EMPLOYMENT TRIBUNALS

Claimant: Mrs T Brockwell

Respondent: Welwyn Hatfield Borough Council

Heard at: Watford in person and in part by video (CVP)
On: 7-11 and 14-15 March 2022

Before: Employment Judge R Lewis
Mr A Scott
Mr S Woodward

Appearances

For the claimant: In person, assisted by Mr Brockwell (her husband)
For the respondent: Mr J Davies, counsel

JUDGMENT having been sent to the parties, and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Procedure

1. This was the hearing of a claim presented on 6 June 2020. Day A was 18 February and Day B was 18 March. A case management hearing took place by telephone before Employment Judge Postle on 25 March 2021 (63). Following the hearing before Judge Postle, and perhaps reflecting his suggestion that the claimant should take advice, a number of the claims which were live at the time of the preliminary hearing were withdrawn, and were the subject of judgment under Rule 52 on 26 August 2021 (224a). The tribunal at this hearing had a bundle paper numbered up to 740, in PDF of 843 pages. All page references are to the paper numbering.

2. Before the start of the hearing, the parties had exchanged witness statements. The claimant was the only witness on her own behalf. Her statement ran to some 132 pages (over 32,000 words). She supplemented her statement with an opening submission of 42 pages (over 11,500 words).

3. The respondent submitted four witness statements. They were from the following, all of whom gave evidence:

- Ms M Martinus, Head of Law and Administration, and line manager of the claimant's line manager;
- Ms K Frantzell, HR Advisor;
- Mr R Bridge, formerly Chief Executive;
- Ms S Saunders, Legal Services Manager, who had been the claimant's line manager for the last months of her employment.

4. Listing had been for 8 days, to decide liability only. The first day was taken up with case management and reading. A number of procedural details were dealt with.

5. In July 2021 the claimant had applied in writing to amend the claim. That applied in fact had never been dealt with by a Judge, and Mr Davies pragmatically agreed the amendment on behalf of the respondent, as it was in effect relabelling of existing claims.

6. It was confirmed that this hearing would deal with liability only, and that any Polkey question would be dealt with at the remedy stage.

7. It was confirmed, as had been understood on both sides, that the "something" in the s.15 claim related to the claimant's absences.

8. Of the tribunal's own initiative, the Judge advised the parties that any reference to a service user / client / member of the public (but not an internal department of the respondent) would be anonymised in any judgment. There was no disagreement.

9. Some time was taken over the list of issues. Judge Postle's order identified a list of issues. However, as Mr Davies pointed out, and with all due respect to Judge Postle, his summary elided issues with the claimant's evidence and submissions. That reflected the manner in which the claimant presented her arguments to us, and Judge Postle's task, of reducing the claimant's presentation to written analysis, cannot have been any easier at a telephone hearing.

10. Judge Postle's list nevertheless remained the only version of the list of issues until about a week before this hearing, when Mr Davies produced a document called a Proposed List of Issues, in which he had reformulated the legal issues into 47 questions (with sub-questions) which, he said, was a recasting of the case designated by Judge Postle and no more.

11. The claimant was suspicious of Mr Davies' proposal, asserting that she had not had proper time before this hearing to consider it. She expressed concern that as a litigant in person any change in the ground rules for this hearing would prejudice her.

12. Both sides were right. The list of issues from March 2021 needed to be fine-tuned. To do was the responsibility of both sides, with a heavier burden on the represented party. We agree in principle with Mr Davies that his proposed list was a recasting of Judge Postle's list. It was a welcome clarification in principle, but it should not have been produced just a few days before a hearing conducted by a litigant in person. Inevitably, we have endeavoured in this judgment to adjudicate on both, and both lists are appended.

13. The claim for disability discrimination was brought under six conditions, three of which were conceded to meet the s.6 definition of disability. The claimant confirmed that she wished to proceed with all claims. It was therefore necessary for the tribunal to make decisions on whether she met the s.6 definition for the three conditions which were in dispute.

14. After discussion on the first day, a number of adjustments to working methods were put in place. The tribunal took a number of breaks, considerably more flexibly than usual. The claimant was supported throughout the hearing by Mr Brockwell, her husband. The tribunal was entirely flexible when questions or submissions which had begun by the claimant were continued by Mr Brockwell. The tribunal proposed, and Mr Davies did not oppose, that for all breaks when giving evidence, the claimant should be released from oath. When giving her evidence, the claimant asked to have with her a prepared aide memoire. Mr Davies did not oppose, and we agreed this. In the event of additional evidence in chief (which did not materialise) the tribunal asked Mr Davies to produce a written summary of the points to be covered, so that after additional evidence in chief it could take breaks, during which the claimant and Mr Brockwell could reflect on any new evidence which they had just heard.

15. The claimant gave evidence for the whole of the second day of hearing. Ms Martinus gave evidence for the whole of the third day, except for the evidence of Mr Bridge, which by consent was interposed and given by CVP, Mr Bridger no longer being employed by the respondent. The evidence of Ms Frantzell was given on the morning of the fourth day, and that of Ms Saunders completed that day. The first four days of hearing were face-to-face except for the evidence of Mr Bridge and Ms Frantzell.

16. For submissions, the tribunal agreed to meet at 12 noon on the fifth day (Friday 11 March) to proceed by CVP. Mr Davies had submitted written closing submissions, which, at the tribunal's suggestion, were an update of his opening submissions, with tracked amended changes. At the claimant's request, her reply was not given until 12 noon on Monday 14 March. The tribunal reserved judgment and gave judgment at the same time on the seventh day, and then adjourned for the lunch break after which the claimant and Mr Brockwell had a number of practical questions. The last three days were listed at 12 noon as we understood that that would minimise the burden on Mr Brockwell's work commitments.

Rule 50

17. At the end of her submissions, the claimant asked for Rule 50 anonymity. The claimant said that since dismissal, she has struggled to find part-time work, drawing on her specialist skills and experience, within a reasonable commuting distance of her home. She is concerned that this judgment, when posted online, will create an opportunity for prospective employers to receive information about her health history which may cause her difficulty in the labour market. That seems to us a perfectly legitimate point. It arises out of two strands: the claimant's legitimate desire to select the medical information which she gives a prospective new employer; and the unconsidered consequences of the administrative practice of posting reasons online.

18. We interpret s.12 of the Employment Tribunals Act 1996 broadly. However,

its clear ambit is personal information. Experience of such cases is limited; the present tribunal has rarely if ever encountered an application for anonymity in accordance with the personal information provisions. However, we understand the purpose to be to preserve the personal and intimate privacy rights which relate to any individual's health. That entitlement is to be balanced with the interests of open justice, and to be assessed objectively. Some medical information may be personal and embarrassing, but mere embarrassment may not outweigh public justice. Information about the detail of a visible disability may be more difficult to justify as falling within the ambit of privacy. We can see the strongest argument for the anonymisation of information about an invisible disability, which may attract stigma, and which may as a result have an impact on the individual's labour market prospects.

19. We have very considerable sympathy with the claimant's application. We struggle to accept that the open justice of a public court room equates with the openness derived from a search engine. Nevertheless, we consider ourselves bound to refuse the claimant's application. This Judgment is the product of seven days public work in a public forum. We consider ourselves bound not just by the principle of open justice, but by the interpretation of open justice which extends the openness not just to those members of the public who watch a court hearing (whether in person or online) but to every user of the internet who troubles to search against the name of any other person.

General approach

20. We preface our findings with a number of matters of general approach. During this hearing reference was made to a wide range of issues. Where we make no reference to a matter that was mentioned, or where we do so, but not to the depth to which the parties went, that should not be taken as oversight or omission. It is a reflection of the extent to which we find the point in question to be truly relevant and of assistance.

21. That is a frequent point in our work. It was particularly important in this case, where the claimant had many years' service in a relatively small authority, and where emotion played a large part in the case before us.

22. It was clear to the tribunal that the hurt of losing her employment, at a time when she had undergone serious and distressing health episodes, remained raw for the claimant (and Mr Brockwell) nearly three years after the events. We do not criticise the claimant for the strength of her feelings or emotions. We find that emotion repeatedly clouded her judgment and distracted her from the objective analysis which this case required.

23. When we are called upon to assess evidence about the respondent's systems and operations, we seek to apply a reasonable and realistic standard. We try to avoid the wisdom of hindsight, and to remember that events must be considered as they presented at the time and in light of information available at the time: it is trite to say that nobody goes to work with the gift of prophecy. We must apply the realistic standard of the employer of the respondent's size and resources, which, in the public service, should endeavour to be a high standard. It is however not a standard of perfection. We noted for example that a number of the respondent's HR procedures appeared in need of clarification or modernisation. We were

surprised to see correspondence on the question of whether the claimant was "registered disabled." The claimant's interim line manager appears not to have properly understood the position of part-timers in relation to sickness absence.

24. We note those matters, but the question for us is whether they have a bearing on our adjudication. In that context, we attach little or no weight to events after the claimant's employment had ended. We did not find this to be a case where recruitment after dismissal undermined the respondent's case on genuine reason for dismissal. Likewise, when we avoid a standard of perfection, we should note that like many claimants, the claimant has at times criticised the respondent for failing to adhere to what presented as a judicial standard. The claimant submitted that as Ms Turner had carried out her redundancy calculation in August 2019, she was not an appropriate HR advisor to support her grievance investigation several months later. We completely disagree. Likewise, we disagree that Ms Baker, who had been a member of the Management Team which had approved the redundancy proposal, was thereby disqualified from involvement in managing the claimant's grievance.

The claimant's approach

25. The tribunal is familiar with the difficulties encountered by many litigants in person. It is the tribunal's duty to seek so far as it practicably can to place parties on equal footing. That obligation is not changed where the claimant, as in this case, is a qualified solicitor; it was evident that she had little experience of the relevant law and procedure, and in particular she did not have a practitioner's understanding of the practicalities of litigation.

26. That said, it is right that we set out a number of the aspects of the claimant's approach to this case which were evidence of her inexperience and misunderstanding, and which contributed to her inability to do justice to the case which she wished to present. We set out a number of the problem points which the claimant faced in seeking to do justice to her case. It seems to us in the interests of justice to set out these general points, as a preface to our more detailed finding of fact. The points we make here are not exhaustive and they are not in order of priority. They are not set out gratuitously, but to help the claimant to understand why she lost this case comprehensively.

27. We have commented on the emotion which the claimant brought to the case. In a revealing phrase in closing submission, the claimant stated that she loved her job, and was dismissed from it, even though "I did nothing wrong." We entirely agree that the claimant did nothing wrong. That was not what this case was about, nor is it what economic redundancies are about: the framework of redundancy protection is established to support the many thousands who lose jobs through no fault of their own – as the claimant must have seen on countless occasions in a local government career.

28. The claimant made submissions from which it was apparent that she took chronology for causation. The starkest example was a point to which she returned many times, the date of her redundancy calculation on 19 August. The fact that that came shortly after her two-week sickness absence was, in our finding, a coincidence of timing; the claimant had no basis to infer that the earlier event caused the later one. Her submission about Ms Martinus and

her daughter was even more striking: she said that she was dismissed in March 2020, and in less than a year, Ms Martinus had arranged for her daughter to be employed by the respondent. We heard no evidence whatsoever to suggest that the claimant's departure cleared the way for the employment of Ms Martinus' daughter; and mere chronological sequence is not probative. We record that the claimant showed little insight into the gravity of that allegation against Mrs Martinus' integrity, for which we find that there was no evidence or basis whatsoever.

