



EMPLOYMENT TRIBUNALS

Claimant: Miss R Wilson (1)
Ms F Khan (2)
Respondent: Nottingham City Council

Heard at: Nottingham On: 25, 26, 27, 28 & 29 November 2019
In Chambers on 13 & 14 February
2020

Before: Employment Judge Victoria Butler
Mr M Pavey
Mr J Akhtar

Representation

Claimant: Mr A Ross, Counsel
Respondent: Ms C Jennings, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The Claimants' claims of unfair dismissal are not well-founded and are dismissed.
2. The Claimants' claims of less favourable treatment contrary to Regulation 3 of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 ("FTER") are not well-founded and are dismissed.
3. The First Claimant's claim that she was subjected to detriments contrary to Regulation 6 FTER is not well-founded and is dismissed.
4. The 2nd Claimant's claim of discrimination arising from disability is not well-founded and is dismissed.

5. The 2nd Claimant's claim that the Respondent failed to make reasonable adjustments is not well-founded and is dismissed.

REASONS

Background to this claim

1. Miss Wilson was employed by the Respondent as a Volunteer Programme Coordinator and Ms Khan as a Family Learning Assistant. Both were employed on fixed-term contracts until their dismissal with effect from 31 March 2018. (**NB** Ms Khan held another role with the Respondent, that of Student Action Officer. She remains employed in that role and it is not subject to these proceedings. Miss Wilson secured an alternative role with the Respondent after her dismissal).
2. The Claimants notified ACAS on 22 February 2018 and entered into a period of early conciliation, after which ACAS issued the Early Conciliation Certificate on 22 March 2018. Miss Wilson presented her ET1 to the Tribunal on 27 June 2018 and Miss Khan presented hers on 28 June 2018. The Respondent submitted ET3s in respect of both on 16 August 2018. Both Claimants claim unfair dismissal and breaches of the FTWR.
3. Ms Khan also brings claims of discrimination arising from disability and a failure to make reasonable adjustments, and relies on the condition of hypothyroidism. The Respondent initially disputed that she was disabled for the purposes of s.6 of the Equality Act 2010 ("EQA"). At a preliminary hearing before Employment Judge Legard on 26 October 2018, Ms Khan was ordered to produce all relevant medical records relating to her condition, along with an impact statement. On review, the Respondent conceded that she was a disabled person by virtue of her hypothyroidism from 22 February 2018 onwards. However, it only had the requisite knowledge of her disability from 3 July 2018 on receipt of an Occupational Health report, after her dismissal from her fixed-term contract.

The issues

4. The issues agreed between the parties are as follows:

Unfair Dismissal

1. *Both Claimants bring complaints of unfair dismissal under Section 111 ERA arising out of their dismissals on 31 March 2018.*
2. *Was the (principal) reason for Ms Khan's dismissal that she had alleged that R had infringed the Regulations, refused (or proposed to refuse) to forego a right conferred on her by the Regulations, or done anything under the Regulations in*

relation to R or any other person? If so, her dismissal was automatically unfair pursuant to Regulation 6.

3. Was there a potentially fair reason for dismissal? The Respondent relies on redundancy and/or "SOSR" as the reason for the Claimants' dismissals. The Claimants deny that there was a potentially fair reason for their dismissal.
4. If there was a potentially fair reason for the Claimants' dismissals, did the Respondent act reasonably in the circumstances (including the size and administrative resources of its undertaking) in treating that reason as a sufficient reason for dismissing the Claimants on 31 March 2018? The Claimants allege that the Respondent acted unreasonably, particularly because:
 - a. there was no genuine redundancy situation;
 - b. there was no meaningful consultation; and
 - c. there was no right of appeal.
5. If the Claimant's dismissal is found to be procedurally unfair, to what extent would correcting the procedural flaws have made any difference to the outcome?
6. Did the Second Claimant's conduct in failing to engage with the redeployment process and alert the Respondent to her wanting to apply for roles contribute to her dismissal? **[NOT AGREED AS AN ISSUE BY THE CLAIMANTS. TO BE DEALT WITH AT THE START OF THE HEARING]**

Less Favourable Treatment: Regulation 3

7. Did the Respondent treat the Claimants as alleged below?
 - a. On 27 November 2017, the Respondent failed to tell either Claimant that they were entitled to engage in the redundancy consultation.
 - b. The Respondent failed to give either Claimant the opportunity to secure a permanent position within the re-structuring process in November or December 2017: Ms Wilson alleges that her Post Programmes Co-Ordinator role was recreated as the Business Support Assistant role; Ms Khan that the Family Learning Assistant role was re-created as the Museum Events Assistant role.
 - c. The Respondent failed to deal with the Claimants' 5 February 2018 formal grievance in accordance with the Formal Grievance procedure.
 - d. Ms Wilson was only offered a three-day-a-week position as Events Assistant.

- e. *Ms Wilson was required to work at weekends while her job-share partner (a permanent employee) was not required to work weekends.*
- 8. *If so, was the impugned treatment on the ground that the Claimants were fixed-term employees?*
- 9. *If so, was any of the above treatment justified on objective grounds?*

Detriment: Regulation 6

- 10. *Did Rachel Evans subject Ms Wilson to the following treatment:*
 - a. *On 15 January 2018, Ms Evans said to Ms Wilson, “stop going on about the fact your job still exists and you didn't get it”.*
 - b. *In March 2018, Ms Evans shouted at Ms Wilson and said that:*
 - i. *Ms Wilson was being unprofessional and if she did not do exactly what Ms Evans wanted it would be a performance management issue.*
 - ii. *Ms Wilson was being difficult and should get over it and get on with it.*
 - iii. *Because Ms Wilson was not doing the task given to her, Ms Evans could not give her a reference and would ruin her reputation in the sector.*
 - iv. *From now on, Ms Wilson was not allowed to talk to Sue whilst at Community Courtyard or during work time about anything union related as it was not a proper use of work time.*

- 11. *If so, was this because Ms Wilson had alleged that the Respondent had infringed the Regulations, refused (or proposed to refuse) to forego a right conferred on her by the Regulations, or done anything under the Regulations in relation to the Respondent or any other person?*

Disability Discrimination

- 12. *The Respondent concedes that Ms Khan was disabled by virtue of her hypothyroidism from 22 February 2018 onwards.*
- 13. *The Respondent admits that it had the requisite knowledge of such a disability from 3 July 2018.*

