EMPLOYMENT TRIBUNALS

Claimants: 1. Mr M McFarlane
2. Mr N Cole

Respondent: Babcock Mission Critical Services Offshore Limited

HELD AT: Manchester **ON:** 6-15 March 2017
16 and 17 March 2017
(in Chambers)

BEFORE: Employment Judge Sherratt

REPRESENTATION:

Claimants: Mr A McGrath, Counsel
Respondent: Mr J Mitchell, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The principal reason for which the claimants were selected for dismissal was not that they had made one or more protected disclosures.

2. The dismissal of the claimants because they were redundant was fair.

REASONS

The Issues

1. It being accepted that the principal reason for the dismissal of the claimants was that they were redundant, and that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to those held by the claimants and who have not been dismissed, was the principal reason for which the claimants were selected for dismissal that they had made protected disclosures?

2. There is also an ordinary unfair dismissal claim questioning overall fairness.

3. At a preliminary hearing on 22 July 2016 when the claimants were represented by a solicitor they were ordered to provide amended particulars of their claims to include particulars of each alleged disclosure of information relied upon and details of alleged acts of unfairness in relation to the redundancy selection process by 21 October 2016. There was to be a further preliminary hearing on 28 November 2016. When finalising their amended particulars the claimants had received disclosure from the respondent and had disclosed their own documents.

4. Mr McFarlane's particulars of claim assert his belief that his reputation for fault reporting and raising concerns about failing to follow regulations was the reason that he was selected for redundancy and that the redundancy selection process was deliberately designed to target him as a result. The selection matrix was very heavily weighted in favour of the time served criterion and the selection pools were artificially divided into pilots and co-pilots which was unfair. The combination of these factors ensured Mr McFarlane and Mr Cole would be selected without the need for a panel to carry out a scoring process. The whole process was a sham.

5. Mr Cole's further particulars are to the effect that time served in Blackpool was the prime customer requirement for retention with the implications of that being used as a criterion being immediately obvious. The process was treated as a fait accompli by the respondent from the outset. The claimant puts the respondent to strict proof as to its assertion that the same redundancy matrix had been used in a previous redundancy process.

6. At the preliminary hearing on 28 November 2016 it was noted that the claimants did not dispute that they were made redundant and that it was a genuine redundancy situation. The claimants alleged that the redundancy process was prejudged so that they were targeted to be the candidates selected for redundancy from the outset. They are critical of both the pool and the selection criteria adopted by the respondent. In the alternative it is alleged that they were selected for having made protected disclosures. It was agreed that the issues for the unfair dismissal claim involved "did the respondent act reasonably in identifying the pool for selection?" The claimants alleged that there was also an issue as to whether the selection criteria were objectively chosen and fairly applied and **Polkey** was also said to be an issue.

The Parties

7. Each claimant was employed by the respondent to fly helicopters from a base at Blackpool. Mr Cole joined the respondent on 7 January 2013 followed by Mr McFarlane on 17 June 2013. They both joined as co-pilots and were both promoted to the rank of captain. Both claimants had flown helicopters in military service.

8. The respondent is a large company. One of its operations involves flying people who work offshore to, from and between various rigs from Blackpool, Aberdeen and other venues. The offshore installations are relatively close to Blackpool and can be reached in 10-12 minutes. The service operated by the respondent in Blackpool differs significantly from that in Aberdeen where the time to travel from base to the installation might exceed one hour.

9. The helicopters used out of Blackpool are of type N3 with a maximum of 11 passengers. Aberdeen helicopters are type S92 carrying up to 10 passengers on longer haul flights often in excess of 250 miles.

The Evidence

10. The claimants gave evidence on their own behalf. They called a former colleague, Robert Jones, and provided a witness statement from Ben Lloyd.

11. Evidence for the respondent was given by Simon Meakins, Head of Flight Operations; Rob Dyas, Director of Operations; Andrew Doyle Managing Pilot at Blackpool; Julie Fawcett, Human Resources Business Partner; Fiona Wallis, former employee; and Paul Kelsall, Director of Service Delivery.

12. The bundle of documents contained in the region of 550 pages.

The Blackpool Operation

13. At Blackpool the respondent had a joint contract with two customers, ENI and Centrica. The contract has been in operation since 2009 and was renewed in 2015. Under the terms of the contract two N3 aircraft are made available to the customer and the respondent carries out flight operations seven days a week and 365 days a year.

14. The significance of there only being two aircraft is that when one is out of service it is only the other one that is available for use on behalf of both customers. Had the customers decided to pay for three helicopters then it would have a different but more expensive operation.

15. Each helicopter has a crew of two. The respondent employs pilots who are either captains or co-pilots. Each flight must have two pilots on board with at least one of them being a captain. A captain could therefore fly with another captain or with a co-pilot but a co-pilot would always have to fly with a captain.

16. The crews were rostered and normally four crew members would be on duty in the morning and four in the afternoon, providing a service between 07:00 and 21:00. There used to be a standby service overnight and it is the cessation of this service that caused the need for redundancies.

17. Some of the captains and co-pilots held other roles in addition to their flying roles.

18. Before the redundancy the flying crew at Blackpool included the following positions, some of which were held by captains and some by co-pilots:

Managing Pilot	Captain
Type rating examiner x 2	Captain
Senior line training captain	Captain
Deputy Managing Pilot	Co-pilot

FDM gatekeeper	Co-pilot
Flight safety officer	Co-pilot
Technical pilot	Co-pilot

19. In addition there were eight captains and four co-pilots carrying out flying duties only.

20. In the redundancy exercise the number of captains was to be reduced from eight to six and co-pilots from four to three.

21. Some members of the ground staff at Blackpool were also made redundant in the course of the redundancy exercise but it is not relevant to this judgment. The total numbers involved did not exceed 20.

22. The ratio of captains to co-pilots was in the region of 60:40.

23. The Managing Pilot at Blackpool was Andrew Doyle. He reported to Simon Meakins, the Head of Flight Operations. Mr Meakins reported to Rob Dyas, the Director of Operations. All three are helicopter pilots. Mr Dyas has legal accountability for the safe conduct of flight operations by the company.

Crew Reports

24. The respondent operates the Q-Pulse reporting system which is a proprietary system of reporting used in the aviation industry.

25. According to the respondent's safety management manual Q-Pulse has a number of different reporting functions, with those relevant here being an Aviation Safety Report – ASR – which is mainly for pilots to input. There is a Flight Crew Report – FCR – which is mainly for use by pilots and co-pilots, and Occupational Safety Reports – OSR – for all staff to use on matters relating to health and safety.

26. Again according to the manual, reports may be treated as confidential if the reporter requests it. Reporting occurrences is essential for improving safety and is strongly encouraged. In return, the company guarantees that the reporter will not be punished for reporting safety concerns except in the case of illegal act, gross negligence, or a deliberate disregard for regulations and applicable procedures. Each occurrence reported in a Q-Pulse is analysed and processed by the relevant person with continuous oversight and supervision from the Safety and Compliance Department.

27. In addition to the Q-Pulse system the respondent has as whistle-blower hotline, a mission safe reporting email address and provision for confidential and entirely anonymous concerns to be raised with the Flight Safety Manager by means of confidential reports.

28. In this case the claimants only made Q-Pulse reports. They do not claim to have used the whistle-blower hotline or to have used mission safe reporting or confidential reports.

29. Simon Meakins has provided a table with the number of Q-Pulse reports made by each pilot in the period from April 2015 to March 2016:

Cole	35
Deputy Managing Pilot	33
Managing Pilot	22
FDM gatekeeper	21
Fleet Technical Pilot	21
Flight Safety Officer	18
McFarlane	16
Type rating examiner	14
Senior line training captain	13
Captain	12
Captain	10
Type rating examiner	10
Co-pilot	8
Captain	6
Captain	6
Co-pilot	5
Co-pilot	5
Captain	2
Co-pilot	3
Captain	3
Type rating examiner	1

30. According to Mr Meakins he first became aware of the relative number of Q-Pulse reports submitted by each Blackpool pilot when preparing to defend these claims.

31. It is open to anyone completing a Q-Pulse report to mark it as a Mandatory Occurrence Report which will involve it being reported to the Civil Aviation Authority. None of the reports submitted by the claimants were marked MOR.

Protected Disclosures

32. Each claimant prepared a schedule dealing with their alleged protected disclosures. Mr Cole listed eight and Mr McFarlane 11, with their numbers of ASR reports being 34 and 16 respectively.

33. The respondent accepted that Mr Cole had made five protected disclosures and did not accept that three of the reports constituted protected disclosures.

34. Of Mr McFarlane's 11 matters, two were not relied upon by him reducing the number to nine, and of these the respondent accepted that five of them amounted to protected disclosures.

Nicholas Cole list of protected disclosures – case number 4101032/2016

35. Mr Cole's list of protected disclosures, as provided by his solicitors, is as follows:

The date of the alleged disclosure	**The nature of disclosure**	**The information said to have been disclosed, which you allege constitutes a protected disclosure**	**To whom the disclosure was made and where it was made**	**How the disclosure was made (was it verbally or in writing)**
May 2014	Health and safety concern **Section 43B(d)**	Inadequate training provision for pilots.	Respondent **Section 43C relied upon**	Verbally, subsequently discussed by conference call with Andrew Doyle and Mile Harris (Respondent)
21/08/2013 & 13/09/2015	Health and safety concern and potential breach of flight safety regulations regarding pilot fatigue. **Section 43B(1)(b) and (d)**	Pilots flying fatigued due to lack of resource/poor scheduling. Because the claimant drew attention to the potential breaches of flight safety regulations and insisted upon following them the company was forced to recruit additional staff, costing it money. Unofficially claimant told by A Doyle to "learn to fly fatigued".	Respondent (and its client) **Section 43C relied upon**	Q Pulse Report 988 and 1074
28/11/2014	Health and safety concern **Section 43B(d)**	The claimant submitted a report concerning lack of planning in relation to use of aircraft becoming a health and safety concern.	Respondent **Section 43C relied upon**	Q Pulse Report 3843
28/12/2014	Health and safety concern	Claimant raised concerns about inadequate IT systems/failure to update	Respondent **Section 43C**	Q Pulse Report 3999

	Section 43B(d)	pilots on regulations impacting on flight safety.	**relied upon**	
10/06/2015 18-26/06/15	Health and safety concern and potential breach of flight safety regulations (legal obligation) **Section 43B(1)(b) and (d)**	Claimant raised concerns on health and safety and compliance with flight safety regulations (legal obligation), specifically breach of an OM (A) rule breach concerning non-compliant "Defect Handling/reporting faults.	Respondent (including A Doyle directly by email) **Section 43C relied upon**	Q Pulse Report 4908 & subsequent email exchange with A Doyle regarding the same
24/08/2015	Health and safety concern and potential breach of flight safety regulations (legal obligation) **Section 43B(1)(b) and (d)**	Claimant raised concerns on health and safety and compliance with flight safety regulations (legal obligation) and refused to carry out a night time intervention in the absence of a risk assessment/on an unlit platform at night which would have been contrary to flight safety regulations.	Respondent **Section 43C relied upon**	Q Pulse Report 5308
October 2015	Health and safety concern and potential breach of flight safety regulations (legal obligation) **Section 43B(1)(b) and (d)**	Claimant raised concerns on health and safety and compliance with flight safety regulations (legal obligation) highlighting culture of non-compliance.	Liam Messer and Andy Bury (Respondent) **Section 43C relied upon**	Verbally at a meeting/training event Documented thereafter in an email from Liam Messer to the claimant dated 28/10/2015
18-19/12/15 & 4/1/2015	Health and safety concern and potential breach of flight safety regulations (legal obligation) **Section 43B(1)(b) and (d)**	Claimant raised concerns on health and safety and compliance with flight safety regulations (legal obligation) highlighting culture of non-compliance.	David McGowan & Nathan Griffiths (Respondent) **Section 43C relied upon**	Email

36. The respondent did not accept as protected disclosures those dated 28 December 2014, October 2015 and December 2015.

<u>Mark McFarlane list of protected disclosures – case number 2401203-2016</u>

37. Mr McFarlane's list of protected disclosures, as provided by his solicitors, is as follows:

The date of the alleged disclosure	**The nature of disclosure**	**The information said to have been disclosed, which you allege constitutes a protected disclosure**	**To whom the disclosure was made and where it was made**	**How the disclosure was made (was it verbally or in writing)**
17/06/2015	Health and safety concern necessitated grounding the aircraft **Section 43B(1)(d)**	During an unscheduled offshore intervention the aircraft steps failed to extend correctly; the claimant reported the incident followed official company procedure and returned to base.	Respondent **Section 43C relied upon**	Q Pulse Report 4917
05/09/2015	Health and safety concern and potential breach of flight safety regulations necessitated grounding the aircraft **Section 43B(1)(b) and (d)**	Because the claimant drew attention to the potential breaches of flight safety regulations and insisted upon following them an intervention was delayed, at cost, for some time.	Respondent (and its client) **Section 43C relied upon**	Q Pulse Report 5376
07/12/15	Health and safety concern and potential breach of flight safety regulations (legal obligation) **Section 43B(1)(b) and (d)**	The claimant submitted a series of reports concerning unserviceable aircraft which were being placed on the flight line for commercial operations with known faults, which were not known to the claimant and co-pilot placing them in jeopardy.	Respondent **Section 43C relied upon**	Q Pulse Reports 5863 & 5871
31/12/15	Health and safety concern and breach of flight safety regulations (legal obligation) **Section 43B(1)(b) and (d)**	Claimant raised concerns and insisted upon being issued with PPE (a specialist bespoke suit for flying in cold weather conditions) that was a requirement of flight safety regulations. This was costly.	Respondent **Section 43C relied upon**	Q Pulse Reports 6008 & 6011 And verbally, directly to the respondent's headquarters at Aberdeen via the ECF representative on or around the same dates
24/10/14	Health and safety concern and potential breach of flight safety	Claimant raised concerns on health and safety and compliance with flight safety regulations (legal obligation).	Andrew Doyle (Respondent)	Email

	regulations (legal obligation) **Section 43B(1)(b) and (d)**		**Section 43C relied upon**	
19/02/15	Health and safety concern and potential breach of flight safety regulations (legal obligation). **Section 43B(1)(b) and (d)**	Claimant raised concerns on health and safety and compliance with flight safety regulations (legal obligation) highlighting culture of non-compliance.	Doyle (Respondent) **Section 43C relied upon**	Email
20/02/15	Health and safety concern and potential breach of flight safety regulations (legal obligation)	Claimant raised concerns on health and safety and compliance with flight safety regulations (legal obligation) highlighting culture of non-compliance and how pilots were discouraged from reporting faults contrary to the same.	Andrew Doyle and Andrew Martin (Respondent)	Verbally at a meeting
22/02/15	Health and safety concern and potential breach of flight safety regulations (legal obligation)	Claimant raised concerns on health and safety and compliance with flight safety regulations (legal obligation) highlighting culture of non-compliance.	Andrew Doyle (Respondent)	Email
10/07/2015	Health and safety concern and potential breach of flight safety regulations (legal obligation)	Claimant raised multiple concerns on health and safety and compliance with flight safety regulations (legal obligation), highlighting culture of non-compliance.	Brian Baldwin CAA Flight Operations Inspector	Verbally at annual Crew Resource Management Training
22/12/15-5/1/16	Health and safety concern and potential breach of flight safety regulations (legal obligation)	pilots not recording faults for commercial expediency.	Nathan Griffin (Respondent)	Numerous emails & verbally on the telephone (exact date of telephone conversation unknown
31/12/15	Health and safety concern and potential breach of IAW flight safety regulations (legal obligation)	Claimant intervened in incident whilst flying as co-pilot to prevent breach of rules and insisted correct protocols were followed.	Captain (Respondent)	Verbally

38. Mr McFarlane does not rely on the disclosures dated 24 October 2014 and 22 December 2015. The respondent does not accept those dated 19 February 2015, 20 February 2015, 22 February 2015 and 10 July 2015.

