



EMPLOYMENT TRIBUNALS

Claimant: Ms Rachel Fletcher

Respondent: University of Essex

Heard at: East London Hearing Centre (by Cloud Video Platform)

On: 3, 4, 5, 9 and 10 February 2021
In chambers on 20 April 2021 and 29 June 2021

Before: Employment Judge Jones

Members: Ms M Legg
Mr L Bowman

Representation

Claimant: Ms K Hosking, Counsel

Respondent: Mr D O'Dempsey, Counsel

JUDGMENT

The claimant's complaints of unfair dismissal and indirect sex discrimination fail and are dismissed.

REASONS

This was a remote hearing on the papers as both parties consented to it. The form of remote hearing was V: Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The parties presented the Tribunal with an agreed bundle of documents, chronology and cast list. The Tribunal has identified below where it has referred to these or any other documents.

Claims and issues

1. The claimant brought complaints of unfair dismissal and indirect sex discrimination. It was her case that although the respondent had a policy that encouraged part-time/flexible working, in practice, the respondent applied PCPs which meant that the application was indirectly discriminatory towards women and against the claimant. The respondent's defence was that there was a redundancy situation within which the claimant's post was redundant, the

claimant opted for early retirement and as there were no other posts that were suitable, the respondent dismissed her for redundancy.

2. A list of the agreed issues is set out at the end of judgment where the tribunal applies the law to its findings of fact.

3. The Tribunal apologises to the parties for the delay in the promulgation of this judgment and reasons. The delay is due to difficulties with finding dates when the Tribunal could meet in chambers and to pressure of work on the judge.

Evidence

4. The tribunal heard from the claimant and from Angela Jones, former Head of Student Support/Deputy Director of Student Life, on her behalf. Although we had witness statements from Louise McLean and Michelle Carpenter on the claimant's behalf, they were not able to attend the Tribunal to give live evidence. For the respondent, the tribunal heard from Richard Stock, Academic Registrar; Rachel Lucas, Director of Student Life; and Kate Horne, Senior Employee Relations Adviser. All witnesses prepared written witness statements for the tribunal.

5. There was an agreed bundle of documents and additional documents were produced during the hearing.

6. The Tribunal made the following findings of fact from the evidence. The tribunal has only made findings of fact on those matters that it needs to in order to decide on the issues in this case. The case was decided on the balance of probabilities. The Tribunal was unanimous in its findings and its judgment.

Findings of fact

7. The claimant was employed by the respondent from January 2003. The claimant's post was Director of Student Support, which was a Grade 10 role, which she held until 31 July 2015. The claimant led a team which provided various forms of support to students, contributed to the development of policy and delivered a variety of projects.

8. In 2012 the claimant's life partner was diagnosed with cancer. In 2014, the claimant and the respondent agreed that she would reduce her hours to 0.8 FTE. In 2015, the claimant began an agreed six-month period of unpaid leave of absence. This was related to the care and support that her partner needed at the time and the pessimistic prognosis that she had been given. Mr McAuliffe was the claimant's line manager at that time.

9. While the claimant was on leave in 2015, the respondent's academic section was restructured. Two new subsections, known as Directorates, were created; Student Life and Academic Services. When the claimant returned to work in August 2015, she was slotted into the role of Deputy Director of Student Life/Head of Retention and Success. The role was a 0.5 FTE (full-time equivalent). Before the claimant returned to work, she was referred to the respondent's occupational health who recommended that she should be permitted to work two full days in the office with the flexibility to work the remaining half day from home. Mr McAuliffe agreed this arrangement with her after discussion. The arrangement was that the claimant worked full days on Tuesday and Thursday and usually, half day on Wednesday. Over the years, the

claimant demonstrated a willingness to increase her hours on a temporary basis when the need arose such as when her deputy resigned in October 2016 or to meet business need. The role was later renamed as Deputy Director of Student Life/Head of Student Engagement and was the role the claimant continued to perform, until the end of her employment.

10. Rachel Lucas became Director of Student Life in September 2017. She was the claimant's line manager. Ms Lucas's evidence was that some members of the claimant's team had spoken to her about their difficulties in reaching the claimant when she was not at work. This was not raised directly with the claimant but Ms Lucas noted in the claimant's appraisal and personal development record that the claimant's presence in the office was an issue, as was the need to proactively manage the strategic priorities of the team. Ms Lucas agreed in evidence that issues of delegation, management and communication in teams were not unique to part-time working.

11. We find that the funding to support the Retention and Success work, which was done by the claimant's team was expanded for three years from August 2015 by the addition of two new fixed term posts, which were to run to 31 July 2018. This was to provide additional support to the academic departments by setting up new projects and initiatives. The claimant's role was not fixed term. The team the claimant headed was known as the Student Engagement team.

12. The claimant's team undertook many other short-term/time limited projects such as the Early Engagement project or the Achieving Potential project. In 2017, the team temporarily took on responsibility for 'Welcome' at short notice. On her appointment, Ms Lucas formalised the claimant's team's responsibility for *Welcome*. The claimant co-ordinated the operational welcome planning group which had oversight of *Welcome* and her team was responsible for doing the *Welcome* for new students in 2017, 2018 and 2019. Welcome had a tendency to be quite intense and take a lot of resources for a short period of time, usually at the beginning of the academic year.

13. On her appointment, Ms Lucas was given the remit to reorganise the whole Academic section so although she could not make Welcome a permanent part of their work, she made it so that the claimant's team would keep it for as long it continued to exist.

14. When the funding for the fixed term posts came to an end in 2018, other additional short-term project funding which supported some of the interns continued.

15. There were some changes in the claimant's team shortly after Ms Lucas was appointed. Hannah Lamb was taken out of the claimant's team. Hannah Gott was moved into the claimant's team under the claimant's line management.

16. As part of the Education Action Plan for 2017/2018, Student Life was tasked with taking forward work in relation to Student Voice and Surveys. This work was to be placed within the Student Engagement Team. At the same time, the respondent acknowledged the need for a deeper consideration of the future of this team. It is likely that the work on Student Voice, Welcome and Surveys was given to the claimant's team while the respondent looked at what they were doing and how that work was going to be organising the future. It was therefore not permanent.

17. We looked at the claimant's appraisal form for 2017/2018. It showed that the objectives the claimant was set for the following year were in four priority areas: overview of the activities for the currently configured Student Engagement Team, ensure delivery of key actions - including for Welcome, STEP (Student Transitions Engagement Project), Student Surveys and Student Voice. The team were not wholly responsible for all of these but were part responsible for promoting Student Surveys, coordinating the results, working with the communications team on various aspects and in relation to Student Voice, engaging student ambassadors and advising departments on how to engage with students.

18. It is likely that the claimant's team knew that most aspects of this work had not been placed permanently with them. The claimant confirmed in her witness statement that the team were working on targeted projects and initiatives between 2015 and 2018 (para 28).

19. Shortly after Rachel Lucas' arrival in the department the respondent began its reorganisation of the Academic section with the creation of a central Student Life Operations team and then a restructure of the Wellbeing service. The Tribunal heard from Angela Jones who was the Head of Student Support and who also reported to Rachel Lucas.

20. They had been various discussions about reorganisation and the claimant admitted in her witness statement that changes such as a merger of her team with the Talent Development Centre had been under discussion for some time. By August 2018, the claimant's team were uncertain about their future and she noted that they had expressed disquiet at the lack of certainty about future directions and priorities. It is likely that they were aware that most of the work that they were doing was time-limited, coming to an end and that change was inevitable.

The respondent/Ms Lucas' attitude to part-time/flexible working

21. The respondent's flexible working policy was called its '*Work Life Balance Policy*' and we had a copy in the trial bundle. The policy stated that all staff have the right to work flexibly provided that they had been employed for at least 26 weeks at the time that the application was made. Employees with less than 26 weeks service could also make applications. It stated that the University would consider requests in a reasonable manner and would only refuse them if there was a business reason for doing so.

22. The policy stated that managers and staff must recognise that the scope of flexibility will vary between job roles and that not all jobs could accommodate all flexibility. What mattered in each job was achieving the objectives set by the University. That was of paramount importance. So, whilst all managers were encouraged to be creative in seeking opportunities for staff to enjoy a measure of flexibility, the policy stated that the business needs of the University would determine the extent to which individual cases could be supported. In its introduction, the policy stated that it was the joint responsibility of managers and staff to think ahead, identify potential problems, work through implications, challenge assumptions and be flexible in finding work life balance solutions that were successful. It stated that flexible working was not about preferential treatment but about working together to find workable solutions that meet individuals' and organisational needs. The policy then gave a sample of different

types of flexible arrangements that the respondent could consider, such as compressed hours, job sharing, part-time working, term time only working, and working from home. There was also a list of considerations intended to assist heads of department when considering request for flexible working; such as the needs of the service - both generally and on the days/times in question - the job for which the person was employed, how the work would be supervised, the impact on colleagues and service users, and the practicalities of undertaking specific elements or tasks at home.

23. The policy set out the procedure for making and considering flexible working and career break requests including the process of applying for flexible working, meeting with head of Department to discuss it, how the decision would be made and how it would be conveyed. In the section dealing with the application, the policy stated: *'you should submit your application form to your head of department..... The initial onus is on you to prepare a carefully thought out application well in advance of when you would like the desired working pattern/time off to take effect confirming the pattern you wish to work and how it could be accommodated within your department. You should give considerable thought to your application take into account business needs.'*

24. We find that there was an expectation in the policy that the applicant would have given some thought and would be able to explain in writing, how their desired pattern of working would affect the department and how that should be countered. This was not a new aspect to the application process brought in by Ms Lucas but was an integral part of the respondent's existing procedure.

25. Most of the evidence from the claimant on this issue was given by Ms Jones. We find that prior to Ms Lucas' appointment there were many flexible and part-time working arrangements in the Student Life department. On Ms Lucas' appointment to her post, Richard Stock spoke with both her and her opposite number about bringing consistency into the working of the flexible working policy. He advised that they should ensure that the policy was implemented in a more organised and consistent way across the department. For instance, they should ensure that their reporting managers informed them when they received an application for flexible working and what their thoughts were on it and how it might work; even before a decision was made on it.

26. The claimant's evidence was that she recalled a particular discussion with Ms Lucas soon after Ms Lucas was appointed, about a flexible working request made by member of her team. In live evidence she confirmed that she herself did not support the request. It is likely that Ms Lucas took her lead from the claimant as she was the manager working directly with that member of staff. Ms Lucas discussed with her the issues that would need to be taken into account in considering the request and responding to it. It was appropriate for her to point out to the claimant that as a manager, when considering a request for flexible working, she would need to consider not just the individual and their needs but also, the impact of the request on the delivery of the business and the members of the team. There were also legitimate concerns about the particular employee who had applied for flexible working and their ability to perform their job duties, if it were granted. That member of staff had an ongoing health condition. Ms Lucas also recalled that occupational health had not supported the request as a reasonable adjustment on medical grounds. In the circumstances, we find that rather than expressing a negative viewpoint on the request, what Ms Lucas did

was to draw the claimant's attention to real concerns that she as the manager needed to consider.

27. The claimant complained that at one of her early meetings with senior managers Ms Lucas stated that existing flexible working arrangements would not necessarily continue after any restructure. What Ms Lucas did was to refer to the following section of the respondent's existing flexible working policy. At section 2.2 it stated as follows:

- a. *'Changes which are approved following a flexible working request are permanent and will remain in place until either another request is made by the employee or organisationally there is a requirement to review the needs of the service and consult regarding change'.*

28. At section 9.1, under the heading Restructure, it stated:

- a. *'During a restructure, every effort will be made to accommodate flexible working arrangements, in particular where this has involved part-time working'.*

29. In her first meeting with the Student Life leadership team, in the autumn term of 2017, Ms Lucas outlined how she wanted flexible working applications to be processed. Each manager was to let her know by email or in their 1:1 catch up meetings when they received an application for part-time/flexible working so that she was aware of it. She would then make a note of it and would be available to support them in their management and processing of the application. If there were any concerns or complexity involved in the application, the manager could discuss this with Ms Lucas. They would then be able to go into the meeting with the applicant, confident that they had considered all the implications of the application, how it might affect the department and were able to address them in their discussion with the applicant. Once the manager had the meeting with the applicant, they would be able to make an informed decision as to whether or not to recommend the flexible working request.