14. *Did the Respondent know, or should it reasonably have been expected to know, that Ms Khan was disabled by virtue of hypothyroidism during the relevant period, namely between 22 February and 31 March 2018?*
15. *Did the Respondent treat Ms Khan unfavourably because of something arising in consequence of her disability (s15 EqA 2010)? She relies on the vacancies communicated to others on 7 March 2018 not being communicated to her. The “something arising” was her absence from work.*
16. *The Respondent had PCPs which put Ms Khan to a substantial disadvantage in comparison with those without hypothyroidism (ss20-21 EqA 2010). That is because she is more likely to be off sick and unable to access her work emails. The PCPs are:*
 - a. *not sending redeployment-related emails to employees’ personal email addresses when they are off sick (even where this has been specifically requested);*
 - b. *not telephoning employees who are off sick with information about redeployment opportunities;*
 - c. *not posting redeployment information to employees who are off sick; and*
 - d. *not extending redeployment application deadlines for employees who are off sick.*
17. *Ms Khan avers that it would have been reasonable for the Respondent to have:*
 - a. *emailed redeployment opportunities to her at her personal address;*
 - b. *posted redeployment opportunities to her;*
 - c. *telephoned her to inform her of such opportunities; and/or*
 - d. *extended the deadline for her to apply for such opportunities.*

The hearing

5. The case was heard on 25 – 29 November 2019. The first morning was a reading morning and the evidence and submissions were heard over the remainder of the time. Accordingly, we had to reserve our decision and met in Chambers on 13 and 14 February 2020 to deliberate and arrive at our conclusions.
6. Prior the hearing the parties helpfully presented
 - an agreed list of issues (save one point);
 - an agreed chronology;

- an agreed bundle of documents; and
 - a cast list.
7. References to page numbers in these reasons are references to the page numbers in the agreed bundle.
8. Miss Wilson suffers from stress and anxiety and finds knitting calms her. We were happy to allow her to knit during the hearing, provided it did not cause any distraction. Additionally, if any additional breaks were required, these would be accommodated.

The evidence

9. We heard evidence from:
- Miss Wilson
 - Ms Khan
10. On behalf of the Respondent:
- Lisa Jane Wilkins, ex Volunteer Co-ordinator
 - Hugh White, Director of Sports & Culture
 - Sarah Morris, ex-Museum Volunteer Co-Ordinator
 - Paul Slater, HR Consultant
 - Rachel Barker-Evans, Museums Development Manager
 - Nigel; Hawkins, Head of Culture & Libraries
 - Rachel James, Chief Operating Officer, Wollaton Hall & Park
 - Louise Button-Lowth, Audience Engagement Officer
 - Ronald Inglis, Service Manager – Museums & Galleries
 - Sarah Newton, Service Transformation Lead
11. We were satisfied that the Respondent's witnesses were genuine and credible. On occasion where there was a conflict in the Respondent's own evidence, this was simply because of individual's understanding of events, based on their own personal involvement in various different elements of the restructure, rather than an issue of credibility.
12. We found the 1st Claimant's evidence to be honest, albeit she is so entrenched in her position that she could not, and would not, accept a different perspective on matters.
13. The 2nd Claimant's evidence was unreliable and, at times, unbelievable. She would change her evidence to suit and gave, on occasion, entirely new evidence that she had failed to mention previously, evidence that was potentially key to her claim. By way of example, her disability discrimination claim was predicated on the Respondent having constructive knowledge of her claim. During oral evidence she said that she had advised one of her line managers of her disability, but this was first

time she raised it. Accordingly, where there was a conflict in the evidence, we have preferred that of the Respondent.

Findings of fact

14. We have made our findings of fact based on the material before us, taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. We resolved any conflicts of evidence that arose on the balance of probabilities. We have taken into account our assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts.
15. The findings of fact relevant to the issues which we determine are as follows:

Common background

16. The Respondent is a recipient of funding from the Arts Council England (“ACE”) and has to re-apply for it every three years. The round of funding relevant to this claim was due to end on 31 March 2018. The funding for 2018-2021 was being granted against new criteria and its focus was moving away from commerciality and towards an emphasis on engagement and social benefits.
17. Previously, there had been a strand of revenue funding specifically for the museum sector, known as the Major Partner Museums Fund “MPM”. This was due to change in 2018 to encompass all parts of the arts, libraries and museums sectors within the ACE’s National Portfolio Programme, amounting to a completely different approach.
18. Amongst these changes, the most significant was the move away from the principle of “additionality” (i.e. grants funding for specific projects, which would be in addition to normal core activity) to an approach which supported the core business of the Respondent and enabling it to meet the strategic aims of ACE for the cultural sector as a whole. Consequently, the ACE funding that had supported the Claimants’ roles (and other similarly funded roles) ended on 31 March 2018.
19. Running in parallel with this, Nottingham Castle was closing and there was increasing marketplace competition in the heritage sector generally. Additionally, local government funding had reduced resulting in a pursuit by the Respondent of becoming cost neutral by 2024/25. It hoped to achieve this through effective management of costs and continued commercial growth. In light of all these challenges, the Respondent’s Museums and Galleries service undertook a service-wide review of its business model and staffing structures.
20. The Museums and Galleries restructure was overseen by Nigel Hawkins, Head of Culture and Libraries. Sarah Newton, Service Transformation Lead, provided direct support to Mr Hawkins. Paul Slater, HR Consultant, provided HR support.

21. As part of the restructure design, the Respondent considered the Museums and Galleries service holistically. Some posts were deleted, and others changed. All job roles were configured and affected staff from existing posts were moved to corresponding posts in the new structure where appropriate. Four fixed-term employees were mapped across into the new structure where there was a requirement for their roles to continue. Two of those roles were previously ACE funded. Both Claimants were in roles for which ACE funding would cease entirely, and there was no requirement for work of that particular kind in the new structure.
22. One of the existing roles mapped across was that of Site Services Co-ordinator ("SSC"). It was mapped into the new role of Business Support Assistant ("BSA") after the Respondent identified that the two roles were sufficiently similar (p.250). Accordingly, the SSCs were not placed at risk of redundancy. In the existing structure there were 2.65 full-time equivalent SSCs, and there were three full-time equivalent BSA posts in the new structure.
23. The existing SSCs were effectively performing the role of BSAs already. They were based at the museums and gallery sites undertaking the administrative duties to support their running. This entailed coordinating the operational and commercial running of individual sites and being involved practically with the museums, shops, cafes, events and general day-to-day operations. Their role required them to have a practical working knowledge of the site in addition to the commercial systems, including tills, stock systems, site banking and the like. There was daily communication via phone, email and social media which required a thorough knowledge of the sites.
24. Ms Wilson was not mapped across to the BSA role because her existing role was not sufficiently similar (nor was it sufficiently similar to any other role in the new structure). Ms Wilson's role required her to provide administrative support to grant-funded projects, support with project funding, and general day-to-day project support. Whilst she had some generic administrative duties, her core responsibilities were fundamentally different to those of the SSCs.
25. Those employees employed on ACE funded fixed-term contracts which were naturally coming to an end on 31 March 2018 (which included the Claimants) were treated as being in a pool of their own for the purposes of the overall restructure, unless they were mapped across in the new structure. However, they were subject to the principles of the main restructure.
26. The proposed restructure was set out in an 'Enabling Document' which provided the full detail and its consequences (pages 245 – 253). The Respondent also had a set of generic "change management" principles which apply in all restructuring/redundancy exercises. In those principles, the guidance on 'Consultations' provides that "*individual consultation allows the opportunity for*

colleagues at risk of redundancy to have relevant issues and challenges considered, therefore the grievance procedure does not apply in this regard (however, please see section 12.5 for the appeal process)." (p.128).

