



EMPLOYMENT TRIBUNALS

Claimants:

1. Miss S Harty
2. Mrs L Leonard
3. Mrs D Pieri
4. Mrs S Vince-Cain

Respondent: Manchester University NHS Foundation Trust

Heard at: Manchester

On: 13-17 January 2020
21 February 2020
(in Chambers)

Before: Employment Judge Sherratt
Ms M T Dowling
Ms S Khan

REPRESENTATION:

Claimants: Litigants in person
Respondent: Mr B Williams, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. Each claimant was dismissed because she was redundant.

2. The dismissals were unfair in respect of the first, second and third claimants but fair in respect of the fourth claimant.
3. The respondent offered the fourth claimant suitable alternative employment. Her refusal of the offer was unreasonable. She is not entitled to a redundancy payment.
4. The respondent did not treat Miss Harty unfavourably because she exercised her right to take maternity leave.

REASONS

The Issues

1. The issues to be determined by the Tribunal were set out at a preliminary hearing held on 3 June 2019 as follows:
 - (1) It being accepted that each claimant was dismissed, what was the reason for their dismissal? The respondent contends that in each case the dismissal was by reason of redundancy.
 - (2) Did the respondent in the circumstances act reasonably or unreasonably in treating redundancy as a sufficient reason for dismissing the claimants?
 - (3) In respect of Ms Vince-Cain, did the respondent offer her suitable alternative employment? If so and her refusal was unreasonable did she lose the right to a redundancy payment?
 - (4) In respect of Ms Harty, did the respondent treat her unfavourably for the purposes of section 18 of the Equality Act 2010 given that she was in the protected period until 22 August 2018?

The Claimants

2. Sarah Harty has been employed in the NHS since October 2008 and joined the respondent on 28 October 2013 as a British Heart Foundation Senior Nutritionist on a three year contract. The role was working alongside Manchester University NHS Foundation Trust's Children and Family Weight Management Services to deliver a British Heart Foundation and Hearty Lives Programme commissioned by Manchester City Council. In 2016 she was subject to redundancy consultation but

during the consultation process she secured a job as a professional Community Lifestyle CHAMPion which was basically a Senior Nutritionist within the respondent's Children's Health and Monitoring Programme as an NHS Band 6 under a six month contract.

3. Lorraine Leonard started her employment with the North Manchester Primary Care Trust on 5 September 2005. The Trust became Central Manchester University Hospitals NHS Foundation Trust and by 2010 she was working in the role of Public Health Nutritionist within the newly formed Children and Family Weight Management Service. Following a TUPE transfer in 2016 Mrs Leonard's employment ended by reason of redundancy, but on 12 September 2016 she was re-employed by the respondent starting with a six month temporary post working as a Community CHAMPion (Senior Nutritionist) working on the Children's Health and Monitoring Programme ("CHAMP").

4. Dina Pieri started her employment with North Manchester Primary Care Trust on 9 August 2004. This became the Central Manchester University Hospitals NHS Foundation Trust where she remained employed as a Public Health Nutritionist for the Children and Family Weight Management Service. She was made redundant on 30 March 2016 and re-employed on 12 September 2016 on a six month temporary contract as the Operational Team Lead working on the Children's Health and Monitoring Programme.

5. Sarah Vince-Cain commenced her employment with Central Manchester University Hospitals NHS Foundation Trust on 6 September 2006 as a newly qualified dietician, and by 2010 was a Specialist Paediatric Dietician and the Dietetic Team Lead for the Children and Family Weight Management Service in Community Adult Services Directorate. The service moved to the Community Children's Services Directorate in 2014. It was decommissioned on 31 March 2016 and the team members were made redundant. The claimant accepted secondment with the Trust as Clinical Programme Manager – Childhood Obesity for two years from 1 April 2015 until 31 March 2017. She then led the project called Reducing Childhood Obesity in Manchester ("RCOM"). This Health Education England ("HEE") funded project ended on 31 March 2017. Her role also incorporated developing and leading on CHAMP which was developed prior to the end of the RCOM project and continued beyond 31 March 2017 when the RCOM project ended.

6. The CHAMP team members, comprising all of the claimants and one other who secured alternative employment, sat within Patient Services in the Corporate Services Directorate not in the Community Children's Services Directorate.

The CHAMP Project

7. The remit of the CHAMP project was the weighing and measuring of all primary aged children in Manchester schools. The National Child Measuring Programme measures children in Reception and Year 6 to assess overweight and obesity levels in children. The CHAMP project involved weighing and measuring children annually. The weighing and measuring was done by School Nurse Assistants and the results were uploaded to a website.

8. The CHAMP team members would visit schools to promote CHAMP and provide feedback on levels of obesity at a school level. Via the schools, parents were encouraged to engage with the CHAMP feedback system by viewing their child's height and weight on the CHAMP portal. It was hoped this would encourage parents to take responsibility for the weight of their child.

9. The CHAMP project was also intended to oversee the further development of the CHAMP portal to improve the process for School Nurse Assistants to measure a large number of children and to ensure high quality data collection, to develop the use of individualised assessments by health and educational professionals and input onto the CHAMP portal and to introduce educational packages for healthcare professionals to include the use of CHAMP and e-learning resource.

10. From the point of view of a claimant Ms Harty told us that her role involved working with a team of highly skilled nutrition experts to innovate and support a wide variety of projects designed to improve local lifestyles and, more specifically, child obesity. She initiated and facilitated inter-agency partnerships and worked collaboratively with school leadership teams to promote engagement with CHAMP. She would feed back to each leadership team regarding school level data and in addition to school level feedback would also liaise and engage with parents, supporting them to assess and interpret data on the CHAMP online portal. She would advise and provide support and intervention to parents if required or requested.

The Respondent

11. The respondent is the Manchester University NHS Foundation Trust and employs more than 20,000 people. Mark Edwards is an employee of the Trust but from around July 2017 he became Acting Chief Operating Officer for the Manchester Provider Board which, on 1 April 2018, became the Manchester Local Care Organisation ("MLCO") of which he is the Chief Operating Officer. The MLCO is a partnership organisation bringing together NHS community and mental health services, primary care and social care services in the city of Manchester. All

healthcare staff are employed by the Manchester University NHS Foundation Trust with the exception of mental health staff who are employed by Greater Manchester NHS Foundation Trust. All social care staff are employed by Manchester City Council. The MLCO is not a legal entity, does not employ any staff and for the purposes of the operation of community health contracts it is essentially another division of the Trust.

The Evidence

12. For the respondent evidence was given by Mark Edwards, Lorraine Ganley, Deputy Director of Nursing (Community) who was involved in the termination of the employment of the claimants and Sue Langley who chaired their appeals.
13. Each claimant gave evidence.
14. The bundle of documents extended to around 1,200 pages.

Findings of Fact

15. Given that each claimant was treated in a similar manner by the respondent in connection with their employment and how it continued, we shall concentrate initially on the process undertaken in relation to Ms Harty, who is the first claimant.
16. In a letter sent on 28 September 2016 Ms Harty was informed that she had secured a six month post with the Obesity Project and she was told that:

“Unfortunately this is a temporary post, and whilst it delays the risk or redundancy, it does not remove it. As a result I will be contacting you again in December to recommence the redundancy consultation process with an amended end date of 31 March 2017.”
17. There was an individual consultation meeting recorded on 1 February 2017 followed by a letter on 2 February 2017 which referred to the meeting, which was a continuation of the consultation process to discuss her future employment. As the fixed-term contract was coming to an end they had formally recommenced the redundancy consultation and redeployment process. She was given notice of redundancy from 3 February to 31 March 2017 but she would go on the redeployment register and they would continue to seek a suitable position for her. The redeployment system involved registering with the Trust’s careers website on a system called TRAC.

18. As well as giving notice of redundancy a calculation of notice and redundancy payments was given together with a right of appeal.

19. On 24 March 2017 Ms Harty received a letter confirming that the Reducing Childhood Obesity Programme was to be extended for six months to 31 September 2017, which meant that the risk of redundancy was removed from 31 March but that risk was delayed until 31 September rather than removed, and the redeployment process would start again 12 weeks before the end.

20. By a letter dated 20 July 2017 Ms Harty was given notice of redundancy with effect from 28 July 2017 with a view to the employment ceasing by reason of redundancy on 30 September 2017. Again details were given as to the redundancy and notice payments.

21. On 28 September 2017 a letter was sent to the claimant, confirming information given on 16 September, that the Reducing Childhood Obesity Programme funding will be extended for a further 12 months from 1 October 2017 to 30 September 2018. Although the risk of redundancy on 30 September had been removed it was not a permanent extension and the risk of redundancy was delayed but not removed. The redeployment process would once again commence approximately 12 weeks prior to the end of the extended funding period seeking to safeguard continuity of employment. It was anticipated that the claimant may be on maternity leave around that time.

22. The employment of the other three claimants was similarly extended.

23. On 4 July 2018 Lorraine Ganley, Deputy Director of Nursing, wrote to Sarah Harty as follows:

“As you will be aware the Childhood Obesity Team has been subject to annual review due to the nature of the funding in place to support this team. You were originally redeployed into this role following a redundancy consultation exercise in relation to the citywide Community Weight Management and Nutrition Support Service and were advised of the temporary nature of the funding available. I have recently received confirmation that the funding will not be extended beyond this date and this means that your current role is not proposed to continue beyond this date.

I would therefore like to offer you the opportunity to meet with me on Wednesday 11 July...so that we can discuss the employment options available to you. The purpose of the meeting will be for you to discuss the situation with me further and to discuss any opportunities for alternative roles

to be considered. Natalie O'Mara, HR Business Partner will be present and you are welcome to bring a staff side representative or colleague if you wish to do so.

Please be assured that we will endeavour to explore suitable redeployment options for you and to support you in any way we can over the coming weeks."

24. The first paragraph of the letter from Lorraine Ganley to Dina Pieri was different:

"I write in reference to my letter dated 28 September 2017 which confirms that your fixed-term contract will be extended until 30 September 2018. You will therefore be aware that your fixed-term contract of employment with Manchester University NHS Foundation Trust is due to expire on the above date. The post you are appointed is subject to arrangements which are renewed six monthly or annually and following a review of future requirements the Childhood Obesity Team will not, unfortunately, receive any further funding. This means that your role is not proposed to continue beyond this date."

25. Mark Edwards tells us about the funding of the work carried out by the claimants under the CHAMP project. It was initially funded by Health Education England for a two year period to 31 March 2017. It was a specific project and not a commissioned service and there was no recurrent source of funding.

26. It was the understanding of Mr Edwards that no funding was available for the financial year 2017/18 and the money was found as an overspend against the Patient Services budget. He became aware of budgetary pressures during March/April 2018.

27. The project having been extended to 30 September 2017, there was support for the CHAMP project within the Patient Services Division and the project was extended for a further 12 months to 30 September 2018. Although no external funding was forthcoming, the Trust took the financial based risk of maintaining the project whilst trying to secure funding sources. The CHAMP project was a cost pressure to the Trust from 1 April 2017 to 31 March 2018.

