

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

**APPLICANT:** Mr Brian Fox  
Represented by: Ms Jessica Pearce, National Union of Teachers

**RESPONDENT:** Blanchelande College  
Represented by: Mr Patrick Harland

**Witnesses:**

**Called by the Applicant:** Mr Brian Fox

**Called by the Respondent:** Mr Patrick Harland  
Ms Lesley Le Page

**Called by the Tribunal:** Ms Katie Vidamour

**Decision of the Tribunal Hearing held on 26, 27 and 30 April 2012**

**Tribunal Members:** Mr Peter Woodward (Chairman)  
Mr Andrew Vernon  
Mr Norson Harris

**DECISION**

Having considered all the evidence presented, whether recorded in this judgment or not, and the representations of both parties, and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was unfairly dismissed for a reason other than redundancy. In respect of this decision the Tribunal awards the Applicant £16,315.74.

In relation to the claim of sex discrimination, having considered all the evidence presented, whether recorded in this judgment or not, and the representations of both parties and having regard to all the circumstances, the Tribunal found that, under the provision of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, the Applicant had been discriminated against. In respect of this decision the Tribunal awards the Applicant £8,157.87.

In relation to the claim re. a written statement of reasons for dismissal, the Tribunal makes no award.

Mr Peter Woodward

.....  
Signature of the Chairman

**Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.**

**The detailed reasons for the Tribunal's Decision are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF. The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended**

## **Extended Reasons**

### **1.0 Introduction**

- 1.1 The Applicant, Mr Brian Fox was represented by Ms Jessica Pearce of the National Union of Teachers.

The Applicant called the following witnesses:-  
Mrs Margaret Webster

- 1.2 The Respondent was represented by Mr Patrick Harland Principal of Blanchelande College.

The Respondent called the following witnesses:-  
Mrs Lesley Le Page

*A further witness was called by Mr Harland but in the event The Tribunal disregarded the evidence which was presented by this witness. The Tribunal declares that this evidence made no material difference to either the conclusions or the decisions contained within this judgement.*

- 1.3 The Tribunal called Ms Katie Vidamour.

- 1.4 At the outset of the hearing it was confirmed that:-

The agreed Effective Date of Termination (EDT) was 31 August 2011.  
The gross earnings were £16,315.74 for the six months prior to the EDT.

- 1.5 The complaints alleged were as follows:

- 1.5.1 Unfair dismissal
- 1.5.2 Sex Discrimination
- 1.5.3 Untrue written reasons for dismissal

- 1.6 The Respondent, in his ET2, admitted the dismissal but denied all three complaints.

### **2.0 Facts Found**

- 2.1 The Respondent, Blanchelande College, is an independent Catholic school; it employs approximately 52 staff including teachers, teaching assistants, and administrative support staff. In October 2010 the trustees and the Board of Governors voted, due to funding difficulties, to suspend the school's sixth form "offering" for a minimum of two years, until the school was in a stronger financial position.

- 2.2 The Applicant, Mr Fox, was a mathematics teacher with the College, having commenced employment in January 2007.

- 2.3 The decision to suspend the sixth form was to take effect from September 2011 and as a result would reduce the number of mathematics teaching periods in the senior school from 76 in the academic year 2010/ 2011 to 68 for the academic year 2011 / 2012.

- 2.4 The College adopted a number of cost-cutting and efficiency measures including the decision not to appoint a Vice Principal for the academic year 2011 to 2012.
- 2.5 On 26 November 2010 a whole staff meeting was convened at which it was communicated that the Board were looking at the future strategy of the school and that this included a review of the current sixth form offering.
- 2.6 During the period 26 November 2010 until January 2011 a full review of the timetable took place to identify what the teaching timetable would be without a sixth form. This analysis indicated that there would need to be a reduction in timetabled lessons of 91 lessons from the start of the 2011 / 2012 academic year.
- 2.7 In early January 2011, the College retained external assistance from Focus HR Solutions and also chose to use the services of Carey Olsen for legal advice. Working with the advisors, the College determined that all subject teaching staff in the senior school (excluding the Principal and Principal Designate) could be affected by this reduction of lessons, either because their post might no longer exist or because their hours might need to be reduced.
- 2.8 On the 18 January 2011, the College staff were formally advised of the decision to suspend the sixth form. They were provided with an explanatory letter (ER1 Tab 4 Refers) and a list of "Frequently Asked Questions" (ER1 Tab 5) in which it was stated that role redundancies would be a last resort when all other measures have failed.
- 2.9 On the 28 January 2011, a further clarifying letter was issued to staff explaining the consultation process, it was explained that over the consultation period the College would be:
- 1) Agreeing a formal procedure to handle the restructuring process;
  - 2) Identifying roles/positions that will need to be filled for September 2011; and
  - 3) Consulting with staff and/or their representatives.
- 2.10 In this letter, the role that Focus HR was intended to play was explained. Staff were encouraged to have an individual consultation meeting with a member of Focus HR and it was stated that such consultation meetings would be extremely important in identifying how best to resource the College from September 2011. It was stated in this documentation that primary intent of these meetings was to assist individuals with "understanding the situation", to conduct a "career review" and in addition to conduct a "person review".
- 2.11 Mr Harland gave evidence that he had included four teachers in the mathematics "pool"; Mr Fox, Mrs Webster, Mrs Perrot and Mr Claxton; written confirmation of this can be found in ER 1 page 11.
- 2.12 On 4 February 2011, Mr Fox received a letter informing him that his role was at risk (ER1 Tab 9 Refers). Attached to this letter was:
- 1) A curriculum analysis for the year 2011 / 2012 indicating subjects and lessons required for that year;
  - 2) A list of "Positions of Responsibility" for the year 2011 / 2012;
  - 3) Selection criteria; and
  - 4) A staff consultation form.

