Case number: **6010199/2024**

EMPLOYMENT TRIBUNALS

Claimant : R Rokitowska

Respondent: PrimaryBid Limited

Heard at: London South, by CVP **On:** 22, 23 July 2025

Before: EJ Harley

Representation:
Claimant – in person
Respondent – Ms Churchhouse (Counsel)

JUDGMENT having been delivered with reasons orally on the final day of the Hearing, and the judgment was sent to the parties on 25 July 2025, I have now been asked by the claimant to produce full written reasons in this matter.
While the text has been edited and reordered it reflects the reasoned judgment provided on the day.

Claim:

1. The Claimant is claiming Unfair Dismissal pursuant to ss94 and 98 of the Employment Rights Act 1996. This arises from her dismissal for what the respondent asserts was the fair reason of redundancy. The claimant asserts that the redundancy process was unfair, and that as a result of bullying, favouritism and being in effect held back in her role, she was in a less senior role than she ought to have been at the time, and that she had been unfairly targeted for dismissal.

Decision

2. This case was listed for a two-day hearing via CVP. The claimant represented herself as a litigant in person. The Respondent was represented by Counsel. I was grateful to both for the assistance and courtesy during the hearing.

3. I was provided with electronic bundles prepared by the respondent: a hearing bundle running to 423 pages, and a witness statement bundle running to 27 pages. The first statement bundle provided contained misnumbered references and I was on the first morning of the hearing supplied with a revised corrected statement

bundle with the corrected references.

4. In the minutes before the hearing started I was sent an additional electronic supplementary clip of documents, which had been sent to the Tribunal and claimant the night before. I had no opportunity to review this bundle, but the contents list outlined a suggested reading list, cast list, chronology and three organisational charts. I noted receipt of these documents and there was no indication from the parties that any of these documents were controversial or not agreed, and no issue was raised with the inclusion of any of the documents by the claimant at the outset of the hearing.

5. We were advised by Counsel that the respondent's witness (Ms Boulton, Chief People Officer) was facing a tragic personal situation, which required her to travel, meaning that we needed to conclude her evidence by 12:45 which I noted. As a result, and with a view to ensure that the claimant had all the time available to put questions to the witness I proposed quickly placing the witness under oath and proceeded with the cross examination of the witness by the claimant with assistance from the judge. Before doing so I addressed preliminary matters, asking if reasonable adjustments were required, but none were requested.

6. There was no agreed list of issues. Counsel for the Respondent had prepared a list which unfortunately did not address the claimant's clearly flagged arguments that she had been held back in her role, had been bullied and was unfairly targeted for redundancy. I had therefore prepared additional issues to cover these points, and having outlined them the parties agreed their inclusion. We also touched on issues regarding witness attendance, and the expected behaviour of participants on CVP. No applications were flagged by either party. Having confirmed that the claimant had not had the benefit of legal advice I outlined to the claimant the importance of cross examination, of challenging evidence to which she objected, and the particular importance of putting her case to the witnesses by reference to a simple illustrative example.

7. Counsel during examination in chief referred her witness to charts in the supplemental clip. The witness identified them as organisational charts reflecting the organisation at various points, including a specific organisational chart at pg. 32 (proposed organisational structure) pertinent to the claimant's work area to which she said the claimant had access during the consultation period. Despite having had sight of the bundle from the evening before, the claimant did not challenge the witness as to the veracity or authenticity of the charts, or as to the question of whether or when she had access to the charts. Later during her own re-examination she raised a question as to why the charts were produced at a late stage. I did not understand her to object to their inclusion, and she had accepted that the chart at pg. 32 reflected the post-redundancy structure of her work area. As the process of cross-examination proved to be emotional we took two short breaks to allow the participants to collect themselves. In the event we finished cross examination by 12:30 and after dealing with housekeeping matters adjourned for lunch, the respondent closed its case.

8. On the afternoon of day one, the claimant opened her case and was cross examined by Counsel. Opportunities for re-examination were offered to both parties, and both witnesses were asked supplemental questions by the judge. At the end of Day 1, Counsel raised the issue of the exclusion of claimant witnesses, on the basis of relevance (in summary, that the witnesses were no longer employed at the relevant time). This had been raised in correspondence in May 2025 (included in the agreed bundle) to which the Tribunal had replied in June 25, reserving the decision for myself. I had the benefit of the witness statements the night before the hearing. The claimant had not sought witness summonses or arranged for her witnesses to voluntarily attend the hearing. I heard representations from the parties and considered their respective positions. The claimant was unable to offer arguments to counter the relevance argument, and I took the view that, as these witnesses were not in employment at the relevant time they would not assist the claimant's case on Unfair Dismissal (Redundancy), so excluded their evidence from the proceedings, and the claimant's case closed.

9. Counsel agreed as a courtesy to assist the Tribunal and Claimant to lead the closing submissions, and she agreed to supply her submissions in written form the next morning. Her written skeleton argument was circulated on the morning of the proceedings. We gave the claimant 25 minutes to read the submissions in advance of hearing their respective arguments. I heard submissions from both parties, with Counsel offered an opportunity to respond which she declined. The claimant was understandably upset at points during the proceedings, and we paused to allow her time to collect herself when that occurred. I rose and indicated that I would deliver a decision with reasons that afternoon, which I did from 345pm.