30. The managers were informed that the member of staff should demonstrate that they had given some thought as to how the flexible working proposal would work in practice. There were likely to be implications for the team and for the department if a colleague began to work flexibly. Ms Lucas wanted her managers to consider those as well as the circumstances of the individual employee. As managers they needed to be conscious of the needs of the department and the service, as well as that of the individual concerned. For instance, if a post is filled by someone working a part-time/flexible working arrangement, it might be difficult in future, to make a case for it to be filled by a full-time worker. The applicant would not need to know the work of every other member of the team in order to be able to show that they have considered how their proposal would affect the team or have worked it out in every detail. But if they could show that they had thought about how their work could be covered, that would be sufficient. We refer to sections 7.3 and 7.4 of the respondent's policy and note that at page 369, there are questions in the application form which ask the applicant to consider the implications of their proposed arrangement, for the rest of the team.

31. In setting out this way of operating the policy, Ms Lucas wanted to make it work fairly and in an organised and consistent way. We find that there was no direction from Ms Lucas that members of staff should be discouraged from making flexible/part-time working applications or that they should be told that applications for flexible working would not be considered.

32. When she was new in her post, Ms Lucas asked HR to provide some training to her direct reports on flexible working. She asked them to cover topics such as the role of the manager in formulating or assisting a worker to formulate an application for flexible working, the respondent's flexible working policy, expectations and how decisions are made. This was delivered in 2018. She also asked for them to be given training on recruitment. The decision on a flexible working application would be made by the operational managers so it was important that they had a clear understanding of the policy and could own recommendations before making the referral to HR and the Registrar.

33. Ms Lucas told her direct reports, (which included the claimant and Ms Jones), that flexible working applications should be clear and that it should be obvious on reading it that the applicant had given some thought to how it was going to work. When an employee makes an application for flexible working, they should set out the requested pattern of work on the form. The manager should consider the application in discussion with the applicant. If a compromise was reached or the manager decided to grant the original application, it would be recommended to the Department by first being submitted to HR who would put it before the Registrar for approval. HR would normally only put the request part of the form to the Registrar. Ms Lucas wanted the compromise to be reflected on the form rather than the original request. That was why she asked the managers to ensure that the compromised position was the only one included in the form that was submitted to HR. Ms Lucas wanted to ensure that the form submitted to the Registrar only reflected the compromised position.

34. We had a copy of an email exchange between Ms Lucas and Miss Jones in August 2019 regarding Hannah Brightman's application for flexible working in which Ms Lucas reiterated her position on flexible working applications. She stated that the point of the process of agreeing a flexible working application with the employee, in advance of the formal request been put forward to senior management was to find a *'mutually suitable arrangement that can be accommodated. The member of staff can then shape their final, formal request on the basis of the discussion (which may in some cases mean requesting something you aren't prepared to support, but normally means requesting a pattern that you've agreed and they agreed suits them and us). It is perfectly fine for them to include elsewhere comments to reflect that originally they'd wanted one approach but, after discussion, have agreed a compromise and is now requesting what is being submitted. The statement that goes in Richard's name can acknowledgethe consideration of impact and the compromise reached - itmakes a more persuasive case.'*

35. In the Tribunal hearing, we went through the following flexible working applications. An application from Louise Ward. Her original request was amended to reflect what had been agreed between her and her manager. We do not agree with Ms Jones' evidence that Ms Ward was made to change her request. We find that having come to a compromise with her manager, which she was able to accept and which would not have adversely impacted the service, Ms Lucas wanted the form that was to be submitted to the Registrar to

only contain the compromised/agreed working pattern. We could not see any benefit in Ms Jones' position that the Registrar/Secretary should be given the original proposal as well as the compromise and it was likely to cause confusion and prolong the process.

36. In Hannah Brightman's application, Ms Lucas wanted the proposed working pattern that would be submitted to senior management to be changed so that it reflected what had been agreed between Ms Jones and Ms Brightman rather than the original request, which was no longer being put forward.

37. We considered Natalie Walker's flexible working application. Ms Jones had refused to support an application for flexible working from Ms Walker's predecessor in the same post. When Ms Walker was about to go off on maternity leave, Ms Jones raised in a meeting with Ms Lucas the possibility that Ms Walker could return on a part-time basis. Ms Lucas reminded her that she had refused a similar application from Ms Walker's predecessor. Ms Jones remembered that she had concerns about that particular job been done on a part-time basis, which meant that it was likely that if Miss Walker submitted an application to do the job on a part-time basis, the same concerns would exist. Ms Lucas supported Miss Jones in being consistent with her decision about the suitability of that particular job to flexible working. As a result, Ms Jones indicated to Ms Walker that if she submitted an application for flexible working on her return from maternity leave, that would not be supported by the department. It was not the case that Ms Lucas directed Ms Jones to advise Ms Walker not to make a flexible working request on her return, but rather, Ms Jones as the manager, did so out of her concern that there would be difficulties doing that job while on a flexible contract. Ms Lucas supported Ms Jones in the process.

38. In or around May 2018, the respondent undertook a reorganisation of its disability advice and Well-Being service. Well-Being was part of Student Support and included counselling and mental health support. Ms Lucas asked Ms Jones to lead on the restructure of the Well-Being section as that came under her management. She was asked to come up with a proposal for the new structure and to take it to Mr Stock for approval. Once the new structure was approved, Ms Jones was able to consult with the individual employees who had expressed an interest on where they would fit in it. Ms Lucas was only involved if she had to take part in an interview for a Grade 8 or Grade 9 post. Employees who had previously occupied posts within the Well-Being section were invited to apply for posts within the new structure by submitting '*expressions of interest*' forms and to indicate on those forms the way they wanted to work, i.e. how many hours per week. We saw some of those forms in the hearing. At the time, these forms were not shared with Ms Lucas.

39. Ms Jones provided an appendix to her witness statement, which was a table giving information on all staff employed before and after the Well-Being restructure, whether they worked full or part-time; their Grade and the outcome for each individual at the end of the restructure.

40. We find it likely that Ms Lucas stated that she could not guarantee what would happen to each post in the reorganisation, including whether they would remain a part-time post. It was expected that the restructure of Well-Being section would result in a reduction in the number of posts available. The consultation papers included an organisational chart and job descriptions for all of the jobs that would come out of the restructure, which were all advertised as

full-time posts. We find it likely that those who submitted expressions of interest were interviewed for those posts. After the interviews, Ms Jones and Ms Lucas met with HR to discuss each post.

41. We find that the respondent did not advertise any of the jobs coming out of the reorganisation as part-time/flexible jobs but once selected, it was prepared to consider proposals from successful candidates to work a particular job on a flexible basis. Every candidate's circumstances would be different and they would want to personalise their pattern of work to suit their own requirements. We find it unlikely that Ms Lucas made a statement in that meeting that she did not want Ms Jones to offer any part time positions or that there should be no part-time appointments. If she had, it is likely that she would have been challenged about it by HR as it is likely that Ms Foster or someone else from HR was at that meeting. If she had made such a statement, we find that HR would have taken the matter up with her and/or her managers as such a statement would have been in breach of the respondent's published flexible working policy. There was never a complaint to HR about Ms Lucas' attitude towards or statements about flexible working.

42. We find that as part of the Well-Being restructure, the respondent ceased to be an accredited provider of advice and assistance around disabled student allowance (DSA), which is a state benefit paid directly to disabled students. That meant that there would no longer need to employ DSA advisors to advise and assist students with it. Some of the posts were transferred under the TUPE Regulations to the provider who took on the provision of that service. About 20 staff in Well-Being were related to the DSA/counselling service. 19 of those posts were held by flexible/part-time employees. That would account for some of the reduction of staff in the reorganised service.

43. As part of the interview panel for the more senior jobs, Ms Lucas' role was to make sure that those appointed were suitable for the post, in terms of their experience and their skills. Their pattern of work would only be relevant once they had been offered the role. In the case of this reorganisation, that was done by Ms Jones. Ms Jones did discuss some of the expressions of interest with Ms Lucas but whether those individuals were appointed to the pattern they wanted was Ms Jones' decision as she was the person managing the re-structure.

44. Louise McLean submitted an expression of interest to work 22 hours or 4 days a week. She had previously worked part-time in the old structure and wanted to continue to work those hours in the new structure. She had also been off sick during her employment and just before the restructure. She had only been in the old post for around 9 months before the restructure. The role had been advertised as 36 hours per week. Ms Lucas agreed with Ms Jones' decision to offer Ms McLean the post. We find that Ms Lucas was open to suggestions as to how the job could be done flexibly. We had a witness statement from Ms McLean but we did not give the contents greater weight than the other evidence as she was unable to attend to give live evidence, which meant that her evidence was not tested.

45. Ms Jones told Ms McLean that the job had to be done over 5 days a week (i.e. 36 hours). She discouraged her from making a flexible working application. We do not accept that she did this on Ms Lucas' instructions but it is likely that she did this because after considering whether the job could be done over a 3 day/2 day split, with Ms McLean working 3 days a week; Ms Jones was not

confident that Ms McLean had been in the job long enough to demonstrate that she could do it in that time. Although Ms Jones wanted to support Ms Lucas, it is likely that she was also aware that it could not be done in the way suggested and that is why she discouraged Ms Lucas from making the application. Later, Ms McLean applied to do the job in compressed hours and this application was successful.

46. We also heard about Helen Aldis, Julia Brotherton, Ian Meek and Hannah Gott's situations. We find that these individuals wanted to accept the jobs offered to them in the reorganisation but wanted to do those jobs on a part-time/flexible basis, usually with less hours than full-time, as they had done before the reorganisation. Sometimes what was applied for was workable, such as in Ms Aldis' case. Other times, a compromise was achieved between what the individual wanted to work and what the respondent needed to have, in order to fulfil the service.

47. Ms Brotherton, Mr Meek and Ms Gott were all able to continue working on a part-time basis. The respondent reached a compromise with Mr Meek at 0.8FTE. Ms Brotherton accepted the job offered to her. A compromise was achieved with Ms Gott which saw her increasing her working hours to 0.9FTE. We find that rather than forcing Ms Gott to increase her hours as alleged, what happened was that the respondent noticed that although she had previously been contracted to work 0.8FTE, Ms Gott regularly worked over those hours. There was a meeting between Ms Lucas, Ms Gott and Ms Jones to discuss her working hours. In an effort to properly reward her for the number of hours she was giving to the job, the respondent wanted her to increase her contract to the number of hours she was actually working so that she could be properly remunerated for her work. Although Ms Gott had some concerns about increasing her contractual hours, she agreed to do so. Ms Lucas also advised Ms Jones to organise some coaching for Ms Gott on managing her workload. At the time of the hearing we were told that she continues to work for the respondent.

48. It is possible that Ms Jones told Michelle Carpenter that her job had to be done on a full-time basis following the restructure. Ms Jones was leading on this restructure and decided what she would tell staff about the jobs. That was her responsibility. The job was advertised as a full-time post and once she was offered the role, Ms Carpenter had the option to put a proposal to management that would meet her needs and get the job duties done. Ms Carpenter had been doing 15 hours a week before the restructure. She did not put an application forward and instead applied for and took voluntary redundancy. Ms Lucas was not aware that this was the reason for her application for voluntary redundancy and expressed shock when she read this in Ms Carpenter's witness statement.

49. As a result of the restructure, out of the senior managers (grade 9), one took voluntary redundancy, one left before the restructure and the other continued to work for the respondent under a compressed hours arrangement. The rest of the staff slotted into posts in the new structure.

50. We find it likely that Ms Jones as a senior manager within the department, had general discussions with Ms Lucas, about working from home or flexible working. She also had similar discussions with Mr Stock. In those discussions it is likely that both expressed support for flexible working but with an awareness that it was likely to present challenges for some staff, including Grade 10

managers, in terms of managing staff, responding to issues and queries quickly and keeping up a knowledge framework. She was told that it would not always be possible for the respondent to agree to flexible working and that this would depend on the role and the arrangement that the individual wanted. Ms Lucas and Mr Stock were concerned that it might prove difficult for staff who managed others to work flexibly/part-time as they would not always be accessible to those staff. We find that there was no policy or practice to reject applications for flexible working out of hand without consideration, discussion and the possibility of compromise.

51. In the trial bundle was a document showing the anonymised breakdown of flexible working requests for Academic Services and Student Life (for Grade 8 and above), between January 2017 – January 2020. The document showed that in that period of time the respondent had 21 applications for flexible working. 13 from staff at Grade 8, 6 from Grade 9s, 1 from an employee at Grade 10 and 1 from an employee at Grade 11. All were granted. All were recorded as 'agreed'. Some of which were granted under Ms Lucas' management and some before. Out of the 21 applications, 11 were for compressed hours, 6 were for a reduction in hours and 2 were for flexible retirement/reduced hours. The first 11 were from 2017. In 2018, a significant number of staff who wanted to work flexibly made that known to the respondent through expressions of interest. Between 2018 – 2019, there were 4 different restructures going on in the Academic Services and Student Life teams so some flexible working arrangements may have come out of those.