28. Ms Vince-Cain, who managed the project, had been looking to secure additional funding from Health Education England and in March 2018 she secured £226,000 to deliver a number of items. The trust's corporate finance position is that revenue cannot be carried forward to the next financial year, therefore it was decided

that the HEE monies were to be used to write off the deficit created by the CHAMP project, it being a balancing figure against a negative budget.

29. Together with the interim FD of the MLCO Mr Edwards was investigating how they could secure funding for the CHAMP team and also ensure that the objectives agreed with the HEE were carried out. They identified the possibility of securing Greater Manchester allocated “transformation funds” which were intended for projects across the MLCO but each project was subject to business case approval and commissioning scrutiny. A letter was sent explaining the rationale for investing transformation funding into the Child Obesity Programme website and funding was obtained in the sum of £250,000 which could be deployed from April 2018.

30. On 4 May 2018 there was a meeting between Mark Edwards and Sarah Vince-Cain in respect of which each has a different recollection. According to Mr Edwards, he explained the situation regarding the funding and that it was likely that the CHAMP project would be coming to an end, although one permanent role would be created for Ms Vince-Cain in line with the objectives of HEE. Transformation fund monies would be used for one year from September 2018 and thereafter her role would come within the remit of Mr Regan, the Executive Director of Population, Health and Wellbeing, a part of Manchester Health and Care Commissioning. According to him he told her that unless alternative roles could be found the other members of the team would most likely be made redundant.

31. In the recollection of Sarah Vince-Cain, she was invited to a meeting to discuss the future of CHAMP and Mr Edwards expressed confidence in the future of it, giving assurances that none of the CHAMP team would be made redundant and that her role would continue. She had no reason to disbelieve his assurances especially given the timing of this meeting, which followed Ms Vince-Cain having made a presentation in the House of Commons to the Health Select Committee. As a personal comment Mr Edwards put it to her that some people did not like her, some people did not like him either, and he said that she was “the grit in the oyster”.

32. In cross examination Mr Edwards explained that he meant this to apply to people who are driven by a desire to improve, and “without grit you do not get the pearl in the oyster”. It was important to have people who were not prepared to accept the status quo with a desire to drive things forward. He considered this as a compliment in respect of someone driving services forward as this brought about the essential innovations in healthcare.

33. According to Ms Pieri, who did not include this information in her witness statement, Ms Vince-Cain reported back to her team the version of the meeting that she described to us.

34. Neither party took any notes of the meeting and no-one else was present.

35. A paper dated 18 June 2018 was prepared for Mark Edwards on the subject of Children's Health and Monitoring Programme (CHAMP) Project Team, dealing with sustainability and next steps. The purpose of the paper was to provide a briefing on the position of the CHAMP team in respect of the plan to decommission the project and confirm next steps.

36. From the introduction there is reference to a period of discussion with commissioners and key colleagues leading to a decision of the LCO Executive that the CHAMP project will formally end in September 2018 as unfortunately there was no funding stream available to support the continuation of the project in its current form. The paper would set out the current employment position in relation to the team staff and the next steps in managing the disestablishment of the team.

37. It gave some background history and noted that the contracts for the staff currently ran until 30 September 2018 and it had been agreed that the project in its current form would end on this date. It had not been possible to identify further sources of income and there had been none since April 2018. The project had not been formally commissioned nor were there any plans in the future to formally commission the project, which resulted in an unsatisfactory position for the staff working on the project who were left uncertain about their future.

38. The paper gave redundancy costs for each member of staff and as to next steps it was proposed to end the employment of each member of the team when their fixed-term contract ended, giving contractual notice and redundancy payments where alternative employment could not be found via the redeployment process. It was not anticipated that redeployment would be successful for all staff as they had tried to identify nutritionist roles across the organisation in a previous redundancy consultation exercise but this had not been successful. MFT (the respondent) generally employs dieticians rather than nutritionists and the skillsets are said not to be comparable.

39. There would be a need to meet the staff members involved and to place them on the redeployment register. It would be necessary to meet with Sarah Vince-Cain by the middle of June as she had a three month notice period.

40. Again, according to the evidence of Mr Edwards following executive level discussions between the Manchester Health Commissioners and the MLCO in March 2018 both organisations collaborated to define the forward commissioning intentions and hence future form of the existing CHAMP project. The outcome was a preference for a significantly reduced scale of investment with the commissioning of an Obesity Strategic Programme Lead only. As a consequence the majority of the existing workforce would be served redundancy notices in accordance with due process. Given that financial responsibility for CHAMP passed to the MLCO from March 2017, the MLCO has been required to develop a strategy which ensured the affordability of the closedown of the existing project and its transition to the proposed commissioning form. During 2017/18 the MLCO secured an allocation of £250,000 from the Transformation Fund to assist with finding a future solution for the project. This allocation was subsequently carried forward for use in 2018/19 on the basis that the project was able to utilise a Health Education England grant award to cover 2017/18 costs in the main. The Transformation Fund allocation was non recurrent and could not be overspent and unused money must be made available for other transformational investment priorities. MLCO had committed to deliver the outcomes funded by HEE and had met with the Programme Manager to be clear of what was required to finalise them. A small financial commitment would be required from Manchester Foundation Trust to enable full completion. The paper then set out how the funds would be utilised including the funding of unmet commitments for 2017/18, payment of project costs from 1 April to 30 September 2018, funding redundancy costs from the termination of the project as at 30 September 2018 and funding salary costs for the proposed Strategic Programme Lead for Obesity for the period to September 2018 in accordance with the terms of HEE funding.

41. Sarah Harty, whilst on maternity leave, received the 4 July letter but she was not aware that the Child Obesity Team had been subject to annual review and no information was given as to confirmation that funding would not be extended. The meeting would be the first opportunity she would have to discuss the redundancy and the decision making process despite the letter suggesting that she had known something about it before.

42. Given that she was on maternity leave she thought the respondent's approach was unfair and extremely insensitive of her situation, and she would have expected more support as she was out of the workplace on maternity leave. The letter was different in tone and content from previous letters received and she was told by her work colleagues they had also been placed on notice of redundancy so effectively the whole team was at risk.

43. Ms Harty attended the meeting with Lorraine Ganley and the HR Business Partner. According to Ms Harty she was told by Lorraine Ganley that, “CHAMP in its current format will not continue” without any further comment or explanation. Ms Harty would have expected further information given that what was happening with CHAMP and the work involved with it was a relevant factor as to whether her role was indeed redundant or whether there would be available alternatives going forward. Ms Harty formed her own conclusion that the work currently done by CHAMP would be continuing.

44. Unlike the two prior occasions when she had been spoken to when her contract period was coming to an end, it seemed as though dismissal and the redundancy was the main focus and it was explained as if it was a “done deal” without discussion, and as an afterthought redeployment and other employment opportunities were tagged on.

45. The HR representative explained the redundancy package but it was unlikely a suitable role would present itself under redeployment as the Trust does not employ nutritionists. This was something new to Ms Harty and to her mind it was untrue as they did employ them. In her view it was a little short-sighted since she would not have only wanted to just be considered for nutritionist posts. She would have looked at any alternative roles in order to retain employment with the respondent or within the service. She would have welcomed discussion about any roles available, but this was not offered. She did not think any consideration was given to her transferable skills. The other claimants gave evidence to the same effect with regard to the absence of any discussion about their transferable skills particularly in the light of the comment as to there being no roles for nutritionists within the respondent.

46. The redeployment system, she was told, was not advanced enough to take into consideration anything other than jobs of the same banding with similar hours. However, her colleague Lorraine Leonard was told by HR that if they match 75% of a job role then they could express an interest and be considered.

47. Ms Harty found this meeting drastically different from her previous meetings and came away from it thinking any applications or chance of securing a future position was already prejudged. There was no further meeting following that on 11 July.

48. On 27 July Lorraine Ganley sent an email to Ms Harty, at her private email address, sending an electronic copy of the letter regarding the redeployment process and notice of redundancy with an employee guide to redeployment and a claim for redundancy payment form. The letter ended stating that if Ms Harty had any queries

or if there was anything Lorraine Ganley could do by way of support she should not hesitate to contact her and there were an email address and a mobile number for this purpose.

49. The letter dated 26 July 2018 was headed "Redeployment Process and Notice of Redundancy":

"As you are aware, your initial risk of redundancy arose from the transfer of Manchester's Citywide Community Weight Management and Nutrition Support Service to ABL Health as outlined in the letter from Mark Edwards dated 19 January 2017 regarding the redeployment process and your previous notice of redundancy. To summarise, following the successful tender from ABL Health for Manchester Citywide Community Weight Manager and Nutrition Support Service, ABL Health confirmed that they did not believe TUPE applied. Following this, given that the former Central Manchester University Hospitals NHS Foundation Trust ("CMFT") provided service would cease to exist as of 1 April 2016, the definition of redundancy under the Employment Rights Act 1996 was met resulting in the former CMFT commencing a redundancy consultation.

Throughout this process you were redeployed into your current role within the reducing Childhood Obesity Team. You were advised that this was a fixed-term opportunity. On 28 September 2017 Nicola Marsden wrote to you to confirm that the funding for the Childhood Obesity Project had been extended until 30 September 2018. This resulted in your role in the Reducing Childhood Obesity Programme also being extended until this date, delaying the risk of redundancy.

Further to our meeting on 11 July 2018 I can confirm that there is no additional funding available to meet the Childhood Obesity Project and the service will close with effect from 30 September 2018. Your role is therefore directly affected and the purpose of this letter is to describe how we will seek to find alternative roles to enable you to maintain employment and to ensure the Trust is able to secure your valuable skills and ensure you are issued appropriate notice of a redundancy situation.

It is the Trust's policy to run redeployment and redundancy notice periods concurrently. Therefore you will be placed on the Trust's redeployment register with effect from 11 July 2018. Throughout your period of time on the redeployment register and your notice of redundancy we will continue to seek a suitable position within the Trust.

The Redeployment Process

The Trust is committed to safeguarding employment where staff are displaced and will seek suitable alternative employment for you in line with the Trust's redeployment procedure...All vacancies within the Trust are assessed for suitability and possible matching against those on the redeployment register prior to advertising. As part of this formal process you will be forwarded the details of any posts which have been identified through the Trust's redeployment procedure as being potentially suitable.

You will be sent an email which contains a link to the Trust's careers website. This allowed you access to the system (TRAC) to complete the application form and enable the Trust to identify suitable alternative posts for you through the redeployment procedure.

Your Responsibilities

You are advised to regularly check the MFT job vacancy section and NHS Jobs which lists all vacancies within the NHS. Reasonable time off for interviews will be supported. Should you identify any internal posts which have not been forwarded to you but you would like to be considered for please highlight these to me as a matter of urgency. Equally I would encourage you to share with me any reasonable training you feel could be explored which would extend your ability to gain alternative employment. In order to ensure that all redeployees are provided with information in a timely manner and the Trust does not unnecessarily delay recruiting to vacancies it is crucial that you respond to any vacancies forwarded to you within the timescale identified. Should you not respond in a timely manner the post may no longer be available to you. Should you feel that any of the posts forwarded to you are not suitable please me know, explaining your reasons against the criteria for suitable alternative employment identified through the redeployment procedure. I must also inform you that should you fail to provide valid reasons why posts identified by the Trust are not suitable alternative employment you may lose your right to any redundancy payments or protection arrangement.