- 2.13 In this letter Mr Fox was informed that Focus HR would be running “drop-in” afternoons, and that hourly appointments could be booked through the school office. In addition a staff representative had offered to speak in confidence to Mr Fox throughout this process.
- 2.14 The Applicant was requested to complete the staff consultation form detailing current role responsibilities and any additional activities or positions of responsibility that he held within the School. The completed form was required to be returned to the school on Friday 18 February 2011.
- 2.15 On 15 March 2011, Mr Fox met with Leslie Le Page, the Principal, and Patrick Harland, Principal Designate, to discuss timetabling options for himself and other staff in the Mathematics department in academic year 2011 / 2012.
- 2.16 On 30 March 2011, a management decision was made that the College would need to appoint a Head of Mathematics with a full timetable i.e. 33 or 35 lessons per week. The current Head of Mathematics, Mrs Perrot, who was teaching fewer periods than those required declined this post.
- 2.17 On 6 April 2011, a meeting took place between Mr Fox and Mr Harland, in the Bursar’s office, lasting approximately four to five minutes. In this meeting, Mr Fox restated that he felt the current Head of Mathematics should be teaching 28 lessons and not 33; Mr Harland stated that he did not believe 28 lessons per week were enough for a Head of Department role.
- 2.18 On 8 April 2011, Mr Fox met with the Principal, Mrs Le Page, and a governor of the school and was informed that his role was redundant; this was confirmed in a letter which was given to him on the same day. Mr Fox was notified in this letter that he could appeal within ten days of this decision.
- 2.19 On 8 April 2011 Mrs Webster was offered and accepted a contract for 10 periods per week for the academic year 2011 /2012.
- 2.20 On 14 April 2011 Mrs Webster wrote a letter to Mr Harland (ER1 Tab 15 Refers) stating that in her opinion that she anticipated any existing staff “willing and able to fill this position” should be offered a part time mathematics post ahead of her. Mrs Webster requested a meeting with Mr Harland at the beginning of the summer term.
- 2.21 On 27 April 2011 a meeting took place between Mr Harland and Mrs Webster to discuss why Mrs Webster had been given preference over Mr Fox in determining the available mathematics teaching posts for September 2011

2.22 The College subsequently advertised a post in the local press for either a part time or full time mathematics teacher in June 2011 (EE1 Page 57 Refers).

2.23 Mr Fox was dismissed on 31 August 2011.

### **3.0 Mr Patrick Harland**

3.1 The witness read from a witness statement to be found in ER1 Pages 4 to 20.

3.2 In giving his evidence Mr Harland stated that he was fully knowledgeable of the code of practice issued by Commerce and Employment “Handling Redundancy”.

- 3.3 During the term from January 2011 to April 2011 the mathematics timetable had consisted of 76 lessons per week and these had been covered by three teachers in the senior school, Mrs Perrot, Mr Fox and Mrs Webster.
- 3.4 Mrs Perrot and Mrs Webster taught up to and including A-level students, Mr Fox taught up to and including GCSE students.
- 3.5 Mrs Webster was employed on a fixed term contract, of two terms, which commenced on 17 January 2011 with an end of contract date in August 2011.
- 3.6 Mrs Perrot was on an open ended permanent contract of employment with the College.
- 3.7 Mr Fox was employed on a long-term supply basis with the school as per an offer letter dated 10 July 2007 (ER 1 appendix 2 refers). Mr Harland stated that it was not uncommon for a supply teacher to remain with a teaching establishment for periods of up to two to three years.
- 3.8 Mr Harland stated that as they considered the necessary restructuring of the mathematics department to meet their future needs that there was a strong desire to have a full-time Head of Mathematics. It was explained to the Tribunal that Mrs Perrot with 28 periods of maths was not satisfying this requirement, typically a full-time head of maths would either have 33 or 35 teaching periods in a week. In the case of Mrs Perrot she benefited from a prior concession that eight of her paid periods per week did not constitute class periods and thus she was paid in total for 36 periods per week.
- 3.9 Mr Harland also stated that in order to retain Mr Claxton, the school music teacher he needed to offer him some mathematic teaching periods for the academic year 2011 to 2012. Mr Claxton was unhappy to stay at the College unless he had a full-time role. Mr Claxton was qualified to teach mathematics but was not teaching the subject in the academic year 2010 / 2011. Mr Harland declared that it was the school policy to give priority to those who wish to work full-time versus those teachers who wish to work part time. Thus this gave a preference of Mr Claxton over Mr Fox.
- 3.10 Mr Harland told the Tribunal that despite the temporary suspension of A-level mathematics from the College curriculum for a period of a minimum of two years, it was still extremely important to have mathematics teachers who could teach at A-level standard and who could also advise those students taking GCSE on their suitability to take the subject beyond this stage to A-level.
- 3.11 Mr Harland in his written statement informed the Tribunal that a number of actions were taken including retirement of employees. However, when questioned by the Tribunal he stated that in fact no employees had been retired as part of the reduction in staffing levels.
- 3.12 Despite all the measures that were taken it was concluded that some reduction in staffing levels was unavoidable and he told the Tribunal that the guiding principle was to support the best resourcing requirements of the school going forward.

- 3.13 Mr Harland informed the Tribunal that at that time the school did not actively recognise trade unions through any formal agreement nor did it partake in any collective bargaining however it did consult the trade unions and staff associations as part of this process.
- 3.14 In January 2011, the senior management team led by Mrs Le Page and Mr Harland started identifying a pool for selection. In the event all senior subject teaching staff and some subject teaching staff in the junior school were identified as being in the pool, this amounted to either 21 or 22 teachers.
- 3.15 The College also established selection criteria as follows:-

Essential Criteria

- Relevant skills, qualifications and experience relevant to the role(s) applied for, including reference to performance management records.
- Ability to offer Extra-curricular activities either/or during the lunch break or after school.

Highly Desirable Criteria

- Ability to act as a Form Tutor, being in School for all class registrations at the start of the morning and afternoon sessions.
- Ability to teach more than one subject to GCSE level.
- To ensure the best resourcing of the School.