39. The claimants each rely on the totality of their disclosures being unable to point to any particular disclosure which must have influenced the actions of the respondent any more than any other one. On behalf of the claimants Mr McGrath submits that these were all matters which caused the dismissals. They were the reasons or principal reasons for the dismissals and affected Simon Meakins when his decisions were made to include the criteria and weighting in section 3 of the redundancy selection matrix.

40. In these circumstances where I can be satisfied from the respondent's admissions that disclosures qualifying for protection were made by each claimant I do not think it necessary to reach any conclusions as to whether or not the disputed matters were qualifying disclosures for the purposes of section 43B of the Employment Rights Act 1996.

Mr McFarlane's Grievance

41. One of the protected disclosures relates to a grievance raised by the claimant in February 2015. Mr McFarlane has provided an account of his stage one grievance meeting with Andrew Doyle, Base Managing Pilot, on 19 February 2015, with the grievance being against Stuart Croft, Engineering Team Leader. According to Mr McFarlane's note there were two matters to deal with. The first was the question of deliberate lying and the second claim was that he was over keen to snag an aircraft. According to his note, as a part of the meeting the Base Managing Pilot stated that a formal base meeting needed to be held at the earliest opportunity to address any cultural behaviours and practices across all departments which are not in line with company policy. According to Mr McFarlane he made a number of verbal disclosures in the meeting. Mr Doyle sent an email to Mr McFarlane on 21 February dealing with the outcome. Mr Doyle then approached Simon Meakins by email saying that he was dealing with a grievance which looked like it would not be resolved at local level. A formal grievance meeting was arranged for Thursday 5 March 2015 when Mr McFarlane would meet with Simon Meakins who would be accompanied by Julie Fawcett, HR Business Partner.

42. Having met with the claimant at 14:00 on Thursday 5 March 2015 Simon Meakins then met with Stuart Croft, the Engineering Manager. The claimant was seen again by Simon Meakins on Friday 6 March and he was told that the grievance was not upheld. Mr Meakins gave reasons. An outcome letter was sent on 9 March 2015. Mr Meakins had not found any intentional malice and no defamation of character. Comments were not meant as a personal attack; rather they were a statement of fact. He found it to be a disagreement between two different characters with different ways of expressing themselves and different perceptions as to what was said and what was meant. There was a degree of banter that might have been perceived as personal but was not malicious. Engineers had been reminded of the importance of maintaining a professional relationship with pilots. Mr Meakins had satisfied himself that both parties were following their procedures correctly and any tech log entries were being investigated fully and correctly with no question of either party's professionalism. Mr McFarlane was given the right of appeal but did not

exercise it. According to his statement the outcome was a whitewash but he accepted it for a quiet life.

The Redundancy Process

43. Andrew Doyle first became aware of the possibility of redundancies at the Blackpool base in June 2015 when Paula Parker, from the company's commercial team, asked him how many pilots the Blackpool operation could cope with if night standby cover was cancelled. His email response was that:

> "By dropping nights I could lose three from my FTE and be fairly comfortable for sickness, an unusual situation for Blackpool. At least one of the three would have to be a co-pilot."

44. Mr Doyle said that at least one of the three would have to be a co-pilot to ensure that they maintained what he said was the best ratio of captains to co-pilots for a safe and robust operation. According to him it was generally accepted across the industry and within the company that the ratio should be 60:40 to ensure sufficient captains in the event of sickness or other absence. A greater number of captains provided greater operational flexibility.

45. On 28 January 2016 the customers issued three months' notice that they intended to cease the night standby cover on 28 April 2016. The daytime services would still be required. There would be a reduced requirement for flight services when the notice took effect. The company proposed redundancies across its pilot teams as well as security and logistics at Blackpool.

46. The redundancy planning process was carried out by Simon Meakins with input from Rob Dyas (Director of Operations), Julie Fawcett (HR Business Partner) and Helen Scott (HR Director). Steve Godfrey (Head of Training) had input into the decision as to which positions should be protected to ensure that the training requirements at the base were adequately accounted for.

47. Mr Meakins and Mr Dyas considered the operational requirements and proposed to reduce the number of captains by two and the number of co-pilots by one. They decided to treat the captains and co-pilots separately with the security and logistics staff being treated entirely separately from the pilots. According to Mr Meakins he made this decision supported by Mr Dyas and the HR department. According to Mr Meakins it was to try to maintain the captain to co-pilot ratio at the right level that they decided to pool the captains and the co-pilots separately.

48. As to protected positions, he and Mr Dyas considered the various roles which were involved at Blackpool, looking at the cost and time that would be involved in replacing the person carrying out the particular role. Having looked at this it was determined that all of the holders of the roles described at paragraph 18 above should be protected from potential redundancy selection.

49. In cross examination Mr Meakins said that he was based in Aberdeen flying the S92.

50. He did not have any day-to-day contact with the Blackpool clients. He might be in contact with them monthly on average and he attended a quarterly review

meeting discussing performance during the period, matters of safety and operational changes. Health and safety matters were discussed. The clients would see Q-Pulse reports, anonymised, if they affected the clients. It was a very good relationship with feedback being welcome in either direction.

51. He was managed by Mr Dyas. They had weekly team meetings. Mr Dyas did not normally attend the quarterly meetings. Mr Doyle was reporting to him. He was his eyes and ears on the ground at Blackpool. They liaised every two or three days and formally spoke each Friday during a weekly conference call with all of the Managing Pilots. Flight safety reports were normally dealt with through the flight safety chain rather than the weekly conference meeting. He received the Q-Pulse reports automatically on email. It gave the narrative but did not show who had made the report. He would not ask who put the report in. Their training was to ensure that they maintained an open reporting culture and unless it was a serious incident or accident there was no need for him to know who had put in the report. He could find out if he needed to by going into the message.

52. He was not aware of the recruitment of the claimants. He had worked in Aberdeen. He knew, subsequently, that the claimants were pilots in the organisation. There was no need for him to look into their career histories. This was done when they were recruited. He had no need to go into their records.

53. When the customer gave notice he had to consider the total number of pilots that were required to service the contract and the correct ratio of pilots to co-pilots. With the advice of Andrew Doyle the decision was to reduce the full-time equivalent from 20 to 17 i.e. a reduction of three, at least one of whom would be a co-pilot. He and Mr Doyle came to the same conclusions as to the ratio, although he could not recall discussing it with Mr Doyle. The ratio was used across the offshore business in all operating locations and he thought other operators would do the same.

54. The separate pooling of captains and co-pilots was his decision with the support of Rob Dyas and HR.

55. If they employed 100% captains it would give complete operational resilience but would not be a viable solution commercially. A basic co-pilot was paid 50%-70% of a captain's salary.

56. In cross examination he confirmed that the pool decision once made was not going to change. 60:40 gave them the best balance between commercial and operational requirements. It provided the needs of the contract. There was no consultation in relation to the pools. The ECF representative was not consulted in relation to them.

57. The pools were referred to at the "at risk" meeting on 17 February 2016 without comment or explanation as to how they were arrived at.

58. The protected positions were relevant to pooling. They could not do the pooling until a decision had been taken as to which positions would be protected.

59. Turning to the selection matrix, Mr Meakins said that he aimed to ensure that the criteria were as objective as possible with a view to ensuring as level a playing field as possible for those at risk. His focus was on the competencies required for the

role, being particularly conscious that the line flying at Blackpool was highly specialised. The short shuttle nature of the flying operations was peculiar to Blackpool as a result of the relative proximity of the offshore installations and the use of the smaller and more agile N3 aircraft which was only flown from Blackpool.

60. The pilots were trained specifically on the N3 aircraft flying in and out of Blackpool and they were familiar with the customer requirements. He needed to ensure the pilots were qualified and experienced in dealing with the particular conditions and requirements of the aircraft and the environment. The pilots needed to have knowledge of the particular regulations and procedures in place for crew change flights on an N3 aircraft out of Blackpool. Taking all of these things together, experience of flying the N3 at Blackpool and working under the regulations governing flying the N3 out of Blackpool were to his mind absolutely critical to the performance of the role of the pilot at Blackpool.

61. Blackpool pilots attend for their shift, carry out their flights, return to base and leave work once the necessary checks are complete. The vast majority of a pilot's time is spent on flying duties and not other matters. The additional or secondary duties were carried out by those who were in the protected roles.

62. Mr Meakins looked at the selection matrix which had been used in a redundancy exercise concerning search and rescue helicopter pilots in Aberdeen. In search and rescue operations the aircraft are flown by two captains so the ratio 60:40 is not relevant. In that exercise they consulted with the training department as to which scores were available for assessment, and there was a lot of overlap between the training scores available at Blackpool and in search and rescue, so in his view many of the criteria could be adopted. Given the importance of experience on the N3 aircraft, for the company he included this experience as a criterion on its own and having discussed the draft with Julie Fawcett he added other crew change experience working for a different employer as similar skills and regulations would have been applicable. He decided to award a double weighting to these criteria related to experience in Blackpool, flying the N3 and crew change work.

63. He met with Rob Dyas and Julie Fawcett. Mr Dyas agreed specific experience on the N3 aircraft was critical and a higher weighting should be used in the matrix. He also agreed previous crew change experience and knowledge of relevant regulations as assessed on testing would be a good indication of the required competencies. Julie Fawcett suggested an additional element should be included in the selection matrix to give credit to experience with operators other than the company, such as air ambulance, onshore and military. They determined the most appropriate measure would be total flying hours as this was in their view the easiest to measure across a variety of different flying types. This was a further criterion added with a score of 20.

64. The final selection matrix was arrived at following these discussions. There was no involvement with the customer in determining selection criteria or weightings. The only involvement of the customer was the giving of the notice of cancellation in respect of night flights.

65. The Aberdeen search and rescue commander matrix criteria were:

1A Demonstrates aircraft technical knowledge (GRRT/TCAS)

1B Demonstrates required operations manual knowledge (SAR role paper)

1C Demonstrates depth of professional knowledge (DG/first aid/ESE)

2A OPC/LPC training records

2B Line check

2C SAR check

2D Live disciplinary or cautions

3A North Sea SAR experience years

3B Additional SAR experience years

4A Multi skilled to meet business needs

4B Has the individual identified operational improvements that have been implemented?

66. For the Blackpool crew change pilot matrix the first section dealt with technical and professional knowledge, the second with performance and skill in role and the third with experience and competencies, with the categories being as follows:

1A Demonstrates aircraft technical knowledge (GRRT)

1B Demonstrates depth of professional knowledge (DG/first aid/ESE)

2A OPC/LPC training records

2B Line check

2C Live disciplinary or cautions

3A BOH Blackpool crew change experience years

3B Additional crew change experience years

3C Total flying hours

67. Category 1 items were given a weighting of 20; category 2 a weighting of 20 and category 3 a weighting of 60.

68. Although the Aberdeen redundancy exercise was carried out it did not involve compulsory redundancy because voluntary redundancy was taken by some and the remaining pilots accepted suitable alternative employment with Aberdeen crew change.

69. In cross examination Mr Meakins said it was an incredibly difficult thing to have to select from two pools of pilots, all of whom were qualified and capable. He had to make a decision as to the best and most experienced/appropriate pilots to retain. Experience in role at Blackpool he considered the most relevant criterion and

it was awarded weighting accordingly. Impact would be felt by those with less offshore flying experience.

70. Mr Dyas in cross examination said that he had a legal duty and responsibility with regard to flight safety. He was familiar with CAA regulations. He had seven years' background in the military. The respondent has some 500 employees and a turnover of £150million. He accepted the company had an HR director and an HR adviser and could consult solicitors so the company was adequately resourced to deal with procedural issues.

71. Mr Dyas would have received the Q-Pulse reports generated by the claimants and indeed all of the company's pilots. What he got did not detail the author but showed the base and the type of occurrence. He got the narrative word for word as completed on the form. He did not as a matter of course access the Q-Pulse system to look at additional detail. Last year there were 1,000 ASRs. He would expect pilots to use aviation safety reports and flight crew reports. He relied on flight safety department Managing Pilots to manage them. There was a monthly review board that would consider some reports if the appropriate criteria were met, or if anyone deemed it appropriate to raise it. He was not aware in detail of the reports put in by the claimants. He did not believe Mr Cole's report on fatigue had been treated as an MOR or indeed that it should have been treated as an MOR. He did not believe, based on the report, that there was a safety related outcome from the report. It is the first responsibility of the reporting pilot to submit a report as an MOR but if those subsequently looking at the report consider that it should have been so categorised it can be amended accordingly. They submit 5-6 MORs per month to the CAA who accept it as a healthy level of reporting. He was not aware of who was submitting the reports. He had the ability to go into the reports but did not. He had a department to do that.

72. As to the weighting in the matrix, the company was in the position where it had to conduct the selection process. Mr Meakins produced the matrix and he accepted his recommendation.

73. As to protected positions he had sent an email having considered the question setting out who should be in a protected position and why, on 15 February 2016 to Helen Scott and Simon Meakins, copied to Steve Godfrey, Paul Kelsall and Julie Fawcett. In respect of each of the positions, he set out the cost to replace, the time to replace the experience and a recommendation. It was sent to Mr Kelsall out of courtesy because he was running a parallel redundancy process. He had discussion with Helen Scott of HR before reaching his conclusions. He took the view that the positions were recruited for, selected for and allowances paid. Experience was needed for people to be brought up to speed. The roles would still be required after the redundancy so their positions would be protected. Some were more marginal than others. He was asked questions about the various people on the list. He had no knowledge that Mr Cole had been involved in flight safety. He accepted it might have been done by Mr Cole when in the military.

74. As to the contents of the matrix, the line check was done by the line trainer. The licence proficiency check was a formal requirement of the CAA. The qualified type rating examination was a more lengthy process involving work on a simulator. The operational proficiency check was usually carried out by Mr Andy Bury at Blackpool plus a classroom assessment.

75. During further questioning the matrix Mr Meakins confirmed that he did not know who would be selected when he prepared the matrix. There was no involvement of the customer with the development of it. The customer did not interfere in the process. He did not believe that the speed with which the pilots carried out their duties was anything to do with it. The company had to select between two pools of pilots who were all qualified to do the job.

76. Mr Meakins was asked about the protected disclosures. He was not in post in July 2013 when Mr Cole made the disclosure concerning fatigue but he was aware that fatigue had been identified as an issue in Blackpool through the safety management system, and this resulted in them getting an additional co-pilot. He was not aware that it was Mr Cole who had reported it. It was put to him that the additional pilot meant that it cost more to run the Blackpool case and his response was that it was a positive step with safety management working as designed.

77. The May 2014 complaint concerning training – he was not aware of it prior to the redundancy exercise. The 28 November 2014 report by Mr Cole would have been seen by him but he would not have known who submitted it. This was a good action by Mr Doyle, discussing matters with the customer was a perfectly correct process that he had no part in.

78. He had read the 28 December 2014 report by Mr Cole on IT issues without knowing who had inputted it. For him it was a report not a complaint. The problem was correctly raised. It was a demonstration of the open reporting culture they encourage and that improvements were made as a consequence. He did not know who put the report in.

79. He was involved in Mr McFarlane's grievance concerning Mr Croft. He remembered having done it. As far as he was aware Mr McFarlane accepted his findings and led him to believe the matter was closed, so that was that.

80. Mr Cole's report of 10 June 2015 was something he was aware of. He saw it as a positive reflection on the safety management system. Procedures were improved because of it.

81. He was not aware of any discussions that Mr McFarlane may have had with Mr Baldwin, a CAA employee nominated to deal with flight safety for the respondent. As far as he was aware Mr Dyas had not been contacted by Mr Baldwin.

