



## EMPLOYMENT TRIBUNALS

**Claimant:** Mrs R Hopkin  
Mrs K Perry

**Respondent:** The National Trust

**Heard at:** Cardiff **On: 6, 7, 8,11 and 12 November  
2019**

**Before:** Employment Judge RL Brace  
Mrs L Bishop  
Ms M Walters

**Representation:**

Claimant: Mr P Neilson (representative)  
Respondent: Miss G Boorer (Counsel)

## JUDGMENT

**JUDGMENT** having been sent to the parties on 15 November 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 (“Employment Tribunal Rules”), the following reasons are provided:

These written reasons are a slightly amended transcribed version of the oral reasons delivered by Employment Judge Brace at the conclusion of the five-day hearing

## WRITTEN REASONS

1. We have heard evidence over the course of 4 days: from witnesses, Joanne Harrison, Kate Simons and Geraldine Donovan, from the Respondent, and from the two Claimants, Mrs Rosemary Hopkin (“Mrs Hopkin”) and Mrs Karen Perry (“Mrs Perry”). We have also had before us a bundle of agreed documents (the “Bundle”).
2. The issues before us were agreed in advance and, save for some preliminary discussion at the outset of the hearing regarding timetabling and additional documents, there was no amendment to change that list of issues. I do not propose to repeat those issues as part of this Judgment.

### Background

3. In terms of the background, the Claimants worked for the Vale of Glamorgan local authority at Dyffryn Gardens (“Duffryn”).
4. Mrs Perry commenced her employment in October 2005, as Visitor Centre Manager and Events Duty Manager, on a full-time basis. Mrs Hopkin commenced work in 2007, as Visitor Centre Assistant at 26 hours per week. Mrs Hopkin reported to Mrs Perry.
5. On 1 January 2013 the Respondent, the National Trust, leased Dyffryn from the Vale of Glamorgan and, as a result, the contracts of employment of staff engaged by the local authority based at Dyffryn, including the Claimants, transferred to the Respondent under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”). Mrs Hopkin’s role was at some point around this time re-titled ‘Visitor Reception Assistant’.
6. TUPE staff, as I will refer to them, were on a higher rate of pay than National Trust staff and were also provided with enhanced weekend and bank holiday rates. They also had the ability to be members of the Local Government Pension Scheme. At the time of the transfer, Karen Perry reported to Gerry Donovan, who herself had also TUPE transferred from the Vale of Glamorgan.
7. Within the Visitor Reception team at Duffryn, all staff would admit paying visitors, promote and sell National Trust membership, as well as undertake retail duties, Dyffryn having a combined admission and shop.
8. In March 2015 Kate Simons commenced employment at the Respondent as Visitor Experience Manager and, from that time, Mrs Perry started reporting to her.

*Mrs Hopkin*

9. In March 2014 Mrs Hopkin's mother unfortunately suffered a major stroke and, by September 2014, Mrs Hopkin sought to reduce her contracted hours to 24 hours per week. This was agreed and for a short period the Claimant worked on those reduced hours, before returning later that year, to 26 hours per week. In the latter part of that year, Mrs Hopkin was diagnosed with pelvic floor weakness and likely pelvic floor prolapse and, at the beginning of 2015, visited a Consultant Obstetrics and Gynecology specialist, who recommended physiotherapy for her.
10. In April 2015 Mrs Hopkin was seconded to the 'Garden Team' within Duffryn for six months and increased her hours to 30 hours per week in that period. In that role her main duties involved dead-heading plants and weeding, cleaning and tidying the gardens at Duffryn. She avoided heavy work because of her prolapse, but it was found that this was a relatively physically active job. As confirmed by Mrs Hopkin on cross examination, whilst working in the gardens, 30 hours per week were not excessive or unmanageable for her.
11. In October that year, at the end of the six month secondment, Mrs Hopkin returned to her permanent employment in the Visitor Reception, reverting back to 26 hours per week, but by December 2015, following her mother's death, she asked for a permanent reduction in her hours to 20 hours per week.
12. No formal application was made by Mrs Hopkin for any reasonable adjustment at this, or indeed at any time, and the reasons for her desired reduction in hours were not specified in the documentation that was contemporaneous and provided to us. Indeed, no reference was made in that contemporaneous documentation for any rationale for her request to reduce hours; the documentation [223] simply referenced the contractual and potential pension implications of a reduction in hours. There was no medical evidence at this time to support a claim that the Mrs Hopkin could not work in excess of 20 hours per week.
13. We found that Mrs Hopkin requested a reduction in hours to spend more time with her father following her mother's passing. She also wanted to spend less time on her feet as a result of her own health problem.
14. By 2017 she felt that her condition had worsened, although this had improved by March 2018, she was considered to have a mild to moderate prolapse which had reduced. She was advised at that point in time to avoid weight bearing and prolonged standing.