29. The claimant showed lack of understanding, to the point of occasional naivety, about workplace norms and practices. She submitted that her internal client department should have been consulted about her redundancy, and Mr Brockwell commented that in the private sector, it would be invariable practice to do so. The non-legal members of this tribunal advised that it is next to unheard of for external clients to be consulted about redundancy, a view which accords with the Judge's experience and understanding. The claimant may also have been naive in her understanding of the sympathetic remarks made by colleagues when told of her dismissal, and she was certainly naive in taking office gossip as truth, let alone evidence. She was clearly taken aback when Ms Martinus and Ms Saunders denied the existence of personal friendships, either with each other or with Ms Emilien.

30. The claimant mistook consequence for intention. It was a fundamental of her case that her dismissal as an individual was the intention of the redundancy exercise, as demonstrated by the fact that the exercise began with the proposed deletion of her post, and concluded with the actual deletion of her post. We do not agree that consequence is proof of intention.

31. Making every allowance for the claimant's position as litigant in person, she was and is a qualified solicitor. The questions which she and occasionally Mr Brockwell asked the tribunal about tribunal procedure were surprising in their number and extent, and in the extent to which they evidenced inadequate preparation for a hearing which came began some 107 weeks after Day A.

Findings of fact

32. We turn now to set the scene. The claimant, who was born in 1972, has been a qualified solicitor for many years. She began employment with the respondent in November 2007. At all times she worked 50% part-time. This case was conducted on both sides on the agreed understanding that the claimant was a valued employee, who had been a good colleague and able performer. No criticism was made whatsoever of any aspect of her work, or working relationships. We accept Mr Brockwell's comment that the claimant consistently contributed more than a mathematical 50% of time and work to the respondent, covering for colleagues, handing over, extending hours and ensuring that her part-time arrangements worked flexibly.

33. The respondent is a modest sized District Council. It is relevant to state the obvious point: it is located on a relatively short direct train line to central London and the City of London; it includes commuter destinations; and its job market competes with bigger London boroughs, and with the London legal market.

Executive summary

34. On the basis of the scene setting and observations above, we now turn to our specific findings. We occasionally avoid full conventional chronology, for fear that that would lead us into some of the verbosity and unnecessary detail of the claimant's presentation of the case. We hope it makes these reasons clearer if we present in this paragraph a summary of how we proceed. We deal first with the events which we find lasted from February until December 2019 leading to the claimant's dismissal. Our overarching conclusion is that there was a genuine redundancy / restructuring in which the claimant's post, and one other post, then vacant, were deleted. We find that the process followed by the respondent was fair, even when mistakes were made, and imperfections occurred. We make no finding on Polkey, as it is unnecessary for us to do so.

35. The claimant's discrimination claims, in which we include all claims under the Equality Act 2010 and PTWR 2000, turn to a great extent on a dispute of evidence about a crucial meeting between the claimant with Ms Saunders and Ms Frantzell on 11 October 2019. We resolve that dispute entirely in favour of the respondent, and all claims which are based on the claimant's argument that the new post of Principal Conveyancer could only be occupied by a single person working full time, therefore fail. We accept that the post was in principle available on a job-share basis.

36. There were narrow, discrete points upon which the claimant based claims of age discrimination and sex discrimination. We reject those claims on consideration of the evidence.

37. Although much evidence turned on the disability discrimination claims, we do not agree either with the claimant that they were the central part of the claim, or with Mr Davies' rather brusque submission that they were a red herring. We find that there has been no evidence that the three alleged disabilities, which the respondent disputed, have been shown to meet the s.6 definition. We find that the claims of disability discrimination based on the admitted disabilities fail on their facts. In so saying, we stress that our conclusions would have been the same if we had found that any of the three disputed disabilities was in fact a s.6 disability.

Events in 2019

38. At the start of 2019, the claimant held the post of Senior Conveyancing Officer, reporting to the Legal Services Manager, who in turn reported to Ms Martinus. There were two Senior Conveyancing Officers, the claimant at half-time and another at full-time, the full-time post being vacant at the time in question (383).

39. In February 2019 Ms Martinus reported to the respondent's Corporate Management Team. Her report was not in our bundle. It would have been very useful. We accept the accuracy of the summary which Ms Martinus wrote in her later report of 30 August:

> "On 13 February 2019 CMT considered a report on the provision of legal services to the council and considered the challenges with regard to recruitment and retention within the team. CMT agreed to cover unfilled posts by agency staff, at

> market rates and outside of salary range, to ensure the maintenance of the service pending a more permanent solution. Since the arrival of additional agency staff to cover the vacancies, the service to the council has been maintained."

40. In oral evidence, Ms Martinus referred to a recruitment "crisis" within the respondent. We accept that that word accurately represented her understanding. We note the above in relation to the respondent's job market, particularly in legal services, and particularly (as emerged in evidence) in the market for commercial property legal services.

41. The claimant reported to the Legal Services Manager. It seems that in the first months of 2019 that post was held in the short term, or covered by, Ms Martinus, Ms Hussain, Ms Ayyub and Ms Dennis, until the arrival of Ms Saunders in the first week of June 2019. Ms Saunders brought to her role many years of experience in managing legal services within local government.

42. Following the arrival of Ms Saunders, she was tasked with supporting Ms Martinus in restructuring the provision of legal services. That task led to Ms Martinus' report of 30 August at 365A. We accept the evidence, which was that the writer of the report was Ms Martinus, and that Ms Sanders contributed to it.

43. Ms Martinus' report should be read in full. It proposed and explained the deletion of two posts from the Litigation Team. It made the following proposal in relation to the Conveyancing Team (365B):

> **"Conveyancing team**- The key changes to this team are: -the deletion of the Senior Conveyancing Officer (full-time) and Senior Conveyancing Officer (18.5 hours per week) to create a new Principal Conveyancing Lawyer (Property and Contracts) post. The rationale for this is that the current skills set of the Legal Services Manager require greater senior conveyancing expertise within that team. In addition to this, more senior conveyancing expertise within the team will avoid the need for some of the more complex conveyancing matters to be externalised. Also, the skills set of the legal team have never included contracts expertise. Based upon the key priorities of the council, it was considered that this would be a useful area of expertise to add to the team and will save costs on externalisation. This will be even more relevant once the council's housing company is fully up and running, where increased legal support may be required. The Principal Lawyer Conveyancing Lawyer (Property and Contracts) will have supervisory responsibility for the conveyancing officers and report to the Legal Services Manager. A new job description and evaluation will be required for this post."

44. In relation to the Property Team, other changes were proposed. However, the crucial proposal was the creation of a new post of Principal Conveyancer and, as appears from paragraphs 3.8 to 3.9, redistribution of a number of responsibilities to lower level staff. At paragraph 3.10 the proposal was the following:

> **"Trainee posts** – in view of the recruitment challenges we have faced (and continue to face), a fair amount of consideration has been given on how to

> fully maximise the available resource and whether it would be possible to 'grow our own' lawyers. It is proposed that 2 new trainee posts are created within the service. (1) a formal Trainee Solicitor post that reports directly to the Legal Services Manager and (2) a trainee Conveyancing Officer, possibly qualifying through the CILEX route. This post will report to the Principal Conveyancing Officer."

45. In a costing section, the report stated that the estimated costs of the proposals exceeded budget, and set out the calculation of redundancy payments for each of those posts proposed be made redundant. There was also a proposed timetable for consultation and implementation, which, we noted, proposed completion within the same financial year.

46. All redundancy payments, including that of the claimant, were calculated before Ms Martinus' proposal had gone before the CMT. We accept that the reason for calculations being undertaken was so that when the CMT considered the report, it understood what the redundancy costs would be. We accept that that was a standard requirement of the respondent where a redundancy was proposed. The claimant was not singled out, because as the report makes clear, calculations were undertaken for all proposed deletions or redundancies. The timing of the calculation was driven by the procedure, and by completion of the report, not by the personal factors individual to the claimant on which she relied. The mathematical calculation appears to be no more than a formal exercise, which in our judgment did not debar Ms Turner (HR) from any subsequent management of the claimant.

47. Taking an overview of the report as a whole, our interpretation of the proposal, and the proposed new structure (384) was that in effect it split up the deleted roles, including the claimant's. The higher level and more demanding responsibilities were to be placed with the new Principal; lower level tasks were to be allocated to paralegal or trainee roles. The claimant's 50% salary, and the 100% salary of the vacant Senior Conveyancer post, would together pay for the cost of a Principal, and therefore represented the hope that a higher salary would attract a candidate of high calibre and potential. There was no reference in the report to any element of part-time or flexible or job share working, save to say that the Principal post was designated as a full-time post.

48. Ms Saunders had joined the respondent in June. Detailed consideration of a reorganisation required the post of Legal Services Manager to be filled, partly because that person would bring to the department his or her own professional skill set, which would therefore have a bearing on the needs going forward; and secondly, because he or she would be the direct line manager of the team, and it was common sense for the post holder to contribute to the analysis of problems and proposal of solution. The proposal to split the role was in part, hers.

49. The report was presented to the CMT on 18 September 2019 and approved by it. The next stage was on 30 September.

50. Ms Martinus and Ms Saunders agreed that formal consultation would begin on 30 September. Ms Saunders had short meetings that morning individually with each member of the team who would be affected. That included

communicating to those whose posts were to be retained that there would be change, but that they would not be personally at risk; and communicating to the claimant that she was personally at risk. Ms Saunders prepared a proforma for giving information (371) and recorded the claimant's answers on her proforma. The claimant was told that she would be directly affected; others were told that they would not be directly affected. That was no more than the truth, as Ms Saunders understood it that day. After the short individual meetings, there was a general meeting.

51. We accept that the process was a reasonable one, and not unusual. The respondent kept the entire restructure confidential until it was ready to launch. It notified individuals in short one-to-one meetings before a general announcement and commencement of consultation. It confirmed the notifications individually in writing, distinguishing carefully in what it told those directly affected and those not directly affected. It then sent all concerned a consultation document, including organograms showing the team structure before and after restructure.

52. At this hearing the claimant described her dismissal as "predetermined" (a word she used several times) and the consultation as merely "going through the motions." In closing, she described her feelings on 30 September 2019 as having been knifed, falling to her knees, and crawling from the room where she had met Ms Saunders. That was the language of shock and emotion. It did not appear to us that the passage of time had enabled the claimant to approach the matter more objectively or analytically. Our finding is that Ms Saunders was correct to see events in a more nuanced fashion. She said in evidence that once the new structure had been adopted by the CMT, there was little realistic prospect of the claimant's then post being saved from deletion; but that there were realistic prospects of the claimant saving a job, and therefore avoiding dismissal.

53. The respondent sent the claimant further information to enable her to prepare for a one-to-one consultation meeting with Ms Saunders supported by Ms Frantzell on 11 October (431a). We heard evidence about this meeting, which was strongly disputed, and we divide our assessment into a number of specific points.