- 3.16 The consultation period ran from 18 January 2011 to 8 April 2011 and Mr Harland stated that in order to assist this process they asked all staff to complete consultation forms (ER1 Tab 11 refers). In addition the College offered their staff independent meetings with Focus HR.
- 3.17 All staff were made aware of the roles that would be available and were invited to apply for any vacant positions.
- 3.18 Mr Harland informed the Tribunal that Mr Fox was employed on a long-term "supply" basis. When the Tribunal explored this concept of employed status with Mr Harland it became evident that he did not regard it as a permanent contract of employment and that the contractual relationship could, in his mind, come to an end at any point determined by the College. Mr Harland did not communicate his view of the employment relationship to Mr Fox prior to his dismissal on 8 April 2011.
- 3.19 Mr Harland and Mrs Le Page met with the Applicant on 15 March 2011 to discuss the staff consultation form that he had completed (ER1 Appendix13 Refers). Mr Harland apparently took the information contained in the consultation form as read, i.e. he did not explore Mr Fox's academic background in relation to his ability to teach mathematics to the modern curriculum or as to his abilities to guide prospective A-level students toward an appropriate course of studies.
- 3.20 Mr Harland gave evidence that another reason for selecting Mr Fox for redundancy was that he did not want to work on Fridays and thus in the view of the College could not hold the role of form tutor. Mr Harland told the Tribunal he took the consultation form as read and did not explore the possibility with Mr Fox that he might consider Friday attendance in order to perform this role.

- 3.21 It was confirmed by Mr Harland that no attempt was made to score any of the criteria that was being used for comparison of staff.
- 3.22 During the meeting Mr Fox stated that the College should only be asking Mrs Perrot to teach 28 lessons and that he and Mrs Webster could “job share” at 15 periods each thus offering 58 periods and that Mr Claxton could then have 10 periods. Mr Harland responded that to save money he wished the Head of Mathematics to teach 33 periods per week therefore this proposal might not be possible.
- 3.23 Mr Harland informed the Tribunal that at this point in time he had a provisional plan to share the periods as follows:-
- Mr Fox 20 periods
  - Mrs Perrot 33 periods
  - Mrs Webster 10 periods
  - Mr Claxton 5 periods
- He did not share this plan with Mr Fox as he had not consulted the other staff.
- 3.24 By 30 March 2011, Mr Harland was aware that Mrs Perrot would not accept a role as Head of Mathematics teaching 33 periods per week and he re-confirmed to Mr Fox on 6 April 2011 that a Head of Department would be only appointed if they could teach in a full time capacity.
- 3.25 In discussion with Mrs Le Page a decision was made to recruit a new Head of Maths at 35 periods per week; offer a new contract to Mrs Perrot of 13 periods per week, and offer 10 periods to Mr Claxton. The Respondent stated that the decision to offer Mr Claxton these mathematics teaching periods was strongly influenced by his expressed desire to take on the role of Form Tutor and the wish that he should be assigned a full time post.
- 3.26 This left 10 periods to be assigned either to Mrs Webster or Mr Fox.
- 3.27 Mr Harland stated that prior to this decision he consulted the Head of Teaching and Learning, Mrs Tribe. She told him that Mr Fox had demonstrated some resistance to the introduction of new initiatives and that he believed that children were frightened of learning objectives. On one occasion the Head of Teaching and Learning had attended one of Mr Fox's lessons, with no prior warning, and had observed his teaching style. She considered it textbook led with little direction and interaction. In the same discussion the Head of Teaching and Learning said that she had had several informal discussions with Mrs Webster and believed that she was a practitioner of the new teaching methods.
- 3.28 The Head of Teaching and Learning further advised Mr Harland that her own child was being taught by Mrs Webster and she was delighted with the exceptional progress of her child under this tutelage.
- 3.29 The Head of Teaching and Learning told Mr Harland that she believed Mr Fox's resistance to adopting these new teaching initiatives could be seen as an unhelpful voice of dissent if voiced within the staff room at a time when they were trying very hard to raise pupil achievement through the introduction of new teaching and learning initiatives. It could also be confusing to students who she believed benefited from consistent teaching practices.

- 3.30 The decision was taken that in conjunction with the above that Mrs Webster with her recent experience of teaching "A level" mathematics would be preferred over Mr Fox. The rationale was that Mrs Webster had experience in teaching to maths "A level". Although the College would not be offering this subject at "A level" for at least two years it was considered important that teaching staff would be able to stretch some of their GCSE students to their greatest ability and provide advice and support to any who felt that A Level maths might be a future option. Consequently Mrs Webster was offered these 10 periods via a new contract for the year 2011 / 2012.
- 3.31 On 8 April, the decision to make Mr Fox redundant was communicated by the Principal and a School Governor.
- 3.32 On 14 April 2011, Mr Harland received a letter from Mrs Webster. In this letter Mrs Webster expressed concerns about the offer of a position within the maths department that had been made to her.
- 3.33 On 27 April 2011, Mr Harland met with Mrs Webster to discuss the letter. He explained that his decision to choose Mrs Webster in preference to Mrs Fox was on the grounds that they had to consider the best resourcing for the school going forward. Mr Harland further stated that even if Mrs Webster had not accepted the offer of employment this would not have necessarily meant that it would have been offered to Mr Fox.
- 3.34 Mr Harland explained to Mrs Webster that the College had to consider who would be the best teacher for the job going forward, and in this particular scenario they needed someone who could teach maths A-level.
- 3.35 Mr Harland agreed that he advised Mrs Webster that he also wanted strong female role models within the maths department, although he could not remember his exact words. However he did admit that the subject was discussed.
- 3.36 Mr Harland sought to defend this position in his written statement by stating that there is evidence to support that girls, in particular, benefit from female teachers within subject areas that are typically male dominated e.g. maths and science.
- 3.37 Mr Harland also stated that he had given Mrs Webster three justifications for preferring her over Mr Fox and that the reference to female role models was the third of these priorities, not the first.
- 3.38 Mr Harland subsequently, in June 2011, advertised a post in the local press for either a part-time or full time mathematics teacher (EE1 Page 57 Refers). Mr Fox was not invited to consider applying for this role.
- 3.39 In summary, Mr Harland stated that Mr Fox's redundancy was not an indication of underperformance and that he was regarded very highly. It was unfortunate for him that other colleagues had greater and more relevant experience in areas which the College considered important.

#### **4.0 Ms Katie Vidamour**

- 4.1 Ms Vidamour is an owner and Director of Focus HR Solutions.