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15. The medical opinion from May that year, provided to the Respondent as part of disclosure in this litigation and not contemporaneously, provided no view on Mrs Hopkin's working hours. Indeed, none of the medical opinions on Mrs Hopkin's condition, was before the employer on a contemporaneous basis.
16. Whilst both Mrs Perry and Sandra Durant, Mrs Hopkin's manager whilst in the Garden Team, were aware of her need to avoid heavy lifting, and that use of machinery might be a problem for Mrs Hopkin due to her prolapse, neither communicated this more widely as Mrs Hopkin wished for the matter to remain confidential.
17. There was no evidence before us to find that Mrs Hopkin indicated, either to Mrs Perry or Sandra Durant, that the need for her reduced hours was for health reasons, or that this was needed as a reasonable adjustment for her. Whilst we found that both Mrs Perry and Ms Durant had knowledge of the Claimant's prolapse, and in turn (on the basis that disability had been conceded in this litigation by the Respondent,) had knowledge of the disability, we did not find there was any knowledge of the Claimant being unable to work certain hours because of her disability.
18. The Claimant had worked 30 hours per week in the Garden Team whilst suffering from her impairment. In Mrs Hopkin's ET1 claim form, she claimed that despite being contracted to work 20 hours a week in Visitor Reception, she worked on average 22.5 hours a week. We accepted that this was a mixture of overtime, weekend work and additional days.
19. There was no medical evidence to demonstrate that Mrs Hopkin could not work in excess of 20 hours because of her disability.
20. We found that there was no evidence before us to find that the Claimant was unable to work hours in excess of 20 hours as a result of her disability. Rather, we found that the Claimant simply did not wish to for personal reasons.

*Mrs Perry*

21. Mrs Perry had worked on a full-time basis with the Vale of Glamorgan and latterly, following the TUPE transfer, with the Respondent. On her return from her first period of maternity leave in 2014/15, Mrs Perry had a staged return and worked on a part-time basis for a period following that leave.
22. In October 2016 Mrs Perry commenced a second period of maternity leave, returning to work in September 2017 on a full-time basis but using up her

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accrued annual leave to manage a staged part-time return to work until December 2017.

23. On 7 November 2017 Mrs Perry made a flexible working request [342]. The request was not for a permanent change to her contract, but a temporary reduction in hours to 24 hours per week basis from 5 March 2018 to March 2020. We found that the Claimant was unable to work fulltime hours as a result of her childcare responsibilities.
24. No response was received and, following a further email from Mrs Perry on 29 November 2017, Ms Simons responded that the request would need to be factored into the restructure plan for Visitor Reception [344].
25. The possibility of a restructure in Visitor Reception was not a new idea to Mrs Perry. There had been discussions regarding the restructure of the Visitor Reception since Ms Simon had been appointed, with Mrs Perry having been asked to undertake a short report in September 2015 on splitting retail from membership. No proposals were formulated however, but by her return from maternity in September 2017, Mrs Perry was aware that it was the intention for any restructure to be in place by May 2018.
26. By March 2018 the proposals had still not been formulated and accordingly Mrs Perry asked for her request to be reconsidered whilst the Visitor Reception restructure was ongoing, albeit on a temporary basis [353].
27. On 12 March 2018 Ms Simons wrote to Mrs Perry confirming that the request for the role to be undertaking on a temporary basis was again rejected [360]. She was provided with a right of appeal to Gerry Donovan which she did not make. Had the Claimant objected to Mrs Donovan considering any appeal, we found that management would have considered the objection and proposed alternative managers to deal with the matter if they considered that to be a reasonable objection. She did not however appeal, and she did not raise concerns regarding Mrs Donovan's potential involvement in any appeal.
28. On 15 March 2018 the proposed restructure was announced to staff by Ms Simons and the following day, on 16 March 2018, a Consultation Document [86] was sent to all staff within the Visitor Reception Team by email, inviting comments from them as part of the consultation process.
29. The Consultation Document flagged up the challenges that the Respondent was facing; essentially limited space for a shared membership, retail and welcome area, and a staffing structure which relied heavily on seasonal support. In addition to considering options for the use of the property, an objective was given to give detailed focus to membership, visitor welcome

