation example

#### Findings of fact

47. The following findings of fact were reached by the Tribunal, on the balance of probabilities, having considered all of the evidence given by the witnesses during the hearing. That included the documents referred to by the witnesses and took into account the Tribunal's assessment of the evidence.
48. Only relevant findings of fact pertaining to the issues and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that does not mean it was not considered if it was referenced in the witness statements/evidence.
49. Unite the Union is and was recognised by the respondent and all cabin crew (all the test claimants) fell within its collective bargaining unit and it is therefore Unite with whom the respondent must consult in relation to the proposals made (page 796). It is not the Tribunal's role to go behind the agreement which was reached

with Unite. The fact the claimants now disagree with the selection matrix does not allow the Tribunal to 're-make' that agreement in their favour. There are many criticisms of the minutiae of the agreement and in what follows, the Tribunal makes numerous references to the respondent's agreement reached with Unite. Despite the claimants' position now being that there was no agreement with Unite, the Tribunal finds there was.

Jurisdiction – issue 1

**Correct Respondent**

1. Is Virgin Atlantic Airways Limited (“the Respondent”) the correct and only respondent in these proceedings? Some of the Claimants listed in Annex 1 also bring claims against Virgin Atlantic International Limited. The Respondent and MS claimants are of the view that it is the correct and only Respondent to these claims, as confirmed by the Order of EJ Hyams-Parish dated 10 June 2022.

50. This was dealt with by Employment Judge Hyams-Parish at the preliminary hearing on 30/5/2022 and he determined that the sole respondent is Virgin Atlantic Airways Ltd (VAA).

**Time Limits: Employment Rights Act 1996**

2. Have any claims below been brought outside the time period provided by ss. 48(3)(a) or 111(2)(a) of the Employment Rights Act 1996 ('**ERA 1996**'), as adjusted for early conciliation?
3. If so, has the Claimant shown that:
  - 3.1 It was not reasonably practicable to present their claim within the prescribed period, pursuant to ss. 48(3)(b) or 111(2)(b) ERA 1996; and
  - 3.2 If so, their claim was presented within a reasonable further period?

**Time Limits: Equality Act 2010**

4. Have any claims below been brought outside the time limit provided by s. 123(1)(a) of the Equality Act 2010 ('**EqA 2010**'), as adjusted for early conciliation?

5. If so, has the Claimant shown it is just and equitable to extend time to bring those claims pursuant to s. 123(1)(b) EqA 2010?

**Time Limits: Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000**

6. Have any claims below been brought outside the time limit provided by Regulation 8(2) of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ('**PTWR 2000**')? If so, has the Claimant shown it is just and equitable to extend time to bring those claims pursuant to Regulation 8(3) PTWR 2000?

51. The Tribunal understands that no time limit points are taken. Mr Brown submitted that time limits were not addressed in his submissions (paragraph 134). This was not clarified further by Mr Brown.

Unfair dismissal

8.1 The respondent denies that Gemma O'Hara (CCU) was dismissed as she took voluntary redundancy.

8.2 The respondent agrees the claimants set out in Annex 1 were dismissed.

52. The respondent denies Gemma O'Hara was dismissed for the purposes of s.95(1)(a) Employment Rights Act 1996 (ERA). Its position is that she resigned prior to the proposed introduction of new terms. She resigned and her employment ended on the 25/9/2020. She took voluntary redundancy as she contended she had no option but to resign as otherwise, she could potentially lose her redundancy payment. She does not contend she was constructively unfairly dismissed. The Tribunal finds there was no dismissal of Ms O'Hara.

53. Ms O'Hara was not therefore unfairly dismissed and her claim for unfair dismissal is not well-founded, it fails and is dismissed.

Adequate warning and consultation

Collective consultation

11 When did the respondent form a fixed clear (albeit provisional) intention to made redundancies? Did the respondent give advance warning of redundancies, and was consultation in good time?

12.1 The reason for the redundancy proposals;

12.2 The numbers and descriptions of the worker whom it is proposed to dismiss as redundant;

12.3 The total number of workers employed at the establishment in question;

12.4 The proposed method of selection and the manner in which the dismissals were to be carried out and;

12.5 The proposed method of calculating redundancy payments?

13. Was consultation meaningful? The Claimants allege there was no meaningful consultation with the appropriate representatives of the employees affected by the redundancies, i.e., Unite the Union. They allege that:

13.1 The consultation was “abridged”;

13.2 The Respondent provided inadequate information on the redundancy matrix or scoring to be used;

13.3 There was no trial run of the selection matrix as suggested by the Union;

13.4 The Respondent dismissed relevant employees in the currency of the statutory minimum consultation period contrary to s. 188(1A)(a) TULRCA 1992.

54. The WHO declared Covid-19 a public health emergency of international concern on the 30/1/2020 (page 582). The respondent confirmed suspension of its Shanghai route on the 28/2/2020 until the 19/4/2020 and announced that flights to Hong Kong would reduce (page 584). In addition, it implemented a freeze on recruitment, stopped all non-essential travel and training and limited the number of internal events (page 584). These matters were communicated on ‘Workplace’ – a social media Facebook based platform which the respondent uses to communicate, collaborate and share information. It is used to cascade information quickly and efficiently to the crew and other staff. This will take into account that during ‘normal’ times, crew in particular will be flying and then resting in different time-zones.

55. On the 4/3/2020 additional cash protection measures were announced, which referred to cabin crew having already been asked to take unpaid leave in April and May 2020 (page 586). On the 16/3/2020 the respondent informed the cabin team that it needed all crew to take a period of two months’ unpaid leave (page

606). The Tribunal was told that the respondent had arranged to offer an interest free loan and that this was to spread the loss of salary over six months. It is not clear if this offer was communicated earlier than the FAQ for crew on the 17/3/2020 (page 616).

56. Following the WHO declaring the Covid-19 outbreak to be a global pandemic on 11/3/2020, the respondent announced a planned reduction to its flying programme of approximately 20% (page 596). After the United States announced on 14/3/2020 it would add the UK to its travel embargo with effect from 16/3/2020, the respondent met with Unite on the 16/3/2020. Flights to the US accounted for approximately 70% of the respondent's network.
57. In respect of the unpaid leave, the respondent agreed with Unite to convert it to leave under the CJRS on 26/3/2020 (Sven Sharpe's witness statement paragraph 15).
58. The respondent held a briefing call with representatives from Unite at 11.30am on the 5/5/2020 (page 670). In setting out its position, the respondent said that it intended to 'start consultation' with Unite the following day (6/5/2020). Unite responded that as the CJRS was available until the end of June, that it had a strong legal view on redundancies taking place whilst the scheme was in operation (page 671). Unite went onto say that the issuing of s.188 letters and HR1s<sup>9</sup> would lead to a 'legal process of non-engagement and then looking at

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<sup>9</sup> Under the Chapter heading collective bargaining, section 188 of the Trade Unions and Labour Relations (Consolidation) Act 1992 provides for the duty of the employer to consult representatives and provides:

(1) Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.

(1A) The consultation shall begin in good time and in any event—

- (a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 45 days, and
- (b) otherwise, at least 30 days,

before the first of the dismissals takes effect.

Form HR1 is Advance Notification of Redundancies and it is a statutory requirement to notify the Secretary of State of a proposal to dismiss 20 or more employees as redundant at one establishment within a period of 90 days or less.

finding a legal resolution'. Unite referred to the 45-day consultation period and to the CJRS being in place until the end of June 2020<sup>10</sup>. The 45-day consultation process was officially later triggered on the 27/5/2020 when the Chief Customer Officer wrote to the Regional Officer of Unite (page 1013).

59. There are some difficulties in attempting to recreate the atmosphere in this period of 2020. It should be remembered that the CJRS was originally due to end on 31/5/2020. It was extended on 17/4/2020 to 30/6/2020. As one commentator said, this extension was doubtless because large businesses were due to start a 45-day consultation period on the 17/4/2020 if it then intended to make more than 100 people redundant by the time of the original end of the CJRS.
60. On the 12/5/2020 the Chancellor announced the CJRS would be extended for four months, to the 31/10/2020 (this resulted in the latest date for the 45-day consultation period moving to 16/9/2020). The Chancellor made a further announcement on the 29/5/2020. Employers then had to pay national insurance and pension contributions from August and contribute 10% of pay from September and 20% from October. Throughout September and October 2020 the Government ruled out any further extension of the CJRS, until it changed its position on the 31/10/2020.
61. On 17/7/2020 HMRC confirmed that the CJRS could not be used to pay statutory or contractual notice or to substitute a statutory redundancy payment (it was later confirmed the statutory redundancy payment had to be paid at the 100% rate of pay, not the reduced rate under the CJRS). These were therefore costs the respondent would have to bear.
62. On the 29/9/2020 the Chancellor set out new job retention measures in the House of Commons, noting that the CJRS would end on 31/10/2020 and that the government could not save every job. There were inevitably various amendments to the replacement scheme in September and October 2020. On the 31/10/2020 it was announced there would be a second lockdown to start on the 5/11/2020 and that the CJRS would be extended until the 31/12/2020. It was only on 5/11/2020 that the Chancellor extended the scheme to March 2021. There was also a retrospective provision that any employee made redundant after the 23/9/2020 could be reinstated and put back onto the CJRS.
63. The situation was unpredictable and volatile. Statements made were contradicted. The Tribunal finds that not only was the financial position of an airline such as this respondent precarious; but that there was no certainty at all about what would happen in the future. It should be remembered that at this

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<sup>10</sup> The CJRS was extended to 31/10/2020 on 12/5/2020 (page 1701).

time, there was no effective vaccination for Covid-19 (the first one took place on 8/12/2020).

64. Notwithstanding the steps the respondent had taken, on the 5/5/2020 the respondent announced redundancies and other cost saving measures (page 681). It announced a consultation period of 45-days and a planned reduction of a total of 3,150 jobs across all functions (page 682). Estelle Hollingsworth (Vice President – Cabin) shared a Cabin Crew Information Pack with Q&As (page 684). Ms Hollingsworth in a video message stated that a reduction of approximately 1,540 people across the cabin crew teams would be needed. She also referred to a proposal to give ‘approximately 1,250 people from our impacted crew the opportunity of being placed into a redundancy Holding Pool for a maximum of two years’ (page 686).
65. Ms Hollingsworth had proposed to Unite that those in the Holding Pool would not get their redundancy payment until the end of the two year period, so that if they returned to the respondent during that time, although their contract would have been terminated by reason of redundancy and as such, they were entitled to a redundancy payment; it would not be paid for two years and only then, if they had not returned to work for the respondent (page 672). Whilst the Tribunal can understand the attractiveness of this to Ms Hollingsworth – it would save the respondent money as there was no state aid for redundancy and other termination payments; it would however be unlawful.
66. At some point the respondent changed its position on this and agreed that if a member of crew was made redundant, they would be paid their statutory and contractual termination payments (or work their notice as they did). The respondent accepted and acknowledged that some people in the holding pool, who may well have been loyal and respected employees, simply would not want to return to work for it.
67. Although the summer of 2020 was a torrid time, there were, as can be recalled, opportunities in certain sectors (such as supermarket retail). It may have been the case that some redundant crew simply had to find an alternative role and may well have then found that new role suited them better and even if they then had the opportunity to return, they did not want to do so.
68. It is fair to say however, that certainly for the MS claimants (the Tribunal was told the OHP test claimants in the Holding Pool had subsequently returned to work for the respondent) they expressed at the time and subsequently, their passion for their job. By the 13/5/2020 the respondent was still considering a means of avoiding paying the redundancy payment and referred to ‘defer[ring]’ the statutory

redundancy payment and which the crew would 'waive' in totality if they were re-employed. The respondent's position on the Holding Pool was (page 727):

### Proposed Redundancy Holding pool

Summary	
Concept	<ul style="list-style-type: none"> <li>All crew in the holding pool are served notice and are no longer employees of the company</li> <li>Lowest performers are not eligible to join the holding pool</li> <li>The holding pool list will be in performance order and we will offer positions to higher performers first</li> <li>Crew will be brought back on line from the pool (subject to their confirmation), as and when the flying programme requires it</li> <li>Holding pool closes at the end of 24 months and redundancy paid to each remaining person</li> <li>Notice paid is not worked and redundancy payment only paid when employee leaves</li> </ul>
Benefits Company	<ul style="list-style-type: none"> <li>Human approach and in line with our values</li> <li>Redundancy cost deferral</li> <li>Operational resilience and flexibility</li> <li>Future cost avoidance for recruitment and new hire training</li> </ul>
Employee	<ul style="list-style-type: none"> <li>Notice period paid (maximum 12 weeks)</li> <li>Redundancy payment paid, if not brought back after the 24 month period</li> <li>Seniority retained and will return on benefits at time of entering the pool</li> <li>No recruitment process required to go through when being brought back</li> <li>Able to find alternative employment or claim universal credits, whilst in the pool</li> </ul>
Process	<ul style="list-style-type: none"> <li>Redundancies offered to volunteers first with holding pool volunteers canvassed at the same time</li> <li>Minimum score identified. Redundancy applied to lowest performing individuals whom we do not wish to remain in the business</li> <li>Holding pools filled with volunteers from remaining crew (ascending performance order)</li> <li>Redundancy applied to achieve remaining headcount (ascending performance order)</li> </ul>
Training Requirements	<ul style="list-style-type: none"> <li>Absent from flying more than 6 months, but less than 2 years – Refresher Course (10 days)</li> <li>Absent from flying more than 2 years, but less than 5 years – Extended Refresher Course (14 days)</li> <li>Absent from flying more than 5 years – New Hire Course (5 weeks). Applicable for those on longer term absences prior to entering holding pool e.g. Maternity.</li> </ul>

69. The Cabin Crew Information Pack dated 6/5/2020 contained the following information: compulsory redundancies to achieve a planned reduction of 1,540 crew across the three distinct ranks<sup>11</sup> and a proposed Holding Pool for 'around 1250 people' (page 693). The proposal was that staff who were compulsory redundant would have their employment terminated by reason of redundancy and so they could work elsewhere and/or claim benefits. As and when the respondent's flying programme picked up again, those staff in the Holding Pool would return (if they wanted to) and 'they will do so with seniority that reflects previous service and the same core benefits as when they left' (page 686). It is not clear when it was clarified that crew who returned, did not maintain their length of service, i.e. if they rejoined, they would be treated as new starters (notwithstanding they would maintain their seniority and core benefits).

70. There was also a proposal to standardise the respondent's part-time contracts and to reduce and change the crew complement on certain aircraft, in addition to changes to trip patterns (layover reduction) and the standby agreement (page 693).

<sup>11</sup> The more senior Flight Service Manager (FSM) and Cabin Service Supervisor (CSS) are collectively known as OBMs (Onboard Manager) and Cabin Crew (CC) are the more junior rank.

71. The cabin crew pack stated the respondent proposed the selection criteria for redundancy to be: on board performance; conduct; and absence (page 695).
72. There was a further consultation meeting with Unite on the 6/5/2024. The confidential discussions included a reduction in crew of 1,034 FTE and a Holding Pool for 980 FTE (page 725). The next page of the confidential proposal referred to a reduction of crew of 1,034 FTE (page 725). In respect of the three ranks, it was proposed (page 726):
- FSM c 120FTE which is approximately 155 crew  
CCS 190 FTE which is approximately 245 crew  
CC 894 FTE which is approximately 1146 crew
73. It was suggested that if there was enough interest in the Holding Pool, only 220FTE/282 crew would leave under compulsory redundancy. The written proposal did refer to 'lowest performers' not being eligible to join the Holding Pool (page 727). Although some of the arithmetic is incorrect, there was not only a breakdown by rank discussed, but also a breakdown by rank and location for the Holding Pool (page 730).
74. It may well be the case that this information was not passed onto cabin crew by Unite, however, it is incorrect to say that the respondent did not have a view of the approximate number of staff who would be made redundant across the two bases and three ranks (issue 12.2 and 12.3).
75. On the 20/4/2020 in anticipation of needing to reduce the headcount, Ms Hollingsworth had sent Mr Sharpe a copy of the working selection matrix for ground staff on the basis that they would also need to align the crew selection criteria to this (page 654).
76. At the meeting on 7/5/2020, the proposed redundancy selection criteria are recorded as: on board performance; company values (in reality conduct); punctuality (added at this meeting page 664); and absence (page 732).
77. The rationale for changing part-time contracts was discussed. In short, the proposal was to migrate the legacy part-time contracts onto the 'modern' part-time contracts; as they had proved to be more efficient and flexible. They resulted in part-time staff being able to accommodate more trips during their working time (page 736).
78. A proposed consultation timetable was set out, with the aim of a final agreement being reached by the 15/5/2020 (page 746).

79. The claimants criticised Ms Hollingsworth and others for referring to working at 'pace'. There are numerous references in the communications, information packs produced and in minutes of meetings, to working or moving at 'pace'. The test claimants interpret this statement as discriminating against older staff and against female staff. The Tribunal finds that all this statement was referring to was the need for consultation to happen, agreements to be reached and for decisions to be made as quickly as reasonably possible in the short-term.
80. At this point in time, the respondent did not have the luxury of being able to proceed cautiously. The respondent needed to react quickly to the challenges of the pandemic, which were particularly affecting the airline industry. If the respondent did not cut costs and refinance, there was a risk of insolvency (noting that Flybe had entered into administration at the start of March 2020, Virgin Australia had entered into administration on 21/4/2020 and at the meeting on 5/5/2020 it was noted 'IAG getting support, Ryan Air cutting, EasyJet raising £600m, Norwegian halving and may ground until summer 2021 and making redundancies, RR and Boeing having made announcements' (page 670)).
81. The summary of the 7/5/2020 meeting noted that 'there was an agreement in principle to exploring the use of VOC and PM for the performance element of the OBM selection' (page 747). VOC was 'Voice of the Customer' the respondent's customer/passenger feedback survey. PM was 'Performance Monitoring' a crew-to-crew or peer rating system.
82. During the collective consultation period the respondent did discuss selection criteria. It did not however record any discussion or agreement regarding the manner or methodology which would be used to apply the agreed criteria. Nor did it discuss the timetable or timeframe which would be applied.
83. It does not appear that there was collective consultation regarding the calculation of the redundancy payments. If the respondent intended to use the statutory method of payment; then it is not clear what collective consultation was required (issue 12.5).
84. The claimants advanced matters under issue 13 (no meaningful collective consultation, consultation was abridged, inadequate information on the scoring matrix to be used, no trial run and dismissals during the currency of the statutory minimum consultation period); when they had no standing to do so. No claim has been made by Unite in respect of a breach of the Trade Union and Labour Relations (Consolidation) Act 1992.

85. Furthermore, the claimants have not advanced any justification for these criticisms; other than making bald allegations. In any event, of the matters which were subject to the collective consultation, the Tribunal finds that it was meaningful and with the appropriate representatives from Unite. It is difficult to understand how the test claimants maintain their stance on this issue.

Individual consultation

14. Did the Respondent adequately inform and consult about possible redundancies? The Claimants allege individual consultation was inadequate as:

14.1 In respect of Karen Wordley's claim only, the Respondent "ignored my request to be consulted";

14.2 The Respondent "misled" "long serving OBMs" as to the number of such employees being made redundant, such that such staff did not seek enhanced voluntary redundancy;

14.3 The Respondent provided insufficient "background data" before individual consultation meetings, in that:

14.3.1 The matrix was highly complex and difficult to understand;

14.3.2 There was mixed use of aggregated, mean, mode and median which led to less accurate outcomes;

14.3.3 DSARs for personal information were not actioned adequately; and

14.3.4 Incomplete data was provided;

14.4 There were discrepancies between the scoring system shared with employees at risk of redundancy and the scoring system as applied by the Respondent;

14.5 The Respondent provided inadequate information on the redundancy matrix or scoring to be used. The Claimants allege that:

14.5.1 The normalisation method was changed between rounds 1 and 2 of redundancy;

14.5.2 The normalisation method was not conducted as agreed;

14.5.3 No calculations were shared by the Respondent; and

14.5.4 Claimants were not told where they were placed on the redundancy list.

86. Following a meeting with Unite, on the 5/5/2020 the respondent announced a reduction of 3,150 jobs across all functions (page 682). All cabin crew were sent a letter on the same date informing them that all three ranks of cabin crew were at risk of redundancy (page 715). The cabin crew were also informed that the respondent was entering into a period of collective consultation with Unite, which could last for 45-days. The letter referred to the 'Company redundancy policy'.

87. The 'Red Book' (which is dated per the index as June 2020) refers to 'individual consultation – where we consult with you directly' (page 1927). The policy provides (page 1931):

'We'll consult with both representatives and you **individually** during collective consultation. Whereas we'll consult only with you individually if it's not a collective redundancy situation. If we're consulting with you individually, we'll still consult meaningfully and if we're contemplating dismissing you by reason of redundancy, we'll always write to you to invite you to a meeting.

During the meeting, we'll discuss the matters set out in Consultation – avoiding redundancies, including giving you the opportunity to **comment upon your provisional selection** and discussing ways of mitigating redundancy and considering alternative roles. After the meeting, we'll **follow up**, insofar as possible, any reasonable suggestions and representations made by you. We'll, then, confirm our decision in writing and you'll have the right to appeal in accordance with this policy.' [emphasis added]

88. The respondent did purport to consult individually and therefore this process was engaged and it is accepted that it is industrial practise to do so. There was in fact no individual consultation prior to the notification of the redundancy to the crew. The respondent and Unite reached an agreement on 19/5/2020 on: the planned number of redundancies across three ranks and two bases (page 900); a Holding Pool; redundancy payments and timings; and selection criteria. It also reached agreement on: network reduction; part-time contracts; and layover reductions. The respondent then ran its Structured Query Language (SQL) programme to score the cabin crew on the selection criteria and it identified which members of staff had been selected as redundant.

89. As an example Joanne Bunting (MS) was then informed on 11/6/2020 that she had been selected as redundant with no offer of a place in the Holding Pool (page 1102). That letter referred to the collective consultation with Unite. There was no reference to individual consultation as none took place. There is

reference to a formal redundancy consultation meeting; however, that consultation would be futile as Ms Bunting had already been told she had been selected for redundancy.

90. Furthermore, Mr Sharpe in his witness statement said that when re-running the data programme at the appeal stage, the respondent had decided that crew could only improve their score as a result of the review, 'i.e. a crew member who had previously been told they were retaining their role would not be placed at risk again but a crew member whose appeal had been upheld might have moved from compulsorily redundant to retaining their role' (paragraph 134 page 319).
91. The result of Mr Sharpe's evidence is therefore that whilst a crew member could move from 'redundant' to 'safe', no-one would be moved from 'safe' to 'redundant'. Mr Brown for the respondent submitted that rankings could change where appeals were allowed (paragraph 164 of his main submission). The Tribunal however did not hear any evidence of an appeal succeeding such that a crew member's position changed from safe to redundant or vice-versa. In any event, the Tribunal accepted Mr Sharpe's evidence.
92. On the 13/6/2020 Ms Bunting was invited to a meeting on the 23/6/2020 and was informed 'The purpose of this individual meeting is to discuss the impact of the proposals on your role and to answer any specific questions you have about your personal circumstances' (page 2381). Ms Bunting was then informed of her scoring against the criteria. She was not however given a breakdown of the scores, nor any of the data used to calculate her scores (such as the flights she had operated which the respondent had used to calculate her scores).
93. There was no effective individual consultation and what the respondent did, the Tribunal finds was inadequate. Mr Gloster gave evidence to say that the meeting was labelled as such as it was a 'softer format' than calling it a redundancy meeting. Whatever the meeting was and whatever it was labelled, it was certainly not an effective consultation meeting (issue 14).
94. Karen Wordley declined to be a test claimant and the respondent addressed this issue in an email of the 25/3/2024 (page 560) (issue 14.1).
95. The reference to long-serving OBMs being misled, such that they did not seek enhanced voluntary redundancy; has not been clarified. The respondent did not offer enhanced voluntary redundancy at this time. It asked for volunteers for redundancy, but that was on the basis of an offer of statutory redundancy only. The previous offer of enhanced severance pay in March 2020 had been withdrawn.

96. The matters referred to as issues 14.3, 14.4 and 14.5 are criticisms of what was provided before a meeting which was ineffective.
97. It is correct to say that the normalised calculations were complex and difficult to understand (issue 14.3.1). There was mixed use of technical terms and it is fair to say the language was not readily understood (issue 14.3.2).
98. Data subject access requests (issue 14.3.3) are not something over which the Tribunal has jurisdiction. In so far as they went to the fairness of the dismissal, it is not clear how the claimants advance this issue. The respondent's response is that the statutory right to make a data subject access request is separate to the statutory consultation for redundancy. That is accepted.
99. It is accepted that insufficient data was provided by the respondent prior to the consultation meeting (issue 14.3.4).
100. The scoring system shared with crew (the Karen example) was far less complex than the methodology the respondent actually used for crew (issue 14.4).
101. The respondent did not provide adequate information to the crew in respect of its scoring methodology prior to it being applied to crew and them being told they had been selected for redundancy (issue 14.5).

The adoption of a reasonable selection decision including its approach to selection pool

15. Was the creation of a separate Manchester pool within the range of reasonable responses available to the Respondent?

16. Did the Respondent adopt a fair selection procedure and criteria?

17. The Claimants allege the criteria were applied inconsistently as described at paragraph 21.8, 21.9 and further that –

17.1 Normalisation was not routinely applied;

17.2 Redundancy scores were determined according to a variable number of performance management (PM) scores;

17.3 Rank averages were not awarded to compensate for missing PM scores;

17.4 Staff were not scored according to a consistent number of VOC scores;

17.5 Negative feedback and detractors were wrongly attributed to FSMs and CSSs;

17.6 The trigger for maximum points available for loyalty was less in round one than in round two;

17.7 A higher number of points was awarded to those in the top 50% for VOC scores than those in the top 50% of PM scores;

17.8 VOC was only applied to CSSs and FSMs – not to other potential candidates for redundancy;

17.9 VOC was wrongly attributed to CSSs for cabins not under their supervision;

17.10 Some OBM's had appeal points upheld that were outside of the 5 allowable challenge criteria;

17.11 A "Last in First Out" ("LIFO" i.e. a loyalty/length of service) policy had been consistently used by the Respondent for previous redundancies for all cabin crew and pilots. In this selection process, LIFO was not implemented for the cabin crew selection criteria, but it was for pilots.

17.12 crew member union representatives were ring fenced and protected from redundancy selection.

18. Did the Respondent apply the selection procedure and criteria fairly?

19. The Claimants say there was a "trend of all lower salaried seasonal crew retaining a position within the company". The selection criteria were unfairly applied as Seasonal FSMs were given a choice of rank to be considered for, better prepared for the selection exercise as they were given "prior knowledge and understanding of normalisation" to make "a more informed decision".

20. Were the redundancy matrix and use of the 'Voice of the Customer' ('VOC') and Performance Management ('PM') scores unfair?

21. The Claimants allege that the scores against the criteria were unfair because:

21.1 The scores for Performance were 'unreliable', 'inaccurate', not objective and/or discriminatory because they were based on VOC data, which was never intended as a tool for redundancy selection;

21.2 The Respondent failed to set a minimum number of VOC returns per sector (flight) before the VOC data could be used, meaning the VOC data used was unreliable;

21.3 When using VOC to score Performance, FSMs and CSSs were banded together under the umbrella term of OBM, despite their different responsibilities;

21.4 The Respondent arbitrarily chose to use one promoter and two detractor comments in the calculation of scores, rendering them unfair;

21.5 There was a failure to include reliable attendance and productivity data in the selection criteria;

21.6 The Respondent's and ACAS procedures were not followed "when issuing informal sanctions", i.e. letters of concern, but these led to selection for redundancy;

21.7 The Respondent's and ACAS procedures were not followed "when issuing informal sanctions" for "sickness triggers" but these also led to selection for redundancy;

21.8 Scoring was inconsistently applied in that:

21.8.1 VOC data was not used for cabin crew but was used for OBMs;

21.8.2 The scoring system was "dependent upon the specific aircraft type ...destination" and aircraft age;

21.8.3 There were calculation errors, i.e., the Respondent incorrectly applied the calculation

21.8.3.1 The original score given by the Respondent could not be replicated using the calculation method given;

21.8.3.2 Incorrect data was used to score candidates;

21.8.3.3 Calculations were not retained, meaning that methodology could not be verified;

21.8.3.4 Further the scores were not, in all cases, calculated using the stated minimum number of entries;

21.8.3.5 Incorrect base targets were used.

21.8.4 The calculation varied by contract type “meaning two individuals on the same flight would have scored differently depending on whether they had operated 45 sectors or or 75+ sectors”;

21.9 There was no statistical robustness in the application of the VOC data, meaning the data was not resistant to errors in the results. The Claimants allege that:

21.9.1 The VoC data was subjective, unreliable and often inaccurate;

21.9.2 There was no minimum number of returns per flight in place (so a single return would have been accepted from a flight of over 400 passengers);

21.9.3 Individual calculations were not in accordance with published guidelines;

21.9.4 Methodology was overly complex, and switched between mean, median, mode and/or average.

21.9.5 Cumulative scores were used, which meant that very low data returns exaggerated the scores, creating extreme highs and lows, not averages.