- 4.2 Ms Vidamour assisted the Respondent in the restructuring process, supplying an advisory service and reviewing staff files for relevant data on qualifications and experience.
- 4.3 Ms Vidamour confirmed that the tabulated list submitted by Mr Harland (ER1 page 11 refers) had been developed by her. It had been put together in preparation for the Tribunal Hearing and the intent of this was to provide an easy understandable summary as to how the selection criteria were applied to the mathematics teachers.
- 4.4 Ms Vidamour stated that the original document had been sent to Mr Fox's representative at the NUT in March 2012. When asked why the version found in the Respondent's bundle was different from that submitted to the NUT Ms Vidamour stated that it was a document that was being developed for the hearing and thus they were different versions.
- 4.5 Ms Vidamour stated that without this summary, the evidence would have been very "weighty". Under cross examination, she stated that this did not mean that any documents which should have been produced as part of a normal "document discovery" process (as required by a pre-hearing Case Management Meeting) had been withheld from the Tribunal.
- 4.6 In confirming that the document (ER1 Page 11 refers) was not in existence at the time of Mr Fox's redundancy, Ms Vidamour asserted that there was no intention to mislead the Tribunal.
- 4.7 Ms Vidamour was asked if, in her opinion, a part-time employee could be a Form Tutor; she responded that, as long as they were available each work day at the beginning of the school day and at the commencement of afternoon lessons, this should satisfy the requirement.

## **5.0 Mrs Lesley le Page**

- 5.1 The witness read from a witness statement to be found in section ER1 Pages 21 & 22.
- 5.2 Mrs Le Page confirmed that no records or minutes were made of any of the meetings involving the redundancy process; no file notes were made of any consultative meetings. Mrs Le Page stated that she had never been told this was a requirement.
- 5.3 It was confirmed by Mrs Le Page that no attempt was made to score any of the criteria that was being used for comparison of staff.
- 5.4 The witness informed the Tribunal that she had spent 34 years of her teaching career at Blanchelande and was Principal for the 14 years until 2011.
- 5.5 She concurred with Mr Harland that given the suspension of the sixth form the College was overstaffed and that reductions were required.
- 5.6 Mrs Le Page confirmed that there were at least two other teaching staff at the College who were qualified to teach mathematics and had done so whilst with the College. She confirmed they had not been included in the Mathematics "pool".

- 5.7 Mrs Le Page stated that Mr Fox was the type of staff member that was very welcome. He was willing to take more classes when requested, always supportive, popular with the pupils, and a very experienced, talented and effective classroom teacher. He was calm in the staff room and much respected. He came along to plays and concerts, supported charity and fund raising events. He willingly assisted pupils out of lesson time and also ran a weekly maths club.
- 5.8 Mrs Le Page stated that given his academic qualifications Mr Fox was quite capable of advising GCSE students on their suitability for future mathematics study at “A Level”.
- 5.9 Mrs Le Page confirmed that following a decision by Mrs Perrot to stand down from her role as Head of Mathematics it was necessary to recruit a replacement. The new Head of Department would need to be supported by two part time teachers in the academic year 2011 /2012. Whilst this new Head of Department was highly likely to be able to teach “A level” it was not a certainty, therefore there needed to be an assurance that one of the part time teachers be capable of teaching “A level” maths.
- 5.10 A priority was given to Mr Claxton to assign him 10 periods of mathematics in order he could be full time.
- 5.11 Given these decisions Mrs Le Page then met with Mr Harland and Mrs Tribe, to finalise who, out of Mr Fox and Mrs Webster, should take the remaining periods.
- 5.12 Mrs Le Page stated that Mrs Webster was a very competent teacher and had taught maths “A level” recently. This experience was preferred to that of Mr Fox when it came to the allocation of the remaining maths periods for the year 2011 / 2012. Mrs Le Page stated that this decision was not taken on the basis of gender.

## **6.0 Mrs Margaret Webster**

- 6.1 Mrs Webster confirmed that she had been taken on a fixed term contract to teach mathematics at Blanchelande College between January 2011 and July 2011. She had taught at A-level standard.
- 6.2 Mrs Webster confirmed that she had written a letter to Mr Harland on 14 April 2011 expressing concerns about her appointment to a role in the Mathematics Department in September 2011. (EE1 page 55 refers).
- 6.3 Subsequently, on or about 27 or 28 April 2007, she met with Mr Harland to discuss these concerns. Mr Harland told her that she had been chosen over Mr Fox for three reasons:
- 1) Positive feedback from her students.
  - 2) Other recent A-level teaching experience.
  - 3) That in an all-girls school with male oriented subjects like maths that in providing a female role model it would be helping their learning and understanding of the subject.

## **7.0 Mr Brian Fox**

- 7.1 Mr Fox informed the Tribunal that he had taught Mathematics for 40 years in eight academic institutions. He had last taught A level mathematics in 1975.

- 7.2 He had graduated with a BSC in mathematics and had then taken a Master's degree in the study of Mathematics. As such he was capable of advising students, including students taking degree level maths, as to their academic preferences in the various parts of the mathematics discipline.
- 7.3 Mr Fox had held the role of Head of Mathematics for 10 years in the UK and for a period of times in his career had acted as Deputy Head and Acting Head for academic institutions.
- 7.4 In the UK he was part of the pilot programme for the introduction of "SATS" test for 14 year olds prior to their nationwide implementation.
- 7.5 He worked with the UK EDEXCEL Examination Board as a member of their "subject panel" advising on the content of their mathematics in course papers.
- 7.6 He was a qualified Maths Advisor in Guernsey, was consulted throughout the Channel Islands on EDEXCEL exam issues; and was a qualified VSSE Inspector.
- 7.7 Mr Fox stated that, contrary to the evidence given by Mr Harland on Page 10 ER1, that not all of the 76 periods had been covered by Mrs Perrot, Mrs Webster and Mr Fox. In total they taught 71 periods and Mrs Le Page taught 5 periods. In addition Mr Fox's evidence was not disputed when he stated that in the spring term 2011 Mrs Perrot was teaching 31 periods rather than the 28 periods evidenced by Mr Harland.
- 7.8 Mr Fox agreed that he was initially recruited in January 2007 on a supply basis and had not wished to undertake a permanent role as he was concerned that he might jeopardise his pension scheme which was already "pension in payment". The pension rules forbade him, as a current pensioner, taking any role which involved making contributions to the teacher's pension fund.
- 7.9 However, by the middle of September 2011 Mr Fox had clarified the rules of his pension scheme and could inform Mrs Le Page that provided he did not undertake a full time role, which would automatically involve enrolment in the pension scheme, he was free to enter into an open ended employment relationship with the College. He informed Mrs Le Page who expressed considerable relief as she needed his longer term commitment for the on-going teaching of mathematics at the College. The Bursar confirmed his inclusion on a regular monthly payroll basis on the 19 September 2007 (EE4 Refers).
- 7.10 Mr Fox was not issued with a written contract of employment; however he did work continuously on this basis from autumn 2007 until 2011.
- 7.11 Mr Fox confirmed that the last time he taught an "A level" curriculum was in 1975, however he did add that in his current role he was teaching the "A level" curriculum. He expressed the opinion that whilst a syllabus might change the mathematics that needs to be taught does not change.
- 7.12 Mr Fox informed the Tribunal that he believed his role was safe as the College had stated in its information pack (ER1 tab 5 Refers) that they would reduce or eliminate the use of teachers on temporary / agency contracts and that role redundancies would be a last resort when all other measures have failed. As the natural ending of Mrs Webster's fixed term contract in August 2011 would achieve the required