54. Ms Saunders and Ms Frantzell were aware of the need to distinguish between a post or role and a job. We find that they used those words carefully. While we accept that the claimant understood the distinction in principle, we do not think that she was prepared to apply it that day in practice. Ms Saunders and Ms Frantzell explained, (using our words), that the deleted posts would be broken up and absorbed into higher level and lower level posts. Although the claimant asked about stepping down into a lower level post, and was told that this was in principle available to her, our view is that it was not a realistic proposition for a respected senior colleague of many years service. The claimant was told clearly that her role was to be deleted, and that she would not be offered assimilation into any other post.

55. Most significantly, we find that there was discussion about whether the new role of Principal Conveyancer was available to be undertaken part-time. The claimant had always worked part-time, and for legitimate personal reasons, wanted to continue to do so.

56. The claimant's evidence was that she was told that Ms Saunders required the role to be undertaken full-time in the office. The evidence of Ms Saunders and Ms Frantzell was that the role was a full-time role but was in principle available to be shared. Ms Frantzell explained in evidence that the way that would work in practice would be that if a candidate were appointable who wished to work part-time, they would be told that the respondent would advertise for a job share, and seek to appoint two candidates to job share. We did not ask what would happen if a job share could not be found. The important point of this evidence, which we accept, was that if the respondent accepted the first candidate in principle, it then assumed the burden of filling the vacant part of the job sharer.

57. We prefer the respondent's evidence on this crucial point because the entire exercise was predicated on recruitment and retention difficulties. Ms Saunders was an experienced local government lawyer. She and Ms Martinus knew that posts were difficult to fill. They had no reason whatsoever to exclude the pool of potential part-time candidates, and on the contrary every reason to keep the potential pool of candidates as wide and as open as possible. They had no reason to exclude the claimant as an individual: she was long serving, competent and respected, and had worked successfully on a part time pattern for over a decade.

58. We comment that a clear express statement in the consultation papers to the effect that any new role was available in principle to job share might have avoided much dispute. That said, we also accept that the claimant, in her twelfth year of service with the respondent, had no reason to doubt the availability in principle of part time work, including job sharing.

59. We accept that the respondent also engaged in consultation with appropriate recognised unions. The claimant was not a union member.

60. The claimant raised the question of whether the Housing Service Team with which she worked had been consulted. The consultation had been with the Head of that service, not with those individual with whom the claimant worked directly. The tribunal accepts that that was reasonable and appropriate. Essentially, the claimant's point was that her client, who could give the best evidence of her direct day-to-day efficiency as a solicitor, had not been consulted; our view is that that would be highly exceptional, and a failure to take that step was not unreasonable. The reason is that the consultation was not about the claimant's individual ability; it was about structural and economic requirements.

61. In similar vein, the claimant asked to be accompanied at meetings by Mr Sampson, whom she described as a work colleague. We accept the respondent's evidence, which was that Mr Sampson was not an employee of the respondent, although he had worked for and with the respondent for a number of years as an external contractor; and that the right of accompaniment is limited to a fellow employee of the respondent employer (or trade union official).

62. Further communications took place between the claimant and the respondent between 18 October and 18 December, when the claimant was sent her dismissal letter. We do not go through the details. In short, the claimant pursued various avenues which might avoid the deletion of her post, and

questioned aspects of the reasoning and detail of the restructure proposal and process. While the respondent answered the claimant's questions so far as it could, it did not depart from the structure which the CMT had adopted on 18 September.

63. The dismissal letter, giving notice to expire on 11 March 2020, was sent on 18 December 2019 (527). The claimant raised the question of timing, and the impact on her of being dismissed close to Christmas. Ms Saunders' evidence was that the appropriate stage in the process had been reached, and that to proceed with the process, it was necessary to issue notice. We agree that that was a reasonable management decision, while accepting that the hurt already felt by the claimant was exacerbated by the perception of being dismissed just before Christmas.

64. The claimant therefore did not apply for the Principal Conveyancing role, stating in evidence that she had been prevented or debarred or was unable to apply, because she had been told in terms that it was available only to a single individual working full time, a pattern which was not open to her. We accept the respondent's position that the post was in principle available to job share and that it was open to the claimant to apply. In particular we accept that she was not told the opposite.

65. Ms Emilien, who was working for the respondent through an agency, applied and was appointed to the Principal Conveyancing post. At this hearing, the claimant did not conceal her personalised resentment of Ms Emilien. We heard nothing to Ms Emilien's discredit at this hearing. We were told that she has since resigned from the respondent's employment; we were not told of any reasons or circumstances. There was no evidence whatsoever to support the claimant's suggestion that there were personal and / or social friendships involving Ms Martinus and/or Ms Emilien and/or Ms Saunders which were either part of the rationale for the restructure, or which assisted Ms Emilien to apply and be appointed. We make the identical finding in relation to the employment of Ms Martinus' daughter, who we were told joined the respondent on a one-year contract as a paralegal in December 2020, ie a year after the claimant was given notice. We add, for the sake of completeness, that we accept Ms Martinus' evidence, which was that she informed HR of the relationship when her daughter applied for employment, and disqualified herself from any aspect of the recruitment process.

66. On paper, the most appropriate alternative potential vacancy for the claimant was that of a Senior Litigation Officer. That role was of comparable seniority to the claimant's role, was designated as Senior, and was expressly available on a part-time basis. The claimant expressed interest in the role (508). The respondent, through Ms Frantzell, made arrangements for the claimant to be interviewed. The reason the respondent considered an interview appropriate was that the post was graded at one level above the post then held by the claimant. The claimant could therefore not be assimilated into it, but had to apply. The application, being for a higher graded post, was treated by the respondent as an application for promotion. We were referred to the respondent's procedures on this point (649-652). We accept that the respondent honestly believed in good faith that it was required to interview the claimant. We find that the written procedure made the point far from clear. It was common ground that if the claimant were appointed, the respondent

would recognise that despite her seniority, she would require training specific to her new post, which would be provided.

67. The claimant raised with this tribunal the question of whether, in order to do justice to herself at assessment or interview, the claimant was required to be provided with a job description. We do not share the claimant's confidence in this point. We can see that it would have been helpful, but we do not agree that it was an essential, and we do not agree that it took the points before us any further.

68. The claimant was assessed first on a written assessment (567). Although the claimant said in evidence that the conditions in which she took the assessment were far from ideal (she referenced poor lighting, background noise, and a keyboard with keystrokes missing) there was no sign of any of those problems in the printout of her assessment answers which we saw, and, at the time, she commented that she thought that she had done quite well.

69. She was then interviewed by Ms Martinus, with Ms Byrne, Principal Litigation Lawyer (and therefore the line manager to whom the successful candidate would report), observed by a member of HR. The bundle contained extensive notes of the assessment and interview process (567A ff). We accept that the two lawyers undertook the assessment of legal competencies. We do not attach weight to Mr Brockwell's comment that they could not separately have assessed in good faith, as each assessed the identical scores on a large number of variables. We accept Ms Martinus' evidence, which was that while she could not specifically remember the details of the assessment, it was possible that the model was that after the interview, the interviewers discussed the performance of the candidate, reached agreed scores, and then wrote the agreed scores separately on their separate sheets, which is the reason why there were two lots of score sheets with identical numbering. The claimant scored poorly and was not considered appointable.

70. We were taken to a dispute about how and when the Principal Litigation post was filled and advertised. We accept that in the course of December the respondent notified its retained employment agency that it needed locum cover for the post, and that the agency produced an advertisement, in which it included that there were potential opportunities at the authority which was advertising. That was the agency's wording, and it was a sales pitch to candidates. We accept that the locum took up post on 7 Janaury, before the claimant was interviewed, and that there was a subsequent public advertisement for the substantive post after the claimant's unsuccessful interview. We do not read into this sequence any element of unfairness or discrimination against the claimant. If the claimant's point was that the sequence is evidence that her application was pre-determined to fail, we disagree. The respondent identified an immediate, short-term need for a locum; at that point, it did not know how the claimant, or any other candidate for that matter, would progress.

71. The evidence touched on events after dismissal. We deal with them to a limited extent. We set out our findings, so far as material, on the claimant's appeal against dismissal, and, briefly, on her grievance. In evidence and submission the claimant referred to events at the respondent after she left,

which were an agglomeration of complaint, grievance and gossip.

72. The claimant appealed against her dismissal on 27 December (534, 571), and her appeal was heard by Mr Bridge on 30 January 2020, and dismissed by letter dated 12 February (580). We find that Mr Bridge gave consideration to the points raised by the claimant, and, following an analysis not very different from our own, rejected them. The question for him was, as for this tribunal, not sympathy with the claimant as an individual, but whether organisational rationale for the decision of the CMT had been shown, and whether after that proper process had been followed.

73. Early in November, the claimant submitted a grievance (466) against Ms Saunders, and in particular in relation to a number of the points and decisions which the claimant alleged had arisen during the redundancy process. She summarised that her complaint was of, 'maladministration throughout this whole process.' There was no grievance meeting, although the claimant was invited to take part. The outcome was given by Mr Long on 6 December (510). The claimant's appeal against the grievance outcome was rejected, following a meeting, by Ms Russell on 23 January 2020 (569). Broadly, both found, as had Mr Bridge, that they accepted the organisational rationale for the restructure, and that proper process had been followed. It is no criticism of the claimant to observe that like many employees caught up in a process, she hoped that the grievance procedure would provide an avenue for postponing or perhaps even averting the outcome.

74. Beyond what has been said above about the claimant's ancillary personal allegations against each of Ms Martinus, her daughter (whose surname is not Martinus), Ms Saunders, Ms Emilien and a number of other former colleagues, this tribunal is not assisted by any of the claimant's allegations about events at the respondent since her dismissal. Although they were evidence of poor analytical skills, the allegations do not, in our judgment, have a bearing on the credibility of the claimant's evidence about the events before us.

Unfair dismissal

75. This was primarily a case of unfair dismissal. The first question for the tribunal is to identify the reason for dismissal. That means the factual circumstance which operates on the mind of the dismissal decision maker. We were grateful to Mr Davies for written submissions, which seemed to us clear, concise, and an accurate statement of the law and which we gratefully adopt.

76. We agree with Mr Davies that a reorganisation took place, in which two posts were deleted and therefore redundant. One was the claimant's part time post, and the other was the claimant's full-time mirror post, which was vacant, and which was also deleted.

77. The questions of whether the reorganisation was the right way to solve the respondent's recruitment problems, and whether it succeeded in that objective, are not for the tribunal. As Mr Davies neatly summarised it, our task is to ask, "whether the decision to terminate employment by way of redundancy was genuine, not whether it was wise." We find that it was genuine, and we make no finding on its wisdom.

78. We accept that the work being done by the claimant continued to be done and did not diminish, but that it was done following reallocation between different individuals;

79. We accept Mr Davies' reliance on Robinson v British Island Airways Ltd [1978] ICR 304, as authority for the proposition that,

> "It is well established that the deletion of a post as part of a restructure leads to a diminution in the requirement for an employee to carry out work of a particular kind where the duties of the role are distributed elsewhere."