21.9.6 No consistent amounts of data applied to all crew.

21.9.7 Minimum flight sector entry was set at 25 with no maximum.

21.9.8 Fewer entries for part-time crew were more likely to be affected by outlier scores;

21.9.9 Virgin Holidays (double red) data was removed. This could negatively impact those who operated on holiday routes, mainly based at Manchester or Gatwick;

21.9.10 Instead of giving the customer 10 options from excellent to very poor, there were only 5 options leading to less reliable outcomes due to outliers;

21.9.11 VoC data used 2 detractors (very poor and poor) but only 1 promoter (excellent)

- 21.9.12 PM (performance monitoring) critical amounts of data was missing. New crew and those in training with less than 10 entries given the company wide average.
- 21.9.13 PM was delivered 3 months in arrears and anonymously. Challenges of PM were generally unsuccessful.
- 21.9.14 PM inconsistently applied. New crew not trained how to provide upward feedback.
- 21.9.15 Some OBMs were told to lower marks as there was an unrealistic average of 4.7+/5 for OBM ranks.
- 21.9.16 Customers who provide feedback are generally negative so it is unfair to use this as PM / in redundancy selection.
- 21.9.17 No trial run was ever performed on the outcome of the matrix list.
- 21.9.18 Two impartial managers with direct knowledge of the individuals should have checked the outcomes, instead of having an external company perform the data run.
- 21.9.19 Calculations (including the background data) should have been supplied to enable challenge by the Claimants, or stored / saved from appeal outcome rerun by VAA.
- 21.9.20 No minimum or maximum set for either VoC, PM or passenger entry responses.
- 21.9.21 The comments were mainly irrelevant to performance, yet unchallengeable due to narrowly defined appeal process.
- 21.9.22 Appeal outcomes were inconsistent from appeal managers, some with no knowledge of the job role.
- 21.9.23 Normalised scores were not supplied before redundancy process to crew (except newly promoted).
- 21.9.24 Normalisation did not take fair account of differences between certain routes.;
- 21.10 VOC data was unfairly used only in the case of OBM staff, rather than for all cabin crew;

21.11 In respect of Caroline James' claim only, it is alleged that mistakes were made regarding length of service scores, and these were not rectified;

21.12 "Performance [had] to be measured to 5 decimal places to separate candidates on tie breakers";

21.13 Performance scores were not normalised fairly by the Respondent – not applied to days of the week, months of year, aircraft type / changes, Virgin Holidays scores were removed but the same logic was not applied to other scores based on subjective comments;

21.14 The Respondent failed to adjust the period over which VOC scores were considered where Claimants had limited scores due to being on maternity/parental/adoption leave, sick leave or bereavement leave, or worked part-time over the relevant period under consideration;

21.15 In respect of Karen Wordley's claim only, the Respondent considered VOC scores obtained when employees were not working in their contracted roles;

21.16 "The promotion of 15 seasonal FSMs resulted in all year round over establishment in the rank and a disproportionate number of FSM redundancies at the Manchester base";

21.17 Some crew members (including Manchester temporary 7-5) were told in advance of normalisation of the scoring system and were advised which destinations to avoid. The Claimants allege that CSS's were not told. It is alleged that only individuals who were on a promotion journey were told, including some FSMs, newly promoted OBMs, and some individuals on performance plans, were told this prior to selection by their line managers at LHR and MAN, including Tony Mayo and Jason Papageorgiou;

21.18 Seasonal FSMs were given choice of what rank to be considered for, coached in the role to assist them with the redundancy selection criteria, whereas the Claimants were not;

21.19 "Seasonal FSMs receiving PM scores over a 7-month period as FSM, 5 months at the lower rank of CSS, while permanent FSMs attributed scores with 12 months in rank. Unfair comparable data";

21.20 Manchester and London staff were “treated differently in terms of thresholds. Being on the wrong side of the boundary the company chose lower performing FSMs with less loyalty due to location”;

21.21 The criteria and scoring were flawed as there was no “trial-run” of the matrix;

21.22 The use of reports from “untrained junior crew” in the scoring of OBMs against Performance Monitoring was unfair;

21.23 Performance monitoring was unfair as it was subjective and inconsistent;

21.24 There were “system deficiencies”, failures of management and performance monitoring, meaning that the CSS rank had no managers for months, Claimants’ performance was not appraised appropriately for years, no correct base targets provided and scoring of their performance was unjustified and unfair;

21.25 “The company not honouring a clear overlap in loyalty points awarded”;

22. Insofar as any Claimant succeeds in demonstrating that the use, weighting and scoring of the criteria was discriminatory, did that render their dismissals unfair?

102. It was reasonable to separate the Manchester cabin crew from the London Heathrow cabin crew during the redundancy process. Manchester was a separate base. A unique contract had been created (the 7:5 contract) to address the staffing issues which Manchester experienced.

103. Furthermore, this was agreed by Unite during the collective consultation (issue 15) (pages 900 and 907).

104. The Tribunal makes the following findings in respect of the redundancy process, the fairness of the selection process and the criteria (issue 16).

105. The collective consultation with Unite resulted in an agreement reached on the 19/5/2020 (the signatures have been removed however the document was signed electronically) (page 907):

The above changes have been agreed, as part of the meetings between Virgin Atlantic and Unite, and will form the basis of the information that we will share with crew, as of 19<sup>th</sup> May 2020 onwards.

Signed:

Estelle Hollingsworth, Vice President Cabin:

Date: 19 May 2020

Claire Simpson, Regional Unite Officer:

Date: 19 May 2020

Gaynor Worrell, Flight Services Manager/VAA Unite Chair:

Date: 19 May 2020

106. It appears to be the claimants' case that the 'agreement' reached with Unite was not in fact an agreement and that somehow, it was imposed upon Unite by the respondent. The Tribunal does not accept that is the case. It may well be that Unite's representatives now wish to resile from the agreement reached and the position taken in May 2020. It is however the case that an agreement was reached.

107. Ms Hollingsworth then communicated to the cabin crew via a video and a posting on Workplace: the selection criteria, the productivity changes and the next steps (page 908). She also sent an email to all cabin crew (page 912). Accompanying those documents was: a selection matrix guide; additional questions pack; and; crew changes briefing pack.

108. The Tribunal finds the respondent consulted and reached agreement with Unite on the following matters:

- a reduction of circa 1204 FTE cabin crew;
- the distribution of those redundancies over base and rank;
- the creation of a holding pool;
- redundancy payment and notice periods;
- the five selection criteria, the weightings;
- how onboard performance would be scored across the three ranks;
- and
- other changes (network reduction; part-time contracts and layover reduction).

109. What the respondent did not agree with Unite was the methodology (manner of selection) of how the scoring would be attributed to each individual or the timeline/process.

110. The starting point is the respondent's 'Redundancy Selection Matrix Manager Guidelines, which provides (page 655):

**'Do team members have a right to see their score?'**

If a team member is put at risk of redundancy on the basis of selection matrix, they have the right to see a breakdown of their score. If they ask, they also have a right to see in an anonymised way how they ranked against other people in the pool.'

111. Numbers were identified in the Cabin Crew Information Pack circulated on the 5/5/2020 of a reduction of 1540 crew distributed across three ranks and a Holding Pool of around 1250 people (page 693).

112. As there were discussions regarding use of VOC data for OBMs in the selection matrix; 'normalisation' was explained. On the 7/5/2020 a Cabin Crew Selection Matrix was shared with Unite (page 751). That gave the example of 'Karen' in respect of calculating a 'normalised score' (page 765). The 'normalised' score was the crew member's score adjusted against the average score achieved by all OBMs on that route. Karen's scores were demonstrated in colour blocks (see appendix F for a visual reproduction of what was presented to the crew), but in essence, provided the following example as step one:

Flight	Karen's average score on that route	Overall average for all crew	difference
VS101	50	minus 45	= +5
VS102	58	minus 60	= -2
VS103	60	minus 57	= +3

It should be noted in this example the overall average score is deducted from Karen's score.

113. Step two then provides for the 'weight' of each flight route for each crew member and was depicted as (page 766):

Flight	Karen's number of flights on that route	Karen's total number of flights	Weight
VS101	10 ]	30	= 0.33
VS102	5 ]		= 0.17
VS103	15 ]		= 0.5

The 'weight' calculation was not explained, however it was calculated by dividing the number of flights on a particular route, by the total number of

flights on the three routes, e.g. 10 divided by 30 = 0.33333333. Crew were told that all 'weights' should add up to 'one' at the end (e.g. 0.33 + 0.17 + 0.5 = 1)

114. The third step was to multiply each flight score with the according weight and then sum them all up (page 766):

Flight	Difference	Weight	Result	
VS101	+5	x 0.33 =	+1.65 ]	
VS102	-2	x 0.17 =	-0.34 ]	sum = +2.81
VS103	+3	x 0.5 =	+1.5 ]	

115. The final step was to add the score from step three (+2.81) to the 'overall mean' which results in a 'normalised net score' for each crew member. In Karen's case, this was (page 767):

Average across all flights and all crew		Karen's score to be added		Karen's final score
55	+	+2.81	=	57.81

116. With a worked example, it is possible to follow how Karen's score was calculated. Only two decimal places were used (scores were rounded up or down, e.g. 0.333333333 was rounded down to 0.33 and 0.166666666 was rounded up to 0.17). Specific terminology was used, but not explained; such as 'weighting', 'overall mean' and 'normalised net score'.

117. What was not available at this stage, was the average score on the particular flight route (route averages) for all crew members (the figure which was deducted from Karen's average score), nor was there an example of how Karen's average score for the flight route was calculated.

118. The route averages were not provided until the 23/6/2020 when a guide for cabin crew and OBMs was produced (page 1171). This guide repeated the Karen example using the same four steps and calculations (page 1184). Examples of route averages for 128 flights were given and an extract is reproduced below (page 1196):

**Route Averages Used**

- The below calculation of the route average is the same as VOC (% total promoters - % total detractors)
- The route average is a complex calculation which considers the average of all the individual crew members results for the respective 12- or 18-month period
- These individual crew scores are added together in order to calculate the average score for the route
- The above is achieved by taking a blend of both time periods giving a fair and accurate route average, essentially considering everyone's performance
- Please see below the route averages:

Flight Number	Route Average	Flight Number	Route Average
VS1	58.14314	VS103	56.77337
VS2	48.1348	VS104	47.94391
VS3	55.0246	VS105	61.62149
VS4	50.68362	VS106	55.06329
VS5	57.3481	VS109	59.84587
VS6	48.69434	VS110	53.5854
VS7	58.66849	VS112	66.66666
VS8	48.89124	VS117	55.82175
VS9	56.56692	VS118	45.42302
VS10	44.57816	VS121	59.80883
VS11	59.66134	VS122	51.21951
VS12	48.45729	VS125	50
VS15	57.24659	VS126	0
VS16	46.98514	VS127	59.73518
VS17	66.66666	VS128	52.87477
VS19	59.89574	VS131	62.17948
VS20	51.40957	VS132	44.54225
VS21	61.11157	VS133	91.66666

119. An example of Ms Bunting's actual data, used to work out her average for her total number of flights (for step two) and her average for each flight route (step one) is also reproduced below (it does appear this was sent to her as an Excel spreadsheet) (page 2393):

Case Numbers: 2304618/2020  
and others  
2300056 Multi

Payroll	Operating	Date Range	Flight Num	Flight Date	Excellent	Very Good	Good	Poor	Very Poor	Total	Include in data
42776	CC	12	128	03/02/2020	5	0	7	0	0	12	Exclude - Op Rank
42776	CC	12	127	02/02/2020	9	4	1	0	0	14	Exclude - Op Rank
42776	FSM	12	76	11/01/2020	11	10	5	0	0	26	Include
42776	FSM	12	75	10/01/2020	22	8	3	0	0	33	Include
42776	FSM	12	128	02/01/2020	12	11	3	1	0	27	Include
42776	FSM	12	127	01/01/2020	5	7	2	0	0	14	Include
42776	FSM	12	76	21/12/2019	14	8	1	1	0	24	Include
42776	FSM	12	75	20/12/2019	4	5	0	1	0	10	Include
42776	FSM	12	128	08/12/2019	13	14	5	0	0	32	Include
42776	FSM	12	127	07/12/2019	14	4	0	0	1	19	Include
42776	CC	12	128	23/11/2019	16	5	1	0	0	22	Exclude - Op Rank
42776	CC	12	127	22/11/2019	4	5	5	0	0	14	Exclude - Op Rank
42776	FSM	12	128	18/11/2019	8	5	4	0	0	17	Include
42776	FSM	12	127	17/11/2019	6	4	1	0	0	11	Include
42776	FSM	12	78	09/11/2019	5	1	1	0	0	7	Include
42776	FSM	12	77	08/11/2019	14	8	3	1	0	26	Include
42776	FSM	12	128	10/10/2019	16	12	2	0	0	30	Include
42776	FSM	12	127	09/10/2019	13	11	2	0	0	26	Include
42776	FSM	12	182	25/09/2019	16	14	10	0	0	40	Include
42776	FSM	12	181	22/09/2019	14	5	4	0	0	23	Include
42776	FSM	12	122	14/09/2019	23	13	9	0	0	45	Include
42776	FSM	12	121	11/09/2019	16	7	4	1	0	28	Include
42776	FSM	12	110	14/08/2019	10	4	4	0	0	18	Include
42776	FSM	12	109	13/08/2019	11	4	0	1	0	16	Include
42776	FSM	12	128	12/07/2019	12	7	4	0	0	23	Include
42776	FSM	12	127	11/07/2019	12	3	1	0	0	16	Include
42776	FSM	12	110	08/07/2019	6	3	2	0	0	11	Include
42776	FSM	12	109	07/07/2019	11	10	2	1	0	24	Include
42776	FSM	12	86	02/07/2019	4	3	5	1	0	13	Include
42776	FSM	12	85	29/06/2019	6	2	2	0	0	10	Include
42776	FSM	12	128	21/06/2019	11	8	11	0	1	31	Include
42776	FSM	12	127	20/06/2019	16	5	2	0	0	23	Include

**2393**

42776	FSM	12	86	11/06/2019	5	3	0	0	0	8	Include
42776	FSM	12	85	08/06/2019	6	3	0	0	0	9	Include
42776	CC	12	128	17/05/2019	12	5	0	2	0	19	Exclude - Op Rank
42776	CC	12	127	16/05/2019	8	8	0	0	1	17	Exclude - Op Rank
42776	CC	12	128	12/05/2019	8	6	2	1	0	17	Exclude - Op Rank
42776	CC	12	127	11/05/2019	16	4	0	0	0	20	Exclude - Op Rank
42776	FSM	12	86	02/05/2019	8	4	0	2	0	14	Include
42776	FSM	12	85	30/04/2019	3	0	0	0	0	3	Include
42776	FSM	12	128	14/04/2019	3	5	1	0	0	9	Include
42776	FSM	12	127	13/04/2019	7	1	3	1	0	12	Include

120. This data was not provided to Ms Bunting until 27/6/2020 (page 2391).

121. Returning to what the respondent and Unite were discussing on the 7/5/2020, it was agreed that certain surveys would be excluded from the data ('Double Red') (page 768), yet the crew were told how to 'filter out' those surveys when accessing their own data during phase one of the redundancies (witness statement of Jonathan Borsberry paragraphs 33 and 34). Flights which had zero returns were also similarly supposed to have been excluded (page 1234). This

was challenged by the MS claimants, who said that flights with zero returns had been included in the calculation. For example, Ms Wood-Wolley had two flights showing in her data, where she was operating as a CSS, with zero VOC returns, whereas the final column on the spreadsheet (heading 'include in data') said 'include' (page 3328). It is not necessary for the Tribunal to resolve this issue, it is however included to demonstrate the lack of confidence the OBM claimants had in the respondent's data.

122. A summary of the consultation as at 8/5/2020 recorded as 'actions agreed to' were 'agreement to exploring VOC and PM for the OBM performance' (page 794). That document also referred to modelling the demographic impact with and without length of service applied, to ensure that there was no disproportionate effect on those selected/not selected.
123. At a meeting on 12/5/2020 Mr Powell a Unite union representative raised the 'extension of furlough'. Ms Hollingsworth responded that she would review and respond (page 804). The Tribunal reminds itself that this must be a reference to the Chancellor extending the CJRS for four months until the end of October 2020 on the same date (page 1701).
124. Using VOC for OBMs was still being discussed on the 13/5/2020 when Mr Sharpe asked the Unite Chairperson if they had moved away from the agreement to use VOC (page 824). The summary of that meeting also referred to 'model the demographic impact with/without length of service applied, to ensure that there is no disproportionate effect on age, gender, BAME, part time characteristics' (page 834). That modelling reference was repeated on the summary of the consultation on the 14/5/2020 (page 864). The minutes of that meeting also record Ms Hollingsworth stating when referring to OBMs, that 50% of them had a sanction (page 836). This was contrary to the MS claimant's submissions that only 'a very small proportion' of OBMs had sanctions (paragraph 97). The Tribunal however did not hear any evidence on this. It may be the 50% referred to lower end or minor sanctions.
125. The agreement reached between the respondent and Unite on the 19/5/2020 did reference that if there were enough applications for the Holding Pool, some crew would leave under compulsory redundancy 'without a hope to return to VAA' and to the latest thinking being the lowest performers are not eligible to join the Holding Pool (page 901). The Tribunal finds this was rather brutal language to use and the respondent had limited the number of places in the Holding Pool. This was not something which was challenged by Unite, however.
126. Subsequently on the 30/5/2020 Ms Hollingsworth said in an update that 'subject to meeting the minimum criteria of having no live formal sanctions in

place at the time of selection' if selected for compulsory redundancy, that member of crew would have the opportunity to enter the Holding Pool. She did refer to earlier communications in this respect, however, she did not in that communication refer to the fixed numbers of each rank in the Holding Pool. Those fixed numbers had clearly been discussed with Unite and there had been earlier references to categories of staff who would be excluded from the Holding Pool (page 901).

127. Whilst the Tribunal understands the rationale for creating the Holding Pool (not least that if and when flying resumed, the respondent would be able to offer to the tried and tested crew a return to work, with little recruitment and retraining cost and to have available to it new recruits who had been through the selection process); overall, its position in respect of the Holding Pool was poorly communicated.
128. Although not visible to the crew at the time, the references to 'without a hope to return to VAA' and 'lowest performers are not eligible to join' the Holding Pool in the 19/5/2020 agreement with Unite, were dismissive. The Tribunal can make allowances for the pressure the respondent was under at this time and it understands and agrees with the respondent's position of not wanting to give false hope or to giving an avenue of return to poor performers. The statements however could have been much clearer and more sympathetic. The existence of the Holding Pool was only something which was relevant once a dismissal had taken place. It was not therefore relevant to the fairness or otherwise of the dismissals.
129. The selection criteria and weightings applied to them (not the weightings referred to in the Karen example) were agreed on 19/5/2020 (page 907). There then followed an email exchange between Ms Holligsworth and Unite in which 'legal challenge' was referred to (page 986). In view of the fact this was a large-scale and unprecedented redundancy situation and the day after the agreement was reached between the respondent and Unite, the union referred to a legal challenge; the Tribunal finds it surprising and unacceptable that the data was not retained.
130. In the same communication, Unite referred to its 'criteria comms' which had been shared and in which it confirmed to its members it had 'Agreed To use VOC and PM for OBM's' (page 989).
131. A document was produced dated June 2020 entitled 'Individual Consultation Meetings Process and Principles' aimed at cabin crew (page 1092). It provided for (page 1093):

• We need to meet (or have offered to meet) individuals at least once before we confirm the final redundancy decision i.e. notice of redundancy in writing.

• The meeting is a chance for individuals to explain why they shouldn't be made redundant or if they don't think we have followed our process properly or if they feel they have been chosen unfairly.'

132. That simply did not happen and there has been no satisfactory explanation as to why not from the respondent. The respondent moved straight to confirming some crew were compulsorily redundant with no access to the Holding Pool (page 1102). The respondent did not retain individual letters informing staff of the outcome and the Tribunal only had the precedent letters available.

133. Sven Sharpe said the consultation meetings used a script (witness statement paragraph 126). He said that managers would explain to the individual that if their role was confirmed as redundant, the respondent intended to serve notice from 1/7/2020. That was not accurate. The relevant test claimants had already been informed they had been selected for redundancy. There was nothing unequivocal in the statement:

'Following the application of the agreed selection criteria, I can confirm you have been selected for compulsory redundancy, with the selection criteria indicating that you are not eligible for a position in the redundancy holding pool.'

(page 1102)

134. The crew were told the purpose of the individual meeting was to discuss the impact of the proposals on their role and to answer specific questions about their own personal circumstances.

135. The letter also informed compulsory redundant crew that available alternative roles would be posted on the internal careers page of the intranet on 12/6/2020. This was also confirmed in a Workplace posting of the same date, which stated the applications process would close at 23:59 on 18/6/2020 (page 1119). The MS claimants criticise this timeframe as their meetings took place after the application process had closed (for example, Ms Bunting's meeting was on 23/6/2020 and the 'script' used informed her vacant roles would be available to view until 19/6/2020 (page 2386).

136. The Tribunal accepts that in the circumstances, in reality, there would be few alternative roles available. It does find however, that it was not reasonable to have such a limited period of time during which redundant staff could apply for alternative roles. They had significant information to process in a short period of time. Firstly, that they were compulsorily redundant. Secondly and certainly for the MS claimants, there was the shock that they were not offered a place in the

Holding Pool. They had no sanctions and did not consider themselves to be poor performers. Thirdly, they then only had seven days to apply for an alternative role. Ms Bunting received her invitation to the consultation meeting on the 13/6/2020 (page 2381). She was given her scores, which in reality meant nothing to her and she was told her meeting was scheduled for the 23/6/2020. It was not reasonable to expect crew, during a pandemic with various restrictions in place, to consider their position and to apply for an alternative role, in such a compressed and short period of time.

137. The claimants criticise the appeal process. An appeal webinar was broadcast on the 16/6/2020 to the Appeal Managers. The appeal process was not going to be able to rectify the complexity of the calculations required to work out the individual crew member's score, the methodology which was applied to create those scores, the fact the scores and the calculations were not provided to the crew and that the redundancy was presented as a *fait accompli*. This meant that at this stage there was no provisional selection, which could be queried, challenged and changed.

138. To illustrate this point, the Tribunal uses the example of Ms Bunting.

139. The relevant chronology is:

139.1. 4/1/2000 Start date.

139.2. 11/6/2020 She was informed of selection for compulsory redundancy with no Holding Pool. Due to her length of service, the termination date will be 20/9/2020 (page 2395).

139.3. 13/6/2020 Invited by Jason Papageorgiou to individual redundancy consultation meeting and given her overall score of 20 points (page 2381).

139.4. 23/6/2020 The meeting took place (page 2384).

139.5. 23/6/2020 Ms Bunting queried her score and should she use the monthly average or the year to date (page 2390). She referred to scores of 62.9 or 58.3.

139.6. 26/6/2020 Ms Bunting requested an individual breakdown of her scores for each flight she operated between April 2019 and March 2019 (it is assumed she meant March 2020). She explained she had accessed the scores herself (as she had been directed to do) and was unable to replicate the score attributed to her by the respondent (page 2424).

- 139.7. 27/6/2020 Ms Bunting was sent an overview of her VOC data and was told to be placed in the Holding Pool, the cut off point was 20 points (she had scored 20 points). There was then an explanation of the tiebreaker and the fact that after sanctions, the next criterion was Lowest Performance. Ms Bunting was told that this then placed her in the compulsory redundant category (page 2391).
- 139.8. 29/6/2020 Ms Bunting appealed within seven days (page 2396). Her attachments comprised 23-pages. Ms Bunting calculated her VOC score, but was unable to replicate the respondent's score of -0.37. Her appeal was acknowledged on the same day (page 2421).
- 139.9. 30/6/2020 Ms Bunting corrected an error in her notice period and received an ambiguous response (page 2423).
- 139.10. 30/6/2020 In response to her request for an individual breakdown of her scores on the 26/6/2020, Ms Bunting was informed she should have access to her full VOC data (page 2424).
- 139.11. 1/7/2020 Ms Bunting's appeal was sent to Mr Daniels (page 2427).
- 139.12. 3/7/2020 Mr Daniels informed Ms Bunting he had been assigned to her appeal (page 2428).
- 139.13. 3/7/2020 Mr Daniels checked with Mr Papageorgiou the comments Ms Bunting attributed to him during the meeting on 26/6/2020 (page 2446).
- 139.14. 6/7/2020 Mr Daniels referred Ms Bunting's first appeal point to Mr Borsberry and Mr Thomas (page 2431). Mr Borsberry referred the query to Mr Barber (page 2430).
- 139.15. 6/7/2020 Mr Barber replied to Mr Borsberry and explained that Ms Bunting had not added up the total number of responses correctly (he referred to total 'detracts, promotes and responses')<sup>12</sup>. He went on to say that if the same error had been replicated for all flights numbers/routes (in this case 14) the result would differ to the selection criteria. He said he attached the 'detailed' calculation for reference (page 2430).
- 139.16. 6/7/2020 Mr Papageorgiou responded to Mr Daniels and confirmed he was shocked when he saw Ms Bunting was in the compulsory redundant

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<sup>12</sup> This particular terminology was never explained to the crew.

pool, her RED training was fantastic and he held her in high regard (page 2446).

139.17. 8/7/2020 Mr Daniels asked Mr Papageorgiou if Ms Bunting had raised concerns about missing PM data with him previously. Mr Papageorgiou replied, but did not directly answer the question. He said that from memory, he did not recall Ms Bunting having any PM issues.

139.18. 8/7/2020 Mr Daniels asked Mr Borsberry if he could send the Excel document to Ms Bunting as evidence as to why he did not uphold her appeal. Mr Borsberry replied that he did not want to share the spreadsheet as it may open the respondent up to 'further requests' (page 2448).

139.19. 5/8/2020 Mr Daniels updated Ms Bunting regarding the progress of her appeal and apologised for the delay (page 2458).

139.20. 10/8/2020 Mr Daniels informed Ms Bunting of the appeal outcome, which was not to uphold her appeal (page 2459).

140. The position Mr Borsberry took, that he did not want to give crew access to their spreadsheets, was contrary to the respondent's policy that a team member at risk of redundancy had the right to see a breakdown of their score and to see in an anonymised way how they ranked against others in the pool (page 655).

141. One outcome of the appeal was that Mr Daniels made a recommendation to Mr Papageorgiou on the 10/8/2020 that all OBMs should be managed against normalised VOC scores (page 2482). Certainly, the Tribunal is critical of the fact that the respondent knew but did not address during the redundancy process that the scores the OBMs saw on their iPads, did not reflect the scores and the actual calculations used during the redundancy process.

142. What is not reflected by Mr Barber in his correspondence and what does not appear to have been factored in is that in phase one the OBMs were not told to perform what became step one, two and step five in the phase two instruction during phase one (page 1609). Those steps were missing from the information given to OBMs in phase one. The figures agree, however, Mr Barber had included the 'weighting' column in his calculation which he sent to Mr Borsberry (page 2430). That figure is created by applying steps one, two and five as follows:

[step 1]

Flight 127 total number of returns (VOC surveys) = 121

[step 2]

[promoters (excellent ratings) divided by 121] less [detractors (poor and very poor ratings) divided by 121]

[73 divided by 121] less [2 divided by 121] x 100 = 58.677686

0.60330578512 less 0.01652892562 = 0.5867768595 x 100 = 58.67768595  
rounded to 58.677686

[step 4]

Ms Bunting's average of 58.677686 minus the route average of 59.73518  
[step 3] = -1.0574915 (this is the figure Ms Bunting calculates)

143. The calculation Ms Bunting did not perform was step six (page 1609):

Multiply your weighting (Step 5) by the difference between Crew Average and Route Average (Step 4) to obtain your normalised score by flight route

144. What was needed was to multiply her 'weighting' (step 5) and the difference between the Crew Average and Route Average (step 3)

[step 6]

[-1.0574915] multiplied by [0.205882353] = [-0.2177188].

145. The figure of [0.205882353] was arrived at (step five) by dividing the total number of flights in route VS127 [7] by the total number of flights in the data set for Ms Bunting [34], thus 7 divided by 34 = 0.205882352.