reduction in hours for the Mathematics Department he thought he should not have any concerns.

- 7.13 Mr Fox explained that he did not meet with members of the Focus HR team as he was mystified as to what such an organisation could do for him. He had consulted their web site and established they had no educational roles and he made the assumption that there was little that such an organisation could do to advise him. He also assumed his role was safe based on the relatively limited reduction required in mathematics teaching commitments.
- 7.14 With reference to the consultation meeting on 15 March 2011 with Mrs Le Page and Mr Harland the Tribunal was directed to Page 52A EE1. This was a copy of the suggested timetable for mathematics in year 2011 /2012. It proposed the following:-
- Mrs Perrot to conduct 28 periods and to be allocated five non-teaching periods as “Exams Officer” as defined in the “Proposed Positions of Responsibility” 2011 / 2012 (ER1 Tab 11 refers).
  - Mr Fox to conduct 15 periods.
  - Mrs Webster to conduct 15 periods.
  - Mr Claxton to conduct 10 periods.
- 7.15 Discussion as to this proposal was somewhat limited, for example Mr Harland did not inform Mr Fox that in his view a full time teaching role was one of 36 periods per week. However he did inform Mr Fox that he wanted Mrs Perrot to undertake more than 28 teaching periods per week.
- 7.16 Mr Fox left this meeting with the understanding that his offer to reduce to 20 periods was seen as a possible option, but it was not a formal commitment.
- 7.17 On the 6 April 2011, he briefly met Mr Harland and he told Mr Fox the “maths situation” was still under consideration. Mr Fox expressed the opinion to Mr Harland that he did not need to appoint a new Head of Department as it would be better for her and staff morale if Mrs Perrot was retained on a 28 period week.
- 7.18 At 11.55 am on 8 April 2011, the day the school was due to finish at 12.30 pm for the Easter holiday; Mrs Le Page found Mr Fox in the hall and asked him to accompany her to her office. In the office he was introduced to a Governor, Ms Susan Ashman. He was told by Mrs Le Page that the staffing of the maths department had been difficult and that unfortunately there would be no role for him in September 2011. Mrs Le Page stated that she did not wish Mr Fox to find this out in a letter and that he, like her, was out of the door.
- 7.19 Mr Fox expressed his great shock at the news and asked who would pick up his teaching load. Mrs Le Page informed him she believed Mrs Webster would be picking this up.
- 7.20 Mr Fox was not given any information, either verbally or in writing as to the rationale for his selection and how he had measured up against any verifiable or objective criteria.
- 7.21 Mr Fox did not have any sight of specific and tabulated redundancy criteria for the Maths department until this Hearing.

- 7.22 Mr Fox was unaware of the “A” level teaching criteria being applied until this Hearing.
- 7.23 Mr Fox was unaware that the Head of Teaching and Learning had made any assessment of his teaching methods and that it was his opinion that this went against all established practice for a covert informal assessment to be made without feedback to the assessed teacher.
- 7.24 Mr Fox was unaware that priority was being given to full time posts versus part time posts; and resulted in Mr Claxton being assigned a priority above him in terms of retention.
- 7.25 Mr Fox was unaware until the Hearing that Mr Harland considered his employment as temporary and of a lesser status than that of other teachers; he understood from Mrs Le Page that he was employed on a permanent basis.
- 7.26 Mr Fox was given 10 days to appeal from 8 April 2011, he did not do so. He explained that, as there were no criteria in the letter of dismissal explaining why he had been selected; he could not know on what grounds he could appeal. He also stated that he was due to leave the island at 4.30 pm on the 8 April 2011 and not due to return till after the expiry of the appeal period; in his dismissal letter he was advised no “out of time” appeals were permitted. Whilst continuing to teach at the College he made no attempt to appeal against this decision.
- 7.27 On his return from his Easter break Mr Fox discussed the matter of his redundancy with Mrs Webster. She told him that she had written to Mr Harland on 14 April 2011 in relation to the offer of a part-time post from September 2011 and pointed out that she felt slightly uncomfortable with the situation (EE1 Page 55 Refers)
- 7.28 In her letter Mrs Webster stated that at the start of the consultation period staff were assured that the teaching posts would be offered first and foremost to those with the relevant skills before considering any external appointees. She pointed out that she did not consider herself to be amongst the permanent staff given that she was only one term through a fixed two term contract. She pointed out that she would have anticipated that any existing staff willing and able to fill the position would have been offered it ahead of her.
- 7.29 Mrs Webster told Mr Fox that, on or about 30 April 2011, she had had a conversation with Mr Harland during which he told her that, even if she did not accept the role, there would be no guarantee that Mr Fox would be offered the role, because the school needed strong female role models in the mathematics department and that they would probably advertise the job.
- 7.30 During the week commencing 23 May 2011, Mr Fox asked Mrs Le Page for time off to attend an interview at the Grammar School. Mrs Le Page responded that Mrs Perrot had now resigned so Mr Fox might like to reconsider as, if it was up to her, he would not be the one who was leaving. Bearing in mind Mr Harland's comment to Mrs Webster, Mr Fox had concluded that the school wanted to appoint a woman rather than a man.