80. Was the claimant dismissed by reason of that reorganisation / redundancy? (We come separately to the discrimination law issues). We find that she was: there was no cogent evidence to the contrary. At this point, we consider the claimant's allegations of bad faith. There was no evidence whatsoever to support the claimant's allegations that the reorganisation was a sham, designed on grounds of cronyism (in favour of Ms Emilien) and/or nepotism (in favour of Ms Martinus' daughter). During submission, Mr Brockwell touched on the other regulatory avenues to which he might wish to refer those allegations, and we record having said, as we repeat, that that is his right. We add, in case there is any confusion in the claimant's mind, that, if upheld, either of the allegations of cronyism or nepotism would in our view be highly material to the question of fairness.

81. Part of the claimant's case was that she was "targeted" (a word which she used several times at the hearing). At the end of her evidence, the Judge asked her specifically whether it was possible that she was not targeted as an individual, but that she was unlucky (in that she held a post which was proposed for deletion). The claimant very firmly shook her head and stated that she had been targeted. We have a modest degree of sympathy for the claimant on this point. The post which she held came to be targeted, and Ms Saunders agreed that it was unlikely that any process of consultation could save the post from deletion. However, we do not accept the claimant's submission that she as an individual was targeted, no matter her emotion or perception.

82. We accept that redundancy / reorganisation are potentially fair reasons for dismissal, and that the tribunal must next consider whether the test of fairness has been met. It is set out in s.98(4) ERA 1996, and provides,

> "[T]he determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case."

83. We must take care not just to apply the realistic standard of the reasonable employer, but also not to substitute our own view, and to approach the matter objectively, unswayed by the emotion shown at this hearing. We accept that at each stage at which the respondent must exercise discretion, it has a range of reasonable responses: in less ornate terms, each question may have more than one right answer. Our overarching, general finding, before we come

below to the major specific contentions, is that the standard of fairness has been met. It has been shown that there was an objective analysis and business reason for the restructure, and that there was an objective reason for deletion of the claimant's post. The claimant and others were informed and consulted, offered rights of accompaniment, provided with relevant information and documents, given outcomes in writing, and offered a right of appeal.

Specific points in unfair dismissal

84. In submission, Mr Davies very correctly put to the tribunal a number of points about consultation, the redundancy pool, selection, bumping, the search for suitable alternative employment, and adherence to the respondent's own procedures, including the advertisement for Senior Litigation post. The claimant also made a number of other specific points. We now turn to those, insofar as each may be relevant to a finding of fairness.

Full time post

85. We repeat our overarching finding that the Principal Conveyancer post was available in principle for job share, and that the claimant was given that information at the meeting on 11 October 2019. We add this observation: at the end of this hearing, we were concerned that the claimant had on a number of occasions shown the tribunal poor listening skills. At the time in question, the claimant's health was possibly vulnerable, and she had suffered the enormous shock of being told that her job was at risk. It is entirely possible that when Ms Saunders and Ms Frantzell told her that the Principal Conveyancing post was a full-time post, the claimant misunderstood what exactly she was being told.

Pool

86. The redundancy pool consisted of the claimant only; if the mirror post had been occupied, the post would also have been pooled.

87. The claimant referred to four other colleagues who she submitted should have been pooled. We heard a considerable amount of evidence about them. We accept the respondent's evidence, which was that two were not pooled because their posts were funded from a different designated budget from that of Legal Services as a whole (Affordable Housing), and that they were in any event fixed term contract appointments; and that the other two were funded by project work which in time would diminish (Voluntary Registration).

88. Mr Brockwell in particular contested these points fiercely, but his guidance on the intricacies of local government finance did not assist us. We note the budget figures quoted by Ms Martinus in her report of September. We accept that when she wrote the report she understood that the funding position was that set out above, and there was no evidence of that approach having been challenged by the CMT or any member of the CMT who had before them Ms Martinus' budget figures.

89. In support of her submission on pooling, the claimant argued that the work of the entire team was "interchangeable" and sought to refer the tribunal to records of for example, work which she undertook which fell within the

Affordable Housing remit. We prefer the evidence of the respondent, which was that the property team was a collegiate team, working together in an open plan space, in which collegiate cover was an everyday occurrence (from which the claimant in particular as a part-timer must have benefitted); but that it does not follow that the work of the whole team is interchangeable work. We agree, and the point does not assist.

Accompaniment

90. The claimant referenced her right of accompaniment which we have dealt with above, and the failure to consult the client, also dealt with above. In plain terms: she wanted the decision maker to hear from the colleague(s) with whom she had worked most closely, who were best placed to speak to the quality of her work. That is completely understandable, but it is not the basis of the right of accompaniment, and it pre-supposes, wrongly, that the quality of her work was a material factor in the process.

Volunteers

91. The claimant referenced the respondent's failure, in accordance with its own procedure (646) to ask for volunteers for redundancy, or to dismiss agency staff first. We accept the respondent's submission, which was that the procedures in question were in principle not mandatory. However, a much more important point was that they were in any event not applicable to the claimant's circumstances, because there was no relevant candidate to ask to volunteer, and no relevant agency staff. The flaw in the claimant's point was that it applies in cases where a respondent may have to select which individual(s) to dismiss; in this case, by definition, that was not the case.

Assimilation / bumping

92. The claimant submitted that others at her level might or should have been removed from post so that she could be put into their post to avoid dismissal. This is what we mean by "bumping". We agree with the respondent that there is no obligation to undertake bumping to avoid the redundancy of an individual. We also add that concept of bumping is based on a degree of interchangeability and may be more suitable to an outdated model of redundancy among manual workers than within professional work.

93. The claimant also submitted, although it was much the same point, that she should have been assimilated into a Conveyancer post. We accept the respondent's submission: there was no vacant Conveyancer post into which to assimilate her, and she had no right to be bumped into a colleague's post at that person's expense.

Cost saving

94. Part of the objective of the restructure was to save on the costs of external property lawyers, by bringing high level expensive legal work in-house. The claimant was very confident that that aspiration had not in fact been delivered. We accept that that objective was a legitimate aspiration of the creation of the Principal level post. The claimant's criticism of the aspiration seemed to us excessive: even a modest reduction in external legal service might have led to a budget saving. However, whether or not that objective was achieved

is not a matter for us, as we accept that it was part of the legitimate factual basis for the restructure.

Competence

95. The claimant said in a number of ways that Ms Emilien was no more qualified to undertake the Principal conveyancing post than was she, the claimant. The tribunal cannot assess their respective qualifications or competences. It can however point to a very specific qualification which Ms Emilien had which the claimant did not, which was that Ms Emilien actually applied for the job. We are in no position to say what might have happened if the claimant had applied and been interviewed in competition (as a potential job share) with Ms Emilien.

Disability discrimination issues

96. We turn to the question of disability. In this section of our reasons we are aware of the practical and principled issue raised by the claimant and Mr Brockwell about information in the public domain.

97. We preface our discussion of disability discrimination with a number of points. While we repeat that Mr Davies goes too far in describing disability as a red herring, we do reject in full the three central pillars of the claims of disability discrimination, which were that the timing of the claimant's redundancy calculation was in response to her uveitis diagnosis; that she was in any way targeted because he was part time (which was at least in part related to disability); and / or that she was unable to apply for the Principal Conveyancer post because it was only available to a single full time post holder.

98. We do agree with Mr Davies that disability was, in practice, a far less important issue in the claimant's employment and its termination than the focus on disability at this hearing might suggest. Secondly, although the claimant repeatedly said that she had worked for 12 years as a part time worker in order in part to cope with her disabilities (and also for family reasons) we note that she was, throughout that period, a part-time worker whose work pattern and arrangements seemed to have given rise to absolutely no issues about performance, effectiveness, relationships with colleagues, or any of the range of issues which can arise from part-time work. Thirdly, we were told of, or shown, nothing untoward in her absence record up to the end of 2018. She suffered a period of diagnosed ill-health in the first months of 2019. That experience coincided with the restructure with which this hearing was concerned. Our overarching finding remains that that was a coincidence of timing, not a causal sequence. Certainly, there was nothing in the claimant's attendance or sickness pattern which indicated that before about May 2019 health or disability issues had interfered with her professional effectiveness.

99. The claimant said that it was visually obvious that she had health issues and / or disabilities. She said that her workstation was provided with specialist ergonomic equipment; that in the course of 2019 she attended work over a long period of time with a constant cough; and that she sometimes wore sunglasses to protect her eyes from the screen.

100. The claimant worked in an open plan space. When Ms Saunders joined in

early June 2019, one of her immediate tasks was to familiarise herself with the practice and procedure of her new office, and to get to know her new direct reports. She presented to us as a thoughtful sensitive manager, who was aware of the potential problems for a newly appointed manager, the fourth in as many months, meeting long established colleagues. We accept her evidence, which was that there was nothing at the claimant's workstation or in her presentation at work which alerted Ms Saunders to any untoward issue of health or disability. We add that the mere presence of ergonomic equipment, and/or of a persistent cough, and/or of occasional use of sunglasses in the office, do not together or separately in our judgment give rise to an inference of disability, or, in isolation, to constructive knowledge of disability.

101. The claim proceeded on the basis that the claimant relied on a raft of health conditions. Judge Postle's order no doubt captures how the claimant described them to him, but the greater level of analysis, which was necessary for this hearing, was not provided by the claimant. In a helpful table appended to his skeleton argument, (see below) Mr Davies set out the six conditions which had been referred to in these proceedings. The respondent accepts that three each constituted a disability. They were chronic back pain, diagnosed before the claimant took up employment with the respondent ; and two conditions diagnosed in the course of 2019, thyrotoxicosis and sarcoidosis. The claimant had also pleaded three other conditions. One was arthritis. When asked by the tribunal what the difference was between that pleaded issue and chronic back pain, the claimant hesitated and answered that arthritic pain sometimes affected her neck. There was no evidence that arthritis had a substantial effect on the claimant's day-to-day activities which was separate from and additional to that caused by chronic back pain, and it did not assist us to try to analyse the matter as a further or separate disability. We declined to do so. Any claim based on arthritis fails because on evidence the s.6 test has not been met: the claimant adduced no evidence of a substantial effect on any day to day activity.

102. The claimant was first diagnosed with acute anterior uveitis on 22 July 2019. It is an autoimmune eye condition. At date of diagnosis it had manifested for about two weeks; it was treated, and the episode ended in the course of August 2019. There was no evidence of any recurrence or substantial effect before the claimant's dismissal, or evidence of likelihood of recurrence. (The Judge mentioned at the hearing that he has had this condition for over 40 years, and that in his experience, it is a condition of which symptoms present episodically, sometimes years apart, and are then managed). We do not underestimate the distress caused to the claimant by the acute episode in the summer of 2019, but there was no evidence of its effect on day to day activities beyond that episode, or evidence of actual or likely duration. It did not appear to us that communication to the respondent of the words "Uveitis" and / or "autoimmune" obliged the respondent to pursue a reasonable line of enquiry into the condition or the claimant's diagnosis, or of themselves put the respondent on notice of a disability. Any claim based on uveitis fails because on evidence the s.6 test has not been met.

103. We add that the conclusions just given make no difference whatsoever to the outcome of this case. If we had found that the claimant as a result of arthritis and / or uveitis met the s.6 test, the claims would still have failed. A critical

part of the claimant's submission turned on the proposition that her two week absence in late July and early August 2019, along with her notification to the respondent that the diagnosis was uveitis, were separately or together an effective material cause of the decision on 19 August to calculate her redundancy payment, as a step towards her dismissal. As stated elsewhere, we wholly reject that submission. It is based on the misconception that sequence proves causation. We accept that there was no more than coincidence of timing.