Issues

10. The claims before the Employment Tribunal are:

1.1. Unfair dismissal pursuant to ss 94 and 98 Employment Rights Act 1996 ("**ERA 1996"**).

Unfair Dismissal ss 94 and 98 ERA 1996
2. Can the Respondent show that the Claimant was dismissed for a potentially fair reason pursuant to s98(1) or (2) ERA 1996?

2.1. The Respondent relies on the potentially fair reason of redundancy.

2.1.1. Was the Claimant dismissed by reason of redundancy within the meaning of s139(1) ERA 1996?
Had the requirements of the Respondent's business for employees to carry out work of a particular kind ceased or diminished or were they expected to cease or diminish?
Was the Claimant's dismissal caused wholly or mainly by the cessation or diminution?
In other words, was there a genuine redundancy situation?

2.1.1. The Claimant asserts that her selection for redundancy was predetermined. Was the claimant's selection for redundancy influenced by:
(a) any prior complaints or grievances she raised?
(b) prior acts or omissions by the employer which undermined her professional standing?
(c) a history of bullying, exclusion, or sidelining by management?
Did the employer act in breach of the implied term of **mutual trust and confidence** in the period preceding dismissal?
If so, did such conduct have a bearing on the claimant's selection for redundancy or the fairness of the overall process?

3. Did the Respondent act reasonably and fairly in all the circumstances in treating redundancy as a sufficient reason for dismissing the Claimant pursuant to section 98(4) ERA 1996? As to this:

3.1 Were the selection criteria objectively chosen and fairly applied;

3.2 Were employees were warned and consulted about the redundancy;

3.3 If there was a union, were the union's views sought; and
(The Respondent does not have a unionised workforce and so it is not necessary for the Tribunal to consider this point.)

3.4. Did the Respondent consider and was the Claimant offered any suitable alternative employment? Did the Respondent provide the Claimant opportunity to apply for suitable alternative roles?

4. Did the Respondent follow a fair procedure (including as set out in ACAS guidance) when dismissing the Claimant?

5. Taken as a whole, was the dismissal within the **range of reasonable responses** available to a reasonable employer?

Remedy

6. If the Tribunal finds that the Claimant has been unfairly dismissed, did the Claimant suffer loss for which she should be compensated?

7. Has the Claimant received payment in lieu of notice or ex gratia payments?

7.1. If so, what reductions to the compensatory award should be made?

8. Has the Claimant taken reasonable steps to mitigate her loss?
8.1. If not, should a reduction be made to the compensatory award for the Claimant's failure to mitigate her loss under s123(4) ERA 1996?
9. If the Respondent failed to follow a fair procedure, can the Respondent show that following a fair procedure would have made no difference to the decision to dismiss?
9.1. If so, is it just and equitable to reduce the compensatory award under

s123 (1) ERA 1996?

10. Should an uplift or reduction of 25% be made to the compensatory award for failure to follow the ACAS Code of Practice, pursuant to s207A TUL(C)RA 1992?

10 .1. Should interest be awarded? If so, at what rate?

Facts

11. I found these facts on the balance of probabilities, on the basis of the evidence I heard, statements I reviewed and the materials in the agreed bundle. For the avoidance of doubt, where there was a dispute over a fact and I have stated a finding, that is my decision as to that issue. I heard and considered a good deal of evidence, not all of which has proved relevant and so I will not refer to it all here.

12. The claimant joined the respondent, a financial technology company which among other activities was involved in the provision of online investment platforms, including the provision of what is described as a 'first party' type product, which enables users to participate in stock market trades. The claimant was employed as a Level 4 Programme Manager from 2 February 2021 at a rate of £87,000 per annum, rising to £91,500 from February 2022.

13. Her initial role was within the Programme Management team. In September 2021, she was transferred to the International Team. The claimant ascribed her move as having happened owing to favouritism from her superior – a Mr Pandit – but also due to limited career progression opportunities in her team. She worked in the International Team until February 2023, when she was informed that she would be returning to the Programme Management team as a Business Development Manager, working under Ms Van der Laar. The agreed bundle includes an exchange from January 2023 between Ms Van der Laar and Ms Richards regarding this move which I have noted:

> "I would … like to discuss with you some context around how and why she moved teams in the first place. There were a lot of challenges around it, some of that will have been resolved over time, some of it that are still active today and I think you and I should discuss. I am not debating the outcome, but I do want to give you some context and set some very clear objectives for Renata in this team when she moves back in ***order to avoid any issues we have had in the past." (my emphasis)***

The claimant indicates that it was made clear to her that her only options were to accept the move or leave the company. This is reflected in an internal memo dated 8 Feb 2023 where Ms Boulton captured that if the claimant didn't want the role she would be facing a redundancy consultation process. [1]

14. In April 2023, redundancies were announced in the claimant's work area, but the claimant's role was retained. Later, on 27 April 2023, in response to the claimant pressing her on support for her promotion campaign, Ms Van der Laar wrote to the claimant:

> "I started doing some work on your case to get you to an L5 in the next round (September). Although I can't promise anything as you know, I will give it my absolute all…" and further, on 2 May 2023 in the same vein stated
>
> "…we will just give it our absolute best and ***hope we get you up to the next level in September!" (my emphasis)."***