52. The last bit of evidence we had to consider in relation to the respondent's attitude towards flexible working was the results of the survey carried out among staff in July and August 2019. The respondent's HR and Equality and Diversity Group conducted the survey among staff to gauge their understanding and impression of the organisation's flexible working policy. Out of a total of 4212 employees at the time, only 460 members of staff responded to the survey.

53. In the bundle we had a paper produced by the Group in October 2019 which proposed some revisions to the flexible working policy and that the respondent should conduct a communications campaign in which it would set out clear messages about its commitment to a flexible working culture. In the paper, the survey results were summarised as follows:

Over half the respondents stated that they were able to be flexible in how they managed their work and time (59%), and 64% said that they were aware of the University's policy and approach to flexible working. However, in response to the question on whether they felt a formal request for flexible working would be dealt with fairly, only 46% responded positively while 33% indicated they were not confident this would happen (21% neither agreed nor disagreed).

54. There were also 20 pages of what were referred to in the hearing as 'free text' comments. In those the employees who responded to the survey demonstrated a perception that flexible working was procedurally complicated to apply for and burdensome for the individual and intimidating as there was too much emphasis on the individual to produce detailed justification and impact analysis. Some employees felt that the ability to work flexibly depended on the views of individual managers, with some parts of the business seen as generally against flexible working. The most aggrieved appeared to be academic staff.

Other employees expressed a feeling that there was a limit on career progression for those who work flexibly and that very few jobs were advertised as part-time, which discouraged applications and was demotivating.

55. Ms Horn was cross-examined about some of the 'free text' responses. She believed that they demonstrated people's perceptions that the process to apply for flexible working had become more difficult. She recalled being asked by employees who were applying or thinking of applying for flexible working, why the respondent needed so much detail in the application. She told them what information the respondent needed. The respondent's approach was to balance the need to apply the policy consistently while respecting the employee's privacy.

56. The report concluded that the respondent's existing policy had not yet resulted in a fully flexible working culture, even though that was a core element of the respondent's objectives.

57. It was not possible to ascertain how many of the small percentage of those who responded to the survey were from the Student Life/Academic Section departments.

58. Once the results of the survey were assessed, it was apparent that the respondent had some work to do in terms of communication to staff about the policy. The respondent did not want its employees to continue to perceive that it would be difficult to secure a flexible working arrangement. The respondent set about a communications campaign. The biggest change brought about by the survey was that the signoff for applications was now with the heads of department.

Student Development restructure

59. We find that Ms Lucas would often meet with Ms Jones, the claimant and other managers as part of the Student Life leadership team. They also had regular 1:1s with her. We find it likely that Ms Lucas would have ensured that the leadership team were up to date on any changes to working practices in the University such as changes to financial reporting/sign off. Following the discussions that she had with Mr Stock before her appointment, she told the team that she wanted to be told of any flexible working applications made by junior staff. She may also have said in those meetings that the respondent could not guarantee that existing flexible working applications would continue in any restructure. We find that at the start of a restructure it would be difficult to predict what jobs would continue and what hours would be required; otherwise it would not be a genuine restructure.

60. The claimant confirmed in her statement that a merger of her team with the Talent Development Centre had been under discussion for some time. There was an away day on 1 August 2018 for the Student Engagement team and the more senior members of the Talent Development Centre. During the day the proposals for restructure/merger were looked at in detail. Prior to the away day Ms Lucas had discussed the vision for the future with the claimant. She would have had the opportunity to become familiar with it in the interim period. At the away day the reorganisation was discussed. Staff were asked for their vision as to how their services could be reshaped and how each team's activities fitted in to the vision or how the vision could be adjusted. Staff were able to express their worries about the future. A follow-up meeting was planned for October 2018.

61. At the October meeting the respondent informed the teams that the Employability and Careers Centre would be included in the revised vision. From October 2018 the respondent consulted on its vision of amalgamating the three teams from Employability and Careers, the Talent and Development Centre and Student Engagement (the claimant's team). In or around November 2018, Ms Lucas and Mr Stock submitted papers to the university steering group called '*a new vision for student well-being services*' and '*vision for supporting student development*'. Even before those papers were presented, Ms Lucas had spoken to the three Grade 10 postholders who would be affected by the restructure. Those were the claimant, the Head of Employability and the Careers Centre and the Head of the Talent and Development Centre. The subject of the reorganisations also came up in some of the claimant's regular 1:1 supervision meetings with Ms Lucas.

62. Although the claimant produced handwritten notes from meetings, which were in the tribunal bundle, we did not find this particularly useful as in her evidence, the claimant confirmed that she sometimes noted down her thoughts about the situation, something that she planned to say but may not have; or, something that someone said in the meeting. We were therefore unable to conclude that they were complete and accurate records of what was said in meetings.

63. In December 2018, the University steering group endorsed the new vision for Student Development which was to create a team that combined the three existing teams – Talent Development, Student Engagement and Employability and Careers Centre. This would enable the respondent to have a more integrated approach to student skills development through the delivery of employability and career services, academic skills support and student engagement expertise.

64. Thereafter the respondent began two separate consultation processes. One was on the proposal to combine and restructure the three teams and the other was on the proposal to create and appoint to the role of Head of Student Development, a new grade 10 role which would lead the proposed Student Development Service. That role was to report to Ms Lucas and would be responsible for managing five senior managers. The respondent's expectation was that the post-holder would be leading on the development of the new Student Development Service, including providing strategic direction.

65. The Head of Employability left the respondent before Christmas 2018. From mid-January 2019, the respondent consulted with the claimant and the Head of the Talent Development Centre on the creation of the new Head of Student Development role.

66. On 17 January, Ms Lucas sent the claimant a copy of the consultation document and confirmed in the accompanying email that this was the start of the formal consultation process. She informed the claimant that the vision for Student Development had been endorsed on 18 December by the University Steering Group, which meant that the proposal to create a new team combining the Talent Development Centre, Student Engagement Team and Employability and Careers Centre was going ahead. The claimant was reassured that the proposals would be managed within the respondent's Managing Structural Change policy. The first activity in the project, was to settle the leadership of the team and the new Head of Service role. She attached a copy of the consultation

document on the proposed Grade 10 Head of Student Development post and told the claimant that HR would arrange a meeting with her to discuss how the proposals would affect her personally.

67. On 22 January, Kate Horn wrote to the claimant to invite her to a meeting on the 31st. She informed the claimant that she had the right to be accompanied and that this was the beginning of a formal consultation process that would end on 20 February. She enclosed a copy of the job description and the respondent's managing change policy. Neither letter mentioned redundancy but the consultation paper stated that the proposal was to take the 3 Head of department roles and replace them with the Head of Student Development. The claimant understood when she read those documents that there was a possibility of her being made redundant.

68. Minutes of the consultation meeting held on 31 January 2019 were in the hearing bundle. We also had the claimant's handwritten notes. The claimant attended the meeting with her trade union representative. The claimant was not being interviewed for the role at this meeting so when she asked Ms Lucas whether she saw her as a potential candidate for it, Ms Lucas felt unable to answer. It would not have been appropriate for her to comment on the claimant's suitability for the role before the claimant had submitted an expression of interest and had an opportunity to explain how she met the criteria. Ms Lucas stated that she did not know the claimant's full background. The claimant did not then go on to set out that background. As stated in the invitation letters, the meeting was to discuss the proposed changes and how they could potentially affect the claimant and her role, including possible redundancy. This was the start of the two consultations, outlined above, that were happening at the same time.

69. Ms Lucas looked to HR to lead on the redundancy consultation. She had not come to the meeting prepared for a discussion about the claimant's suitability for the role. The respondent envisaged a broader discussion about the structure of the departments and the feasibility of creating a senior grade 10 role which had elements of each of the 3 existing grade 10 roles.

70. They did have that broad discussion at this meeting, about the role, the Department, the focus of the reorganisation and what the respondent was hoping to achieve. The claimant agreed that there was rationale for creating an integrated new Student Development team. However, she observed that there were aspects of the person specification for the new job, such as the focus on employability skills, which might prove to be a barrier to her being appointed to the role. The claimant also asked about the possibility of doing the job on a job share basis and in response, Ms Lucas looked at Ms Horn because, as she was HR, she expected her to answer that question. The claimant asked Ms Lucas about her opinion on part-time working. Ms Lucas commented that part-time/flexible working in this job could be challenging and that it had been conceived as 1 FTE (full-time equivalent) but that it might be possible and they were prepared to consider other arrangements. 1 FTE post did not refer to headcount. Ms Lucas told her that she would need to make a proposal as to how she envisaged work being done in the fractional time she wanted to work. During the meeting, the claimant stated that a job share arrangement would have some advantages for the respondent as well as for the post-holder. Ms Lucas did not dispute that. They did not discuss the job share prospect in any detail. The claimant did not propose an actual job share arrangement. She did suggest that the respondent consider making it a job share that added up to 1.6 FTE. At this

point, the claimant had not yet expressed an interest in the role of Head of Student Development.

71. The claimant was aware that the new post would be leading a large team and she recognised that the size, scope and complexity of that team would bring some challenges for leadership and management. The claimant referred to her personal circumstances, namely her caring responsibilities and her partner's declining and unpredictable health and confirmed that working part-time suited her caring responsibilities. She indicated that she was willing to look at increasing her hours but she thought that it would be challenging to do so given her caring responsibilities.

72. Ms Lucas referred to the possibility of a new grade 10 role of Head of Student Services being created. She shared with the claimant that the respondent was thinking of a further smaller restructure creating a separate Student Services team by moving existing activities around. However, the claimant was informed that the respondent would only be able to consider a new Head of Student Services role if there were sufficient resources remaining after the restructuring. The discussion was not taken any further as there was no Head of Student Services role available at that time. In the hearing, Ms Lucas described it as a '*twinkle*' in her and Mr Stocks' eyes at this point in the restructuring.

73. Ms Lucas also advised her that she should consider applying for some of the Grade 9 roles that were becoming available during the restructuring. The claimant stated that she was worried about displacing her colleagues in doing so. Ms Lucas encouraged her to apply.

74. They also discussed that this was the beginning of a redundancy consultation. The prospect of redundancy was discussed as was the possibility of other roles coming up during the consultation process, if the claimant did not go for the Head of Student Development role. The claimant's note at page 118 also refers to the discussion covering successor rights to some roles and that she would need to express an interest in order to be considered. The claimant asked at that meeting about redeployment and for information about the redundancy payment and the pension options open to her, should that become necessary.

75. In her written response to the consultation document on 19 February, the claimant confirmed that she could see the rationale behind the reorganisation and that she supported it. She made some suggestions and some helpful points, some of which the respondent incorporated into the final documents. The claimant indicated that the breath, complexity and strategic importance of the activities to be completed would be challenging for a single full-time grade 10 post-holder. She included her suggestion that the role could be designed as a job share involving two postholders amounting to a total resource of 1.6 FTE (full-time equivalent). The claimant had been told that the role had been conceived as a full-time (i.e. 1.0 FTE). She also suggested that because the role as written, included pedagogical aspects including development of study/academic skills, career development learning and curriculum development, an academic teaching background would be desirable for the role from the point of view of creditability with academics; although she noted that this would not help her if she was a candidate as she did not have a teaching background.

76. After seeking advice from HR, Ms Lucas replied to the claimant by email. She clarified that the vision for the department had been endorsed by the Senate and the Education committee and that support had also been received from key stakeholders. She gave specific responses to the issues that the claimant raised about the role and the job description.

77. The claimant was told that the points that she had made in her response to the consultation papers would be fed into the development of the new Student Development team. The respondent was clear with the claimant that it intended to recruit to the Head of Student Development role and Ms Lucas told the claimant that the role would replace the Head of Employability, Head of Talent Development Centre, and the Head of Student Engagement roles. This meant that the claimant's role would no longer exist in the new structure and she would be at risk of redundancy. Ms Lucas provided the claimant with the revised and finalised job description and person specification for the Head of Student Development post and invited her to indicate whether she was interested in being considered for the role. Ms Lucas confirmed that it had been ring fenced for priority consideration of those at risk, who were the claimant and the other Grade 10, Liz, Head of the Talent Development Centre. She indicated that she did not want to be considered for the role. The claimant also told that although it was described as a full-time post, consideration could be given to flexibility within the full-time role and/or job share, if it could be demonstrated how this could work in practice.