104. A further condition was diagnosed in October, by which time the redundancy consultation had commenced; there was no evidence of its substantial effect, or actual or likely duration, or of it having played any part whatsoever in these events. Any claim based on the October diagnosis therefore fails because on evidence the s.6 test has not been met.

105. Drawing the above points together, the position reached by the tribunal in conclusion is a slightly strange one. We accept, and it is common ground, that at all material times the claimant met the s.6 definition of disability by virtue of chronic back pain; and, in the course of 2019, by virtue of the two other pulmonary12 conditions identified above. We do not accept that any of the other three conditions relied upon by the claimant brought her within the s.6 definition. We repeat that even if we did, it would make no difference whatsoever to any of our conclusions.

106. In relation to all disability issues, we accept the respondent's submission that it did not have actual or constructive knowledge of disability. This may well reflect the claimant's proactive management of her own health, and of her attendance at work. It was very clear to us that she was assiduous in managing her part-time work pattern, perhaps in part with a view to avoiding criticism or burdens on the service or colleagues.

107. We repeat that we could see no evidence whatsoever that disability or any other protected characteristic played any part whatsoever in the central events in this case, namely the restructuring and the claimant's dismissal. For avoidance of doubt, our rejection of the submission that part-time working was in any way relevant to these events includes our rejection of any suggestion that the Principal role was not available to the claimant as a part time opportunity because of any factor related to disability.

Absence Management

108. Going back in chronology, we here deal with a recurrent related issue about triggers of the Absence Management Policy. In common with many policies, the respondent's policy provided that a management action would be triggered by a number of days of absence in a set period and / or by a number of episodes of absence in a set period (654):

> "Line managers must regularly review sickness absence levels within their team and discuss cases with HR to ensure consistency across the Council. In particular, the following will trigger a review:
> · a total of 6 days absence in any 12 month rolling period (the 12 month rolling period is calculated from the first day of sickness absence). This is pro- rata for part time employees e.g. an employee who works 18.5 hours per week will hit the trigger point after 3 days.

- where the employee has 3 periods of absence in a rolling 12 month period
- any pattern of absence which causes the manager concern, for example sickness regularly attached to other leave, regular absences on certain days or absences linked to events.
- long term absence of 4 weeks or more."

109. As Mr Davies pointed out, the provision for days of absence is expressly stated to be pro rata, but that for periods of absence is not. The respondent's system at the time was that an employee reported sickness absence to an external OH provider, Firstcare, which automatically informed the relevant manager by email that a trigger had been activated. At the first stage, that in turn led the manager to monitor the situation.

110. We were asked to adjudicate on four trigger events. It was agreed that each was an event when the respondent's procedure of monitoring the claimant's absence was triggered. The claimant asked us to find that the triggering / monitoring was on each occasion an act of disability discrimination.

January 2018 absence

111. The first was that in January 2018 the claimant was absent for two days because of diarrhoea. There was no evidence that the specific absence was related to any of the pleaded disabilities. That absence triggered a period of sickness management monitoring. The monitoring ended on 30 March 2018. There was no evidence that any further steps were taken as a result of the monitoring. That is a stand-alone event. On the claimant's best case, it ended at the end of March 2018. That was almost two years before Day A. The next potentially related event was over 13 months later. We decline to find that there was a continuing act between two events over a year apart, and we decline to find that it is just and equitable to extend time. As a stand alone claim any complaint about any monitoring in January to March 2018 is out of time. We add that this event has no evidential value as background to what followed.

May 2019 absence

112. The claimant had a short absence in February 2019 for 'Flu-like symptoms.' She had two absences in May 2019, which were recorded separately (333) as 'Respiratory disorder' and 'Cardiovascular –Chest pain.' The claimant's subsequent diagnosis indicates that either absence in May probably arose out of the pulmonary conditions diagnosed later in 2019. While we accept objectively that the claimant has shown on the balance of probabilities that the absence was disability related, the logic of her claim would require us to find that at the time, and on no more information than that quoted above, the respondent had or should have had knowledge of her disability before the claimant herself had it. We decline to make such a finding in this case.

113. We accept that Ms Ayyub (then acting line manager) wrongly triggered the Absence Monitoring Policy (325) because of her own misreading of the Policy. She did not understand how to calculate trigger points pro rata for periods of absence for a part timer, and the Firstcare system was unhelpful in this regard. However, as a stand-alone event under s.15 the claim of discrimination by triggering monitoring fails because of absence of the respondent's knowledge.

June and August triggers

114. The third trigger was that Firstcare triggered a notification to the respondent at the beginning of June 2019, which in turn led to a further triggering of a period of absence managing monitoring until August 2019. On 10 June 2019 Ms Saunders, then in her first week in post, had a return to work meeting with the claimant. It is evident from the very long referral which she then made to Occupational Health (337) that Ms Saunders took the opportunity to have a meticulous and detailed discussion with the claimant about health issues and absences. Her note records that while the claimant felt, and in part displayed, concerning symptoms, the cause(s) remained under specialist investigation.

115. We repeat our points about the May trigger: even if it were shown on subsequent knowledge that absence in early June was disability related, the respondent had no knowledge of that or reason to pursue a line of enquiry about disability, and in this case we decline to find that the respondent had or should have had knowledge of disability before the claimant herself did.

116. The fourth and final trigger was that for two weeks at the end of July and the beginning of August 2019 the claimant had what appears to have been the longest sickness absence possibly of her working life. It was due to an eye infection. She received the diagnosis of uveitis at the A & E Clinic at Moorfields Eye Hospital on 22 July and communicated it to the respondent. As Ms Saunders said, that triggered mathematically a further period of absence monitoring, which Ms Saunders extended to the end of November 2019. We repeat out findings above about uveitis. As a s.15 claim, the complaint about extension of the monitoring period to November also fails because the absence was not related to disability and the respondent had no actual or constructive knowledge of potential disability.

117. All of these claims fail on their merits for the reasons given. There are therefore two overarching points which we note but do not need to decide. The first is whether, for s.15 purposes, the mere trigger of monitoring constitutes unfavourable treatment, if no more is done in pursuance of the monitoring. Mr Davies made the point a number of times that whatever trigger had taken place, nothing more was done about it on any of the four occasions referenced above. That seems to us a good point, but not one that goes to unfavourable treatment. We accept that being placed on monitoring is in principle unfavourable treatment. An employee who is being, has been, monitored is in a less favourable position than an employee who is not, or has not been, monitored.

118. However, it seems to us that if we had to consider justification, we would accept that the mere act of monitoring is a proportionate means of achieving the legitimate aim of managing staff attendance, service delivery, with the health and welfare considerations involved in managing the individual. Monitoring is no more than gathering information for further action and assessment. That is where Mr Davies' point is well made: it is the further action and assessment which follows from monitoring which may, depending on the case, amount to a detriment.

Other discrimination claims

119. We give an overview of the discrimination points. We reject the claimant's submission that the Principal post was available to a single individual on a full-time basis only. That being so, all claims and submissions based on that factual allegation fail. That includes the only claim of sex discrimination, namely the complaint that limiting the post to a full timer was indirectly discriminatory against the claimant as a woman with childcare responsibilities.

120. The new structure included posts which were called Graduate or Trainee posts. The claimant submitted that she was discriminated against on grounds of age. She submitted that those posts were only available, not quite by definition but close to it, to younger candidates. She was 47 at the time of dismissal.

121. That claim fails at almost every point. We do not agree that a single management decision to create lower level posts constitutes a continuous system and therefore a PCP in the sense required by Ishola v TFL, 2020 EWCA Civ 112. We do not agree that it put the claimant at any disadvantage, because she had been a trainee at least 15 to 20 years before the events in question and could never be a candidate for a job at that level. If we had to consider the matter further, we would, in light of Ms Martinus' report of September 2019, accept that the creation of "home grown" staff was a proportionate means of achieving the legitimate aims of a stable committed workforce in a setting where instability and discontinuity were a significant problem.

122. The claimant brought victimisation claims based on a number of protected acts. We accept the respondent's submission that the claimant's flexible working applications in April and May 2019, no matter how important to the claimant and her family, included a protected act (342-3). The reference to parental responsibility (ie a request to change hours in order to accommodate the claimant's daughter's ballet classes) falls within even the broad framework of s.27(5) Equality Act 2010.

123. We accept the respondent's submission that we had no evidence to confirm that the two alleged protected acts made by emails to Mr Long had been sent by the claimant, or received by Mr Long. The respondent has rightly conceded that at the meeting with Ms Saunders on 11 October 2019, and subsequently in her written grievance, the claimant did protected acts by referring to discrimination.

124. Our finding is that there was no indication whatsoever at any stage that any act, event, or decision of which the claimant complains was in any way related to the fact that she had alleged discrimination. We would have reached the same conclusion if we had found that any of the first three alleged protected acts had in fact taken place.

125. Much of this case focused on the complaint that the claimant had been dismissed, at least in part, because she worked part time. A large portion of the claimant's claims, and in particular those under PTWR 2000, fall away as a result of our factual conclusions above about the Principal Conveyancer role. It was not clear to us that the claimant understood until late in these proceedings that the PTWR do not apply to dismissal on grounds of part-time status; that they carry no right for compensation to injury to feelings; and that

they require proof of an actual not a hypothetical comparator (Carl v University of Sheffield, UKEAT 0261/08). (The tribunal commented to the claimant that claims about discrimination against part-timers are, in our experience, very predominantly brought as claims of indirect discrimination). We add that we accept that if the full-time post which mirrored the claimant's post had not been vacant at the time of the consultation, that person would have been the ideal comparator, and assuming implementation of the restructure, he or she would also have been dismissed unless appointed to an alternative role.

126. One of the claimant's claims under the Part Time Worker Regulations did trouble us. It appeared that on 9 May 2019 (325) Ms Ayyub, in the mistaken belief that the claimant had a right to no more than 1.5 periods of absence, regarded the absence management procedure as triggered when the claimant had a second period of absence.

127. Although this was obviously a mistake, we do not think that an honest mistake made on the basis of part-time worker status necessarily escapes liability under the Regulations. However, as a claim under the PTWR it fails in the absence of an actual comparator. We add that as we told the claimant that if it had succeeded, it would have led to no more than a declaration that there had been a breach, without apparent financial loss and without an award for injury to feelings.

The lists of issues

128. Finally, we turn to the two lists of issues. We remind ourselves that we approach them on the footing that Mr Davies' list is a recasting of Judge Postle's list.

The Judge's list

129. We start with the order of Judge Postle (73-81), to whose numbering we now refer.

    2(a): Agreed and dealt with above.

    2(b): Agreed and dealt with above.

    2(c): The claimant received the same pre-warning as the rest of her team on 30 September 2019.

    2(d): We have dealt above with pool and our analysis differs from that of the claimant.

    2(e): We agree that there were no objective selection criteria , the reason being that the claimant's post and the vacant mirror post were the only ones to be identified as at risk of redundancy.

    2(f): The respondent gave the opportunity to the claimant to apply for the litigation post. It appointed a locum before the claimant's interview to ensure service provision. It did not then appoint to the substantive post.