27. The affected employees were covered by a collective agreement and the Respondent commenced collective consultation with the recognised unions on 24 November 2017. All employees, including the Claimants, were invited to a briefing on 27 November 2017 at which the Respondent shared its proposals with them. The briefing was supported with a Powerpoint presentation which confirmed that collective consultation had begun on 24 November 2017 and that *'you will meet with your Manager and Service Transformation Lead in your own personal consultation meeting where you will have the proposals explained to you and you will be able to give your feedback as well as any alternative suggestions'* (p.255a.-d.)
28. At this meeting, the Claimants were also provided with individual letters confirming that their fixed-term contracts would not be renewed beyond their end date of 31 March 2018. The letters confirmed *"We have now entered into a period of formal collective consultation which commenced on 24 November 2017 when we met with the trade unions to outline the proposals. The collective consultation process will last for a minimum of 45 days and consultation with colleagues will continue up to and potentially beyond the closure of Nottingham Castle....Your existing temporary contract of employment will end on the dates given in your contract, however unfortunately we will not be able to offer a further extension. If there are any vacant posts available following the consultation process, details of these posts and how you can apply will be made available to you."* (p.256–257). The Claimants were, therefore, aware that they were included in the collective consultation and would also have individual consultation.
29. During the collective consultation, it was agreed that those employees at risk of redundancy would have one individual consultation meeting, and a further one if requested. However, the agreed principle was that second consultations would not be scheduled until all first ones were complete.
30. After the close of the collective consultation, all affected employees, including the Claimants, were consulted individually. They were also provided with a copy of the Respondent's 'Employee Guide to the Consultation Process' (p.264 -273).
31. As part of the initial proposals, permanent employees who were at risk of redundancy were given priority for available redeployment. All employees, regardless of their contractual status, were entitled to submit an expression of interest for available roles, but in the event of competing applications, permanent employees would be given priority over those on fixed-term contracts (p.258). Ultimately, this decision was reversed (more below).

32. All employees who were made redundant, including those on fixed-term contracts which were not renewed, were entitled to a redundancy payment.

Rebecca Wilson

33. Miss Wilson commenced employment with the Respondent on 11 February 2013 and was employed on successive fixed term contracts until 31 March 2018. Her first two positions were part-time fixed-term roles and she secured her full-time position as Volunteer Programme Coordinator on 11 November 2013. Her contract was initially due to terminate in July 2014 (p.169 –177) but, after several extensions, was due to terminate on 31 March 2018.
34. Miss Wilson's role was fully funded by ACE, as confirmed in the resourcing approval request form - *"the role is specific and relates to a partnership programme that would be over and above the remit of anyone else in the team as they would not have the capacity. The post is also externally funded by Arts Council England"* (p.182/3).
35. The initial ACE funding for the role was 22.2 hours per week. However, the Respondent used additional underspent funds from an associated post that it had been unable to find maternity cover for, and increased her hours to 37 per week (p.192). The job description confirmed the role as Programmes Assistant [ACE] in the Museums and Galleries service area. The job purpose was *"to assist in the day to day coordination of the museums and galleries grant assisted and development projects [including minor capital and other revenue works] for the Service; liaising with team members, other Council services (Accountancy, HR etc) key stakeholders and partners as required, taking responsibility for the collation of financial and other outputs"* (p.186).
36. Whilst Miss Wilson's duties involved general administrative skills, her core duties were focused on various work streams and activities relevant to the MPM funded by ACE. The Respondent was in a consortium with Derby City museums during the 2015 – 2018 period for the MPM program. It was Miss Wilson's responsibility to report back to Derby museums on the Respondent's quarterly activity progress and financial status. Her line manager was Rachel Evans, Museums Development Manager. Ms Evans herself was at risk during the restructure.
37. Miss Wilson attended the initial employee briefing on 27 November 2017 and received a copy of the enabling document and her individual letter of the same date. Her first individual consultation meeting took place on 15 December 2017. The meeting was attended by Ms Evans and Ms Newton for the Respondent and Miss Wilson was accompanied by her union representative, Ms Mallender. Miss Wilson was initially concerned about Ms Newton's attendance. Ms Newton explained that her presence was an agreed approach to the individual consultations to ensure consistency of messaging, and, that it would also give her an overview of all

feedback and enable her to resolve any individual issues swiftly. Ms Newton offered to leave the meeting, but her offer was declined.

38. Miss Wilson made a number of counter-proposals in this meeting which included: the re-grading of more senior roles; reducing pay increases of other senior roles (including the Chief Operating Officer); and, re-writing job descriptions and placing them at lower grades. She enquired about redeployment and Ms Newton explained the priority order for new posts, and that those posts were likely to be released in possibly late January/early February.
39. Miss Wilson told Ms Evans and Ms Newton that she wanted meet with Mr Ronald Inglis, Chief Operating Officer of Museum Collections, to discuss the restructure and seek answers to her questions. She also asserted that she should have been slotted into the role of BSA (p.274–277).
40. Following the meeting, Miss Wilson emailed three-and-a-half pages of typed questions regarding the restructure. Many of her questions were directed at why her existing role had not been mapped over to the BSA role. She also submitted a business case for the retention of her existing role (p.202–207).
41. Miss Wilson also contacted Mr Inglis directly to arrange a meeting, but he was not able to attend at the proposed time. Additionally, he explained that no second consultation meetings would take place until every affected employee had attended their first (p.294).
42. On 18 December 2017, Mr Inglis wrote to Miss Wilson confirming that her fixed-term contract would terminate on 31 March 2018. He provided information on how the redeployment process would work and confirmed that employees who were not successfully redeployed would be entitled to a redundancy payment, subject to meeting qualifying conditions (p.288 –289).
43. On 19 December 2017, Ms Newton acknowledged receipt of Miss Wilson’s email and confirmed that she would forward her business case to Mr Hawkins and Mr Inglis. Additionally, she had asked Mr Inglis to contact Miss Wilson to arrange a meeting (p. 292 – 295).
44. Ms Newton also began to address Miss Wilson’s extensive list of questions and contacted the appropriate individuals who, in turn, could provide answers for her (p. 301-302, 316–321).
45. On 10 January 2018, Ms Slater provided Miss Wilson with details of her redundancy payment (p. 325–326). On 12 January 2018, she was provided with the information required to register on the redeployment register (p.337 -344).