78. There was a further discussion between the claimant and Ms Lucas on the 26 February 2019 about the reorganisation and in particular, about the Head of Student Development role. Ms Lucas advised the claimant that HR had advised her that the claimant would need to provide a proposal as to how she felt the role could be delivered on a part-time basis. She expressed her concerns that doing such a senior job on a part-time basis may prove to be challenging to the post-holder and problematic to the teams being managed by that person. But she did not rule it out. In her proposal, the claimant would need to address the challenges that such a reduction of capacity would most likely create. She would also need to show how she met the essential criteria of the role. The claimant's notes from that meeting show that her concerns were about the uncertainty about her partner's health and what would be best now and in the future for her partner, herself and the respondent.

79. It is likely that in the discussions that Ms Lucas and the claimant had on the reorganisation and the new post, Ms Lucas did not stress the likelihood of redundancy because when this process started, the respondent hoped that no one would be made redundant and that posts could be found for all staff. The aim of the reorganisation was not to reduce headcount but to more properly focus the respondent's resources where they were most effective.

80. The claimant was unsure about her suitability for the post. She discussed with Ms Lucas whether she had enough experience in employability to be able to do the role. We find it likely that the claimant had questions as to her ability to do aspects of the role which were evident at the hearing. At points in her evidence she stated that she struggled to meet the criteria for the job because of the way that it was worded. However, she agreed that the respondent had not written the job description in a way to rule her out. Later in her evidence she stated that she had put evidence of her ability to do the job in her expression of interest. At one point she agreed that she did not satisfy the criteria for the job and yet she also

stated that she could have done the job. She complained that she had been discouraged from applying for the role but when challenged she stated that what she meant was that she had not been specifically encouraged to do so.

81. She also had a perception that Ms Lucas would not support her in getting the role. We find it unlikely that that perception was justified. Ms Lucas had previously stated that she did not know the claimant's full background and we find that she had an open mind about the claimant's suitability before receiving the claimant's expression of interest. She did have concerns about the job being a done on a part-time basis but had invited the claimant, as a senior employee of the respondent, to demonstrate in her application how she felt that this senior role can be done on a part-time basis, which they would then discuss. It was open to the claimant to put such a proposal together.

82. In an email to her trade union representative on 27 February, the claimant stated that Ms Lucas had offered support to her when she told her that she was finding the process and the uncertainty unsettling. She informed him that she had not had an answer/indication of timescales in relation to the pension quote and that this was key information in exploring her options. She expressed reluctance to apply for the Head of Student Development role for two reasons: the respondent's desire for the role to be full-time and what she described as a mismatch between her skills and experience and several aspects in the person specification. She felt that the person specification had been drafted too narrowly. She also complained about Ms Lucas' concern that working part-time could be problematic in a senior management role. She considered that Ms Lucas' perception was *'wholly negative and problem focused'*.

83. In an email exchange just before she submitted application, the claimant queried whether, if she did not apply for the Head of Student Development role that might jeopardise any other options, in particular, whether she might be seen as refusing an offer of suitable alternative employment. Ms Lucas confirmed that because the role was so different from the claimant's existing role, it could not be considered to be suitable alternative employment and therefore, if she did not apply, it would not have that effect. In her witness statement, the claimant categorised her application for the Head of Student Development role as something that she did in absence of clarity about other fallback options rather than an application she made because she felt that she had the necessary skills and was the right person for the role.

84. The claimant's application was submitted on 5 March 2019. In the email accompanying the application, the claimant stated that she was submitting it because she felt obliged to do so, *'in the absence of a definitive response in relation to my enquiry about early retirement'*. She also stated that she believed that she had the necessary skills to do the role. To address the point of how she envisaged the role been done on a flexible, part-time working basis, the claimant stated as follows:

- a. *'While I have caring responsibilities I would prefer to continue to work part-time, allowing flexibility to care for my partner and to attend chemotherapy and other appointments with her. I would be willing to consider increasing hours, change my pattern, work flexibly away from my desk at times and/or to job share. As things stand I prefer not to be the office on Fridays (as currently chemo was on 2 Fridays in 3).'*

85. She did not specifically address the job tasks and set out how those can be done on a part-time basis. She described how she met the essential criteria for the role. At the end of the application the claimant expressed a hope that a role could be found for her, which allowed her to progress her career at the respondent alongside her caring responsibilities.

86. In early March 2019, the claimant was in correspondence with HR and with the pensions team, about her eligibility for her pension. Following her initial request in the meeting on 31st January, she had been sent information about her statutory redundancy pay entitlement. She was then told that she would not be eligible for early retirement unless the respondent made a mandatory payment of £22,138.22 into the scheme and that there was no precedent of payments of this type ever being made by the respondent. The claimant was unhappy about this.

87. On 8 March, Ms Lucas and Mr Stock met to discuss the claimant expression of interest in the Head of Student Development role. In an email Ms Lucas had already expressed her preliminary view on reading the claimant's application, that she did not meet the essential criteria. She wanted to discuss it with Mr Stock first before fully making up her mind. Before their meeting, Ms Lucas sought advice from Kate Horn of HR about whether they needed to interview the claimant if they considered after discussion, that she did not meet the essential criteria for the role. Ms Horn's advice was that under the redeployment procedure, they would only be able to proceed with an application if the candidate met the essential requirements for the role.

88. At the meeting on March 8, Ms Lucas and Mr Stock agreed that the claimant did not meet three aspects of the essential criteria i.e. - experience of successful innovation in the field of employability, understanding the employment market for university graduates and, having a track record of successful partnership working in the area of employability and/or academic skills development with external agencies, educational partners, employers, students and recent graduates.

89. They both acknowledged that the claimant had extensive senior level management experience, some of which was transferable but she did not have the experience referred to above and what she did have was not drawn from a teaching background. She did not have specific qualifications or experience in relation to employability and careers and was not able to demonstrate the detailed and specific knowledge and experience relevant to the key areas for which the Head of Student Development would be responsible. They also did not believe that the gaps in the claimant's experience could be addressed through training, in a reasonable timescale. It was on those bases that Ms Lucas and Mr Stock decided not to proceed with the claimant's application for the role of Head of Student Development.

90. As they agreed that the claimant did not meet the essential criteria for the role, they did not go on to consider the issue of part-time working or job share.

91. On the advice of Ms Horn, Ms Lucas arranged a meeting with the claimant on 14 March, to give her feedback on her expression of interest and to confirm that her post would now be made redundant unless suitable alternative employment could be found for her.

92. On 14 March, the claimant and her trade union representative met with Ms Lucas, Ms Horn and Mr Stock. Ms Lucas gave the claimant feedback her application. She explained that although the claimant had some very good skills, she had not met all the essential criteria and in particular, the 3 aspects outlined above, which the respondent considered to be fundamental to the role. The claimant appeared to agree as she stated that her application had been a '*long shot*' but that in the circumstances, she made it because she wanted to keep her options open. We find it likely that she said this not because of any perceived issues with working part-time but because she recognised that she did not have the skills, particularly the employability and career knowledge and experience required for the role.

93. Ms Horn confirmed that the formal consultation had now ended and that the claimant's role would most likely be made redundant with effect from 31 July 2019. This would give the claimant longer than her contractual 3 months' notice. The claimant was told that she would now be placed on the redeployment register. She was advised that she would be sent a link to the redeployment register and also, details of any redeployment opportunities as these came through. It would then be up to her to let Ms Horn know if there were any jobs that were of interest to her and which she wished to be considered for. The claimant agreed that she would do so. The claimant asked again about her pension and whether she could take early retirement. They had a discussion about the mandatory payment required to make that happen, which the claimant had previously been advised of and which, at this stage, the respondent considered too large to make. She was told that the Head of HR had decided not to approve the payment. The claimant expressed her unhappiness about this and asked for that decision to be reconsidered, now that her position had been confirmed as redundant.

94. The claimant also asked about the Head of Student Services role, which had last been discussed with her in the consultation meeting on 31 January. Ms Lucas stated that no decision had yet been taken about creating this role, and that it was part of the ongoing consultation on the new structure. She expected the final structure for Student Development to be released in mid-April. She stated that she would update the claimant at that time. She also stated that the potential new role was seen as a full-time role. Again, that related to the role rather than to headcount which meant that it would have been possible for more than one person to make up a full-time role.

95. We find it unlikely that Ms Lucas would not have been in a position to discuss a job description for the Head of Student Services at this point as one had not yet been drafted. She had ideas as to what teams she wanted to put under the remit of the Head of Student Services but it had not yet been finalised. It depended on the other reorganisations that were going on at that time. Ms Lucas did not consider it appropriate to discuss aspects of the job description with someone who might be interested in the role when other potential applicants would not have had the benefit of such a discussion. She wanted to wait until she had approval to go ahead with the role and an approved job description before discussing it with potential applicants, such as the claimant.

96. The claimant was upset at this meeting. It is likely that the possibility of her career at the University coming to an end was upsetting for her, as well as

the respondent's position on the mandatory pension payment which at that point it had decided not to pay. She referred to the respondent's decision to create a role for her in August 2015, when she returned to work after a period of unpaid leave to allow her to support and care for her partner. In contrast, she felt that the way she was being treated this time was potentially discriminatory and she stated that she wanted to consider her options.

97. The respondent confirmed to the claimant in a letter dated 27 March that her role would be made redundant from 31 July 2019 and in the interim, she would be placed on the redeployment register. If she was interested in any roles on the register, she would need to submit an expression of interest outlining why she felt that she fulfilled the essential criteria of the role. That would be forwarded to the hiring manager prior to the role being advertised. She was also asked to keep a check on the website for vacancies at her current grade or at Grade 9 and let HR know if she wanted to apply for anything. She was also advised that if she was successful in applying for a role on the redeployment register, she would be appointed to it on a 60 working day trial. The letter included details of the redundancy payment that she would receive and she was informed of her right of appeal against dismissal.

98. There was further correspondence between the claimant and Kate Horn about the claimant's entitlement to take early retirement and to access her pension. The respondent had been under a misunderstanding that it could decide whether to allow the claimant to access her pension and that the mandatory payment would only be triggered, if it allowed her to retire early. Eventually, the respondent was advised that its initial understanding was incorrect and that the claimant could access early retirement without its permission and that if she did so, the mandatory payment had to be paid.

99. In an email dated 29 March, Kate Horn confirmed to the claimant that she was able to take early retirement and that the respondent would pay the mandatory payment. She apologised to the claimant for the distress that the delay and confusion about her entitlement would have caused her. She stated that she would continue to check the redeployment register for alternate opportunities and would contact the claimant accordingly.

100. On 1 April, while on leave, the claimant emailed Ms Horn. She stated that on balance, and in light of her partner's declining health, she wanted to take early retirement to enable her to care for and spend as much time as possible with her partner. She asked for the paperwork to be prepared to enable her to do so. She also stated that she wanted to discuss with Ms Lucas/Mr Stock whether it was possible for her to handover her existing work and projects earlier than 31 July. The claimant gave a clear indication that she wanted to leave the respondent's employment as early as possible. At the time, the claimant's life partner was seriously unwell and she stated that she wanted to ensure that she did not spend the last few months of her partner's life working out her notice.

101. In an email dated 5 April to HR, Ms Lucas asked why the respondent was prepared to agree to the claimant retiring early at this point because as far she was concerned, firstly, the claimant would not be redundant until 1 August and secondly, in the interim; the respondent was seeking to prevent that from happening via redeployment. Ms Lucas expected the claimant to find alternative employment via redeployment, elsewhere in the University. Ms Palmer of HR

responded to say that early retirement for the claimant was possible because she had already been given notice of redundancy.

102. In a later email dated 23 April, the claimant made some corrections to the respondent's minutes of the 14 March meeting but stated that any changes to the notes now felt quite academic to her. She concluded by stating that she wanted to focus on confirming arrangements for her retirement as soon as possible. She did not mention redeployment or any other jobs.

103. During her evidence in the hearing, the claimant accepted that as a senior manager, she would have known that opportunities for redeployment would not have continued beyond the end of her employment. At the time, the claimant did not raise this issue with the respondent as it had not occurred to her. She did ask to be paid notice pay up to the end of her notice period of 31 July, even if she left early. The respondent considered but was unable to agree to that proposal. In the hearing the claimant referred to one of the respondent's former employees who she believed had been placed on gardening leave after being made redundant. She accepted that the particular individual had been disruptive, which meant that it was reasonable for the respondent to have chosen on that occasion to put him on gardening leave rather than have him present at work while working out his notice. It was not the respondent's general practice to have employees on gardening leave up until their end date. The respondent's other concern was that the claimant's role was not actually redundant until 1 August 2019, which was when the restructuring involving Student Life and Student Services were due to be completed.