- 7.31 Mr Fox stated that other than this one conversation with Mrs Le Page no one from the school management ever discussed the matter with him or had offered him any other work.
- 7.32 On about 23 May 2011, Mrs Perrot tendered her resignation. A few weeks later she was persuaded to continue teaching her A-level class and is still at Blanchelande College performing this work.
- 7.33 Mrs Webster wrote to Mr Harland on 26 May informing him that she would not be able to take up her role on September 2011.
- 7.34 On 4 June 2011 the school advertised for a full or part-time mathematics teacher (EE1 Page 57 Refers). Mr Fox did not apply for this role as he had already accepted a job offer at the Grammar School.
- 7.35 Mr Fox's dismissal took effect on 31 August 2011.

## **8.0 Conclusions**

- 8.1 The Tribunal accepts that the College was experiencing a period of financial stringency and had a firm financial rationale for having to reduce staffing levels.
- 8.2 The Tribunal takes account of the influential UK ruling in *Polkey V Dayton Services Ltd* In *Polkey v A.E. Dayton Services Limited* [1988] AC 344, HL, Lord Bridge stated that “... *in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair decision on which to select for redundancy and takes such steps as may be reasonable to minimise a redundancy by redeployment within his own organisation*”.

*The judgement included 4 basic Principles of fairness ‘which should always be considered’ in situations of redundancy:*

1. *The duty to consult the employee*
2. *The duty to warn of redundancy*
3. *The duty to establish fair criteria for the selection of employees*
4. *The duty to explore alternatives to redundancy.*

*Accordingly consultation should begin in good time and be completed before any redundancy notice is issued. Consultations must be conducted with an open-minded approach; the employer must not only have this approach but display it too”.*

These principles are relevant to the application by Mr Fox.

- 8.3 The Panel turned its attention, in the first instance, to the alleged unfair dismissal and it should be noted that, whilst the Code of Practice “Handling Redundancy” issued by Commerce and Employment is not binding in law, the adherence or non-adherence to this code may be taken into account in determining whether a dismissal is fair or unfair. Indeed Mr Harland referred to it as his “bible” and emphasised that he had used external HR advisors to ensure correct process was observed.
- 8.4 Turning first to measures taken to avoid redundancies Mr Harland claimed that the College had taken many measures and they were listed in the written evidence that had been submitted in the bundle. However in the written evidence it was stated

that the College had taken the measure of retiring employees, (ER1 Page 7 refers), but when questioned by the Tribunal Mr Harland stated that no member of staff had been retired as part of the restructuring process. This does bring into question the veracity of these claims.

- 8.5 A pre-requisite of a fair redundancy process is to ensure that the pool for selection has been identified correctly and to identify where the roles are interchangeable. In this case, Mr Harland argued the pool was either 21 or 22 of the teachers then in employment at the College. It was clear from the evidence that not all of the teachers within that number could teach mathematics; indeed, the number for the specific subject of mathematics was fewer than 21.
- 8.6 In practice the College worked with a pool of three mathematics teachers; namely Mr Fox, Mrs Perrot, and Mrs Webster and then had added Mr Claxton, the music teacher, to the pool. The Tribunal heard evidence that the sole reason for including Mr Claxton in the pool was to meet his demand that he should have a full time post. Subsequent evidence indicated that, additionally, there were at least two other members of staff, other than Mrs Le Page, who were qualified to teach mathematics. Thus, the composition of the pool, which probably comprised at least six staff, was clearly flawed from the outset.
- 8.7 The Tribunal also notes that there is a discrepancy in the evidence of the two parties in relation to the number of periods being taught by the various staff at the College in Spring 2011. Mr Harland stated that Mrs Perrot was teaching 28 periods, however Mr Fox gave undisputed evidence that Mrs Perrot was teaching 31 periods. Also Mr Fox evidenced that Mrs Le Page was conducting 5 periods of mathematics per week in that term. Mr Harland had stated in his evidence that all the 76 mathematics periods were being taught by Mrs Perrot, Mrs Webster and Mr Fox.
- 8.8 On balance the Tribunal prefers the evidence of Mr Fox and it would seem to indicate that Mr Harland had not fully grasped the current situation. If an organisation cannot clearly state their allocation of work to their employees prior to a restructuring, which involves the job security of its employees, this is of some concern and goes to the credibility of the evidence.
- 8.9 Mr Harland stated in evidence that he wanted to give preference to “Full Time” employees rather than “Part Time”. This was not stated in the criteria, but the desire to meet Mr Claxton’s needs seemed to be a primary motivator, and have a priority over the needs of Mr Fox to retain his employment. In passing it should be noted that Mr Harland should have been aware that if he had adopted such a position generally, throughout the school, he made himself potentially liable to a complaint of indirect discrimination. With a workforce which included female part-time staff there is the potential problem that women may be less likely to fulfil full time roles and this might then result in indirect discrimination.
- 8.10 The Code of Practice refers to the requirement to use objective and verifiable selection criteria. Initially the Tribunal was directed to a document headed “Selection Criteria” It was noted on this document that staff in the selection pool would be assessed against these criteria in descending priority order. The Tribunal notes that Mr Harland gave in evidence that the College at this time was not undertaking any staff appraisal and that consequently there were no “performance management records” to rely upon. In the opinion of the Tribunal this somewhat

detracts from the reliability of the first criterion when it came to be assessed against members of staff.