Notice of Redundancy

It is accepted that your post will not exist beyond 30 September 2018 and is therefore redundant. The Trust will now issue notice of redundancy to you. Please take this letter as confirmation of notice of redundancy from 11 July

2018. During your period of notice the Trust will continue to seek suitable alternative employment for you through the redeployment process.”

50. The letter then went on to deal with the claimant's period of continuous employment and the amount of the redundancy payment.

51. The claimant was given the right to appeal against the decision to terminate her employment by reason of redundancy. Access was given to a confidential staff support department and Ms Ganley should be contacted with any queries or concerns.

52. Notice of redundancy was given to Ms Vince-Cain at a meeting on 9 July with confirmation issued in writing on 12 July. Notices of redundancy were given to the three other claimants in writing on 26 July.

53. On 10 August 2018 appeals were raised by Ms Leonard, Ms Pieri and Ms Vince-Cain. Ms Harty raised her appeal on 23 August.

54. Ms Vince-Cain raised a grievance on 10 September followed by Ms Harty and Ms Pieri on 1 September and Ms Leonard on 12 September 2018.

55. When Ms Vince-Cain met with Mr Edwards on 4 May 2018 Mr Edwards recalls discussing a potential new role for Ms Vince-Cain with effect from 1 October 2018. He and Mr Regan, the Director of Public Health, were looking at the programme of work in the City of Manchester including managing obesity and intervention. They recognised that Ms Vince-Cain had considerable expertise and leadership in this field of work, and they were looking at how they could retain her skills. They therefore developed a role aligned to her skillset but meeting the Public Health agenda on obesity in Manchester.

56. In an email sent on 5 September 2018 Ms Vince-Cain said to Mark Edwards that they had previously discussed a role becoming available to her centred around childhood obesity and she had not received any further information following their meeting in May and subsequent telephone conversations. She asked for a job description and said she assumed that the role incorporated the HEE funding which was aligned to bringing the CHAMP system-wide feedback to a broader audience. Mark Edwards replied later that day saying that the job description was undergoing evaluation, but it was to be a permanent role working in MLCO under the developing Public Health remit. It fell under the medical leadership of Sohail Munshi reading across to David Regan, Executive Director of Population Health and Wellbeing, Manchester Health and Care Commissioning, and his team in Public Health, and the day-to-day report would be to a Public Health Consultant role.

57. On 6 September 2018 Ms Vince-Cain responded that this was the role they discussed back in May but since then her HEE funded role had really developed and was tied to the introduction of CHAMP in RMCH, to the commercialisation of the CHAMP assessment tool and to developing a scale-up proposal across GM and beyond. The new MLCO role currently under review was interesting albeit significantly different to that which she was currently working on – importantly the new role sits within MLCO where the HEE dedicated role sits within the Trust and did so until early July.

58. The job description was sent to Ms Vince-Cain on 13 September attached to an email. It was said to be still subject to final banding but it was the intention of Mr Edwards to have it banded at 8b.

59. The job description was set out over 4½ pages and there was a person specification set out over three pages.

60. The post was that of Strategic Programme Lead – Healthy Weight Management in the Department of the Chief Medical Officer – MLCO. It was full-time, permanent and responsible to the Chief Medical Officer. Reported to consultant in Public Health Medicine, Manchester Local Care Organisation/Manchester Health and Care Commissioning. The description went on to deal with professional accountability, liaison, work base and job purpose, which was:

“...to provide strategic leadership and coordinate efforts to tackle healthy weight management and obesity in Manchester in order to improve population health outcomes and reduce health inequalities in the city. The Strategic Programme Lead will work across partner health organisations in Manchester and be responsible for the development of a city healthy weight management strategy which will incorporate prevention, early intervention and the appropriate management of children, families and adults who are overweight/obese...”

61. As part of the job purpose it stated:

“Utilise the wealth of local data from NCMP and CHAMP to determine the timing and type of interventions, with a focus on evidence based actions that will impact on outcomes.”

62. Ms Vince-Cain thanked Mr Edwards for the job description and asked him to let her know when it was finalised in terms of banding and associated changes. She

also thanked him for authorising the two HEE workstreams given both projects were starting imminently.

63. On 20 September 2018 at 13:18 Mark Edwards emailed Sarah Vince-Cain re-attaching the job description:

“...for the role identified for you as alternative employment, past the end of this month. As discussed the role will enable you to continue with and complete work on the current HEE priorities which we agreed it would be beneficial for you to see through personally...As you know the role is undergoing banding today...which gives me confidence that it will be concluded and that by tomorrow or very early next week you will have the final banded JD at 8b level. On this basis, I believe the role does constitute suitable alternative employment to your current post. I am keen that you keep your base at Alexandra Park...”

64. On 21 September at 14:30 Mr Edwards informed Ms Vince-Cain that the permanent role had been banded at 8b and he provided her with information as to some tracked changes.

65. On 24 September Ms Vince-Cain responded, saying:

“I have studied the job description and there are several elements that appeal to me; some of the components are familiar while there are elements less familiar yet would present a positive challenge.

The purpose of the role outlined is to serve the population of Manchester and to be a system leader, building relationships with local stakeholders in order to drive collaborative approaches to address overweight and obesity in adults and children.

The Health Education England funded role (April 2018 – September 2019) has a brief that is very focussed in so much that it is to lead the children’s Health and Monitoring Programme (NHS CHAMP) via various workstreams; to deploy it into clinical settings, to support clinical practice and to drive a regional/national scale up.

Although both roles have similarities, they have distinctly different remits, geographical boundaries and stakeholder groups.

I have committed to the 18 month HEE role and I am leading on a number of associated workstreams. The focus is for CHAMP to be a financially

sustainable model and the Trust is investing in this ambition through work undertaken by Trustech and MFT Informatics. I believe that to not continue to lead on this work would be to renege on an agreement and would reflect badly on all parties involved. I will continue my conversations with the Trust with regards to how I can continue with the HEE role for the next 12 months.

I am conscious that the success of the new MLCO role very much depends on the collaboration and cooperation of key service stakeholders and as we know there are historic personal differences and challenges that I believe would impact on the progression of work if it were to be led by me.”

66. Mr Edwards responded by saying:

“I am writing to clarify that the role you are currently undertaking will cease on Sunday 30 September 2018 as per the previous consultation undertaken and our previous discussions.

As explained the ‘Strategic Programme Lead – Healthy Weight Management’ post is a new role, with a different and wider remit. Whilst the new post incorporates some elements of your current role it is a distinct, new role which I believe constitutes alternative suitable employment.

I think it would be helpful for you, Lorraine Ganley and I to meet, to further discuss the opportunities and expectations of the role as well as the support available to you.”

67. On 26 September at 09:42 Ms Vince-Cain thanked Mr Edwards for his email; and then wrote:

“By way of summary;

- MFT accepted £226,000 from Health Education England in March 2018 to progress a CHAMP scale-up within the Trust and across GM.
- £102,000 of the £226,000 was accepted to fund my CHAMP clinical programme manager role in its entirety from April 2018 until September 2019.
- Six months into the 18 month role the MLCO issued me a notice of redundancy citing a lack of funding.

- HEE has not been notified that the funded role will cease beyond September 2018.
- I have raised a grievance with MFT and an appeal against the redundancy (which would equate to 12 months' salary for me not to continue with the HEE role).
- MLCO has presented me with a new role; significantly different from my HEE funded role.

For a number of reasons including my ongoing grievance, appeal and the HEE funding associated with my role, I cannot with integrity consider the new role that you present.

With 20 contractual hours left, my hope would be that you are able to liaise with MFT colleagues and that it be requested that I continue the HEE funded role until September 2019 and that I sit within MFT under the division of Research and Innovation or Informatics.”

68. Mark Edwards responded at 13:18 urging the claimant to meet with himself and Lorraine Ganley, saying it was vital that she understood the relationship to the ending of the original programme, the HEE grant and the offer of the new suitable alternative post funded via transformation funds accessed through MLCO. He was committed to working directly with the claimant to resolve the queries she had raised to enable them to move forward positively and constructively whilst appreciating this was a very difficult time for her. He was happy to talk this through by any means possible.

69. The claimant responded at 16:13 saying that from that response it seemed there was further information of which she may not be aware, and she proposed it be shared via email so she could consider it fully.

70. At 16:48 Mark Edwards told her that:

“There is no new information. I am concerned though that the issues relating to understanding of funding streams is impacting on your decision in relation to the new post. You will recall that together with myself and Nigel Glouden in MLCO you agreed a plan to ensure the HEE outcomes were to be met through you completing that work, or other areas of MFT having to ensure work was completed (IT was an example of the latter). The new role provides you the opportunity to complete the work plan we set out together which I shared at the time with colleagues at MFT and MLCO. On that basis I would

strongly recommend that you meet with myself and Lorraine to discuss this and find a solution together.”

71. At 10:47 on 27 September Ms Vince-Cain gave her understanding with regard to the funding streams relating to the CHAMP team as follows:

- “(1) Initial HEE funded programme ceased March 2017 with assurance that CHAMP team would continue to be funded.
- (2) £200,000 pledged from MLCO to fund CHAMP team until March 2018.
- (3) Further HEE funds accepted by MFT £226,000 March 2018 to fund CHAMP workstreams until September 2019.”

72. She went on to say that the £200,000 pledge from MLCO did not materialise and the deficit was plugged using HEE funding:

“Nigel Glouden sought my help in applying for £200,000 from TF/MHCC. Rather than the funding pot that I was led to believe I was supporting, and therefore expecting, the product of this application was the new role I have been presented with which gives no flexibility to fund CHAMP nor does it bear any resemblance to the role that HEE believe that they are funding until September 2019. Finding a resolution at this late stage would certainly be an achievement for all involved; but vital, otherwise debates will continue rather than the important work we are all trying to do. Ultimately the release of £200,000 from MLCO to MFT would secure 12 months CHAMP team funding including my role until September 2019. All HEE objectives would be met. Work would then continue with Trustech, HInM etc to develop a GM strategy and CHAMP sustainability post September 2019. It is clear that CHAMP is continuing in Manchester and that CHAMP team roles are required. I would be inclined to suggest that CCS should legitimately transfer this figure and for this purpose.”

73. Mr Edwards responded on 27 September at 16:42 with a lengthy email and an attached email that had been copied to her on 14 June. He referred to their meeting on Friday 4 May when he explained that there was only commissioning support for a role that would require input from the Director of Public Health and it would be based within the MLCO. This was the post currently offered to the claimant as suitable alternative employment. He believed that she understood at the time that this was the post currently offered as suitable alternative employment. The remainder of the funding for the rest of the year would be needed to ensure they met the expectations

of the HEE programme but it would not be possible to fund the remainder of the CHAMP project and team.