104. After discussion with Mr Stock, Ms Lucas decided that she could bring certain parts of the restructure forward to enable the claimant to be released earlier than 31 July. There was also the pension position to be considered. Ms Lucas enquired whether moving the date forward would cause a problem with the claimant's pension. After seeking information from the pension section, Ms Horn confirmed that the claimant's leaving date could be brought forward without compromising the pension position. Lastly, the respondent considered the claimant's notice period. Her entitlement was to a three-month notice period. The respondent considered how it could bring her end date forward as she requested, without reducing that period, which would not have been in her interest. The respondent was doing all it could to support the claimant and bring her end date forward as she requested, while managing the restructure and provide the service.

105. On 23 April, on her return from leave, the claimant met with Ms Lucas. They agreed that if they treated the claimant's notice period as having started on 14 March when the claimant was informed that she did not meet the essential requirements for the post of Head of Student Development and would therefore be made redundant; the three-month period would end on 14 June. They were therefore able to agree a leaving date of 14 June, which Mr Stock later agreed to. The respondent agreed to work with the claimant in order to make that date work because it was what the claimant wanted.

106. At this time, Ms Lucas' focus was to do all she could to facilitate what the claimant had asked for, which was for her to be able to take early retirement and for her end date to be earlier than 31 July. She did so with HR's input and within the reorganisation/restructure that she was also managing.

107. At that meeting they briefly discussed the Head of Student Services role. Ms Lucas informed the claimant that although she intended to fill the role eventually, funding was not yet available. The claimant was told that the role may come back in a later iteration and that Ms Lucas was hopeful that she could bring it to fruition, but she did not know when this was likely to happen.

108. Ms Lucas' evidence was that making the new role happen was not wholly within her gift. In the first instance, there needed to be a written brief rationale for the structure/role which had to be taken through the planning process i.e. to the Registrar and Secretary. There would be discussions on and approval of the rationale and of the costs. Only if there is a green light at that stage and if the budget is affordable, would the process then move on to HR to get a job description drawn up, consulted on and agreed. That would be the point when the job description could be discussed with potential applicants.

109. The new structure was confirmed on 1 May. It did not refer to the Head of Student Services post.

110. It is likely that it was in the middle of May that confirmation was given of funding/costings for all the new posts arising from the Student Development restructure, which this time included the Head of Student Services role. The respondent then finalised the job description and subjected the role to its job evaluation process.

111. The claimant remained unhappy that the respondent would not agree for her to be on garden leave until 31 July and she raised this with Lucy in the pension team. Kate Horn was told about this. There was some correspondence by email at the beginning of May on this matter between Ms Horn and Ms Lucas. Because of the restructuring and the need to ensure a smooth handover, the respondent was unable to agree to the claimant going on garden leave. There was no precedent for it. The claimant's end date was agreed at 14 June and she was to be paid up to that date.

112. The role of Head of Student Development was advertised externally and an appointment was made in June 2019. This appointment was not made solely by Ms Lucas but by an interview panel. The successful candidate had been working as a Deputy Head and Acting Principal of a school. He had experience as a teacher and demonstrated that he had direct knowledge of the skills gap home students might arrive at university with. The respondent confirmed that although the successful candidate did not have experience of higher education, he did have experience of employability and skills development - especially skills development for A-level students - which was relevant to first-year degree students - bridging the gap between school and higher education. In the hearing, the claimant accepted that he did have the skills necessary for the job.

113. The claimant was unhappy about the way her leaving was announced to her colleagues. In an email discussion about the announcement that was going to be made regarding her leaving event, the claimant asked for it to say that she was leaving because her post was redundant or, as a result of a restructure. She did not want the respondent to say that she was leaving to spend more time with her partner.

114. Before she left, the claimant met with the Head of Equality and Diversity to express her concerns about what she felt was a changed attitude within the

Academic section towards part-time and flexible working. It was this office that was later responsible for conducting the survey referred to above, of the respondent's staff on their experience of the part-time/flexible working policy.

115. On 6 June, the claimant had an exit interview with Bryn Morris - the respondent's Registrar and Secretary - which she had requested. They discussed her overall experience of working for the respondent for many years, the most recent restructure and the process she went through when she expressed an interest in the post of Head of Student Development. She complained about what she saw as a mismatch between respondent's published policy on flexible working and the lack of encouragement/imagination regarding flexible working in senior roles. She told him that she believed the respondent had been '*mean-spirited*' in the way it handled the issues of the mandatory payment to allow her early retirement, the decision to pay her the statutory minimum redundancy payment and its refusal to pay her notice pay while it allowed her to leave early. They also discussed some of the interesting and challenging projects they had worked on together. Mr Morris thanked her for her commitment to the respondent, for been a valued colleague and for her loyal service. During that meeting, the claimant confirmed that she had heard nothing further about the Head of Student Services role and expressed her disappointment that it had not formed part of the final structure.

116. Afterwards, on the same day, the claimant had a final handover meeting with Ms Lucas. There was a dispute between the claimant and Ms Lucas as to whether they had a brief discussion on the Head of Student Services role during that meeting. The claimant did not recall it being discussed but Ms Lucas' evidence was that she told the claimant that it had been given budget approval and would soon be advertised. She recalled telling the claimant that a job description was being finalised. That was the situation around that time as budget approval for the post was obtained in mid-May. She also recalled that the claimant did not ask any follow-up questions about the job or make any further enquiries. We find it likely that this conversation happened.

117. A few days later, on 11 June, while the claimant still at work and employed, Ms Lucas sent an email to the Academic section. In it she referred to the new Student Development team that was to start on 1 August and announced the appointment of the new Head of Student Development. She also stated that the respondent would soon be recruiting to a brand-new Head of Student Services role '*in due course*' and that in the meantime, the Student Services and Student Experience teams would be managed by Angela Jones (Head of Student Support). Ms Lucas's evidence was that she did not write directly to the claimant about the job because she had spoken to her the week before about it and the claimant had not shown any interest. She confirmed that it would have been a relevant redeployment position for the claimant, had she been in employment when the recruitment started.

118. The claimant confirmed in the hearing that she received this email. Whether or not she had a conversation with Ms Lucas on 6 June about it, she had spoken to Mr Morris about it. However, she did not follow up this email with any contact to HR or to Ms Lucas.

119. The claimant's final day of work was 13 June.

120. In July, the claimant applied for and was appointed to the role of Clerk to Ardleigh Council. She took up that role in September.

121. In late August, the claimant noticed that the Head of Student Services job was advertised on the respondent's website. The closing date was 15 September, which meant that the claimant had enough time to apply for the job. The claimant sought advice from ACAS and wrote to the respondent HR on 29 August to tell them that she was aggrieved that she had not been considered for the role since she believed that it incorporated all the areas that she had been managing before leaving the respondent. She stated that she believed that she had been disadvantaged because she needed to work part-time because of her partner's disability. She referred to what she considered to be '*open hostility*' from Rachel Lucas to part-time working, the respondent's initial refusal to pay the mandatory employer payment and what she referred to as the respondent's '*mean-spirited*' way in which it dealt with the whole process. She referred to possible successor rights to the Head of Student Services post and stated that she felt that the way that she had been treated was discriminatory and that she was considering taking legal action against respondent.

122. She did not ask to be allowed to apply for the job, or to be interviewed for it.

123. It took some time for the respondent to provide a full response to the claimant as Ms Lucas was a holiday at the time that HR received her email. Also, the HR officers who had supported the restructure, were also on leave.

124. We had copies of emails between various members of the HR team and Richard Stock, in the bundle of documents as they gathered information together in order to respond to the claimant's complaint. The timeline set out in Hannah Lamb's email of 4 September confirmed that the post was part of the proposal set out in the formal consultation document dated 4 March, which made it a possibility at that time rather a certainty. At the time, the budget had not yet been agreed.

125. The new structure was approved on 1 May but funding for the Head of Student Services post was not approved until 13 May. She referred to Ms Lucas' email of 11 June, which was sent to everyone in the Academic section and announced the recruitment to the post. The post was advertised on 1 August, with a closing date of 15 September. On 17 September, on her return from leave, Ms Lucas also set out a timeline in an email to HR to assist them in formulating a response to the claimant. She confirmed that she had spoken to the claimant in March to let her know that although there was no budget for the post, she was expecting it to happen. She recalled actively discussing the post with the claimant on more than one occasion, including the meeting on 14 March and subsequently. She also confirmed that she was not hostile to part-time working but that she had pointed out in meetings with the claimant that with senior roles, it was appropriate to expect the person proposing flexible/part-time working to be able to show how those roles can be done on that basis.

126. On 24 September, Sara Limerick from the respondent's HR, responded to the claimant. She stated that the claimant would not necessarily have had a successor rights to the Head of Student Services role but this was a preliminary view because no one had as yet carried out an assessment of the two roles. She addressed the point the claimant made about the possibility of doing the Head of

Student Development role on a part-time/flexible working basis. She also informed the claimant that as she received the email with the confirmation of the Head of Student Development role on 11 June, before her leaving date of 13 June; there had been time before her employment terminated, for her to express an interest in the role through redeployment.

127. She concluded the email by informing the claimant that as the advert had only just closed, she would be given an opportunity to indicate whether she wished to be considered and must do so by the end of the week, 27 September. The claimant should bear in mind however that if she did so, this would have implications for her pension and the redundancy payment she had already received because if she was successful and appointed under the redeployment policy; she would no longer be redundant or retired.

128. Although the claimant had been advised by Ms Limerick that she had to indicate her interest in the job by 27 September, she did not respond to email until late in the day on 27 September. We noticed that the claimant's email, which was headed '*without prejudice*' was timed at 16.52, which was likely to have been towards the end of the working day. The claimant waived privilege with regard to this email in the hearing. In the email, she told the respondent that she had started a new part-time job, which she was reluctant to give up. She then set out conditions which she wanted met before she would '*proceed further*'. Those conditions were: the respondent would agree to her being slotted into the role without having to go through a competitive process, and the respondent would agree to her doing the role on a part-time, job share basis for one year in the 1st instance. She then set out her reasons for insisting on those pre-conditions, which were that she felt that she had successor rights to the Head of Student Services role and that doing the job on a part-time, job share basis would meet her personal needs.

129. If the respondent was not able to agree to those pre-conditions, the claimant stated that she wanted the reasons set out in writing. She also stated that she was going to continue with the ACAS early conciliation process which she started on 12 September.

130. It was not clear to the respondent that this was the claimant's expression of interest in the role. An email headed '*without prejudice*' would not be considered an application for a job. We find it likely that by the time she responded to the email on 27 September, the claimant was ambivalent about whether she wanted to submit an expression of interest in this role. We say this because of how late in the day she sent the email and because she put two pre-conditions on it before she could be considered. It was not clear whether she was waiting for an agreement to those pre-conditions before then submitting an expression of interest. It never got to that point as by that time, the post had been filled. In live evidence, the claimant stated that if they had agreed to her preconditions, she would have been prepared to complete an application form, if she had been asked to do so. She wanted agreement about part-time working before she applied. That indicated to us, that the email 27 September was not an application for the job. The claimant's ACAS conciliation certificate was issued on the same day, 27 September.

131. The exact date when the Head of Student Services role was filled was unclear. When the respondent replied to the claimant's email on 8 October, HR told her that by the date of the last email exchange, the role had already been

filled. Ms Limerick also stated that it would not have been possible for the claimant to be slotted in as that would be part of the redeployment process and as the claimant was no longer an employee, she could not be redeployed. She also stated that the new role was not an exact match to the claimant's previous role which had focused specifically on Student Engagement. The new role brought a number of re-shaped services together under the remit of Student Services. She stated that the claimant would not have had successor rights to the Head of Student Services role. In relation to the part-time working request, she stated that this could not be guaranteed for every job and was something that should be discussed with the relevant manager once a person was appointed. The claimant did not respond to this email.