82. Mr Cole's pilot fatigue report he would not have regarded as an MOR.

83. Liam Messer had not raised any issues with him.

84. Mr McFarlane's 7 December 2015 report would have been seen by him but he was not aware who reported it. Malfunctions were not uncommon. This was an example of something correctly worked through.

85. With regard to a number of emails in December 2015 concerning faults, he had not seen them until they appeared in the bundle.

86. The 31 December 2015 report concerning Mr McFarlane's flying suit would have been seen by him and he was happy that the base management were dealing

with it. He did not think this was a health and safety matter provided a compliant and suitable survival suit was provided. The spare suits were still compliant.

87. The 31 December 2014 report of Mr McFarlane concerning a CHIP light he would have read but not known who sent it. The text of the report shows correct and compliant processes being followed.

88. In cross examination Mr Dyas confirmed he was in post when Mr Cole reported fatigue in August/September 2013. He did not believe that there was a safety related outcome from the report. He did not believe it should have been treated as an MOR. He believed that Mr Cole as co-pilot and Mr Doyle as captain did the right thing when Mr Cole had an onset of fatigue. Mr Doyle as the captain flew back to Blackpool. The matter was treated very seriously by the organisation. There was a successful outcome with additional resource introduced to the Blackpool base and management of fatigue.

89. Brian Baldwin, CAA Flight Operations Inspector, had not raised with him anything that might have been said to Mr Baldwin by Mr McFarlane on 10 July 2015.

90. Julie Fawcett was not aware of any of the issues raised by either claimant other than Mr McFarlane's grievance when she was working on the formulation of the selection matrix, when the scoring process was undertaken or when she was involved in the subsequent redundancy process.

91. As Managing Pilot at Blackpool Andrew Doyle was not involved in the decision making process. He was not involved in the preparation of the selection matrix, although he believed it was fair and objective. He was not involved in any of the individual consultation meetings. He did not feel that his relationship with the claimants was any different from that with his other pilots.

92. He did not criticise their Q-Pulse reporting habits. They both had a good record and he had no concerns about it. Their reporting was in line with his and the company's expectations and was not out of kilter with many of their colleagues. He did not accept there was a culture of underreporting of defects at Blackpool and in his view to suggest pilots were not reporting flight safety matters was effectively equivalent to suggesting that pilots were putting their own lives at risk as well as the lives of their colleagues and passengers. He could not understand how the claimants could believe there was any basis to such a suggestion as in his view none of the pilots would put lives or safety at risk. Having looked at their Q-Pulse reports and email chains he felt they were part and parcel of their normal duties as pilots and were in line with that duty and expectation to report concerns.

93. In his witness statement he dealt with each of the alleged protected disclosures.

94. In cross examination he said he was not aware of the preparation of the matrix or of the list of protected positions until before the "at risk" meeting. He was told in a phone call from Mr Dyas. He did not see the email from Mr Dyas concerning the protected positions.

95. Subsequently Mr Meakins gave him a summary of the contents of the matrix.

96. On being shown Mr Cole's report on fatigue for August 2013 he recollected it. It was not an unknown event and they were already returning to base. He took over to fly back to Blackpool. He certainly did not suggest to Mr Cole that he should learn to fly fatigued in the offshore environment. He may have said something like "you'll get used to the offshore environment" but he would not have said to someone they should learn to fly fatigued. Two pilots were recruited after the fatigue report. One was to replace an employee who had resigned and the other was to alleviate fatigue.

97. When matters were raised with the client the names of the pilots were never given.

98. As to IT issues he recalled there were a lot of them at the time. It was a ground and flight operations issue. The fix was already being pursued.

99. The CHIP light issue was a straightforward matter. The aircraft was brought back for engineering attention.

100. In his meetings with the clients there had never been a complaint about a particular pilot. He believed that one of the customers liked to know who the flight crew were so that the radio staff could greet them by name. The other customer did not express any interest in who the crew was. They never named names from safety reports when meeting the clients. The clients had no influence on which pilots they had. They got the crew allocated to them on the day.

101. Mr Doyle was not asked about increased communication with Mr Meakins or Mr Dyas in connection with the contract change and the redundancy process.

The Consultation Process

102. Following the preparation of the matrix and the selecting of the protected positions the respondent was ready to announce the proposed redundancies to the wider workforce. The announcement was to be made on 17 February 2016. On the day of the first consultation meeting Simon Meakins and Julie Fawcett met with Barry MacDonald, the employee communication forum ("ECF") representative at the Blackpool base to discuss the selection matrix. According to Mr Meakins, Mr MacDonald was content with the criteria and weightings, but did point out an error in the range of years listed in one of the criteria. This was the only comment he had and he appeared happy with the matrix after the error was corrected.

103. The Blackpool briefing meeting was held on 17 February 2016 and slides were produced. The first slide shows the need to remove two captains and one co-pilot and also deals with security/logistics staff. The meeting was to advise people that their position was at risk of redundancy, unless protected. They would be invited to an individual consultation meeting during the following week with a view to exploring ways of avoiding or reducing the number of redundancies. The employees could make their own suggestions and raise any concerns or questions. No decisions had been taken and would not be until the consultation had concluded.

104. The next slide dealt with the structure of pilots showing the current and proposed structure. The then current structure has been set out above. The proposed structure was the same save that captains had gone down from eight to six and co-pilots from four to three.

105. The next slide showed selection pools for the Blackpool staff. Pool one was the captains and pool two was the co-pilots. The pilot scoring matrix was not shown but it was said to be objective and factual, that there had been consultation with the pilot ECF representative, that each pilot would be scored individually and independently, that individuals in the pool would be ranked top to bottom and individuals with the same score will be split by length of service. There was then a flowchart showing the consultation process which involved identifying positions at risk, selection criteria being discussed with the ECF representative, the first consultation meeting, the selection board to review the scores, then the second consultation meeting at which employees would be informed of the results of the selection board and their scores. Reference was made to expressions of interest for voluntary redundancy. Those at risk were told they could go home if they wanted to as the evening shuttle flights would be conducted by those holding the protected positions. Individual consultation meetings would be in the week commencing 22 February 2016.

106. Mr Cole said that Simon Meakins briefed Blackpool base saying that the phase of redundancy was not driven by financial factors but by a change in the customer requirement involving the removal of night standby duty. The redundancy process was about the retention of the right man for the job. Salaries were not part of the consideration or the selection criteria, although savings from the reduction in the contract were to be passed on to the customer.

107. Mr Meakins was asked about this comment and he said he may have said it, quite possibly. He was asked if this might lead the claimants to believe their competence would be relevant. He agreed that it would and in the matrix they did assess competence as pilots.

108. Each person affected received a letter and then an invitation to a consultation meeting to discuss questions about the process and suggestions on avoiding redundancy or minimising its impact. The right to be accompanied was given.

First Consultation Meetings

109. The individual consultation meetings with the claimants were on Tuesday 23 February 2016 with Mr Cole starting at 13:00 and Mr McFarlane at 15:00. Mr Meakins conducted the meetings and he was accompanied by Julie Fawcett who had prepared a script for use at the meetings. She produced brief notes of the meetings including any comments by the employees but based very much on her script.

110. In the meeting with Mr Cole, Mr Meakins went through the script outlining the process that would be followed and he referred to a selection matrix to support the decision making. According to the note, the matrix had been developed using objective and evidence based criteria and had been agreed with the ECF representative. He went over the areas covered in the matrix using the words in the script:

> "Technical and professional knowledge assesses the match of your skills, qualifications and knowledge to the key requirements for the role.

> Performance and skill in role looks at your training records and line checks as part of your role in the company. Consideration will also be given to any live disciplinaries or external sanctions on file for that may result in a deduction of a number of points dependent on what the record shows.
>
> Experience and competencies looks at your experience with the company which could be applied to the role and also your previous career history to determine your level of experience in similar roles and your overall aviation experience."

111. When asked if he had any concerns, Mr Cole asked how he could possibly score enough against TUPE'd personnel under the matrix and Mr Meakins told him they were assessing a number of people, all qualified to do the role, but ensuring they gave credit for relevant experience to the role. Mr Cole thought it seemed almost impossible for him to counter the crew change experience. Mr Meakins confirmed that this was a potentially correct statement but they had to be consistent in their assessment and ensure that they credited individuals for their experience in relation to the role.

112. There was a reference to a search for suitable alternative employment and then if the employee had any further questions they should please let them know and they could be discussed further. Mr Cole asked if job share was a potential option and Mr Meakins said it would be considered and assessed. They would need to look at numbers and practicalities. Mr Meakins said that the selection board would have assessed the criteria by the time of their next meeting, likely to be in the middle of March.

113. The claimant was concerned about how the base would shape up after the redundancy exercise. He was concerned that there might be gaps in the roster. Mr Meakins said that 17 people was the correct number for the roster, which was the same number as for other bases with the roster being over 191 days. It would bring parity to the rosters across all bases.

114. Mr Cole asked if sickness was factored into the matrix and was told it was not, as the company encouraged people to go sick if they did not feel fit to fly. They did not wish to change this culture.

115. Mr Cole asked if individual performance was a factor and he was told that it was not as they did not have appraisals. The claimant said that if they had an individual who did not perform as well as another then it all came down to the latter part of the form, to which Mr Meakins said this would be measured by PIP or disciplinary.

116. After the meeting Mr Cole asked Mr Meakins for a copy of the matrix format. Mr Meakins replied saying it was not policy to release copies of the selection matrix as it remained a confidential document and had the potential to change during the consultation process. If Mr Cole needed to talk through it then they could discuss. Later on 24 February Mr Cole responded to Simon Meakins by email expressing his concern that the matrix document would not be disclosed considering its significance for his career. He went on to say he was disappointed that he had that day heard from Andrew Doyle that he had been pre-selected for termination of employment. He understood that the selection board would make the decision and were they now in

the appeal phase and could he advise on the way forward? Mr Meakins responded to say it was absolutely not the case that he had been pre-selected for termination of employment. No decision would be taken until the management selection board. Mr Cole responded by saying there was no confusion on his part. He and Mr Doyle had discussed whether he would prefer to stay at home and look for a new job or continue to fly. They had discussed the matrix. The inference was obvious.

117. At Mr McFarlane's first consultation meeting the same script was followed. When told that the selection matrix had been agreed with the ECF representative Mr McFarlane asked if the ECF representative had agreed it as fair even though it may favour him. Julie Fawcett told him that the ECF representative had two separate roles. One was being involved in the process with the other being the ECF representative. He had separated the two roles in his professional capacity.

118. After the matrix was described Mr McFarlane asked about his experience with the company. He was told by Julie Wallis the matrix was assessing criteria against suitability for the role that was available. Mr McFarlane did not feel the matrix was fair as he could not compete on experience. He could see what would happen. Mr Meakins said that they had to reduce headcount and they had to assess everyone who was already capable of doing the job. He was told that he should not consider it as a done deal because the company was doing what they could to mitigate redundancy. Mr McFarlane said he was in the tope 25% of TREs but could not compete on the experience. Mr Meakins said that until the matrix was run through the selection board they did not know the answer.

119. Mr McFarlane said he did not cheat in exams but all of the marks would be roughly the same except his. Mr McFarlane had not seen anyone cheating in the exams. If there had been errors in scoring then they would be rectified. Mr McFarlane confirmed he did not have any reason to doubt the marks he had been given.

120. Mr McFarlane asked if it was a cost saving exercise and was told that it was to reduce the cost of the contract after the request of the customer to remove night cover. He asked if the matrix would take account of his top 25% P1. Mr Meakins said that if something had been said to him but not written down or graded then it would not count. Mr Meakins said salaries had not been taken into account. It was about skills and competencies for the business going forward not about money. Job share was on the table. The last of Mr McFarlane's comments was that he could out perform legacy pilots in all areas yet he could not compete on the heavier loading of experience and competencies.

121. In cross examination Mr Meakins confirmed that the notes made by Julie Fawcett were not supplied to the individuals until they appeared in the Tribunal bundle.

122. He was not going through the motions. It was not a fait accompli.

123. Questioned about Mr Cole, and looking for the best man for the job Mr Meakins believed he was asking about the factoring of performance in role in the selection process. This was why it was not in the matrix. They had individual scores for the various items which were all measured and regular assessments of performance. Mr Cole did not suggest other sources of performance measurement.

124. As to Mr McFarlane, he had drawn a conclusion as to what would happen but the selection process had not been completed. Mr Meakins was confident in the reason why he had allocated weight to specific experience. It was absolutely not because he wanted the claimants out. As to being in the top 25% of TREs, this showed he was highly regarded but it was not taken into account. In the view of Mr Meakins the assessment of OPL/LPC training records and line checks completed by type rating examiners and line training captain was the mechanism to assess people objectively based on evidence in the electronic training programme. That was their method of assessing performance. If Mr McFarlane was told he was in the top 25% verbally this was outside of the normal and expected method of recording competency. Being in the top 25% is the opinion of an individual. The recorded information in the approved training system enables him and colleagues to track the performance of the pilots, which was why it was in the matrix. It was based on objective evidence available. He wanted to avoid any subjective information coming into the process. He did not contact Andy Bury on this question. He considered it would be subjective. If not inputted into the programme then it was not considered to be relevant. The process was based on objective evidence on each individual.

125. Mr Meakins and Ms Fawcett met all of the other captains and co-pilots at risk of redundancy on 23 and 24 February 2016. No-one raised concerns about the proposed protected positions or the make up of the selection pools.

Management Selection Board

126. The management selection board meeting took place on 3 March 2016. It was made up of Andrew Doyle, Fiona Wallis (Regional Service Delivery Manager) and Simon Meakins. Ms Wallis was there as an independent panel member. Mr Doyle had travelled from Blackpool to Aberdeen for the meeting.

127. Prior to the meeting each of the individuals at risk were asked to provide details of their number of years of experience as a crew change pilot and their total flying hours. Information was collated in relation to exam scores, disciplinary records, training records, etc., and this information was made available to the management selection board meeting.

128. The information provided was looked at in relation to each of the captains and co-pilots and the scores were determined based upon the information provided. They then totalled the scores for each captain and co-pilot and calculated their rankings in the captain and co-pilot pools.

129. Mr Doyle confirmed that all he did at the meeting was to check that the scores given were correct for each category and properly added up. He did not make any comments on the individual pilots.

130. Ms Wallis said that the weighting given to the experience criteria was relatively high and had they been given too heavy a weighting? They re-ran the scoring process with the weighting allocated to experience halved from 60 to 30 and whilst the total scores changed the ranking and overall order of the captains did not change with the two claimants remaining seventh and eighth out of eight.

131. Against the original matrix the scores of the eight captains were 96, 96, 92, 90, 88, 64, 62 and 58. With the weighting halved in section 3 the totals became 66, 66, 62, 60, 58, 50, 48 and 46.

132. Looking at the scoring it is apparent that the captains referred to by the claimants as the legacy captains scored full marks in respect of 3A, 3B and 3C contrasting with Mr Cole's scores of 6, 0 and 8, and Mr McFarlane's scores of 4, 0 and 8 for those three categories.

133. Mr Cole was only two marks behind the person scored in sixth place, with the two mark difference being in respect of score 1B where Mr Cole had two fewer marks. Having said that, if their scores were the same Mr Cole would still have been selected because he had been there for less time than the other pilot and length of service would be taken into account where two pilots scored the same.

134. In cross examination Mr Meakins did not accept that it would have been fair to send details of their scores to all those at risk. Being in the room and looking the person in the eye when giving bad news was the correct and reasonable way to act.

Second Consultation Meetings

135. Mr McFarlane was seen on 10 March at 13:00 by Mr Meakins and Ms Fawcett. Again Mr Meakins worked to a script in which he told Mr McFarlane that unfortunately he had been selected for redundancy. They went through the matrix so that Mr McFarlane could understand his score. At the end of the exercise he had no questions. Mr McFarlane was not interested in job share. Mr McFarlane asked why there was the requirement to reduce costs, why two pools, substandard and non compliant pilots within the base. Mr Meakins is recorded as saying that he was not aware of substandard and non compliant pilots as all were qualified to do the job.