146. Mr Barber's comments are reproduced below (page 2430).



MAN FSM									
	On Board Performance PM (Score)	On Board Performance VoC (Score)	On Board Performance Combined VoC and PM Points	Loyalty (Years)	Loyalty (Points)	Conduct (Points)	Punctuality (Points)	Sickness Absence (Points)	Total Overall Points
42776	4.75	-0.37	0	20	2	0	0	0	20

150. The Tribunal finds that Ms Bunting would have known she had 20 years' service and would have been able to correlate this to the two loyalty points. As per the Selection Matrix Guide sent to the crew on 19/5/2020 an FSM at Manchester with between 11 and 21 years' service, would be awarded +2 points, with a weighting of 10% (2 x 10 = 20) (page 918).
151. She had no way of knowing how the figures of PM 4.75 and VOC -0.37 had been arrived at. The normalised VOC figure was not the score the crew were used to seeing from their iPads (page 983). Furthermore, she did not have the data to perform her own calculations. Finally, the respondent's route averages were not provided to the crew until the 23/6/2020 (page 1169).
152. Notwithstanding that position, the calculation was complex. The four steps in the Karen example provided that the route average was deducted from the crew member's score. By the time of phase two of the redundancies, this had become a seven step process, with step four reading: 'Subtract the Crew Average score (step 2) from the Route Average score (step 3) to obtain your difference to the average' (page 1609); as acknowledged by Mr Brown in his supplementary submissions (paragraph 20). Mr Brown appended to his supplementary submissions his calculation for Ms Bunting (appendix 1 pages 10 to 26 (although the calculation is well-spaced out, it is of note that it runs to 16-pages, to calculate 14 flight routes)).
153. The Tribunal cross-checked Mr Brown's calculation. It did not perform the calculation and it had the benefit of being able to use an Excel spreadsheet to check it. If not able to use an Excel spreadsheet or similar programme, it was almost impossible to add together positive and negative figures running to 11 or more decimal places. A calculator does not have enough decimal places and the number of decimal places on Excel had to be adjusted to accommodate the 15 decimal places which the calculation ran to. It took over three hours just to check Mr Brown's calculation; not to perform it. This is not reasonable.
154. The Tribunal agreed with Mr Brown's calculation (with minor corrections); save that the respondent attributed a score of -0.37 for VOC for Ms Bunting. Mr Brown's figure gave score of +0.3716640326. That accorded with the Karen example of deducting the route average from Ms Bunting's score for that flight route. Whereas, Mr Brown had followed the seven step phase two process and had subtracted Ms Bunting's average score from the route average (for example,

he calculated the score for route VS127 to be +0.21771936314 (supplemental submissions page 23 (paragraph 148 above)). However it was arrived at, it appears the respondent has used the correct calculation (it has not used the Karen methodology) in arriving at a figure of -0.37; notwithstanding it was not possible for Ms Bunting to replicate that calculation (page 2381). Even though Ms Bunting had the assistance of a qualified data analyst they were still not able to replicate the respondent's score.

155. The Tribunal finds that if the route average is deducted from the crew member's score; and a crew member scores lower than the route average, the result is a positive score. Clearly a crew member who scores lower than the route average should result in a negative score; their average is lower than the route average of all scores for all crew on that flight.
156. The Tribunal finds that the scoring process for VOC was far too complex. It could only be understood once in possession of the appropriate data and with the benefit of a computer programme, which only Mr Barber understood, as a SQL expert. That was clear from the emails sent to Mr Barber by the appeal managers who themselves did not understand the calculations.
157. Not only that, the respondent then decided to use quartiles for the overall combination of VOC and PM scores. That resulted in an overall score of a round number of a multiple of ten. In the Respondent's own worked examples, the projected scores were: 120; 30; -10; 30; and 60 (pages 920 to 921). In those examples, the two scores on 30 points were different combinations of:

OBM - Low PM, Low VoC, No Sanction, Loyalty @ 24 Years

OBM - High PM, Low VoC, Sickness Sanction, Loyalty @ 8 Years

158. In these examples, both crew members are OBMs, however their circumstances are different and yet they have the same end score.
159. This was only ever going to bring into play the tiebreaker. The Tribunal did not see any tie-breaker calculations. It was aware of the tiebreaker contained in the Selection Matrix Guide (page 919):

#### Tie Breaker

Once the selection criteria have been applied, should multiple people have the same score within the cut off, then tie break criteria will be applied in the following order:

1. Sanctions taking into consideration sanction severity, followed by weighting and number i.e. a final written warning for conduct would place an individual at risk of redundancy over a first informal absence caution for sickness.

2. Lowest Performance – Cabin Crew individual PM score considered. OBM's VoC plus PM score considered.

3. Seniority.

160. The tiebreaker was however agreed with Unite (Sven Sharpe witness statement paragraph 92).
161. The matrix agreed with Unite appeared to be relatively straight-forward, as per the Karen example. It became complicated however, once it became apparent how many decimal places would actually be involved; rather than the neat and simple examples used for Karen. The methodology of how the matrix was applied was complex. A four-step process in phase one became a seven-step process in phase two and Mr Barber acknowledged his explanation could have been clearer and that there were oversights (for example a missing percentage sign at the top of a column, his witness statement paragraph 26).
162. The Tribunal finds that the respondent did in blind-faith rely upon Mr Barber's SQL programme. It did not at any point step-back and look at the overall picture. An example of this is Ms Bunting's line manager Mr Papageorgiou stating he considered her to be in the top five performing FSMs in Manchester. Prior to phase one redundancies, there were 55 FSMs in Manchester and therefore he considered her to be in the top 9%. As Mr Papageorgiou conducted Ms Bunting's consultation meeting; the Tribunal finds it must have been a reasonable consideration to reflect upon and to look into why Ms Bunting had scored as she had, using the respondent's calculation.
163. The Tribunal can therefore understand how and why Ms Bunting and the other high-performing MS claimants were so shocked, upset and aghast to find their outcome was they were compulsorily redundant without a place in the Holding Pool.
164. The Tribunal also finds that the process was driven by Mr Barber's SQL programme and was pulled-together in a short time-period in extremely difficult circumstances. It does not however accept that the respondent intended to target particular groups of people during that process. The respondent was aware of potential discrimination (for example the risk in using last in first out as a criterion) and sought to avoid that. Its methodology was flawed, but that was due to an attempt to create an objective process; which became so extremely complex, that no-one at the respondent really understood it, (save for Mr Barber).
165. It is also of concern to note that there was an issue on the end date used for the data. The cut off date should have been 29/3/2020 or 30/3/2020; whereas

the SQL coding showed the date of 31/3/2020 was used. Mr Barber said he 'spot checked' this using two files and neither included a flight from the 31/3/2020 and he was therefore confident that data from the 31/3/2020 was not included (witness statement paragraph 10). The Tribunal is not particularly comforted by a 'spot check' of two files and this was another flaw which demonstrated the programme which the respondent ran was subject to input errors from the creator of that programme. It was certainly not infallible.

166. The list of issues in this section of the redundancy selection process and the reasonableness of it, run to seven issues, with numerous sub-issues, over six pages of A4 (pages 530-536). The claimants' case would have been shorter and less complex, if they had focused on the substantive failings which they relied upon. Rather than advancing every single aspect with which they disagreed.
167. It is not proportionate to go into great detail in respect of these allegations which are a scatter-gun approach to this litigation. On the 26/7/2024 the claimants were asked to consider the claims they were pursuing as it was self-evident that some claims were stronger than others. The claimants were asked to withdraw any weaker claims, as the majority of the evidence had been heard. There are seven main issues and 78 sub-issues. The OPH claimants have been legally represented from the outset and the MS claimants since a least prior to the first preliminary hearing on the 30/5/2022. It should not have been beyond the capability of the legally represented claimants to have agreed to narrow the list of issues.
168. In addressing some general criticisms, the Tribunal finds as follows.
169. There was a reference to voluntary redundancy (issue 14.2). The Tribunal understands there was no enhanced redundancy offered in phase one or phase two. Voluntary redundancy was offered to the cabin crew until 1/6/2020 (page 1042). An enhanced package had been offered in March 2020 when that offer was withdrawn (page 1130). There was therefore no enhanced redundancy package on offer during either phase one or phase two of the redundancies which are the subject of these claims.
170. It is agreed the matrix was highly complex, as was the terminology (issues 14.3.1 and 14.3.2). Data Subject Access Requests are not within the jurisdiction of this Tribunal (issue 14.3.3).
171. The Tribunal does not agree incomplete data was provided. Data was not provided when it should have been, i.e., before any decisions had been taken in order that a crew member could verify it. It is not apparent however that incomplete data was provided (issue 14.3.4).

172. It was not possible to check for discrepancies as the data was not retained (issue 14.4).
173. Whenever the data was provided, it was not possible for cabin crew to replicate the complex scoring system the respondent had applied. The normalisation method was not changed between phase one and two (issue 14.5.1). The explanation was expanded in phase two. The normalisation method was not conducted as agreed; the Karen example was completely different to the one used (issue 14.5.2). The different calculations the respondent used were not shared (issue 14.5.3).
174. It is agreed the claimants were not told, contrary to the Redundancy Selection Matrix Manager Guidelines where anonymously their score ranked (issue 14.5.4).
175. The respondent's decision to separate London Heathrow and Manchester was reasonable. They were separate bases, had separate crew and had different needs moving forward (issue 15).
176. Overall, the selection procedure was unfair due to the manner/methodology which was applied. The process to be used was not however agreed with Unite. The respondent did agree the criteria with Unite (notwithstanding the position which is now taken in respect of that) and whilst Unite may have been protecting some groups of crew at the expense of others; the criteria were agreed. The Tribunal does not intend to go behind that agreement. The respondent had to select a large number of people for redundancy in a short period of time, when there was in reality little to differentiate them.
177. The criticism that normalisation was not routinely applied was not clarified. Unless this is a reference to the incorrect order of subtraction of the route average score from the crew member's average score. If it is, the findings above are repeated (issue 17.1). It could be this issue referred to the scores the crew could see on their iPads and the scores used when scoring. It is simply not clear to the Tribunal.
178. A variable number of PM scores were used, subject to a minimum. This was agreed with Unite (issue 17.2).
179. Rank averages were not used to compensate for missing PM scores if the minimum number did not apply. Again, this was agreed by Unite (issue 17.3).
180. Subject to a minimum number of entries (agreed with Unite), the VOC scores were normalised using the route average and applied (issue 17.4).

181. It is not correct to say negative feedback and detractors were wrongly attributed to OBMs. Some OBMs disagreed with some scores attributed to them. The Tribunal finds however, that overall, this would have applied to all OBMs, not just to these claimants (issue 17.5).
182. It is agreed the trigger for maximum points for loyalty was fewer in phase one than in phase two. This was agreed with Unite in phase one. The respondent did not want to use loyalty points at all; yet it agreed to it. Loyalty benefitted crew with longer service. The Cabin Crew Data Guide of 23/6/2020 reflected that all crew with fewer than three years service (0 to 2 years) received zero points. There was a divergence for FSMs in that those at London Heathrow received three points for 24 years or more service and for Manchester they received three points for 22 years or more (page 1179). Ms Moss for the MS claimants criticises the wide banding of 11-20 years for CCSs (all bases) and for FSMs of 11-23 years for Manchester and for 11-21 years for London Heathrow. These bandings were agreed with Unite (issue 17.6).
183. VOC was given a higher weighting than PM in the selection matrix. It only applied to OBMs. Unite agreed to this. The rationale was to indicate the customer view (voice of the customer) and to reflect what actually took place on board the aircraft. All the OBM claimants disagreed with VOC being included into the matrix; however, the respondent had to use some method to select OBMs for redundancy (issue 17.7).
184. The different scoring for PM and VOC were agreed with Unite (issue 17.8).
185. The use of VOC scoring was agreed with Unite (issue 17.9).
186. Some OBMs did have appeal points upheld outside of the five allowable appeal points which related to preventative measures in respect of Covid-19 (page 2480) (issue 17.10). An appeal point being upheld did not affect the selection for redundancy.
187. Last in first out (LIFO) was not used. The respondent had moved away from that criterion, understandably as since the introduction of age discrimination legislation, it was potentially unlawful. The respondent resisted using any form of length of service criteria. Unite pushed for this and the respondent accepted it. There was no evidence that it was used for pilots (other than anecdotal evidence) and the Tribunal did not hear any rationale for why it was used, if indeed it was, for pilots (issue 17.11).

188. The crew member trade union representatives were ring-fenced and protected in phase one of the redundancies. There was a reasonable explanation for this. The respondent needed the representatives to assist their members and to represent them during the redundancy process and considered them to be 'business critical' (page 2813). Unite did not appear to object to this. It is accepted that trade union representatives were not protected at the expense of other crew members. Other crew members were also ring-fenced for various reasons. Mr McGill was ultimately dismissed in phase two of the redundancy process, having been selected based upon his scores in phase one, but protected due to his role. All the phase one protection achieved for him was a stay of execution. Mr McGill's circumstances were unique and it is not clear why he was selected as a test claimant (issue 17.12).
189. The fairness of the application of the redundancy selection criteria was in accordance with that agreed collectively with Unite. The procedure was unfairly applied for the reasons set out above (issue 18).
190. The 7:5 FSMs at Manchester were on a different contract and were in a different redundancy selection pool to the test claimants (none of the 7:5 claimants were test claimants). In any event, any carve-out was agreed by Unite (issue 19).
191. The Tribunal does not find the use of VOC and PM data unreasonable as a selection process for redundancy in these circumstances (issue 20). There was no other available data that applied across all ranks and Unite agreed to the use VOC for OBMs. It has been suggested that some of the other 'reward' mechanisms should have been applied (incREDible awards, Red Hot 100, Instantly Inspired, etc). It does not appear that was ever seriously suggested by Unite. Furthermore, that would have only identified some crew who satisfied those criteria. It would not have provided a selection mechanism for the remaining crew. At the risk of repetition, the selection criteria were agreed with Unite. At a risk of further repetition, crew who were selected for redundancy now appear to suggest criteria which would have made them 'safe' and would have resulted in others being made redundant.
192. The Tribunal's finding on the use of VOC and PM are repeated. It finds the use of that data was not unfair and it was agreed with Unite. What was unreasonable and therefore unfair, was the manner/methodology used to apply that data and the complexity of the calculation.
193. The performance scores were objective in the sense that they were collected prior to the redundancy situation arising. It is accepted that when the scores were collected the purpose was not communicated (to a passenger for example);

that potentially the scores would be used for a redundancy purpose. The same can be said however, of any data collected for any form of monitoring purposes (e.g. using an appraisal to assess past performance in a redundancy situation).

194. The Tribunal finds the VOC scores were to some extent arbitrary; the same rationale however applied to all crew who were scored. If the majority of the VOC returns scored the crew at the lower end; then this would apply to all. It is not accepted that the scores were only discriminatory to certain sections of crew (issue 21.1).
195. The respondent did not set a minimum number of VOC returns per sector (flights) before the data was used. The respondent had to use some data which applied to all crew to select for redundancy. Ultimately and again, this does not appear to have been challenged by Unite. It is worth saying, that Unite would have had a far greater understanding and appreciation of the application of the outcome of using this data at the relevant time; than this Tribunal. The respondent consulted collectively with Unite and some compromises were made. The outcome, which was unfortunately inevitable, was that significant numbers of crew were made redundant (issue 21.2).
196. The criticism that CCSs and FSMs were banded together under the term OBMs was agreed with Unite (issue 21.3) (page 753).
197. The respondent did not arbitrarily choose one promoter and two detractor comments/scores (issue 21.4). This was agreed with and not challenged by Unite.
198. It was not made clear to the Tribunal what is meant by the criticism that there was a failure to include reliable attendance and productivity data in the selection criteria. In any event, the criteria were agreed with Unite (issue 21.5).
199. The criticism of the respondent's and Acas' procedure not being followed when 'issuing informal sanctions' was neither clarified nor evidenced. It certainly did not apply to the proactive MS claimants and it is not clear to the Tribunal which other claimants advanced this point (issue 21.6).
200. The Tribunal does not understand the criticism that the respondent's and Acas' procedures were not followed when issuing informal sanctions. The use of sanctions was agreed with Unite (issue 21.7).
201. VOC data was used for OBMs, but not cabin crew. This was agreed by Unite (issue 21.8.1).

202. The Tribunal finds that in respect of aircraft type and destination that this would have created an additional level of complexity. The Tribunal has already found (the VOC scoring and normalisation) process to be too complex and not able to be replicated. The respondent's explanation for not going into this level of detail is accepted. It simply cannot be the case that the claimants criticise the respondent for its process being too complex and then seek to criticise it for not being complex enough. Ultimately, as part of the collective consultation, Unite accepted the respondent's criteria (issue 21.8.2).
203. The Tribunal has already made its findings in respect of calculation errors. Using Ms Bunting as an example, the Karen example was lacking in precision, however the actual calculation used was correct.
204. The Tribunal agrees the original score given by the respondent could not be replicated using the scoring method provided. That of itself may not have been fatal for the respondent. In reality however, without the SQL expertise of Mr Barber, it was completely unrealistic that a member of crew, potentially without access to Excel (or a similar programme) would be able to replicate their scores. Furthermore, based upon the MS claimants, the crew were not provided with their scores in a meaningful format, nor the data, needed to replicate them for their own information. Put simply, the claimants were not given the information they needed by the respondent. It would have been in the respondent's resources to provide this. Mr Barber said it would have taken him no more than a week, more likely four days, to provide that information. Although Mr Barber was also tasked with processing customer refunds (he said this took 60% of his time), the Tribunal finds the respondent did have time to provide this information (issue 21.8.3.1).
205. It was not possible to check whether incorrect data was used, as the respondent did not retain the data (issue 21.8.3.2).
206. The Tribunal has been told the information was not retained by the respondent. That is surprising. It is even more extraordinary when Mr Barber's evidence was that he could re-run the data and provide that information. Furthermore, Unite had intimated legal action, as did Ms Bunting in her appeal. The respondent must have expected a legal challenge and should have retained its data (issue 21.8.3.3).
207. The Tribunal does not recall any instance of the scores not being calculated using the stated minimum number of entries being advanced. There was no specificity advanced by the test claimants (issue 21.8.3.4).
208. The Tribunal does not understand what is meant by incorrect base targets were used (issue 21.8.3.5). It is understood 'base targets' refer to the figures

crew had access to on their iPads relevant to each base. Mr Borsberry said those targets were not used for the normalisation calculation (witness statement paragraph 27).

209. It is not accepted that calculations varied by contract type. That was the point of the normalisation. What varied was an individual's number of returns/scores and the number of times they flew on a particular flight (issue 21.8.4).
210. To the extent that the VOC data was captured, it recorded what the passenger had said in their feedback form. From that point of view, it was robust. That was notwithstanding that the crew member may have disagreed with the feedback given (issue 21.9).
211. The VOC data was subjective in that it was a particular passenger's view. It was a reliable record of *that* passenger's comment(s). It is not correct to say it was often (always) inaccurate; what the Tribunal finds is meant by that, is that the crew member did not agree with the passenger's comment/view. That however is the point of a customer feedback form (issue 21.9.1).
212. There was no minimum number of returns per flight. Unite would have been aware of this when the criteria were agreed (issue 21.9.2).
213. It is not clear what this criticism (individual calculations were not in accordance with published calculations) referred to. If it was the difference between the Karen example and the calculations used, this has been addressed above (issue 21.9.3).
214. The complex methodology has been addressed above (issue 21.9.4).
215. The Tribunal accepts that outlier scores did not distort the overall score. That would only happen when and if a crew member regularly scored particularly high or low (issue 21.9.5).
216. The minimum amount of VOC scores which would be applied was agreed with Unite (issued 21.9.6).
217. The minimum of 25 scores was agreed with Unite (issue 21.9.7).
218. The point about outlier scores has been addressed above (issue 21.9.8).
219. It appears OBMs are now asserting that Virgin Holiday (double red) data should be included. It was understood to be their case all along that those scores

should be removed and indeed, Ruth Benzal Mahon appealed on this point and was successful (issue 21.9.9).

220. It is accepted that the 10 options, would have been grouped or scored in the same way as the five options which were given to passengers. Mr Barber's evidence on this point is accepted (witness statement paragraph 31 and Mr Borsberry's witness statement paragraph 7) (issue 21.9.10).
221. VOC did use two detractors and one promoter (page 1069). This was agreed with Unite (issue 21.9.11).
222. Some MS claimants said that PM data was missing. They referred to the percentage given. The respondent said that it had 90% data for OBMs and for example, Ruth Benzal Mahon referred to only having 56% of her PM data. In particular for the MS claimants, the PM data was extremely positive and resulted in them scoring highly. Other than comparing the overall average and their own percentage score, there was no other evidence that scores were missing from these claimants (issue 21.9.12).
223. Crew with fewer than 10 entries (including crew in training) were given the rank average score. This was agreed with Unite (issue 21.9.12).
224. PM was delivered three months in arrears, anonymously and challenges were generally unsuccessful. Unite knew how PM scoring operated and whether or not this would impact upon using this method of assessment for the redundancy process. This is a perfect example of where Unite was in a much better role to provide checks and balances during the collective consultation. The Tribunal can hear evidence as to how this worked in practise, but it does not have the day-to-day working knowledge of this scoring process; unlike Unite, who did (issue 21.9.13).
225. It is not accepted crew (whether new or not) needed to be trained on how to provide feedback (issue 21.9.14).
226. Some OBMs were told to lower marks by Mr Papageorgiou (page 2379). This instruction was dated 15/4/2019 and if crew did so, then this impacted across all the crew they scored. It only applied to Manchester and that demonstrates the correct decision to separate the bases of London Heathrow and Manchester. It also applied over most of the 12-month period used to collect scores/entries. It did not operate to the disadvantage of a particular crew member and any disadvantage would even out over the period of time following the instruction (issue 21.9.15).

227. The Tribunal can accept and take Judicial Notice that passengers who are inspired to provide voluntary feedback may generally have done so to express negativity. If that were the case, it would apply to most passengers and therefore to most crew. Any unfairness applied generally. Again, Unite would have been aware of this factor yet it agreed to use VOC (issue 21.9.16).
228. A trial run may not have been used; however, some modelling was carried out (page 920). It is not clear what a trial run would have achieved and Mr Sharpe's evidence on this is accepted (witness statement paragraphs 90-91). The criticisms of the process have been identified above. Demographics were provided to Unite on 17/7/2020, although, this post-dated the redundancy selection (page 1299) (issue 21.9.17).
229. It was impossible for there to be two impartial managers with direct knowledge of the individuals to have checked the outcome. By definition, there is no such thing as an 'impartial' manager with 'knowledge' of the crew member. What would have been a reasonable thing to do, once the scores were known (and before any communication was made regarding 'safe' or 'redundant') was that someone (for example in Manchester Mr Papageorgiou) should have considered the scoring and 'sense-checked' it (issue 21.9.18).
230. The Tribunal wholeheartedly agrees that the calculation and background data should have been supplied, stored and saved. There has been no satisfactory explanation from the respondent as to why this was not the case. This is a valid criticism especially as Mr Barber told the Tribunal he could have re-run and/or re-created the data (issue 21.9.19).
231. There was no minimum or maximum number set for responses. Unite were aware of this (issue 21.9.20).
232. It is not correct to say that VOC comments were 'mainly irrelevant to performance'. It is correct to say FSMs disagreed with comments about their performance which were negative. It is agreed the appeal process was narrowly defined (issue 21.9.21).
233. It cannot be the case that one complaint is the appeal process was narrowly defined and then that appeal outcomes were inconsistent. If the appeal process was narrowly defined, then logically, successful outcomes must have been minimal. Appeal managers worked for the respondent and had some knowledge of the cabin crew role; even if they had not performed it themselves. Had the respondent used different appeal managers (for example fewer managers) that would have caused delay and the Tribunal finds that delay would have been criticised.

234. It was reasonable for the respondent to structure the appeals in the way it did and it did provide training and support for the appeal managers (issue 21.9.22). The Tribunal does find however that although the 'narrowness' of the appeal was consistently applied; the crew should have been given the benefit of the doubt when issues were raised. There was one example where Mr Maughan asked Mr Mayo for his view and Mr Mayo said he would have allowed the appeal point. One of Ms Benzal Mahon's appeal points was upheld; yet it did not make any difference to her outcome.
235. Ultimately, the Tribunal finds that the respondent had applied a 'straight-jacket' to itself in respect of the appeals as it had already confirmed the outcome of the redundancy decision; prior to any effective consultation. Furthermore, the Tribunal finds the respondent had not factored into its process any need for decisions to be overturned on appeal and it accepted that Mr Sharpe said crew who were told they were safe would not then be told they were redundant.
236. A form of scoring was provided to the crew on their iPads, however, this was a different form of scoring to that used in the redundancy process. Route averages were not provided to the crew until the 23/6/2020 (page 1171) (issue 21.9.23).
237. Normalisation did take into account the differences between certain routes. That was the point of normalisation (issue 21.9.24).
238. VOC data was used for OBMs rather than for all crew. That was agreed with Unite (issue 21.10). This is a repeated criticism and the Tribunal's view remains the same.
239. No findings are made in respect of Caroline James as she was not accepted as a test claimant (issue 21.11).
240. Performance had to be measured to five decimal places and more and this applied to the tiebreaker. This has been addressed above (issue 21.12).
241. The claimants criticise the complexity of the calculation used by the respondent and then seek to introduce further complexity by suggesting that the days of the week/month of the year/type of aircraft were factored in. To do so would have made the calculation significantly more complex and that would not have been reasonable (issue 21.13).

242. Virgin Holiday (double red) scores were removed. This was agreed with Unite. Unite would also have been aware of any potential subjectivity (issue 21.13).
243. It is not correct to say the respondent did not adjust VOC scores to allow for periods of leave. If a OBM had insufficient scores over the initial 12-month period, the respondent then allowed for an 18-month period (extended by six-months). If there were not enough scores over that period, the rank average was applied. This was agreed with Unite (issue 21.14).
244. Karen Wordley was not a test claimant (issue 21.15).
245. The 7:5 seasonal FSMs in Manchester were a separate group. By definition, they only worked as FSMs for seven months of the year. How they were scored or treated under the redundancy process was agreed with Unite (issue 21.16).
246. It is not accepted some crew members were told in advance of normalisation; or were told which routes to avoid. It was accepted that some routes generally had a lower VOC score than others (the example was given of Delhi scoring lower than Seattle or San Fransisco). That was the point of normalisation which countered this differential. Newly appointed OBMs were given guidance on the use of normalisation (issue 21.17).
247. The treatment of seasonal 7:5 FSMs was agreed with Unite (issues: 21.17; 21.18 and 21.19).
248. Manchester and London Heathrow staff were treated as separate pools of three ranks. This was agreed with Unite (issue 21.20).
249. The lack of a trial run has been addressed above (issue 21.21).
250. It is not accepted that there had to be any formal training of crew (whether junior or not) to score peers using PM (issue 21.22).
251. It is not accepted the use of PM was unfair. Its use was agreed with Unite. It was a tool used by the respondent to measure on-board performance. Any inconsistency or subjectivity applied to all crew who were scored (issue 21.23).
252. The lack of managers for CSS ranks was countered by the use of VOC and PM in the redundancy process (issue 21.24). This criticism highlights the respondent's difficulty. The Tribunal finds if there was no manager and no standard or traditional appraisal, how did it assess staff who were generally performing well.

253. It was not clarified for the Tribunal what is meant by ‘not honouring a clear overlap in loyalty points awarded’ (issue 21.25).
254. The Tribunal does not find the weighting and scoring was discriminatory. It has made its findings in respect of unfairness, unreasonableness and complexity. It was not overall unreasonable (issue 22).
255. VOC scores were subjective. They were however, not influenced by internal matters (which was a criticism of the use of PM – such as crew who were reprimanded, scoring their manager a lower score in retribution). There was no reason to suppose passengers did not give their honest view or opinion in their scores. Some passengers may have scored unduly low and some may have rated OBMs more highly. It is accepted however, that extremes would balance out over a period of time and the use of a minimum number of returns would provide protection against outlier scores. Clearly, OBMs who were made redundant as a result of these scores (accepting they were the respondent’s main focus when selecting for redundancy) disagreed with their VOC scores.
256. Ultimately and again repeating this finding, Unite would have known of these issues in using VOC and indeed raised them in the collective consultation (page 717 on 6/5/2020). The fact remains that Unite agreed to the use of VOC, to the weighting of VOC against PM and the use of the eventual score being placed into quartiles. As has already been set out, not only can the Tribunal not go behind this agreement (unless it was a sham, which it was not); Unite has not brought a claim in respect of the collective consultation. The Tribunal cannot now reselect the scoring matrix or weighting. It seems Unite agreed with the respondent that notwithstanding any subjectivity, the use of on-board performance was a suitable mechanism of selecting crew for redundancy and having heard the evidence and submissions; the Tribunal finds this was so.