46. On 15 January 2018, Miss Wilson attended a second individual consultation meeting with Ms Evans and Ms Mallender. A key focus was why she had not been mapped across to the role of BSA. Ms Evans suggested to Miss Wilson that she concentrate on a business case for an additional BSA post, of which there was 0.35 full-time equivalent hours already available and gave her advice on how to best focus her efforts (p.345). Ms Evans did not say tell Miss Wilson to “*stop going on about the fact your job still exists and you didn’t get it*”.
47. The following day, Ms Evans emailed Ms Newton and Mr Slater (copying in Miss Wilson and Ms Mallender) confirming that the plan was for Miss Wilson to “*submit a comprehensive financial business case to you by the end of the week for your consideration showing the aspects of the current post that are not delivered by the Site Coordinators evidencing the need for an additional 0.65 of a post. At the same time Rebecca will access other opportunities across the Council through the redeployment process. Sue and I will continue to work closely with Rebecca to support her during the consultation. Rebecca may decide she would like a second consultation with yourself (Sarah) and Ron but understands this may happen once all first consultations are complete. In the first instance she will concentrate on the two steps above.*” (p. 354).
48. On 16 January 20, the Respondent produced a “frequently asked questions” document about the Museums and Galleries restructure. This document confirmed once more that permanent colleagues at risk of redundancy had priority for new posts and would be considered ahead of those on fixed-term contracts (p.347– 353).
49. On 19 January 2018, Miss Wilson produced her business case highlighting aspects of her current role which, in her view, were not delivered by the SSCs (p.356–359). Ms Evans forwarded it Ms Newton and Mr Slater for consideration.
50. Around this time, Miss Wilson’s relationship with Ms Evans began to deteriorate. Miss Wilson was isolating herself in the office and becoming entrenched in her potential redundancy. Ms Evans was initially sympathetic to her situation but felt that, ultimately, her behaviour was having an impact on colleagues around her.
51. On 5 February 2018, Ms Mallender submitted a grievance on behalf of affected fixed-term employees, including both Claimants, about the restructure process (p.390-932).
52. On 13 February 2018, there was a further collective consultation meeting in which it was confirmed to Unison that the grievance process was not the appropriate channel for complaints about the restructure, and the change management principles applied, not the grievance procedure (p.393–405). Unison accepted this decision but, regardless, Nicola Gel, HR Business Partner (Commercial and Operations) met with Mr Slater to work through the issues raised in the grievance so they could give appropriate responses via the collective consultation (p.406–411).

53. On 5 March 2018, Mr Hawkins wrote to Miss Wilson providing an update on the restructure. He confirmed that her fixed-term contract would terminate on 31 March 2018, and enclosed a list of vacant posts available for employees to submit an expression of interest. He also confirmed that interviews were planned to take place during week commencing 19 March 2018 (p.417-418). Ms Button-Lowth, Audience Engagement Officer, also emailed Miss Wilson, amongst others, about a redeployment workshop (p.423 –445).
54. On 7 March 2018, Mr Hawkins distributed the current vacancy list (p.432–433).
55. During this period, Ms Evans had asked Miss Wilson to provide “handover notes” prior to the end of March to enable her to finalise the final MPM annual report. Miss Wilson objected to her use of the term “handover” and told Ms Evans that she had thought about deleting her files and had advised others facing redundancy to do the same. Ms Evans reported her concerns about Miss Wilson’s behaviour to Mr Inglis who emailed saying “*I may consider gardening leave as an option*” (p. 438). Ms Evans responded, reporting that Miss Wilson was being more cooperative but ‘*if [the Claimant] is still being difficult I’ll let you know*’. Mr Inglis replied “*on that basis, I will let things stand, but I know how difficult and exasperating you found her to be of late. If you feel that you would like to reconsider, then please do let me know straightaway, or Sarah in my absence*” (p.437).
56. On 12 March 2018, Ms Evans had cause to ask Miss Wilson to limit the amount of time she was spending on ‘seeking evidence’ against the Respondent and concentrate on her substantive role. However, she continued to support Ms Wilson developing her business case for a further BSA role. At no time did she speak inappropriately to Miss Wilson or shout at her; threaten her with performance management; threaten to withhold a reference or redundancy payment; nor did she imply that Miss Wilson’s professional reputation in the Museums and Heritage sector would be affected. Ms Evans endeavoured to support Miss Wilson as best she could, even in the face of her challenging behaviour.
57. That same day, Mr Hawkins replied to the issues raised in Miss Wilson’s grievance. In particular he confirmed that “*I have taken the decision that both permanent at-risk employees and those employees at risk on fixed-term contracts who are ACE funded will have the same level of access in priority to new, vacant posts. The new vacant roles are currently with colleagues to submit expressions of interest and I will be ensuring that panel members for the interviews next week are aware of this change*” (p.443).
58. He also wrote directly to Miss Wilson regarding her grievance and responded to her questions. One of her complaints related to the consultation notes and he asked her “*to send the specific examples where you have concerns and I will look to address these*” (p.444–446) but she did not respond to this request.

59. On 14 March 2018, Ms Evans held a final meeting with Miss Wilson and followed up with an email later that day they saying *"it's been a great pleasure to work with you and I hope one day we may be friends again..."* (p.457).
60. On 19 March 2018, Miss Wilson attended an interview for the position of Museum Events Assistant. There were two full-time vacancies available, one at Wollaton Hall and the other at Newstead Abbey. Two other candidates, Jon Brown and Amy Bollu, were successful in securing the posts. As background, Mr Brown had been mapped across to the BSA role as part of the main restructure. However, he felt that it was not a suitable alternative role for him, which the Respondent accepted. Accordingly, he became at risk of redundancy and had access to the redeployment vacancies.
61. Mr Brown was the first appointable candidate and accepted the position at Newstead Abbey. Ms Bollu was the second appointable candidate and she accepted the full-time post at Wollaton Hall. However, Mr Brown wished to reduce his hours to the equivalent of two days per week with little weekend working, which was agreed by the Respondent. Ms Wilson was the third appointable candidate and was offered Mr Brown's remaining hours, which included weekend working. Ms Wilson is a keen football fan and the Respondent agreed that she could have the occasional Saturday off to attend matches.
62. On 31 March 2018, Miss Wilson's role as Programmes Assistant terminated. In addition to her new post as Museum Events Assistant, she undertook casual work for the Respondent as a Heritage Assistant for two days per week between 1 April 2018 and 30 June 2018.
63. On 11 May 2018, both Claimants submitted an appeal against the response to their collective grievance to Mr Huw White, Director of Sport and Culture (p.475-478). Despite the grievance procedure not being the applicable channel, Mr White provided a detailed response in writing. He did not uphold the appeal (pages 479 – 495).

Miss Khan

64. Ms Khan was employed in two roles by the Respondent at the time of the restructure. She commenced employment in February 2014 as a Student Action Officer on a permanent contract, working part-time hours (as above, this role was not affected by the restructure). In December 2015, she accepted a role as a Family Learning Assistant which was a fixed-term part-time role. This role was ACE funded and due to expire on 31 March 2018 (p.230-235). Her job purpose was to *"to grow the current family learning programme which spans Nottingham City Museum and Gallery sites. To ensure the efficient and effective coordination of the programme. To devise suitable activities and to support and train operational teams and volunteers in their delivery with families. To promote NCMG sites as family learning environments in which participatory learning is key. To increase the number and diversity visiting*

families" (p.223–225). The family learning programme was part of the Respondent's Public Programme in the Museums and Galleries service.