130. Judge Postle set out 14 points of unfairness relied on by the claimant. We refer to his numbering (65).

1. We have set out the reason for dismissal above.

2. We find that there was a redundancy situation, alternatively a reorganisation.

3. We accept that work previously undertaken by the claimant has in effect been redistributed and that we have dealt with the point above. We accept that there is some element of the new Principal's work which was previously undertaken by the claimant.

4. We have dealt above with the aspiration to reduce reliance on expensive external legal spend. It is not the role of the tribunal to second guess the respondent's business or commercial approach to the Hatfield project.

5. The first point implies that the claimant's role was deleted because it was part-time, and we have rejected that argument. The second point refers to the competition between the claimant and Ms Emilien, which did not in fact take place because the claimant did not apply.

6. We do not agree that the claimant "trained up" Ms Saunders or Ms Emilien although she may well have assisted with their induction into the respondent's systems. Any comparison between the claimant and Ms Emilien fails in the overwhelming material difference, which was that Ms Emilien applied for the vacancy and the claimant did not.

7. Our finding has been that a fair procedure was followed. Our finding is that where the respondent departed from its own written procedures, the reason was that not all elements of the written procedure were applicable to the claimant's circumstances.

8. The conduct and outcome of the claimant's grievance were not material, but in any event the claimant did appeal unsuccessfully against the grievance outcome (t may well be that Judge Postle misunderstood what the claimant told him).

9. The claimant here takes issue with the management of the creation of lower level posts, for which she was never a candidate. We accept that there was consultation. We repeat that the prospect of avoiding deletion of the proposed roles was poor.

10. We accept that the postholders whose roles were funded from outside Legal Services were not placed in the pool. We do not fault that decision.

11. The point is factually correct, but we do not agree that it

rendered the dismissal unfair. Ms Martinus and Ms Saunders made a legitimate management decision about communicating distressing information to members of their team.

12. We have dealt above with the different wording of the different letters sent to staff differently affected. The different wordings accurately reflected the different positions of those at risk (because their posts were proposed for deletion) and those not at risk. We do not agree that the second sentence is material.

13. This point repeats a number of the claimant's concerns about process, dealt with above.

14. We have dealt above with the issue of volunteers and agency staff. There was no evidence that Ms Emilien was a personal friend of Ms Saunders.

5 to 9. We deal separately with discrimination.

10 and 11. We have found that the claimant's disability played no part whatsoever in the decision to dismiss her. We repeat that we would have reached the same conclusion if we had found that any of the three additional conditions constituted a disability. We have rejected the claims of age and sex discrimination.

12 and 13. We have dealt above with the single event of 9 May 2019 to which this refers.

14. The tribunal agrees that the issue of the 2018 monitoring is a free-standing individual issue which is significantly out of time and that it has no jurisdiction to hear it. It accepts that the claimant's sickness management in 2019 was a continuing act and that it does have jurisdiction to hear it.

15(a). There was no such PCP. We add this seems a strange allegation from a claimant with 12 years unblemished employment, all of it part-time.

15(b) The requirement was that the post be occupied full-time, not that the post holder work full-time.

15(c) We do not agree that the introduction of three new posts constituted a PCP (Ishola) as set out above.

17 to 22. We do not agree that a PCP applied to the claimant to work full time in the office five days a week. It never did.

21. While the sickness absence procedure is capable of constituting a PCP, we do not agree that the individual decision made by Ms Ayyub on 9 May 2019, made in obvious error, was a PCP. We accept that Ishola extends to individual management decisions made by mistake.

23 to 26. These have been withdrawn.

27.1 This was not a protected act.

27.2 to 3 There was no evidence that these protected acts were made.

27.4 it is agreed that there were protected acts.

Detriments 1 to 3 We find that the protected acts played no part whatsoever in any of the detriments recorded by Judge Postle.

PTWR 1 We disagree that the claimant's part-time work status was a consideration or indeed is capable of being litigated as pleaded.

PTWR 2 The bundle referred to a single past opportunity to attend an external event which the claimant alleges was denied to her on grounds of part-time work status. That is a single event which is well out of time and we do not extend time to hear it. If, however, the claimant refers to training to enhance her prospects in the litigation role, we agree that she was not offered training. Our finding is that the reason was that her performance at interview rendered her un-appointable. We accept that in principle had she been found to be appointable but to have a training need, training would have been offered.

PTWR3 This issue did not arise in light of our findings about the event of 9 May 2019.

Mr Davies' list

131. We turn now to Mr Davies proposed list of issues and we follow his numbering in that document. This final portion of our reasons is inevitably brief, as it replicates what we have set out above (more than once, in relation to a number of points), and we do not repeat in terms what we have already said.

1(a) Yes

1(b) None of the quoted factors.

1(c) In the alternative yes.

2(a) Yes, from 30 September 2019 onwards.

2(b) Yes

2(c) and (d) We accept that the absence of criteria was not unreasonable in the circumstances.

2(e) We accept that there was no obligation to bump and that bumping did not arise in these circumstances.

2(f) We accept that the claimant was furnished with the relevant information.

3(a) and (b) We have dealt above with volunteers and agency staff.

3(c) We have dealt above with the advertisements for the locum and the substantive post.

4. Yes.

5. The Polkey question would have been dealt with at the remedy stage. We made no finding that any procedural failing rendered the claimant's dismissal unfair.

6 to 8. We have dealt with these points above in finding that none of the three disputed impairments led the claimant to meet the s.6 definition.

9. Disability played no part whatsoever in any of the claimant's selection / failure to be offered alternative employment /dismissal.

10 to 12. We understand this to refer to the 2018 event. If so, the answer to 10 and 11 is no and therefore 12 does not arise. The major but not only reason is that there was no evidence that diarrhoea was something arising in consequence of any disability.

13 to 15. We understand this to apply to the management absence in May, June and August 2019 and have dealt with it above.

16. No. The claimant could not apply for Conveyancing Officer posts because they were occupied and not at risk or pooled.

17 to 18. Not applicable.

19. No. See above.

20 to 21. We have set out above our findings on limitation in relation to absence management.

22. No. See our findings about the 11 October meeting.

23 to 25. Not applicable.

26. No. See our findings about the 11 October meeting.

27 to 29. Not applicable.

30. No. We have explained above why we do not find that these decisions amounted to a PCP.

31 to 32. Not applicable.

33. If we had had to considered the point, the answer would have been yes.

34. No.

35 to 36. Not applicable, but we add on 36(b), that we accept Ms Saunders' evidence that homeworking was not a feasible option in September 2019 in the way that it is now: it was striking to be told in evidence that at that time the respondent's Legal Services did not for example have Microsoft Teams.

37. The question may be answered by accepting that the respondent applied its absence management procedure (642).

38 to 39. There was no evidence to that effect.

40. No to both (a) and (b) separately.

41. No.

42. No.

43(a). No.

43(b) and (c) No.

43 (d) No. There was no comparable full-time worker. The claimant is right to assert that Ms Ayyub mis-applied the relevant policy.

44. Yes. We have discussed above the relationship between Ms Ayyub's mistake and part-time status and find that we cannot realistically separate the two.

45. We would struggle to accept justification of discrimination based on a management mistake.

46 and 47. It is a continuing act and the answer to 46 is yes.

_____

Employment Judge R Lewis

Date: 27/4/2022

Judgment sent to the parties on

9/5/2022

N Gotecha

For the Tribunal office

Appendix A: Mr Davies' Proposed list

Case No: 3305337/2020

IN THE EMPLOYMENT TRIBUNAL
WATFORD

BETWEEN

MRS THILA BROCKWELL

Claimant

and

WELWYN HATFIELD BOROUGH COUNCIL

Defendant

RESPONDENT'S PROPOSED LIST OF ISSUES

Unfair Dismissal

1. Was the reason for dismissal:

(a) redundancy; or

(b) a combination of:

(i) sex:
(ii) age;
(iii) disability;
(iv) disability related absence;
(v) part time worker status;
(vi) favouritism towards Ann-Marie Emilien, a former member of agency staff, who is alleged to be a friend of Sheila Saunders

(c) (if not a redundancy and the Claimant does not prove her reasons) SOSR (a business reorganisation carried out in the interests of economy and efficiency) or

2. Did the Respondent act within the band of reasonable responses in the manner in which it:

(a) warned and consulted the Claimant about the proposed redundancy;

(b) defined the pool for redundancy appropriately (*the Claimant says the pool of selection should have included the other 4 Conveyancing Officer*s *– see issue (x) of the List of Issues* [65]);

(c) drew up selection criteria;

(d) applied those selection criteria;

(e) bumped her into the Conveyancing Officer role;

(f) searched for alternative employment for the Claimant.

3. In addition, the Claimant argues that the Respondent acted outside the band of reasonable responses because it did not, it is alleged, contrary to its own policy:

(a) seek volunteers for redundancy

(b) terminate the employment of agency staff

(c) held off advertising the Senior Litigation Officer Role externally before the Claimant was interviewed for it.

4. Was the decision to dismiss within the band of reasonable responses?

5. Absent any procedural failing in the procedure the Employment Tribunal finds to have occurred, what is the chance the Respondent would have fairly dismissed the Claimant in any event?

Equality Act 2010

Section 6: Disability

(NB: The Respondent has accepted that the Claimant is disabled by virtue of certain impairments. Its position is set out in the table in Appendix One. The issues set out below reflect the remaining points of contention)

Arthritis in Back and Neck

6. Did the Claimant's Arthritis in Back and Neck have a substantial adverse effect on her ability to carry out normal day-to-day activities?

7. If so, at the material times:

(a) had it lasted for at least 12 months;

(b) was it likely to last for at least 12 months, or

(c) was it likely to last for the rest of the life of the person affected; or

(d) if ceased, was it likely to recur?

8. In relation to the Claimant's Uveitis and Depression at the material times:

(a) had it lasted for at least 12 months;

(b) was it likely to last for at least 12 months, or

(c) was it likely to last for the rest of the life of the person affected; or

(d) if ceased, was it likely to recur?

Section 13

9. Did the Respondent treat the Claimant less favourably than it would have treated someone without a disability she has because of any or all of her disabilities by:

(a) selecting her for redundancy;

(b) not providing her with alternative offers of employment;

(c) dismissing her.

Section 15

Absence Improvement Plan

10. Did the Respondent put the Claimant on an absence improvement plan?

11. If so, did that amount to unfavourable treatment because of something arising in consequence of any or all of her disabilities?

12. If so, was the treatment a proportionate means of achieving a legitimate aim (ensuring good attendance at work)?

Sickness Absence Policy

13. Did the Respondent apply to the Claimant its sickness absence policy?

14. If so, did that amount to unfavourable treatment because of something arising in consequence of any or all of her disabilities?

15. If so, was the treatment a proportionate means of achieving a legitimate aim (ensuring good attendance at work)?

Did the Respondent preventing the Claimant from applying for 2 Conveyancing Officer posts on a part time or job share basis?

16. Did the Respondent prevent the Claimant from applying for 2 Conveyancing Officer Posts on a part time or job share basis?

17. If so, did that amount to unfavourable treatment because of something arising in consequence of any or all of her disabilities?