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- and retail, with a proposal to split retail from membership and visitor welcome, with dedicated staff and distinct leadership roles to each discipline so that processes were optimized, resulting in permanent regular hours for the core team.
30. Duffryn, at that point in time, had faced criticism from senior management within The National Trust and extorted to significantly improve its membership figures which it was considered was lagging behind other Trust sites. Whilst retail figures were strong, there was a need to significantly increase membership conversion.
  31. Details of the proposed structure was included in the Consultation Document. This included a new post of Membership and Visitor Welcome Manager on a permanent full-time basis, which I will refer to as the 'Membership Manager' post, with a separate and dedicated Retail Manager ("Retail Manager") and dedicated Visitor Welcome Shift Leader ("Shift Leader").
  32. The Consultation Documents appeared to place just the six permanent staff at risk i.e. the Visitor Centre Manager, Mrs Perry, two Senior Visitor Reception Assistants and three Visitor Reception Assistants, one being Mrs Hopkin. Staff were advised that they would be asked to express an interest in the new post in the structure and go through an internal selection process and interview for appointment to the new roles, and that those that were successful would be confirmed posts while those who were unsuccessful would commence a formal redundancy process. New posts would be on National Trust terms and conditions.
  33. The Consultation Document was sent to all staff within Visitor Reception and they were invited to question and comment by 8 April 2018, following which a final decision would be made by 13 April 2018. A timetable indicated the individual meetings with affected staff would take place between 28 March and 6 April, consultation would end on 8 May with further individual meetings with affected staff taking place after the final decision on restructure was made on 13 April between 19 April and 10 May.
  34. A copy of the respondent's Redundancy Policy was available via a link with a copy on the Respondent's intranet. This had a separate section in relation to salary protection and a copy was printed off for the staff affected by Mrs Perry. The Redundancy Policy was clear that salary protection for a maximum period of 3 years was available and we found that staff were aware of this.
  35. At this point there were six permanent members of staff, all being staff who had TUPE transferred from Vale of Glamorgan, and six nonpermanent staff,

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all on Trust terms and conditions. The non-permanent staff were a mix of staff on fixed term contracts and seasonal casual staff. Most, if not all, non-permanent staff had continuity of employment in excess of two years, their fixed term contracts having been repeatedly extended by the Respondent.

36. It was determined that there would be a full-time Membership Manager, and operational management was split. Retail management would be the responsibility of the Retail Manager, with the post-holder managing the Retail Assistants. The Shift Leader being responsible for managing the Membership and Visitor Welcome Assistants.
37. We found that the focus of the Membership Manager role was very much of a different focus to the old Visitor Reception Supervisor role undertaken by Mrs Hopkin. The new role was not responsible for direct operational management, which was now the responsibility for the Retail Manager and Shift Leader, and its focus was to maximise membership and visitor sales.
38. Whilst it was not referred to as a strategic role in the documentation before us, we found that it was much more of a strategic role, with its aim to increase membership to meet higher targets. It was not a role that it was reasonable for Mrs Perry to be slotted into as it was a different role to that undertaken by her in her previous role.
39. On 16 March 2018 Katie Simon emailed Mrs Perry regarding the new role and the new post of Membership Manager indicating that this would be a full-time role and that the years ahead would be transformational for Dyffryn so that a part-time lead or shared responsibility across two parttimers would be detrimental for performance in that role [366]. Mrs Simons did however recognise Mrs Perry had different views on this and she was encouraged to use the consultation process to feedback her views about the full-time/part-time options for that post. She was told that the Retail Manager was to be a part-time post.
40. On receipt of the consultation document Mrs Perry called all twelve members of staff to a staff meeting to discuss the consultation documents and on 23 March sent a Feedback Document to Ms Simons on behalf of all staff in the Visitor Reception Team [96]. The Feedback Document was received by management and it was highlighted that an outcomes document would be pulled together following consultation when there would be a further round of meetings to discuss individual preferences.
41. The first of the one to one staff meetings, scheduled between all staff affected and Joanne Harrison, People Business Partner for Wales and Kate Simons, was provided for in the Consultation Document. For each of the two Claimants, the one to one meeting were arranged for 19 April 2018. By the

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date of that meeting, no response to the Feedback Document had been received by the staff affected.