65. Ms Khan was line managed by Louise Button–Lowth, Audience Engagement Officer, and Interim Learning and Engagement Manager at the relevant time. Ms Khan received the same documentation as Ms Wilson relating to the expiry of her fixed-term contract (p.257, 419-420), the enabling document and the Change Management Principles. Her role was not mapped across into the new structure as there was nothing sufficiently similar. Family Learning would continue to be delivered, but in a fundamentally different way.
66. Ms Khan attended her first individual consultation on 15 December 2017. The meeting was chaired by Ms Button-Lowth and Ms Newton. Ms Khan considered that her role should have been mapped across to that of Museums Events Assistant, albeit she felt that it was not creative enough for her because it was largely administrative in nature. Ms Newton asked Ms Khan if she wanted slotting into the role (p.279-281). Ms Khan agreed to let Ms Newton know if she did, but at no time thereafter did Ms Khan confirm that she wanted slotting in.
67. On 18 December 2017, Ms Khan received a letter from Mr Inglis advising her that she would be referred to the redeployment register with effect from 1 January 2018 for a period of three months (p.290–291).
68. On 29 December 2017, Ms Newton e-mailed the first consultation meeting notes to Ms Khan and advised her that if she had changes, she should track and return them (p.315A). Ms Khan did not reply to this email, nor did she make any further individual challenge about her redundancy.
69. On 17 January 2018, Ms Button-Lowth emailed employees at risk, including Ms Khan, about redeployment saying "*You should by now have received an email from the redeployment team asking you to register on the new East Midlands shared service recruitment portal. Further to this you will also need to complete a version of the employee summary form attached. This is vital to inform them of the skills and experience that each person has at the moment they only have current job titles, which does not give a picture of previous roles skills and experience gained...*"(p.424/5). Ms Khan did not take any action in response to this.
70. On 5 February 2018, as above, Unison submitted a grievance on behalf of affected fixed term employees.
71. On 15 February 2018, Ms Button-Lowth emailed Ms Khan (and all others at risk) attaching a redeployment checklist document and asked her to complete and return it (p.424–425). Again, Ms Khan did not take any action in response to this.

72. Ms Khan suffers from hyperthyroidism (more below). On 22 February 2018, she was admitted to hospital for a week after experiencing dizziness, vomiting and collapse. Thereafter, she remained off sick for the remainder of the consultation period, returning to her permanent role on 3 June 2018.
73. After Ms Khan's collapse, Ms Button-Lowth received a phone call from Ms Khan's niece advising her of the same. She said she would keep Ms Button-Lowth informed of progress. After Ms Khan was discharged from hospital, she telephoned Ms Button-Lowth to provide an update herself and they discussed keeping in touch going forward.
74. On 20 February 2018, Ms Khan emailed Ms Button-Lowth and Steve Harrison, her line manager in her permanent role, confirming that she had returned home from hospital and would be absent for at least the following two weeks. She had been advised not to use computer screens or travel until a proper diagnosis had been confirmed. She said "*I am contactable on this email, I am trying to limit phone calls as doctors have asked me to use it within limits due to the dizziness*" (p.221-422). Ms Khan sent this email from her personal 'icloud' account, although Ms Button-Lowth had understood that she was still accessing her work e-mails during her absence. Ms Khan kept in contact with Ms Button-Lowth by phone and remained in touch with colleagues from time to time.
75. On 5 March 2018, Ms Button-Lowth sent details of the redeployment workshop to Ms Khan to her work email address (p.423-425). That same day, Ms Khan emailed her fitness for work certificates to Ms Button-Lowth and Mr Harrison from her iCloud account. The certificates cited "investigation for collapse" (p. 426-427).
76. On 6 March 2018, Mr Inglis emailed Ms Khan with an update on the restructure and attached a list of vacant posts for an expression interest. He confirmed that "*these posts are available colleagues to submit an expression of interest to, with interviews planned for w/c 19th March*" (p. 428/430). Ms Khan received and read this email.
77. On 12 March 2018, Ms Khan received and read a hard copy of her personalised grievance response letter sent to her at her work e-mail address (p.447-448).
78. During March 2018, Ms Khan attended an afternoon tea with her colleagues. On 15 March 2018, one of her colleagues visited Ms Khan at home and told her that the new vacancies had been released and that she had applied for a few. Ms Khan made no contact with the Respondent to discuss the possibility of redeployment, despite being aware that the applications were open.
79. Ms Khan's fixed-term contract terminated at the end of its term on 31 March 2018. Her permanent role was not affected.

80. On 27 March 2018, Ms Khan emailed her colleagues in the Museums and Galleries service from her work email account to thank them for her leaving gift and wish them well (p.462).

Disability

81. Ms Khan was diagnosed with hypothyroidism in approximately 1999. It is a condition where the thyroid gland produces more thyroid hormones than are required by the body. She did not disclose this condition to the Respondent, or her line managers in either role.

82. During her employment with the Respondent, Ms Khan had the following absences:

7 June 2017	2 days	Eye, ear, nose and mouth
9 September 2016	1 day	Gastro-stomach, digestive
19 December 2016	1 day	Stress/mental health
3 January 2017	2 days	Chest/respiratory
19 September 2017	1 day	Gastro-stomach, digestive
30 October 2017	5 days	Cough, cold, flu
12 December 2017	1 day	Neurological
6 February 2018	1 day	Neurological
22 February 2018	73 days	Heart, blood pressure, circulation

83. Ms Khan did not disclose any health issues in her pre-employment checks (p.513, 51, 518).

84. In or around January 2017, she sought professional help by the Respondent for mental health issues but did not raise any issues with her physical health (p.523–529).

85. Ms Khan did not advise the Respondent that she suffered with hypothyroidism prior to her absence, during it, or even at her return-to-work meeting during the consultation period (p.530–531). Further, the Respondent was not provided with any specific diagnosis for the Claimant's period of absence between February and June 2018. The first time the Respondent was aware of her condition was on 3 July 2018

on receipt of the occupational health report, after her dismissal by reason of redundancy from her post as Family Learning Assistant.

The law

Unfair dismissal

86. Section s.98 (“ERA”) provides.

- “(1) *In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
- (a) *the reason (or, if more than one, the principal reason) for the dismissal, and*
 - (b) *that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
- (2) *A reason falls within this subsection if it—*
- (a) *relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*
 - (b) *relates to the conduct of the employee,*
 - (c) *is that the employee was redundant, or*
 - (d) *is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.*
- (4) *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
- (a) *depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
 - (b) *shall be determined in accordance with equity and the substantial merits of the case.”*

87. Section 139 ERA provides:

“For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to--

- (a) the fact that his employer has ceased or intends to cease--
 - (i) to carry on the business for the purposes of which the employee was employed by him, or*
 - (ii) to carry on that business in the place where the employee was so employed, or**
- (b) the fact that the requirements of that business--
 - (i) for employees to carry out work of a particular kind, or*
 - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish”.**

88. We have had regard to the following cases:

Abernethy v Mott [1974] ICR 323, CA; Polkey v AE Dayton Services Ltd [1987] IRLR 503; Rv British Coal Corporation and Secretary of State for Trade and Industry ex parte Price [1994] IRLR 72; Taymech Ltd v Ryan EAT 663/94; Maguire v London Borough of Brent UKEAT/0094/13; Ridge v HM Land Registry [2014] UKEAT/0485/12; Williams v Compare Maxam Ltd [1982] ICR 156; Moon v Homeworthy Furniture (Northern) Ltd [1976] IRLR 298; Ladbroke Courage Holidays Ltd v Asten [1981] IRLR 59; Orr v Vaughan [1981] IRLR 63; Quinton Hazell Ltd v Earl [1976] IRLR 296; Simpson v Endsleigh Insurance Services Ltd [2011] ICR 75; Hollister v National Farmers Union [1979] IRLR 238; Kerry Foods Ltd v Lynch [2005] IRLR 238; and Taylor v OCS Group Limited [2006] IRLR 613, CA.