136. Mr McFarlane requested a review of GRRT scores. Mr Meakins said it would not happen as he had had the opportunity to challenge the score at the time it was given and had not done so. He asked if non-compliance would be a low score and was told it would be dealt with through the disciplinary procedure. He asked for the type rating captains to grade the pilots. He was told it would not happen. The information was as factually recorded.

137. Mr McFarlane said he could tell he would be selected following a call overheard by his wife. Mr Meakins said this was something that could not have been known as the matrix had not been scored. Mr McFarlane requested the loading for time served be reviewed. Mr Meakins said it was a combination of experience in a similar role. Mr Meakins confirmed that the customer had no influence on the content of the matrix. When McFarlane asked for a review of the protected roles Mr Meakins said there would be no review and the roles were required moving forward. Mr Meakins said that there was a reduction in the need for pilots. They had to have evidenced criteria. Everyone was eligible and able to do the job. They had selected a number of criteria suitable for the needs of the base going forward. Mr Meakins totally refuted an allegation that there were issues with flight safety.

138. At Mr Cole's second consultation meeting at 14:15 on 10 March the same format was followed, and after the scores had been given Mr Cole said there was no way that if anyone scored zero in exams he still could not score anywhere near what

anyone else had based on the weighting for experience. Mr Meakins said they did run it with reduced weightings and it made no material difference. Mr Cole said that he had taken advice. He felt the process had been shaped to put him in a position whereby he fell into the redundancy bracket.

139. He said that under ACAS guidelines performance and sickness could be taken into account. Mr Meakins said that people had to be able to put their hands up and declare themselves unfit to fly. This meant that sickness was not considered. Mr Meakins explained the three people who were on the selection board. There was no suitable alternative employment available. As to open book exams Mr Meakins said they were marked separately and grades placed into the training system. The senior N3 training captain was not consulted about individual performance as unless something was recorded it was subjective.

140. Mr Cole was concerned by the manner individuals were protected saying it was unfair. Mr Meakins told him the decision was made to protect positions that people had the opportunity to apply for. The flight safety officer was protected because it was an additional duty and applied for. The base Managing Pilot job was a different job to just a pilot. The technical pilot involved a huge amount of work and the position was applied for.

141. Mr Cole suggested that there were two pools for pilots and it was an unfairly shaped process. Mr Meakins told him he did not know the results in advance. There was a requirement for a reduction of two commanders and one co-pilot and the pools were based on that. Mr Cole sought a review of the two pools but Mr Meakins was not going to review it. The business model going forward was costed on having a balance of commanders and co-pilots.

142. Mr Cole asked about non-compliance with procedures and how some people might rate above him. Mr Meakins asked him who it was, what evidence did he have and what had he done about it? Mr Cole had spoken to the training captain. Mr Meakins asked him to provide evidence based information.

143. Mr Meakins confirmed that the experience criterion was not insisted on by the client. Mr Cole asked about the procedural drift with the number of Q-Pulses highlighting issues of deviation. Julie Fawcett said that the number of Q-Pulse issues raised was not considered. Mr Cole suggested that the matrix was effectively last in/first out but was told that this was not the case.

144. After a number of other issues were raised Mr Cole was told that they would meet again over the following two weeks when matters would be confirmed. If he had any questions he should raise them at any time.

145. On 21 March 2016 both claimants sent letters of appeal/grievance in respect of the redundancy procedure. Mr Cole's letter was set out over seven pages with Mr McFarlane's letter being set out over three pages.

146. Mr Cole noted the matrix appeared to be heavily weighted on time served without taking account of sickness or attendance, skill, standard of work performance or aptitude. He had concerns over open source exams and pass/fail flying competency checks being an appropriate and fair assessment of the individual. The matrix was flawed. It would not capture the right man for the job. He referred to his

24 February telephone call from Andrew Doyle and the feeling that the outcome of the redundancy process was a foregone conclusion after the first consultation meeting. He referred to the challenges he had made at the second consultation meeting. As to the redundancy matrix, it relied almost entirely on time served within Blackpool. The scoring was so one-sided that it would be impossible for any relatively new employee to retain their position regardless of their skill and competency. It constituted last in/first out selection.

147. He raised his complaints about the use of open book examinations and whilst he welcomed the use of flying competency checks the use of them without the formal input of the training department to add a context to the report and assess the competency, skill and professionalism of the individual was irrelevant. A pass/fail result was in his view an entirely flawed and lazy method of boarding an individual for life-changing redundancy. As to protected positions, he understood why the type rating examiners and the senior line training captain positions were protected, but outside of them he thought that the field was shaped to expose certain individuals to redundancy. Individuals had been rewarded for their loyalty by protection of their position. The majority of protected positions in his view required minimum financial investment and training and were made available to junior pilots for them to get more money. In his view the protection of the positions and the reasoning behind it was flawed.

148. He believed the redundancy pools had been used to expose himself and Captain McFarlane to the redundancy process and at the same time had protected other individuals. The deliberate separation of captains and co-pilots meant that the last two captains were vulnerable to last in/first out selection based on a flawed time served matrix.

149. In the view of Mr Cole the process would not achieve the right man for the job. The matrix involved the retention of time served individuals as opposed to the most competent or professional pilots. There had been a failure to consult with the Blackpool based training department regarding skills and abilities of captains and co-pilots. The process had retained two senior first officers who had failed captaincy selection and who required close supervision. The process had protected legacy captains that were non compliant with the company's regulations and procedures. Senior Blackpool management were aware of legacy captains operating in a manner inconsistent with company regulations. This was described as procedural drift. As to the validity of his comments he believed a formal external investigation into the operation of the Blackpool base was the only way forward.

150. He was concerned that there was a lack of any input from the training department to the redundancy board meeting. He did not understand why the Blackpool Managing Pilot failed to raise his concerns during the crucial redundancy meeting regarding the conduct and competency of certain members of air crew within the operation whilst scoring the redundancy matrix.

151. Mr Cole went on to refer to having conducted himself with the utmost integrity and honesty, having formally and informally raised all serious issues within the base and he listed some of the issues that he had raised. In conclusion he felt he and Mr McFarlane had been deliberately targeted for redundancy entirely due to the fact that they were compliant with all company mandated regulations and that they refused to place flight safety below commercial results and profit margins. They consistently

challenged poor practice and rule breaking and maintained the highest standards demanded by the company of their captains. The process had fallen short of the company's own high standards and had failed the customers entirely. Had the redundancy process been handled with honesty and integrity, targeting cost reduction whilst retaining the right man for the job, then there would be no requirement for further action, but he rejected the flawed process. He requested an urgent review of the process and if appropriate an investigation into the circumstances that had driven a selective redundancy process deliberately targeting two individuals for the termination of their employment.

152. Mr McFarlane's letter stated that it was blatantly obvious to all from the first consultation that the procedure for selection would be based on a unfairly loaded time served matrix which was clearly a dressed up last in/first out system. He and Mr Cole had received calls from the Blackpool Managing Pilot who had realised it was so obvious that they would be the ones to be selected. Mr Meakins referred to documented non compliant practices which were ignored, tolerated and concealed by post holders appointed to safeguard against such transgressions.

153. He was the lowest paid captain, marginally above the level of acknowledged substandard senior first officers. The advantages of retaining captains over co-pilots were obvious when employment costs were not an issue, yet they were protected by their time served. Experience in years served had a loading so high that all other criteria were irrelevant.

154. The exams were open book for some people. He had sat the exams in a closed book fashion. There had been no consultation with the training department to add context to the performance grading. He read the matrix as flawed, unfair and vindictive against those who promoted the company's policies of safety and professionalism.

155. He believed the use of two "at risk" pools conveniently shaped the process and deliberately targeted two captains who routinely challenged issues within the base, especially when safety was deliberately disregarded in favour of commercial convenience. The issues were documented but he then went on to set out some of them. He and Captain Nicolas Cole had refused to operate in a particular manner and so had been identified as "troublemakers" hence the agenda and design of the matrix. The company had selected the two lowest paid and compliant captains whose operational performance was being conveniently and deliberately ignored. He therefore felt the process had preselected two captains because of their professionalism and the issues that that placed upon perceived commercial convenience. He was under no illusion that he and Captain Cole were the focus of an internal agenda driven by operational management because they refused to break the law and continuously challenged the standards and practices that management had directed for the commercial convenience of the company.

Third Consultation Meetings

156. Mark McFarlane was seen on 25 March at 10:00. Selection for redundancy was confirmed with no suitable alternative employment being available. The anticipated 28 April 2016 termination date was brought forward to 28 March with a payment in lieu being made. This did not reduce the amount payable to the claimant. It was noted that he had appealed.

157. Mr Cole was seen at 11:30. According to the note he asked if the conversation was being recorded by mobile phone and Ms Fawcett said "no" and all phones were removed from the table. The same script was followed as for Mr McFarlane and he was told the document he had submitted as a grievance would be treated as an appeal against redundancy.

158. Dismissal letters were sent to both claimants on 25 March 2016.

The Appeal Process

159. Mr McFarlane submitted a 29 March addendum to his letter of appeal and grievance dated 21 March. It was to the effect that the Blackpool Managing Pilot had stated on Friday 18 March that he had been aware of the result of the process for some 3.5 weeks. The addendum was accepted as part of Mr McFarlane's grievance/appeal.

160. Paul Kelsall, Director of Service Delivery, was to deal with the grievances/appeals supported by Isabel Howson, HR Director. Mr Kelsall was at a comparable level to Mr Dyas (Director of Operations) and more senior to Simon Meakins. His ground operations team was separate from the flight operations team.

161. He was provided with copies of the letters from the claimants. He met with Mr Cole on 15 April 2016 by conference call and with Mr McFarlane on 19 April in person. As to the scoring matrix, both felt the criteria included should have been different and that there was too much weight placed on experience. They both believed the redundancy process was predetermined and that they had been targeted for redundancy because they had raised flight safety concerns.

162. Having met with both claimants he gave consideration to the points they raised and reviewed various documents.

163. He met with Andrew Doyle and found no indication that either claimant had been targeted and he did not find any sense of an agenda outside the normal redundancy process. He found the calls made by Andrew Doyle to the claimants following the first consultation meetings to have been misguided, albeit done with the best of intentions. It had been the view of Mr Doyle that the claimants would be the most likely to be provisionally selected but he did not know for certain.

164. He briefly met with the Deputy Managing Pilot and the Flight Safety Manager but neither of them was involved in the redundancy selection process.

165. He met with Julie Fawcett who talked him through the consultation process. She had not made any decisions but was there to ensure that the process was fair.

166. He met with Simon Meakins who had been involved in all aspects of the redundancy process. According to Mr Meakins the matrix was not created on any preconceived ideas or to target anyone in particular. It was based on a previous redundancy matrix used for Aberdeen. It was explained to him how objective criteria for the matrix had been chosen and how checks and balances had been put in place to ensure fairness and why experience was so important. Simon Meakins explained that he had no idea which pilots would be selected for redundancy and that the matrix was created to retain the most suitable people.

167. He met with Fiona Wallis who had been on the selection panel. She was entirely independent of flight operations. She had challenged the weighting of the matrix leading to it being re-run with the weighting on experience halved but the outcome was the same. She explained that she understood the rationale behind the objective criteria and checked that the scores were calculated correctly.

168. Having considered matters Mr Kelsall reached conclusions and with the assistance of Isabel Howson the appeal outcome letters were produced.

169. As to unfair selection for redundancy, raised by both claimants, he found the selection had been based on a fair and objective process. He agreed with the decision to pool the captains and co-pilots separately and he understood there was a 60:40 split for optimum operational resilience. As to protected positions he found each of them required sufficient additional training and experience which would have been a burden in time and/or cost to the company, making it necessary for the company to retain those individuals occupying the roles to maintain a robust and safe operation. In his view the protection was justified. As to weighting placed on experience, he found the roles were safety critical and it was appropriate to score experience highly. Crew change at Blackpool was a very specific type of flying experience, different from other operations, so it was important to retain experienced pilots at Blackpool. He did note credit being given for other crew change experience prior to joining the respondent. He was aware that the process had been re-run with experience weighting halved and he did not find the matrix unfairly loaded on the basis of time served.

170. He found the qualifications element of the matrix applied to all in the same way, with everyone having the opportunity to use the open book method for examinations. The scoring for the examinations was from 75%-100% and the scoring reflected it. He found the use of open book exam results fair and appropriate.

171. He did not agree that the training department should have been involved by providing subjective views on skills of pilots. This would have introduced an element of subjectivity which would have been open to challenge.

172. He did not agree that sickness records should have been used. It was essential for the safe operation of the business that pilots did not come to work when they were sick. In conclusion he found the matrix fair and objective and a fair assessment of ability, competency and professionalism.

173. Mr Cole raised the point that no-one from training was there to input views onto the selection board. Mr Kelsall found the construction of the selection panel had the appropriate independent perspective to question the matrix and process and the appropriate knowledge, skill and understanding to conduct the selection board fairly. He did not find it was necessary or appropriate for someone from training to be included.

174. That the outcome of the redundancy process was a foregone conclusion was also raised by Mr Cole. In response to this Mr Kelsall found the matrix was entirely objective with no opportunity to be manipulated or impacted by bias. The results were not known until the selection meeting. He did not find Mr Doyle's phone calls indicated that the redundancy process was a foregone conclusion. It reflected the

view of Mr Doyle as to who was most likely to be provisionally selected based upon the matrix.

175. Both claimants argued that they had been preselected as a result of raising flight safety and non-compliance matters. Mr Kelsall dealt first of all with his own experience as to safety considerations. He was the nominated person for ground operations in relation to safety. In his view the culture of the company involved encouraging the reporting of any concerns to ensure a safe operation. It was inconceivable to him that any pilot would be disadvantaged as a result of reporting through the Q-Pulse system or otherwise.

176. He did not consider the substance of any flight safety or non-compliance matters as part of his investigation into the two appeals. Instead he investigated whether or not the claimants having raised such matters influenced the redundancy process or its outcome. He found the allegations raised by them that they were preselected as a result of raising flight safety and non-compliance matters were unfounded. He did not find any evidence connecting the disclosures to the dismissals. At no point did he gain the impression that the claimants had been targeted or that there was a plan to remove them.

177. In cross examination Mr Kelsall said he was not involved in deciding which positions should be protected. He could not remember receiving the email from Mr Dyas until he saw it in the bundle. He would have looked at it and deleted it as it had no real impact on what he was doing. He had not interviewed Mr Dyas. Matters relating to senior first officers were not relevant because they were in the co-pilot pool not the captain pool. They had no bearing on the claimants' eventual selection.

178. With regard to Mr Cole he agreed that the question of legacy captains' non-compliance with published flight profiles and field entry procedures was not part of his investigation. He saw it was raised as a point of appeal. He said flight safety was a separate investigation and something he did not look at. The North European Executive had to look at flight safety issues. He did not have the technical expertise to do so.

179. He agreed that the fact there were two pools was something he needed to consider and whether two captains were deliberately targeted. Questions of non-compliance were prevalent in the letters but this was part of the flight safety appeal and not the redundancy process. It was Mission Critical Europe based in London who were going to deal with the safety matters. It was removed from his remit. He was to consider whether there was any connection between the reports submitted and the process undertaken. He was unaware of any safety report being produced but it would not have been shared with him.

180. It was put to him that during his investigation there were just two questions that might have had a bearing in targeting for non-compliance. Mr Meakins was asked whether Mr Cole raising flight safety issues in the past had had any bearing on the redundancy rating and Mr Meakins had said "absolutely not".

181. Julie Fawcett gave evidence over a video link from Aberdeen. She had been involved in several redundancy exercises during her career including some carried out by a previous employer. She had been made redundant herself so knew how it felt.