42. It had been put to the witnesses on cross examination that the respondent had not restricted recruitment prior to the restructuring. It was also suggested to them that the respondent had failed to provide the Prospect trade union with a copy of the Consultation Document within the time frames set out in the Redundancy Policy. There was no evidence before us to make any finding that there was no restriction on recruitment prior to the restructure or that there had been a failure to provide Prospect with a copy of the consultation in sufficient time.
43. With regard to Mrs Hopkin, at her meeting on 19 April she was accompanied by a work colleague. She queried the position if staff generally were unable to work the contracted hours provided for in the new structure. She was told that the new Membership Assistant role could be worked 20 hours in the summer and 30 in the winter to reflect the average 25 hours per week in total on an annualized basis. Mrs Hopkin did not feel she could work the increased hours. She did not tell either Mrs Harrison or Ms Simon at this meeting of her specific concerns, or that she felt she could not work in excess of 20 hours. She was told that hours could be managed and hours monitored. Mrs Hopkin felt, rather than was told, that there was no room to move on the set hours.
44. Pay protection was not specifically referred to by either Mrs Hopkin or management in that meeting, and the pension consequences of redundancy for her was not raised or discussed.
45. At her meeting on 19 April 2018, Mrs Perry was upset and angry as management had not responded to the Feedback Document and no answers in advance of the meeting, to the queries raised, had been given. The meeting provided no clarification to her general concern regarding process.
46. There was no indication in the evidence before us however that Mrs Perry raised any specific concerns regarding the issue of whether, if she applied for the Membership Manager role, she could undertake this on a part-time or job share basis and we found on balance that this was not specifically raised at that particular meeting.
47. On 20 April 2018 an Outcomes Document [111] was sent out to staff and staff were asked to arrange meetings on a one to one basis again with Katie Simons. The Outcome Document showed the final structure with:
  - a. the Membership Manager role as a permanent full-time,



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- b. the Retail Manager as a permanent part-time role (30 hours annualised),
  - c. the Membership and Visitor Welcome Assistant Shift Leader role on a permanent 30 hours annualised contract,
  - d. Retail Assistants were permanent on an annualised 20 hours contract; with the
  - e. Membership and Visitor Welcome Assistants role on a permanent part-time annualised 25 hours contract.
48. A variety of fixed term and flexible hours in both departments were also available.
49. At some point, a few days after receiving the Outcomes Document, Mrs Hopkin was advised by Mrs Harrison that she could request to work fewer hours on her Preference Form for roles, but was not given any guarantee that she would get those hours.
50. On 27 April 2018 Mrs Perry raised some queries with Mrs Harrison, sent on behalf of staff, which included the query regarding where staff stood if the hours were unsuitable for staff as individuals [374]. Mrs Harrison responded a few days later that the issue of suitability covered hours as well as the post, and if the hours were not suitable the Respondent would not regard the post as suitable for the employee.
51. Mrs Perry submitted her Preference Form on 4 May 2018 [310] with her first choice being the Membership Manager role on a 24 hours per week part-time job share basis. She attached a SWAT analysis. Her second choice was Retail Manager, again on a 24 hours per week basis. Her third choice was redundancy if neither of the foregoing were accepted.
52. Mrs Hopkin submitted her Preference Form by 6 May 2018. She applied for redundancy only [210].
53. On 11 May 2018 Mrs Perry met Katie Simons to discuss the Outcomes Document and her Preference Form. She was told that the Membership Manager role was not suitable for job share or part-time but they would consider the Retail Manager role, at that time stated to be a contracted 30 hours per week, on fewer hours than that stated in the outcomes document. Katie Simons discussed this potential over the course of the next few days with Mrs Harrison and Ms Donovan and it was agreed that there could be more flexibility on the Retail Manager role as they did not wish to lose Mrs Perry as an employee.
54. On 14 May Katie Simons emailed Mrs Perry and advised her that the Membership Manager role required strong and consistent leadership which they considered crucial to the changes to membership recruitment and

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retention to enable a cultural shift and she was also told that the Retail Manager post would be reduced to 24 hours to accommodate her need to work part-time if she were successful in her application for that post.