Fixed-term workers

89. Regulation 3 FTWR provides:

(1) A fixed-term employee has the right not to be treated by his employer less favourably than the employer treats a comparable permanent employee—

- (a) as regards the terms of his contract; or*
- (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.*

.....

(3) *The right conferred by paragraph (1) applies only if—*

(a) the treatment is on the ground that the employee is a fixed-term employee, and

(b) the treatment is not justified on objective grounds.

90. Regulation 6 provides:

(1) An employee who is dismissed shall be regarded as unfairly dismissed for the purposes of Part 10 of the 1996 Act(1) if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3).

(2) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, of his employer done on a ground specified in paragraph (3).

(3) The reasons or, as the case may be, grounds are—

(a) that the employee—

(i) brought proceedings against the employer under these Regulations;

.....

(iv) otherwise did anything under these Regulations in relation to the employer or any other person;

(v) alleged that the employer had infringed these Regulations;

(vi) refused (or proposed to refuse) to forgo a right conferred on him by these Regulations;

91. We have had regard to the following cases: Pensions v Webley [2005] IRLR 288 and Adeneler v Ellinikos Organismos Galaktos C-212/04, [2006] IRLR 716.

Disability discrimination

92. Section 15 of the EQA states:

(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arises in consequences of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Sub-Section (1) does not apply if A shows that A did not now, and could not reasonably have been expected to know, that B had the disability.”

93. Section 20 of the EQA provides:

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

.....

94. We have had regard to the following cases:

Eastern and Coastal Kent PCT v Grey [2009] IRLR 429; Wilcox v Birmingham CAB Services Ltd [2011] All ER (D) 73 (Aug); Ridout v TC Group [1998] IRLR 628; Secretary of State for Work and Pensions v Allen [2010] ICR 665; and Mutombo-Mpania v Angard Staffing Solutions Limited UKEATS/0002/18.

Submissions

95. We had the benefit of comprehensive written submissions from both Mr Ross and Ms Jennings, together with further oral submissions. Whilst they are not set out in full, we have considered all the points made and all the authorities relied on, even when no specific reference is made to them.

96. In summary, Mr Ross invited us to find that the Claimants' dismissals were unfair, albeit they conceded that they were on the grounds of redundancy. The Respondent failed to consider slotting their roles into the new structure which, had it done so, would have resulted in them securing ongoing employment. In respect of the procedure, the Claimants were not expressly advised that they could participate in the consultation process and the consultation that did take place was not meaningful. Further, the Respondent failed in its duty to support the Claimants in seeking alternative employment.

97. The claims under the FTWR are set out in the list of issues and the following amounted to a breach of Regulation 3:

The Claimants were not advised that they could participate in the redundancy consultation;

The Respondent failed to slot their roles into the new structure – only permanent employees were considered for roles;

The Respondent failed to deal with the Claimants' grievance in accordance with the formal grievance procedure; and

Miss Wilson was only offered the Museum Events Assistant roles for three days a week and was required to work weekends, whereas Mr Brown was not.

98. The following amounted to detriments for the purposes of Regulation 6 FTWR:

Miss Evans telling Miss Wilson on 15 January 2018 to "stop going on about the fact your job still exists and you didn't get it";

In March 2018, Ms Evans shouted at Ms Wilson and telling her that she was unprofessional otherwise it would be a performance management issue; telling her that she was being difficult and should get over it; that she would not give her a reference and would ruin her reputation in the sector; and preventing her from talking to her union representative during work time.

99. The above mentioned was because Miss Wilson had alleged that the Respondent had infringed the FTWR.

100. Ms Jennings for the Respondent submitted that overall, the Claimants' dismissals, by reason of redundancy, were fair. They were covered by the collective consultation, and had meaningful individual consultation. The Respondent

considered fixed-term posts against the new structure, but neither of the Claimants' roles mapped across.

101. The Respondent accepts that the Claimants were not expressly advised of their right of appeal, but regardless, this was remedied as the Respondent dealt with an appeal against their grievance outcome. No questions remained unanswered by the time the Claimants were dismissed from their fixed-term roles.

102. The Respondent also acknowledges that initially, there was a proposal that those employed on fixed-term contracts would not be treated as priority redeployees alongside their permanent colleagues. However, this was remedied by the time the redeployment window was open (and we note that there is no claim under FTWR in this regard).

103. Furthermore, neither Claimant was treated less favourably (Regulation 3 FTWR) and Ms Wilson not subjected to the detriments alleged (Regulation 6 FTWR).

Conclusions

Unfair dismissal – common conclusions

104. The Claimants were dismissed on the expiry of their fixed term contract on 31 March 2018. In terms of the shared background, both roles were fully funded by ACE, such funding due to cease with effect from 31 March 2018. In addition to that, a wider restructure took place within the Respondent's Museums and Galleries service consequent of a range of factors including the closure of Nottingham Castle, the changes to ACE funding, marketplace competition in the heritage sector and local government funding reductions. Against this background, it was the Respondent's mission to become cost neutral by 2024/25.

105. We have no reason to doubt the Respondent's evidence that this was the backdrop against which the wider restructure was proposed in November 2017, running in parallel with the expiry of a number of fixed-term contracts solely funded by ACE.

106. Whilst the two processes were running in parallel, the reality is that they were so intertwined that it is difficult to separate the two. We accept the Respondent's evidence that at the outset, all roles across the Museums and Galleries service were considered in the new structure, including those on fixed-term contracts, whether ACE funded or not. Whilst this particular point was not expressly addressed in the Respondent's witness statements, the oral evidence from Mr Hawkins and Ms Newton, and the documentary evidence, supported it. Four fixed-term roles were mapped across into the new structure because the work itself had not ceased or diminished, two of which were ACE funded. Not all permanent members of staff were

mapped across. We are satisfied that all employees, regardless of contractual status, were initially on equal footing.