182. She was involved in the Aberdeen search and rescue redundancy exercise. She provided HR support in relation to the Blackpool redundancy process. Having read the claims put forward by the claimants she understood they did not dispute the fairness of the consultation process. In her view their only complaints were in respect of the choice for the selection pool, the selection matrix and that the outcome was predetermined or that they were targeted.

183. Towards the end of January 2016 she was informed of notice being given by the clients to cease night standby cover at Blackpool. She met with Simon Meakins and Rob Dyas assisting in the creation of the selection matrix which was finalised before she went on leave on 5 February. She confirmed that the starting point was the Aberdeen search and rescue matrix. She advised Simon Meakins to focus on the requirements of the role so that the criteria assessed individuals against the role they were to carry out. She supported the separate pools as she understood the need to maintain an appropriate captain to co-pilot ratio. She had suggested inclusion of the criteria giving credit for previous experience outside of the crew change operation and overall flying hours was agreed as the best measure of this. As to weighting, she understood that the experience criteria were very important. She wanted to recognise experience of the pilots before they had joined the company, both in terms of previous crew change experience and overall flying hours.

184. She could not have guessed the outcome as she had limited knowledge of the experience levels of pilots before they joined the company and what type of flying their previous experience related to. She had no knowledge of their test results. She did, however, know that some pilots had long service with the company so would have quite a lot of experience both at Blackpool and previous crew change.

185. She was not involved in the decision around pooling and protected positions but when the rationale was explained to her she agreed with it.

186. She was not at the meeting on 17 February 2016 but was present for the individual consultation meetings. She was not involved in the management selection board meeting.

187. As to her previous involvement with the claimants, she could not recall meeting Mr Cole but she had met Mr McFarlane as part of his February 2015 grievance process. Other than the grievance she was not aware of any issues raised by the claimants. She having read their lists of protected disclosures was not aware of any of them.

188. She had no involvement with regard to Q-Pulse reports. She did not see how any concerns raised, whether via Q-Pulse or otherwise, impacted on the redundancy outcome. She did not consider there was an agenda by anyone in relation to the redundancy process or that anyone was being targeted. Alleged protected disclosures of flight safety matters were not mentioned during any of the discussions that she was involved with.

189. In cross examination she confirmed her involvement with the grievance concerning Mr McFarlane in 2015. This did refer to cultural malpractice. In her view if Simon Meakins had discovered any evidence of non-compliance then there would have been an output.

190. She had worked with Simon Meakins on the Aberdeen matrix which was the company's first one. It was unusual because the company had issued a letter to the Aberdeen pilots saying they would have a job for two years if the contract they were working on ended. All pilots either remained in the contract or went to a crew change role.

191. She knew the requirements for a fair consultation process. Consultation when the proposals were at a formative stage. Adequate information upon which an employee was able to respond and conscientious consideration by the employer of the points arising.

192. She prepared the scripts for Simon Meakins to use at the consultation meetings to ensure he covered all the necessary points. These scripts formed the basis of her notes. What people said was added in.

193. She was aware of the pools before her holidays. She and Simon Meakins had discussed them. They were developed to meet the business need. If employees had any challenges it would have been at the first consultation meetings. There was no consultation on the pools prior to the presentation.

194. Although they have done FAQs in the past she could not remember any being prepared for this exercise.

195. She had an advisory role at the consultation meetings, both for the manager and the employee. HR was impartial.

196. She agreed that in his first consultation meeting Mr Cole arrived at the conclusion that he would be made redundant having been shown the matrix for the first time. People could have challenged the matrix. It could have changed up to the time of the management board on 3 March.

197. She agreed that Mr McFarlane said at his first consultation meeting that he could not compete on experience. She agreed both claimants expressed concern about the weighting for the third section. She recalled Simon Meakins responding saying they would not know how it worked out until the matrix was run. The company could not be held accountable for previous career experience. Someone was going to have less experience than someone else. She did not recall Mrs Meakins saying, "Best man for the job".

198. She agreed that the matrix related to skills and competencies not money. Salaries had no impact on who would come out and where on the matrix.

199. They saw Mr Doyle at Blackpool around the time of the first individual consultation meetings. They let him see what the consultation script and the draft matrix looked like. Copies were not given to him.

200. She believed the pooling had been explained as had the 60:40 ratio, although there did not appear to be any note of this in the meeting. She believed at some point it was explained. Her notes were not verbatim. She believed they did understand the need for the 60:40 split.

201. People could not retrospectively challenge exam scores. This should have been done at the time.

202. She agreed that there would be no review of the protected roles. They were required moving forward. Ms Fawcett agreed that it potentially could be wrong if someone was dismissed without knowing the business case for the protected roles – without understanding the rationale and reasoning. She did not know what the claimants had been told about the matters causing Mr Dyas to reach his conclusions on who should be protected.

The Evidence of the Claimants

203. Mr Cole provided a longer statement than Mr McFarlane. Mr McFarlane in his statement confirmed that he had read the statement of Mr Cole and agreed with matters that were general or that related to both of them.

204. Mr Cole started by explaining that although he was an experienced military pilot and flying instructor when he joined the respondent he had to undertake a good deal of aircraft specific training before he could take up the employment. He joined as a Senior First Officer and was fast-tracked to become an Airline Transport Pilot Licensed Captain following significant financial investment in him by the respondent. Mr McFarlane joined some six months later and he was also fast-tracked to captain. They did not know one another before they joined but became friends. They both had military backgrounds.

205. He describes legacy captains as those who were employed initially by the Canadian Helicopter Company prior to being transferred to Bond Offshore Helicopters which then became the respondent. In his view safety rules were routinely deviated from and corners were cut for commercial expediency with this being tacitly and sometimes expressly approved by the Managing Pilot, Andrew Doyle.

206. Mr Cole makes reference to certain incidents and then deals with the protected disclosures. Given what has been stated concerning the protected disclosures above I do not find it necessary to go into any further detail with regard to them.

207. Turning to the redundancy process Mr Cole expressed a belief that the disclosures he had made throughout the course of his employment had the cumulative effect of making him unpopular with the respondent, although they knew he was a good pilot and they would balance the cost of replacing him against the commercial cost of keeping him. He believed it was the incident with the unlit platform that really brought things to a head in terms of their decision to get rid of him and Mr McFarlane because the respondent seized on the opportunity to target them when a reduction in staff numbers was justified even though, in his opinion, a reduction in the number of captains was not. In his view logic dictated losing three co-pilots to maintain maximum flexibility. With reference to Mr Doyle's June 2015 email as to losing three people, at least one of whom would be a co-pilot, Mr Cole strongly suspects that Mr Doyle already had in mind dismissing him and Mr McFarlane. He did not accept that Mr Doyle had no input to the redundancy process as he was aware of the outcome long before consultation had been concluded. It

was clear to him that management had discussed the process, including who was going to leaving, well before any formal decision was made.

208. As to the selection matrix, it majored on time served over the Irish Sea for 60 points out of 100. The implications of this were obvious to him and the process was treated as a fait accompli. Although the respondent says that the customer had no input into the criteria, he was told by Simon Meakins on several occasions that time served was the prime customer requirement for retention. In the view of Mr Cole, the view of the respondent that time served criteria was valid because different types of flying entailed different rules and regulations was farcical. He had three years of directly relevant experience as an offshore helicopter pilot flying out of Blackpool which was, in his view, a decent amount of experience. He was very familiar with the rules and followed them more carefully than the legacy pilots. It made no sense to him for the respondent to focus on experience. He believed that one of the customers may have told the respondent they would be happy for him and Mr McFarlane to be the ones to go because they insisted on complying with rules rather than pandering to the demands of the customers. He believed the respondent did not seek to challenge the customers because commercially it suited them to keep the client happy and to get rid of him and Mr McFarlane; them raising health and safety issues was costing the company money. He firmly believed this was the real reason why the selection matrix was so heavily weighted in favour of time served and why the pools were arranged as they were, with co-pilots and captains being in separate pools and so many individuals being protected.

209. It was in his view a joke that the EDF representative was spoken to. In his view the ECF representative had no relevant experience or training in the role. He was a co-pilot in the “at risk” pool but would have known he was safe due to the loading on time served. There was a clear conflict of interest where he would not challenge criteria that suited him personally.

210. In his first redundancy consultation meeting when he saw the selection matrix it had been immediately obvious to him he could not score enough against the legacy pilots to survive the process. Mr Meakins acknowledged this was potentially correct so the notion that no-one had any idea what the scores would be until the selection board met was absurd. It was odd that he was not allowed a copy of the matrix. He referred to his telephone conversation from Andrew Doyle concerning pre-selection for redundancy. Whilst Mr Doyle may not have designed the matrix he was confident that Mr Doyle along with the clients had been instrumental in determining who should be targeted before Mr Meakins and Mr Dyas set about determining how best to secure that outcome. In his view Mr Meakins and Mr Dyas would have been very familiar with many of the disclosures he made because they drove changes to equipment or procedures as a result.

211. Andrew Doyle was on the management selection board and did not point out any of the obvious flaws and issues with the criteria used, which to Mr Cole suggested he was not an objective observer but someone who understood and supported the objective of removing two specific pilots.

212. In the view of Mr Cole the use of the internal exam scores was terribly inappropriate because they were done open book by many people. The legacy pilots had copies of all of the test papers and the answers. The respondent should have

removed this element of scoring from the matrix using something more reliable, such as empirical evidence from Andy Bury to secure performance/skill more fairly.

213. Although the company had provision for appraisals they had never taken place.

214. He found it astounding that Andy Bury was not asked for his professional submission as to the performance of individuals who he had assessed. He was fully qualified to provide his expert opinion on the performance of pilots. He decided who could or could not be promoted to captain. In the view of Mr Cole any true measure of performance in the role was deliberately avoided as this would have rendered him and Mr McFarlane safe from redundancy.

215. As to selection pools, he believed the pools applied to the pilots were to illogical as to be perverse. He did not accept the 60:40 ratio was needed to provide operational resilience. Had he and Mr McFarlane been retained there would have been maximum commercial flexibility as two captains can occupy the positions of captain and co-pilot, whereas two co-pilots could not perform the role of captain. There as a minimal salary difference between a senior first officer and a newly promoted captain. Salaries were not a part of the consideration. In his view this aspect of pooling simply revealed further how deliberately he and Mr McFarlane were targeted.

216. By removing certain candidates holding protected positions it unfairly narrowed the selection pool and served to expose him and Mark McFarlane by removing the bottom layer of new arrivals to the base from the process whilst ostensibly applying the criterion of time served over the Irish Sea.

217. As to protected positions he had been provided with the email from Rob Dyas as part of the Employment Tribunal process and what was missing was the comparative cost of training a senior first officer to captain such as the company had spent training him and Mr McFarlane. Mr Cole did not give this figure.

218. He thought some of the “cost to replace” figures in the email from Mr Dyas were inaccurate, as were the times to replace. He thought a false business case was made to protect the positions because it had cost much more to train him and Mr McFarlane as captains than it had cost to create some of the people in their protected positions. The removal of so many individuals with minimal flying experience from the selection process was at odds with the notion that experience of flying over the Irish Sea was the most important factor in retaining the best person for the job. He then went on to comment on the various protected roles. In dealing with them he does not mention any captains who started with the company after he did who were protected, but towards the end of the section he does suggest that the cost to train him and Mr McFarlane would have been in the region of £15,000-£20,000 each.

219. He made individual comments on two senior first officers who were in the co-pilot pool and five people in the captains’ pool who were the legacy pilots, alleging that these people were the ones involved in “procedural drift” which was ignored by the respondent as it was commercially expedient.

220. Mr Cole does not deal with any other matters regarding the redundancy process.

221. Mr McFarlane in his statement said that Andrew Doyle deviated from flight regulations. He then went on to deal with his protected disclosures before looking at the redundancy process.

222. He believed the process was designed to target him and Mr Cole, and it was clear as soon as he saw the matrix. He believed it was motivated by an internal agenda to get rid of him and Mr Cole due to the commercial pressure their professionalism was placing on the company.

223. Andrew Doyle, he believed, spoke to him after the first consultation meeting with the very best of intentions and was supportive but left Mr McFarlane with the very clear message that he and Mr Cole were the ones who would be leaving. Only the two of them received the calls. He then referred to the later conversation with Mr Doyle about him having known for 3½ weeks as to the results of the process.

224. As to the selection matrix, it was deliberately biased against him and Mr Cole, with the weighting on time served being the most obvious problem. 60% of the available score was based on time served.

225. Looking at the scores at 3A, someone who had five years' service would score 20 whereas someone with 3.5 years' service would only score 12, and he with 2-3 years scored only eight, immediately opening up a significant gap between the three ex-military pilots and the legacy pilots. 3B dealing with additional crew change experience had the ex-military pilots all scoring zero and the legacy pilots all scoring 20. Total flying hours was still stacked against the military pilots because they generally accrued fewer flying hours per year than those working commercially. This scoring was why he knew as soon as he saw the matrix he stood no chance in the process. In his view he could not understand why it was used since time served had nothing to do with skill or competency. The only rational explanation he had is that the matrix was engineered to fit the desired outcome which was the removal of him and Mr Cole.

226. He then went on to refer to the examinations which some people did open book although he never did. Exam cheating was not looked at. Everyone scored a maximum of ten points in the section. Some pass marks were genuine; others were the result of people copying out answers from a crib sheet. He and Mr Cole did the exams without the benefit of any reference material under strict exam conditions. Subsequent papers were sent out by email and it was down to individual integrity to carry out the exams in appropriate conditions. He believed it was totally unreasonable for the respondent to proceed with the selection criteria with a serious flaw like this.

227. As to consultation it went through the motions of a fair process but in reality they could have just had one meeting to confirm their dismissal right at the beginning because nothing was going to change as a result of the consultation or the appeal. It was a done deal from the start.

228. As to the selection pools, he agreed with the comments made by Mr Cole. He raised the concern through the redundancy process. He was given the answer about

maximising operational resilience but no-one could explain to him how the pools could achieve that objective. He did not believe any genuine thought was given to the pools save how best to expose him and Mr Cole for selection.

229. He agreed with Mr Cole on the subject of protected positions.

230. Mr McFarlane did not go on to comment upon any other aspects of the redundancy process.

231. Before Mr Cole gave evidence his counsel indicated that Mr Cole had made recordings of the three consultation meetings. Mr McGrath had only recently been made aware of this. They were being transcribed. When Mr Cole was cross examined the first questions to him related to the recordings. He confirmed he had recorded the meetings without telling anyone he was recording. It was not because they would not keep an accurate note. It was because he could not keep an accurate note. He did not take written notes other than some that were informal in nature used to write the grievance letter and then destroyed. He felt vulnerable on his own. Ms Fawcett was able to take notes but he was not. He agreed he should have stated that he was recording. He had never considered mentioning them because he did not believe they were admissible; they were for his informal notes and having changed phones twice since the relevant time he only last night found them because they were backed up. He had not listened to them. He only remembered them the previous night.

232. He accepted that some of his disclosures were before and some were after Mr Doyle's email on the question of losing three pilots of whom one would be a co-pilot in June 2015. The ratio was applied before he made his disclosures.

233. He knew that he had the opportunity to contact the ECF representative but he did not.

234. He did not know who had produced the matrix. He had relatively little day-to-day contact with Mr Dyas. He believed Mr Dyas knew who were captains and who were co-pilots. In his judgment the 2:1 ratio was not flexible enough. He had no concept of the ratio until the bundle arrived. He did not consider the ratio as part of the claim or in respect of any allegations of unfairness.

235. He had no knowledge of the existence of the matrix until the first meeting. He had an issue with the pooling of captains and co-pilots but no issue with how the process was conducted.

236. He agreed that voluntary redundancy had been offered to all pilots but the package was so unattractive that no-one would have taken it. He agreed that if two had volunteered then there would not have been any involuntary redundancies.