What steps to avoid the need for compulsory redundancies and find suitable alternative employment

23. What steps did the R take to avoid the need for redundancies? The Claimants say there was a lack of “*procedural mitigation*” compared to the “*avenues*” available for ground staff.

24. Did the Respondent consider alternative employment as a way of avoiding redundancy? The Claimants allege the Respondent failed to consider suitable alternative employment in that:

24.1 It failed to consider demotion (noting the allegation that “Seasonal crew” had “multiple chances...to retain employment within different ranks”);

24.2 It failed to place the Claimant in the holding pool;

24.3 It failed to furlough the Claimants or maintain furlough for Claimants as an alternative to redundancy;

24.4 The Retiree Benefit Package was offered to crew, stating they had met the correct criteria to be awarded this, it was then retracted as a mistake;

24.5 It failed to consider bumping.

257. None of the test claimants advanced any evidence in respect of ‘procedural mitigation’. It was not clear to the Tribunal what is meant by this reference (issue 23). Furthermore, none of the test claimants referred to avenues available for ground crew and the Tribunal is similarly mystified. Joanne Bunting in her claim form made the statement: ‘Lack of procedural mitigation for job losses for the crew community, when other avenues explored for ground staff and other parts of the company’ (page 110). Other than this bald statement, this allegation was not pursued further.

258. The respondent’s explanation for not demoting, maintaining furlough leave or bumping was accepted. The respondent’s objective was to reduce crew across all three ranks (FSM, CCS and CC). If it demoted FSMs or CCSs then it would in effect bring in a ‘last in first out’ criterion, as the longer serving FSMs and CCSs would replace the lesser serving CCs. (issue 24.1)

259. The ‘Seasonal Crew’ were those on specific 7:5 contracts at Manchester. It was agreed with Unite that the selection process needed to take account of the unique split of the 7:5 role. This was communicated to the crew in an updated Additional Questions document dated 10/7/2020 (page 1276).

260. The MS test claimants were not placed in the Holding Pool. The Holding Pool was not a mechanism to avoid compulsory redundancy (issue 24.2).

261. The CJRS leave scheme was not cost free; although the respondent acknowledged that it did assist (Suzanne Roddie’s witness statement paragraph 17, page 279). There was the cost of national insurance, pension contributions, accrual of annual leave and administration costs. By 15/5/2020 at the time of the consultation with Unite, the respondent was aware the CJRS had been extended to 31/10/2020 and that it would start to cost it more in terms of contributions.

From 1/9/2020 the contribution to salary dropped to 70% from 80% and from 1/10/2020 to 60%. There were also additional costs in terms of national insurance and pension from August 2020. At the time of the consultation with Unite, the CJRS was due to end on 31/10/2020 (issue 24.3).

262. The respondent was seeking to refinance and as such, it had to reduce its headcount. Placing staff on furlough leave would not assist it in this regard.
263. The Tribunal accepts that continuing furlough leave was not an option for the respondent during phase one (issue 24.3).
264. The respondent did incorrectly inform some staff that they met the criteria to receive the staff travel retiree package. An explanation was given of a corrupted spreadsheet leading to the error (page 1270). This demonstrates that the spreadsheets were not infallible. Notwithstanding this error, offering a staff travel retiree package does not (whatever the eligibility) avoid compulsory redundancy. Nor is there any link to alternative employment. By its very nature, a 'retiree package' does not apply to one who remains in employment (issue 24.4).
265. There was no scope for bumping in each of the three ranks. A demotion outside the rank would not assist the respondent in retaining a balance across the three ranks (issue 24.5).

#### Appeals Process

25. Was the appeals process unfair? The Claimants contend that the appeal process was flawed and compounded the unfairness of their dismissals in that (they allege):

25.1 'The criteria on which an appeal could be made were too narrowly defined';

25.2 The Respondent failed to supply requested personal data in time for appeals;

25.3 Employees were 'unable to question or challenge applied data, procedures or decisions' as appeals were by writing;

25.4 Appeal managers had no 'formal knowledge' of material roles – some appeals were dealt with by managers of obscure departments, from different continents or companies (e.g. Delta) with no knowledge of VAA crew role;

- 25.5 Appeals were heard by the same managers who took part in the individual consultations appealed;
- 25.6 Not all elements of appeals were addressed;
- 25.7 The information provided to the appeal by the Respondent was incomplete, inadequate and inconsistently applied; and/or
- 25.8 The appeal outcomes were unfair and inconsistent. The Claimants allege:
- 25.8.1 Where there were successful appeal challenges to individual scores, these were not applied to all OBMs on that flight, despite the acknowledgment that the scores were unfair;
- 25.8.2 An OBM could be impacted by poor cabin scores for a cabin or “area of control” which they did not work in, placing the OBM at higher risk of redundancy;
- 25.8.3 OBMs were unable to challenge non-crew complaints; and
- 25.8.4 The Respondent was inconsistent in how it treated individuals appealing under the 5 point VOC removal criteria. That is, upholding an appeal point under point 3 – clear from the customer comment that the score relates to a different flight with a different crew – upholding this appeal point for Alexis Redman and Sarah Feldman while dismissing it for Zoe Anderson.
26. Did the Respondent follow a fair procedure, taking into account the matters above?
27. If so, were the dismissals fair in all the circumstances taking account of factors including the Respondent’s size and administrative resources within the meaning of s. 98(4) ERA 1996?

266. The appeals process cannot ‘compound’ the dismissal whether or not it was unfair. The Tribunal finds that the appeals process was unfair in that if no member of cabin crew who was ‘safe’ from redundancy could be moved into the ‘redundant’ category; then the reality was that an appeal could not overturn the decision that a member of cabin crew was ‘redundant’. In those circumstances, the appeal was futile as the decision could not be overturned (issue 25).

267. As the appeal process was flawed and therefore unfair, it is not proportionate to consider each and every criticism of it by the claimants. The appeal was not a

re-hearing; it was an unfair and ineffective review of the redundancy process. The unfairness of the redundancy process has not been mitigated by the appeal process. The appeal process however did not materially change the unfairness of the dismissals.

268. The appeal process was not relevant to the fairness of the dismissal; it is a criticism which post-dates the decision to dismiss. The claimants are critical of the appeal process, it is not however proportionate to go through the minutiae of those criticisms. Once a claimant's employment had terminated, there was no particular urgency in respect of the appeals and that was demonstrated in Ms Bunting's case, where she had seven days to appeal, and then it took six-weeks to give her the outcome.

269. The Tribunal can appreciate both sides' position. The claimants can criticise the respondent for delay, whereas the respondent not only had a large number of appeals to process, this was at a time when it would have become apparent that it needed to make more staff redundant. There was no particular time pressure upon the respondent, as the appeal did not extend any redundant crew member's employment (accepting that delay should be avoided). There may have been a further impediment for the respondent, which was that the calculations were so complex, the appeal managers did not understand them and therefore considering the appeal took longer. That may well have been a problem of the respondent's own making. Stepping back, the Tribunal can fully appreciate the issues which arose on the appeals from both sides' point of view. Fundamentally, the appeal process did not affect the fairness or reasonableness of the dismissal.

#### Phase one cabin crew redundancies

270. Samantha Ryder was not an OBM and she was the only cabin crew test claimant in phase one (as Ms O'Hara was not dismissed). The respondent accepted she claimed unfair dismissal (paragraph 13g of the outline closing submissions).

271. The difficulty the Tribunal has with Ms Ryder's evidence-in-chief is that she does not give any evidence at all, in respect of the dismissal which took effect on 16/8/2020 (page 2989).

272. The Tribunal has found that the reason for the dismissal was redundancy, which is a potentially fair reason. Once the reason for dismissal is established by the respondent, the burden of proof is then neutral. The gist of Ms Ryder's two-page witness statement is that the imposition of a final written warning in January 2020 was unfair and as a result she was selected for redundancy.

273. Ms Ryder has not therefore addressed the neutral burden of proof in her evidence-in-chief and she cannot now go behind a final written warning that was not challenged at the time (she was offered a right of appeal on the 10/1/2020 (page 2975)). Furthermore, Ms Ryder does not make any claim that the final written warning was given in bad faith. As such, that warning stands.

274. This leads the Tribunal to find that whatever redundancy selection process the respondent used, Ms Ryder would have been selected due to the final warning.

34 Have the Claimants shown that they were subjected to a detriment? The detriment relied upon by the Claimants is that set out above, namely the use of a smaller sample, rather than 25 VOC entries.

s.47C ERA 1996 detriments

35.1.1 s.47C(2)(ba) adoption leave

35.1.2 s.47C(2)(bb) shared parental leave

35.1.3 s.47C(2)(b) maternity leave

275. TC12's (OHP) leave: her complaint is that due to the leave she took during the timeframe the respondent used to collect the data regarding the VOC responses; she was disadvantaged as she only had 11 entries used to assess her performance. She referred to the respondent's decision to use 10 flights as a minimum for a member of crew to be scored (those with fewer than 10 flights had the rank average applied).

276. The cabin crew matrix sent to Unite (and others) on 7/5/2020 contained a reference to 'those with a low base (<10 entries) ... have the rank average applied' (page 571 and 767). On the following day (8/5/2020) during a meeting with Unite, Mr Sharpe discussed those with less than 10 responses and said that the data was 'pretty consistent above 10' (page 783 and 784). Although not expressly referred to in the agreement between the respondent and Unite signed on the 19/5/2020, the minimum of 10 entries was accepted (page 907). Certainly, there is no record of any objection from Unite to this minimum figure.

277. It is not the case therefore that TC12 was subjected to a detriment due to her particular leave. She has failed to establish a link between her leave and the use of 10 minimum entries. The minimum of 10 responses applied whatever form of leave a member of crew had been on. It also applied to any other member of

crew who had fewer than 10 entries, but who had not flown a great deal during the relevant period, for whatever reason, for example sickness.

278. The matrices supplied indicated that in addition to TC12, Lyndsey Stevenson was pursuing a claim for detriment under S.47C. There was no reference in the evidence-in-chief from Ms Stevenson of any form of adoption, shared parental leave or maternity leave.

Equality Act 2010

Age

Direct discrimination

36. Did the Respondent subject the Claimants to the following treatment, as alleged or at all? The Claimants allege that:

36.1 The Respondent protected the 'youngest crew members' (i.e., those in the age group under 38 years of age) from redundancy;

36.2 Used data from the Voice of the Customer surveys ("VOC Data") to score On-Board Managers ("OBMs") for the "On-Board Performance" criterion;

36.3 Used and weighted certain selection criteria to protect the youngest crew members (i.e. comparative weighting of performance cf. loyalty; using wide bands for loyalty, i.e. 11-21 years, using sickness and punctuality records when younger cabin crew had had less opportunity to have been sick or late);

36.4 Gave "New Recruits" (those with experience of fewer than 10 flights) average scores under Performance Monitoring ("PM") but subjecting older cabin crew to scoring from colleagues under PM;

36.5 Excluded older Claimants from the holding pool, giving New Recruits automatic entry to holding pool.

36.6 Dismissed the Claimants.

37. Was this less favourable treatment than a younger hypothetical comparator under the age of 38?

38. If so, was it because of age?

39. If so, was this treatment a proportionate means of achieving a legitimate aim?

The Respondent denies that any of the alleged treatment was because of age and does not therefore seek to argue that the alleged treatment was in pursuit of a legitimate aim.

40. The Claimants describe their age or age group as 38 years old and over and compare themselves with people of age or age group under 38 years old.

279. None of the OPH claimants pursue claims of direct age discrimination.
280. Of the CCU claimants only Gemma O'Hara, Paul McGill and Lyndsay Stevenson pursue claims of direct age discrimination and all of the MS claimants claim direct age discrimination.
281. Mr McGill gave no evidence-in-chief of direct age discrimination, save to say that (page 238 of the witness statement bundle):
- 'I have felt penalised, treated unfairly, disadvantaged and discriminated against regarding my age, previous health problems, bereavement absence related, my part time contract and discrimination for being a part time member of staff.'
282. There is no specificity from Mr McGill in respect of direct age discrimination, nor in respect of indirect age discrimination, nor for being treated less favourably in respect of his part-time status. The burden of proof does not shift to the respondent.
283. Similarly, Gemma O'Hara does not give any evidence-in-chief in respect of direct age or sex discrimination, save that she said after describing proposed changes to her contract (page 110):
- 'At MINIMUM this is indirect sexual and age discrimination, however,'
284. There is no specificity from Ms O'Hara in respect of: direct age discrimination; indirect age discrimination; direct sex discrimination; or for being treated less favourably in respect of part-time status. The burden of proof does not shift to the respondent.
285. The Tribunal therefore proceeded to consider this claim in respect of Lyndsey Stevenson (CCU) and the MS claimants. Ms Stevenson's evidence was that it was her time in the rank of CSS that was reflected on the loyalty criterion, not her entire length of service. Her score however reflected her nine-years' total service (page 3049).
286. The MS claimants no longer pursue the allegations: 36.2; 36.3; and 36.4.

287. The first allegation (36.1) is that the respondent protected the 'youngest' crew members (those under 38) from redundancy. It would have to be the case that the respondent subjected the older crew members (those in the age group of 38 years old or over) to the less favourable treatment of not protecting them, because of their age.
288. It is not accepted that the youngest crew members were in materially the same circumstances as the claimants. The correct comparator would have to be OBMs who were aged under 38 and who were protected from redundancy.
289. The Tribunal finds there was no such 'protection' from redundancy for OBMs. All cabin crew (save for those on maternity leave and who were on income protection or otherwise exempted) were put at risk of redundancy. Criteria were agreed with Unite. All crew were put through the scoring process. Notwithstanding the findings made regarding the flaws in that process, those 38 years old and over were not treated less favourably than those under 38 years old in that there was no protection for them.
290. There was no specific evidence-in-chief from Lyndsey Stevenson (CCU) in respect of allegations 36.2, 36.3 and 36.4. Ms Stevenson compares herself (a CSS) to cabin crew; that is the wrong comparator. The burden of proof does not therefore transfer to the respondent.
291. The respondent did not exclude older claimants from the Holding Pool (allegation 36.5). It did make some of the new hire groups compulsorily redundant and they were included in the Holding Pool (of the new hires, approximately 25% were aged over 38 (page 3640)). This was agreed with Unite. The new hire group are not comparators for the purpose of this allegation, their circumstances were materially different. There was however no evidence advanced that the older claimants were excluded from the Holding Pool (OPH OBMs aged over 38 were in the Holding Pool). The Holding Pool was limited by number with the result that some claimants who did not have any sanctions (disciplinary warnings) were not offered a place in the Holding Pool due to where their score placed them on the list, albeit this information was never disclosed. That was not however determined by the age group of over 38.
292. The claimants who claim direct age discrimination were dismissed by reason of redundancy by the respondent. They were not dismissed because of their age group (38 and over). They were dismissed due to redundancy (issue 36.6).

Equality Act 2010 Age
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Indirect discrimination

41. Did the Respondent apply provisions, criteria, or a practice ('PCP') of:
- 41.1 Giving performance and conduct a greater weighting than loyalty;
  - 41.2 Failing to adequately account for length of service in scoring by providing the same score to those with 11 years and 21 years seniority;
  - 41.3 Using different data to score against certain criteria for different categories of employee in the pool, i.e., deciding to subject only OBMs to the scoring based on the VOC data, giving New Recruits average scores for PM;
  - 41.4 Using sickness and punctuality records in selection exercise;
  - 41.5 'A trend of F[light] S[ervice] M[anager]s with an average of 20 years loyalty and having a contract of 70% to full time, being made redundant with no pool' - selecting those with long service for redundancy;
  - 41.6 Excluding those with long service from the holding pool (having a tiebreaker for FSM on 20 points and CSS on 20 points), including New Recruits into the holding pool instead;
  - 41.7 Coaching seasonal crew and newly promoted OBMs (who tend to be younger) on how to increase their VOC scores as part of the redundancy selection process and not coaching the Claimants;
  - 41.8 In respect of Gemma O'Hara's claim only, replacing legacy 50% and 70% contracts with "red" and "purple" contracts.
42. If so, did or would that PCP put persons with whom the Claimants share the age group of 38 years and older, at a particular disadvantage of being more likely to be made redundant when compared to those younger than 38 years?
43. Did the PCP put the Claimants at that disadvantage, of being more likely to be made redundant?
44. If so, was the PCP a proportionate means of achieving a legitimate aim?
- The Respondent relies on the following:
- 44.1 Ensuring that the weighting of the selection criteria appropriately recognised the factors identified as being of core importance to the

Respondent's business needs, namely strong performance in providing a positive customer experience and demonstrable positive conduct aligned with the Respondent's values.

44.2 Ensuring manageable application of the selection criteria while providing appropriate recognition and reward to commitment and loyalty by rank and base.

44.3 Ensuring that the data used to score against each of the selection criteria appropriately and fairly recognised and accounted for the differing functions and circumstances of the different categories of employees in the pool.

44.4 Ensuring that the adverse impact of poor punctuality and / or sickness absence on the Respondent's operations including, but not limited to, the impact on customer experience and colleagues, was appropriately acknowledged and incorporated into the selection criteria.

44.5 The Respondent does not accept that those with long service were selected for redundancy as alleged or at all. Selection was based on set criteria fairly and reasonably applied.

44.6 The Respondent does not accept that those with long service were excluded from the hold pool as alleged or at all. Hold pool selection was not based on length of service.

44.7 The Respondent does not accept that it in any way coached employees on increasing their VOC scores as part of the redundancy selection process. Selection was based on set weighted selection criteria and data applied fairly and reasonably.

44.8 Aligning part time contract options to enable roster optimisation and increase operational efficiencies.

The Respondent relies in each appropriate case in addition to, and alongside the above, the overarching legitimate aim of implementing a fair and efficient business reorganisation to aid the Respondent's economic and operational survival at a time when the Covid-19 pandemic created a threat to its ongoing existence.

293. None of the OHP claimant pursue claims of indirect age discrimination.

294. Of the CCU claimants Gemma O'Hara, Paul McGill and Lyndsey Stevenson pursue claims of indirect age discrimination and all of the MS claimants claim indirect age discrimination.
295. None of the CCU claimants advanced any evidence-in-chief in respect of a claim of indirect age discrimination contrary to the EQA and therefore the burden of proof does not shift to the respondent.
296. The MS claimants have withdrawn the following PCPs; 41.1; 41.2; 41.4; and 41.5.
297. The PCP at 41.3 has been split into two parts. It refers to different data to score for OBMs and new recruits; and to giving new recruits average scores for PM. Both elements did happen and it was agreed with Unite. The new recruits are not however comparators for the OBMs. There must be no material differences between the OBMs and the new recruits and therefore, the new recruits are not comparators for the purposes of s.23 EQA.
298. The PCP of excluding those with long-service from the Holding Pool (PCP 41.6) is not made out. Those with long-service were not excluded from the holding pool. Again, the new recruits are not comparators. The OBMs were not offered a place in the Holding Pool, due to their score. They were not excluded due to their long service. OHP OBMs (aged over 38) were in the HP
299. The PCP of coaching seasonal crew and newly promoted OBMs (PCP 41.7) suffers from the same problem. The seasonal crew and newly promoted OBMs were not in materially the same circumstances as the OBM claimants. The newly promoted OBMs had a strict compliance regime. They had to achieve an overall PM rating of 4 or over and a normalised VOC score of 90% or higher ('2019 Performance Criteria' page 3625). If they did not meet all requirements after a three-stage process, they were not confirmed in post.
300. The seasonal crew were on a completely different contract, which provided for the crew member to carry out the higher contractual duties for seven months of the year and then to carry out the lower rank for five months of the year (Sven Sharpe witness statement paragraph 116).

Equality Act 2010  
Sex  
Direct discrimination

45. Did the Respondent target women for redundancy by using VOC data to score Performance?

46. Was this less favourable than a hypothetical male comparator would have been treated?

47. Did the Respondent target the women for redundancy because of their sex?

301. Samantha Ryder (CCU) did not provide any evidence-in-chief in respect of direct sex discrimination, indirect sex discrimination or part-time worker detriment. That is notwithstanding the respondent submitted that her claim is limited to unfair dismissal only (page 371). It is agreed that there is no pleaded claim under the EQA or under the Part-Time Worker Regulations 2000. The burden of proof does not transfer.

302. For Gemma O'Hara (CCU) see above (paragraph 53).

303. In respect of Lyndsey Stevenson (CCU), she did not provide any evidence-in-chief in respect of direct sex discrimination. The burden of proof does not transfer.

304. Paula Lin (OHP), to the extent that such a claim had been pleaded, did refer in her witness statement to VOC being 'sole[ly] limited' to OBMs. She referred to it being unfair and gave examples. She referred to 'further issues was that [she] was working on a part-time contract'. She did not however make any reference to her gender or suggest how as a female OBM, she was treated less favourably than a male OBM. The burden of proof therefore does not transfer.

Equality Act 2010  
Sex  
Indirect discrimination

48. Did the Respondent apply PCPs:

48.1 That all on board staff (flight and cabin crew) selected for redundancy return their uniforms to the Respondent;

48.2 Of only paying for the return of pilots' uniform and company property?

49. If so, did or would those PCPs put women at a particular disadvantage when compared to men as:

49.1 The majority of pilots are male; and

49.2 Non-pilot staff had to pay to return their uniform and company property.

50. If so, did the PCPs put the Claimant at that disadvantage?

51. If so, was the PCP a proportionate means of achieving a legitimate aim?

The Respondent relies on the legitimate aim of seeking to achieve economic and operational efficiencies in the return of its property from a large and geographically scattered cabin crew workforce. Following consultation, in early August 2020, the Respondent adopted its approach and paid or reimbursed postage costs for those flight and cabin crew (and pilots) who lived more than 70 miles from one of its designated uniform drop off points or had health, safety or wellbeing issues meaning they were unable to travel to one of the drop off points.

52. In respect of Gemma O'Hara's claim only, in replacing legacy 50% and 70% contracts with "red" and "purple" contracts did the Respondent apply to the Claimants a PCP?

53. If so, did or would that PCP put women at a particular disadvantage in comparison to men?

54. If so, did the PCP put the Claimants at that disadvantage?

55. If so, was the PCP a proportionate means of achieving a legitimate aim?

The legitimate aim relied upon by the Respondent is the alignment of part time contract options to enable roster optimisation and increase operational efficiencies

56. In (a) using the VOC data to score OBMs against the On-Board Performance criterion, (b) basing performance scores over a set period of time rather than a set number of flights, (c) not setting a minimum number of VOC responses per flight, before using them, (d) failing to normalise VOC data from weekend flights in comparison with week-day flights, did the Respondent apply to the Claimants a PCP?

57. If so, did or would that PCP (or one of them) put women at a particular disadvantage in comparison to men?

58. If so, did a PCP put the Claimants at that disadvantage?

59. If so, was the PCP a proportionate means of achieving a legitimate aim?

The Respondent relies on the legitimate aim of fairly and efficiently selecting for retention the best employees at a time when the Covid-19 pandemic created a threat to its ongoing existence.

305. There are two PCPs contended for (48.1 and 48.2). The claimants who pursue this claim are all from MS: Zoe Anderson; Ruth Benzal Mahon; and Claire Wood-Wolley.

306. The respondent submits that there is no single PCP which applied to flight crew and cabin crew. It submits there is a separate PCP for each group (respondent's submissions of 5/11/2024 paragraph 233).

307. If the respondent is correct, then if there is no PCP, there can be no indirect discrimination.

308. The PCP of returning uniform is framed as all on board staff (flight and cabin crew) selected for redundancy had to return their uniforms to the respondent. In short, anyone who worked on an aircraft and wore a uniform, had to return it to the respondent if they were made redundant. The Tribunal finds that was a PCP. The respondent quoted Baroness Hale in in paragraph 94 in Chief Constable of West Yorkshire Police v Homer 2012 ICR 704, SC, [17] of its submissions:

'The law of indirect discrimination is an attempt to level the playing field by subjecting to scrutiny requirements which look neutral on their face but in reality work to the comparative disadvantage of people with a particular protected characteristic'

309. A requirement to all on board staff to return their uniforms is on the face of it a neutral one. This is the thing done by the respondent which could result in the disparate impact complained of. The disparate impact/disadvantage the claimants contend for is that as mostly female cabin crew, they had to return their uniforms personally. Whereas the mostly male flight crew had other options in respect of returning their uniforms.

310. It could be accepted that a PCP of all on-board staff (cabin crew and flight crew) having to return their uniform if selected for redundancy, was applied by the respondent.

311. There are however, material differences between the flight crew (pilots) and cabin crew. They: are on different contracts; have different representation (British Airline Pilots' Association - BALPA); and have different requirements in respect of how long a commute they have to their base. Cabin crew are required to live within one hour 45 minutes of their base, Heathrow or Manchester. The flights crew's access to the terminal differed from that of cabin crew (page 1353).

The collective consultation differed. The redundancy processes were separate. For example, the Tribunal was told that the flight crew Holding Pool would remain open for three years, unlike the two years for the cabin crew (according to one witness).

312. The flight crew are not therefore appropriate comparators for the purposes of s.23 EQA when compared to the cabin crew. There are material differences between the two groups and therefore, this claim is not made out.
313. Furthermore, the respondent's PCP was not something which Unite objected to (page 1355).
314. The purported PCP of only paying for the return of pilots' (flight crew) uniform is not a PCP (PCP 48.2). It is a disadvantage for the cabin crew if the respondent did not offer to reimburse cabin crew for the cost of returning their uniforms.
315. The pilots are not a comparator group for the claimants (s.23 EQA).
316. Gemma O'Hara's (CCU) legacy part-time contract (50%) would have been replaced with an updated part-time contract. The respondent accepts this was a PCP (issue 52).
317. Unite were consulted in respect of this change, with the consultation commencing on 5/5/2020 (page 671). Agreement was reached between the respondent and Unite on the 19/5/2020 (page 908).
318. The Tribunal could take Judicial Notice that the childcare burden still falls disproportionately on females, rather than males. That does not however lead to the conclusion that the PCP put females at a particular disadvantage in changing or updating the part-time contract. It is not the case for example, that the part-time contract was replaced with a full-time contract. There was no evidence from Ms O'Hara in respect of females being put at a particular disadvantage compared with males. Ms O'Hara did give evidence-in-chief of the difficulties the change would potentially have on her domestic arrangements; she has not however, demonstrated the group disadvantage for females.
319. Ms O'Hara relies upon her own particular circumstances to say that she was put at that disadvantage; such that she accepted voluntary redundancy.
320. The respondent relies upon the aim of alignment of part-time contract options. It claims that aim is legitimate and the proportionate means of achieving that aim; is to enable roster optimisation and increase operational effectiveness.

321. Mr Sharpe gave evidence of the rationale for the contract change, which was explained to and agreed by Unite. That rationale was to maximise productivity amongst crew remaining after the redundancies and ultimately, rationalising the eight historic part-time contracts. Agreement was reached between the respondent and Unite on 10/5/2020.
322. The PCPs (PCP 56) of (a) using the VOC data to score OBMs against the performance criterion, (b) basing performance scores over a set period of time rather than a set number of flights, (c) not setting a minimum number of VOC responses per flight, before using them, and (d) not further normalising VOC data by particular days of the week; are accepted by the respondent as PCPs (paragraph 243 of the outline submissions).
323. To the extent that Paula Lin (OHP) has a claim under this issue, she only led evidence-in-chief in respect of PCP 56 (a) and not (b), (c) or (d); therefore she relies upon using the VOC data to score OBMs against the on-board performance criterion.
324. The claim is that the PCP put females at a particular disadvantage in comparison to males. According to MS's statistics, the contract type by gender is of 78% female to 22% male (page 3639). Prior to the phase one redundancies, the percentage of CSS at London Heathrow were 371 females and 103 males; which equates to approximately 22.5% male crew.
325. Ms Lin however does not articulate what the particular disadvantage for females is. The burden of proof therefore does not pass to the respondent.
326. Samantha Ryder (CCU) led no evidence-in-chief in respect of these allegations. The burden of proof does not pass to the respondent.
327. Lyndsey Stevenson (CCU) similarly led no evidence-in-chief in respect of the allegation of indirect sex discrimination. The burden of proof does not pass to the respondent.

Part-time contracts

61.1 basing performance scores over a set period of time rather than a set number of flights.

328. It appeared from the matrices provided that Paul McGill (CCU) was bringing a claim for (in essence) part-time worker discrimination. He led no evidence-in-chief on this point (he did however say in cross-examination he moved to a part-

time purple contract (not a legacy contract) on 20/3/2019 and he worked 14 days per month). He did not identify however which part-time contract he was on in his evidence-in-chief and he did not refer to the less favourable treatment he relied upon (as per allegation 61.1).