74. They had had a meeting by telephone on 14 June 2018 when it was confirmed that remainder funding would be committed to a role that would become the offer currently available to her. He confirmed that the HEE requirements in the new role, coupled with the known requirements for affording redundancy to the remainder to the CHAMP team, would exhaust the non-recurrent allocation of transformation funds but he would ensure a role to lead on healthy weight management which would become a permanent role. After referring to some figures he confirmed that the role of Strategic Programme Lead – Healthy Weight Management had been created specifically for the claimant based on her experience of the CHAMP Project Team, her understanding of the obesity agenda, her ability to influence wider system changes and to ensure they are able to retain her valuable skills and experience within all partner organisations. He considered the offer of the role met the definition of suitable alternative employment referred to in Agenda for Change. The email went on to indicate to the claimant that if she did not provide valid reasons why posts identified by the Trust were not suitable alternative employment then she may lose her right to redundancy payments. He made it clear that if the claimant did not accept the offered role the redundancy payment would be withheld. A meeting had been scheduled for 28 September at 08:45.

75. At 11:37 on 28 September the claimant wrote to Mark Edwards as follows:

“I have addressed the points that you raised yesterday afternoon via your email and to summarise;

- (1) MFT accepted funding from HEE in March to fund my current role from April 2018 until September 2019.
- (2) My full-time role is to lead CHAMP and to scale it up within the Trust and across Greater Manchester; also to lead on other HEE funded workstreams linked with the role.
- (3) I commenced the HEE funded role April 2018, was issued with notice of redundancy July 2018 and was presented with a new role September 2018.
- (4) Compared to my current role the new role is working in a different organisation with a different remit alongside different stakeholders and funded differently (Transformation Fund).

- (5) The role that you presented to me last Friday bears no resemblance to my HEE funded role.
- (6) HEE has not been notified regarding the change of circumstances by MFT and I am uncomfortable that HEE has not been involved in associated discussions.
- (7) The Trust gave assurance to HEE that the funding would be managed appropriately.
- (8) The Trust has received national attention regarding CHAMP and has reported to Parliament via the Health and Social Care Committee that CHAMP is embedded in Manchester.
- (9) I appreciate our email dialogue over the past week and I have declined to meet in person firstly for fear of being given verbal assurances relating to my HEE, and associated Trust, commitments that could be subject to change or amendment in the future, and secondly owing to the complexity and gravity of the situation.
- (10) I am currently involved in both grievance and redundancy appeal discussions with the Trust relating to this situation.

For the reasons above I am unable to accept the new role that you have presented; I firmly believe that this role is not a suitable alternative and I believe that withholding redundancy entitlement would constitute constructive dismissal.”

76. Mr Edwards responded at 14:49 on 28 September:

“I am unclear as to why you believe I gave you assurances that no CHAMP staff would be made redundant. The sole reason that I met with you on May 4th 2018 was to convey to you, as the manager of the programme, that we had been unable to gain commissioner support for the team and project to continue and that I would be working with Public Health colleagues to draft a role that would enable you to continue working in Manchester on the obesity agenda. I am clear that I did not give you this assurance and that I was advising there would be an end to their contracts which has led to redundancy and associated entitlements.

To be clear there is no funding or commissioner support for the CHAMP team in its entirety to continue and this is the whole premise on which this exercise

has been predicated. It is correct that you say the role offered to you as a suitable alternative is different from your current role as the CHAMP project will no longer exist in its present format and is therefore no longer required. However, the role you have been offered encompasses the next steps for the wider development of the Citywide Obesity Agenda and will support your ability to maintain ongoing dialogue with partner organisations in regard to the utilisation and promotion of CHAMP system and data. In my continued efforts to reassure you around the new role I have been clear that the HEE requirements need to be met and that these of course read across to some elements of CHAMP that will remain, in a role that is focussed on Manchester.

I have carefully reviewed the reasons stated in your email as to why you do not believe this constitutes an offer of suitable alternative employment. There is nothing in your rationale which identifies to me why you are not capable of undertaking this role with success or why your skills and experience do not match the outline of a person specification, based upon your previous role as Clinical Programme Manager and the relationships that you have developed in support of the obesity agenda. The role is banded as an 8b and would therefore not require a change in your pay, terms and conditions of employment or any change in your employment status. I therefore believe that I have no alternative but to follow the guidance set out in Agenda for Change terms and conditions of employment and confirm that your redundancy on 30 September will **not** attract a redundancy payment. I would urge you to reconsider your position and reassure you that you will be warmly welcomed and fully supported to undertake this role.”

77. In his witness statement Mr Edwards dealt with the reasons given by Ms Vince-Cain as to why she had turned down the role, stating:

- “(1) This demonstrated to me that notwithstanding Ms Vince-Cain’s involvement in funding matters and previous explanations I had provided she did not understand how HEE’s monies had been used. It was in the Trust’s gift to use HEE’s monies in the way it had. The alternative role for Ms Vince-Cain included the objectives of HEE.
- (2) I agree that her CHAMP role was to lead the CHAMP project. However, the CHAMP project was ending. I have no knowledge of any plans to scale CHAMP up across Greater Manchester and this has not been done. In the alternative role, Ms Vince-Cain would have led on the other HEE workstreams.

- (3) This statement was correct save for the fact that it was not an HEE funded role. From April 2018 Mrs Vince-Cain's role was funded by transformation funds.
- (4) This was incorrect. Ms Vince-Cain would remain an employee of the Trust. She would continue working within the MLCO and she would work with Public Health. This role would also be funded by the Transformation Fund (as her CHAMP project role had been from April 2018). I agree that the alternative role had a different remit in that it included focus on intervention and was aimed at all ages but it did allow the postholder to have significant strategic leadership. In essence, the Director of Public Health and myself agreed that this was an appropriate next step on the Manchester obesity agenda.
- (5) The alternative role was a new and permanent role working in the realm of obesity in Manchester within the MLCO and with Public Health. It matched Ms Vince-Cain's knowledge, skills and experience. As with the CHAMP project it was public facing. The role was the same band, the same salary, had the same hours and I was prepared to be very flexible around her base and travel arrangements.
- (6) This is incorrect. HEE were fully apprised as detailed above.
- (7) This was correct – and HEE funding was managed appropriately.
- (8) I agreed with this statement. I watched the Commons Select Committee with Ms Vince-Cain and Ms Heaton and was impressed. However there was a business need to close down the CHAMP project as there was no funding for it and no interest from any source in providing funding.
- (9) I was disappointed that Ms Vince-Cain would not meet Ms Ganley and I so that I could reassure her and try and achieve a resolution.
- (10) This was noted.”

78. Mr Edwards formed the view that the reasons put forward by Ms Vince-Cain for rejecting the new role were not reasonable reasons. A number of her points were misconceived and others were not relevant, however all this he thought could have been discussed had they been able to meet.

79. In cross-examination Ms Vince-Cain conceded that the role would have been permanent and she believed that she could have done it. She rejected it because her current role was not redundant. Mr Edwards was not her line manager and she did not feel that she had the authority to accept the offer of an alternative position from him without express permission from Mrs Heaton who was out of the country at the time. She did not say that she could not do the job. She did not say that it was wholly unsuitable. She said in the appeal that it was a post she could do. She did not consider that it was a genuine redundancy situation.

80. Ms Sarah Harty brought a claim under section 18 of the Equality Act 2010 and following the preliminary hearing she provided written particulars:

- “(1) The claimant will maintain that she was treated unfavourably because she took a period of maternity leave.
- (2) The claimant maintains that she was subject to a course of discriminatory treatment, amounting to direct discrimination because she took a period of maternity leave, which stemmed from a series of acts, outlined below:
 - (a) The claimant received a letter dated 4 July 2018 which confirmed that her role would not continue past 30 September 2018. Despite her being on maternity leave and unable to speak directly to anyone within the respondent about the content of the letter, it gave no contact details of anyone she could call to discuss the matter with. Other members of staff who were placed at risk of redundancy were in work, and able to speak/meet with management to do so.
 - (b) The claimant was left with no contact or offer of the same from the respondent following receipt of the above letter, until the meeting on 11 July, which caused her unnecessary stress and worry during her maternity leave.
 - (c) Within their letter of 26 July 2018, the respondent stated that the claimant should regularly check the MFT job vacancy section. No consideration was given to the fact that the claimant was on maternity leave and therefore did not have the same time and opportunity as other members of staff (who were also placed at risk) to search the website and apply for work. For example, they gave the others reasonable time off to attend interviews.

- (d) Within their letter of 11 July the respondent stated that the claimant should respond to any vacancies “within the timescale identified”. Furthermore, it stated that should she not “respond in a timely manner”, that posts may no longer be available to her. There was no thought or consideration given to the fact that the claimant was on maternity leave and therefore may not be able to respond/respond as quickly as others to roles. The respondent made no allowance for this.
- (e) Further to point (c) above, the respondent provided no assistance to the claimant in identifying suitable alternative roles or vacancies, or helping her in her search for alternative roles.
- (f) The respondent did not meet with the claimant to identify her experience and job history in order to match her to other roles within the organisation.
- (g) The claimant was told during a meeting on 11 July that she would receive a redundancy calculation, however, this was not sent until 12 days later with no explanation for the delay. The figure stated was incorrect.
- (h) There was no communication whatsoever from the respondent to the claimant between 11 July 2018 and her return to work on 22 August 2018, which left her feeling isolated.”

81. In cross examination Ms Harty was asked about her clarification of the claim set out above. She said that nothing different was offered to her. The lack of support placed her at a disadvantage. She agreed that she and her colleagues all made the same criticism of the process and that the same process was followed for all of them which involved one meeting and a follow-up letter.

82. She accepted that contact details had been provided for Lorraine Ganley on the email to which the outcome letter was attached.

83. Ms Harty was asked about the reason why she was treated unfavourably and was not sure.

84. Ms Harty was allowed to think about her answer to the question overnight and after time for consideration she said that she was treated unfavourably in that she was not invited in for fair, meaningful and reasonable consultation in respect of what roles might be available. She would have assumed that she would be treated

better. She would hope that the basics would have been done, that there would have been more consultation. The respondent should have disclosed what elements of CHAMP were continuing.

85. Ms Harty's period of maternity leave ended on 22 August 2018 when she returned to work.

86. As to suitable alternative employment, the respondent advertised a job entitled "Healthy Weight School Nurse" paid at Agenda for Change Band 6 reporting to the Healthy Weight Project Lead and responsible to Operational and Clinical Heads of Service, School Health Service. The advertisement appeared towards the end of July 2018. The person specification had as essential criteria First Level Registered Nurse Adult/Child, evidence of post-registration education and training HE Level 6 and mentorship qualification/998.

87. None of the claimants were registered nurses.

88. Lorraine Ganley told us that she investigated with Nicola Marsden, Assistant Director of Children's Community Health Services, the suitability of this role for the claimants, and ascertained that it was not suitable for them as the nursing qualification was an essential requirement for the role. The School Health Service required an individual who could fulfil the role of a School Nurse, including responsibility for delivering a programme to improve health outcomes for school aged children and young people aged 5-19 years, identifying issues and risks early, providing early intervention and support to children with illness and disability to enable them to access education and recreation.

89. There was a job entitled "Clinical Healthy Weight Project Lead, Health Schools/Healthy Child Programme functions", paid at Agenda for Change Band 7. The postholder would report to Head of Service – School Health and would be responsible to School Health Services, Operational Head of Service and Clinical Head of Service. It involved leading and supporting and providing line management to healthy weight nurses, school nurses and healthy schools and families, working in conjunction with ABL Weight Management Service and clinicians within RMCH. The person specification said that it was essential that the postholder would have a relevant professional qualification e.g. Healthy Weight Specialist/Obesity Nurse, BSc or MSc in Dietetics or BSc in relevant science plus postgraduate diploma or MSc in Dietetics, state registration via Health and Care Professions Council.