237. As to protected positions, training was generally treated as work. Some of the posts did not attract training. He did not know the costs in time. He agreed that any courses would have to add travel, accommodation and subsistence onto the costs. He did not accept anyone could have applied for the protected positions. He was never told he could apply for the flight data gatekeeper role. Usually a junior first officer would do this and get a small pay supplement. He saw the advert for the Deputy Managing Pilot but no-one wanted to work for Mr Doyle apart from Ben Lloyd

who applied. He could have applied for Deputy Managing Pilot but chose not to. He took issue with some of the costs in the Dyas email but not all of them. As to the technical pilot, he did not recall seeing the ad but he was aware the position was available and did not apply.

238. As to the individual scores given to him, he did not challenge any of them. He could not challenge any aspect of the criteria. The matrix was introduced at the first consultation meeting. He believed Mr Doyle would have had some input into it. Mr Doyle was absolutely the subject matter expert. He could not understand that they would produce a matrix without his input. Accepting what was said by Mr Dyas and Ms Fawcett as to the matrix being produced in isolation from Mr Doyle, it went against his belief that Mr Doyle had involvement with it.

239. When asked if the Employment Judge accepted that if Mr Doyle was not involved then the criteria could not have been related to his disclosures, Mr Cole said that Mr Dyas and Mr Meakins would have been aware of his disclosures so he contended that that would have influenced their design of the matrix with or without Mr Doyle's imprint.

240. Asked which disclosures influenced Mr Dyas and where they were on the schedule of disclosures, Mr Cole said he believed the cumulative effect of his disclosures would have placed his name and that of Mr McFarlane at the forefront of the matrix in the minds of Mr Meakins and Mr Doyle.

241. He believed an inappropriate weighting was applied to time served. He agreed the role at Blackpool did not exist anywhere else in the country and it was very specific to that base, but this did not give it all the more reason to include it in the factors. He agreed that the N3 was an older machine, not in common usage elsewhere. He had type specific training on the N3 flying out of Blackpool.

242. As to the matrix, he noted the evidence of Mr Meakins that the Aberdeen search and rescue matrix had been the starting point. He did not accept the customer had no involvement with the matrix and who was selected. Whilst 3A and 3B were not introduced by the customer, he believed the customer would have had an influence on which individuals to retain. The intention of the customer would have been apparent to Andrew Doyle. In his view the customer would have a preference for specific pilots. For him influence would come from the customer to Mr Doyle and then to his manager, Mr Meakins. The customer preferred pilots who operated more speedily. Mr Doyle preferred pilots who did not cause him managerial issues. The mindset of Mr Doyle would have been communicated to Mr Meakins.

243. There was a disconnect in the length of service between the legacy pilots and the military pilots. To retain the others would be simple – put weight on time served. Speed was not accounted for in the matrix.

244. The criterion from 1A to 2C attracted such little weighting that regardless of whether you scored full points you could not compete and overcome the legacy pilots in respect of 3A, 3B or 3C. Even with the weighting reduced it still could not be done.

245. He accepted that Mr Dyas would not have had any knowledge of potential scores of the pilots for 1A, 1B, 2A, 2B and 3C.

246. As to the process he had not spoken with the ECF representative, Barry McDonald. He did not know whether Mr McDonald had taken any advice before commenting upon the matrix. He did not go and see him.

247. At the meeting he believed he asked if protecting the positions was appropriate, and Mr Meakins said it was. He did say the matrix was unfair. How could he score enough to overcome the legacy captains?

248. In his view if looking for the best person for the job you would look at training records and key performance. It was never accounted for other than a pass/fail. He believed that flight assessments and checks could have been used to assess who were the better pilots to retain. He did not say all were not as good as him but he believed the training department would be able to say who the better pilots were. The type rating instructor was fully qualified to assess the competency and skill on the aircraft and there would be archived reports. He did not believe a subject matter expert would be subjective. He was relatively content knowing that the training department held him in high regard that he would be relatively safe in terms of redundancy selection. He was concerned he would not score enough but his performance, he anticipated, would be judged fairly.

249. He accepted all other pilots were consulted and that if the respondent said so then no-one but he and Mr McFarlane raised any issues.

250. He confirmed Mr Doyle had called him on 24 February 2016 when the matrix had not been scored. He accepted Mr Doyle may have come to the same conclusion that he did that he would be one of the ones to go. He could not compete on time served in Blackpool.

251. As to his flying hours, he provided the information to the respondent. Mr Dyas was an ex military pilot as was he, so Mr Dyas was probably aware of his length of service as a pilot.

252. He did not challenge the scores against the matrix. He did not accept Mr Doyle had no negative influence on his scores, although the scores given by Mr Doyle were correct. He accepted that whether or not Mr Doyle liked him would not change the scores. The matrix was formulated to get rid of him. If you are an expert in matrices you can make a token gesture that looks helpful but achieves nothing. This was in relation to the suggestion by Ms Wallis to reduce the weighting on time served in Blackpool.

253. It was put to him that the number of Q-Pulse reports was not considered. Mr Cole did not accept that the board dealing with the scoring did not consider the type and nature of the reports. Both Mr Meakins and Mr Doyle would have been aware of his name related to the reports. Mr Cole accepted that Q-Pulse reporting was not factored in so did not change anyone's score.

254. As to Mr Kelsall dealing with his grievance/appeal, he accepted that Mr Kelsall had made his findings after talking to various colleagues.

255. Mr Cole did not accept that the legacy pilots were safe but accepted "you could fly safely without complying with the company's operating procedures". He agreed that if a co-pilot was unsafe it was his job to raise it.

256. Q-Pulse reporting was part of the role and was a professional obligation. Mr Cole rarely allowed the co-pilot to do the Q-Pulse reporting when he was the captain.

257. He accepted that for senior management it was the issue raised on the Q-Pulse report rather than who raised it.

258. He thought Mr Doyle was there to protect the jobs at the base and to provide the customer with the service they had contracted for. Pressure from the customer to have the aircraft available was immense and if they were unusable then the pressure to get them back flying was felt throughout the base. He had never seen the contract.

259. He accepted Q-Pulse reports were automatically forwarded to various people. Although there was provision to do a confidential report or an anonymous one he never did. What was the important was the nature of the report and its operational impact. There were numerous issues that would be ignored or reported occasionally. According to the regulations "you must report a fault".

260. He could have recorded a mandatory occurrence which would then go to the CAA but he would be surprised if anyone at any of the company's bases reported a mandatory occurrence.

261. As to sickness, there was an individual with a reputation for tactical sickness. He agreed that the respondent did not wish to discourage people calling in sick as a safety issue but Mr Cole thought they should separate genuine sickness from someone who was not genuine.

262. Mr McFarlane was cross examined. He did not record his consultation meetings and he had not listened to the recordings made by Mr Cole.

263. With regard to Mr Doyle's email on losing three staff in a 2:1 ratio, why could all three of those to be lost not be co-pilots?

264. He accepted some of his disclosures were before the redundancy was in question.

265. He had attended the briefing on 17 February. He had three consultation meetings and an appeal. Procedurally it was a fair process as briefed by Mr Meakins. Whilst the process was fair the substance was not.

266. He had very little contact with Robert Dyas. He had no knowledge of the 2:1 ratio in the business at that time. He believed that the ratio shaped the pools for selection.

267. As to which disclosures affected the respondent, he believed Mr Dyas and Mrs Meakins would have had access to all of the disclosures he had made. By their type and nature they caused problems for the respondent, whether financial or regulatory.

268. There was nothing to prevent him from ticking the MOR box on the Q-Pulse report. When he was training as a co-pilot he was briefed not to tick the MOR box as it was career suicide. He was not aware of anyone in Blackpool doing it. He had never received full training on the Q-Pulse system but as a pilot it was his own

professional obligation to raise matters with the regulator if required. The system is fairly simplistic allowing a narrative report. Under the nature of the safety system the fault would/should be remedied.

269. Voluntary redundancy was briefed to all pilots but the figures were not attractive. It was never going to be for him or anyone.

270. As to protected positions, he agreed with the evidence of Mr Cole. He accepted that it would be expensive to replace a type rating examiner.

271. As to the selection matrix, he had seen no physical evidence of the customer being shown it. He did not disagree with the scores he was given mathematically. He accepted that Mr Meakins, Mr Dyas and Ms Fawcett were involved in the preparation of the matrix having seen the bundle.

272. As to Blackpool versus Aberdeen, offshore flying is a specialised activity. Blackpool was different but no more specialised than Aberdeen. Flight profiles are generic to all flights. Blackpool was the only base that conducted a shuttle. Landing and taking off was more frequent at Blackpool compared with Aberdeen.

273. The N3 was used at Blackpool by the company. There was training specific to the type of aircraft and then training for how the operator wanted it to be used based on the company's manual. If you are not operating in accordance with the regulations and manual you are not gaining the experience the company wants.

274. As to the Aberdeen matrix, it was not his case that this was drawn up as a result of his disclosures.

275. As to the Aberdeen matrix, 3A and 3B were the same as the Blackpool matrix.

276. 3C at Blackpool, total flying hours, would account for experience but he would beg to differ that it was a gauge of experience. Flying hours did not deal with competence and experience. Competence was subjective; it was based on a personal point of view. Total flying hours was an arithmetically objective score. Whether you were a good or a bad pilot was subjective.

277. In his view the matrix was not fair. It was not a level playing field. If it had been a level playing field with the same result he would have accepted it.

278. Section 3 on experience was so overloaded. He had been in Blackpool for 2-5 years. He had been told by three CAA appointed examiners that he was in the top 25%. He found it unfair it was not reflected in the matrix. The examiners were capable of objective reporting. He did not know what was said to the other pilots. If he was in the top 25% there must be 75% elsewhere. He wanted a specific measure that would objectively measure performance in a tough but fair way.

279. He had had some sickness from September to December 2015 following a fractured wrist.

280. He did not accept the company's reason for double-weighting. He believed it was done just to get him and Mr Cole out of the organisation. He believed the disclosures he had made affected the business significantly and therefore when there was a need to reduce numbers a way was devised to target him and Mr Cole.

281. He was briefed that the matrix had been used before when making people redundant yet there was no evidence that people had been made redundant. He believed he and Mr Cole were the first two.

282. He accepted his disclosures had not affected the drawing up of the criteria for Aberdeen. He agreed Mr Doyle was not involved in the creation of the selection criteria as set out on the matrix. As to the content of the matrix, he did not know if Mr Doyle was consulted.

283. As to 1A and 1B Mr Dyas would not know his scores unless he had scored less than 75. As to 2A and 2B Mr Dyas would not know his exact scores unless he had failed to achieve. As to 3C Mr Dyas would not know his exact flying hours but military pilots tended to have lower flying hours when compared to long-term commercial pilots.

284. He had no reason to doubt that Mr Doyle did not see the matrix until 23 February on the basis of the phone call he made thereafter on 24 February.

285. Mr McFarlane had had the opportunity to speak to the ECF representative. He did not know who the ECF representative had reached out to. He agreed it was not inconceivable that he took advice for himself.

286. He had the meeting notes drawn up by Julie Fawcett in respect of the three consultation meetings before he prepared his witness statement. He had not stated anything was incorrect.

287. As to fairness, in his opinion the excessive loading in one section made the other two sections irrelevant. Mr Meakins said they wanted the best pilot for the job. He failed to see how that happened.

288. At the first individual consultation meeting he did not say the matrix was designed to ensure his selection because of his disclosures, although he could clearly see that it was designed for him.

289. Mr Doyle had called him. Mr Doyle had worked out it would be him. There was an offer of time at home to look for another job.

290. As to the scoring, it was fixed. The reduced weighting did not make any difference.

291. When he prepared his letter of appeal/grievance after the second meeting he had not seen the letter produced by Mr Cole.

292. He found the appeal hearing was just going through the motions. Mr Kelsall said he would look at the process of redundancy and flight safety aspects separately, but for him they were linked. The company said they would be separated.

293. The effect of his disclosures, their type, nature and impact on the business targeted him for the redundancy process. If the legacy pilots were not flying in accordance with the company's operation manuals they would be unsafe. Certain captains do comply with the regulations rigidly. When they are crewed together with someone who did not then the flight was going to be conducted in accordance with the regulations.

294. He could have raised his view that other captains were unsafe. It was his duty to raise it but it was the organisation that had brought this to his attention not him bringing it to their attention.

295. He did not tick the MOR box on the Q-Pulse report. It would be suicide to tick it. He accepted if he failed to report a proper MOR then it would be a breach of his obligation.

296. In the dispute that led to his grievance he was supported by the chain of command which had said what he did was right.

297. The claimants called Rob Jones who was employed by the respondent from March 2013 to August 2016 at Blackpool. He was surprised that it was a two rather than a three aircraft contract. In his view this contributed to faults not being reported due to the pressure to keep the aircraft flying.

298. He thought it surprising that the claimants had been selected for redundancy when there were a number of people at the base known for not following rules and regulations in relation to fault reporting and offshore flight operations. He believed management were tolerant of them because it was commercially expedient. The people did not rock the boat. Mr Doyle had spoken to him about the need to watch some of the older experienced captains and two of the first officers. He was surprised none of these people were made redundant.

299. The matrix used for the selection made no commercial sense to him. Removing two captains rather than three co-pilots did not give maximum operational resilience. This was not have maintained the ratio of pilots to co-pilots. It was his belief that the claimants were in all probability targeted for redundancy due to their refusal to ignore compliance issues. They only just managed to run the roster efficiently when the claimants left.

300. In cross examination Mr Jones accepted that reporting was strongly encouraged at the Blackpool base. He had had some Q-Pulse training. It was not a complicated system. It is a good tool to capture data if used correctly. He agreed it could be done confidentially. Although usually two pilots witnessed the matter it is written by one of them. Both members of the crew discuss it. It is unusual for there to be two separate reports of the one issue. The pilot and co-pilot needed to decide between them who was going to make the report. He was not aware of the whistle-blower hotline. He was aware of mission safety reporting. He did not raise a culture of non-reporting.

301. He had not read Mr Cole's statement when he wrote his own but the draft was adjusted by the solicitor to tie in with the comments on the statements of Mr Cole and Mr McFarlane.

302. He had obtained new employment before he resigned. He asked the respondent for, and was granted, some latitude with regard to his notice.

303. He was not aware of there being no penalty on the company if an aircraft was out of service.

304. He accepted he had the opportunity to raise issues and he did so with the training captain. Unserviceability issues were dealt with through the technical log.

305. It would not take long for an experienced pilot to pick up the role carried out at Blackpool or Aberdeen.

306. He agreed that if a technical defect was logged the aircraft could not be returned to service without it being looked at. Work orders needed to be closed even if no fault was found. There were certain defects that could be deferred and certain defects that could not. He accepted that on resigning he had expressed gratitude for the opportunity given and made no criticism of the company.

307. The claimants tendered a witness statement from Benjamin Lloyd. Mr Lloyd did not attend for cross examination. He was employed at the respondent until 30 October 2016 in the position of Deputy Managing Pilot which was a protected position, so he was not involved in the redundancy process.

Submissions

Claimants' Submissions

308. For the claimants Mr McGrath accepted that a redundancy situation arose following the giving of notice to remove night cover towards the end of January 2016. The claimants rely upon their protected disclosures, four of which were not admitted. Mr McGrath briefly submitted why those that were not admitted should be found as qualifying protected disclosures.

309. On behalf of the claimants it was submitted that all of the protected disclosures alleged were matters that caused the dismissals. They were the reasons or principal reasons for the dismissals and affected Simon Meakins when his decisions were made to include the criteria and weighting in section 3 of the matrix. In this regard it was submitted that strong inferences were to be drawn from the following:-

(a) The claimants' consistent complaints about a culture of non compliance which incidentally were always swept away or disappeared into the ether when Simon Meakins became involved including the so-called and alleged report by MCS Europe into flight safety issues which appears to have come to nothing.