329. The Tribunal was somewhat mystified as to the status of Mr McGill's claim. The claim form presented by Mr Maisey of the CCU on behalf of Caroline James on 3/2/2021 claimed notice pay (page 137). Mr McGill is named as a claimant to the claim (a multiple claimant). Acas early conciliation took place between 5/1/2021 and 6/1/2021 (pages 145). A second claim was also presented on 3/2/2020 and it claimed unfair treatment and it referred to Mr McGill (page 154). This claim does not appear to have any legal basis. Acas early conciliation took place between 5/1/2021 and 6/1/2021 (page 162). A further claim was presented on 11/2/2021 by Mr Maisey, on behalf of Ms James, again with Mr McGill named as a multiple claimant. That claim was for unfair dismissal and 'other payments' (page 171). Acas early conciliation took place between 5/2/2021 and 9/2/2021 (page 179). A fourth claim was presented by Mr Maisey for Ms James on the 10/2/2021 which claimed a failure to consult for 45-days prior to redundancy (page 188). Mr McGill was named as a multiple claimant and Acas early conciliation took place between 5/2/2021 and 9/2/2021 (page 196).
330. Mr Maisey presented a fifth claim on behalf of Ms James on the 9/5/2021 (page 215). There was however no mention of Mr McGill in this claim.
331. One schedule (appendix C to this judgment) gives Mr McGill's termination date as 8/1/2021, however, his own evidence is that his employment terminated on 16/1/2021 (witness statement bundle page 233).
332. There was no mention of any claim for part-time worker discrimination in any of the claims which named Mr McGill and the Tribunal is not entirely sure how his claim came to be formulated as per this allegation (61). The Tribunal has not seen any issue taken by the respondent in this regard.
333. In respect of Gemma O'Hara (CCU); she does refer to her type of part-time contract in her evidence-in-chief (50% part time legacy contract, (9 working days)); however, she did not refer to the particular less favourable treatment she relied upon.
334. Samantha Ryder (CCU) gave evidence that she had reduced to a 75% contract in November 2019. She did not however advance any other evidence-in-chief in respect of this claim, for example, she did not refer to her comparator MR. Ms Ryder was not identified in the list of issues as advancing a claim as a Part-Time Worker.

335. Finally, Paula Lin (OPH) claimed part-time worker discrimination. In her evidence-in-chief she referred to working on a part-time contract and to the less favourable treatment, that she did not have the volume of PM scores, compared with a full-time member of staff. She said she had also returned from a period of compassionate leave. Furthermore, she also identified MR as a full-time comparator (in the list of issues). She did not however, make any reference to the scores being based upon a set number of flights. When she was asked about this, she replied that the number of flights should be over a period of perhaps three to six months. If that was her suggestion, she was referring to a timeframe, rather than a specific number of flights. She misunderstood how her allegation had been advanced.

336. The time period was set as 12 months and for crew who had not achieved 25 entries, that period was extended back to 18 months (witness statement of Sven Sharpe paragraph 81). The minimum number of entries was 10 (see above regarding issue 35 for the finding on this). If a member of crew had fewer than 10 entries, the rank average would apply. It was unsatisfactory that neither Mr Sharpe nor Mr Barber could recall in their evidence-in-chief why the minimum of 10 entries was deemed acceptable (page 1754). It was however a figure that was agreed to by Unite.

337. This was not less favourable treatment based upon part-time working status. The respondent factored in the possibility that some crew may have fewer than 25 entries and agreed with Unite a method of addressing this. Furthermore, the minimum number of entries could potentially be accepted as 10, as the data was considered to be 'pretty consistent' (per Sven Sharpe).

338. Ms Lin's claim appears to be, that had she 'survived' phase one of the redundancies, she would then have retained her role in phase two. She refers to had she been on 'maternity leave or long term sick' she would have been protected in phase one. Crew on maternity leave were treated differently under statute and crew on long-term ill-health absence who were on income protection were also not included in the redundancy process, unless it was proposed their role was going to cease altogether (page 1438).

#### The Law

339. The statement of the law is taken from Mr Brown's closing submissions, with some editing (deletions). The Tribunal accepts this is a reasonable summary of the legal tests it is to apply.

<b><u>Unfair dismissal</u></b>
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**Redundancy**

340. An employee has the right not to be unfairly dismissed by their employer (s. 94(1) ERA 1996). S. 98 ERA 1996 provides, insofar as is relevant, that:

*(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –*  
*(a) the reason (or, if more than one, the principal reason) for the dismissal, and*  
*(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

*(2) A reason falls within this subsection if it...  
(c) is that the employee was redundant...*

*(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...*

341. S. 139(1)(b) ERA 1996 provides, inter alia, that a dismissal is by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the employer's business for employees to carry out work of a particular kind has ceased or diminished, either in general or at the location at which the employee was employed. Per s. 139(6), in 'subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason'.

342. Per Lord Irving in **Murray and Another v Foyle Meats Ltd** [1999] ICR 827 (HL), 829:

*...the language of paragraph (b)...asks two questions of fact. The first is whether one or other of various states of economic affairs exists. In this*

*case, the relevant one is whether the requirements of the business for employees to carry out work of a particular kind have diminished. The second question is whether the dismissal is attributable, wholly or mainly, to that state of affairs. This is a question of causation...*

### **Fairness**

343. If the employer satisfies the Employment Tribunal that the reason for dismissal was a potentially fair reason, the Tribunal will then consider whether the dismissal was in fact fair under s. 98(4) ERA 1996, applying a neutral burden of proof.

344. An employer will have acted reasonably by having regard to the 'band of reasonable responses', including by reference to s. 98(4) ERA 1996:

*...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.*

345. In the leading case of **Williams v Compair Maxam Ltd** [1982] IRLR 83, EAT, 162, Browne-Wilkinson J set out five factors which may provide useful guidance on fairness in a redundancy dismissal:

345.1. The employer will seek to give as much warning as possible of impending redundancies;

345.2. *'The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible'*, including the selection criteria to be applied;

345.3. The selection criteria ought to be fair and ought not to depend solely on the subjective opinion of the selector;

345.4. Selection ought to be made fairly in accordance with these criteria; and

345.5. *'The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment'*.

346. The guidelines in **Compair Maxam** are not principles of law but rather standards of behaviour which may inform the application of the section 98(4) reasonableness test. The overriding test is whether the actions of an employer at each stage of the redundancy process was within the band of reasonable responses.

### **Selection**

347. The core question as to selection criteria remains whether the Respondent acted reasonably overall. A Tribunal cannot substitute its own principles of selection for those of the employer. They can interfere only if the criteria adopted were such that no reasonable employer could have adopted them or applied them in the way in which the employer did: **Earl of Bradford v Jowett (No 2)** [1978] ICR 431; **NC Watling v Richardson** [1978] ICR 1049.

348. Especially in hard economic times, an employer must be entitled to take into account criteria in addition to length of service, e.g., efficiency and the need to retain a balanced workforce. Provided these are proper criteria a Tribunal cannot seek to substitute its own selection method by giving greater prominence to long service: **BL Cars Ltd v Lewis** [1983] IRLR 58.

349. It is not necessary that the employee should have been warned in advance that some conduct or performance issue will render him particularly vulnerable to selection for redundancy: **Gray v Shetland Norse Preserving Co Ltd** [1985] IRLR 53. Although such a warning is often required where dismissal is conduct or performance, different considerations apply where the reason for dismissal is redundancy and conduct or performance is relevant only to *selection*.

350. While **Compair Maxim** cautions against depending '*solely on the subjective opinion of the selector*', caution regarding subjectivity must not be taken too far; a significant element of subjectivity will always be involved in selection and should not be castigated too readily. Selection criteria may

involve 'matters of judgment' and need not be scientifically quantifiable, which could 'limit selection procedures to box-ticking exercises', **Mitchells of Lancaster (Brewers) Ltd v Tattersall** EAT 0605/11 [21]; **Samsung Electronics (UK) Ltd v Monte-D'Cruz** (EAT, 1 March 2012) [27]. In **Swinburne and Jackson LLP v Simpson** EAT 0551/12, the EAT stated that:

*...in an ideal world all criteria adopted by an employer in a redundancy context would be expressed in a way capable of objective assessment and verification. But our law recognises that in the real-world employers making tough decisions need sometimes to deploy criteria which call for the application of personal judgement and a degree of subjectivity. It is well settled law that an employment tribunal reviewing such criteria does not go wrong so long as it recognises that fact in its determination of fairness.*

351. Similarly, 'The goal of avoiding subjectivity and bias is of course desirable but it can come at too high a price; and if the fear is that employment tribunals will find a procedure unfair only because there is an element of "subjectivity" involved, that fear is misplaced', per the judgment of Underhill J in **Mental Health Care (UK) Ltd v Biluan and anor** EAT 0248/12, [36].

352. Where there is criticism of subjectivity, that is criticism of the application of the selector's opinion as to the relative performance of an employee, rather than a criticism of data – such as customer feedback – which may ultimately have subjective opinion as its source.

353. In **British Aerospace plc v Green** [1995] IRLR 433 (which concerned 560 redundancies from a workforce of about 7,000) and, in particular, the passage at [3] in the judgment of Waite LJ, the Court of Appeal said that selection criteria and their application should not be subject to over-minute scrutiny. Tribunals ought only to interfere where there is overt unfairness which falls outside the reasonable responses open to the employer:

*The degree of scrutiny required of the industrial tribunal Employment law recognises, pragmatically, that an over-minute investigation of the selection process by the tribunal members may run the risk of defeating the purpose which the tribunals were called into being to discharge – namely a swift, informal disposal of disputes arising from redundancy in the workplace. So in general the employer who sets up a system of selection which can reasonably be described as fair and applies it without*

*any overt sign of conduct which mars its fairness will have done all that the law requires of him.*

354. Similar sentiments were expressed by Pill LJ in **Bascetta v Santander** [2010] EWCA Civ 351:

*"The tribunal is not entitled to embark on a reassessment exercise. I would endorse the observations of the appeal tribunal in Eaton Ltd v King ... that it is sufficient for the employer to show that he set up a good system of selection and that it was fairly administered, that ordinarily there will be no need for the employer to justify the assessments on which the selection for redundancy was based."*

355. Findings of unfair dismissal should not be made 'whenever a redundancy selection procedure is sub-optimal', **Mental Health Care (UK) Ltd v Biluan and anor** EAT 0248/12, [28], citing the observations of Lady Smith in **First Scottish Searching Services Ltd v McDine** UKEATS/51/10, [45]. As Lady Smith went on to say, the identification of a risk in a system does not mean that the claimants' dismissals were unfair, [46].

356. A Tribunal should remain cautious of adopting a substitution mindset: the focus is on the reasonableness of the selection criteria chosen by the employer, not the selection criteria which the Tribunal would have chosen or thinks ought to have been chosen: **LTI Ltd v Radford** EAT 164/00, [33].

357. While Tribunals are entitled to consider whether selection criteria were applied fairly, they should not examine the actual scoring unless there has been bad faith or an obvious error: **Dabson v David Cover and Sons Ltd** EAT 0374/10, [65].

358. Much will depend on the information held by a Respondent at the time of scoring and selection: an employer can only make use of data which is available. An employer, employing staff who work in a traditional manner, and who possesses reliable appraisals and the like which allow them to assess relative staff performance likely ought to use such data to do so. This is not because it is a legal requirement to use such data but, rather, where such data exists, it will likely be a matter of common sense and fairness to use that data, **Mental Health Care (UK) Ltd v Biluan and anor** EAT 0248/12, [25], [36]. Where this data does not exist, it cannot be used, and the fact such data was not used does not render scoring and selection unfair.

The mere fact that this may be unusual or non-traditional is legally irrelevant.

### **Pool**

359. The selection of a pool is to be assessed on the basis of the range of reasonable responses, **Kvaerner Oil and Gas Ltd v Parker and ors** EAT 0444/02, [20], [25].

360. In **Taymech v Ryan** [1994] EAT/663/94, Mummery P said, '...*The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind the problem.*'

361. Where the pool for selection has been agreed, the employer will normally be expected to adhere to that pool, see IDS, Vol. 11, Ch. 8, [8.95] and Harvey, DI(10)(C)(3)(a), [1686].

### **Collective consultation**

362. Section 188(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ('**TULR(C)A 1992**') provides as follows:

*Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.*

363. Where affected employees are represented by a recognised Trade Union, the employer must inform and consult representatives of that Trade Union, as opposed to other employee representatives, s. 188(1B) TULR(C)A 1992. What is relevant is that the Trade Union is recognised for the category of affected employees (or, to use the words of s. 188(1B): '*employees...of a description*'), not whether the employees in such a class are members of that Trade Union, see **Governing Body of the Northern Ireland Hotel and Catering College and anor v NATFHE** 1995 IRLR 83, NICA, [12-13].

364. Per s. 295(1) TULR(C)A 1992, an '*...employer...in relation to an employee, means the person by whom the employee is (or, where the employment has ceased, was) employed*'.

365. Per s. 195(1) TULR(C)A 1992, a redundancy dismissal is a dismissal for any reason '*not related to the individual employee concerned or for a number of reasons all of which are not so related*'.

366. A '*proposal*' for the purposes of collective redundancies was considered in **UK Coal Mining Ltd v National Union of Mineworkers (Northumberland Area)** [2008] ICR 163, [86], per Elias J:

*...The difference between proposed and contemplated will still impact on the point at which the duty to consult arises - it will not be when the closure is mooted as a possibility but only when it is fixed as a clear, albeit provisional, intention.*

367. In **Kelly v Hesley Group Limited** [2013] IRLR 514, [18] the EAT expressed the view that (adopting the approach of the Advocate General in **Keskusliitto v Fujitsu Siemens Computers** [2010] ICR 444 EC) the obligation to consult for these purposes would only arise: '*...once the crucial operational decision is taken and the employer is then contemplating or intending the collective redundancies made necessary by that decision.*'

368. This necessarily involves a focus on (i) the intention to make collective redundancies, **Atavan Erityisdojen AEK v Fujitsu Siemens Computers** [2009] IRLR 944, [39-40] and the judgment of Glidewell LJ in **R v British Coal Corporation ex parte Vardy** [1993] IRLR 104, [124]: '*Section 188 applies when he has decided that, whether because he has to close a plant or for some other reason, it is his intention, however reluctant, to make employees redundant*', (ii) with the relevant intention being that of the employer or person with the requisite authority to make such a proposal, **MSF v Refuge Assurance plc** [2002] ICR 1365, per Lindsay J at [45].

369. The duty ought not to trigger too early to be effective per **Atavan** [45-46] as:

*'...a premature triggering of the obligation to hold consultations could lead to results contrary to the purpose of Directive 98/59, such as restricting the flexibility available to undertakings when restructuring,*

*creating heavier administrative burdens and causing unnecessary uncertainty for workers about the safety of their jobs...Lastly, the raison d'être and effectiveness of consultations with the workers' representatives presuppose that the factors to be taken into account in the course of those consultations have been determined, given that it is impossible to undertake consultations in a manner which is appropriate and consistent with their objectives when there has been no definition of the factors which are of relevance with regard to the collective redundancies contemplated. Those objectives are, under Article 2(2) of Directive 98/59, to avoid termination of employment contracts or to reduce the number of workers affected, and to mitigate the consequences (see Junk, paragraph 38). However, where a decision deemed likely to lead to collective redundancies is merely contemplated and where, accordingly, such collective redundancies are only a probability and the relevant factors for the consultations are not known, those objectives cannot be achieved.'*

370. Albeit that not all of the information specified by s. 188(4) TULR(C)A 1992 must necessarily be available for the duty to be triggered, MSF, [39]. The Tribunal is required to 'form a view as to where the case falls on the spectrum between contemplation and proposal', Keeping Kids Company v Smith [2018] I.R.L.R. 484, [56].

371. The information which s. 188(4) requires be provided in all situations where s. 188(1) is triggered is as follows:

- (4) *For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives –*
- (a) *the reasons for his proposals,*
  - (b) *the numbers and descriptions of employees whom it is proposed to dismiss as redundant,*
  - (c) *the total number of employees of any such description employed by the employer at the establishment in question,*
  - (d) *the proposed method of selecting the employees who may be dismissed,*
  - (e) *the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect*
  - (f) *the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation*

*imposed by or by virtue of any enactment) to employees who may be dismissed.*

*(g) the number of agency workers working temporarily for and under the supervision and direction of the employer,*

*(h) the parts of the employer's undertaking in which those agency workers are working, and*

*(i) the type of work those agency workers are carrying out.*

372. Collective consultation must commence, in situations where the employer proposes to dismiss more than 100 employees, at least 45 days before the first dismissal takes effect, per s. 188(1A)(a) TULR(C)A 1992. (There is no rule, however, that consultations must last all of that 45 day period.)
373. Yet further, collective consultation must commence '*in good time*', per s. 188(1A) TULR(C)A 1992. This is not a question which can be answered mechanistically or arithmetically but is instead a question for the Tribunal adopting a multi-factorial approach, **Amicus v Nissan Motor Manufacturing (UK) Ltd** UKEAT/0184/05, [11]. '*In good time*' is not the same as at the earliest opportunity. It is '*in good time*' for meaningful consultation with the Trade Union to occur, **Keeping Kids Company v Smith** [2018] I.R.L.R. 484, [27], [60].
374. Consultation must occur early enough for meaningful dialogue to take place between employer and Trade Union in all the circumstances of the case. This will involve the employer having some form of developed plan which involves redundancy dismissals where the subject-matter of the negotiations is liable to be sufficiently specific, to allow proper participation in decision making.
375. The oft-quoted dictum from Glidewell LJ in **R v British Coal Corpn, ex p Price** [1994] IRLR 72, [24] is that:

*It is axiomatic that the process of consultation is not one in which the consultor is obliged to adopt all or any of the views expressed by the person or body whom he is consulting. I would respectfully adopt the tests proposed by Hodgson J in R v Gwent County Council, ex p Bryant reported, as far as I know, only at [1988] Crown Office Digest p 19, when he said:*

*"Fair consultation means:*

- (a) consultation when the proposals are still at a formative stage;
- (b) adequate information upon which to respond;
- (c) adequate time in which to respond;
- (d) conscientious consideration ... of the response to consultation."

376. The Acas guidance, '*Handling large-scale redundancies*' (April 2014), provides that meaningful consultation, consultation '*with a view to reaching agreement*', involves '*listen[ing] and respond[ing] to the views and suggestions raised*'.

#### **Individual consultation**

377. Consultation must be meaningful and must give the employee '*fair and proper opportunity to understand fully the matters about which it is being consulted, and to express its views on those subjects, with the consultor thereafter considering those views properly and genuinely*' (**R v British Coal Corpn, ex p Price**, [25]).

378. What compliance with the above requires is '*a question of fact and degree*': see **Mugford v Midland Bank**, as cited by **De Bank Haycocks v ADP RPO UK Ltd** [2024] ICR 432, [22(f)]. It is not necessarily unfair that there is a lack of consultation in a particular respect, **Haycocks**, [22(f)]. Adequacy will depend on the facts and circumstances of the case at hand.

379. This is a matter common to both collective and individual consultation: the law is commonsensical in its assessment of the adequacy of consultations. Individual consultation is one matter – an important matter – which goes to the overall fairness of the redundancy dismissal. The Tribunal '*should not elevate individual consultation prior to dismissal as a pre-requirement for a fair dismissal*', **Haycocks**, [16] (applying **Mugford**), as the '*statute does not allow of such an approach*', **Mugford**, 407.

380. Collective consultation is one factor which may impact upon the requirements for, and adequacy of, individual consultation. Where matters are more usefully consulted on with the recognised Trade Union, it may not be unfair to not then consult on these matters individually, see **Biluan**, [35]:

*Mr McCracken's points are well founded. It is inevitable that the character of the consultation that is reasonable and appropriate may differ to some extent in cases where there is collective consultation with a trade union or other representatives and in cases where there is not. The scope for useful consultation on such issues as avoiding the redundancy situation altogether or the choice of selection criteria may well be less in the latter case; the focus for individual consultation will normally be on the circumstances involving the individual's particular case, and in particular – though not necessarily only – the chances of alternative employment. It seems to us that the tribunal took no real account of this.*

381. Individual consultation, by contrast, is 'more personally directed' and would instead consider 'such things as alternative employment', **Haycocks**, [29].
382. In certain circumstances where collective consultation has occurred, the absence of individual consultation will not necessarily render subsequent redundancy dismissal unfair, **Mugford**, 496, citing **Rolls-Royce Motor Cars Ltd v Price** [1993] I.R.L.R. 203, 208 per Knox J. The question of whether individual consultation was nevertheless adequate in the overall context of fairness is one of fact and degree, **Mugford**, 406-407, and whether 'consultation with the individual and/or his union was so inadequate as to render his dismissal unfair', per **Unipart Eberspacher Exhaust Systems Ltd v Keenan** EAT 1473/00, [14], referring to **Mugford**.
383. A further factor which informs the adequacy of consultation is the external financial pressure causing the relevant business downturn and applicable timescales. It is for this reason that in exceptional cases a failure to consult will not render dismissal unfair where consultation would be futile, **Polkey**, 163, per Lord Bridge, e.g., where due to the sudden loss of a major client, the business can no longer survive and will soon cease to exist.
384. An employer is not under a duty to provide an employee selected for redundancy with all the information on which the decision to dismiss had been based so that the employee could examine it, point out any mistakes that might have been made, and require the employer to go through a revision exercise. If this were required, the employer would not be able to carry out the redundancy exercise at all; it would lead to an 'intolerably protracted and utterly impracticable process', **Boal and anor v Gullick Dobson**

Ltd EAT 515/92, per Hull J. The relevant question is whether there was a fair process which allowed the employee adequate information to contest their selection.

385. While the EAT found in **John Brown Engineering Ltd v Brown and ors** 1997 IRLR 90, EAT, that withholding selection marks from employees rendered the process unfair, *'The decision in Brown related to its particular circumstances which were that the employees had been given no information at all about their individual assessments, not even their individual scores'*, per **Camelot Group plc v Hogg** EATS 0019/10, [71], which Lady Smith contrasted with the circumstances of that case where the claimant *'knew her total score, what scores she had been awarded under each heading and the respective weightings afforded to each of those heads'* and had not put the Respondent on notice of her intention to challenge those scores.

386. Lady Smith went on at [73] to note that: *'...the Tribunal were wrong to suggest...that whenever an employee who is at risk of redundancy makes any request for information, an ensuing dismissal will be unfair if that request has not been acceded to...'* It is *'the context of the circumstances in which information is or is not provided that is of importance and that the ET has to "stand back and ask whether, overall, there was a fair redundancy process"'*, **Haycocks**, [15].

387. The provision of scoring information is *'not essential'* to that overall fair process, **Haycocks**, [22(g)].

### **Appeals**

388. A redundancy process must be viewed as a whole and an appeal may correct an earlier failing making the process as a whole reasonable, **Haycocks**, [22(d)].

### **Furlough and the fairness of dismissal**

389. The fact that an employee could have been kept on furlough will not render unfair a redundancy dismissal. While a failure to consider furlough may - in the particular circumstances of a case - render dismissal unfair, **Lovingangels Care Ltd v Mhindurwa** [2023] EAT 65, [34], this does not preclude dismissal and goes no further than considering whether a period of furlough was a possible alternative to dismissal. It is not realistic to

require an employer suffering a business downturn to maintain the ongoing costs associated with furloughing employees.

**Polkey**

390. Per **Williams v Compair Maxam Ltd** [1982] I.C.R. 156, per Browne-Wilkinson J., at pp. 161-162:

*...the tribunal must be satisfied that it was reasonable to dismiss each of the applicants on the ground of redundancy. It is not enough to show simply that it was reasonable to dismiss an employee; it must be shown that the employer acted reasonably in treating redundancy 'as a sufficient reason for dismissing the employee,' i.e., the employee complaining of dismissal. Therefore, if the circumstances of the employer make it inevitable that some employee must be dismissed, it is still necessary to consider the means whereby the applicant was selected to be the employee to be dismissed and the reasonableness of the steps taken by the employer to choose the applicant, rather than some other employee, for dismissal.*

**s. 47C ERA DETRIMENTS**

391. S. 47C ERA 1996 protects employees from suffering detriment in employment done for prescribed reasons falling under the ambit of leave for family and domestic reasons and which are fully specified at s. 47C(2). For present purposes, it suffices to note that the prescribed reasons include adoption leave (s. 47C(2)(ba) ERA 1996), shared parental leave (s. 47C(2)(bb) ERA 1996), and maternity leave (s. 47C(2)(b) ERA 1996).

392. Employees have the right not to be subjected to any detriment for having exercised or sought to exercise one of the rights to family leave. Thus, the mere fact that a detriment arises is insufficient – there must be a link between the employer's act (or deliberate failure to act) and the exercise of the right.

**DIRECT DISCRIMINATION**

**Burden of proof**

393. Section 136 EqA 2010 provides that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that a

person has contravened a provision of the Act, the court must hold that the contravention occurred (s.136(2)). Under s. 136(3), subsection (2) does not apply if the alleged discriminator shows that they did not contravene the provision. The Tribunal is referred to the useful summary of the authorities on the burden of proof in discrimination claims in Ayodele v City Link Ltd [2018] ICR 748, [34–59], [106].

### Direct Age Discrimination

394. Section 13 of the Equality Act 2010 ('EqA 2010') provides as follows, so far as is relevant:

*(1) 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.*

395. For the purposes of conducting the comparison exercise referred to in s. 13, there must be no material difference between the circumstances relating to each case (s. 23(1) EqA 2010).

396. Section 5 EqA 2010 is also relevant and provides as follows:

*(1) In relation to the protected characteristic of age –  
(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group;  
(b) a reference to persons who share a protected characteristic is a reference to persons of the same age group.  
(2) A reference to an age group is a reference to a group of persons defined by reference to age, whether by reference to a particular age or to a range of ages.*

397. The age difference(s) involved is one factor which may be relevant to the Tribunal's considerations, see Citibank v Kirk [2022] EAT 103, [62]:

*Thus, the prohibited act occurs if, because of age, a person treats another less favourably than he treats or would treat others. It is clear from s.5(2) EqA that "age" can refer to a person of a particular age or falling within a range of ages. Age discrimination can, therefore, arise where there is only a small difference in age between the person treated less favourably and his comparator. This is most likely to arise where the employer applies a particular age as a cut-off for some benefit or the*

*imposition of some detriment. The person reaching the cut-off age may be subject to less favourable treatment whereas a person who is only a few weeks or months short of the cut-off age may not. However, in the absence of a cut-off age (or, as Mr Carr, puts it a “cliff edge”) a relatively small difference in age may render it less likely that the discriminatory treatment is because of age. Even then, the particular ages of those concerned might be relevant: a difference in age of two years between an 18- and 20-year-old might, for example, be considered much more significant than the same difference in age in those over the age of 40. A small difference in age between protagonists in their 50s might, without more, render it implausible that age is the reason for any difference in treatment. That is not to say that age could not be the reason in such cases, but a claim that it is would be subject to careful scrutiny.*

### **Direct Age Discrimination: Justification**

398. As the Tribunal will be well aware, a unique feature of direct age discrimination is that if less favourable treatment because of age is established, the respondent may nonetheless prove that it was a proportionate means of achieving a legitimate aim, see s. 13(2) EqA 2010 and **Seldon v Clarkson Wright & Jakes** [2012] ICR 716, [50], [56-57] per the judgment of Baroness Hale. The Respondent in this matter denies that any of the alleged treatment was because of age and does not therefore argue that any of the alleged treatment was in pursuit of a legitimate aim.

### **Causation**

399. A difference in treatment and a difference in protected characteristic is not, in and of itself, sufficient to amount to unlawful direct discrimination. The difference in treatment must be ‘because of’ the protected characteristic, whether that be sex, age group, etc, see, e.g., **Qureshi v London Borough of Newham** [1991] IRLR 264, CA, **Zafar v Glasgow City Council** [1998] IRLR 36, HL and **Bahl v Law Society** [2004] IRLR 799, CA.

400. The concept is most clearly explained by Underhill J (as he then was) in **Amnesty International v Ahmed** [2009] I.C.R. 1450, [32-37]<sup>13</sup>:

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<sup>13</sup> **Ahmed** was decided before the coming into force of the EqA and therefore uses the language which appeared in previous discrimination legislation, but it is now well established that there is no material difference between the concept of the ‘grounds’ for less favourable treatment as appeared in the

400.1. In some cases, the ground, or the reason, for the treatment complained of is inherent in the act itself. Underhill J gave the example of an owner of premises who puts up a sign saying 'no blacks admitted': in such a case race is, necessarily, the ground on which (or the reason why) the individual is excluded;

400.2. In other cases, 'the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, i.e. by the 'mental processes' (whether conscious or unconscious) which led the putative discriminator to do the act'<sup>14</sup>.