- 8.11 Specifically in relation to the mathematics department the Tribunal was presented with a tabulated list of criteria by Mr Harland (ER1 Tab 1 page 11 refers). As Mr Harland gave his evidence the Panel was under the clear impression that this tabulation had been produced prior to the dismissal on 8 April 2011 and was the primary and codified basis for the decision to select Mr Fox for redundancy, as opposed to his colleagues. It only became clear from subsequent evidence given by Ms Vidamour that this tabulation was produced in March 2012, and produced specifically for the Tribunal Hearing. In addition the Tribunal found that the copy of this document which was supplied by the Respondent to the Applicant was not an exact copy and that certain information had been added to the Respondent's tabulation to support his arguments. Miss Vidamour claimed that this was because it was an "evolving document". The Panel cannot but view this as most disingenuous and it brings into question the fundamental credibility of both Mr Harland's testimony and the evidential material to be found in his bundle.
- 8.12 A specific late addition to this document was the reference in the Respondent's version to Mr Fox not wishing to work Fridays; and this criteria thus excluding Mr Fox from the role of Form Tutor. However, Mrs Webster was also a part time teacher and there was no reference in the tabulation to her ability or inability to hold a Form Tutor role. It would seem that the respondent was "cherry picking" criteria to support his rationale for making Mr Fox redundant.
- 8.13 The Tribunal notes that the Respondent had used a consultation form (ER1 Tab 13 for "20 periods a week and not Friday". It would seem from the evidence that Mr Harland took this as a fixed position. However, it became abundantly clear from evidence given by Mrs Le Page and Mr Fox that this was, as it stated, a preference. Mrs Le Page told the Panel that Mr Fox had been very flexible in his teaching commitments and was always prepared to fit in with the College requirements. Mr Fox gave evidence that in offering a reduction from his current 30 periods to 20 periods he was providing the College with a very simple and straightforward answer to the required reduction of 8 periods in the number of mathematics teaching periods required. It is also worth pausing and considering that Mr Fox was offering to reduce not only to 20 periods per week but to 15 periods per week. The Tribunal might conclude that together with the expiration of Mrs Webster's contract on 31<sup>st</sup> August 2011 there was a potential for a substantial reduction in teaching hours. There was arguably still enough headroom to appoint a new full time Head of Mathematics and call upon other existing permanent members of staff who, according to Mrs Le Page, were qualified to teach mathematics. The outcome being a reduction to 68 hours whilst still retaining at least 3 teachers in the mathematics discipline.
- 8.14 It is arguable that on the evidence above the Applicant can reasonably claim that he was dismissed for a reason other than redundancy. However, the Respondent claimed that there were other considerations which the Panel should take into account and are considered below.
- 8.15 The Respondent introduced into evidence further criteria which had no mention on the summary tabulation submitted to the Panel. The Panel was told that prior to the decision to make Mr Fox redundant Mr Harland had consulted with the Head of Teaching and Learning; a member of the senior management team of the College.



She informed Mr Harland that Mr Fox did not believe in “learning objectives” and had noted that on one occasion she had observed his teaching style and summarised it as “textbook led with little direction and interaction”.

- 8.16 In addition the Head of Teaching and Learning informed Mr Harland that her own child was being taught by Mrs Webster and achieving significant progress using techniques approved of by the Head of Teaching and Learning. Mr Fox gave undisputed evidence that such an informal observation went against all the tenets of teaching observation, particularly as this critique was never communicated to him. Mr Harland put very significant weight on this evidence in his initial submission, although he then tried to retract from this position in subsequent cross examination; again the consistency and credibility of his evidence was brought into question. The Panel notes that Mr Fox was totally unaware of this assessment by the Head of Teaching and Learning until this hearing.
- 8.17 One of the criteria given great weight by the Respondent was the ability to teach the modern curriculum mathematics to “A level” and to have recent experience of this. This same criterion would also allow the teacher to advise students as to their suitability in opting for mathematics as a subject at “A Level”. The Panel notes that these criteria were never communicated to Mr Fox.
- 8.18 The Respondent argued that if Mr Fox had appealed against the redundancy decision he would have been told that these were primary criteria by the Appeals Panel. This would seem to be “after the fact” and hypothetical. Mr Fox should have known at the time of his dismissal that they were primary criteria. It would also seem from the academic attainments entered into evidence by Mr Fox, not contested by Mr Harland, that Mr Fox might well be capable of both teaching mathematics at “A level” and advising on student suitability to undertake these qualifications. In the event Mr Harland did not consult on this issue and was seemingly in ignorance of Mr Fox’s role at a UK Examining Board level in advising on “A level” mathematics curricula; as well as being a “Channel Islands” teaching assessor in his subject. In addition Mrs Le Page gave evidence that anybody who is educated to degree level in maths should be able to advise students on their suitability to take “A Level” Maths. The Tribunal notes not only did Mr Fox have a degree in Mathematics he had, in addition, a Masters level qualification in the study of mathematics.
- 8.19 The Tribunal also notes that at the time of Mr Fox’s redundancy a new Head of Mathematics was being actively recruited. Mrs Le Page in her evidence stated it was highly likely that the College would recruit a candidate capable of teaching at “A Level” standard.
- 8.20 A criterion relied upon by the Respondent in his decision to dismiss, but not communicated to the Applicant, was assertion that Mr Fox was a “Temporary Supply Teacher”. Mr Harland claimed that this was the case and that as such his “temporary” position was no different from that of Mrs Webster on a fixed term contract of less than a year. Mr Harland seemed to wish to persuade the Tribunal that Mr Fox had some form of lower status employment than his teaching colleagues, this was plainly misguided and was not so.
- 8.21 In the first place if Mr Harland truly believed the role was on a truly temporary “supply” basis then why did he not end Mr Fox’s Employment without notice; instead he placed Mr Fox in the “pool” for redundancy.

- 8.22 Also this argument runs counter to the Employment Protection Law 1998 as amended. Under this law an employment contract can either be for a fixed term or of unlimited duration, save for a contractual retirement date. The letter of 19 September 2007 issued to Mr Fox by the College Bursar (EE4 Refers) clearly indicates that Mr Fox was to be placed on a regular monthly salary without limit of time, in effect on an open ended, indeterminate length, contract of employment. It was also evident that the Principal Mrs Le Page considered him as a continuing member of staff. Thus in the opinion of the Tribunal Mr Fox was as permanent as any other member of the permanent College staff.
- 8.23 In passing, the Tribunal notes that Mr Fox did not seem to have written terms and conditions of employment as required by the 1985 Conditions of Employment (Guernsey) Law, 1985 (as amended). This may be an isolated issue and all other staff have written terms and conditions in compliance with the law, however the College would be advised to verify this compliance.
- 8.24 During the meeting held on 27 April 2011 between Harland and Mrs Webster another criterion was used as a rationale for preferring Mrs Webster over Mr Fox, namely "student feedback". The Tribunal can find no reference to this in any of the written criteria submitted in evidence by the Respondent.
- 8.25 In consideration of all the above the Tribunal considers the duty to provide objective, fair and verifiable criteria to the Applicant, prior to dismissal, was not discharged.
- 8.26 The Panel has also come to the conclusion that the attempt by the Respondent to consult was administratively very poor and seeming not entered into in a genuine spirit of enquiry.
- 8.27 Mr Harland stated that it was normal practice for minutes to be taken at the Board of Trustees' meetings and in more formal staff meetings, however both he, and Mrs Le Page gave in evidence that not one of the management or consultative meetings related to the redundancy process was minuted. It is also noted that no file notes were put on employee files following these meetings. Such a fundamental requirement arguably should have been obvious in a seat of learning such as Blanchelande College, and indeed it is included in the checklist in the "Code of Practice" which Mr Harland stated he had used as his "bible". The outcome of this deficiency of process is that there are no verifiable records of these meetings.
- 8.28 The Code of practice also states that *"The aim of consultation is to enable all those concerned in the redundancy to understand and share the problems they are facing. Consultation also enables suggestions and alternative options to be explored at the earliest opportunity, reduces uncertainty and promotes more positive dialogue between employer and employee"*.
- 8.29 Mr Harland asserted that by not attending "HR Drop In / Career Advisory" meetings, hosted by members of Focus HR that Mr Fox had not entered into the consultation process. In evidence Mr Fox stated that he had not chosen to do so after reviewing the Web Site of Focus HR and finding it lacking in any educational opportunities. It does not seem unreasonable to the Tribunal that Mr Fox had concluded that such a company might offer little to him at his stage of career in terms of advice. Additionally, Mr Fox had concluded, perhaps unwisely, that his job was not at great