(b) Mr Cole's fatigue issues in autumn 2013 were the first reports of fatigue recorded by the respondent, were known to Simon Meakins (should have been an MOR) and caused the respondent to recruit.

(c) Mark McFarlane's grievance – Simon Meakins was directly involved and the cultural issues raised in the course of that grievance were apparently ignored.

(d) The volume of Q-Pulse reports generated by the claimants – especially those in which the clients' productivity was affected and/or meetings with the clients were necessary as a result.

(e) The clear line of communication between Andrew Doyle/Simon Meakins and Rob Dyas in respect of operational matters in Blackpool. This level of communication must have increased at around the time of the contract change and redundancy exercise. This would have allowed Andrew Doyle to remind Simon Meakins/Rob Dyas of the claimants' history of challenging the practices at the Blackpool base giving rise to annoyance/irritation on his part.

(f) The lack of documentation around the compilation of the matrix, the pooling decision and the management selection board on 3/3/16.

(g) The suspicious presence of Andrew Doyle on the management selection board.

310. As to the redundancy process, the claimants submit that the respondent is of sufficient size and resource to be able to avoid unfairly dismissing employees in a redundancy process. It was about skills and competencies for the business going forward not about money. Simon Meakins was very clear in wanting the right/best man for the job, which in cross examination he agreed he may well have said. On that basis the claimants were entitled to conclude that there would be a qualitative assessment of the abilities of those at risk when deciding who should be made redundant. The claimants allege that what in fact happened amounted to a fait accompli, pre-selection, sham and/or pre-judgment. Given the content of the matrix, the so-called "management selection board" in Aberdeen was an artificial exercise.

311. Counsel referred to the classic definition of "consultation" by Glidewell LJ in **R v British Coal Corporation [1994] IRLR 72** where fair consultation means:

> "Consultation when the proposals are still at a formative stage, adequate information on which to respond, adequate time in which to respond and conscientious consideration by an employer of the response to consultation."

312. Contrary to this:

(a) There was no consultation at the formative stage when the respondent was deciding upon the matrix criteria which were finalised before 5 February 2016, as were the redundancy pools and protected positions.

(b) The "at risk" meeting on 17 February the situation was presented as a fait accompli with no provision for a question and answer session with Simon Meakins and no FAQs.

(c) The claimants were not provided with a copy of the matrix, any rationale for the pooling or any justification for the protected positions prior to individual consultation (or at all).

(d) There was no dedicated note taker allocated to the consultation process and/or any means by which the notes for the meetings could be approved by the claimants.

(e) The notes which were taken by Julie Fawcett were not disclosed in any event.

(f) During the first consultation meetings on 23 February the claimants were shown the matrix for the first time and both immediately identified they would be unable to compete effectively with the legacy pilots.

(g) The first impression gained by the claimants was supported by the first impression of Andrew Doyle and Julie Farrell. The effect of the excessive weighting made this in effect a "last in/first out" exercise.

(h) After the first consultation meeting Andrew Doyle telephoned both claimants and suggested they might take time to look for alternative work, suggesting a foregone conclusion.

(i) The involvement of Andrew Doyle on the management selection board given his knowledge of the claimants' disclosures and the fact that the meeting went unminuted.

(j) The claimants were not provided with advanced disclosure of their scores prior to the second consultation meeting.

(k) At the second consultation meeting the claimants were shown their scores for the first time.

(l) At the second consultation stage their requests for reviews of the pooling, exam scores, weighting and protected roles were mostly met with a similar response – this will not happen. This was not proper consultation. If the respondent had entered into such consultation the claimants would have been afforded the opportunity to challenge the matrix criteria, pooling (now justified as the respondent's practice and/or industry norm) and the rationale for the protected positions as explained in the evidence of Mr Dyas and his email of 15 February 2016.

(m) Both claimants, on the understanding that the respondent was seeking the best man for the job, suggested there were training records which would have a bearing on their assessed quality as pilots. The respondent rejected such an approach as being subjective, but in the absence of any enquiry of Andy Berry, Training Captain, the respondent cannot have known the type of material held by the trainers and/or whether it could be assimilated in an objective way. In particular, if the same trainer had assessed each of those at risk any alleged subjectivity could have been limited. This was a failure on the respondent to respond conscientiously to consultation.

(n) On 18 March Mr Doyle told Mr McFarlane he had known the results some 3.5 weeks before.

(o) The whole process was a complete sham. The claimants were effectively railroaded towards dismissal. Whatever they raised in the process was bound to be ignored. By the time of the third consultation meetings their termination date was brought forward to accelerate their dismissals. This was consequent upon them having raised their grievances/appeals.

(p) In their appeals both claimants ascribed their dismissals to the fact that they had made protected disclosures and/or become known troublemakers. As a result of a decision allegedly made by MSC Europe, as revealed in evidence by Mr Kinsella, the alleged reason for the claimants' dismissals was not investigated at the appeal stage. Instead the health and safety issues underlying their protected disclosures were hived off to a so-called and alleged investigation by MSC Europe. There has been no evidence produced to support this alleged intervention, therefore the health and safety issues which were so intrinsically linked to the dismissals were superficially dealt with by Mr Kinsella in two short questions to Simon Meakins. Mr McFarlane had made the point that the issues should not be separated. The separation of the issues was not within reasonable bounds. It follows that the appeal process was a complete sham. Mr Kinsella did not even bother to interview Mr Dyas.

(q) The appeal did nothing to redress the failings in the dismissal procedures. The claimants came out of the whole process without understanding the pooling principles which had been applied – the 60:40 split or the justification for the protected positions. This information belatedly came to light in the Tribunal process.

(r) As a matter of fact the claimants were better pilots than some others.

(s) As a fact the claimants could easily have slotted into the protected positions of FDM gatekeeper/deputy managing pilot.

(t) If the claimants had been retained at the cost of the co-pilots the respondent's day-to-day running of the roster or operational resilience would have been unaffected or improved.

(u) Despite the claimants raising these latter points on appeal there was no proper investigation of their arguments by Mr Kinsella.

(v) Ultimately it was the weighting in section 3 of the matrix which ensured that the claimants were selected. Their submission is that the application of this weighting to the criteria was outside the range of reasonable responses in the circumstances of this case, bearing in mind that the best (and most compliant) pilots should have been required in the interests of safety. A reasonable employer would have devised a method of retaining the best and most competent pilots rather than the blanket approach applied by the respondent i.e. all are treated equally because they are qualified pilots.

(w) The absurd result of the weighting was that it could be halved and still achieve the claimants' dismissals. Further, a hypothetical reduction of the next person's scores and the application of a final written warning of the scores of the person who came fifth would not even have made a difference to the selection of these claimants. The only logical conclusion is that the claimants were targeted.

(x) The respondent's explanation for the weighting is not credible. The N3 aircraft operated from Blackpool is to be flown in accordance with the

> manual which prescribes the method of flight/landing. The skills and adaptation to fly the N3 are minimal for an otherwise experienced pilot. Both claimants had progressed to the rank of captain within a relatively short time and were the equal of their peers in terms of ability in flying the N3. Mr Doyle never had cause to doubt their abilities as pilots. It follows that the character or nature of the flying required is overplayed by the respondent as a justification for the dismissals.

313. In conclusion Mr McGrath invited the Tribunal to conclude that the dismissals were unfair, both procedurally and substantively, and/or that the reasons or principal reasons for their selection for dismissal were the disclosures made by the claimants.

Respondent's Submissions

314. For the respondent Mr Mitchell presented written submissions of over 43 pages. Put simply, the case for the claimants is misconceived. There is an agreement that there was a redundancy situation. The claimants in cross examination agreed that the respondent had followed a fair process. They did not challenge their scoring. They asserted that the redundancy matrix alone was created to remove them, yet Mr Cole accepted that the role performed by the pilots flying from Blackpool was very specific to that base operating an N3 helicopter, yet could not accept that this was the basis for the criteria that would value service relevance to the Blackpool base together with additional crew change experience. Mr McFarlane accepted that the criteria used by the respondent were specifically based upon the Aberdeen matrix with 3A and 3B being taken from the Aberdeen document that was not created by the respondent because of his disclosures.

315. The underlying premise of the claimants' case is that there must be a conspiracy for which there is no written or oral or circumstantial evidence. This absence remained following the cross examination of all witnesses. In the submission of the respondent it is clear that the entire basis for constructing the conspiracy is based on the fact that the claimants do not agree with the inclusion by the respondent of items 3A and 3B or that they were valid criteria by which to distinguish between the pilots working for the respondent in Blackpool. They have jumped from the fact that they made protected qualifying disclosures in the performance of their roles to the conclusion that this somehow motivated those responsible for the content of the selection matrix.

316. The claimants' reaction to the matrix was that they could not compete on experience against the legacy pilots. They disputed the criteria used because they scored lower than their colleagues. Counsel submits that the claimants would not have complained of the same criteria or have asserted its unfairness were it not for the fact that they scored poorly against their colleagues. It is not surprising they desired to include either subjective criterion on ability or for example sickness based on the belief, rightly or wrongly, that they would have scored higher than their colleagues were such categories to be included.

317. It is a regrettable consequence of a redundancy exercise that someone is selected for redundancy. Whoever is selected wishes the criterion used from which they score poorly to be removed or not used or other matters changed to their benefit. Merely to suggest that someone else should have been selected does not mean that the selection of these claimants was unfair. Whilst the respondent has

sympathy for the claimants, regrettably it was necessary to make the redundancies consequent upon the commercial decision of the client to stop the night standby.

318. The respondent submits that there is no evidence to support or establish that Mr Dyas, Ms Fawcett and Mr Meakins were influenced by Mr Doyle or anyone else when creating the selection matrix. The claimants moved from Mr Doyle being responsible for the selection matrix to Mr Meakins.

319. The respondent operates an open culture in encouraging safety concerns to be raised. The claimants on the one hand seek to assert that the respondent had a culture that did not encourage the reporting of concerns yet both accept that they raised a large number and that the respondent addressed each and every concern they raised to their satisfaction. They also accepted that Mr Doyle and others were responsible for their own Q-Pulse reports. They had not raised any Q-Pulse reports asserting that other pilots were unsafe, notwithstanding their professional obligation to do so.

320. The claimants had not alleged they suffered any action short of dismissal having made protected disclosures. Accordingly there can be no rationale for them having failed to raise concerns regarding other pilots unless they did not have such concerns. If the claimants are correct each and every other pilot or co-pilot must have placed their own lives at risk together with those of the passengers and members of the public within influencing distance.

321. If the assertions of the claimants are true then there was a conspiracy of captains and co-pilots to turn a blind eye to unsafe pilots. A conspiracy of ground staff to cover up and not raised matters they became aware of. A conspiracy of senior management to keep dangerous pilots flying. A conspiracy of senior management to get rid of the claimants for raising something they had not actually raised. A conspiracy of senior managers lying to the Tribunal to hide Mr Doyle's involvement in the selection matrix. The selection matrix for Aberdeen was created and used there with a view to selecting the claimants in Blackpool thereafter because of disclosures. The customer and senior management had conspired to select the claimants.

322. It being accepted that there was a redundancy situation the question of fairness depends on the application of the general test under section 98(4) of the Employment Rights Act 1996. Did the respondent act reasonably in dismissing the claimants on the ground of redundancy in all the circumstances? Was the process followed by the respondent in all the circumstances fair? In the submission of the respondent:

> "Redundancy dismissal is likely to be fair if the employer –
>
> (a) identifies an appropriate pool for selection,
>
> (b) consults with individuals in the pool,
>
> (c) applies objective selection criteria to those in the pool,
>
> (d) considers suitable alternative employment where appropriate."

323. Did either claimant complain of specific matters or identify them as being unfair at the time? Did the purported act or omission cause any unfairness? It is not enough to say that something could or should have been done. It is a necessary element of determining fairness for there to be a conclusion that it would have made a difference to the outcome.

324. Counsel then went on to deal with the statute law and make submissions with regard to the evidence.

325. As to credibility he submitted that the credibility of Mr Cole should be questioned because of his covert recording of the three consultation meetings. The evidence of Mr Jones was amended to match the statements of the claimants.

326. As to the disclosures, it is part of the role of the claimants to raise Q-Pulse reports and a professional obligation to raise safety reports. The priority of every pilot is the safety of the crew, passengers and the public. The respondent has an open culture as regards reporting of concerns. The claimants could not point to a single report raising a concern over a culture of non compliance or non reporting. All matters reported were properly reviewed.

327. As to causation, there was no credible evidence to establish even a prima facie case that the creation of the matrix was because of the disclosures of the claimants, whether or not they were admitted for the purpose of these proceedings. Their dismissals were because their scores, which they did not challenge, placed them as the lowest scoring pilots in Blackpool, even after the weighting was reduced. They scored the lowest in the redundancy situation.

328. If the Tribunal finds procedural irregularities, none of which were admitted, then the Tribunal should find the likelihood that their employment would have terminated in any event or for how long it would have continued had a proper procedure been followed. The respondent submits that the claimants have failed to establish any basis in support of the procedural matters preventing their dismissal on the ground of redundancy.

The Relevant Law

329. Section 98(2)(c) Employment Rights Act 1996 provides that redundancy is a potentially fair reason for dismissal. It is for the employer to show this.

330. The question of fairness is dealt with at section 98(4) which provides that:

> "(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."

331. Section 103A deals with protected disclosure and provides that:

> "An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

332. Section 105 deals with redundancy and provides:

> "(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if –
>
> (a) The reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,
>
> (b) It is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
>
> (c) It is shown that any of subsection (2A) to (7N) applies."

333. Subsection (6A) provides:

> "This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 103A."

334. It is for the employer to show the reason for the dismissal. In this case the reason is redundancy. The claimants allege that the principal reason for their selection was that they had made one or more protected disclosures. Where the employee shows that there is an issue which warrants investigation and which is capable of establishing the competing automatically unfair reason advanced, the burden reverts to the employer which must prove, on the balance of probabilities, which of the competing reasons was the principal reason for dismissal. See **Maund v Penwith District Council [1984] ICR 143, CA**.

335. Section 105(6A) applies where the principal reason for dismissal is redundancy and the situation applies equally to one or more other employees who were not dismissed. Because it is accepted that this is a genuine redundancy situation these claims are rightly dealt with under section 105(6A) rather than section 103A.

336. For there to be a successful claim under section 105(6A) the sole or principal reason for selection must be the fact that the employee had made one or more protected disclosures. The IDS Employment Law Handbook, Whistle-Blowing at Work, at 6.32 deals with establishing a causal link:

> "…An employer can evade liability if the protected disclosure was one of the reasons, but not the principal reason, for the employee's selection for redundancy. Tribunals may face particular challenges in this regard when confronted with the situation where an employee has been selected for redundancy by way of a matrix of selection criteria, and one or more of the scores assigned under those criteria was influenced by the employee having made a

> protected disclosure. The approach Tribunals take to the question of causation in a claim under section 105(6A) should essentially mirror that which is taken when determining the principal reason for dismissal in a claim under section 103A. Thus it is necessary to examine the conscious and unconscious reasons for selection and it may be appropriate for Tribunals to draw inferences from findings of fact."

337. In terms of ordinary unfair dismissal the first matter for consideration relates to the pool for selection. Does the choice of pool fall within the range of reasonable responses available to an employer in the particular circumstances?

338. If the Tribunal finds the selection pool is reasonable then it must move on to consider the selection criteria which, with a view to ensuring fairness, should be objective, with a reference to records maintained by the employer, and preferably not reflecting the personal opinion of those involved in the selection process. Again the question for the Tribunal relates to the reasonableness of the employer's conduct in selecting the criteria and their application.

339. Thereafter the individual consultation falls to be considered in a case where collective consultation is not required.