90. Ms Harty, Ms Leonard and Ms Pieri did not hold nursing or dietetic qualifications nor were they registered with either the Nursing and Midwifery Council or the Health and Care Professions Council.

91. There was also a Healthy Improvement Practitioner Specialist role which was advertised in March 2019, and thus was not available during the claimants' consultation period.

92. The claimants had each raised grievances and appeals as noted above. They were invited to appeal hearings on 21 September and they each took the view that they would not attend the proposed appeal meetings until their grievances had been heard.

93. The respondent did not hold the appeal hearings in September but took legal advice as to whether they could deal with the grievance and appeal hearings sequentially. This is what the respondent decided to do based on the advice received.

94. Sue Langley, Director of Nursing at the Manchester Royal Eye Hospital and the University Dental Hospital of Manchester, chaired the panels dealing with the appeals and grievances in respect of each claimant. She was first asked to be on the panels on 4 February 2019. It would not be possible for the same panel members to be present at each appeal, so to ensure some consistency Ms Langley chaired both panels.

95. Appeal packs were prepared for each claimant and circulated to the panel.

96. The appeal hearings for Ms Harty and Ms Vince-Cain were held on 4 April. Transcripts were later provided.

97. Having heard both appeals the panel met and considered it necessary to undertake further enquiries. In particular they were concerned by the funding issues that had been raised and the possibility that the CHAMP project may be continuing. They also wanted to better understand the alternative role offered to Ms Vince-Cain and the potential alternative roles highlighted by Ms Harty. The panel met again on 17 April and reached their conclusions. The conclusions were provided both orally and in writing to the claimants.

98. By way of summary, the panel consider that Ms Ganley could have met Ms Vince-Cain and Ms Harty again following the initial consultation meetings in July 2018 to further discuss the ending of the CHAMP project, but they considered this would not have had a material impact as in reality there was nothing further to consult on. However, an additional meeting or meetings would have been a supportive measure. The panel were satisfied that Ms Vince-Cain and Ms Harty had been fully informed that their roles were at risk and why and that they had the opportunity to discuss this, raise any concerns and make any counterproposals.

99. The panel was satisfied that Ms Harty and Ms Vince-Cain's roles were redundant and that the CHAMP project was not continuing. The panel was satisfied that the selection process was appropriate, being confined to those employees who worked in the CHAMP project. They saw no evidence that any other employees outside of the CHAMP project should have been included in the redundancy exercise.

100. The panel did not consider the alternative roles highlighted by Ms Harty were suitable. The Band 7 Clinical Healthy Weight Project Lead was at a higher band than her Band 6 Senior Community Nutritionist post. The Band 6 Healthy Weight School Nurse role required a nursing qualification which Ms Harty did not have.

101. They were satisfied that the Strategic Programme Lead role offered to Ms Vince-Cain was a suitable alternative employment and that her reasons for refusing the role were not reasonable.

102. They accepted the explanation given by Mr Edwards as to CHAMP funding and the panel were satisfied there was no ongoing funding for the CHAMP project.

103. In conclusion the panel was satisfied that the dismissals were reasonable and fair and that the Trust was entitled to withhold Ms Vince-Cain's redundancy payments. Full details of the findings of the panel are in the lengthy outcome letters sent to the claimants.

104. When looking at the reasons MS Vince-Cain gave for not accepting the offered role the panel set out:

"The reasons you gave for not accepting this role and our finding in respect of each area are as follows:

- (1) **There was no explicit work trial offered.** The panel found that ideally this would have been documented and clearly recorded. As an 8B Manager you could have articulated a desire to have a trial period and as this role had been created for you this would not have been a barrier. There is no evidence that you highlighted a request for a trial at the time or that this was raised as an issue.
- (2) **You were concerned about relationships with managers in the LCO.** Your line management would have been through the medical Public Health route and you would not have reported to one of the LCO Managers that you felt to be unsuitable; therefore this would not have resulted in the post being unsuitable.

- (3) **You were unable to contact Gill Heaton who was on holiday to discuss the post and redundancy situation with her.** The panel did not see this as a viable barrier to taking up a trial of the post. You could have discussed this with her prior to or following her leave and could have noted your interim acceptance of a trial pending this discussion taking place.
- (4) **You were concerned about ethical concerns with regard for the funding for the redeployment post.** The panel noted your loyalty to the CHAMP project; however you fully understood that the project would not be continuing in its current format. Funding for the new role had been secured via Public Health and the new role had been discussed with HEE.
- (5) **The post did not excite you.** The panel do not believe this is necessary for the role to be suitable. You stated at the hearing that you would have been capable of doing the work required and that the role had been developed from your CHAMP job description.

As a whole the panel did not accept the reasons you gave for not accepting this redeployment as reasonable and the post was offered to you on multiple occasions. The panel agree that on this basis you were not entitled to receive a redundancy payment.”

105. The appeal hearings of Ms Pieri and Ms Leonard took place on 5 April 2019, chaired by Ms Langley but with different panel members. A similar process was followed. After gathering further information the panel met on 9 April to consider the evidence, legal advice received and to reach conclusions.

106. The panel found that whilst there were learning points arising from the level of managerial engagement in the consultation process, namely that there could have been better communication with the claimants, using appropriate logos and letterheads, so that when receiving correspondence the claimants understood that the MLCO was part of the Trust and not a different organisation. The panel were satisfied that a reasonable consultation exercise had been carried out involving both Ms Pieri and Ms Leonard being fully informed that their roles were at risk of redundancy and the reasons for this, namely that there was no funding available after 30 September 2018. They were satisfied that Ms Pieri and Ms Leonard had the opportunity to raise any queries or concerns and to suggest any counterproposals.

107. The panel were satisfied that the selection process had been appropriate. The CHAMP team was a discrete team, the individuals were on temporary contracts and the CHAMP project work to which they were appointed ceased to continue.

108. The panel were satisfied that reasonable steps had been taken to seek redeployment for Ms Pieri and Ms Leonard but they considered Ms Ganley could have sought to hold further meetings as a supportive measure.

109. The Healthy Weight School Nurse post was not suitable for either Ms Pieri or Ms Leonard as they did not hold the nursing qualification. Both Ms Pieri and Ms Leonard had applied for the Band 7 Clinical Health Development Coordinator role. They felt it was unfortunate Ms Leonard had not been shortlisted. Ms Pieri had applied for the post but without informing her manager and she too was not shortlisted.

110. The explanation given by Mr Edwards about the funding of the CHAMP project and that it had ceased was accepted by the panel who were satisfied that Ms Pieri and Ms Leonard's roles were redundant and their dismissals in the circumstances were reasonable and fair. Lengthy letters were sent to each claimant giving full details of the findings of the panel.

111. There has been some question as to which of the respondent's policies were used in relation to the redundancy process. When letters were sent to the claimants on 27 July by email "An Employee Guide to Redeployment" was also sent to the claimants, and in the body of the letter there was reference to a copy of "Your Guide to Redeployment" being attached.

112. "Your Guide to Redeployment" appears within the bundle from page 1162 and seems to be the relevant policy. The employee is told that they can expect their manager "will provide support and understanding for people directly affected by the change and will follow Trust policy and procedure. An employee can expect an initial meeting with the manager, to complete an online application form so your details can be added to the redeployment register and review meetings with your manager during the process".

113. The initial meeting with the manager, said to be a Key Point in the Redeployment Process, is to take place at the start of the redeployment process and the purpose of the meeting is stated to be:

- For your manager to explain the process for redeployment;

- For your manager to gather information about your experience and skill, etc;
- To discuss the range of alternative work that you feel you may be suitable for, as well as any limitations on accepting alternative work. Limitations may include personal circumstances as well as any health issues you may have. Reasonable adjustments will be accommodated;
- To discuss any necessary training requirements which would increase your skills and abilities. Any training identified should be considered essential criteria for potential areas of redeployment, i.e. computer courses for administrative posts.

114. In the questions and answers section there is reference to the TRAC redeployment system from which:

“You will receive notifications to your email for you to review the role, job description and person specification and also given the opportunity to submit your form to be considered for the role, prior to the advert being published externally. The requirements of the post are matched against your requirements on the register for example band, hours, skills, etc. If there is a match between a post and your details on the register, you will be contacted via the TRAC system to inform you of the vacancy. A copy of job description and person specification can be downloaded in order for you to decide whether you believe the post is suitable. You will have a limited number of days from receipt of the job description to decide this. You should speak to your manager when considering whether the post is suitable... The Trust has a responsibility to assist you to meet the essential criteria through the provision of reasonable additional training and key skills e.g. the use of a relevant computer package... Whilst on the redeployment register you and your manager will be responsible for checking the vacancy listings in order for you to identify any vacancies that you consider to be suitable but that have already gone through the advertisement process”.

115. According to the guide:

“You and your manager should meet on a regular basis, at least once a month, in order to discuss:

- Your situation;

- Any vacancies that have been brought to your attention and reasons why they were not deemed suitable;
- Update on any changes in circumstances that may affect the suitability of any potential alternative employment.”

116. In cross examination Lorraine Ganley accepted that she did not, when meeting the claimants, have any discussion with them about their skills such as was envisaged in the Guide to Redeployment. As was apparent from the appeal process no second meetings were held by her with any of the claimants.

The Relevant Law

117. Part X of the Employment Rights Act 1996 deals with unfair dismissal. Section 95 deals with circumstances in which an employee is dismissed, which includes:

“He is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract.”

118. Section 98 deals with the fairness of a dismissal and provides as follows:

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –
 - (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it –
 - (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
 - (b) relates to the conduct of the employee,
 - (c) is that the employee was redundant, or
 - (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that

of his employer) of a duty or restriction imposed by or under an enactment.

- (3) In subsection (2)(a) –
- (a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
 - (b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
 - (b) shall be determined in accordance with equity and the substantial merits of the case.

119. Part XI of the Employment Rights Act 1996 deals with redundancy payments.

120. Section 135 provides that an employer shall pay a redundancy payment to any employee of his if the employee is dismissed by the employer by reason of redundancy, although this is subject to various provisions including section 141.

121. Dismissal by reason of redundancy is dealt with in section 136, "Circumstances in which an employee is dismissed" as follows:

- (1) Subject to the provisions of this section and sections 137 and 138, for the purposes of this Part an employee is dismissed by his employer if (and only if) –
- (a) The contract under which he is employed by the employer is terminated by the employer (with or without notice),

- (b) He is employed under a limited term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract...

122. Section 139 deals with the definition of redundancy and provides that:

- (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –
 - (a) the fact that his employer has ceased or intends to cease -
 - (i) to carry on the business for the purposes of which the employee was employed by him, or
 - (ii) to carry on that business in the place where the employee was so employed, or
 - (b) the fact that the requirements of that business –
 - (i) for employees to carry out work of a particular kind, or
 - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,
- have ceased or diminished or are expected to cease or diminish.