401. In the former case, the reason for the putative discriminator's action can be found in the 'criterion' itself, whereas in the latter it is necessary to establish the relevant mental processes. In **Chief Constable of West Yorkshire Police v Khan** [2001] I.C.R. 1065, [29], Lord Nicholls explained that this requires the Tribunal to identify the reason why the alleged discriminator acted as they did: what, consciously or unconsciously, was their reason? This approach was approved by the Supreme Court in **R (on the application of E) v Governing Body of JFS** [ [2010] IRLR 136 see in particular the speeches of Lord Phillips at [13-23]; Lady Hale at [61-64]; Lord Mance at [78]; Lord Kerr at [113-114] and Lord Clarke at [132-142].

402. It is only the mental processes of the relevant decision-maker that are relevant for these purposes. In **Reynolds v CLFIS (UK) Ltd** [2015] ICR 1010, [36], per Underhill LJ (with whom LJ Jackson and LJ Longmore agreed) explained why:

*... it is fundamental to the scheme of the legislation that liability can only attach to an employer where an individual employee or agent for whose act he is responsible has done an act which satisfies the definition of discrimination. That means that the individual employee who did the act complained of must himself have been motivated by the protected characteristic. I see no basis on which his act can be said to be discriminatory on the basis of someone else's motivation.*

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previous legislation and the words 'because of' as appears in s. 13(1) of the EqA, see for example Lord Nicholls in the **JFS** case at 884H-885A and **Onu v Akwivu** [2014] ICR 571 , [19].

<sup>14</sup> 'Motivation' is here used in a different sense from 'motive' and connotes the relevant 'mental processes of the alleged discriminator' see Underhill LJ in **Page v Lord Chancellor** [2021] ICR 912 at [69] citing **Nagarajan v London Regional Transport** [1999] ICR 877, 884F.

## INDIRECT DISCRIMINATION

403. *'The law of indirect discrimination is an attempt to level the playing field by subjecting to scrutiny requirements which look neutral on their face but in reality work to the comparative disadvantage of people with a particular protected characteristic'*, see **Chief Constable of West Yorkshire Police v Homer** 2012 ICR 704, SC, [17], per Baroness Hale.

### The statutory framework

404. ss. 19(1)-(2) of the Equality Act 2010 ('EqA 2010') provide that:

- (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
- (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
  - (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
  - (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
  - (c) it puts, or would put, B at that disadvantage, and
  - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

### The PCP

405. For the purpose of a claim of indirect discrimination the PCP should be defined so as to focus specifically on the measures taken – that is, the thing or things done – by the respondent which result in the disparate impact complained of, see **HM Land Registry v Benson** [2012] IRLR 373, [32], citing **Kraft Foods UK Ltd v Hastie** [2010] ICR 1355, [9–10].

406. A change or difference in policy as between two groups of employees cannot amount to a PCP because it is artificial and unnatural to describe a change as a PCP. Where there is a change or difference in policy what is applied to a group of employees is not the change, but the particular PCP

which is actually applied to them. Unless the PCP actually applied to a group of employees give rise to disparate treatment in relation to a protected characteristic, there is no indirect discrimination: **ABN AMRO Management Services Ltd v Hogben** EAT (EAT, 20 November 2009). What H complained about (and which was not a PCP) was “*the intersection of two practices on the part of the [employers]*” [28].

407. If non-neutral matters about which a claimant complains do not constitute direct discrimination because the relevant ground is absent, they cannot be converted by some process of abstraction into the application of a discriminatory PCP, nor can they be broken down into a series of PCPs in order to seek to generate a PCP: **Onu v Akwivu; Taiwo v Olaigbe** [2014] ICR 571, [58]; [2016] ICT 756, [32].

#### **The burden of proof**

408. It is for the Claimant to prove (i) the PCP, (ii) ‘group’ particular disadvantage, and (iii) ‘individual’ particular disadvantage. ‘*Only then*’ are the reverse burden of proof provisions of s. 136 EqA 2010 engaged such that the burden shifts and the Respondent is ‘*required to justify the provision, criterion or practice...to provide both explanation and justification*’: **Dziedziak v Future Electronics Ltd** EAT 0271/11, per Langstaff P at [42].

409. As the Court of Appeal stated in **Lord Chancellor v McCloud** [2019] ICR 1489, [222]: ‘*In any indirect discrimination claim the individual claimant must show that he or she is disadvantaged by the PCP in the same way as the group*’.

#### **The pool**

410. ‘*...the pool must be one which suitably tests the particular discrimination complained of*’: **Grundy v British Airways Plc** [2008] IRLR 74, per Sedley LJ at [27].

#### **Particular disadvantage**

411. While the statutory language means that statistics are not required, e.g., where they do not exist (see **Chief Constable of West Yorkshire Police v Homer** 2012 ICR 704, SC, per Lady Hale at [14]: ‘*the new formulation was...intended to do away with the need for statistical comparisons where no statistics*

*might exist. It was intended to do away with the complexities involved in identifying those who could comply and those who could not and how great the disparity had to be. Now all that is needed is a particular disadvantage when compared with other people who do not share the characteristic in question.'* Where relevant statistics do exist, they remain 'important material', see **Games v University of Kent** 2015 IRLR 202, EAT, per Richardson J at [41].

412. An approach to statistical analysis is provided by **McCausland v Dungannon District Council** 1993 IRLR 583, NICA, per MacDermott LJ at [4-6]. This appeal to the Northern Ireland Court of Appeal from a decision of the Northern Irish Fair Employment Tribunal involved the same exercise in relation to a statutory duty to ensure equality of opportunity in employment for Protestants and Catholics in Northern Ireland as an assessment of particular disadvantage in complaints of indirect discrimination:

4. As s.16(2)(b) involves a comparison between the group fulfilling the condition or requirement (LGS – SOC 1, 2 and 3) and the appropriate comparable group, those in SOC grades 1, 2 and 3 in the general workforce in Northern Ireland, a formula had to be applied. That favoured by the Tribunal and accepted by both parties before us was:

$PY \div PT$  compared to  $CY \div CT$

In it, P refers to Protestant

C refers to Roman Catholic

Y refers to those who can comply with the requirement

T refers to the total in the comparable class (the general workforce).

5. Using that formula the result was:

$PY \div PT = 0.0207$  (say 0.021) and  $CY \div CT = 0.015$

6. Grossing up those figures 1.5 (Roman Catholics) can be expressed as 71% of 2.1 (Protestants). Thus it can be said that the success chance for

Roman Catholics when the LGS requirement is applied is 29% less for Roman Catholics than for Protestants.

### **Judicial Notice of Particular Disadvantage**

413. *'An industrial tribunal does not sit in blinkers. Its members are selected in order to have a degree of knowledge and expertise in the industrial field generally. The high preponderance of single mothers having care of a child is a matter of common knowledge', **London Underground Ltd v Edwards (No.2)** 1999 ICR 494, CA, per Potter LJ at [24].*
414. It will likely be an error for a Tribunal not to take judicial notice of the 'childcare disparity', i.e. that women bear the greater burden of childcare than men and that this can limit their ability to work certain hours, see **Dobson v North Cumbria Integrated Care NHS Foundation Trust** 2021 ICR 1699, EAT.
415. However, judicial notice may not be taken of matters which go beyond this, i.e., 'particular' childcare problems caused by individual circumstances which differ from the 'general' childcare disparity.

### **Individual disadvantage**

416. The Tribunal must first identify the group disadvantage, and then the corresponding individual disadvantage.
417. Per s. 19(2)(c) the claimant must prove that the PCP puts (or would put) them at '*that disadvantage*', i.e. the same disadvantage as those others who share the relevant protected characteristic.

### **Justification**

418. The test of justification under s. 19(2)(d) EqA 2010 requires the employer to demonstrate that the relevant PCP was a '*proportionate means of achieving a legitimate aim*'.
419. For an aim to be legitimate it must be, '*legal, ...not...discriminatory in itself, and...represent a real, objective consideration*', see EHRC Employment Code at [4.28].

420. Baroness Hale observed in **Chief Constable of West Yorkshire Police v Homer** [2012] ICR 704, [22] that the test of justification pursuant to s. 19(2)(d) EqA is now well settled. A provision, criterion or practice is justified if the employer can show that it is a proportionate means of achieving a legitimate aim: *'To be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and (reasonably)<sup>15</sup> necessary in order to do so'*.

421. As Mummery LJ explained in **R (Elias) v Secretary of State for Defence** [2006] 1 WLR 3213, [151]:

*...the objective of the measure in question must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end. So, it is necessary to weigh the need against the seriousness of the detriment to the disadvantaged group.*

422. Mummery LJ went on, at [165], to commend the three-stage test for determining proportionality derived from **de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing** [1999] 1 AC 69, 80:

*First, is the objective sufficiently important to justify limiting a fundamental right? Secondly, is the measure rationally connected to the objective? Thirdly, are the means chosen no more than is necessary to accomplish the objective?*

423. The more serious the discriminatory effect found, the greater the justification required, and vice versa: *'...The more serious the disparate impact on women, or men as the case may be, the more cogent must be the objective justification'*, see **Barry v Midland Bank plc** 1999 ICR 859, HL, 870E.

424. Whether the aim(s) pursued by a respondent is/are legitimate is a question of fact for the Tribunal. They must correspond to a real (as in genuine) need on the part of the respondent. However, the aim(s) need not have been articulated or even realised at the time the measure was first adopted; the legitimate aim relied upon may be an *ex post facto* rationalisation, see **Seldon**, [60] per Baroness Hale; there is no requirement

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<sup>15</sup> 'Reasonably' added per Lord Keith in **Rainey v Greater Glasgow Health Board** [1987] ICR 129, 142-143.

that the justification must have consciously and contemporaneously featured in the employer's mind, see Seldon, [70] per Lord Hope.

425. A respondent may rely on several aims at the same time and the aims relied upon may be linked to each other or may be relied upon in the alternative, see Fuchs v Land Hessen [2012] ICR 93, [44], [46]. Where a respondent relies on a number of aims it is not enough for the tribunal to apply the proportionality test to each individually; it must also apply a holistic approach to the package overall: BAE Systems (Operations) Ltd v McDowell [2018] ICR 214, [55] (a direct age discrimination claim).

426. It is not enough that a reasonable respondent might think the measure justified. The tribunal itself has to weigh the needs of the respondent, against the discriminatory effects of the provision in question, see Hardy & Hansons plc v Lax [2005] ICR 1565, CA [31-32]. However, as the Court of Appeal made clear in that case, the requirement that the means chosen to achieve the aim be 'necessary' does not require the employer to establish that the particular measure in issue was the only course open to him. It is not a test of absolute necessity. See to like effect Cadman v Health and Safety Executive [2004] IRLR 971, [31], in which Maurice Kay LJ said:

*The test does not require the employer to establish that the measure complained of was 'necessary' in the sense of being the only course open to him. That is plain from Barry. ... The difference between 'necessary' and 'reasonably necessary' is a significant one ...*

427. In other words, a PCP might be justified even if there was a less discriminatory way of achieving the relevant aim.

### PART-TIME WORKERS

428. The Part-Time Worker Regulations 2000 ('PTWR'), via the Part-Time Worker Directive, were introduced to: (i) provide for the removal of discrimination against part-time workers and to improve the quality of part-time work and (ii) to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and workers, see the Framework Agreement on Part-Time Work, clause 1(a)-(b).

429. Clause 4(1) of the Framework Agreement goes on to state: *'In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds'*.

430. The PTWR were made under section 19(1) of the Employment Relations Act 1999, which confers a broad enabling power on the Secretary of State to: *'make regulations for the purpose of securing that persons in part-time employment are treated, for such purposes and to such an extent as the regulations may specify, no less favourably than persons in full-time employment'*.

431. Regulation 5, PTWR provides as follows:

*5. – Less favourable treatment of part-time workers*

*(1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker– (a) as regards the terms of his contract; or (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.*

*(2) The right conferred by paragraph (1) applies only if – (a) the treatment is on the ground that the worker is a part-time worker, and (b) the treatment is not justified on objective grounds.*

*(3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker the pro rata principle shall be applied unless it is inappropriate.*

432. The question posed by regulation 5(1) PTWR is whether, as regards the terms of their contact, the part-time worker has been treated less favourably than a comparable full-time worker.

433. Where the treatment complained of by the worker is being treated the same as comparable full-time worker, all will turn on the context of the treatment. See **Earl Shilton Town Council v Miller** [2023] EAT 5, per HHJ Tayler at [20]:

*Thus, the authorities establish that in certain circumstances treatment that is the "same" could be less favourable treatment and that in other circumstances treatment that is "different" would not be less favourable. Context is all – and the assessment calls for the robust common sense of the employment tribunal in determining whether there is less favourable treatment because of sex...*

434. As Eady P held in **Augustine v Data Cars Ltd** [2024] EAT 117, [27], considering **Earl Shilton**:

*There is not a precise read-across from the protection thus afforded under the EqA to that provided by regulation 5 of the PTWR; on the other hand, the basic principle is the same: the protection is against less favourable treatment of one worker with a specified characteristic (here, being a part-time worker) as compared to another who does not have that characteristic (someone who works full-time). To ensure a like-for-like comparison, the circumstances of the complainant and the comparator should – other than the fact that they work part-time or full-time – be the same.*

435. The less favourable treatment must be ‘on the ground that’ the worker is a part time worker, per regulation 5(2)(a).

436. This test had been applied inconsistently by the Appeal Tribunal until the guidance provided by Eady P in **Augustine v Data Cars Ltd** [2024] EAT 117. As Eady P observed, the supposed differences in fact reflected the developing jurisprudence of the ‘reason why’ test in EqA 2010 cases, [42-43].

437. Per Augustine, [83], Tribunals are ‘required to read’ ‘on the ground that’ as ‘providing that the less favourable treatment must be: “on the sole ground that he is a part-time worker.” (**McMenemy**, paragraph 6)’ This is notwithstanding that the preferred approach of Eady P would have been to interpret ‘on the ground that’ as requiring an inquiry of the ‘effective and predominant cause of the less favourable treatment complained of; it need not be the only cause’, [71]. The Appeal Tribunal, like this Tribunal, are required to apply the approach of the Inner House of the Court of Session in **McMenemy v Capita Business Services Ltd** [2007] CSIH 25, [2007] IRLR 400, [6].

438. Such an approach does not require inquiry as to the respondent’s intention; a decision based on such an intention or a lack of such an intention will amount to an error of law.

439. In **Forth Valley Health Board v James Campbell** [2020] UKEAT 4102170/2020, the EAT considered that the difference in treatment between a part-time employee (who did not receive 15 minute paid breaks when

working shifts below 6hrs) and a full time comparator (who did) was not on grounds of part-time worker status. The EAT compared the hypothetical situation of a full-time and part-time worker working a shift of the same length. In such circumstances the EAT was satisfied that each would have been treated in the same way in respect of breaks, so that there was no less favourable treatment.

440. Even where a part-time worker can show that he or she has been treated less favourably than a comparable full-time worker, and that this treatment was on the ground that he or she is a part-time worker, his or her claim will fail if the employer is able to justify the less favourable treatment on objective grounds. Objective justification in the context of the PTWR is to be applied in the same manner as objective justification in indirect discrimination.

441. Where an ET finds that a complaint under the PTWR is well founded, it may (if it considers it just and equitable) order the employer to pay compensation to the claimant (regulation 8(7)). By regulation 8(9), it is then provided that:

*... the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances, having regard to-*

*...*

442. *(b) any loss which is attributable to the infringement having regard, in the case of an infringement of the right conferred by regulation 5, to the pro rata principle except where it is inappropriate to do so.*

## Conclusions

### Unfair dismissal

443. Ms Moss repeatedly made reference to the size and administrative resources of the respondent (s.98(4)(a) ERA) in her submissions for the MS claimants. The Tribunal does agree that the respondent is a large organisation, with arguably far greater administrative resources than most employers. It also accepts that the MS claimants were 'minnows' in comparison with the respondent.

444. The spring and summer of 2020 were not however 'ordinary times'. The country was under 'lock-down' which was an unprecedented period of suspension of any form of normal life. Nothing about that period of time was

'normal'. People were told how often and in what circumstances they could leave their homes. People who were 'critical workers' who did leave home to go to work had to have authorisation to share with the authorities or security services, when travelling to their place of work.

445. The restrictions of the period of lock down and the other limitations resulted in an exceptional period of restraint. Some of this was reflected in the process which the respondent followed and the Tribunal has made appropriate allowances. For example, the Tribunal was told that Mr Barber was the only team member who had not been placed on the CJRS who had SQL experience. On other occasions, managers were placed on the CJRS (such as Ms Wilson from 1/11/2020 to 1/9/2021).
446. Ultimately however, the Tribunal has concluded that the lack of individual consultation and in the main, the fact that the respondent selected OBM crew for redundancy based upon PM and VOC data which the OBMs did not have access to at the relevant time; was unfair. The Tribunal does not take issue with the use of PM and VOC for OBMs; however, it was the methodology which was used which was unreasonable and therefore unfair.
447. Mr Brown repeatedly made the point that the Tribunal should not propose alternative selection criteria and nor should it somehow seek to 're-score' the candidates. In any event, the Tribunal cannot do so. The Tribunal is mindful that selection criteria were agreed with Unite. The crew who were selected for redundancy now say those criteria were unfair and should not have been used. The Tribunal concludes that Unite would have been (or should have been) aware of those criticisms and it had the opportunity during the collective consultation to challenge them with the respondent.
448. Unite did not simply accept what the respondent proposed. It threatened not to engage in collective consultation if the s.188 letters and HR1s were issued in a meeting on the 5/5/2021(page 671). Mr Richardson (Unite Civil Air transport National Officer) was very forthright and said at the meeting:

'My advice is that if you don't want to get stuck in that legal battle that we will get engaged with, if you want sustainability to how you do this to retain the most loved brand, then I would not say you are starting any formal consultation of s188s or HR1s. You need to announce what you have to announce but the formal process that shouldn't be triggered.

Ryan Air did it in the better way than most by saying what they were looking for but that they would have formal consultation further down the line. Understand you want that conversation but the minute you issue those s188s, that becomes a legal battle and we are precluded in what we can do based on legal advice.

You will end up in a bad place based on where you want to be. There is a better way to do it and other airlines have taken a slightly less confrontational approach.'

449. Furthermore, Unite contended for crew's service to be a criterion and as a result of that had the loyalty criterion included; which was in reality length of service. The respondent was resistant to this, however ultimately, it agreed.
450. The Tribunal concludes that Unite was fully engaged in this process and it reached agreements as part of the collective consultation, which it believed best served its members. It is acknowledged that some members' interests were not as well-served as others. By the very nature of Unite's position under the Trade Union Recognition Agreement, Unite had the right to collective bargaining and to effectively influence the process; which it did.
451. Unite agreed to the respondent using PM and VOC to score on board performance for OBMs and to PM being used for cabin crew.
452. The Tribunal accepted and concluded the reason for the dismissal of staff was redundancy as per s.139(1)(b) ERA in that the dismissal was wholly or mainly attributable to the fact that the requirements of the respondent's business for employees to carry out work of a particular kind had ceased or diminished, either in general or at the location at which the employee was employed. That is notwithstanding the hope expressed that as with previous crises (9/11 and the Global Financial Crises (page 681)), that recovery could take up to three years.
453. The creation and use of the Holding Pool had no bearing on the fairness or otherwise of the dismissals. The use of the Holding Pool was something which arose as a consequence of the termination of employment by reason of redundancy. It was not part of the fairness or reasonableness of the termination.
454. The Tribunal was repeatedly told that the overriding test in applying s.98(4) ERA was reasonableness. Namely, whether at each stage of the redundancy process the actions of the respondent were within the band of reasonable responses.
455. In respect of the first phase of redundancies, the Tribunal concludes the respondent's actions were outside of the band of reasonable responses in respect of the:
- 455.1. manner or methodology used;
  - 455.2. timetable; and

455.3. decision to select OBMs for redundancy as a confirmed decision; without any provisional selection or opportunity to challenge the decision taken.

456. The methodology used was simply too complex. It cannot have been correct that OBMs were simply told their overall score, broken down with the following headings:

PM score	VOC score	Combined score	Loyalty (years)	Loyalty (Points)	Conduct (Points)	Punctuality (Points)	Sickness Absence (Points)	Total Overall Points
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457. A score of (for Ms Bunting) -0.37 for VOC was meaningless without context. Not only was it not the base average score the crew were used to seeing on their iPads; it bore no resemblance to the Karen worked example, which in step four of a normalised net score, gave a figure of 57.81 (page 924). The Karen example was headed 'VOC – Normalisation Explained' (page 922).

458. It was unreasonable not to provide OBMs with their data, the route averages and the respondent's scoring calculations; in order that they could replicate the scores attributed to them. In particular, it was unreasonable for the respondent to provide what it did after its decision had been taken and communicated to the crew.

459. It was unreasonable to expect OBMs to extract their own data to perform complex calculations, which required the use of Excel (or a similar programme). It was unreasonable to provide this on the 23/6/2020, when the OBMs had been informed they had been selected for redundancy on the 11/6/2020. It was unreasonable for the document which explained how to access the data the crew needed, ran to 28-pages (accepting that some of the content was repetition). In any event, the section 'Accessing Historical Roster data' and the 'new' information ran to 13-pages (pages 1186-1198).

460. The unreasonableness of the timetable is demonstrated in part by the fact that the OBMs were informed of redundancies on the 11/6/2020 and were not given information to enable them to access their own data until the 23/6/2020.

461. The Chancellor announced on the 12/5/2020 that the CJRS would be extended to the 31/10/2020 and as such, from that point in time the immediate time pressure was reduced for the respondent (page 1701). The Tribunal accepts that from August 2020 there was additional cost to the respondent in respect of the CJRS; however, there was no urgent need to have pressed ahead with the redundancy notification notices on the 11/6/2020 for OBMs. It was unreasonable to do so.

462. The Tribunal does accept there was time pressure and in respect of phase one of the redundancies, there were two temporal issues. First, that the respondent needed to reduce its headcount for the purposes of refinancing. Second, that the CJRS was due to end on 31/10/2020 and the Government insisted that it would not be extended further.

463. Even allowing for those two factors, the respondent did have the option of slowing its timetable down, by a short period of time. It could then have allowed Mr Barber the time to run the data he said he could produce in four-days so that OBMs could be provided with his version of their data and his calculations. It could also have afforded itself the time to provisionally select crew for redundancy, to inform those crew members, to provide them with the data and then to have an effective consultation meeting with them.

464. The timetable then feeds into the decision to make a bald statement of (page 1102):

'Following the application of the agreed selection criteria, I can confirm you have been selected for compulsory redundancy, with the selection criteria indicating that you are not eligible for a position in the redundancy holding pool.'

465. In respect of the equity and the substantial merits of the case, the Tribunal concludes that in phase one, equity would require the respondent to have taken slightly more time to apply the process. Had it done so, it may have avoided the unreasonableness which the Tribunal has found and the resulting unfairness.

466. The Tribunal therefore concludes that the claims of unfair dismissal during phase one for the following test claimants (all OBMs) :

- 466.1. Zoe Anderson;
- 466.2. Joanne Bunting;
- 466.3. Ruth Benzal Mahon;
- 466.4. Claire Wood-Woolley;
- 466.5. Paula Lin;
- 466.6. TC12; and
- 466.7. Lyndsey Stevenson

are well-founded and succeed.

467. As such, s.112 and s.113 ERA should be referred to:

**S.112 The remedies: orders and compensation.**

(1) This section applies where, on a complaint under section 111, an employment tribunal finds that the grounds of the complaint are well-founded.

(2) The tribunal shall—

(a) explain to the complainant what orders may be made under section 113 and in what circumstances they may be made, and

(b) ask him whether he wishes the tribunal to make such an order.

(3) If the complainant expresses such a wish, the tribunal may make an order under section 113.

(4) If no order is made under section 113, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with sections 118 to 126 to be paid by the employer to the employee.

**s.113 The orders.**

An order under this section may be—

(a) an order for reinstatement (in accordance with section 114), or

(b) an order for re-engagement (in accordance with section 115), as the tribunal may decide.

468. It has been found there was no dismissal in respect of Gemma O’Hara (CCU), therefore her claim of unfair dismissal is not well-founded and is dismissed.

469. Samantha Ryder (CCU) did not advance any evidence to disturb the final written warning and nor did she invite the Tribunal to find any alternative conclusion other than her dismissal was inevitable due to that warning (which was given on 10/1/2020 to last for 24 months until the 9/1/2022 (page 2977)). Ms Ryder’s unfair dismissal claim is not therefore well-founded and is dismissed.

470. There was no other cabin crew claim advanced as a test claim for unfair dismissal in phase one. The three groups of represented claimants had the opportunity to advance a cabin crew test claimant and did not do so.

471. The Tribunal therefore finds the dismissals of the cabin crew were fair by reason of redundancy in phase one.

472. Similarly, in respect of phase two, there was no OBM test claimant, other than Paul McGill (see below). There was no cabin crew test claimant in phase two. The Tribunal therefore finds in the absence of a test claimant being advanced, the dismissals by reason of redundancy in phase two were fair.

s.47C ERA Detriments (issues 34-35)

473. TC12 did not establish any causal link between her leave and the respondent's decision (agreed with Unite) to use a minimum of 10 entries for any crew member. The minimum of 10 was set as the respondent believed that was the acceptable lowest number which could be used and which maintained the data's integrity.

474. Lyndsey Stevenson did not advance any evidence-in-chief in respect of a detriment claim.

475. Both claims fail and are dismissed.

Direct age discrimination (issues 36-40)

476. There was no evidence-in-chief advanced in respect of this allegation by Gemma O'Hara and Paul McGill. Their claims fail and are dismissed.

477. In respect of the MS claimants and Lyndsey Stevenson, the Tribunal reached the following conclusions.

478. There was no evidence-in-chief from Ms Stevenson in respect of allegations 36.2, 36.3 and 36.4. Those allegations are withdrawn by the MS claimants. Those allegations fail and are dismissed.

479. In respect of 36.1, the Tribunal concludes that the youngest crew members are not in materially the same circumstances as the OBMs. The correct comparator would have been OBMs aged under 38 years of age. That is not how the allegation has been framed.

480. In respect of 36.5, the respondent did not exclude older claimants from the Holding Pool. The Tribunal was told TC12 (aged over 38) and Ms Lin (aged 51) were included in the Holding Pool. Some New Hire Groups were, by agreement with Unite, given automatic entry to the Holding Pool. The entry to the Holding Pool was then restricted by not offering a place to those with sanctions and then by order of scoring. A place in the Holding Pool was not determined by being under 38 years of age.

481. The Tribunal has concluded the reason for dismissal was redundancy. Those aged over 38 years of age, were not dismissed because of their age (allegation 36.6).

Indirect Age Discrimination (allegations 41 to 44)

482. None of the CCU claimants (Gemma O'Hara, Paul McGill and Lyndsey Stevenson) advanced evidence-in-chief and therefore their claims fail and are dismissed.
483. The MS claimants now pursue three PCPs, one of which (41.3) has been split into two parts.
484. PCP 41.3 part (a) referred to only scoring OBMs on VOC data. Cabin crew were not scored against VOC. This was agreed with Unite. Some new recruits were given average scores for PM (PCP 41.3 part (b)). Again, this was agreed with Unite. The new recruits are not comparators for the OBMs as per s.23 EQA. The PCP is not established.
485. PCP 41.6 was not established as the comparators were not in the same material circumstances as the OBM claimants per s.23 EQA.
486. PCP 41.7 is also not established. The newly promoted OBMs and seasonal crew were not in materially the same circumstances as the OBMs aged over 38 years of age.
487. Unite were aware of the differentials between the OBMs and the crew they sought to compare themselves to. The PCPs are not established and the claims of indirect age discrimination fail and are dismissed.

Direct sex discrimination (issues 45 to 47)

488. There was no evidence-in-chief from Gemma O'Hara in respect of direct sex discrimination. The same applied to Samantha Ryder, Lyndsey Stevenson and Paula Lin.
489. In the absence of any evidence-in-chief, the burden of proof was not satisfied and the claims fail and are dismissed.

Indirect sex discrimination (issues 48 to 59)

490. The Tribunal concludes the comparator group of flight crew (pilots) and cabin crew are not in materially the same circumstances. The Tribunal found the pilots were not a comparator group for the purposes of the PCP. The allegation therefore fails and is dismissed.
491. There was a proposal to replace Gemma O'Hara's legacy part-time contract with an updated part-time contract and the respondent accepted this was a PCP (allegation 52).

492. The reason Ms O'Hara could not accept the proposed contract was due to her personal circumstances. There is therefore no group disadvantage established by her. This claim fails and is dismissed.