15. In June 23 an internal email from Ms Shukla, one of the officers who originally interviewed the claimant, to Ms Berg (Lead People Partner) and Ms Boulton noted among other issues that the claimant had expressed frustration with her level and salary – she "feels that both should be higher" (pg. 179). She noted while she enjoyed good feedback from some, other stakeholders highlighted a lack of visibility and output. In July 23 the claimant raised the issue of her not having been promoted in a meeting involving Ms Berg who responded in an email to her capturing the discussion and indicating that:

> "…there's currently a review of the levelling framework and a salary benchmarking exercise underway. This won't set people back if they're due a promotion (extra responsibilities), however we do need to be mindful that this will apply across the business and at the moment I don't know where your role will be benchmarked at and cannot promise that you'll see a pay rise as it may be that your salary may be higher than what the benchmarking is (either your current higher level)."

In August 2023 the claimant had it confirmed to her by her then boss Mr Phan that she would not be being promoted or enjoying a pay rise in the next cycle.

16. On the 23.2.24, the Respondent announced a collective consultation proposing that 59 roles would be placed at risk of redundancy, with the proposed redundancy of approximately 50 roles, in an all-hands meeting to inform all the Respondent's employees, and not just those at risk of redundancy. The meeting as an announcement did not permit employees to comment or ask questions. The employees were told that they would receive a letter to inform them of their individual situations. The Claimant was sent her letter by email on the same day confirming her *role was one of those identified as being at risk of redundancy.* She was provided with a detailed 'Restructure Support Document,' setting out the redundancy plan. The redundancy plan explained the rationale for the process following a proposed change in business strategy resulting in the closure of a product/service line, a reduced focus on other product/service lines and reduced financial losses to achieve sustainability.

It stated:

> *"This strategic shift necessitates a restructuring of functions within the company Regrettably, this means we are placing a significant number*

> *of roles "at risk," and "this adjustment in our workforce needs, prompted by the opportunity to invest in new client servicing opportunities, is aimed at enhancing our financial resilience and ensuring the long-term stability of the business."*

17. The roles placed at risk of redundancy included the roles which were directly impacted by the proposed business strategy change, or the roles where the scope of that work could be distributed to other roles. Ms Boulton (Chief People Officer) confirmed in evidence that the effect of the reduction of the jettisoned workstream she identified, namely, the first party software package for those operating in financial markets and regulated by the FCA, represented a reduction of approximately one third of the business's work, and the business did not continue or indeed return to that area of work. This evidence was not challenged by the claimant.

18. Employees identified as at risk were invited to nominate employee representatives as there was no recognised trade union. The vote to elect five employee representatives subsequently took place, their appointment was communicated to staff via email, with a further email to the Claimant confirming her (and her group's) named elected representative. The first employee representative committee meeting was held on 5 March 2024. Amongst the steps taken in this consultation process included:

- Sharing minutes of each consultation meeting with the representatives with the at- risk employees, including the Claimant, the day after each meeting via open folders and email.
- Providing at risk employees with the opportunity to submit anonymous questions via their employee representatives in an open 'Q & A' forum. Ninety-five questions were asked, answered and shared across the consultation period. The Respondent also invited affected individuals to speak with the people team directly.
- Providing all affected employees the opportunity to request individual consultation and to submit proposals for themselves. Two employees opted for individual consultation. Seven proposals were submitted and two were accepted. The Claimant did not submit any proposals or alternatives, and she did not opt for individual consultation.
- Not requiring any employee to work during the consultation period if they felt unable to do so.
- Providing all affected employees the option to put themselves forward for voluntary redundancy – the claimant did not apply.

19. In the Employee Representatives meeting minutes from 12 March it was noted that it was confirmed that "*with regards to sunsetting 1P (the 'first party' product), the email notification to customers had gone out yesterday (11 March), and that the target closure date is 17th April 2024*". At their first meeting on 5 March 2024 it was noted:

- *"Group to review selection pools and criteria- feedback by 12th March 2024 including suggestions to add people to the pooling process.*
- *Voluntary Redundancy deadline extended to 15th March 2024"*

20. The Claimant was not made part of a selection pool – she was held to be in a pool of one – meaning that her performance would not influence the likelihood of her redundancy. Ms Boulton confirmed that initial meetings deciding these questions were held in a group between the whole executive and input would have been given from other executive leaders within the committee, but the final decision regarding redundancy in particular areas would have been between herself and whoever that corresponding leader was for that division, which, in this instance, for the claimant, was Mr. Phan.

21. Ms Boulton explained that pooling of the roles under threat was considered. The question of bumping was considered, and thought was given to the level of exposure that the claimant had to relevant parts of other roles. The claimant later identified that Ms Boulton had failed to identify her past experience in dealing with US entities from an earlier point in her tenure with the company when considering her suitability for a lower paid role, but she did not put that point to the witness. I will consider this issue further in the discussion below.

22. The claimant suggested that two new roles were created in her team after the reorganization, for which she could have been considered. In fact, the existing Level 3 role which was not marked for redundancy and paying £23,000 less than her role was retained but retitled. A Level 4 Chief of Staff Role, engaging with the US entity and paying £14,500 less than her role, was retained and retitled. There were incumbent staff in these posts and either of these roles would have represented a demotion to the claimant. No suitable L4 roles were identified for the claimant in other areas. Having considered the questions, in consultation with Mr Phan, the Claimant was placed in a standalone pool.