18. If so, was the treatment a proportionate means of achieving a legitimate aim (Respondent to particularise if amendment permitted)?]

Knowledge: Section 15(2)

19. In relation to any of the above, if proven, did the Respondent know, at the material time, or could it reasonably have been expected to know, that that the Claimant had the disability?

Limitation

20. In relation to the above, did the Claimant bring the complaint after the end of the period of 3 months starting with the date of the act alleged?

21. If not, it is just and equitable to extend that period?

Section 19: Sex and Disability

Requirement to Work Full Time

22. Did the Respondent apply to both men and women and those who have the same or similar disabilities as the Claimant and those who do not a requirement to work full time?

23. If so, did the above put women and those who had the same or similar disabilities as the Claimant at a particular disadvantage in comparison with men or those who do not have the same or similar disabilities as the Claimant.

24. Did it put the Claimant at that disadvantage?

25. If so, was the treatment a proportionate means of achieving a legitimate aim?

Requirement that Principal Lawyer (Properties and Contracts) Position be full time

26. Did the Respondent apply to both men and women and those who have the same or similar disabilities as the Claimant and those who do not a requirement that the principal conveyancing lawyer position be full time?

27. If so, did the above put women and those who had the same or similar disabilities as the Claimant at a particular disadvantage in comparison with men or those who do not have the same or similar disabilities as the Claimant?

28. Did it put the Claimant at that disadvantage?

29. If so, was the treatment a proportionate means of achieving a legitimate aim (providing legal advice internally)

Section 19: Age

Introducing three new graduate or trainee lawyer posts to structure

30. Did the Respondent apply to those of the Claimant's age group and those outside her age group a PCP of introducing three new graduate or trainee lawyer posts to structure?

31. If so, did the above put those of the Claimant's age group at a particular disadvantage in comparison with those who outside her age group?

32. Did it put the Claimant at that disadvantage?

33. If so, was the treatment a proportionate means of achieving a legitimate aim?

Section 21

Requirement to Work Full Time

34. Did the Respondent apply to the Claimant and others without her disability a requirement to work full time?

35. If so, did that put the Claimant and those with her disability at a substantial disadvantage in comparison with those who do not have her disability because sitting for long periods of time caused the Claimant pain?

36. If so, what steps would it have been reasonable for the Respondent to take to alleviate the disadvantage? The Claimant contends for:

(a) part time working;

(b) home working;

(c) allowing her to apply for alternative 2 conveyancing role posts;

(d) providing her with training for the Senior Litigation role;

(e) providing her with a trial period in the Senior Litigation role.

Application of Respondent's Sickness Absence Policy

37. Did the Respondent apply to the Claimant and others without her disability a rule that an employee would be subject to sickness management procedures if the employee had more than 3 days off sick in rolling 12 month period?

38. If so, did that put the Claimant and those with her disability at a substantial disadvantage in comparison with those who do not have her disability because sitting for long periods of time caused the Claimant pain?

39. If so, what steps would it have been reasonable for the Respondent to take to alleviate the disadvantage? The Claimant contends for discounting disability related absence.

Knowledge

40. In relation to all claims under Section 21, did the Respondent know, at the material time, or could reasonably have been expected to know that the Claimant:

(a) had the disability; and

(b) was likely to be placed at the disadvantage referred to in the first, second or third requirement.

Section 27

(NB: The Respondent's accepts that the Claimant did a protected act on 4 November 2019 by raising a grievance against Sheila Saunders and Margaret Martinus and did protected acts during the meetings with Sheila Saunders and Karin Frantzell on 11 October and in her letter of 18 October 2019. The issues set out below reflect the remaining points of contention.)

41. Did the Claimant do a protected act by:

(a) making a flexible working application in March 2019;

(b) sending a letter by email dated 19 September 2019 to Nick Long attaching a doctor's letter of 18 September 2019;

(c) complaining to Nick Long on 26 September 2019 date that she was on a very low salary.

42. If so, did the Respondent subject the Claimant to the following detriments as a result of the protected act(s):

(a) overlooking her for promotion;

(b) refusing her training and development opportunities;

(c) not considering her for flexible working;

(d) not considering her for job sharing;

(e) not considering her for part time working;

(f) not appointing her to the Senior Litigation Officer role;

(g) making her redundant;

(h) dismissing her.

PTWR

43. Did the Respondent treat the Claimant less favourably than a comparable full-time worker by:

(a) deleting the roles of the 3 part time employees in the restructure (para 23(v) in the Particulars of Claim [32]);

(b) not giving the Claimant the opportunity to apply for/offering the Claimant the chance to apply for part time or job share employment;

(c) not giving the Claimant training;

(d) applying the rule in paragraph 3.9 of its Sickness Absence Management Policy and Procedure that 3 periods of absence in a rolling 12-month period should be adjusted pro-rata in relation to part-timers such that, in her case, she was triggered after just one day of sickness absence.

44. If so, was the treatment done on the ground that the worker is a part-time worker?

45. If so, was the treatment is not justified on objective grounds?

46. In relation to the above, did the Claimant bring the complaint after the end of the period of 3 months starting with the date of the act alleged?

47. If not, it is just and equitable to extend that period?

APPENDIX ONE

Impairment	**Does R accept impairment amounts to a disability?**	**Basis on which R denies disability**	**Does R accept it had knowledge of the disability at the relevant times?**
Chronic Back Pain	Yes		No
Arthritis in Back and Neck	No		No
Graves Thyrotoxicosis	Yes		No
Pulmonary Sarcoidosis	Yes		No
Uveitis	No	Insufficient duration	No
Depression	No	Insufficient duration	No

EMPLOYMENT TRIBUNALS

Claimant: Mrs T Brockwell

Respondent: Welwyn Hatfield Borough Council

RECORD of a PRELIMINARY HEARING

Heard at: Norwich (by telephone) **On:** 25 March 2021

Before: Employment Judge Postle (sitting alone)

Appearances
For the Claimant: In person
For the Respondent: Miss Koon-Koon, Solicitor

CASE MANAGEMENT SUMMARY

Final Hearing

(1) After all matters had been debated between the parties, it was agreed that a realistic time estimate (liability only) was 8 days. The case has therefore been listed before an Employment Judge sitting with Members at **The Watford Employment Tribunal, 3rd Floor, Radius House, 51 Clarendon Road, Watford, Herts., WD17 1HP,** commencing on **Monday 7 March 2022** and concluding on **Wednesday 16 March 2022**, starting at 10am or as soon as possible thereafter. The parties and their Representatives must attend by 9:30am.

(2) The Claimant and the Respondent **must** inform the Tribunal as soon as possible if they think there is a significant risk of the time estimate being insufficient and / or of the case not being ready for the final hearing.

The Claims

By one claim form filed on 6 June 2020, following Acas Early Conciliation commencing on 18 February 2020 and concluding on 18 March 2020, the Claimant made claim under the Employment Rights Act 1996 for ordinary unfair

(3) dismissal. The reason advanced by the Respondent is redundancy. The Claimant also made claims under the Equality Act 2010 for the protected characteristic of age, disability and sex; together with a claim under The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

(4) The Claimant asserts the following disabilities: Pulmonary Sarcoidosis, Graves Thyrotoxicosis, Uveitis (partial blindness), chronic back pain, arthritis (neck and back) and depression.

(5) At this stage the Respondents are not in position to say whether or not they accept the Claimant has these disabilities.

The Issues

(6) The claims give rise to the following specific issues:

Unfair Dismissal

1. What was the fair reason for dismissal?

    1.1 The Claimant alleges that there was no genuine redundancy situation because:

        1.1.1 The work the Claimant carried out continues and has not ceased or diminished; and
        1.1.2 The Claimant has not been presented with clear evidence that there are any substantial changes to her job role nor workload, meaning that her role could not be carried out on a part time basis.

    1.2 The Respondent relies upon redundancy as the fair reason for dismissal. Further and in the alternative, if, which is denied, the circumstances giving rise to the dismissal of the Claimant do not amount to redundancy as defined, the Respondent will contend that they amounted to a substantial reason of a kind such as to justify the dismissal of the Claimant, namely, a business reorganisation carried out in the interests of economy and efficiency, and that the dismissal was, in any event, fair for some other substantial reason.

2. The Claimant alleges that the redundancy process was procedurally and substantively unfair on the basis of:

    a) The Respondent did not seek volunteers for redundancy;
    b) The Respondent did not terminate the employment of agency staff in line with their policy;
    c) The Claimant did not receive pre-warning of the potential redundancy;
    d) The pool of selection did not encompass relevant staff;
    e) The selection criteria was not applied reasonably, fairly or objectively; and

f) The Respondent failed to offer alternative employment and advertised the Senior Litigation Officer role externally before the Claimant interviewed for the same, in breach of the Respondents Policy.

The substantive and procedure unfairness relied upon by Mrs Brockwell:

i. Not dismissed for one of the potentially fair reasons set out in s.98(2) Employment Rights Act 1996 ("ERA 1996").

ii. There was no genuine redundancy situation and the definition of redundancy under s.139 Employment Rights Act 1996 was not met.

iii. The kind of work the Claimant carried out continues and has not ceased or diminished or expected to. The Claimant further asserts the new role of Principal Property and Contracts Lawyer contains any substantial changes to the role or type of work the Claimant performed during her time at the Council.

iv. The information presented by the Respondents highlights major regeneration project in Hatfield Town centre which has been ongoing for over 10 years and speculates on future projects at Welwyn Garden City which the Claimant asserts does not highlight definitive changes and is not a fair response to warrant her dismissal. The £45 million plus Hatfield Regeneration Project – has been outsourced to external firms which specialise in major regeneration works. This has been ongoing for several years and there has been no real intention by the Respondents to suddenly do the works in-house. The Claimant does not accept that the new role of Principal Property and Contracts Lawyer was created to undertake this high-level project work and the Claimant would like the Chief Executive to explain why there was a business need to suddenly bring the high value regeneration works in house which would expose the Council to the associated risks of doing so.

v. Not been presented with clear evidence that there are any substantial changes to the Claimant's job role nor that the workload has increased meaning that it could not be carried out on a part time basis as it has been over the past years. If there are substantial changes, which the Claimant does not accept, what makes Ann Marie more qualified than the Claimant to do the role, to confirm what level?

vi. Both Sheila Saunders and Ann Marie joined the Council in or around May / June 2019. The Claimant trained them both up, the Respondent then deleted my post and Ann Marie, being an agency staff was appointed to the newly created Principal Property and Contracts Lawyer post, which essentially performs the same work the Claimant had been doing. This is not a true redundancy situation.

vii. The Respondent did not follow a fair redundancy process and did not follow their policies and procedures in order to avoid making the Claimant redundant.

viii. Was deprived of the right of an appeal hearing against the grievance decision of Simone Russel dated 23rd January 2020.

ix. There was no genuine and meaningful consultation. Subject Access Request evidence shows that on the 25th October 2019 Margaret Martinus sent an email to Karin Fratzell and Sheila Saunders, requesting that they extend Matuesz fixed term contract. ("could you confirm that Matuesz has had his fixed term contract extended"). This took place within the '30 days consultation period'. The redundancy situation was pre-empted so as to render the dismissal unfair.

x. Was unfairly placed in a pool of 1, when all 4 Conveyancing officers carried out substantially similar work and the roles were interchangeable. The selection criteria was not applied reasonably, fairly and objectively. At the beginning of the 'consultation period' other people that should have been in the pool were in effect told that their jobs were safe.

xi. Did not receive any pre-warning in advance of potential redundancy and was told in a mere 5 minutes before the announcement on the 30th September 2019, that the Claimant's role was being deleted.

xii. On the 30th September 2019 colleagues in the Conveyancing team received a letter from Margaret Martinus which stated that the changes of the restructure "would not have an impact on the post that you hold in the team". In contrast the Claimant's letter from Margaret Martinus stated that the changes "would have an impact on the post that you hold in the team". It was evident from the outset that different letters were sent out to members of the conveyancing team, who clearly should all have been in the same pool. Instead, Mateusz Plaza, the litigation support officer had his contract extended during the 30 days consultation period and Sukhi Punni and Peter Ross both had their fixed term contracts extended.

xiii. The Respondents failed to offer any alternative work, and did not consider the Claimant for suitable alternative employment, or consider her for job share or part time work or training. In fact, in breach of their own policies the Respondents advertised the senior litigation officer role externally before the Claimant's interview and failed to provide her with a job description despite my repeated requests as evidenced in various correspondences including an email from Karin Frantzell to Sheila Saunders sent on the 25th October 2019 in which Karin Frantzell asks Sheila Saunders whether to send me the Job description which was never forthcoming and deliberately held back.

xiv. The Respondent did not seek volunteers for redundancy and they did not terminate employment of agency staff in line with their policy and instead

gave Ann Marie an agency staff member and a friend of Sheila's permanent employment and unfairly removed the Claimant from employment.