55. The following day Mrs Perry withdrew from the interview for the Retail Manager role, as she did not consider the current structure would make her happy. She did not appeal the decision to refuse the request for Membership Manager role to be undertaken on a part-time basis.
56. On 18 May 2018 Katie Simons wrote again to Mrs Perry reiterating her view that:
- a. job share in the Membership Manager role did not provide strong and consistent leadership that the Respondent required,
  - b. a part-time Retail Manager, reporting to two part-time Membership Managers would be problematic; resulting in
  - c. additional direct reporting for her as Visitor Experience Manager;
  - d. an increase in cost and wages, duplicated training and poorer communication.
57. She further stated that it was not a strong foundation for achieving the targets and the structural change they were about to face. She believed performance would suffer and concluded that the role would as a result need to be full-time.
58. We found that the Respondent had considered the rationale for holding that the post was required to be full time and had considered why the role could not be undertaken on a part-time basis or job share basis.
59. With regard to Mrs Hopkin, on cross examination Mrs Hopkin accepted that she had not sought a reduction in hours to the Membership Assistant role as she considered it pointless applying for a reduction in hours to the Membership Assistant role which had been set at 25 hours per week.
60. Whilst Mrs Hopkin considered applying for the Retail Assistant role, which was set at 20 hours per week, she believed that that role would require lifting and carrying heavy objects and therefore unsuitable for her. She did not ask for adjustments to any lifting responsibilities or indeed any aspect of the role to be considered. The hours were in line with her desired 20 hours work.
61. Mrs Hopkin opted for redundancy, rather than either seek a reduction to the 25 hours of the Membership and Visitor Welcome Assistant role or apply for the 20 hours per week Retail Assistant role.

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62. On 17 May she met Katie Simons to discuss the Outcomes Document and her Preference Form. She told Ms Simons that she was forced to choose redundancy because alternative options were detrimental to her caring responsibilities to her father and her health. She did not indicate or make any reference to her physical problems, namely her prolapse, and she did not tell Ms Simons that she would wish to undertake the Membership Assistant role on a 20 hours per week basis. We found that at no time did she ask to work reduced hours to those set out in the Outcomes Document.
63. In June 2018 both Claimants were confirmed as redundant. Neither Claimant appealed the respondent's decision to accept their application for redundancy and the resultant decision to terminate by reason of redundancy. They both considered that any appeal would not be successful as any appeal would be considered by Ms Donovan who had been Ms Simon's Line Manager and had been involved in the redundancy process.
64. Neither raised concerns regarding Ms Donovan's potential involvement in an appeal and/or asked about the possibility of an alternative manager to consider an appeal.
65. As before, with the flexible working request, we accepted the evidence that we heard from the Respondents and found that if any member of staff had raised concerns regarding Ms Donovan's impartiality, steps would have been taken to assess whether an independent manager would have been able to consider any appeal.

## **The Law**

66. With regard to the law in this issue, I do not propose for the purposes of today to repeat out the law. The law is quite well established in unfair dismissal and the discrimination law is in essence set out in Section 15 and Section 19 of the Equality Act 2010.

## **Conclusions**

### *Reason for dismissal*

67. With regard to our decision we were satisfied that there was a genuine redundancy situation in respect of both Mrs Perry and Mrs Hopkin due to the reallocation and change of duties. This was despite the fact that work had increased.
68. Section 139 defines redundancy as a diminished need for employees to carry out work of a particular kind and covers situations other than a straight diminution in the work, as was being argued for the Claimants. We also concluded the reallocation and change of duties did entail a fundamental

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change in the duties done by both Mrs Perry and Mrs Hopkin such that the work being done after the restructure was quite different from that before.