23. In the form for nominating employee representatives, it was confirmed that a full list of roles at risk was to be shared, and that as part of the first employee representative committee a copy of the proposed structure and organisational chart would be circulated**.** These documents were subsequently shared in an online file, accessible to affected staff, and the Claimant confirmed she had access to the online resources. She also confirmed that she'd access to the work email, the work system via her laptop and could access work emails via her own phone via Gmail.

24. The issue of these organisational charts was raised and addressed in the live employer/employee 'Q & A' forum on 6 March where an anonymous employee who had seen the proposed chart asked:

> "Why has the post-redundancies org chart been created at this of consultation period? "

A response from Ms Boulton, from the same date stated:

> "There is a proposed organisational chart that has been created to further demonstrate the proposed restructure should all roles be removed. This is a requirement of any consultation and redundancy process. It has also been requested extensively over the last week."

A separate exchange on the same date asked:

> "What is the justification for the proposed structure?"

with the response from Ms Boulton:

> "This can be found in the supporting document; the justification is that the proposed structure better supports the business needs following restructure."

It is therefore evident that the proposed organisational chart (included in the supplementary bundle) was prepared and in place, available to affected staff and was the subject of discussion during the consultation.

25. On 4.3.24, the Claimant emailed Ms Boulton saying that she would be on annual leave between 20.3.24 and 14.4.24, and so she wanted '*to check and better understand how the consultation process will work in my case specifically*' as she would be '*out of reach*'. She was told she would be able to raise any questions or proposals before or during her leave period and that any updates and/or documents relating to the collective consultation would be emailed to her work email address or, if she preferred, her personal email address. The Claimant confirmed that she would have access to her emails, albeit limitedly as she would be '*backcountry trekking*'.

26. During the course of the process ten separate offers of individual consultation were made to the claimant by Ms Boulton, Ms Berg and Mr Wong (claimant's manager). These were not pursued by the Claimant. Among these were:

- the Restructure Support Document sent on 23 February 2024 which informed the Claimant she could seek individual consultation;
- a 1-2-1 meeting set for 27 Feb with her manager which she cancelled as there was, in her words, nothing to talk about", and indicating she would ask her employee representative about the restructure;
- a 1-2-1 meeting with her manager set for 7 March which she cancelled;
- an email from 29 February 2024 sent by Ms Berg stating *"if you have any questions on the process or would like to chat please let me know, here to support where I can,"* to which the Claimant responded, *"we've got x representing my group and so if any questions I will either raise through him or ping you."*
- an email from 29 February 2024 wherein Ms Boulton stated *"Myself and Charlotte continue to be available for anyone who would like to come to us directly, if you have any questions that are only relevant to you, or you do not feel comfortable giving certain information to be shared with the employee representative/committee."*
- an email from 6 March 2024, where Ms Boulton stated *"if you have any questions or proposals …alternatively if you would like to consult with us on an individual basis or have an individual questions Charlotte and I are available at your convenience."*

27. The claimant's redundancy was confirmed by letter dated 1 April 2024. In terms of changes within Business Operations, the structure went from having:

(a) two individuals at Level 4 (Lead Programme Manager, and a Business Development Manager – the claimant); and one individual at Level 3, a Senior Programme Manager; all reporting to Director Business Operations and Strategy; to

(b) both the Level 4 roles were placed at risk of redundancy and were in turn made redundant;

(c) the Level 3 Senior Programme Manager role was re-titled to Senior Associate Business Operations and Strategy with the incumbent remaining in the re-titled role, with a salary of £68,500.
(d) the Chief of Staff to COO and CPTO – serving US entity, workstreams and initiatives - being re-titled to Lead, Business Operations and Strategy with the incumbent remaining in the re-titled role, with a salary of £77,000; and
(e) two new roles, Finance Manager and QA Senior Engineer roles being created, and advertised.

Ultimately 10 x level 4 positions across the business were made redundant, and among those only the engineering roles were pooled within those level 4 positions.[1]

Job title	**Team**	**Dep cost centre**
Engineering Manager	Engineering	Engineering
Lead Programme Manager	Programme Management	Business Operations
Customer Service Manager	Operations	UK-Reg Co
Business Development Manager	Programme management	Business Operations
Executive Assistant Lead	EA Capital markets	Business Operations
Uk Communications Lead	Corporate Affairs	Corporate Affairs
Staff Software Engineer	Dev-Ops	Engineering
Senior Legal Counsel	Legal	Uk- Reg co
Investor Communications Lead	Distribution	UK-Reg co
Staff Software Engineer	Dev-Ops	Engineering

28. On 5 April 2024, the claimant formally appealed her dismissal on the grounds of redundancy, on the basis that the redundancy procedure was applied in a wrongful way, there had been an unfair selection process and there was an unclear and unjustified rationale for making her role redundant.