3. Was the decision to dismiss reasonable in all the circumstances?

4. If, which is denied, the Tribunal finds that the dismissal was procedurally unfair, the Respondent will rely on Polkey v AE Dayton Services Limited [1987] ICR 142, to argue that the Claimant would have been dismissed in any event and to seek a reduction in any award for compensation accordingly.

Discrimination

5. The Claimant has identified the protected characteristics of age, sex and disability and claims that she was discriminated against by the Respondent due to her disabilities, sex and age.

Disability

6. The Claimant references pulmonary sarcoidosis, uveitis, Graves thyrotoxicosis, chest pains, breathing difficulties, depression, arthritis, painful joints / bones and chronic back pain with degenerative discs. The Respondent does not admit that these amount to a disability under s.6 Equality Act 2010, at this time.

7. The Claimant asserts the Respondents should have known or have reasonably been expected to know that the Claimant was a person with a disability at all relevant times she alleges she made the Respondents aware of her disabilities and the impact that this had on her on a number of occasions.

8. The Claimant asserts the Respondents have been provided with a wealth of medical evidence indicating her disabilities and this was communicated to the Council within increasing frequency during the period from 2019 to early 2020. The Council's own occupational health advisor made it very clear to the Council that the Claimant was not medically fit to attend any meetings until January 2020.

9. Since at least 2019 the Claimant has suffered and continues to suffer from a number of medical disabilities and receiving medical treatment for the disabilities.

Direct Discrimination – s.13 EqA 2010

10. Was the Claimant treated less favourably because of either disability, age or sex? The less favourable treatment the Claimant relies upon is:

    10.1 Selection for redundancy; and
    10.2 Dismissal and not providing alternative offers of employment.

11. The Claimant relies upon the following comparators:

- Ms Noucha Blackman (Age); and
- Mr M Plaza (Age).

And hypothetical comparators:

- Mr A Emilien (Sex); and
- Mr Ross (Disability).

Discrimination Arising from Disability

12. Has the Claimant been treated unfavourably? The unfavourable treatment the Claimant relies upon is:

12.1 Being placed on an absence improvement plan.

12.2 The disability related sick leave from May 2019, exceeded trigger levels of the Respondents sickness absence policy, the requirement for the Claimant as a part-timer in terms of sickness absence is less than just 3 days in a rolling twelve month period and less than 1.5 occasions.

12.3 When applying the sickness absence policy, the Respondents included all disability related sick leave, which has a disproportionate impact on disabled people and therefore discriminatory. Also, the fact that it is pro-rated for part timers creates an even more disproportionate impact on the Claimant.

13. If the above amounts to unfavourable treatment:

a. Did the unfavourable treatment arise in consequence of the Claimant's disability and disability related sick leave?

b. Was the unfavourable treatment a proportionate means of achieving the legitimate aim of ensuring good levels of attendance at work?

Jurisdiction

14. The Respondent avers that this claim is significantly out of time as the Claimant was placed on an improvement plan in 2018. The Respondent avers that this is a standalone claim which the Tribunal does not have jurisdiction to hear and that it is not just and equitable to extend time. In my response to this statement, I wish to say that as I had already taken 4 days of sick leave in early part of 2018, the action required from me was to take no more sick leave that year. The Respondents unsympathetic approach had exacerbated my medical conditions.

Indirect Discrimination – s.19 EqA 2010

15. Was there a provision, criteria or practice ("PCP") which was applied to all? The Claimant relies upon the following PCPs:

    a. A requirement to work full time;
    b. A requirement that the principal conveyancing lawyer position be a full time post; and
    c. The introduction of 3 new graduate or trainee lawyer posts.

The Respondent denies that the above amount to PCPs.

The Claimant is asked to identify whether she claims that each PCP applies to her sex, age, disability or all three.

16. If any of the above amount to a PCP:

a. Did it put, or would put persons whom the Claimant shares the characteristic at a particular disadvantage compared to persons who do not share the characteristic?
b. Did it put the Claimant at that disadvantage?
c. If so, can the Respondent show it to be a proportionate means of achieving a legitimate aim?

In relation to (b) the Respondent avers that the legitimate aim was to provide full legal support to the high level of contract and conveyancing work being brought into the legal department.

Failure to make reasonable adjustments – s.20 EqA 2010

17. Was there a PCP in place which placed the Claimant as a disabled person, at a substantial disadvantage in comparison to those who are not disabled.

18. If so, what was the substantial disadvantage suffered by the Claimant as a result of this PCP compared to those who are not disabled?

19. What adjustment would alleviate the disadvantage?

20. Is such adjustment reasonable in the circumstances?

21. Disadvantages as a result of the failure to make reasonable adjustments:

    a. Sitting for long periods full time would cause severe discomfort and pain; and
    b. As a result of the failure to discount disability related absence, dismissal.

The Provision, Criterion or Practice relied upon by Mrs Brockwell are:

1. The requirement to work full time in the office, 5 days a week.
2. The Respondent was aware of the Claimant's medical conditions and failed to make one or more reasonable adjustments under the EqA 2010.
3. The operation of the Council's sickness absence procedure (not allowed to have more than 3 days off in a rolling 12 month period).

Reasonable Adjustments required

22. The reasonable adjustments suggested are as follows:

22.1 To work part time or job share or working from home or a combination;
22.2 Discount disability related absence for the period May 2019 to September 2019;
22.3 To allow the Claimant to apply for the alternative two Conveyancing Officer posts; and
22.4 To provide training for the Senior Litigation role and offer a trial period.

Harassment – s.26 EqA

23. The Claimant states,

23.1 In or around June 2019, Sheila Saunders asked her whether "I'm ready to work full time, now that the children are at school. She said that she had always had to work full time when her son and daughter were young and that she was lucky to have an aunt that would help out. I told her that I would still need to pick the children up at 3:15pm". The remarks made the Claimant feel uncomfortable creating an offensive environment. The Claimant took this matter up and following the grievance hearing, the offensive remarks were brushed down as "general conversations about motherhood".

24. If the above amounts to unwanted conduct, which is denied, did it have the purpose or effect of violating the Claimants dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment taking into account:

a. The Claimant's perception;
b. The circumstances of the case; and
c. Whether it is reasonable for the conduct to have that effect.

Jurisdiction

25. The Respondent avers that this claim is out of time as the comments the Claimant relies upon were made in June 2019 and the claim therefore should have been submitted no later than 30 September 2019. The Respondent avers that this is a standalone claim which the Tribunal does not have jurisdiction to hear and that it is not just and equitable to extend time.

26. The Claimant will state that it is just and equitable for the Tribunal to hear this as although at the time the remark was made,

> "I felt extremely uncomfortable, it was only after Sheila told me on the 30/09/2019 that my job is going that I looked back in retrospect and realised the discrimination."

Victimisation – s.27 EqA

27. The Respondent accepts that the Claimant's letter of 4 November 2019 amounts to a protected act under s.27 EqA.

The Protected Acts that Mrs Brockwell would like to rely upon are as follows:

1. Flexible working application in March 2019 requesting to change working days from Monday, Tuesday and Thursdays to Mondays, Tuesdays and Wednesdays in line with the Claimant's written contract of employment (due to child care commitments) which was refused by Sheila Saunders in her decision dated 9th July 2019.
2. The Claimant's email to the Respondents on the 19th September 2019 with an attached doctor's letter dated 18/09/2019 addressed to Nick Long. Corporate Director of the Respondents identifying disabilities and requesting the Respondent to make reasonable adjustments at work based on my disabilities.
3. The Claimant's meeting with the Respondents director Nick Long, in or around mid September 2019 introducing my friends Artificial Intelligence Company Chatbot in response to his email to bring ideas for modernisation. During our meeting, Nick acknowledged that he had received the doctor's letter and an email from Chatbot Company. At this meeting I raised a complaint that I was on a very low salary compared to my colleagues and industry practice.
4. I raised a grievance against both of my managers, Sheila Saunders and Margaret Martinus in a meeting on the 11th October 2019 and formally by a letter dated 18th October 2019 and 4th November 2019. On the 10th January 2020, I again raised a grievance against my managers, Sheila Saunders and Margaret Martinus at the appeal hearing with Simone Russell. This all amounts to a protected act.

Detriments

1. The detriments suffered: dismissal, being overlooked for promotion, refused training and development opportunities and not being considered for flexible, job share or part time working and not being offered any form of work.
2. On the 30th September 2019 at about 10:55am, Sheila Saunders informed the Claimant that her job was the only one being deleted.

3. On the 14th January 2020, after a few minutes of the Claimant's interview ending for the position as a senior litigation officer, Margaret Martinus retaliated by informing the Claimant that she was not successful as she did not meet job criteria. The turnaround for making the decision was very quick. The situation was preordained.

Part-time Worker Regulations

1. By deleting part time employment and not offering or giving the Claimant the chance to apply for part time or job share employment.
2. As a senior member of permanent part time staff, I was not offered any training.
3. Furthermore, the sickness policy not only indirectly discriminates against disabled persons but it also discriminates against part timers as it is unreasonable to apportion disability related sickness absence.

Other Matters

(7) The Claimant will require regular breaks throughout the Hearing as the Claimant suffers from back, neck and eye problems.

(8) The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at: *www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/*

(9) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise) …*" **If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written**.

(10) The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.

(11) If the Tribunal determines that the Respondent has breached any of the Claimant's rights to which the claim relates, it may decide whether there were any aggravating features to the breach and, if so, whether to impose a financial penalty and in what sum, in accordance with section 12A Employment Tribunals Act 1996.

(12) The following Case Management Orders were uncontentious and effectively made by consent