493. The PCP (allegation 56 in four sub-parts) relating to the scoring was not addressed in evidence-in-chief by Samantha Ryder and Lyndsey Stevenson. Paula Lin only led evidence-in-chief in respect of PCP 56 (a) – using VOC data to score OBMs against the on-board performance criterion. The Tribunal concludes however that Ms Lin did not articulate what the particular disadvantage is for females. The burden of proof did not pass to the respondent and the claim fails and is dismissed.

#### Part-time contracts (issues 61-64)

494. Based upon the assumption that Paul McGill advanced this allegation as did Gemma O'Hara, Samantha Ryder and Paula Lin; the Tribunal concludes as follows.

495. Mr McGill and Ms O'Hara did not refer to any particular disadvantage to establish less favourable treatment linked to part-time status.

496. Ms Ryder did not advance any evidence-in-chief in respect of this claim.

497. In respect of Ms Lin, the Tribunal found that there was no less favourable treatment based upon part-time working. There was a minimum number of entries required which applied to all.

498. These claims therefore fail and are dismissed.

#### Status of the test claimants

499. Although Ms O'Hara was advanced as a test claimant, the Tribunal finds she was not. The Tribunal has found she was not dismissed and she is not therefore representative of cabin crew claimants.

500. Similarly, Ms Ryder was advanced as a test claimant. She was on her own case on a final written warning (a conduct sanction). The agreed criterion which applied to her was a score of -4 (page 918). Her overall score was -110 (page 3008). In view of the agreement to remove crew with conduct sanctions, it is inevitable that Ms Ryder would have been dismissed as redundant, whatever selection criteria and methodology were agreed with Unite and then applied. Ms Ryder does not represent or advance any class of cabin crew.

501. As the test claims of Caroline James and Amy Adams were not advanced, the result is that there is no effective cabin crew test claimant for either phase one or phase two of the redundancy process.
502. The net result of that is that there was no cabin crew claim determined during this hearing as a test claimant; when there was a clear opportunity to do so. All claims by cabin crew will be dismissed.
503. The OBM claims (FSMs and CSSs) for unfair dismissal during phase one of the redundancies are well-founded and succeed. They will proceed to remedy (see below).
504. The claims for unlawful discrimination contrary to the EQA, for detriments contrary to s.47C ERA and for less favourable treatment as a part-time worker under the 2000 Regulations all fail and are dismissed.
505. There was no effective test claimant advanced in respect of any claim during phase two of the redundancies. Mr McGill was not a test claimant. He was not representative of a group of claimants and was in a self-selecting group of a trade union representative who was selected for redundancy in phase one; but was ring-fenced or protected due to his Trade Union status. Mr McGill echoed the criticisms the other test claimants made of use of PM and VOC; however the findings of fact and conclusions reached in respect of that process apply to him as a CSS. He was not made redundant in phase one despite his score and he did not effectively advance his claim in respect of dismissal in phase two.
506. No effective claim for notice pay or holiday pay was advanced, when there was an opportunity to do so. They therefore fail and are dismissed.

#### Unfair dismissal remedy (issue 33)

507. In respect of the successful claims for OBMs in phase one, there was a finite timeline. At the time of the phase one redundancies, the respondent knew as of 12/5/2020 that the CJRS had been extended to the 31/10/2020 (page 1701), albeit that there were increased costs for the respondent from August 2020. Clearly, whilst the respondent would not want to incur unnecessary additional costs, taking into account all of the circumstances at the time, the additional cost (if OBMs continued on the CJRS into August, September and October 2020) was not significant. If indeed, it was necessary to extend OBMs' employment or notice period with the cut off date being the end of October 2020. The respondent would still have to pay redundancy and notice pay, whenever the termination took place.

508. The late extension of the CJRS on 31/10/2020 to 31/12/2020 and the ability to retrospectively reinstate anyone made redundant from 23/9/2020 (and the extension of the CJRS to 31/3/2021) did not have a material impact upon the phase one redundancies and the timings.
509. The longest period of notice was 12-weeks (as per Ms Bunting (page 2423)). The notice periods expired on the 20/9/2020 (for those on 12 weeks' notice). There was therefore scope for the process to have been less truncated and for the failings which the Tribunal has found; to be corrected. In the alternative, a payment in lieu of notice could have been paid if there was a risk the notice period could expire after the 31/10/2020. It had been confirmed on 17/7/2020 that the CJRS could not be used to pay statutory redundancy or contractual or statutory notice pay. The respondent would therefore have known it would have to meet this cost.
510. Mr Barber's evidence was that it would have taken him four days to do the calculations to provide the data to the crew.
511. The successful OBMs are invited to set out their positions in respect of s.112 and s.113 ERA and for the respondent to agree remedy.
512. If that proves impossible (the parties are reminded of their obligations under the overriding objective and of the cost of further hearings), the successful parties and the respondent are reminded that in order to preserve a date in all diaries, a provisional remedy hearing has been listed for 23/6/2025 to 27/6/2025. The Tribunal would hope that it is not necessary to have a preliminary hearing in advance of a remedy hearing. The parties are Ordered to agree Directions for the remedy hearing and to provide the same to the Tribunal for approval, within 21 days.

10/1/2025

Approved by Employment Judge Wright

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and others  
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Appendix 1 – Chronology

<b>WORKING CHRONOLOGY</b>		
<b>Date</b>	<b>Event</b>	<b>Bundle reference</b>
30 January 2020	World Health Organisation declared Covid-19 a public health emergency of international concern.  The Respondent announced the suspension of its Heathrow to Shanghai operations.	582
28 February 2020	The Respondent confirmed the suspension of Shanghai operations would continue until 19 April 2020, frequency of flights to Hong Kong had been reduced and that it had implemented a freeze on recruiting, stopped all non-essential travel and training and limited the number of internal events.	584
4 March 2020	The Respondent announced additional cash protection measures.	586
11 March 2020	World Health Organisation declared Covid-19 outbreak a global pandemic.	596
13 March 2020	The Respondent announced a planned reduction to its flying programme of approximately 20%.	596
14 March 2020	The United States announced it would add the UK to its travel embargo (effective from 16 March 2020).	599
16 March 2020	The Respondent met with Unite, to discuss and agree the contents of an announcement to be made company-wide regarding the impact of Covid-19, its intended changes to operations and measures proposed to reduce costs.  Respondent makes the above announcement.	612 - 613  604 - 605

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19 March 2020	The Respondent announced that it had avoided the need for a significant compulsory redundancy programme in the immediate term.	626
20 March 2020	The Government launched the Coronavirus Job Retention Scheme ("CJRS").	1701
23 March 2020	First national lockdown announced.	-
26 March 2020	The Respondent announced its skeleton flying programme had been reduced to three routes.  Respondent confirmed it would be utilising the CJRS.	631  631 - 632
17 April 2020	Government announcement regarding the extension of CJRS	1701
21 April 2020	The Respondent paused all passenger flights with flying limited to cargo only.  Virgin Australia entered administration.  The Respondent's Cabin Crew Operations Manager sends Respondent's Head of Cabin Crew Operations an email with the subject 'CR Selection Summary Slides' attaching a Powerpoint titled 'Cabin Crew CR Selection Summary'.	666  666  659-665
24 April 2020	The Respondent announced that, subject to operational changes, it intended to continue using CJRS into June 2020.	666
5 May 2020	The Respondent had a briefing call with Unite.  The Respondent announced the Phase 1 redundancy exercise to its workforce.  All cabin crew were sent a letter confirming that their role had been identified as at risk of redundancy.	670-674  675, 681-682 & 686-687  714-716
6 May 2020	The Respondent met with Unite.	717
7 May 2020	The Respondent met with Unite.  Sven Sharpe circulates draft selection criteria for discussion on 8 May 2020.	747-750, 773-775  751-769
8 May 2020	The Respondent met with Unite.	777-784, 791

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12 May 2020	The Government announced the extension of the CJRS until the end of October 2020.	850, 1701
13 May 2020	The Respondent met with Unite.	809, 823-830, 831-834
14 May 2020	The Respondent met with Unite.	836-849, 861- 864
18 May 2020	The Respondent met with Unite.	887-895
18 May 2020	Unite sent the Respondent the result of its crew survey regarding selection criteria	878-885
19 May 2020	The Respondent and Unite sign an agreement.	900-907
	The Respondent issues an update via Workplace and email informing the crew of selection criteria to be applied.	908, 912-913
20 May 2020	The Respondent published a video on Workplace regarding the crew selection criteria.	982-985
21 May 2020	The Respondent posted on Workplace a summary of the "modern" part-time contract terms.	993-997, 998
22 May 2020	Government announces 14-day quarantine for travellers arriving in the UK from 8 June 2020.	858
26 May 2020	Sven Sharpe email to MPDs re. VOC/PM update – action required.	1010
27 May 2020	The Respondent sent the section 188 letter and copy HR1 forms to Unite	1012-1035
30 May 2020	Estelle Hollingsworth communication on Workplace explaining entry to the holding pool (no live formal sanctions)	1041
1 June 2020	The Respondent published an update on consultation and the timelines for progressing the redundancy process on Workplace	1045-1048
	Unite issued an update to its members.	1049-1050
2 June 2020	The Respondent communicated about changes to part-time contracts	1075 1087

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	The deadline for voluntary redundancy requests was extended from midnight on 1 June 2020 to 5pm on 3 June 2020.	
9 June 2020	Gemma de Silva (O'Hara) voluntary redundancy request confirmed.	2932
11 June 2020	Letters sent to crew confirming the outcome of the selection for redundancy following desktop selection exercise.  Paul McGill informed not selected in Phase 1.	1096 - 1111  2810
12 June 2020	Applications for internal vacancies open at 4pm.  A Workplace video summarising the next steps in the redundancy process for crew published.	1119  1123
15 June 2020	Estelle Hollingsworth post on Workplace about entry to the hold pool.  Individual consultation meetings commence.	1124-1127  1045-1046
16 June 2020	Redundancy appeals managers trained by Respondent by webinar	1132-1147
17 June 2020	Jonathan Borsberry shares guide re how to access performance data.	1149-1151
18 June 2020	The Respondent sent to Unite a summary of the PM and VOC quartile ranges and averages used for Phase 1 selection (by rank and base).  Window for applying for internal vacancies ends.  Ruth Benzal Mahon Individual consultation meeting held.	1157 -1160  1119  2213, 2216-2219
23 June 2020	The Respondent issued a "Cabin Crew Data Guide".  Individual consultation meetings for Zoe Anderson, Jo Bunting and Claire Wood Woolley.  Ruth Benzal Mahon Subject Access Request sent by email.	1171-1198  2096, 2105-2108, 2381, 2384-2387, 3319, 3322-3325  2222
24 June 2020	Lyndsey Stevenson individual consultation meeting held.	3049, 3052-3055

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26 June 2020	The Respondent began to provide individual VOC data breakdowns to OBMs, and PM data breakdowns to crew that had requested them.	1211
26 June 2020	Gemma da Silva (O'Hara) collective grievance lodged.	2938-2940
29 June 2020	Jo Bunting appeal lodged	2396-2420
30 June 2020	TC12 individual consultation meeting held.	2666-2669
2 July 2020	Paula Lin individual consultation meeting held.	2733-2734, 2740- 2744
3 July 2020	Samantha Ryder individual consultation meeting held.	2982-2986
7 July 2020	Claire Wood Woolley appeal lodged	3333-3369
9 July 2020	The Respondent (Richard Callegari) told 36 individuals (of which 22 were cabin crew) they had qualified for retiree staff travel concessions.  This was an error. Richard sent an email regarding the error.	1269-1273  1270
10 July 2020	The Respondent sent redundant crew an email concerning return of company property.  Zoe Anderson appeal lodged.  Lyndsey Stevenson appeal lodged.  TC12 appeal lodged.	1278-1279  2113-2131  3073-3135  2682-2688
11 July 2020	Ruth Benzal Mahon (first) appeal lodged  Amy Adams' individual consultation meeting held	2277-2284  2034-2036
14 July 2020	Respondent announced it had launched a court backed solvent recapitalisation process	1283
16 July 2020	Richard Collegari emailed about an error in relation to qualification for staff travel concessions for 36 colleagues (see 9 July entry).  Samantha Ryder appeal lodged.  Paula Lin appeal lodged.	1291  2994-3002  2754-2767
20 July 2020	Limited passenger flying by the Respondent resumes.	1284

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21 July 2020	The Respondent sends a further email to redundant crew about the return of company property.	1294-1295
22 July 2020	The Respondent sent its Phase 1 demographic summary document to Unite.  Amy Adams submits appeal.	1298, 1299-1305  2037-2049
24 July 2020	Cabin appeals insight webinar held for appeal managers by Respondent.	1308-1319
28 & 31 July 2020	Workplace posts regarding pilot reimbursement for uniform return.	1322, 1333
4 August 2020	The Respondent issues a Workplace post regarding reimbursement for uniform return.	1357-1358
5 August 2020	'Returning Uniform update' issued by the Respondent.	1367-1368
6 August 2020	The first two Phase 1 crew redundancy dismissals took effect.	-
10 August 2020	Jo Bunting appeal outcome delivered (not upheld)  Ruth Benzal Mahon (first) appeal outcome delivered (partially upheld)  Amy Adams appeal outcome (not upheld)	2459, 2467-2481  2289, 2290-2301  2056, 2060-2067
12 August 2020	Zoe Anderson appeal outcome delivered (not upheld)  TC12 appeal outcome (not upheld)	2133, 2135-2166  2690, 2691-2698
13 August 2020	Lyndsey Stevenson appeal outcome (partially upheld)	3159, 3166-3186
16 August 2020	Amy Adams: Effective date of termination  Samantha Ryder: Effective date of termination	2053  2989
25 August 2020	Respondent's People Team sent out example "modern" part-time contract schedule and summary of terms.	1384-1390

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	Workplace post regarding visibility of new part-time contracts.	1391
26 August 2020	Paula Lin appeal outcome (not upheld)	2777, 2778-2794
27 August 2020	Normalisation explanation shared with Jonathan Borsberry by Thomas Barber.	1398-1399
28 August 2020	Samantha Ryder appeal outcome (not upheld)	3014, 3015-3022
31 August 2020	Claire Wood Woolley appeal outcome delivered (partially upheld)	3391, 3392-3411
1 September 2020	Review of Zoe Anderson appeal concluded (not upheld)  Review of Lyndsey Stevenson appeal concluded (partially upheld)	2181, 2187-2197  3278, 3279-3300
3 September 2020	The Respondent met with Unite.  Lyndsey Stevenson: Effective date of termination	-  3059
4 September 2020	The Respondent met with Unite.  Respondent announced a second phase of redundancies (which would include more cabin crew redundancies).  A cabin crew update was shared on a call and a video message posted to Workplace.	1402-1405  1406-1409  1412-1413
6 September 2020	Paul Powell sends the Respondent a 'lessons learned' document  Respondent sends Paul Powell and Claire Simpson of Unite slides created following the 'lessons learnt' discussion held the previous week.	1447-1449  1447, 1450-1454
7 September 2020	The Respondent met with Unite.  The Respondent wrote to all crew regarding Phase 2 redundancies.	1456-1477, 1505-1509  1478-1480
8 September 2020	The Respondent met with Unite.  The Respondent sent the section 188 letter and HR1 forms to Unite.	1497/1509-1511  1512-1525

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9 September 2020	The Respondent met with Unite.	1530-1532
10 September 2020	The Respondent met with Unite.	1533-1534
11 September 2020	The Respondent notified crew that they would be told whether they were at risk by email on the afternoon of 15 September 2020.	1535
11 September 2020	The Respondent HR1 MAN.	1545-1548
12 September 2020	The Respondent HR1 LHR.	1541-1544
14 September 2020	Phase 2 voluntary redundancy window closes.	1487
15 September 2020	Respondent delivers Phase 2 outcome decisions to each crew member specifying whether "not at risk" or confirming selection for compulsory redundancy	1556 - 1559
17 September 2020	Ruth Benzal Mahon effective date of termination.	2255
20 September 2020	Zoe Anderson, Jo Bunting and Claire Wood Woolley effective date of termination	2103, 2395, 3329
25 September 2020	Phase 2 collective consultation ends.  Gemma O'Hara: Effective date of termination.	1578  2933
26 September 2020	Redundancy appeals training webinar for Phase 2 appeal managers.	1580-1588
27 September 2020	TC12: Effective date of termination.	2670
27&28 September 2020	The Respondent sent to Unite (i) a summary of the PM and VOC quartile ranges and averages used for Phase 2 selection (by rank and base); and (ii) the score ranges for crew not selected, selected for the CCRS or selected for compulsory redundancy (with hold pool).	1589-1594
30 September 2020	Ruth Benzal Mahon further appeal submitted  Caroline James individual consultation meeting held.	2329-2337  2545-2549

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September 2020	Agreement regarding Phase 2 between Respondent and Unite.	1647-1651
1 October 2020	Internal vacancies site opened to applications.  Paula Lin: Effective date of termination.	1439  2745
9 October 2020	Ruth Benzal Mahon further appeal outcome delivered (partially upheld)	2360, 2361-2369
13 October 2020	Caroline James lodges collective grievance regarding restriction of access to Virgin's systems for crew on garden leave in Phase 2.	2560
15 October 2020	The Respondent sent its Phase 2 demographic summary document to Unite.  Paul McGill individual consultation meeting held.	1672, 1673-1686  2835-2843
23 October 2020	The Respondent confirmed in a Workplace post that individual consultation meetings had been held for all crew impacted in Phase 2 and that the appeals window had closed.	1693
26 October 2020	The first Phase 2 crew redundancy dismissal took effect.  Paul McGill submits appeal.	-  2881-2894
29 October 2020	Caroline James' collective grievance hearing.	2582-2585
31 October 2020	Government announced suspension of the planned Job Support Scheme and a further extension to CJRS.	1696, 1701
1 November 2020	All crew selected for compulsory redundancy in Phase 2 whose notice period extended past 31 October 2020 were placed on garden leave.	1661-1662
2 November 2020	The Respondent placed intended CCRS participants on furlough leave.	1696-1697
5 November 2020 – 2 December 2020	Second national lockdown.	-
19 November 2020	Caroline James' collective grievance outcome sent.	2602-2607

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14 December 2020	Paul McGill appeal outcome.	2900, 2902-2920
24 December 2020	Caroline James: Effective date of termination	2551
8 January 2021	Paul McGill: Effective date of termination	2846
15 February 2021	Hotel quarantine for travellers arriving from High Risk Countries begins	-
22 February 2021	Government publishes roadmap for leaving lockdown	-
4 January 2021 – 7 March 2021	Third national lockdown.	-
20 July 2021	Gemma da Silva (O'Hara) collective grievance outcome.	2952-2958
8 November 2021	The United States border reopened.	

**Agreed by the parties  
31 May 2024**

Appendix 2 – List of Issues

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**FINAL LIST OF CONSOLIDATED ISSUES**  
**14 MARCH 2024**

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**A - JURISDICTION**

**Correct Respondent**

1. Is Virgin Atlantic Airways Limited (“the Respondent”) the correct and only respondent in these proceedings? Some of the Claimants listed in Annex 1 also bring claims against Virgin Atlantic International Limited. The Respondent and MS claimants are of the view that it is the correct and only Respondent to these claims, as confirmed by the Order of EJ Hyams-Parish dated 10 June 2022.

**Time Limits: Employment Rights Act 1996**

2. Have any claims below been brought outside the time period provided by ss. 48(3)(a) or 111(2)(a) of the Employment Rights Act 1996 (‘**ERA 1996**’), as adjusted for early conciliation?
3. If so, has the Claimant shown that:
  - 3.1 It was not reasonably practicable to present their claim within the prescribed period, pursuant to ss. 48(3)(b) or 111(2)(b) ERA 1996; and
  - 3.2 If so, their claim was presented within a reasonable further period?

**Time Limits: Equality Act 2010**

4. Have any claims below been brought outside the time limit provided by s. 123(1)(a) of the Equality Act 2010 (‘**EqA 2010**’), as adjusted for early conciliation?
5. If so, has the Claimant shown it is just and equitable to extend time to bring those claims pursuant to s. 123(1)(b) EqA 2010?

**Time Limits: Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000**

6. Have any claims below been brought outside the time limit provided by Regulation 8(2) of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (‘**PTWR 2000**’)? If so, has the Claimant shown it is just and equitable to extend time to bring those claims pursuant to Regulation 8(3) PTWR 2000?

**C - UNFAIR DISMISSAL**

7. Were the Claimants bringing an unfair dismissal claim dismissed by the Respondent?

8. The Respondent:
- 8.1 Denies that Noreen Fitzpatrick, Anita Hudson, Courtney Messenger, Gemma O'Hara, Louise Pardoe, Sheri Phillips, Petra Simmons, Vanessa Shadbolt, Rima Theisen and Dee Watts were dismissed as they took voluntary redundancy and termination was by mutual consent; and
- 8.2 Agrees that the Claimants set out in Annex 1 (and not listed at 8.1 above) were dismissed by the Respondent.
9. If the Claimants were dismissed by the Respondent, were the dismissals for a potentially fair reason? The Respondent contends that the reason for dismissal was redundancy or, in the alternative, some other substantial reason, namely business reorganisation.
10. If the reason was redundancy or some other substantial reason of a kind such as to justify the dismissal, did the Respondent act reasonably or unreasonably in the circumstances (including the size and administrative resources of its undertaking) in treating it as a sufficient reason for dismissing the Claimants, considering the following?

**Adequate warning and consultation**

**Collective consultation**

11. When did the Respondent form a fixed clear (albeit provisional) intention to make redundancies? Did the Respondent give advance warning of redundancies, and was consultation in good time?
12. Did the Respondent provide adequate information to appropriate employee representatives so as to allow consultation to take place concerning-
- 12.1 The reason for the redundancy proposals;
- 12.2 The numbers and descriptions of the workers whom it is proposed to dismiss as redundant;
- 12.3 The total number of workers employed at the establishment in question;
- 12.4 The proposed method of selection and the manner in which the dismissals were to be carried out and;
- 12.5 The proposed method of calculating redundancy payments?
13. Was consultation meaningful? The Claimants allege there was no meaningful consultation with the appropriate representatives of the employees affected by the redundancies, i.e., Unite the Union. They allege that:
- 13.1 The consultation was "abridged";
- 13.2 The Respondent provided inadequate information on the redundancy matrix or scoring to be used;
- 13.3 There was no trial run of the selection matrix as suggested by the Union;

13.4 The Respondent dismissed relevant employees in the currency of the statutory minimum consultation period contrary to s. 188(1A)(a) TULRCA 1992.

**Individual consultation**

14. Did the Respondent adequately inform and consult about possible redundancies? The Claimants allege individual consultation was inadequate as:

14.1 In respect of Karen Wordley's claim only, the Respondent "*ignored my request to be consulted*";

14.2 The Respondent "*misled*" "*long serving OBMs*" as to the number of such employees being made redundant, such that such staff did not seek enhanced voluntary redundancy;

14.3 The Respondent provided insufficient "*background data*" before individual consultation meetings, in that:

14.3.1 The matrix was highly complex and difficult to understand;

14.3.2 There was mixed use of aggregated, mean, mode and median which led to less accurate outcomes;

14.3.3 DSARs for personal information were not actioned adequately; and

14.3.4 Incomplete data was provided;

14.4 There were discrepancies between the scoring system shared with employees at risk of redundancy and the scoring system as applied by the Respondent;

14.5 The Respondent provided inadequate information on the redundancy matrix or scoring to be used. The Claimants allege that:

14.5.1 The normalisation method was changed between rounds 1 and 2 of redundancy;

14.5.2 The normalisation method was not conducted as agreed;

14.5.3 No calculations were shared by the Respondent; and

14.5.4 Claimants were not told where they were placed on the redundancy list.

**The adoption of a reasonable selection decision including its approach to selection pool**

15. Was the creation of a separate Manchester pool within the range of reasonable responses available to the Respondent?

16. Did the Respondent adopt a fair selection procedure and criteria?

17. The Claimants allege the criteria were applied inconsistently as described at paragraph 21.8, 21.9 and further that -

17.1 Normalisation was not routinely applied;

17.2 Redundancy scores were determined according to a variable number of performance management (PM) scores;

17.3 Rank averages were not awarded to compensate for missing PM scores;

17.4 Staff were not scored according to a consistent number of VOC scores;

17.5 Negative feedback and detractors were wrongly attributed to FSMs and CSSs;

17.6 The trigger for maximum points available for loyalty was less in round one than in round two;  
17.7 A higher number of points was awarded to those in the top 50% for VOC scores than those in the top 50% of PM scores;  
17.8 VOC was only applied to CSSs and FSMs – not to other potential candidates for redundancy;  
17.9 VOC was wrongly attributed to CSSs for cabins not under their supervision;  
17.10 Some OBM's had appeal points upheld that were outside of the 5 allowable challenge criteria;  
17.11 A "Last in First Out" ("LIFO" i.e. a loyalty/length of service) policy had been consistently used by the Respondent for previous redundancies for all cabin crew and pilots. In this selection process, LIFO was not implemented for the cabin crew selection criteria, but it was for pilots.  
17.12 crew member union representatives were ring fenced and protected from redundancy selection.

18. Did the Respondent apply the selection procedure and criteria fairly?
19. The Claimants say there was a *"trend of all lower salaried seasonal crew retaining a position within the company"*. The selection criteria was unfairly applied as Seasonal FSMs were given a choice of rank to be considered for, better prepared for the selection exercise as they were given *"prior knowledge and understanding of normalisation"* to make *"a more informed decision"*.
20. Were the redundancy matrix and use of the 'Voice of the Customer' ('VOC') and Performance Management ('PM') scores unfair?
21. The Claimants allege that the scores against the criteria were unfair because:
- 21.1 The scores for Performance were 'unreliable', 'inaccurate', not objective and/or discriminatory because they were based on VOC data, which was never intended as a tool for redundancy selection;
- 21.2 The Respondent failed to set a minimum number of VOC returns per sector (flight) before the VOC data could be used, meaning the VOC data used was unreliable;
- 21.3 When using VOC to score Performance, FSMs and CSSs were banded together under the umbrella term of OBM, despite their different responsibilities;
- 21.4 The Respondent arbitrarily chose to use one promoter and two detractor comments in the calculation of scores, rendering them unfair;
- 21.5 There was a failure to include reliable attendance and productivity data in the selection criteria;
- 21.6 The Respondent's and ACAS procedures were not followed *"when issuing informal sanctions"*, i.e. letters of concern, but these led to selection for redundancy;

- 21.7 The Respondent's and ACAS procedures were not followed "*when issuing informal sanctions*" for "*sickness triggers*" but these also led to selection for redundancy;
- 21.8 Scoring was inconsistently applied in that:
  - 21.8.1 VOC data was not used for cabin crew but was used for OBMs;
  - 21.8.2 The scoring system was "*dependent upon the specific aircraft type ...destination*" and aircraft age;
  - 21.8.3 There were calculation errors, i.e., the Respondent incorrectly applied the calculation
    - 21.8.3.1 The original score given by the Respondent could not be replicated using the calculation method given;
    - 21.8.3.2 Incorrect data was used to score candidates;
    - 21.8.3.3 Calculations were not retained, meaning that methodology could not be verified;
    - 21.8.3.4 Further the scores were not, in all cases, calculated using the stated minimum number of entries;
    - 21.8.3.5 Incorrect base targets were used.
  - 21.8.4 The calculation varied by contract type "*meaning two individuals on the same flight would have scored differently depending on whether they had operated 45 sectors or or 75+ sectors*";
- 21.9 There was no statistical robustness in the application of the VOC data, meaning the data was not resistant to errors in the results. The Claimants allege that:
  - 21.9.1 The VoC data was subjective, unreliable and often inaccurate;
  - 21.9.2 There was no minimum number of returns per flight in place (so a single return would have been accepted from a flight of over 400 passengers);
  - 21.9.3 Individual calculations were not in accordance with published guidelines;
  - 21.9.4 Methodology was overly complex, and switched between mean, median, mode and/or average.
  - 21.9.5 Cumulative scores were used, which meant that very low data returns exaggerated the scores, creating extreme highs and lows, not averages.
  - 21.9.6 No consistent amounts of data applied to all crew.
  - 21.9.7 Minimum flight sector entry was set at 25 with no maximum.
  - 21.9.8 Fewer entries for part-time crew were more likely to be affected by outlier scores;
  - 21.9.9 Virgin Holidays (double red) data was removed. This could negatively impact those who operated on holiday routes, mainly based at Manchester or Gatwick;
  - 21.9.10 Instead of giving the customer 10 options from excellent to very poor, there were only 5 options leading to less reliable outcomes due to outliers;
  - 21.9.11 VoC data used 2 detractors (very poor and poor) but only 1 promoter (excellent)

- 21.9.12 PM (performance monitoring) critical amounts of data was missing. New crew and those in training with less than 10 entries given the company wide average.
- 21.9.13 PM was delivered 3 months in arrears and anonymously. Challenges of PM were generally unsuccessful.
- 21.9.14 PM inconsistently applied. New crew not trained how to provide upward feedback.
- 21.9.15 Some OBMs were told to lower marks as there was an unrealistic average of 4.7+/5 for OBM ranks.
- 21.9.16 Customers who provide feedback are generally negative so it is unfair to use this as PM / in redundancy selection.
- 21.9.17 No trial run was ever performed on the outcome of the matrix list.
- 21.9.18 Two impartial managers with direct knowledge of the individuals should have checked the outcomes, instead of having an external company perform the data run.
- 21.9.19 Calculations (including the background data) should have been supplied to enable challenge by the Claimants, or stored / saved from appeal outcome rerun by VAA.
- 21.9.20 No minimum or maximum set for either VoC, PM or passenger entry responses.
- 21.9.21 The comments were mainly irrelevant to performance, yet unchallengeable due to narrowly defined appeal process.
- 21.9.22 Appeal outcomes were inconsistent from appeal managers, some with no knowledge of the job role.
- 21.9.23 Normalised scores were not supplied before redundancy process to crew (except newly promoted).
- 21.9.24 Normalisation did not take fair account of differences between certain routes.;
- 21.10 VOC data was unfairly used only in the case of OBM staff, rather than for all cabin crew;
- 21.11 In respect of Caroline James' claim only, it is alleged that mistakes were made regarding length of service scores, and these were not rectified;
- 21.12 *"Performance [had] to be measured to 5 decimal places to separate candidates on tie breakers"*;
- 21.13 Performance scores were not normalised fairly by the Respondent - not applied to days of the week, months of year, aircraft type / changes, Virgin Holidays scores were removed but the same logic was not applied to other scores based on subjective comments;
- 21.14 The Respondent failed to adjust the period over which VOC scores were considered where Claimants had limited scores due to being on maternity/parental/adoption leave, sick leave or bereavement leave, or worked part-time over the relevant period under consideration;
- 21.15 In respect of Karen Wordley's claim only, the Respondent considered VOC scores obtained when employees were not working in their contracted roles;

- 21.16 *"The promotion of 15 seasonal FSMs resulted in all year round over establishment in the rank and a disproportionate number of FSM redundancies at the Manchester base";*
- 21.17 Some crew members (including Manchester temporary 7-5) were told in advance of normalisation of the scoring system and were advised which destinations to avoid. The Claimants allege that CSS's were not told. It is alleged that only individuals who were on a promotion journey were told, including some FSMs, newly promoted OBMs, and some individuals on performance plans, were told this prior to selection by their line managers at LHR and MAN, including Tony Mayo and Jason Papageorgiou;
- 21.18 Seasonal FSMs were given choice of what rank to be considered for, coached in the role to assist them with the redundancy selection criteria, whereas the Claimants were not;
- 21.19 *"Seasonal FSMs receiving PM scores over a 7-month period as FSM, 5 months at the lower rank of CSS, while permanent FSMs attributed scores with 12 months in rank. Unfair comparable data";*
- 21.20 Manchester and London staff were *"treated differently in terms of thresholds. Being on the wrong side of the boundary the company chose lower performing FSMs with less loyalty due to location";*
- 21.21 The criteria and scoring were flawed as there was no *"trial-run"* of the matrix;
- 21.22 The use of reports from *"untrained junior crew"* in the scoring of OBMs against Performance Monitoring was unfair;
- 21.23 Performance monitoring was unfair as it was subjective and inconsistent;
- 21.24 There were *"system deficiencies"*, failures of management and performance monitoring, meaning that the CSS rank had no managers for months, Claimants' performance was not appraised appropriately for years, no correct base targets provided and scoring of their performance was unjustified and unfair;
- 21.25 *"The company not honouring a clear overlap in loyalty points awarded";*
22. Insofar as any Claimant succeeds in demonstrating that the use, weighting and scoring of the criteria was discriminatory, did that render their dismissals unfair?