132. We had some evidence on the respondent's slotting in process or rights to succession. The rights to succession are set out in the respondent's '*managing structural change, employment protection and redundancy*' policy. We had a copy of it in the trial bundle. As part of the introduction it stated as follows:

- a. *This agreement sets out the principles and procedures which will be followed in the event of the need to reduce staff numbers or of organisational change which affects staff employed by the University. These arrangements do not signal any change to the policy of using best endeavours to avoid the need for redundancy. This policy is to deal with, inter alia, any need to reduce the number of employees by means other than redundancy, wherever possible'.*

133. Successor rights were dealt with at section 12.3.1, which stated as follows:

- a. *'Where a post in the new structure identifiably includes a majority of each of the essential elements of the duties of a post identified as affected by structural change (including, in relation to post within the academic staff, the necessary subject expertise required of the post-holder) the current post-holder will have successor rights to the new post. Restructuring may mean that there is more than one person with successor rights. When current post-holders are identified as affected by the change, HR staff will hold informal discussions with them to gather information to determine those rights.....The purpose of those discussions will be to identify and assess the post holder's skills and qualities in line with criteria outlined in the standard job description. This will provide objective evidence from which to compare the post-holder's skills with a majority of each of the essential requirements of a post that will exist after restructuring and to identify where successor rights lie'.*

134. The policy provided a form which a member of staff who was at risk would need to complete and submit to HR to begin the process. If there is only one successor to a new post, s/he would be asked to attend a '*slotting in*' interview with the relevant manager. The purpose of the interview would be to discuss the changes in the job and what that might mean in terms of new expectations for the post-holder. It will also allow the staff member to ask questions about the new post and to agree any new objectives and development needs. Following that meeting, the person would be appointed to the post.

135. The policy also set out a procedure to be applied if there was more than one successor. The final decision regarding appointment of a successor would

be made by the Executive Dean/Registrar or Secretary. Of paramount importance to the respondent, as set out in the policy was that the individual who is appointed is able to fulfil the duties described in the job description and has the attributes set out in the person specification.

136. Section 13 of the policy dealt with jobs without successor rights/special cases and stated as follows:

- a. *'Some Jobs are likely to be completely new and will hold no resemblance to any post within the old structure so that no member of staff can claim successor rights. Similarly, whilst some posts may have some similarity to "old" posts, the similarity will not be sufficient to allow slotting in (see paragraph 12.3) to occur. These posts will be filled following advertisement in accordance with the University's Recruitment Procedure. Staff whose posts are directly affected by structural change will be given priority consideration for these posts....'*

137. Ms Lucas' live evidence was that in her department, in assessing whether someone has successor rights, they would not only rely on the job description but would also consider any duties that the jobholder had actually doing. It was her position that this was a new role and that successor rights did not apply.

138. At the end of her witness statement, the claimant spent some time comparing the role that she was doing at the end of her employment, Deputy Director of Student Life/Head of Student Engagement and the role that she felt that she had succession rights to, that of Head of Student Services. This was an initial review which the claimant conducted by simply comparing job descriptions. In doing so, the claimant did not look at her job history. This was not a process that occurred during her employment but one that she did for the tribunal hearing. The respondent's position in the email of 24 September was that the claimant would not necessarily have had successor rights to the Head of Student Services role because the role was much broader than her previous role. The respondent had not carried out the comparison exercise referred to in the policy, during the claimant's employment. In the hearing, Ms Lucas stated that she carried out the exercise in relation to this claim but that she had not done so at the time. We did not have any documents related to this process.

139. At the end of the process, we find that some of the tasks that the claimant managed such as Student Voice and the survey were transferred into the team and Hannah Gott went across to support that work. The respondent considered that Student Voice needed some strategic direction which had not been done for some time and November 2018, the Academic section put in a bid for another post to look at Student Voice strategically. The Student Voice manager started in post at the beginning of 2019 and worked on that during the last 6 months of the claimant's employment. Ms Lucas' evidence was that the STEP project completed as she was coming into her role. Other elements of work that the claimant managed/supervised such as data analysis which transferred to the planning and data insights team or other teams were transferred to the Student Development team, and the Academic departments. The tribunal was also aware that some of the fixed term projects which the claimant managed would have ended by the time that the Student Services department came into being.

140. The claimant completed the ACAS conciliation process between 12 and 27 September 2019. Her ET1 complaint form was issued on 25 October 2019.

Law

141. The Claimant's complaints were of unfair dismissal and indirect sex discrimination.

Unfair redundancy dismissal

142. Section 98 of the Employment Rights Act 1996 (ERA) sets out the law on unfair dismissals. Redundancy is a potentially fair reason for dismissal (section 98(2)(c)). The Tribunal is firstly concerned with determining the real reason for the dismissal. The burden is on the Respondent to prove the reason why it dismissed the Claimant and that it was for redundancy. Under section 98(4), the determination of the question whether the dismissal is fair or unfair, having regard to the reason that the respondent has proved; 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. This should be determined in accordance with equity and the substantial merits of the case.

143. In her submissions, the claimant disputed that there was a redundancy situation here. She complained that most of her duties are still being done at the respondent and therefore, there was no diminution in the requirement for work of the kind carried out by her and therefore no redundancy situation. This was not something that she raised when she was notified of the redundancy situation, whilst employed, but it was in her ET1 claim and in the list of issues. It was not in addressed in her witness statement.

144. Section 139 ERA states that an employee is dismissed by the employer by reason of redundancy if, the dismissal is wholly or mainly attributable to

- (a) the fact that the employer has ceased or intends to cease –
to carry on the business for the purposes for which the employee was employed by him, or
- (ii) to carry on that business in the place where the employee was so employer, or
- the fact that the requirements of that business –
for employees to carry out work of a particular kind, or
- (iii) 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.

145. The respondent referred to Cairns LJ's statement in the case of *Abernethy v Mott, Hay & Anderson* (1974) IRLR 213, as follows: "a reason for dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which caused him to dismiss the employee."

146. That was cited with approval in the case of *Beatt v Croydon Health Services NHS Trust* (2017) EWCA Civ 401 where Underhill LJ stated that the

essential point is that the 'reason' for a dismissal connotes the factor or factors operating on the mind of the decision-maker which causes them to take the decision or what *motivates* them to do what they do. (My emphasis).

147. In the case of *Safeway Stores v Burrell* (1997) ICR 523 EAT, Judge Peter Clark emphasised that the question for a tribunal is not whether there has been a diminution in the work requiring to be done. It is the different question of whether there has been a diminution in the number of employees required to do the work. Where one employee was now doing the work formerly done by two, the statutory test of redundancy had been satisfied, even where the amount of work to be done was unchanged. As Judge Bourne stated in the case of *Berkeley Catering Ltd v Jackson* UKEAT/0074/20, 'it is open to an employer to organise its affairs so that its requirement for employees to carry out particular work diminishes. If that occurs, the motive of the employer is irrelevant to the question of whether the redundancy situation exists.'

148. Even if the claimant's post was redundant, the Tribunal then has to consider whether that was the real reason for her dismissal and if so, whether the decision to dismiss her was within the band of reasonable responses which a reasonable employer could adopt or whether the respondent in all circumstances, acted reasonably (section 98(4) ERA).

149. Guidance was set out in the case of *Williams v Compare Maxam Ltd* [1982] IRLR 83 the EAT to assist tribunals in determining whether a dismissal for redundancy is fair under section 98(4). Tribunals were advised to consider whether:

- a. the employee was given as much warning as possible to enable her to take steps to inform herself of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment;
- b. the employer consulted the union, if applicable, and sought to agree with them or if not, the employees, the criteria to be applied in selecting employees to be made redundant;
- c. the employer sought to establish criteria that did not depend solely on the opinion of the person making the selection but which could be objectively checked i.e. on attendance records, experience or length of service;
- d. the employer sought to ensure that the selection was made fairly in accordance with these criteria and considered representations made to it;
- e. the employer sought to see whether instead of dismissing an employee he could offer her alternative employment.

150. Although these were not principles of law but guidelines and standards of behaviour which may alter over the course of time, the courts have confirmed that they are a measure of the fairness of the employer's decision. As has been stated in the case of *Polkey v A E Dayton Services* [1987] IRLR 503

“...in the case of redundancy, the employer will not normally act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation.”

151. Procedural failings will therefore render a dismissal unfair even if the employee would definitely have been dismissed in any event had the procedural breach not occurred. The question of how the employee would have been treated had a fair procedure been adopted is relevant to the question of the appropriate remedy due and even, whether any compensation should be awarded at all.

152. The claimant submitted that the consultation was inadequate and there been no systemic discussion of her skills and experience derived of many years of employment, no consideration of part-time working as possible and no proper consideration of the relationship her existing roles bore to the anticipated Grade 10 vacancies.

153. Harvey noted that tribunals cannot substitute their own principles of selection for those of the employer. They can interfere only if the criteria adopted are such that no reasonable employer could have adopted them or applied them in the way in which the employer did.

154. There must be evidence that the employer took into account the characteristics of his employees when determining who to select. Referring to the guidance from *Williams* set out above, it is important that the criteria chosen for determining the selection should not depend solely on the subjective opinion of a particular manager but should be capable of at least some objective assessment.

Indirect sex discrimination

155. Section 19 of the Equality Act 2010 (EA) prohibits indirect discrimination, which it describes as follows:

‘(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

(2) For the purpose of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if

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A applies, or would apply, it to persons with whom B does not share the characteristic, It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, It puts, or would put, B at that disadvantage, and A cannot show it to be a proportionate means of achieving a legitimate aim.

156. Sex is one of the relevant protected characteristics.

157. The Supreme Court held in *Essop and others v Home Office (UK Border Agency): Naeem v Secretary of State for Justice* [2017] IRLR 558 that there is no requirement for an explanation of the reasons why a particular PCP puts one group at a disadvantage when compared with others. It is enough that it does. Indirect discrimination, unlike direct discrimination, does not require a causal link between the characteristic and the treatment but does require a causal link between the PCP and the particular disadvantage suffered.

Burden of proof

158. The burden of proving the discrimination complaint rests on the employee bringing the complaint. However, it has been recognised that this may well be difficult for an employee who does not hold all the information and evidence that is in the possession of the employer and also, because it relies on the drawing of inferences from evidence. Section 136 of the Equality Act 2010 addresses that and follows on from the cases of *Igen v Wong* and other authorities dealing with the shift in the burden of proof. Section 136 provides that:

“(1)..

(2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

(3) *But subsection (2) does not apply if A shows that A did not contravene the provision.”*

159. In the case *Laing v Manchester City Council* [2006] IRLR 748, tribunals were cautioned against taking a mechanistic approach to the proof of discrimination in following the guidance set out above. In essence the claimant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an unlawful act of discrimination. The tribunal can consider all evidence before it in coming to a conclusion as to whether or not a claimant has made a prima facie case of discrimination (see also *Madarassy v Nomura International plc* [2007] IRLR 246).

160. In every case, the Tribunal has to determine why the claimant was treated as she was. This will entail, looking at all the evidence to determine whether the inference of unconscious or conscious discrimination can be drawn. As Lord Nicholls put it in *Nagarajan* “*This is the crucial question*”. It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.

161. Inferences can also be drawn from surrounding circumstances and background information. The Tribunal must consider the totality of the facts.

162. How the burden of proof principles are to be applied was dealt with in the case of *Bethnal Green and Shoreditch Education Trust v Dippenaar* [2015] UKEAT 0064/15; referred to us by the respondent. In that case it was held that the provision, criterion or practice must be shown to exist before any question arises of applying the statutory burden of proof. The tribunal must identify the PCP and be satisfied that it was adopted by the respondent, before proceeding any further.

163. *Harvey* stated that usually, a PCP will be a state of affairs that have an element of repetition. Although it is possible for a one-off event to constitute a PCP, this is only likely to be so if that event is at least capable of applying again and/or applying to other employees. In the case of *Ishola v Transport for London* [2020] EWCA Civ 112, it was stated that for a PCP to be established, there must be some form of continuum in the sense of how things generally are or will be done by the employer.

164. In *Dippenaar*, it was also stated that 'practices' as distinct from 'provisions' or 'criteria' involve repetition of conduct, or at least the anticipation of repetition. Also, the EAT confirmed that rumour was insufficient proof of practice.

165. The respondent submitted that the claimant could not show that it was more likely than not that the respondent applied any of the PCPs pleaded and itemised in the list of issues. The respondent also submitted that the claimant was only entitled to rely on the pleaded PCPs and the pleaded disadvantages (*Chandok v Tirkey* [2015] IRLR 195). The claimant confirmed in her submissions that she no longer pursued the PCP referred to at 3(a). She accepted that there was no universal requirement that managers at Grade 8 and above work full-time. She submitted however, that the Tribunal could properly infer from the evidence that the respondent applied one or more of the PCPs at 3(b) - (d) and in doing so, made it difficult to work part-time in senior roles (that is, roles at Grade 8 and above) in Student Life.

166. If the tribunal find that there is/are PCPs, then we need to look at whether it/they put or would put, persons with whom claimant shares the characteristic, at a particular disadvantage, when compared with persons with whom she does not share it. The claimant referred in the hearing to the proposition that in society, women are more likely than men to have caring responsibilities, not just in relation to childcare but more generally for people whose care needs arise from disability and old age. The respondent did not dispute that as a proposition although it was submitted that the claimant still had to prove all the elements of her claim i.e. that there was a PCP, that it was applied to her, that it would put women at a disadvantage and that she in particular, was put to that disadvantage. The tribunal took judicial notice of the proposition.