123. Section 141 deals with renewal of contract or re-engagement and provides as follows:

- (1) This section applies where an offer (whether in writing or not) is made to an employee before the end of his employment –
 - (a) to renew his contract of employment, or
 - (b) to re-engage him under a new contract of employment,
- with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.

- (2) Where subsection (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer.
- (3) This subsection is satisfied where –
- (a) the provisions of the contract as renewed, or of the new contract, as to –
- (i) the capacity and place in which the employee would be employed, and
- (ii) the other terms and conditions of his employment,
- would not differ from the corresponding provisions of the previous contract, or
- (b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.
- (4) The employee is not entitled to a redundancy payment if –
- (a) his contract of employment is renewed, or he is re-engaged under a new contract of employment, pursuant of the offer,
- (b) the provisions of the contract as renewed or new contract as to the capacity or place in which he is employed or the other terms and conditions of his employment differ (wholly or in part) from the corresponding provisions of the previous contract,
- (c) the employment is suitable in relation to him, and
- (d) during the trial period he unreasonably terminates the contract, or unreasonably gives notice to terminate it and it is in consequence terminated.

124. Section 18 of the Equality Act 2010 deals with pregnancy and maternity discrimination: work cases, and provides that:

- (1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.

- (2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably –
 - (a) because of the pregnancy, or
 - (b) because of illness suffered by her as a result of it.
- (3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.
- (4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.
- (5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).
- (6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends –
 - (a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
 - (b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.
- (7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as –
 - (a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or
 - (b) it is for a reason mentioned in subsection (3) or (4).

Submissions

125. Each party provided written closing submissions and each party had the opportunity to address the Tribunal.

126. For the respondent Mr Williams submitted that all claims must fail.

127. Starting with the unfair dismissal claims, can the respondent show a potentially fair reason for the dismissal of all of the claimants, and did the respondent act fairly in dismissing them for that reason?

128. The respondent asserts that all four claimants were dismissed due to redundancy and submits that there is no evidential basis for any allegation that a redundancy situation had been invented. The claimants had wholly misunderstood the concept of redundancy and instead adopted a flawed position that because some CHAMP work continued the full project therefore continued requiring their continued employment. This is far too simplistic an approach. The Tribunal may think it straightforward that some form of service would remain even after the funding ceased given the nature of the portal and the fact that it was collecting data. In his submissions the claimants wholly failed to address their minds to the requirement for their own employment in the light of the clear way in which the website remained. To say, "I could have done that work" is not the same as saying "the work I did was continuing". Even on their own case of a continued service this clearly would not have required all of the claimants to remain. The continued work on obesity, wider than CHAMP, required the skillset that Ms Vince-Cain possessed but regrettably she refused the offer of such a role. It would be wrong to conflate CHAMP work with obesity work as a whole.

129. Mr Williams went on to refer to the requirements of the respondent for employees to carry out work of a particular kind having ceased or diminished. The relevant legal test is the fact of the diminution rather than the cause or reason for it. The claimants' work was on the CHAMP programme with the claimants' evidence giving a clear explanation of what they did and where appropriate the fixed term nature of their roles.

130. Even though the cause of the diminution is not relevant to the legal test by way of context funding had stopped/ceased/not been secured and as such the requirement of the work being done was to cease or diminish.

131. The information provided to the claimants each time they were warned of redundancy and their employment was extended was related to funding. The claimants could have been under no misconception as to the importance of funding to their continued work and employment. Whatever Ms Vince-Cain may have said about the promise of funding, the fact is that the evidence proves that the funding had ceased. The fact that the respondent chose to use the funding secured in March 2018 as it did, to plug the deficit, is in his submission irrelevant to the present

claims. The fact is that how the respondent chose to utilise the funds, rightly or wrongly, the Tribunal is concerned with the effect, the diminution in the need for employees to do the work, not the business reasons for the respondent taking certain decisions.

132. The claimants' work was inextricably linked to the project and therefore without funding beyond a certain date their roles were redundant. Mr Edwards explained how the funding was used to pay the redundancy costs, etc.

133. Even if it was the case, which the respondent denies, that the work of the claimants was later absorbed by others, this would have been sufficient to meet the definition of redundancy requiring a reduction in the number of staff used. In his submission the focus moves to the question of fairness.

134. As to the question of fairness, the pool for selection was those involved with the CHAMP project. The claimants put forward no positive case that the pool should have been widened.

135. As to consultation, the claimants criticise the process that was followed and with the benefit of hindsight Lorraine Ganley regretted not holding further meetings with the claimants. The respondent submits that this did not affect the fairness of the dismissals on the particular facts of this case:

- (1) It is clear that the claimants did not accept they were genuinely redundant even now having been presented with clear evidence of it. Explaining to them about the lack of funding to any greater extent would therefore have made no difference.
- (2) They were all placed on the TRAC system and not one of them raised an issue with it. Had they done so then it is likely that more meetings would have occurred. Therefore no meeting was required to discuss redeployment further. TRAC was simply a tool to alert the claimants to potential roles within the respondent. The claimants were free to consider more widely advertised roles.
- (3) The consultation was effectively limited to a search for redeployment.

136. As to the claimants being informed of the redundancy, the correspondence shows that they were aware that their posts were temporary and when there were extensions they were told that the risk or redundancy was delayed not removed. The claimants ought to have been alive to the possibility that their employment may come to an end. The fact that previous fixed terms were extended may have led

them to the feeling that matters might work out but this could not be legitimately expected. All claimants were aware of the inextricable link to funding and all appeared to accept this in evidence. With the cessation of CHAMP the employment of the claimants was no longer required. In the absence of any last minute fortuitous offer of funding the only reasonable way to avoid redundancies was alternative work. Ms Harty would have had the choice of first refusal given her protected status as a woman on maternity leave.

137. To the extent that the claimants criticise the invitation letters for not having the word “consultation”, counsel submits that it is clear that the letters were in the same context as the previous ones, the letters made clear that funding had not been extended, roles are to end and redeployment needs to be explored. No claimant raised an issue with the letter and so the absence of the word “consultation” made no difference. In any event all claimants got letters after the meeting explaining things fully.

138. The claimants knew they were being consulted with. They may feel that the consultation was insufficient but it is quite another thing for them to deny that consultation took place.

139. The respondent’s policy on managing organisational change is not relevant given that this was a redundancy based on a lack of funding.

140. The absence of further meetings with the claimants, it is submitted, made no difference to the outcome. Ms Leonard and Ms Pieri accepted that really they were mostly going through the motions given that they were expecting funding to materialise. Why would they not think the same pattern as before, involving an extension of funding, would follow? These claimants felt that funding would be found. No-one challenged the process at the time suggesting that the lack of holding further meetings made no difference. All of the claimants were sent notes of the meeting and all were offered support. No requests for support were made although questions were raised about some potential roles.

141. Whilst the respondent accepts that meetings with the claimants may have been conducive to them feeling supported (Ms Harty in particular), it is clear that offers of support were not taken up in any event. No-one rang or emailed Lorraine Ganley notwithstanding her offer.

142. It was suggested that the respondent could have extended the employment or delayed the redundancy for a short period of time, but no claimant asked for this at the time. It is a further example of the way the claimants misunderstood the situation and the inextricable link between their roles and funding.

143. As to alternative employment, all the claimants were placed on the TRAC system. None of the claimants were matched with any available role but:

- (1) No claimant raised any issue with the TRAC system in that no-one said they misunderstood it or could not use it.
- (2) Plainly it did work as some of the them were alerted to some roles.,
- (3) There was still a clear emphasis placed on it being for the claimants themselves to look for other work.
- (4) Ms Vincent-Cain's questioning of Lorraine Ganley suggested that she should have sat down to discuss career aspirations and skillsets. This went beyond the redeployment process and beyond the method of redeployment used within the NHS. With the exception of Ms Vince-Cain, roles could not be created out of thin air. A fair process did not require the respondent to look to assist the claimants to requalify into other roles. It was about matching them to a role in accordance with due process.
- (5) Ms Vince-Cain suggested to Lorraine Ganley that it was astonishing that the Trust did not try harder to see how the claimants could contribute to it going forward. In counsel's submission this is to wholly misunderstand the process. No-one was saying the claimants did not contribute or that their work was anything other than excellent but sadly the work came to an end as a result of the lack of funding.

144. Counsel reminds us that Lorraine Ganley gave evidence that she made enquiry of a role in Public Health that would not necessarily have appeared on the TRAC system and she had conversations with colleagues about roles outside the respondent.

145. As to the roles discussed in the hearing:

- (a) Healthy Weight School Nurse role – Lorraine Ganley explains that there was an essential requirement for a nursing qualification and thus it is clear that none of the claimants met the essential criteria. It is too simplistic for the claimants to say that they met 85% of the criteria so should have been appointed. The essential criteria were plainly salient and none of them were met in terms of experience and qualifications. It therefore matters not that the claimants met certain other essential criteria.

- (b) Clinical Healthy Weight Project Lead role – Lorraine Ganley explained that this was an available role at the time and it was for a dietician therefore only Ms Vince-Cain could have successfully applied for it.
- (c) Healthy Improvement Practitioner Specialist role – this was raised only at the appeal by Ms Pieri, Ms Leonard and Ms Harty. The evidence suggests that this was only advertised in March 2019 long after the dismissals, therefore it is difficult to conceive how it is relevant to these claims.
- (d) Health Development Coordinator role – this is mentioned by Ms Leonard in her statement but if it was a role she thought suitable then why did she not apply for it?

146. The next issue dealt with by counsel is the question relating only to Ms Vince-Cain concerning her refusal of allegedly suitable alternative employment. Counsel starts by reminding us that an employee who is dismissed by reason of redundancy loses the right to a redundancy payment if she unreasonably refuses an offer of suitable alternative employment. Here there was a clear offer of an alternative role to Ms Vince-Cain that she could at the very least have trialed. It is clear from the evidence that she chose not to accept it. The crucial question is whether the alternative role was suitable. If it was then it follows that in refusing the role she gave up her entitlement to a redundancy payment.

147. Counsel submits that the question of the suitability of an offer of alternative employment is an objective matter whereas the reasonableness of the employee's refusal depends on factors personal to her and is a subjective matter to be considered from the point of view of the employee.

148. On behalf of the respondent it is submitted that the role was undoubtedly suitable and indeed Ms Vince-Cain did not appear to disagree with that. In any event it was the same band and level of pay, it was within her expertise and skillset, the role was created for her, it encompassed her old role but had a wider remit and the evidence of Mark Edwards as to the role was clear and largely unchallenged.

149. As to the subjective reasonableness of the claimant's refusal, it is submitted that she fails to put forward a case that would show she was reasonable.

150. Pointing to the appeal outcome letter it is apparent that the potential for such a role was made known to Ms Vince-Cain in May 2018. No positive case was put forward that the lack of time to consider the role was the reason for its refusal. Ms Vince-Cain chose not to meet with Mr Edwards to discuss the matter further. She

was fixated on the notion that her role was continuing and could not accept it was to end. Ms Vince-Cain does not assert that the failure to tell her she could trial the position had any impact on her decision to refuse it. Her failure to meet with Mark Edwards meant they did not get any chance to discuss a trial period. Any reference to bullying is not relevant. At the appeal Ms Vince-Cain referred to the fact that the role did not excite her. This is not a good reason to refuse it in the circumstances. The reason for the refusal was that she did not consider the redundancy to be genuine. In the view of counsel, this settles the issue of the unreasonableness of the refusal.