**What steps to avoid the need for compulsory redundancies and find suitable alternative employment**

23. What steps did the R take to avoid the need for redundancies? The Claimants say there was a lack of *"procedural mitigation"* compared to the *"avenues"* available for ground staff.
24. Did the Respondent consider alternative employment as a way of avoiding redundancy? The Claimants allege the Respondent failed to consider suitable alternative employment in that:
- 24.1 It failed to consider demotion (noting the allegation that *"Seasonal crew"* had *"multiple chances...to retain employment within different ranks"*);
- 24.2 It failed to place the Claimant in the holding pool;

- 24.3 It failed to furlough the Claimants or maintain furlough for Claimants as an alternative to redundancy;
- 24.4 The Retiree Benefit Package was offered to crew, stating they had met the correct criteria to be awarded this, it was then retracted as a mistake;
- 24.5 It failed to consider bumping.

### Appeals Process

- 25. Was the appeals process unfair? The Claimants contend that the appeal process was flawed and compounded the unfairness of their dismissals in that (they allege):
  - 25.1 *'The criteria on which an appeal could be made were too narrowly defined'*;
  - 25.2 The Respondent failed to supply requested personal data in time for appeals;
  - 25.3 Employees were *'unable to question or challenge applied data, procedures or decisions'* as appeals were by writing;
  - 25.4 Appeal managers had no *'formal knowledge'* of material roles - some appeals were dealt with by managers of obscure departments, from different continents or companies (e.g. Delta) with no knowledge of VAA crew role;
  - 25.5 Appeals were heard by the same managers who took part in the individual consultations appealed;
  - 25.6 Not all elements of appeals were addressed;
  - 25.7 The information provided to the appeal by the Respondent was incomplete, inadequate and inconsistently applied; and/or
  - 25.8 The appeal outcomes were unfair and inconsistent. The Claimants allege::
    - 25.8.1 Where there were successful appeal challenges to individual scores, these were not applied to all OBMs on that flight, despite the acknowledgment that the scores were unfair;
    - 25.8.2 An OBM could be impacted by poor cabin scores for a cabin or *"area of control"* which they did not work in, placing the OBM at higher risk of redundancy;
    - 25.8.3 OBMs were unable to challenge non-crew complaints; and
    - 25.8.4 The Respondent was inconsistent in how it treated individuals appealing under the 5 point VOC removal criteria. That is, upholding an appeal point under point 3 - clear from the customer comment that the score relates to a different flight with a different crew - upholding this appeal point for Alexis Redman and Sarah Feldman while dismissing it for Zoe Anderson.
- 26. Did the Respondent follow a fair procedure, taking into account the matters above?

27. If so, were the dismissals fair in all the circumstances taking account of factors including the Respondent's size and administrative resources within the meaning of s. 98(4) ERA 1996?

**UNFAIR DISMISSAL REMEDY**

28. If the Claimants' claims of unfair dismissal succeed, in addition to the general question of what compensation should be awarded, the following remedy issues will arise:
29. If the Claimant seeks reinstatement or re-engagement, is a reinstatement or reengagement order an appropriate remedy? In particular, would such an order be practicable for the Respondent to comply with and just, in light of any finding that the Claimant caused or contributed to the dismissal, per s. 116 ERA 1996?
30. If the Claimant does not seek reinstatement or re-engagement, or this is not ordered, what financial loss, if any, has the Claimant suffered as a result of any unfair dismissal?
31. If the Claimant has suffered financial loss, by what percentage should any basic and/or compensatory award be reduced (having regard to those factors set out in s.122 and s.123 ERA)?
32. In particular, to what extent has the Claimant mitigated their loss?
33. Should any compensatory award payable be wholly or partially reduced on the basis that the Claimants would have been fairly dismissed in any event during Phase 1 or Phase 2 of the redundancy process for a fair reason?

**D - s.47C DETRIMENTS**

34. Have the Claimants shown that they were subjected to a detriment? The detriment relied upon by the Claimants is that set out above, namely the use of a smaller sample, rather than 25 VOC entries.
35. If so, were they subjected to a detriment for a prescribed reason for the purposes of:
- 35.1.1 s. 47C(2)(ba) ERA 1996 in respect of adoption leave;
  - 35.1.2 s. 47C(2)(bb) ERA 1996 in respect of shared parental leave; or
  - 35.1.3 s. 47C(2)(b) ERA 1996 in respect of maternity leave?

**E - EQUALITY ACT 2010 CLAIMS (allowed to proceed without the need for an amendment by EJ Balogun)**

**AGE**

**Direct Age Discrimination**

36. Did the Respondent subject the Claimants to the following treatment, as alleged or at all? The Claimants allege that:
- 36.1 The Respondent protected the 'youngest crew members' (i.e., those in the age group under 38 years of age) from redundancy;
  - 36.2 Used data from the Voice of the Customer surveys ("VOC Data") to score On-Board Managers ("OBMs") for the "On-Board Performance" criterion;
  - 36.3 Used and weighted certain selection criteria to protect the youngest crew members (i.e. comparative weighting of performance cf. loyalty; using wide bands for loyalty, i.e. 11-21 years, using sickness and punctuality records when younger cabin crew had had less opportunity to have been sick or late);
  - 36.4 Gave "New Recruits" (those with experience of fewer than 10 flights) average scores under Performance Monitoring ("PM") but subjecting older cabin crew to scoring from colleagues under PM;
  - 36.5 Excluded older Claimants from the holding pool, giving New Recruits automatic entry to holding pool.
  - 36.6 Dismissed the Claimants.
37. Was this less favourable treatment than a younger hypothetical comparator under the age of 38?
38. If so, was it because of age?
39. If so, was this treatment a proportionate means of achieving a legitimate aim?  
*The Respondent denies that any of the alleged treatment was because of age and does not therefore seek to argue that the alleged treatment was in pursuit of a legitimate aim.*
40. The Claimants describe their age or age group as 38 years old and over and compare themselves with people of age or age group under 38 years old.

**Indirect Age Discrimination**

41. Did the Respondent apply provisions, criteria, or a practice ('PCP') of:
- 41.1 Giving performance and conduct a greater weighting than loyalty
  - 41.2 Failing to adequately account for length of service in scoring by providing the same score to those with 11 years and 21 years seniority;
  - 41.3 Using different data to score against certain criteria for different categories of employee in the pool, i.e., deciding to subject only OBMs to the scoring based on the VOC data, giving New Recruits average scores for PM;
  - 41.4 Using sickness and punctuality records in selection exercise;
  - 41.5 'A trend of F[light] S[ervice] M[anager]s with an average of 20 years loyalty and having a contract of 70% to full time, being made redundant with no pool' - selecting those with long service for redundancy;

- 41.6 Excluding those with long service from the holding pool (having a tie-breaker for FSM on 20 points and CSS on 20 points), including New Recruits into the holding pool instead;
- 41.7 Coaching seasonal crew and newly promoted OBMs (who tend to be younger) on how to increase their VOC scores as part of the redundancy selection process and not coaching the Claimants;
- 41.8 In respect of Gemma O'Hara's claim only, replacing legacy 50% and 70% contracts with "red" and "purple" contracts.
  
42. If so, did or would that PCP put persons with whom the Claimants share the age group of 38 years and older, at a particular disadvantage of being more likely to be made redundant when compared to those younger than 38 years?
  
43. Did the PCP put the Claimants at that disadvantage, of being more likely to be made redundant?
  
44. If so, was the PCP a proportionate means of achieving a legitimate aim?

*The Respondent relies on the following:*

- 44.1 *Ensuring that the weighting of the selection criteria appropriately recognised the factors identified as being of core importance to the Respondent's business needs, namely strong performance in providing a positive customer experience and demonstrable positive conduct aligned with the Respondent's values.*
- 44.2 *Ensuring manageable application of the selection criteria while providing appropriate recognition and reward to commitment and loyalty by rank and base.*
- 44.3 *Ensuring that the data used to score against each of the selection criteria appropriately and fairly recognised and accounted for the differing functions and circumstances of the different categories of employees in the pool.*
- 44.4 *Ensuring that the adverse impact of poor punctuality and / or sickness absence on the Respondent's operations including, but not limited to, the impact on customer experience and colleagues, was appropriately acknowledged and incorporated into the selection criteria.*
- 44.5 *The Respondent does not accept that those with long service were selected for redundancy as alleged or at all. Selection was based on set criteria fairly and reasonably applied.*
- 44.6 *The Respondent does not accept that those with long service were excluded from the hold pool as alleged or at all. Hold pool selection was not based on length of service.*
- 44.7 *The Respondent does not accept that it in any way coached employees on increasing their VOC scores as part of the redundancy selection process. Selection was based on set weighted selection criteria and data applied fairly and reasonably.*
- 44.8 *Aligning part time contract options to enable roster optimisation and increase operational efficiencies.*

*The Respondent relies in each appropriate case in addition to, and alongside the above, the overarching legitimate aim of implementing a fair and efficient business reorganisation to aid the*

*Respondent's economic and operational survival at a time when the Covid-19 pandemic created a threat to its ongoing existence.*

**SEX**

**Direct Sex Discrimination**

45. Did the Respondent target women for redundancy by using VOC data to score Performance?
46. Was this less favourable than a hypothetical male comparator would have been treated?
47. Did the Respondent target the women for redundancy because of their sex?

**Indirect Sex Discrimination**

48. Did the Respondent apply PCPs:
  - 48.1 That all on board staff (flight and cabin crew) selected for redundancy return their uniforms to the Respondent;
  - 48.2 Of only paying for the return of pilots' uniform and company property?
49. If so, did or would those PCPs put women at a particular disadvantage when compared to men as:
  - 49.1 The majority of pilots are male; and
  - 49.2 Non-pilot staff had to pay to return their uniform and company property.
50. If so, did the PCPs put the Claimant at that disadvantage?
51. If so, was the PCP a proportionate means of achieving a legitimate aim?

*The Respondent relies on the legitimate aim of seeking to achieve economic and operational efficiencies in the return of its property from a large and geographically scattered cabin crew workforce. Following consultation, in early August 2020, the Respondent adopted its approach and paid or reimbursed postage costs for those flight and cabin crew (and pilots) who lived more than 70 miles from one of its designated uniform drop off points or had health, safety or wellbeing issues meaning they were unable to travel to one of the drop off points.*

52. In respect of Gemma O'Hara's claim only, in replacing legacy 50% and 70% contracts with "red" and "purple" contracts did the Respondent apply to the Claimants a PCP?
53. If so, did or would that PCP put women at a particular disadvantage in comparison to men?

54. If so, did the PCP put the Claimants at that disadvantage?

55. If so, was the PCP a proportionate means of achieving a legitimate aim?

*The legitimate aim relied upon by the Respondent is the alignment of part time contract options to enable roster optimisation and increase operational efficiencies*

56. In (a) using the VOC data to score OBMs against the On-Board Performance criterion, (b) basing performance scores over a set period of time rather than a set number of flights, (c) not setting a minimum number of VOC responses per flight, before using them, (d) failing to normalise VOC data from weekend flights in comparison with week-day flights, did the Respondent apply to the Claimants a PCP?

57. If so, did or would that PCP (or one of them) put women at a particular disadvantage in comparison to men?

58. If so, did a PCP put the Claimants at that disadvantage?

59. If so, was the PCP a proportionate means of achieving a legitimate aim?

*The Respondent relies on the legitimate aim of fairly and efficiently selecting for retention the best employees at a time when the Covid-19 pandemic created a threat to its ongoing existence.*

#### **EQUALITY ACT REMEDY**

60. As to remedy:

60.1 What financial loss, if any, has the Claimant suffered as a result of the unlawful discrimination?

60.2 What award, if any, should be made for injury to feelings?

60.3 Are aggravated damages appropriate? If so, at what level?

60.4 What interest, if any, should be awarded on the award of compensation for discrimination?

#### **F - PART TIME CONTRACTS**

61. Did the Respondent subject the Claimants to the following treatment, as alleged or at all?

61.1 Basing performance scores over a set period of time rather than a set number of flights.

*By way of explanation, key elements in part time contracts were changed by the introduction of "red" and "purple" contracts, in relation to the number of hours worked.*

*When trip patterns were altered during the redundancy process, the particularly fatiguing US West Coast trips (with an 8 hour time difference) were changed from two night*

*layovers to one night layovers, meaning more trips could be fitted into rosters. With full time crew already hitting their permitted 900 hours of flying, more of these trips were given to part timers.*

*CCU put forward Caroline James as an actual full-time comparator for these purposes.*

*Ms Paula Lin puts forward Matthew Robinson as the actual full-time comparator for issue 61.1.*

62. If so, was the above less favourable treatment for the purposes of Reg. 5(1)(a) and/or (b) PTWR 2000?
63. If so, was the above treatment on the grounds that the Claimant was a part-time worker at all material times?
64. If so, was the treatment a proportionate means of achieving a legitimate aim?

*The Respondent relies on the legitimate aim of fairly and efficiently selecting for retention the best employees at a time when the Covid-19 pandemic created a threat to its ongoing existence.*

**14 March 2024**

Appendix 3 – annex 1 provided on 17/5/2024

Name	Start Date	End Date	Length of Service	Rank	Base	Age EDT	Contract	Consultation Manager	Appeal Manager	Representation
Caroline James	25.03.96	24.12.2020	24y 8m	CC	LHR	48	Full time	Amber Wilson	Rami El-Dahshan (grievance manager)	CCU
Gemma O'Hara	02.06.08	25.09.20	12y 3m	CC	MAN	39	50% Legacy	N/A	Albert Thomas (grievance manager)	CCU
Paula Lin	14.08.1989	01.10.2020	31y 1m	CSS	LHR	51	50% Legacy	Kim Pretty	Tony Mayo	OHP
Zoe Anderson	28.09.1998	20.09.2020	21y 11m	CSS	LHR	42	50% Legacy	Hazel Hunt	Andrew Maughan	MS
Joanne Bunting	04.01.2000	20.09.2020	20y 8m	FSM	MAN	44	50% Legacy	Jason Papageorgiou	Ryan Daniels	MS
Paul McGill	06.01.2003	08.01.2021	18 y	CSS	LHR	50	Purple	Tony Mayo	Julie Dilloway-Knapp	CCU
TC12	27.04.1998	27.09.2020	22y5m	FSM	N/A	N/A	Part-time Red Contract	N/A	Amber Wilson	OHP
Ruth Benzal Mahon	28.02.2000	17.09.2020	20y6m	CSS	LHR	43	50% Legacy	Matthew Lee	David Gloster	MS
Amy Adams	<del>25.06.2018</del> Crew role – 31.01.20	<del>16.08.2020</del>	<del>2y1m</del> Crew role 6m	CC	LHR	24	Full Time	Tony Mayo	Connor Genders	CCU
Lyndsey Stevenson	17.01.2011	03.09.2020	9y7m	CSS	LHR	39	Full Time	Matthew Lee	Andrew Maughan	CCU
Samantha Ryder	02.03.2015	16.08.2020	5y5m	CC	LHR	32	Purple	Kim Pretty	Jenny McGowan	CCU
Claire Wood Woolley	15.09.1997	20.09.2020	23y	CSS	LHR	46	50% Legacy	Hazel Hunt	Stephen Buckerfield	MS

Caroline James and Amy Adams' claims did not proceed as test claims as they did not comply with the Tribunal's Orders.

## Appendix d List of Agreed Facts

1. Virgin Atlantic Airways Ltd ('VAA') is a long-haul international airline predominantly operating flights to the United States of America, the Caribbean, India, Nigeria and the Far East.
2. With the exception of Gemma da Silva (O'Hara), the test claimants were all cabin crew members, of various ranks, who were made compulsorily redundant by the Respondent in 2020. Gemma da Silva (O'Hara) took voluntary redundancy.
3. The information included in Annex 1 to these agreed facts is accurate as at the date of termination of each of the 12 test claimants.
4. VAA crew are aligned to two Bases out of which their flights now operate: London Heathrow ("LHR") and Manchester ("MAN"). While VAA operated from London Gatwick ("LGW"), some LHR crew were on a rostering agreement of LGW super preference meaning that their rostering preference was to operate as much as possible out of LGW. VAA suspended its operations from LGW during the Covid-19 pandemic and they have not resumed since.
5. VAA Cabin Crew are divided into three ranks: Cabin Crew ("CC"), Cabin Service Supervisors ("CSS") and Flight Service Managers ("FSM").
6. CSSs and FSMs are known as On-Board Managers ("OBMs").
7. The Cabin Crew Union ("CCU") represent 6 of the 12 test claimants. This cohort consists of OBMs and CC from LHR and MAN. Machins represents 4 of the test claimants. This cohort are all OBMs from both LHR and MAN. These claimants were previously represented by Giles Wilson, and have been known as the Giles Wilson Group ("GWG") claimants. OH Parsons ("OHP") represent two test claimants and three claimants in total. A handful of claimants are representing themselves and/or have lay representatives.
8. VAA obtains customer feedback via an electronic Voice of Customer (VOC) questionnaire.
9. Customers are asked to rate their experience of check in/bag drop; boarding; cabin environment; cabin cleanliness; seat; food and beverage; inflight entertainment; and cabin crew. Customers have 5 rating options which are very poor, poor, good, very good or excellent.
10. VAA had no minimum requirement for the number of questionnaires that had to be returned in order to register a VOC score for a particular flight.

### **Agreed facts relevant to the redundancy procedure**

11. VAA announced a large-scale redundancy programme on 5 May 2020 ('Phase 1'). It issued a section 188 letter and HR1s on 27 May 2020.
12. VAA told crew on 19 May 2020 that the selection criteria it would apply would be:
  - On-board performance – 30%
  - Loyalty to the company – 10%

- Conduct – 30%
  - Punctuality – 20%
  - Sickness absence – 10%
13. For OBMs, scoring for 'On-Board Performance' was informed by VOC and Performance Monitoring ("PM") data. For CC, the 'On-Board Performance' scoring was informed by PM data only.
  14. In its section 188 letter of 27 May 2020, VAA confirmed that the redundancy proposals would result in a loss of 1428 crew roles from LHR (out of 3841), and 116 from MAN (out of 503).
  15. VAA announced a further large-scale redundancy programme on 4 September 2020 ('Phase 2'). It issued a section 188 letter and HR1s on 8 September 2020. The HR1 forms were updated, and the final versions were submitted on 12 September 2020.
  16. As part of the Phase 1 and Phase 2 redundancies, VAA operated a redundancy hold pool. The purpose of the redundancy hold pool was facilitating the re-employment of certain crew who had been dismissed as compulsorily redundant as Covid-19 restrictions eased. The number of places available for hold pool entry during Phase 1 was approximately 1250.
  17. The outcomes for those at risk of compulsory redundancy in Phase 1 were -
    - Safe/ Not selected (i.e. not compulsorily redundant);
    - Compulsorily redundant with a hold pool place;
    - Compulsorily redundant with no hold pool place.
  18. The outcomes for those at risk of compulsory redundancy in Phase 2 were -
    - Not selected for compulsory redundancy;
    - Compulsorily redundant with a hold pool place.
  19. The size of the hold pool was increased by approximately 600 places in Phase 2. Those who were placed into the hold pool in Phase 2 entered at the top (i.e. above those who were already in the hold pool following Phase 1).
  20. No Enhanced Voluntary redundancy packages were offered during either Phase 1 or Phase 2. All redundancies (both voluntary and compulsory) were based on statutory redundancy packages.
  21. All redundancy appeals were reviewed on a desktop basis. Appeal meetings were not held in either Phase 1 or Phase 2.

**Agreed by the parties  
17 May 2024**

Appendix e – List of Abbreviations

Abbreviation	Term	Explanation of meaning
CC	Cabin Crew	Junior crew rank
CCRS	Crew Covid Response Scheme	Respondent funded crew furlough scheme (relevant to Phase 2 redundancies only and did not go live)
CJRS	Coronavirus Job Retention Scheme	Government funded job retention scheme
CSS	Cabin Service Supervisor	Second most senior crew rank
FSM	Flight Service Manager	Senior crew rank
FTE	Full-Time Equivalent	Measure of crew capacity based on the working time of a full-time crew member. For example, 2 crew each on a 50% contract equal 1 full-time crew member.
JFK	John F Kennedy Airport (New York)	Airport
LGW	London Gatwick Airport	Airport
LHR	London Heathrow Airport	Airport
LTTs	Lines to Take	Wording provided to appeal managers by the Respondent to support with responding to frequently asked questions and points of appeal.
MAN	Manchester Airport	Airport
MPD	Performance and Development Manager	Crew line manager rank
OBM	Onboard Manager	Collective term for the Flight Service Manager (FSM) and Cabin Service Supervisor (CSS) ranks.
PM	Performance Monitoring	Crew-to-crew rating system
SE6100	South East 6100	Unite's branch code for Respondent's cabin crew.
N/A	Sector	A single flight i.e. from origin to destination. A return trip e.g. LHR to JFK consists of two sectors. The outbound sector (LHR to JFK) and the inbound sector (JFK to LHR).
SQL	Structured Query Language	Programming language used to interrogate, organise and manage information stored in databases.
VAA / Virgin	Virgin Atlantic Airways Limited	Respondent
VOC / VoC	Voice of Customer	Respondent's customer feedback survey

Case Numbers: 2304618/2020  
and others  
2300056 Multi

A350	Airbus 350	Type of aircraft
B747	Boeing 747	Type of aircraft

Appendix f – Copy of the Karen example (page 765)

## VoC – Normalisation Explained

### Why do we need to make adjustments to VoC performance data for OBMs?

We know that customers on some of our routes tend to score their Cabin Crew differently i.e. some routes see higher overall results vs others. We recognise that this can have an impact on individual crew scores, particularly when being used to assess the performance of all OBMs collectively.

We therefore need an approach to 'normalise' the crew score at an individual level to better reflect their performance. In other words, we will adjust scores up or down to assess each OBMs performance per flight, against the average score achieved by all OBMs.

It is this 'normalised' score which is proposed for calculating performance scores, as part of the redundancy matrix criteria.

### How do we calculate a normalised score?

**Step 1:**

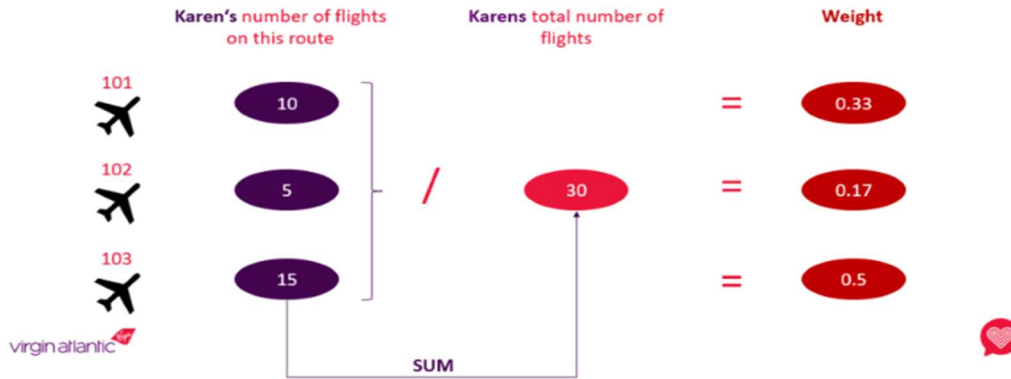
For each flight route and each crew member (in this example: Karen), calculate whether they are doing better or worse than the average on that route and by how much

	Karen's average score on flight route		Average score on flight route (all crew members)		Difference
101 	50	-	45	=	+5
102 	58	-	60	=	-2
103 	60	-	57	=	+3

virgin atlantic  

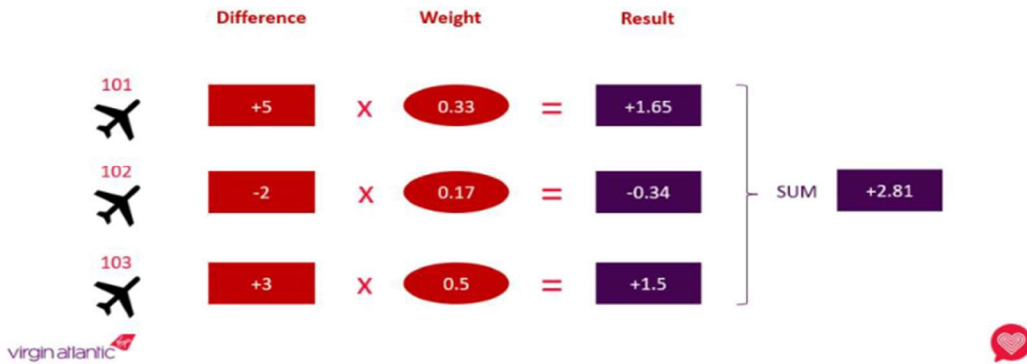
**Step 2:**

Calculate the weight of each flight route for each crew member. For this, divide the number of flights on one route through the total number of flights. All weights should add up to 1 at the end.



**Step 3:**

Calculate the score. Multiply each flight route score with the according weight and then sum them all up.



**Step 4:**

Add this score to the overall mean which results in a **normalised net score** for each crew member