29. An appeal meeting was held on 25 April 2024 involving the claimant, Ms Boulton and Mr Phan. The Claimant raised the issue of her high performance being questioned in the months leading up to the redundancy process and she alleged that bullying from her direct line manager, Mr Wong, was the reason for her being selected for redundancy. It was explained that this was not a factor - the Claimant's role was placed at risk of redundancy alongside another individual in the same role, with the same level and responsibilities. She had raised no grievances or complaints about her treatment, nor had she sought

individual consultation. As the Claimant's role was not pooled, it was not in a selection process and her performance was not considered as part of redundancy and wasn't considered relevant. It was explained that her manager was not involved in the selection process. When challenged as to why she had not engaged in the consultation process and made suggestions as to alternate roles, she countered why would she after having been "bullied and demoted". In fact she had not been formally demoted – it was her stated view that her role was reduced in terms of importance and influence. It was then outlined in the meeting that the L4 Programme Manager roles were made redundant because of the change in strategy, meaning the business line closed with the consequent loss of work, financial constraints. It was further explained that the roles placed at risk of redundancy were specifically due to role requirements and scope of work. The new business strategy meant that the Level 4 Programme Management roles were being placed at risk of redundancy and ultimately made redundant. The tasks performed were no longer required and discontinued.

30. The Claimant alluded to the fact that the L3 Programme Manager role and the L4 Chief of Staff role should have been advertised as new positions due to the change in job title. However, it was explained to her that these were just job title changes. The role responsibilities, seniority and salaries remained the same, which were different, and all were more junior than her role. Her appeal was rejected on 1 May 2024.

31. On 16 May 2024, while on garden leave she filed a formal grievance regarding bullying which was dismissed on 12 June 2024. Her employment formally ended on 1 July 2024.

32. On 9 July 2024, she initiated ACAS Early Conciliation, concluding 9 August 2024, and lodged her Employment Tribunal claim received 1 September 2024.

The Law

Unfair dismissal

33. An employee has the right not to be unfairly dismissed by their employer (*s94 ERA 1996*). For a dismissal to be fair, the employer must have:
- a potentially fair reason for dismissing the employee (s98 (1) ERA 1996). There are five potentially fair reasons for dismissal one of which is redundancy (*section 98(2)(c), ERA 1996*);
- in the circumstances, acted reasonably in treating that reason as sufficient to justify dismissing the employee (*section 98(4), ERA 1996*).

For a dismissal for redundancy to be fair the employer must establish that redundancy was the real reason for the dismissal. Under s139 ERA 1996, a dismissal is by reason of redundancy if it is wholly or mainly attributable to:

(a) the fact that the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed, or to carry on that business in the place where she was employed, or

(b) the fact that the requirements of that business for employees to carry out work of a particular kind, either generally or in the place where the employee was employed, have ceased or diminished or are expected to cease or diminish.

34. The tribunal must find that the employer acted reasonably, in all the circumstances of the case, in treating redundancy as the reason for dismissing the employee which means an employer must follow the "procedural fairness" guidelines confirmed in *Polkey v A E Dayton Services Ltd [1987] IRLR 503*

35. The tribunal must consider whether the decision to dismiss an employee was within the range of conduct that a reasonable employer could have adopted, having regard to *section 98(4)* of the ERA 1996 and the principles of fairness established by case law. In *Williams and others v Compair Maxam Ltd [1982] IRLR 83*, the EAT set out specific guidelines for redundancy selection fairness (consultation, objective criteria and so on) and emphasised that tribunals should not impose their own standards and decide whether had they been the employer, they would have acted differently. The Tribunal is required to avoid adopting a "substitution mindset" - I must not substitute my view for that of the employer.

36. In *De Bank Haycocks v ADP RPO UK Ltd [2023] EAT 129* the EAT reviewed the key case law on reasonableness and summarised the guiding principles, and this summary was subsequently confirmed by the Court of Appeal. These are that:
- an employer will normally warn and consult either the employees affected or their representative in advance;
- fair consultation occurs when proposals are at a formative stage and where adequate information, and adequate time in which to respond, is given along with conscientious consideration to the response;
- whether consultation is individual or collective, its purpose is to avoid dismissal or ameliorate the impact;
- a redundancy process must be viewed as a whole, so an appeal may correct an earlier failing, making the process reasonable as a whole;
- a tribunal should consider the whole process, including the reason for dismissal, when deciding whether it was reasonable to dismiss;
- whether consultation is adequate is a question of fact and degree, and it is not automatically unfair that there is a lack of consultation in a particular respect;
- any particular aspect of consultation, such as the provision of scoring, is not essential to a fair process.

37. In order that they should act reasonably, the employer must follow a fair procedure when dismissing an employee for redundancy. In *Polkey v A E Dayton Services Ltd [1987] IRLR 503* the House of Lords held that an employer will normally not act reasonably (and a dismissal will be unfair) unless it warns and consult its employees, or their representative(s), about the proposed redundancy; it adopts a fair basis on which to select for redundancy (identifying an appropriate pool from which to select potentially redundant employees, selecting against proper criteria), and considers suitable alternative employment (it must search for and, if it is available, offer suitable alternative employment within the organisation. A right of appeal in these situations may remedy defects

in the redundancy consultation process: *John Brown Engineering Limited v Brown [1997] IRLR 90*. The employer is not required to consider bumping in order for a dismissal to be fair, and an employee is not required to raise the question before an employer has to consider it: *Mirab v Mentor Graphics (UK) Ltd. UKEAT/0172/17/DA*

38. R v British Coal Corporation and Secretary of State for Trade and Industry, ex parte Price [1994] IRLR 72 identified that fair consultation involves giving the employees a fair and proper opportunity to understand fully the matters on which they are being consulted, to express their views on those subjects, with the consultor thereafter considering those views properly and genuinely. The implication is that consultation will only be meaningful if it happens at a formative stage rather than when there is a *fait accompli*. The key components of fair consultation were :

- consultation when the proposals are still at a formative stage;
- adequate information on which to respond;
- adequate time in which to respond;
- conscientious consideration of the response to the consultation.