risk given the relatively small decrease in anticipated teaching periods for mathematics and did not foresee the need to consult with Focus HR employees.

- 8.30 The Consultation form completed by Mr Fox (ER1 Appendix 13 refers) was apparently taken by the Respondent as a fixed position rather than a statement of personal preference. Mr Fox gave evidence that he had offered a potential timetabling solution where he offered to reduce his own periods to 15 per week and provided a potential solution to Mr Claxton's concerns. His solution would also seem to have offered ample current sixth form teaching expertise to meet the needs described by Mr Harland in his evidence. This offer to halve his teaching periods was to no avail. It would seem to the Tribunal that no matter what Mr Fox offered in the way of concession he was very unlikely to gain agreement from the Respondent as the subject was not open to genuine consultation.
- 8.31 Mr Fox could have submitted an appeal, even though he was away from the island in the appeal period, however he did not. On balance the Tribunal does not put much weight on the lack of an appeal. The communication of the dismissal on 8 April 2011 was manifestly lacking in any detail as to why he had been selected for dismissal. He could reasonably assert that as he did not know the grounds on which he was dismissed it would be difficult to appeal against them.
- 8.32 Finally, the Tribunal is troubled by the veracity of some of the evidence produced by the Respondent in regard to this dismissal. The examples detailed in this judgment give cause for concern; they may be attributable to simple error but do detract from the credibility of the Respondent's submissions.
- 8.33 In summary, the Tribunal considers that, on the balance of probabilities, this dismissal was unfair and was for an unquantifiable reason other than redundancy.
- 8.34 The Tribunal gave consideration as to whether a reduction in award was merited in accordance with the provisions of Section 23 of the Employment Protection (Guernsey) Law 1998 as amended. The Tribunal considers that the process adopted by the College was badly flawed and the selection criteria lacked clarity and objectivity. Furthermore it has found that the dismissal was for a unquantifiable reason other than redundancy; therefore no reduction is considered appropriate.
- 8.35 In relation to the allegation of sex discrimination the Tribunal has concluded that an act of direct discrimination occurred during the hiring / retention process for Mrs Webster in May 2011. It was not disputed by Mr Harland that he stated to Mrs Webster that a reason for preferring her to Mr Fox was that the College wanted a strong female role model. Mr Harland sought to justify this with an argument that evidence existed to support this position; he did not produce any such evidence.
- 8.36 Such a discriminatory statement falls into the category of direct discrimination for which there can be no other justification other than that of Genuine Occupational Qualification as set out in Section 7 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.
- 8.37 If the Respondent had been able to provide persuasive evidence of such a Genuine Occupational Requirement then this would have been given consideration; however in the event they did not. The Respondent therefore cannot satisfy the tests as laid out in section 7 of this Ordinance.

- 8.38 Mr Fox decided that, notwithstanding the prompting of Principal Lesley Le Page, this attitude would debar him from approaching the College to request a re-consideration of their prior decision to make him redundant.
- 8.39 The Tribunal notes that, having dismissed the Applicant in April 2011, the Respondent found themselves a month later with the potential to be seriously understaffed in the Mathematics Department for the term commencing September 2011. The Respondent had every opportunity to revert to Mr Fox and propose some form of continuing appointment, even of a limited nature, thus discharging a responsibility to avoid redundancy and treat it as an action of “last resort”; they did not.
- 8.40 By his action Mr Harland apparently precluded Mr Fox from requesting reinstatement and was seemingly determined not to offer Mr Fox a post in September 2011; despite the apparently urgent need to staff 68 periods of mathematics in 2011.
- 8.41 Having considered all the oral and written evidence of the parties the Tribunal finds in favour of the Applicant in that he was discriminated on the grounds of his sex in accordance with section 1 (1) of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.
- 8.42 The Applicant also claimed a contravention of Section 2 of the Employment Protection (Guernsey) Law, 1998 as amended; “*Written statement of reasons for dismissal*”. However, as the Applicant did not request a written statement in compliance with section 2(1) this complaint cannot succeed and is found in favour of the Respondent.

## **9.0 Decision**

- 9.1 Having considered all the evidence presented, whether recorded in this judgment or not, and the representations of both parties, and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was unfairly dismissed for a reason other than redundancy. In respect of this decision the Tribunal awards the Applicant £16,315.74.
- 9.2 In relation to the claim of sex discrimination, having considered all the evidence presented, whether recorded in this judgment or not, and the representation of both parties and having regard to all the circumstances, the Tribunal found that under the provision of the Sex Discrimination (Employment) (Guernsey) Ordinance 2005 that the Applicant had been discriminated against. In respect of this decision the Tribunal awards the Applicant £8,157.87.
- 9.3 In relation to the claim re a written statement of reasons for dismissal the Tribunal makes no award.

Mr Peter Woodward  
.....  
Signature of the Chairman

17 May 2012  
.....  
Date