107. Once the holistic review was undertaken, the Respondent took the view that those fixed-term contracts which were ACE funded and due to expire on 31 March 2018 would do so on that date. The natural expiry of fixed-term contracts might typically amount to a potentially fair reason for 'some other substantial reason'. However, in this scenario, the Respondent included the Claimants within a wider redundancy programme, the Claimants accepted that their dismissals were due to redundancy and we are satisfied that it was the reason for their dismissal.
108. The Claimants argue that they were not told that they were entitled to engage in the redundancy consultation. We reject this argument. Both Claimants acknowledged that they were invited to the main briefing on 27 November 2017 for all affected employees. They were expressly told that the collective consultation had commenced and that they would have individual consultation too. At that meeting they received their individual letters of the same date, confirming that the collective consultation period had started and would last for a minimum of 45 days.
109. Some time was spent at the hearing examining the 27 November 2017 letters, particularly the reference to consultation as follows: "*We have now entered into a period of formal collective consultation which commenced on 24 November 2017 when we met with the trade unions to outline the proposals. The collective consultation process will last for a minimum of 45 days and consultation with colleagues will continue up to and potentially beyond the closure of Nottingham Castle*". The Claimants asserted that it was not explicit that they were entitled to consultation. Whilst it is arguable that the letters were not explicit, presumably because the word 'individual' is missing before '*consultation with colleagues*', it seems to us obvious that they were included, and this passage was reference to both collective and individual consultation. In context, and alongside the Powerpoint presentation at the initial briefing, this can only be the case.
110. We observe that at no point did the Claimants complain that they had not been included in the consultation process. Their concerns as fixed-term employees were specifically addressed in the collective consultation meetings and they both had individual consultation meetings. Ms Wilson had a second consultation meeting, whereas Ms Khan did not request one. Ms Wilson had her second consultation meeting on 15 January 2018, so had Ms Khan requested a second meeting, she would most likely have had it prior to her absence commencing on 22 February 2018.
111. The Claimants also claim that the consultation was not meaningful. We are satisfied that it was meaningful and, in many respects, the Respondent went above and beyond its obligations. The change management principles provide that grievances during and about redundancy exercises should be dealt with as part of

the consultation process, and there is nothing, in our view, unfair about that as a principle. However, the Respondent still dealt with the Claimants' grievances in writing and responded to the questions posed. Thereafter, when the Claimants appealed the outcome of their grievance it was, again, treated seriously and responded to in full, despite there being no requirement for the Respondent do so.

112. Following from this, the Claimants complain they were not given an express right of appeal from their dismissals. The Respondent accepts this, but, nevertheless when the Claimants appealed the grievance outcome which related entirely to the redundancy process, the Respondent dealt with it.

113. The Claimants complained throughout the consultation process, and in this claim, that initially, the Respondent was going to prioritise permanent employees for redeployment over those on fixed-term contracts. However, that decision was reversed on 12 March 2018 and we are satisfied that by the time of the interviews for remaining vacant roles, both permanent and fixed-term employees had equal prioritisation. Whilst as a principle, this was unfair, it was remedied in sufficient time.

Miss Wilson

114. Ms Wilson was, and remains, adamant that her role should have been mapped across to that of BSA. However, we are satisfied the evidence given by the Respondent about the difference in those roles was credible and that they were dissimilar. Whilst both roles had an element of administration, the substantive duties were fundamentally different. Miss Wilson's role was focused on supporting the administration of MPM funding and associated projects. The BSA role had a front-of-house focus which did not feature in Miss Wilson's duties.

115. We are satisfied that the consultation process with Miss Wilson was reasonable and fair. Ms Wilson had ongoing support from her line manager, Ms Evans, and union representative, Ms Mallender. Ms Evans assisted Miss Wilson by constructively advising her how to best place her efforts to secure a role at the Respondent going forward, showing a genuine level of care and commitment to her.

116. However, Miss Wilson became entrenched in her situation and was relentless in her pursuit to avoid her dismissal to the point that it became distracting not only to her, but also her colleagues. Ms Evans became frustrated with the amount of time Ms Wilson was dedicating to the matter, to the detriment of her duties. Understandably, in our view, Ms Evans asked her to limit the amount of time she was spending on her business case and focus on her substantive role, which was being neglected.

117. However, we do not accept Miss Wilson's evidence that Ms Evans told her that she was being unprofessional and threatened performance management, or that she told her she was being difficult and should 'get over it and get on with it'. Further,

we do not accept that Ms Evans threatened to withhold a reference and ruin Miss Wilson's reputation in the sector. Miss Wilson also alleged that Ms Evans told her not to talk to her union representative during work time at all, but we are satisfied that this was not the case, and rather, Ms Evans asked her to tone it down so to speak. Ms Wilson took umbrage to this, without justification.

118. The Respondent rejected Miss Wilson's argument that she should have been slotted into the BSA role but she was proactive in seeking alternative employment. She complains that her current role as Museum Events Assistant is not suitable alternative employment, despite having elected it. Her complaint relates to the hours she has to work, namely part-time and at weekends. We are satisfied with the Respondent's evidence that Miss Wilson was the third appointable candidate for the two posts and, when Mr Brown wanted to reduce his working hours, she was offered the remaining hours. We see nothing unfair in this. Had Mr Brown not reduced his hours, the role would not have been offered to Miss Wilson on any basis. Further, it was always open to the Claimant to reject it.

119. To conclude Ms Wilson's unfair dismissal claim, we are satisfied that a genuine redundancy situation had arisen. We are also satisfied that her role as Volunteer Programme Co-ordinator was not sufficiently similar to that of the BSA and, as such, the Respondent's initial assessment and resistance to mapping her across was not unreasonable.

120. We are satisfied that a full consultation was undertaken with Miss Wilson and, whilst she was clearly dissatisfied with the Respondent's responses to her proposals and queries, they were nevertheless addressed, and genuinely so. While both parties agree that, technically, Miss Wilson was not offered a right of appeal in writing, we prefer the Respondent's submission that, in reality, she had one. This is not, in our view, sufficient to render the dismissal procedurally unfair.

121. We are satisfied that the decision to dismiss Miss Wilson was within the range of reasonable responses that a reasonable employer could have adopted and was, therefore, fair. Accordingly, her claim of unfair dismissal is not well-founded and fails.

Ms Khan

122. Ms Khan's situation is entirely different to that of Ms Wilson's. Whilst Ms Wilson threw her heart and soul into challenging the decision not to renew her fixed-term contract, the same cannot be said of Ms Khan. Quite the opposite in fact.

123. Ms Khan failed to engage with the process with any enthusiasm. Whilst she initially challenged the fact that she was not mapped across to the Museum Events Assistant role she was given the opportunity to do so. Ms Khan had explained in the consultation meeting that she did not think it was creative enough, but still, Ms

Newton offered to slot her in to the role. We are satisfied that she did not want this role, otherwise she would have accepted Ms Newton's offer.