For an employer to consult properly, it must retain an open mind and be open to influence about the matters under consultation.

39. The Court of Appeal In *De Bank Haycocks v ADP RPO UK Ltd [2024] EWCA Civ 1291*, confirmed that it is good practice for employers to allow for individual consultation, as individuals may have specific views particular to them as an individual or on issues common to the workforce. Before selecting an employee or employees for dismissal on grounds of redundancy, an employer must consider what the appropriate pool of employees for redundancy selection should be, otherwise the dismissal is likely to be unfair (*Taymech Ltd v Ryan UKEAT/663/94*). In deciding whether a redundancy selection was unfair, a tribunal must decide whether the employer's choice of pool was within the range of reasonable responses; it should not substitute its own view as to what the pool should have been (*Hendy Banks City Print Limited v Fairbrother and others UKEAT/0691/04/TM*). The question of how the pool should be defined is primarily a matter for the employer to determine and, provided an employer genuinely applies its mind to the choice of a pool, it will be difficult for an employee (or a tribunal) to challenge that choice (*Taymech Ltd v Ryan UKEAT/663/94*). The Tribunal should not accept at face value an employer's pool of one, if there is evidence that other employees performed the same role as the claimant *Valimulla v Al-Khair Foundation [2023] EAT 131*.

DISCUSSION

40. The Respondent suggests it had a fair reason for dismissing the Claimant, namely redundancy. Was there a redundancy within the meaning of s139(b) ERA 1996? In other words, did the need for employees of the Respondent to carry out work of a particular kind cease or diminish, or was the need for that work expected to cease or diminish?

41. Ms Boulton outlined that the business's work reduced by approximately one third as a result of the end of the 'First Party' work stream. This had led to

the proposed redundancy of fifty-nine staff and to the dismissal of forty-eight staff. This was a significant redundancy exercise. Ms Boulton confirmed the ending of the work stream resulted in a direct reduction in the type of work the Claimant was undertaking. The claimant was working under a role specification specific to this work stream. The claimant did not challenge this. In turn the ending of this work stream led to a reduction in the number of people required to do programme management work with two level 4 roles in the claimant's work area being removed - the claimant's role, and that of her immediate colleague. The cessation of this work stream was captured and confirmed in the employee committee minutes from March 2024. I am satisfied that a redundancy situation had arisen here.

42. Ms Boulton in her statement and evidence explained the approach and the rationale that she'd adopted here regarding the Claimant's role. It was evident that thought was given to the claimant's role. The respondent (in the Persons of the Chief People Officer, and the executive leaders of each function) considered pooling of roles. The claimant did not challenge that this had occurred. I also heard and accepted that the question of bumping was considered. Thought was given to the level of exposure that the claimant had to relevant parts of these other roles, as was the fact that there were incumbent staff already in post and performing these roles. Ms Boulton did not appear to appreciate that the claimant had more experience in dealing with US entities than she gave her credit for when considering her suitability for a lesser role, but setting this against the fact that there was an incumbent who had a current relationship with the entity, the role was considerably less well paid than the claimant's, the claimant was not seeking a demotion to save her job, and that there is no requirement for an employer to even consider bumping, means that I do not consider this error fatal to the process. Had the claimant been seriously interested in these roles or discussed the process, pooling or any personal proposals she might have, as she was invited to, with HR or management she could have pitched any relevant experience she had in pursuing those or other roles. It was also a matter of record with HR that the claimant was highly focused on promotion to a higher grade and salary. Indeed, it formed part of the claimant's case here that she should have been at a higher grade and salary, and indeed this was in her view evidence of her having suffered unfair treatment at the hands of the respondent. It is unsurprising therefore that the HR team would not actively pursue the idea of bumping to a lesser role with someone who was as unhappy as she was with her existing level of pay and status. The fact was offering such a role would represent a demotion for the claimant, she had repeatedly expressed frustration at her existing salary level and status, and at no point did she herself suggest at any point during the process that she would accept a demotion. Nor indeed did she say during these proceedings that she would accept a demotion.

43. I heard evidence from Ms Boulton that consideration was given to whether other suitable roles existed elsewhere, but on the business' analysis there were considered to be none, and nor did the claimant identify any for me to consider challenging that analysis. Ms Boulton undertook the analysis in consultation with Mr Phan and it was decided to place the Claimant in a standalone pool. This was not Ms Boulton's sole decision and the claimant had no apparent

issues with either colleague. The Claimant raised no evidence of “bad blood” between herself and Ms Boulton or Mr Phan during the consultation or appeal process, nor in her pleaded case, nor was any put in cross examination. Of course, this decision did not have to be the end of the pooling question. The claimant could have challenged this decision or raised her pooling via individual consultation, or via the employee representatives. She did not do so.