167. In summary, in applying the burden of proof, the tribunal must firstly decide whether the PCPs relied on by the claimant existed and were applied. The burden of doing so rests on the claimant. The claimant then has to prove that persons of her sex were put at a particular disadvantage compared to men and that,(section 23 EA), at both the group and then the individual stage, the circumstances of the men and women were the same or not materially different.

168. Section 23(1) EA states that on a comparison of cases for purposes of

section 19 there must be no material difference between the circumstances relating to each case.

169. In her claim, the claimant challenged the criterion for working at grade 8 or above, therefore, the pool for comparison will be those people who would be eligible for those jobs, if the criterion in question had not been applied. In applying section 23 EA, the circumstances of all of those must be the same or not materially different.

170. If the burden does shift, the employer is required only to show a non-discriminatory reason for the treatment in question; the employer is not required to show that he acted reasonably or fairly in relying on such a reason; see the case of *Griffiths-Henry v Network Rail Infrastructure Ltd* [2006] IRLR 865 para 22.

171. Here the respondent relied again on the judgment in *Essop* in which it was said that *'it must be open to the respondent to show that the particular claimant was not put at a disadvantage by the requirement. There was no causal link between the PCP and the disadvantage suffered by the individual: he failed (the test) because he did not prepare, or did not show up at the right time or in the right place to take the test, or did not finish the task. A second answer is that a candidate who fails for reasons such as that is not in the same position as a candidate who diligently prepares the test, turns up in the right place at the right time, and finishes the tasks he was set. In such a situation there would be a "material difference between the circumstances relating to each case", contrary to section 23(1), referred to above.'*

Applying law to facts

172. The Tribunal will now apply the law set out above to the facts that it found from the evidence. In doing so, the Tribunal will refer to the agreed list of issues.

173. Unfair dismissal (s.98 Employment Rights Act 1996)

- a. Did the Respondent have a potentially fair reason for dismissing the Claimant? The Respondent relies upon redundancy as the reason for dismissal the claimant in accordance with section 98(2)(c) ERA.**

174. It is this tribunal's judgment that there was a redundancy situation in relation to the claimant's post of Deputy Director of Student Life/Head of Student Engagement.

175. After extensive discussion within the University, consideration of consultation papers and submission of reports to the University Steering Group, the Registrar, Secretary and other stakeholders; the respondent decided to combine the three Grade 10 posts of Head of Student Engagement, Head of the Talent Development Centre and the Head of Employability and Careers into the single post of the Head of Student Development.

176. Some of the areas the claimant had previously managed had come to an end while other areas remained and continue to be done within the Student Service/Academic Section. As stated in *Safeway Stores v Burrell* cited above and in *Berkeley Catering Ltd v Jackson*, the respondent was entitled to re-organise its

affairs so that it required a reduced number of Grade 10 managers to carry out the work. Whether or not the work had reduced, through the restructure the respondent now had a diminution in the number of employees required to do it.

177. While the claimant was employed, she had not disputed the existence of redundancy situation. She attended the consultation meetings and had many discussions with Ms Lucas about the situation and responded in writing to the consultation document and at no point did she dispute that there was a redundancy situation. She did challenge the existence of a redundancy situation in her ET1 complaint form to the tribunal but did not do so in her witness statement.

178. This was one of a number of reorganisations within the respondent's Student Services/Academic Section. The purpose of the reorganisation was to implement the respondent's new vision for supporting student development and student well-being services. Some parts of the service – such as Well-Being – were trimmed, while the student engagement team was refocussed towards employability and careers. The respondent decided that instead of three heads of department, they wanted to only have one Head of Student Development. It is open to the respondent to decide for business reasons to reduce the number of managers in the service.

179. In all the circumstances, it is our judgment that there had been redundancy situation in relation to the claimant's former role of Head of Student Engagement.

a. If so, was the decision to dismiss the Claimant within the band of reasonable responses which a reasonable employer could adopt?

180. Under this heading the tribunal has to consider whether redundancy was the reason for her dismissal and whether the respondent acted reasonably in all the circumstances when she was dismissed.

181. It was accepted that the claimant had been dismissed.

182. The claimant makes no complaint about her selection for redundancy.

183. The claimant submitted that between January 2019 and 14 June 2019, the respondent failed to take reasonable steps or the steps required by its own policy, to find alternative work for her. In particular, she claims successor rights to the grade 10 Head of Student Services.

184. At the very 1st consultation meeting on 31st January, the claimant asked about redundancy and early retirement. She continued to ask about redundancy and retirement in all her correspondence and meetings with the respondent thereafter.

185. In this restructure, the respondent did not intend to reduce headcount and it was expected the claimant would find alternative employment through redeployment, within the University, even if she was unsuccessful in an application for the role of Head of Student Development. Ms Lucas did not expect her to be made redundant.

186. The claimant submitted an expression of interest in the Head of Student Development role, which had been ring-fenced for her. She did not demonstrate in that form that she had the experience, skills and knowledge in employability and careers nor in academic skills development with external agencies; that the respondent considered that it required.

187. When the claimant wrote to the respondent on the 1 April 2019 and stated that '*on balance*' she had decided to take early retirement to enable her to care for and spend as much time as possible with her partner; the respondent accepted that as the claimant's considered decision. This came shortly after the respondent confirmed that the claimant could take early retirement and that it would pay the mandatory payment to facilitate that.

188. This was not a decision made in the heat of the moment or taken hastily in a high-pressured meeting or in a similar circumstance. The respondent had no reason not to accept the claimant's motive in asking for early retirement.

189. In the beginning, the claimant expressed a desire to consider all options. However, we considered the contents of her emails to her trade union representative on 27 February, to Rachel Lucas on 28 February and the email dated 5 March which accompanied her expression of interest in the role of Head of Student Development. In our judgment, they all indicated that the claimant was more interested in the possibility of early retirement/redundancy as opposed to the Head of Student Development job or redeployment.

190. At the meeting on 14 March, it is our judgment that the claimant acknowledged that her application had been a long shot because she knew that her application had not demonstrated that she had the knowledge, skills and experience required for the Head of Student Development role. Although the respondent put her on the redeployment register and told her how it would work, at no point did the claimant ever enquire about any posts on the register, or contact Ms Horn to say that she had found another post which was suitable for her or to complain that she had heard nothing from her about redeployment. She never made a complaint that she had looked on the register and there was nothing suitable for her.

191. When Ms Horn contacted the claimant on 29 March to confirm that the claimant was able to take early retirement but that she would continue to look for redeployment opportunities for her, the claimant never responded to follow that up. Instead, she opted for the early retirement option.

192. It is our judgment that after 1 April 2019, the claimant expressed a settled intention to take the early retirement option to enable her to care for and spend as much time as possible with her ailing partner.

193. In a subsequent email on 23 April the claimant stated that she wanted to focus on confirming arrangements for her retirement. She did not ask about redeployment or about the Head of Student Services role although that did form part of the discussion that she had with Ms Lucas on the same day.

194. She had been told about redeployment and her right to be sent vacancy lists as well as identify job opportunities for herself. Ms Lucas had earlier told the claimant that she wanted to have a Head of Student Services role in her department and that although it could not be created straightaway, it was something that she still wanted to do. The claimant had all that knowledge when she decided to choose early retirement. That choice was clearly indicated in her 1 April email.

195. After they received that email, HR did what it could to try to facilitate that and her redundancy.

196. In our judgment, the claimant discussions with Ms Horn and Ms Lucas from then on mainly related to her desire to leave the respondent as quickly as possible and to not doing anything to jeopardise her pension and early retirement.

197. Although it is likely that she did, we are not able to say for certain that Ms Lucas told the claimant on 6 June that she was about to recruit to the post of Head of Student Services. However, it is clear that the claimant received the email of 11 June notifying her that the respondent was now going ahead with this role. She did not follow it up with any enquiry to HR or to Ms Lucas. This was the role that she was waiting for and which she complained about to Mr Morris. Yet when she was told that it was about to become a reality, she did not express any interest in it.

198. While the claimant was employed, there was no job description for the Head of Student Services role and nothing over which consultation could have taken place. In our judgment, it was therefore reasonable for the respondent not to have consulted with the claimant over that job.

199. It is our judgment that the consultation was adequate. In the 1st consultation meeting on 31st January, the respondent set out the procedure and discussed the consultation documents which had previously been sent to the claimant. They discussed the Head of Student Development role and how it fitted into the structure. The respondent was going to create one Grade 10 vacancy out of the 3 heads of department posts. The claimant would then be given the opportunity to set out in her expression of interest how she met the requirements for the role.

200. It was appropriate for the respondent to be conducting 2 consultation processes at the same time; one in relation to the claimant's role and secondly, another in relation to the restructure of the section.

201. The claimant had an opportunity to submit an expression of interest in the Head of Student Development role and this was considered fully before Ms Lucas and Mr Stock met with her and her trade union representative to let them know their conclusions. The claimant did not demonstrate in the form that she had the experience, skills and knowledge in employability and careers nor academic skills development with external agencies; that the respondent considered that it required for this role.

202. The respondent had not considered whether it was possible for the role to be done as a 1.6 FTE as she had suggested in her form because she was not suitable.

203. In our judgment, the claimant knew that if she applied for and was unsuccessful in securing the Head of Student Development role she would be at risk of redundancy unless another role could be found for her through redeployment.

204. It is our judgment that the claimant was not entitled to succeed to the Head of Student Services role before her employment ended as the job description had not been finalised. Also, as the claimant failed to express an interest in the role after receiving the email of 11 June, the respondent did not undertake the process of comparing the job descriptions as set out in the Managing Structural Change policy to see if she had succession rights to it. In our judgment, it is not sufficient to simply read the job descriptions and decide that because there are a number of duties from the old job which are similar to the duties in the new job; that means that she would have had rights of succession to the job. The process set out in the policy is much more analytical and the final decision would need to be made by the respondent's Executive Dean/Registrar and Secretary. It is likely that the claimant would have had the right to apply for redeployment to the role had it been available before her end date but it was not.

205. In the circumstances, and taking all factors above into consideration, it is this tribunal's judgment that the claimant indicated a settled intention from 1 April 2019 onwards that she wanted to take early retirement and leave the respondent's employment in order to spend time with and care for her seriously ill partner. She did not express interest in redeployment or at the time, in the Head of Student Services role. The respondent accepted her decision as a senior manager and did all it could to facilitate her choice. The Tribunal would not expect the respondent to override the claimant's clearly articulated choice.

206. Ms Lucas was initially reluctant to agree to early retirement and enquired how that could be done because she expected the claimant to find another role through redeployment. Once she was told that the claimant could choose to go as she had been served with notice of redundancy, Ms Lucas shifted her efforts to do all she could to support the claimant by reorganising the restructure so that her leaving date could be brought forward to 14 June and ensuring that her pension and notice pay would not be jeopardised by the date change.

207. It is our judgment that the claimant was dismissed for redundancy and that her dismissal was fair in all the circumstances of the case and having regard to equity and its substantial merits.

208. **Indirect sex discrimination (s.19 Equality Act 2010)**

- a. **Did the Respondent apply to the Claimant a provision, criterion or practice (a PCP)? If so, what PCP was applied?**

209. **The Claimant relies on the following alleged PCPs:**

- ~~a. a requirement that managers at grade 8 and above in Student Life work full time;~~
- b. alternatively, an expectation that managers at grade 8 and above in Student Life work full time;**
- c. alternatively, a reluctance to consider part-time or job-share working of managers at grade 8 and above in Student Life;**
- d. alternatively, a practice of placing the burden entirely on the employee to show how part-time working would operate and/or make the case for job-sharing.**

210. The tribunal first considered whether the claimant proved that the respondent applied any of the PCPs as set out above.

(a)The claimant no longer pursued this allegation.

(b) was there an expectation that managers at Grade 8 and above in Student Life would work full-time?

211. It is our judgment that on 31 January, in the claimant's first consultation meeting, the claimant had a discussion with Ms Lucas about part-time working. They did not discuss it in detail but Ms Lucas did say that she thought that it might be challenging for someone to do a senior role while working part-time. She had concerns that this may present issues for senior managers but it is our judgment that she was open to considering with someone how it could work. It is our judgment that Ms Lucas was not against part-time working in general.