151. The final matter for consideration is the claim brought by Ms Harty under section 18 of the Equality Act 2010 alleging discrimination whilst she was on maternity leave.

152. A claim under section 18 requires the establishment of unfavourable treatment with the reason for that unfavourable treatment being because the claimant is on maternity leave.

153. Mr Williams recognised that had any suitable role emerged prior to 22 August 2018, the end of the protected period, then Ms Harty was entitled to first refusal of that role.

154. Ms Harty returned to work on 22 August 2018 during the course of the consultation process. There is no doubt that she was properly informed of the issue of funding and the risk to her employment so there is no difference of treatment in this aspect.

155. Looking at the way in which Ms Harty put her claim, the respondent denies that contact details for Lorraine Ganley were not given. This cannot amount to unfavourable treatment.

156. As to a lack of contact until 11 July, the position was the same for all claimants and Ms Harty fails to point to the unfavourable treatment in her evidence. She did not raise any such issue at the time and did not raise any allegation of discrimination in her appeal. Ms Harty does not point to what might be the unfavourable treatment with regard to the 26 July 2018 letter which gives her notice.

157. As to the search for alternative employment, there is no evidence that the TRAC system was somehow less effective given that she was on maternity leave. Counsel submits that there was no unfavourable treatment and any lack of support was not because of her absence on maternity leave.

158. In the submission of counsel Ms Harty was looking for more being provided to her to assist her as a person on maternity leave. This is the wrong way to look at discrimination. She was looking for favourable treatment when the law was there to protect her from unfavourable treatment because she was on maternity leave. The Tribunal is tasked with looking at whether she suffered any unfavourable treatment and if so was this because of her maternity leave? The Tribunal will ask the reason why any treatment was meted out to her.

159. The correct approach should be as set out in the case of **South West Yorkshire Partnership NHS Foundation Trust v Jackson** UKEAT/0090/18/BA in the Employment Appeal Tribunal, a case before His Honour Judge Shanks. The claimant was on maternity leave whilst a redundancy exercise was undertaken. An email requiring her to fill in a redeployment document was sent to her work email address that she was not accessing and so she did not get notice of the email or fill in the form for several days. This did not cause any substantial harm, but it caused a legitimate concern and the Employment Appeal Tribunal upheld the Judgment of the Employment Tribunal that this amounted to unfavourable treatment.

160. The Employment Tribunal found that the unfavourable treatment was because she was exercising her right to maternity leave. The appeal was in relation to this issue because the Employment Tribunal did not consider the question of causation properly. Although the unfavourable treatment would not have happened “but for” the fact that the claimant was on maternity leave, the Employment Tribunal had not considered whether this was the “reason why” she had been treated unfavourably. There was no finding that the fact that the claimant was on maternity leave had operated on the respondent’s mind and no sufficient factual basis or analysis to support a finding that the respondent had applied an inherently discriminatory criterion; in particular, the ET’s Judgment was not clear as to why the sender of the email used only her work email address or why the claimant did not have access to her work emails.

Sarah Harty

161. Sarah Harty in her submission maintains that she was unfairly dismissed and unlawfully discriminated against by way of unfavourable treatment whilst on maternity leave.

162. As to unfair dismissal, she submits that there was no fair and/or meaningful consultation carried out. The meeting on 11 July 2018 was not a formal consultation meeting where her redundancy calculation was discussed prior to redeployment to alternative employment. There was no transparency from the respondent with Ms

Ganley saying that “CHAMP in its current format will not continue”. She submits that it has since been ascertained that aspects of her role as a professional Community Lifestyle Champion were still being carried out. There had been no full and honest disclosure by the respondent as to the true extent of the work continuing under CHAMP but in her submission her role has continued after the date of her redundancy. She was not given an opportunity to put forward any suggestions as to how she could fulfil future work with CHAMP. There had been one meeting with Ms Ganley with no documented minutes. There was no meaningful consultation. The respondent failed to follow the Managing Organisational Change and Your Guide to Redeployment procedures.

163. As to redeployment, she submits that the respondent did not sufficiently consider alternatives to redundancy. She felt that she met over 85% of the essential criteria for the Healthy Weight School Nurse role and believed it was within the respondent’s power and authority to amend the essential criteria to take away the Registered Nurse criterion which would have avoided redundancy and allowed her to take up suitable alternative employment.

164. Ms Harty does not believe that the respondent undertook a sufficiently thorough search for alternative employment and any search or conversations are not documented. In her submission it would be reasonable for a Trust employing over 20,000 employees to have found suitable alternative employment had a sufficient search been carried out.

165. As to funding, in her submission the respondent was not able to establish any fair reason for the dismissal as she does not accept there was no funding available for CHAMP. £226,000 was awarded by Health Education England for work associated with CHAMP and it was accepted by the respondent on this basis and in addition there was the £250,000 awarded by the Greater Manchester Transformation Fund for the purpose of CHAMP with the funding being received in March and April 2018.

166. She questions whether the respondent gave her as much warning as possible of the impending redundancy as it was established that Mr Edwards was aware of the potential ending of CHAMP much earlier on. Ms Vince-Cain was excluded from discussions and the respondent’s position paper, all of which she believes were detrimental to the course of events that led to her redundancy.

167. As to her claim under the Equality Act 2010, Ms Harty set out the alleged acts of unfavourable treatment, in accordance with the further and better particulars she supplied, without further comment.

Lorraine Leonard

168. Lorraine Leonard in her closing submissions maintains that she was unfairly dismissed. The respondent had confirmed that elements of the CHAMP role had continued from the end of her employment to the date of the Tribunal. The respondent had failed, until the Tribunal hearing, to disclose what elements of the work had continued. There was no transparency.

169. She did not believe consultation had been carried out. At the meeting on 11 July she was advised that her role would not continue beyond 30 September and was provided with a redundancy figure. She was to be placed on the TRAC system for redeployment but looking to match jobs by pay grade and hours. As to what would happen to the CHAMP system, no details of what was to continue were divulged. In her submission elements of her previous role within the CHAMP team had continued since the end of her employment. She was not provided with a copy of the Managing Organisational Change policy and never advised that this was being used. She was told it was unlikely any roles would be found for her as the Trust does not employ nutritionists. When asking if her transferable skills would be considered she was advised the TRAC system was not sophisticated enough to do it. There were no minutes of the meeting. She was not given the opportunity to offer a counterproposal or to discuss alternatives to redundancy. She was not advised on HR protocols or supported with next steps.

170. Ms O'Mara advised that if she felt she met at least 75% of a role then she should make contact and a dialogue could be opened. The respondent presented a bleak picture with no funding, no information as to the proposals for the CHAMP work and an unlikely chance of redeployment. She believed the decisions had all been made and the meeting was the opportunity to deliver the bad news.

171. As to the meeting, she did not agree that a consultation and a meeting were the same. She did not believe the meeting constituted the start of a meaningful redeployment consultation. Had it been such then she believes the outcome would have been different.

172. An individual on a fixed term contract for over two years should not receive unfavourable treatment. She did not believe the respondent had sufficiently considered alternatives to redundancy. There were no one-to-one meetings held with her and there was no regular contact maintained by Ms Ganley as suggested in the Managing Organisational Change policy. A meeting to ascertain her skills was not held thus making it difficult for the respondent to make proper efforts to seek to redeploy her.

173. She believes it to be reasonable to suggest that had the respondent wanted to retain the expertise of the claimants and deliver an expert led service that the proposal could have been opened up for discussion in its early stages and a degree of flexibility applied as the jobs had not yet been advertised. There were experienced staff who would have been perfectly able to deliver the service required by the commissioners and she believes she has the necessary experience to deliver an effective child obesity intervention and that she was therefore a suitable candidate for one of the positions. The respondent did not show any flexibility in relation to redeployment or in respect of the Healthy Weight roles. She believes obstacles were placed in her way and there was no reasonable attempt to redeploy her.

174. As to funding the CHAMP team she firmly believed money was allocated to CHAMP which would have enabled the workstreams to continue but the money was diverted to plug a funding gap, leaving CHAMP in a vulnerable position. The respondent did not give due consideration to the promising ongoing applications for funding from Health Innovation Manchester.

175. In summary, the respondent has not fulfilled its duty of care towards her, it has not followed its policies, it did not energetically seek to redeploy her, it prevent CHAMP from continuing by using funds meant for CHAMP for other purposes. CHAMP and the CHAMP team's fate was sealed by the respondent and its failure to fulfil its duty of care.

Dina Pieri

176. Dina Pieri in her submissions notes that she was invited on 4 July to a meeting on 11 July to discuss the employment options available but at no point was this described or documented as a consultation meeting. At the meeting she was simply informed that there was no additional funding available and the service would close from 30 September and that CHAMP would continue albeit in a different format. She was not informed which elements of CHAMP would continue even though she asked. The lack of information did not allow her to put forward a counterproposal nor was she asked for her views or opinions on it. There was no two way dialogue with the objective of finding ways of avoiding the dismissal if possible. In her submission the respondent has confirmed that there are elements of the role that have not changed but are now being carried out by the School Health Service.

177. As to redeployment, the respondent has admitted that the TRAC system is not advanced enough to take into consideration any skills or experience other than

looking for jobs available with the same banding and hours. Notwithstanding this she was sent a wide range of roles ranging from full-time to part-time and from Band 2 to Band 8B.

178. No notes were taken of the meeting by the respondent. Taking into account all these matters she does not believe the respondent attended the meeting with an open mind or was capable of being influenced about the redundancy situation. In her view it was clear that a decision had been made prior to the meeting. Had a meaningful consultation process taken place she believes the outcome would have been different. The respondent did not follow the Managing Organisational Change policy.

179. As to redeployment, the Trust failed to bring to her attention any roles that would be deemed a potential suitable alternative. She proactively kept herself up-to-date with vacancies sent by TRAC and also through NHS Jobs. She found an NHS advertised job for a Health Development Coordinator role which had the same banding as her role. It was a role working for the respondent but was not even brought to her attention by the respondent. Having fully reviewed the job description and person specification she can demonstrate her skills and experience were aligned and believed this was a suitable alternative role that was not presented. Had a discussion taken place about this role she believed she would have been able to demonstrate that her previous experience and skills were enough to at least warrant an interview. As someone under notice of redundancy she would have expected a reasonable employer to have afforded her this opportunity as a minimum.

180. The Healthy Weight Lead role was the same banding as hers. Although the respondent claimed a dietician is needed for the role she previously led the Children and Family Weight Management Service from December 2015 until it was decommissioned in March 2016 even though she was not a dietician. She strongly believed that this was not a required element of the role and that the Healthy Weight Service and the Children and Family Weight Management Service were practically identical.

181. Although the Healthy Weight School Nurse role was a band lower than hers, she still believed it should have been presented to her. She would dispute that a Registered Nurse was required for the role, which was practically identical to the role she fulfilled with the Children and Family Weight Management Service.

182. Without having discussed her skills and experience she did not know how the respondent was able to assess her suitability for any role and she believed obstacles had been put in place to prevent her applying for the two roles referred to. Based

on these matters she does not believe the respondent considered alternative employment as part of a fair redundancy procedure and it did not follow the guide to redeployment.