44. With regards to the redundancy process the claimant alleges that she was not subject to a fair selection process. In fact the evidence showed the Claimant was informed as with all other candidates for redundancy of the plans at a formative stage in consultation, was provided with a Redundancy Support document setting out the rationale for the redundancies, and had access to the restructure organogram, which was identified in the employees ‘Q & A’ forum from 6 March. She could be, and indeed was, invited to engage in collective consultation through her employee representatives.

45. She also had the opportunity for individual consultation. The Claimant did not seek individual consultation despite this having been offered to her on multiple occasions. Some 10 recorded approaches were made to her, which she chose not to take up or pursue. Some of these approaches were from her manager, others from other senior stakeholders from HR. When asked why she did not engage with her manager or others she indicated that there was no point, why would she engage with ‘people who bullied me’. However she did not engage either with Ms Boulton or Ms Berg, neither of whom she accepted she had any ‘bad blood’ with. She positively indicated that she trusted the employee representatives, whom she said she would consult or approach if she wished. The consultation process ran for 38 days. Notably, this was beyond the period the Claimant was on annual leave, which had lasted from 4 March to 20 March 2024. The Claimant therefore had ample opportunity to engage in either collective or individual consultation discussions with the Respondent regarding pooling or any other aspect of this process, before, during or after her annual leave, if she'd so wished. She had the means to maintain communications despite being on annual leave. There were channels through which any specific individual issues could have been raised, had the claimant wanted to. She did not positively establish any issues with the redundancy process beyond raising questions as to whether in fact her role had in fact disappeared. Her position was that roles were interchangeable, everyone was involved in project-management, that roles were axed but were re-badged and re-appeared elsewhere in the new organisation. I didn’t accept that assessment.

48. The claimant did not challenge her position as an unpooled individual, either herself directly or through the reps. When she asked in her appeal about the criteria for redundancy, she was told that selection criteria only applied to pooled roles. Despite what she suggested in evidence, namely that some roles were interchangeable (despite carrying different job descriptions, experience and skill set requirements, pay level and gradings) - she did not present evidence or demonstrate that her work was similar or comparable to other roles in the consultation, nor did she identify other ‘similar roles’ for which she was suited, or suggest that she could have been pooled with other such similar roles, in her area or other areas of the business. Level 4 roles were made redundant across

other functions, and it emerged that some engineering roles were subject to pooling – showing that the business considered and applied pooling where relevant. Other redundant positions at Level 4 were not (given their specific skill requirements) suited to pooling with the claimant's role, such as the UK communications lead, the engineering manager, or senior legal counsel.

49. The claimant complained that she was not offered an alternative role, despite the creation of the Business Operations team. In summary she alleges no interviews took place for the Business Operations roles, that two newly created positions were automatically assigned without any selection process, and she was never considered for either role. There was, according to her no transparent process for other roles. Both Level 4 roles in her team were made redundant, and the lower Level 3 role which was retained and renamed (fulfilling the same functions at the same salary as before) did not form part of the redundancy consultation with the incumbent remaining in the re-titled role. This more junior role paid £68,500, as compared to the claimant's £91,500 salary. The Chief of Staff role, serving the US entity and work was also re-titled (Lead, Business Operations and Strategy) and the incumbent Chief of Staff remained in the retained role. The Chief of Staff Role also had a lower salary of £77,000 and involved different key duties, different business focus, and a different skillset. These were not new roles. The claimant suggested these roles could have been offered to her and had this happened she could have considered them. At no point either during the redundancy process, during her appeal or during the hearing did she positively say she would have accepted such a demotion to save her job. There were in fact two new roles created Finance Manager and QA Senior Engineer but neither role involved the kind of work the Claimant had been employed to undertake, and nor did she apply for them.

50. There was an appeal process which she availed of, where again the issues were raised and the employers position explained. Questions were again raised during the hearing regarding the claimant's willingness to accept demotion or lower paid roles. She indicated in evidence that she wasn't given this option. Having repeatedly complained (her own words pg. 379) at not having had her salary increased from £91,500, it is not credible that she was hoping to be appointed to, or would have entertained, a role paying £68,500. It appears unlikely that the claimant having ignored offers and opportunities from management colleagues to engage with the consultation process and being aware of the situation that she was in fact seriously interested in pursuing such roles or options.

51. From her presentation the claimant is an articulate and capable individual. She was fully apprised of the business situation and had every opportunity to make effective representations to management either herself or via employee representatives regarding pooling or alternative roles. She failed to engage with the process. She failed to make any overture to the management on the topic. As it was she initially took annual leave – no one could blame her for doing that - but even then she had the opportunity and means to keep in contact with the business and to continue to engage with the process, before, during and after her leave, had she wanted to. She did not.

52. Was the process followed fair? The process here certainly had all the outward elements of an ACAS compliant redundancy process. On inspection there was early consultation (both collective and individual was offered). The pooling issue was initially considered by management and was available to be addressed with employee representatives and individual staff, which it emerged it was. Evidence was provided of discussions of this topic by the employee representatives, of proposals regarding pooling having been made by employees and having been accepted and acted upon by the respondent.