124. For completeness, we are satisfied that the Respondent acted reasonably in not mapping her role across initially, and that it was substantively different. We accepted Ms Button-Lowth's evidence that family learning would be delivered in a fundamentally different way. Ms Khan challenged this at her first consultation meeting but did not press it any further thereafter. Whilst it formed part of the grievance and grievance appeal, Ms Khan was certainly not a driving force behind it.
125. Ms Khan became ill on 22 February 2018 and complains that the Respondent failed to send redeployment information to her personal email address, or post it to her at home. She also complains that it did not extend the re-deployment application deadlines for employees who were off sick.
126. Ms Khan's evidence about her illness was changeable and, at times, not believable. On the one hand, she was able to have telephone conversations with Ms Button-Lowth, meet with colleagues at her home, meet with them for afternoon tea, and email from both her personal and her work email address. However, when challenged why she did not, for example, contact the Respondent about redeployment, she said that she was too ill to do anything at all.
127. We are satisfied that Ms Khan was fully aware that she could register an interest for available roles and what the associated timescales were. We do not accept that she did not have access to her work email as she claims at paragraph 36 in her witness statement. In fact, we are satisfied that she was accessing her work e-mails from time to time when she was at home, which is evidenced by documents in the bundle. Further, Ms Khan acknowledged in evidence that she received the grievance outcome at her work e-mail address when she was off sick. We also accept that Ms Button-Lowth had no reason to believe that Ms Khan was not accessing her work emails. Whilst in an ideal world, she could have sent e-mails to Ms Khan's personal email address, we accept the Respondent's submission that Ms Khan was aware of the redeployment process and associated deadlines.
128. Ms Khan also gave oral evidence that a colleague visiting her at home on 15 March 2018 advised her that there had been new vacancies but, because the deadline was 13 March 2018, she was unable to express an interest in them. As above, we do not accept that this was the first time that Ms Khan became aware of the deadlines. However, even if this was the case, at no point did she pick up the phone to Ms Button-Lowth, who was maintaining contact with her and with whom she had a good working relationship, to establish what the position was, or if she could apply in any event.
129. Accordingly, we are satisfied that Ms Khan wholly failed to engage with the consultation process. This was the case even before she became ill, evidenced by

the fact that she did not engage in any way to her first consultation in terms of being slotted into the Museum Events Assistant role, providing a business case, or any other feedback.

130. We are further satisfied that the reason for her dismissal was redundancy, and not because she had alleged that the Respondent had infringed the FTWR, refused (or proposed to refuse) to forego a right conferred on her by the FTWR, or done anything under the FTWR in relation to the Respondent or any other person. Ms Khan has not provided any evidence to support such an assertion.

131. We are satisfied that the decision to dismiss Miss Wilson was within the range of reasonable responses that a reasonable employer could have adopted and was, therefore, fair. Accordingly, her claim of unfair dismissal is not well-founded and fails.

Disability discrimination – Ms Khan

132. Ms Khan relies on the Respondent having constructive, rather than actual, knowledge of her disability for the purposes of this claim. This was clarified by her Counsel at the outset of the hearing. In this regard, Miss Khan attempted to introduce new evidence, namely that she had told Mr Harrison (her line manager in the Student Action role) that she suffered from hypothyroidism. This was not pleaded in her claim form, impact statement or written statement for this hearing. The Respondent objected to her advancing it because it was an entirely new allegation and, therefore, was not in a position to address it. We considered the objection and disallowed the Claimant from advancing it as evidence.

133. The Respondent concedes that Ms Khan was disabled by virtue of hypothyroidism. However, it says it only had the required knowledge from 3 July 2018 on receipt of an occupational health report and denies knowledge during the relevant period from 22 February 2018 – 31 March 2018. We are satisfied that the Respondent did not have constructive knowledge of Ms Khan's disability at the relevant time. She took minimal time off work for different matters, none of which obviously linked to an underlying health condition, and did not raise any issues relating to her condition with the Respondent at any time. Even when Ms Khan was hospitalised, she did not provide the Respondent with any information that should have put it on notice that she was a disabled person, nor could it have reasonably been expected to know.

134. Consequent on the fact that the Respondent did not have constructive knowledge of the Ms Khan's disability and could not reasonably have been expected to know, her claims of disability discrimination under section 15 and sections 20 – 21 EQA must fail.

Less favourable treatment – Regulation 3

135. The Claimants also claim that they suffered less favourable treatment under Regulation 3 of the FTWR. The allegations relied upon also form part of their unfair dismissal claims, of which we have made the findings above. Those findings are also repeated in respect of the claims under the FTWR. We are satisfied in respect of each allegation of less favourable treatment that:
136. The Respondent did not fail to tell the Claimants that they were entitled to engage in the redundancy consultation. On the contrary, they were fully aware that they would be involved, and were so, having been advised as such at the briefing on 27 November 2017 and in their individual letters.
137. The Respondent did not fail to give the Claimants the opportunity to secure a permanent position within the restructuring process in November and December 2017 by failing to map their roles across into the new structure. As per our findings above, we are satisfied that the Respondent acted reasonably in not mapping their roles across into the new structure because neither was sufficiently similar. In the case of Ms Khan, she declined the opportunity to be mapped across into the Museum Events Officer role.
138. The Respondent did not fail to deal the Claimants formal grievance dated 5 February 2018. Firstly, it had a process in place to deal with grievances relating to the restructure under its 'change management' principles. Secondly, whilst it was not obliged to deal with the grievance under the grievance procedure, it did in fact address all the issues raised in it. We are satisfied that the Respondent did not deal with the grievance under the formal grievance procedure because it was following the change management principles (which in itself was reasonable) and not for any reason relating to, or on the grounds of, the Claimants' contractual status.
139. Ms Wilson was offered, and accepted, a three-day-a-week position as Museum Events Assistant. As set out above, the reason she was offered the position on a three-day basis was because Mr Brown, who was the first appointable candidate for the role, reduced his hours. Miss Wilson was the third appointable candidate and if Mr Brown had not reduced his hours, Miss Wilson would not have been offered the role at all. The same rationale applies to the fact that she is required to work weekends. The offer of these terms was not for any reason relating to, or on the grounds of, the Claimants' contractual status.
140. Accordingly, the Claimants were not treated less favourably than a comparable permanent employee, or at all. In light of our findings above, we do not need to consider whether any such treatment was justified on objective grounds.
141. The Claimants claims under Regulation 3 FTWR are not well-founded and are dismissed.

Detriment: Regulation 6

142. Miss Wilson also alleges that she was subjected to the following treatment by Ms Evans: that on 15 January 2018 she said to Ms Wilson “*stop going on about the fact your job still exists and you didn’t get it*” and in March 2018 she shouted at her and said that : she was being unprofessional and if she did not do exactly what Ms Evans wanted it would be a performance management issue; that she was being difficult and should get over it and on with it; that Ms Evans would not give her a reference and would ruin her reputation in the sector; and Ms Evans told her that she could not talk to Ms Mallender whilst at the Community Courtyard or during work time.

143. We have found as fact that these incidents did not happen, so her claims under Regulation 6 are not well-founded and fail.

Employment Judge **Victoria Butler**

Date: 29 April 2020

JUDGMENT SENT TO THE PARTIES ON

29/04/2020.....

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FOR THE TRIBUNAL OFFICE

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