340. Alternative employment needs also to be considered.

Discussion and Conclusions

341. Looking first at section 105 (1), the parties agree that the principal reason for the dismissal of each claimant was that the employee was redundant and that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to those held by the claimants, and who have not been dismissed by the respondent.

342. Counsel for the claimants submits that all of the pilots employed by the respondent at Blackpool, whether or not they held protected positions, whether captain or co-pilot, held similar positions to those held by the claimants given that they were all pilots. Counsel for the respondent submits that only captains who do not hold protected positions should be considered as holding similar positions.

343. "Position" is defined in section 235 of the Employment Rights Act 1996 and "means the following matters taken as a whole (a) his status as an employee, (b) the nature of his work and (c) his terms and conditions of employment".

344. As a matter of fact I conclude that the claimants as captains had a different status from the co-pilots. A co-pilot could not fly without a captain present.

345. I have received evidence that those holding the protected positions received a pay supplement over the salaries normally paid to their colleagues who did not hold such positions. This extra payment taken together with the holding of the position would have given the holders of the protected positions greater status than the claimants and the other captains in the pool for selection

346. The nature of the flying carried out by all of the captains was the same. Those holding the protected positions did extra duties which differed according to the position held.

347. I find that these matters taken as a whole lead me to conclude that it was only the captains in the captains' pool who held positions similar to the claimants for the purposes of section 105 of the Employment Rights Act 1996.

348. On the basis of the numbers of protected disclosures made by each of the claimants and admitted by the respondent it seems to me that the claimants have established that there is an issue which warrants investigation and which is capable of establishing the competing automatically unfair reason advanced that the principal reason for their selection for dismissal was that they had made one or more protected disclosures.

349. I accept that there is no direct evidence of this but that the point might be proved on the basis of inferences to be drawn from the primary facts.

350. It seems to me that this question must be considered in the Blackpool context where all of the captains and co-pilots, including those in the protected positions, submitted Q-Pulse reports. I have set out above the numbers of Q-Pulse reports made by each of the pilots in the period April 2015 to March 2016 with the numbers ranging from 34 for Mr Cole down to 1 from one of the two type rating examiners. Of the 34 reports submitted by Mr Cole and the 16 reports submitted by Mr McFarlane, they have retrospectively analysed them and have put forward that in the case of Mr Cole five of them were protected disclosures and in the case of Mr McFarlane four of them were protected disclosures. The claimants' other disclosures were raised in other ways. What has not been evidenced is how many of the Q-Pulse reports submitted by the other pilots might amount to qualifying protected disclosures if they were analysed retrospectively.

351. Looking to Mr McGrath's submissions as to the matters from which strong inferences are to be drawn, the first relates to the claimants' consistent complaints about a culture of non compliance being swept away or disappearing into the ether. On the basis of the written and oral evidence before me I am satisfied that the complaints raised by the claimants, and any other pilots, were dealt with by the respondent's managers to an appropriate standard consistent with the respondent's obligations to its employees and passengers and those who might be affected by the company's flying operations from Blackpool. I am satisfied that the Q-Pulse reporting system was consistent with the culture of reporting and dealing with safety related matters appropriately.

352. As to the alleged report by MSC Europe this only arose when the decision to dismiss was the subject of the appeal therefore cannot be relevant as something from which to draw an inference concerning the reason for the selection of the claimants for redundancy.

353. Fatigue issues from autumn 2013 reported by Mr Cole were dealt with and caused the respondent to recruit another pilot. According to Mr Meakins this was dealt with appropriately at the time. I do not find it appropriate to infer that this issue was relevant to the selection of the claimants for dismissal. The company had

operated with the extra pilot for more than two years by the time of the redundancy exercise.

354. Mr Meakins was involved in Mr McFarlane's grievance and dealt with the issues that he raised. In my judgment could reasonably believe that the issues were resolved when Mr McFarlane did not appeal. I do not find that Mr Meakins was subsequently motivated by the matters raised in the grievance.

355. The claimants did generate a volume of Q-Pulse reports. From the evidence of the respondent's witnesses they appear to have dealt with all of the Q-Pulse reports raised by all of the pilots satisfactorily and concluded matters with the clients at their regular meetings. I am satisfied from that the reports to the clients did not refer to specific pilots. I am unable to draw any adverse inference from this.

356. I have not heard any evidence that the level of communication increased around the time of the contract change and the redundancy exercise.

357. As to the lack of documentation around the compilation of the matrix, I have been provided with a copy of the Aberdeen Search and Rescue matrix and the Blackpool crew change matrix. Evidence has been given as to how the Aberdeen matrix was compiled, before there was any question of redundancy at Blackpool, and how it was amended to suit the situation at Blackpool and that it was further amended on the advice of Ms Fawcett. The pooling decision appears to be based on industry and/or company standards with no supporting documentation but it has the effect of maintaining the 60:40 ratio. I have seen the documents which were used when compiling the scores at the management selection board. I have seen the outcome document. I do not draw any inferences from these facts

358. Although Mr Doyle was on the management selection board the evidence has been that he did not play any part other than confirming that the various scores were correct. The scores were matters of fact and I am unable to infer that Mr Doyle had any influence on the scores.

359. I have heard the evidence of Mr Meakins, Mr Dyas and Ms Wallis which has been the subject of cross examination. I am satisfied that they were witnesses of truth. In particular I accept that Mr Meakins and Mr Dyas were aware of the Q-Pulse reports as part of their normal duties but that they did not interrogate particular reports so as to find out who had made them. The volume of reporting under the Q-Pulse system from all of the pilots at all of the company's bases appears to me to militate against them looking more specifically at the Q-Pulse reports.

360. Given that the redundancy selection was by a matrix system, did the fact that the claimants had made protected disclosures affect the way in which the matrix was drawn up? On the tested evidence of Mr Meakins, Mr Dyas and Ms Wallis I am satisfied that they did not give any consideration to Q-Pulse reports, which may or may not have amounted to protected disclosures, or to any other matters emanating from these claimants or from the other Blackpool pilots, when the selection matrix was drawn up. I am satisfied as a matter of fact that the Aberdeen matrix was prepared before many of the Q-Pulse reports that were later admitted to amount to protected disclosures on the part of the claimants had been made. I am not satisfied that the making of protected disclosures by the claimants had any relevance to the composition of the selection matrix.

361. Were one or more of the scores assigned under the criteria influenced by the claimants having made one or more protected disclosures? In my judgment they were not. The scores were accepted by the claimants as correct on the basis of the criteria and marking system adopted by the respondent. The criteria scored against do not have any reference to protected disclosures.

362. Having considered the evidence and the submissions made on both sides I conclude that the principal reason for the claimants being selected for dismissal by reason of redundancy was not that they had made protected disclosures. It was because they had recorded the two lowest scores in the captains' pool.

363. Turning now to the claim of ordinary unfair dismissal the respondent has satisfied me that the reason for the dismissal was the potentially fair reason that the claimants were redundant. The claimants agree this.

364. Was it fair under section 98(4)? The burden of proof here is neutral.

365. I am satisfied that there was a genuine redundancy situation at Blackpool once the respondent's clients gave notice to terminate the night-time standby duty.

366. I am satisfied that the question of voluntary redundancy was raised. This is not a point argued by the claimants.

367. The claimants do not argue that there was any suitable alternative employment that the respondent failed to consider for them.

368. Looking at the pools for selection I start by reminding myself that it was on 22 June 2015 that Andrew Doyle stated that by dropping nights he could lose three from his full-time equivalent. At least one of the three would have to be a co-pilot. Those available for selection for redundancy appear to me to be all pilots employed by the respondent at Blackpool. It has never been suggested that pilots from other bases should have been considered.

369. There does not appear to have been any customary arrangement or procedure dealing with pooling so I must consider the decision of management.

370. It was decided that those holding defined posts or roles in addition to being captains or co-pilots should form an excluded group. The decision as to who should be protected was taken by Mr Dyas for the reasons set out in his 15 February 2016 email to Simon Meakins and Helen Scott. He considered the time and cost of replacing those holding the protected positions. It seems to me to be within the range of reasonable responses for an employer to remove from the pool for selection a number of employees holding positions such as the ones set out by Mr Dyas. Where those posts became vacant following the claimants taking up their employment with the respondent they would have had the opportunity to be considered for them had they thought it appropriate. They did not apply.

371. That left eight captains and four co-pilots with the need to lose three of them. Evidence has been given as to the company working on a ratio of two captains to one co-pilot. I have no reason to doubt that this is the basis upon which the respondent organises its pilots and therefore it seems to me to fall within the range of reasonable responses to look to make redundancies in that ratio which in this

case involves the loss of the jobs of two captains and one co-pilot. I therefore conclude that placing the captains and the co-pilots in different pools was within the range of reasonable responses in the circumstances of this case. In reaching this conclusion I note that whilst the jobs of captains and co-pilots are interchangeable, the jobs of co-pilots and captains are not. A co-pilot cannot fly with another co-pilot whereas a captain can fly with a co-pilot or another captain.

372. What about the selection criteria? It has not been argued that those used were not clear and transparent. It has been argued that the respondent might have used other criteria, such as sickness absence, and the views of the type rating examiners. The respondent has indicated why they did not choose to use sickness absence records because they do not wish to encourage pilots to report for work when sick. They did not use the views of the type rating examiners because they were not already recorded on the respondent's system and might be considered to be subjective. The respondent's reasons for not using the criteria suggested by the claimants appear to me to be reasonable in the circumstances of this case.

373. The claimants do not appear to argue with the use of 1A (aircraft technical knowledge) and 1B (depth of professional knowledge).

374. The claimants suggest at 2A that the company should place no reliance on open book exams, but they do not argue with 2B (line check) or 2C (disciplinary or cautions).

375. They argue that 3A, 3B and 3C are given undue weight, particularly when they say that in their lesser time served at Blackpool they had become competent to undertake the duties required of them, and indeed they did so in accordance with the company's operating manuals.

376. The respondent, through Mr Meakins, has explained why the Blackpool crew change experience years were for him important. This involved experience gained on the type of helicopter and working out of Blackpool. He agreed to add additional crew change experience years and total flying hours at the suggestion of Ms Wallis. Mr Meakins was of the view that using these criteria would give him the best men for the job. The claimants do not agree with this view but it seems to me to be a view that Mr Meakins could reasonably hold.

377. On the basis of the explanations given on behalf of the respondent I conclude that the criteria used in the selection matrix were within the range of reasonable responses.

378. As to the scores allocated to the claimants, they do not dispute that they were scored correctly and that it was the same result with a lesser weighting being applied to 3A, B and C.

379. Mr McGrath makes various submissions with regard to the redundancy process.

380. I have just dealt with Mr Meakins feeling that the criteria selected gave him the best men for the job. In his view a qualitative assessment of abilities would involve subjectivity and not objectivity.

381. The claimants allege that what in fact happened amounted to a fait accompli, pre-selection, a sham and/or prejudgment. Given the content of the matrix the so-called management selection board in Aberdeen was an artificial exercise.

382. I accept that once the matrix had been prepared it was almost inevitable that these claimants would be the ones to be selected for redundancy. However, I have found that the respondent had a need to make three pilots redundant and that the pools from which they were selected were fair as were the criteria to be used. In these circumstances the fact that the claimants were selected does not appear to me to be of itself unfair. It was sadly for the claimants an inevitable outcome given their shorter service than those of their colleagues, particularly the legacy pilots.

383. Mr McGrath has referred to **R v British Coal Corporation** on the question of fair consultation. I remind myself that that was a case concerning collective rather than individual consultation. Collective consultation was not required in this case given the number of redundancies.

384. It is correct that there was no consultation at the formative stage when the matrix criteria and the redundancy pools and the protected positions were being considered. Although the situation may have been presented at a fait accompli at the "at risk" meeting, there is no evidence that anyone present was prevented from asking a question. There is no doubt it was made clear to the parties involved that the company had protected certain positions and was thereafter looking to lose two captains and one co-pilot.

385. It is arguable whether the claimants were aware of the rationale for the pooling based on the 2:1 ratio. They were told which positions were protected, seemingly without any explanation.

386. There was a note taker at the consultation meetings in the form of Ms Fawcett. Her notes do not appear to have been provided to the claimants. They were only disclosed in the course of the Tribunal proceedings. Whether they would have been provided had anyone asked is a question that has not been raised.

387. The claimants' first impressions that they would be made redundant were correct. This of itself does not make the process unfair. It might suggest a foregone conclusion.

388. The involvement of Mr Doyle on the management selection board does not seem to me to be of itself unfair. The claimants indeed thought he might be able to speak to the quality of their work at the management selection board.

389. The claimants were only shown their scores for the first time at the second consultation meeting and were not provided with them in advance. I am not aware, and do not find, that there is anything unfair about providing the scores face-to-face which is what Mr Meakins wanted to do.

390. At the second consultation meetings the claimants were given the opportunity to ask questions or raise issues about the redundancy process. Mr McFarlane asked about the requirement to reduce costs, why there were two pools, why there were substandard and non-compliant pilots within the base, and he requested a review of the GRRT exam scores. He asked for the grading of the pilots to be reconsidered

over and above the information that was factually recorded. He requested the loading for time served to be reviewed. He requested a review of the protected roles. He was told that none of these things would happen.

391. Mr Cole referred to the open book exams. He asked whether the senior training captain was consulted about individual performance. He was concerned about the protected positions. He was concerned about the two pools for the pilots – the commanders and the co-pilots. He referred to non-compliance by various other captains. According to the notes of the meeting, all of these points were either given very brief responses or the claimants were told that the positions would not change.

392. The claimants suggested that there were training records which would have a bearing on their assessed quality as pilots. The respondent took the view that if matters were not recorded then they could not be considered objectively.

393. Mr Doyle could not have known the result of the process 3½ weeks before 18 March because the scores had not been given. He could only have had the same idea as the claimants that the claimants would score lowest once he had seen and applied his managerial knowledge to the matrix.

394. Was the dismissal process a sham or was it that with their relatively short service the claimants would always be at the bottom of the list given the criteria used with the emphasis on Blackpool crew change experience? In my judgment it was the latter.

395. Mr McGrath submits that in the appeals the claimants ascribed their dismissals to the fact that they had made protected disclosures. Having examined the appeal/grievance letters there is no reference to protected disclosures as such.

396. The appeals, it is submitted, did not to redress the failings of the dismissal process, with the claimants not understanding the pooling principles, the captain to co-pilot ratio or the justification for the protected positions. The basis on which the respondent was proceeding with the selection process was laid out at the joint introductory meeting. It was open to the claimants to enquire. I have concluded that when carrying out that part of the process the respondent acted fairly.

397. The claimants may have been better pilots than some others but the ones they compare themselves with are from the co-pilot pool and thus fall to be considered differently.

398. The claimants might have easily slotted into some of the protected positions but those holding the protected positions were not in the pool for selection.

399. For the purposes of the appeal the appeal officer accepted the 60:40 ratio of captains to co-pilots and that the respondent was entitled to use this ratio.

400. Mr Kinsella appears to have dealt with the various points raised by the claimants apart from the health and safety issues which go to the protected disclosures, which did not form part of the criteria on the selection matrix.

401. The claimants are correct in submitting that it was the weighting in section 3 that ensured that they were selected, although even without that weighting the

figures were such that the claimants were still the two with the lowest scores. In the view of the respondent they had utilised criteria that would provide the best pilots for the job.

402. A different employer might have devised a different method of selection but this does not take the method utilised by the respondent out of the bounds of reasonableness. Whether or not the weighting for experience was credible in the eyes of the claimants the conclusion was the same with or without it.

403. Looking at all of the matters put forward on behalf of the claimants in their counsel's closing submissions I find that overall the process followed was a fair one and so the claims of the claimants are dismissed.

Employment Judge Sherratt

10 April 2017

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

11 April 2017

FOR THE TRIBUNAL OFFICE