212. Although the claimant felt that she was being discouraged from applying for the Head of Student Engagement on a job-share/part-time basis; we found that she was invited to apply and it was stated in the meeting on 31 January and in later meetings that although it was conceived as a full-time job, the respondent was prepared to consider other arrangements. She was told that she would need to make a proposal as to how she envisaged the work being done on a fractional basis. If she had been considered suitable for the role, the respondent would then have a discussion with her about how her proposal for fractional working would work.

213. The flexible working survey which the respondent carried out gleaned responses from a very small sample of its employees. Out of a total of 4400 employees, only 460 responded. The responses were detailed and were likely to have been helpful to the respondent in assessing the feeling among staff towards the flexible working policy and their experience of it. The responses show that there was a general perception among staff that the respondent's attitude towards flexible working was not positive and that part-time working was complicated to apply for, burdensome for an individual to justify and unlikely to be granted. Reading the free text comments suggested that this perception arose partly from people's actual experience and partly because of hearsay or

conversations that staff had with each other. In reality, over half the respondents to the survey indicated that they were able to be flexible in how they managed their work and time. The negative perception is demonstrated by the fact that only 46% felt that a formal request for flexible working would be dealt with fairly. In our judgment, this suggested that the policy was not understood/owned by staff. We do not agree with the claimant's submission that the survey shows that part-time working was particularly difficult in the Academic section. It was not possible to draw that conclusion from the results of the survey, especially as we were not able to ascertain which responses were from which department of the respondent.

214. The reality is also shown by the anonymised breakdown of flexible working requests for Academic services and Student Life for Grade 8 and above which we referred to above. Out of 21 applications made between 2017 and 2020, all were granted. Some were granted under Ms Lucas' management and some before.

215. In our judgment, the results of the respondent's flexible working survey did not lead us to a conclusion that the respondent was applying a PCP of an expectation that managers in Student Life, in Grade 8 or above, would work full-time.

216. Ms Jones and the claimant gave evidence on comments on flexible working Ms Lucas made in team meetings and in their 1:1 supervision meetings. It is our judgment that those statements show that Ms Lucas wanted applications for flexible working to be dealt with in a systematic and organised way. She also wanted to ensure that applications that were sent to the Registrar for approval were clear, straightforward and simply required signing off and no further deliberation. The evidence was that there were flexible working applications that were granted under her management. It was not the case that all were refused or that people were discouraged from applying.

217. It is likely that Ms Lucas managed applications for flexible working in the Academic section differently to how they had been managed previously. She had been asked by Mr Stock on her appointment to bring some consistency to the application of the policy and in our judgment, that is what she tried to do. Her instructions to her reporting managers that applications should be noted, that she should be told about them, and that the applicants should set out how the proposed arrangements might affect the service and their thoughts as to how that could be managed; were not excessive or in opposition to flexible working. They were in accordance with the respondent's flexible working policy. In our judgment, she gave her reporting managers those instructions in an effort to streamline the process rather than to deter applications.

218. In our judgment, this was good management and she was simply asking them to comply with the wording of the respondent's procedure.

219. In our judgment, Ms Lucas was not being negative or reluctant when she advised her reporting managers that they should be aware that if they granted a flexible working/part-time request that could have implications for the funding of the post in the future. As a senior manager it was appropriate for her to point out the broader issues of policy, resources and budget for the managers to take into

account. They needed to be aware that their decisions were not happening in a vacuum but could have implications for the rest of the team/department. This may have complicated consideration of applications for flexible working but it was not being negative/hostile towards flexible working to point it out.

220. It is our judgment that the respondent, and in particular, Ms Lucas and Mr Stock considered that it could be challenging for someone with a senior position in the respondent to perform the duties of the job while working part-time but they were clear in all their written material and in speaking to the claimant and Ms Jones that they were open to applicants showing how it could work and that they had considered the implications of the proposed way of working. They or the applicant's line manager would then discuss the application further with them and how it would work and either grant the application or reach a compromise. The respondent was willing to and did consider and grant applications for flexible working.

221. Although the roles that we discussed in the hearing were conceived as FTE (full-time equivalent) roles, that did not refer to headcount but rather, to the total resource. As senior managers, the claimant, Ms Jones and those at Grade 8 and above would have known this. In addition, the claimant was told at the meeting on 31 January and later, when she was invited to express her interest in the Head of Student Engagement role that the respondent was open to considering a job share, flexible working request once the person was appointed to the role and if the applicant could show how that would work in practice. Her expression of interest form was a good place for her to set out her thoughts on that.

222. Although we spent a lot of time in the hearing in looking at the members of staff in the Well-being restructure who Ms Jones stated wanted flexible working arrangements but did not get those or who ended up settling for less satisfactory arrangements; we conclude that Ms Jones was largely responsible for those decisions. In our judgment, Ms Lucas did not instruct her to refuse applications for flexible working because she was opposed to flexible/part-time working. On every occasion that an application was discussed with Ms Lucas, the evidence was that she encouraged Ms Jones to consider all the implications of the application and she supported Miss Jones' decision on it. There was a reduction of staff in the Well-being section but our judgment is that this was mostly because of the respondent's decision to cease offering counselling services and support to students around the Disabled Students Allowance. We had no evidence that this was done because some of the people who worked in those services worked flexibly or part-time.

223. There was no expectation that managers at Grade 8 and above would work full-time. The respondent was open to consider and discuss with applicants, their applications for flexible working. 21 applications were granted between 2017 and 2020. The majority were for compressed hours, some were for a reduction in hours and 2 for flexile retirement/reduced hours.

224. Taking all the above into consideration, it is our judgment that the claimant has failed to prove that there was an expectation that managers at grade 8 and above in Student Life, work full time.

(c) was there a reluctance to consider part-time or job-share working of managers at Grade 8 and above in Student Life?

225. It is our judgment that Ms Lucas, with Mr Stock's support, indicated clearly to senior staff in meetings and in written documents that applications for part-time or job-share must follow the respondent's written flexible working policy. The applicant would have to put a proposal forward that showed that they had not simply considered their needs and expected the respondent to work around them but had also thought about how the proposed arrangement might affect the service and how any issues could be managed, so as to avoid disruption.

226. This was in accordance with the respondent's policy. The application would then be discussed with the applicant's manager and it would either be granted as submitted or they would reach a compromise.

227. We did not have evidence of any one individual being reluctant to consider part-time or job share working by managers at Grade 8 and above. We agree with the respondent's submission that in order for us to reach a judgment that there was reluctance to consider part-time or job share working arrangements, they would need to be strong evidence of a mental state over and above mere consideration of that work in accordance with flexible working policy. They would need to be evidence of more than simply a failure to consider such methods of working.

228. In our judgment, the respondent did not put artificial barriers in the way of requests for flexible working. Ms Lucas, with Mr Stock's support instructed her reporting managers to ensure that applicants for flexible working followed the respondent's policy and procedure. Ms Lucas asked her reporting managers to let her know when they received an application for flexible working. There was evidence from both the claimant and Ms Jones of discussions they had with Ms Lucas on applications flexible working from staff reporting to them and how she supported them in the decisions they made about those applications. In our judgment, that does not demonstrate reluctance.

229. In respect of the claimant's situation, she contrasted the way that Mr McAuliffe responded to her application to reduce her working time in 2015, with the way Ms Lucas dealt with her suggestion that the Head of Student Engagement role could be done on a job-share basis. In our judgment those were 2 different situations. The discussion with Ms Lucas took place on 31 January, at the start of the consultation process which was being conducted under the Managing Structural Change policy. Also, the claimant was already in her role when she made the application to Mr McAuliffe whereas in relation to the Head of Student Engagement role, the claimant needed to make the application and if appointed or considered suitable, then the respondent would have had a more detailed discussion with her on her suggestions as to how it could be done on a part-time or flexible working basis. Ms Lucas did not refuse her application flexible working in relation to the Head of Student Development role. Her expression of interest in the role demonstrated that although she had good management experience at university and had many skills, she did not have the knowledge, skills and experience considered essential for that particular role. Once Ms Lucas and Mr Stock came to that conclusion, they did not go on to

consider whether the post could be done in the way the claimant suggested or how they could work with her to make that happen.

230. In the circumstances, it is our judgment that the claimant has failed to prove that the respondent applied a PCP of reluctance to consider part-time or job share working of managers at Grade 8 and above in Student Life.

(e) was there a practice of placing the burden entirely on the employee to show how part-time working would operate and/or make the case for job sharing?

231. The evidence shown that there was considerable discussion between employees making applications for flexible working and their line managers. We heard evidence from Ms Jones about discussions she had members of staff who had made applications for flexible working and the subsequent discussions she had with Ms Lucas about them way when she gave her support for her decisions.

232. As Ms Horn stated in her evidence, the application would be the starting point of the process. We find that employees were told when making an application or flexible working that the respondent needed them to set out their role, the circumstances leading them to make the application and their thoughts on how this could be made to work. Although some employees may have considered that this put the burden on them to work out all the implications of their flexible working application, it was the starting point from which the respondent would work with them in discussion, to come to an agreement on what was the best arrangement for the respondent and for them. The respondent wanted any employees applying for flexible working to consider the obstacles/issues that may come up so that they could be taken into account when the application is considered.

233. The claimant told us about one application that she dealt with soon after Ms Lucas became her manager. She did not support the application. There was a discussion with Ms Lucas about the application, the person's needs and issues that may come up with that person should they be granted the application given their ill-health and other considerations.

234. The applications that Ms Jones received from the employees who she line-managed were in expression of interest forms following the reorganisation of the Well-being service. These were discussed with the employees concerned and with Ms Lucas. The employees were not expected to have worked out exactly how the part-time working would operate before their applications could be considered.

235. In our judgment, there was no evidence of a practice of placing the burden entirely on the employee to show how part-time working would operate. They were asked to demonstrate that they had given some thought to it and to possible solutions to any issues that might arise but that is different from having the burden placed entirely on their shoulders.

236. In relation to the claimant's application for the role of Head of Student Development, it is our judgment that the claimant was asked to make the

application and show how she thought it might work in practice. It is not our judgment that this meant that the burden was placed entirely on her.

237. The way in which the PCPs are drafted, suggests that the respondent expected the employee to work out every aspect of the application for part-time working before submitting it and the respondent would either agree or reject it, based on what was written. The evidence in the hearing did not show the existence of such a PCP. In the claimant's situation, she was not considered suitable for the only role that she applied for in 2019, which meant that there was never any consideration of her proposal in relation to job share/part-time working. It would not have been applying this PCP if the respondent had an expectation that the claimant as a head of Department would be able to outline the implications of her flexible working request and how this could be managed, in more detail than a more junior employee would be able to do. We do not agree that this was placing the burden entirely on the claimant. It was a reasonable expectation, given her seniority. In addition, this would not have been the operation of a policy or practice if only done with the claimant.

238. Under its flexible working policy, the respondent required an employee seeking a flexible working arrangement to put forward a case for it. In our judgment, the employee applicants were required to make an initial case for flexible working/job share, which would then be discussed with their manager and a compromise reached.

239. In the circumstances, it is our judgment that the claimant has failed to prove that the respondent operated a practice of placing the burden entirely on the employee to show how part-time working would operate and/or make the case for job sharing.

240. It is also our judgment that the claimant has failed to prove that she was rejected for the Head of Student Development role because of her need to work part-time. It is our judgment that she was not appointed to the role because she did not meet the essential criteria set out in the job description.

241. Although claimant was aware by 11 June 2019 that the respondent was about to recruit to the post of Head of Student Services, she did not express interest in that role and did not submit an application when she saw the advert. On 1 April, she expressed a desire to take her pension on redundancy in order to spend time with her seriously ill partner. That is the reason why the claimant was not considered for redeployment to the Head of Student Services role as well as the fact that it was not a vacancy at the time that she stopped working.

242. The claimant did not point to any other post that she should have been considered for or that she felt that the respondent had not appointed her to, because of her need to work part-time.

243. It is our judgment that the respondent did not apply any of these PCPs.

244. The respondent operated a flexible working policy. Ms Lucas was tasked with making that policy work in a more consistent and streamlined fashion when she took up her role as Director of Student Life. It is likely that this was more formal than the way that the policy had been applied in the past and there was

some pushback because of that. However, in practice, flexible working requests were made, received, discussed, considered and granted within Student Life following Ms Lucas' appointment and up to 2020.

245. It is our judgment that the claimant's complaint of indirect sex discrimination fails. The complaint is dismissed.

Judgment

246. The claimant's complaint of unfair dismissal fails and is dismissed.

247. The complaint of indirect sex discrimination fails and is dismissed.

**Employment Judge Jones
Date: 7 September 2021**