69. With regard to Mrs Perry, the new Membership Manager role no longer had operational responsibility for either retail or membership, and there was a distinct and significant change of focus to membership recruitment to meet the agenda for change in membership recruitment. We based our conclusions on our finding that it was far more of a strategic role to the previous role held by Mrs Perry, with a significant shift in focus. Whilst we concluded that the Respondent still needed to carry out membership and still needed staff to carry out retail, dismissal was by reason of redundancy in respect of Mrs Perry as the change in duties in her old role and the new role Membership Manager role entailed a fundamental change.
70. Mrs Hopkin had accepted that membership and recruitment duties were not present in the new Retail Assistant roles. Responsibilities for stocking and delivery would increase. Retail duty was not present in the new Membership Assistant roles. The reallocation of duties entailed a fundamental change in the duties of employees so that the work to be done after the restructuring was quite different from that done before. This again meant there had been a diminution in the requirement for employees to carry out work of a particular kind in respect of Mrs Hopkins and her dismissal was also by reason of redundancy.
71. This is our conclusion even though the Respondents overall requirements for work, or even number of employees, may have remained the same.
72. We further concluded that this was the reason for the restructure and, in particular, was the reason for the dismissals. Whilst we accepted those initially placed at risk in the Consultation Document were staff that had been TUPE transferred from the Vale of Glamorgan, the reason they were identified as being at risk in that particular document was not because of TUPE, but because they were on permanent contracts. We were not persuaded that there was any selection because of TUPE.
73. We also conclude that in any event, despite the Consultation Document stating only six permanent staff were at risk, all twelve staff in Visitor Reception were, in reality, at risk including those on Trust contracts. If staff did not leave the Respondent's employment, if they were not dismissed by reason of redundancy, it was because they had opted to apply for and/or were successful in getting alternative employment either with the Respondent or others.
74. Finally on this issue if any permanent staff had been successful in getting posts in the new restructured part of the restructure exercise, they moved

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on to National Trust terms and conditions in any event, which we considered undermined any viable argument they were selected because they were on TUPE terms and conditions, or that the process was to remove them.

*Unair Dismissal*

75. With regard to the process, by reason of our findings we found nothing in the process, in terms of mitigation or avoiding the redundancies to be unreasonable. We concluded that there was no evidence with regard to the general process that supported a generally unfair process for failure to mitigate or avoid the redundancies.
76. With regard to the specific arguments with regard to the pool for selection, we considered the pool for selection, being all staff in Visitor Reception, to be a reasonable pool for selection. We did not accept that, in relation to either of the Claimants' roles, it was reasonable for the Respondent to ring fence roles or remove them from the pool for selection as the roles were significantly changed and were not the same or sufficiently the same as the old roles that they had been working in. Whilst we reviewed the role profiles [95(a) – (g)], we did not find much, if any, assistance from the review of these documents in finding that the jobs had not changed as these were such generic documents for the Respondent as a whole.
77. With regard to the appeal process, whilst we accepted that the claimants may very well have been a concern regarding the impartiality of Ms Donovan to act as Appeals Manager, there was no evidence before us of lack of integrity on the part of the Respondent in the process and no evidence of union objections to Mrs Donovan acting as Appeals Manager.
78. Whilst we accept that Ms Donovan may very well have been placed to consider any appeals raised by either Claimant, had any employee raised a concern then we accepted and concluded that if those objections had been reasonable, an alternative manager would have been considered and, if it had been considered Ms Donovan was not objective, then she may not have been involved in the appeal process and alternatives would have been looked at. We therefore did not find this led to any unfairness.
79. For the reasons set out in our findings, we did not conclude that the Claimants were unaware of salary protection. They were aware of links to, and the Redundancy Policy itself, which contained in some detail the salary protection arrangements. We concluded that the Claimants would have been aware of the 3 year pay protection and, as a result, this did not lead to any unfairness.

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80. We therefore concluded that the dismissals were both substantively and procedurally fair. We concluded that the Respondent had acted reasonably in treating the redundancy as a sufficient reason for dismissal, the process was not procedurally unfair, and the dismissals fell within the band of reasonable responses.

*Mrs Hopkin: s.15 Equality Act 2010*

81. We concluded that the Respondent has not demonstrated that it did not know, and could not reasonably be expected to know, that Mrs Hopkin had a disability.

82. Having found, that as both of Mrs Hopkin's managers knew of her vaginal prolapse and that she was unable to carry out lifting or machinery work, and having conceded that Mrs Hopkin was disabled, the Respondent did know of Mrs Hopkin's disability.

83. Notwithstanding that, we also concluded that any inability on Mrs Hopkins' part, to work contracted hours in suitable roles for her post restructure, did not arise as a consequence her disability and further that the Respondents did not know of any such disadvantage in any event.

84. We concluded that Mrs Hopkin's was not able to demonstrate that she was unable to work any increased hours from 20 hours, but that this rather was due to personal choice. It was not something arising in consequence of her disability.

85. In any event Mrs Hopkin did not seek to apply for a reduction in the hours of any of the Membership Assistants roles, and did not in fact apply for the 20 hour Retail Assistant role, both of which we considered were suitable for her, albeit with potential adjustments to any lifting or other physical aspects to the roles.