53. The respondent considered the claimant's position. Pooling and bumping were considered. The claimant made no overtures regarding pooling or regarding a willingness to consider or accept different or less remunerative work. She had the benefit of an appeal process where her complaints were captured and addressed. During the appeal she complained of having been – using her word – 'demoted' by dint of her treatment, despite the fact that she had neither lost her grading or her salary. The suggestion therefore that she would or might have accepted an actual demotion and a significant pay cut is difficult to accept. Even at this point, she made no positive suggestions as to what other roles she might be considered for, or that she would accept a lesser role.

54. The respondent emphasised throughout the proceedings that the claimant's performance was not a factor in their decisions regarding the claimant. The claimant raised her own performance to make a different point – believing that she was placed in this position of being considered for redundancy only because, in effect, she had been held back in her progression. This was influenced by influential people in the business with the consequence being that – to paraphrase - she was in the wrong grade at the wrong time. The claimant raised the question of her previously asserted high performance, as assessed by previous managers, having been latterly dismissed and undermined, and made allegations that she was bullied from around May/June 2023, by a new manager. No complaint or grievance was lodged at that time. In a one-to-one meeting on 8 August 2023, Mr Phan informed her that he did not believe she would receive a promotion due to a "competency gap" "any time soon"- a direct contradiction of her previous evaluations. This did not lead to any formal challenge from the claimant at that time. She suggests that her 'agency' over her work was significantly reduced. From October 2023, Mr Wong became Head of Business Strategy and Operations, becoming her direct line manager. She alleged that from January 2024, Mr Wong engaged in bullying and micromanagement. Again, no challenge was offered to that until after the redundancy process had occurred, and once she was on garden leave. As to her having been singled out, it was confirmed that her manager had no role in the identification of roles at risk. There was no evidence offered by the claimant to suggest otherwise. I must also note that the grievance in this matter concerning her manager was not launched until 16 May 2024 – the formal redundancy process commenced 23 February 2024.

55. The claimant described various issues around favouritism, and lack of progress in her work dating as far back as 2021. She also outlined issues around being moved against her will from one team to another in 2023. With regards to being 'held back' the claimant characterised her manager in early

2023 (Ms Van Der Laar) as recognising that she was already operating at Level 5 at this stage and that she would support her promotion application, in effect suggesting that by rights she would have been at a higher level but for Ms Van Der Laar's departure, which was followed by her being managed in an undermining or bullying manner.

56. In this context I noted the exchange between Ms Van Der Laar and Ms Richards from January 2023 in the agreed Bundle, when the claimant's move back to her original team was being proposed. Ms Van Der Laar raised the proposed move with Ms Richards, wanted to offer context as to how and why the claimant moved from the team previously, alluded to 'challenges', and said that if the move proceeded she'd require specified objectives for the claimant *"…in order to avoid any issues we have had in the past."* While Ms Van der Laar was evidently outwardly constructive in supporting the claimant's progression, the January 2023 exchange and her couched language when discussing progression: "…I can't promise anything as you know" (April 2023) and "…we...hope we get you up to the next level in September" does not indicate any guarantee or inevitability of the claimant being promoted. Indeed, by reference to the work that needed to be done to get the application right, it was evidently not a foregone conclusion. The other variable here, confirmed by Ms Boulton, was that promotion was not automatic, and there also had to be a vacancy at this level at the relevant time for a promotion to happen. I am therefore not persuaded that the claimant was in fact disadvantaged in the manner she has tried to suggest by the management change, that there were grounds to suggest a break in mutual trust and confidence prior to the redundancy process or that any of the alleged issues were a factor in her selection for consideration for redundancy or for her ultimate redundancy.

Conclusion

57. Having been persuaded a redundancy situation existed it is for me to determine whether a fair process was followed and was the dismissal within the range of reasonable responses open to it. The claimant asserted that she did not believe that the process was fair, but her difficulty is that she, in effect, did not test it, because she did not engage in it. These consultation processes are extremely important, they are designed to support employees, promote dialogue, consider alternatives to redundancy and minimise job losses. It is incumbent on both sides to engage in these processes in good faith and with a sense of seriousness. If the claimant believed there had been an error in her treatment, she was empowered to raise and address it herself, as an individual - with management, or via the employee representatives. She did not do so. It is not coherent with the spirit of these consultations for an employee to sit out the consultation process in silence, and then, only once the consultation has passed, to opportunistically suggest that the employer has fallen into error.

58. I have considered all aspects of the processes adopted here (consultation, consideration of pooling/bumping, appeal process) and the situation the employer faced. This was a redundancy situation, and I am satisfied that the employer fulfilled its obligations via the processes it followed. I take the view that the employer acted reasonably here in treating a redundancy as the reason

for dismissing the employee. I was not persuaded that the claimants selection for consideration for redundancy or her dismissal was informed by or caused by other factors. Unfortunately the claimant lost her job as a result of the redundancy process. This was a painful outcome which she shared with 47 other former colleagues. That is regrettable and is a source of unhappiness for the claimant. It was not however an unfair dismissal.

The claim for Unfair Dismissal is not made out.
The question of remedy falls away.
The claim is dismissed.

Approved by:

Employment Judge Harley

25 August 2025

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Sent to Parties.
27 August 2025

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