86. We concluded that she was not dismissed because of her inability to work the hours specified. She was dismissed because she failed to apply for suitable alternative positions and was dismissed because of redundancy.

87. The s.15 Equality Act 2010 claim brought by Mrs Hopkin is therefore not well founded and is dismissed.

*s.19 Equality Act 2010*

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88. With regard to the Section 19 Equality Act 2010 claims generally, save for the Membership Management post, we concluded that there was flexibility in the hours to the role, for example the Retail Manager, Shift Leader and Assistants posts, which were open to negotiation and that the Respondent did not apply a provision, criterion or practice ("PCP") of requiring its staff to work specified hours post restructure.

*Mrs Hopkin: s.19 Equality Act 2010*

89. With regard specifically to Mrs Hopkin's claim, in addition we also concluded that there was no evidence before us to demonstrate, that even if there was a PCP of requiring Mrs Hopkin to work hours in excess of 20 hours, it was not demonstrated by the Claimant that this put those who suffer from a disability such as Mrs Hopkin, of vaginal prolapse, at a substantial disadvantage compared to those employees who did not so suffer from this specific disability.

90. In any event we had no evidence before us, medical or otherwise, that Mrs Hopkin could not work longer than 20 hours per week. On the contrary, evidence was that Mrs Hopkin did in fact work in excess of 20 hours and, while she had suffered vaginal prolapse in 2015, worked 30 hours per week in a role which was physical. Mrs Hopkin had claimed in her ET1 form that she worked 22.5 hours per week.

91. We further concluded that even if Mrs Hopkin had been able to establish a PCP of being required to work hours specified for the roles post restructure, it did not place her at a particular disadvantage.

92. Finally, for completeness there were roles available, for example the Retail Assistant roles, which were permanent part-time and annualised 20 hours, that were suitable for Mrs Hopkin, potentially with some reasonable adjustments for the more physical aspects of the role, that she did not apply for.

93. We therefore found that Mrs Hopkin's claim under s.19 Equality Act 2010 was not well founded and is dismissed.

*Mrs Perry: s.19 Equality Act 2010*

94. Finally, turning to Mrs Perry's claim under s.15 Equality Act 2010, we did conclude that the Respondent had applied a PCP of requiring any employee in the role of Membership Manager to work specified full-time hours in the new structure.

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95. The requirement to work full-time hours did put women with childcare responsibilities at a substantial disadvantage in relation to the role and we rely on the general statistical evidence that is available on disparate impact. We further concluded that it actually placed Mrs Perry at a disadvantage in that we found that she could not work full-time due to her childcare responsibilities.
96. However, we also concluded that in the very discrete circumstances of this case, being a new restructure in its early formation or foundation as it was referred to, we were satisfied that in relation to the particular Membership Management role the Respondents had, on the balance of probabilities, established the defense of justification and shown that the PCP of full-time hours in relation to that particular role was a proportionate means of achieving a legitimate aim of ensuring that the organization was managed efficiently, and the quality and performance of membership recruitment did not suffer a detrimental impact.
97. We were satisfied that the Respondent had given serious consideration of Mrs Perry's request for the part-time or job share and had conducted a proper assessment of its own operational needs. They considered the practical realities of part-time or job share and satisfied us just that they had legitimate aims of efficient management and quality and performance of membership recruitment and that the requirement to work full-time, and not be allowed to job share, was appropriate to those objectives, and was necessary to achieve those objectives.
98. Whilst our conclusion may very well have been different if the role had been in place for some time and was an established and tested structure, in the discrete context of this being a new structure, and with a considerable agenda for the role, we concluded that objective justification was established.
99. Further for completeness, we concluded that no PCP had been applied in relation to the Retail Manager role, and whilst this role did involve a slightly reduced pay and required the incumbent to report to the new Membership Manager rather than Ms Simons, neither the salary nor status was sufficiently different to render the role unsuitable for Mrs Perry. She was not under a disadvantage as she could have applied for that role on a suitable part-time hours' basis and we therefore found in conclusion that Mrs Perry's s.19 Equality Act 2010 claim was also not well founded and is too dismissed.



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Date ; 2 December 2019

RESERVED JUDGMENT & REASONS  
SENT TO THE PARTIES ON 3 December 2019

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FOR EMPLOYMENT TRIBUNALS