183. As to funding, she believed there were sufficient funds if the funding awarded was used for its intended purpose rather than to plug a gap the claimants were not made aware of. She believes that if there had been open and transparent conversations with Ms Vince-Cain regarding funding then the claimants would have been made aware of the gravity of the situation and would have sought further funding and requested further meetings.

Sarah Vince-Cain

184. Sarah Vince-Cain in her submission maintains she was unfairly dismissed on the basis that funding had been awarded by Health Education England and accepted by the respondent for the purposes of workstreams, including her role as Clinical Programme Manager – Childhood Obesity, on the basis that the CHAMP team would exist to support the associated workstreams. She does not accept there was no funding available for CHAMP. The Tribunal heard evidence of £226,000 awarded by Health Education England for work associated with CHAMP and accepted by the respondent on this basis and received in March 2018. Then £250,000 was awarded by the Greater Manchester Transformation Fund for the purpose of CHAMP and received in April 2018, meaning that £476,000 was received by the respondent for the purpose of CHAMP. Whilst appreciating a budget deficit had arisen due to the later than expected arrival of the transformation funding, she does not accept this resulted in a redundancy situation for herself and the other members of the CHAMP team.

185. Ms Vince-Cain maintains that there was a lack of transparency within MFT in the months leading up to the notice of redundancy, and that she was consciously excluded by the respondent from highly relevant discussions and subsequent proposals. Had she been able to contribute to such discussions then she would have been able to offer realistic assurances to the CHAMP team and better able to ensure that the redundancy situation was avoided.

186. She believes that the respondent failed to follow policies and procedures, there was a notable lack of notetaking and documentation and no meaningful consultation was carried out.

187. In her submission the respondent does not dispute that CHAMP has continued beyond the redundancies, but the respondent had repeatedly refused to confirm or describe the format of it, simply stating that the format was different. The

evidence confirms that tasks undertaken by members of the CHAMP team have been undertaken by other employees of the respondent including day-to-day and the Health Education England funded workstreams.

188. She maintains there was no pool for selection for redundancy and no options were ever discussed or explored.

189. She does not accept that the respondent showed any level of determination to redeploy her within MFT. Evidence shows that reliance was placed on the TRAC system which was known by the respondent to be incapable of effectively filtering vacancies. She believes the lack of effort in redeployment was partly due to the misplaced assumption that she would accept the role of Strategic Programme Manager as an alternative to redundancy.

190. She does not accept that the redundancy situation was genuine and therefore does not believe she was offered a suitable alternative position.

191. Mr Edwards for the respondent had confirmed her current role was funded by HEE for 18 months and he expected her to continue with this role despite the job description not including it. Had she accepted the Strategic Programme Manager role then she would have been also expected to undertake administrative duties relating to CHAMP which were not included in the job description. In her submission this confirms that CHAMP and CHAMP related tasks continued and that the job description was not an accurate reflection of the role that was offered.

192. In her submission Mr Edwards repeatedly demonstrated how he was prepared to use public funding for purposes and within timeframes other than that for which the funding was awarded. The respondent has evidenced that funding acquired to progress CHAMP was used to close it down, and she maintains that managing public funding in this matter is highly irregular.

193. In allowing the CHAMP system to deteriorate the respondent has shown a disregard for significant public investment in a programme shown to positively impact the growth trajectories of children.

194. The announcement during the proceedings by Mr Edwards that the CHAMP website was to be taken offline was such that she could only conclude that this was done in an attempt to reduce an argument made by the claimants that CHAMP was continuing.

Discussion and Conclusions

195. What was the reason for the dismissal of each claimant? The respondent contends that each claimant was redundant.

196. We remind ourselves that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the employer for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.

197. In this case, following a decision not to allocate further funding, the respondent came to the conclusion that it could no longer sustain the CHAMP programme and so the respondent's requirement for the claimants and the other member of the team to carry out their CHAMP work ceased.

198. The need to weigh and measure the children on an annual basis and to upload that information onto the CHAMP platform remained but that work was never done by the claimants. There was a need for queries raised via the platform to be answered. Arrangements were made for other people to deal with that as part of their normal employment. In these circumstances we do not find that the work previously carried out by the claimants for the CHAMP programme continued following the dismissal of the claimants save to a limited extent in respect of dealing with queries.

199. The claimants are not happy that the respondent made the decision to close the CHAMP programme based on funding, but as a matter of law there is no need for an employer to show an economic justification or business case for a decision to make redundancies.

200. We therefore conclude that the reason why each claimant was dismissed because she was redundant in that the need for her to carry out her work of a particular kind had diminished if not ceased.

201. Having concluded that the dismissals were for a potentially fair reason, because the employees were redundant, were the dismissals fair for the purposes of section 98(4) of the Employment Rights Act 1996?

202. The ACAS Code of Practice on Disciplinary and Grievance Procedures does not apply to redundancy dismissals or to the non-renewal of fixed-term contracts on their expiry.

203. The number of people involved was such that collective consultation was not required.

204. In this case it was the decision of the respondent to make all the CHAMP roles redundant. The jobs of all CHAMP team members were to go. There was no pool from which a proportion would be selected and no question of any scoring or assessing of the claimants relative to one another to decide who should stay or go.

205. The word “consultation” does not appear in the 4 July 2018 letters to the claimants telling them that their current roles were not proposed to continue when the temporary funding ceased and inviting them to attend meetings on 11 July. We find that there was no consultation with the claimants in relation to the respondent’s decision to end the CHAMP programme because the decision had already been made by senior management that funding would not be extended and that the roles would not continue.

206. The claimants had gone through a similar process once in 2016 and twice in 2017 when their fixed term contracts were extended albeit at the last minute. The 2018 process cannot have been unexpected by them given that they were well aware that their contracts were due to expire on 30 September. The difference this time was that there would be no extension given the decision to discontinue CHAMP.

207. We do not find that this part of the process was unfair in the particular circumstances described. Had the claimants not been on fixed term contracts or had the respondent been looking to dismiss some rather than all the members of the team then individual consultation from the start of the process would have been necessary.

208. We shall now consider the question of alternative employment in relation to the first three claimants. The position of the fourth claimant falls to be considered separately as an alternative job offer was made to her.

209. From the perspective of the first three claimants whether alternative employment could be found for them was a most important question.

210. The 4 July invitation letters stated that the purpose of the meeting with Ms Ganley was “...so that we can discuss the employment options available to you. The purpose of the meeting will be for you to discuss the situation with me further and to discuss any opportunities for alternative roles to be considered... Please be assured that we will endeavour to explore suitable redeployment options for you and to support you in any way we can over the coming weeks”.

211. In the 26 July letters headed Re: Redeployment Process and Notice of Redundancy the purpose of the letter was “to describe how we will seek to find alternative roles to enable you to maintain employment and to ensure the Trust is

able to secure your valuable skills...The Trust is committed to safeguarding employment where staff are displaced and will seek suitable *alternative* employment for you in line with the Trust's Redeployment Procedure". A copy of Your Guide to Redeployment was provided.

212. We have set out extracts from the Guide from paragraphs 112 to 115 above.

213. At the initial meeting the manager did not gather information about the employees' experience and skills, etc. The manager did not discuss "the range of alternative work that you feel you may be suitable for" and did not discuss "any necessary training requirements which would increase your skills and abilities".

214. There were no further meetings between these claimants and Ms Ganley before the employment ended.

215. Looking at the process set out in "Your Guide to Redeployment" we find that the respondent has failed to follow its own policy in relation to the search for alternative employment in respect of Ms Harty, Ms Leonard and Ms Pieri.

216. Put simply the claimants were not invited to discuss their experience and skills and their aspirations in respect of alternative work that they may have felt would be suitable for them. The question of training was not raised with them.

217. Each of these three claimants had been employed in the NHS for a number of years. They had their own particular qualifications and they had transferable skills but information as to them was not asked for by Ms Ganley.

218. Section 98(4) of the Employment Rights Act 1996 is set out above. Looking at the failure of this respondent, a large NHS trust employing more than 20,000 people including HR advisors, to follow its own redeployment policy leads us to the conclusion that it acted unreasonably when dismissing the first three claimants making their dismissals unfair.

219. Having reached this conclusion there can be no certainty as to whether or not each of the three claimants would have remained in employment and we reflect this doubt by concluding in each case that there was a 50% chance that each of these three claimants would still have lost her employment.

Mrs S Vince-Cain

220. In respect of Ms Vince-Cain, did the respondent offer her suitable alternative employment? If so, and if her refusal was unreasonable, did she lose the right to a redundancy payment?

221. Section 141 of the Employment Rights Act 1996 applies when an offer (whether in writing or not) is made to an employee before the end of the employment to renew the contract or to re-engage the employee under a new contract of employment taking effect immediately or after an interval of not more than four weeks after the end of the employment.

222. We find that an offer was made in writing to the claimant to re-engage her under a new contract to take effect immediately after the end of her employment. The offer was made before the employment ended in the email exchanges set out above between the claimant and Mark Edwards.

223. The offer of employment was at Band 8B which was Ms Vince-Cain's pay band in the CHAMP role. Her base and her hours of work would have been the same. The reporting line would have been different. The offer was of a permanent role not of a fixed-term contract so the prospect was of employment continuing without any specified time limit.

224. The work was different but it still related to the claimant's expertise and skillset as a dietician with a particular interest in weight and health issues. She would have been dealing with healthy weight levels for adults as well as for children. The status of the new role was no lower than the CHAMP role and may well have been higher as the role was an expanded one.

225. The answers given by Ms Vince-Cain in cross examination in connection with the offered role are set out above at paragraph 79.

226. Looking at the claimant's then existing role, the circumstances around the new role and the answers given in cross examination we find that notwithstanding the differences in the roles the offer made to the claimant before her employment expired constituted an offer of suitable employment in relation to her.

227. Ms Vince-Cain is not entitled to a redundancy payment if her refusal of the offer was unreasonable. The question depends on factors personal to the employee and is to be assessed subjectively from her point of view at the time of the refusal.

228. We have set out at paragraph 75 above the stated reasons why Ms Vince-Cain felt unable to accept the new role that was offered to her.

229. We know from Ms Vince-Cain's evidence and from her submissions that she does not accept that the redundancy situation was genuine, and in our judgment, this coloured her view of the role that was offered to her.

230. The relationship between the respondent and Health Education England was a matter for the respondent to manage but Mark Edwards had confirmed to the claimant in writing that the respondent would need to ensure that they met the expectations of the HEE programme and complete the HEE work. In the light of this we do not find that the matters put forward by the claimant at items 1, 3, 6 and 7 were reasonable.

231. We do not find the claimant was reasonable in taking the view that her role was not redundant as leader of the CHAMP project when she had been specifically told that it was and when she was aware that a new job was being designed with her in mind for her to take up in place of the CHAMP role. We therefore do not find that the matters set out by the claimant in her second and fifth paragraphs amounted to reasonable reasons for refusing the offer of new employment.

232. At points 4 and 5 the claimant refers to the new role and how it differs from the old one. We have set out above our conclusions in respect of the suitability of the new role offered to the claimant and indeed we have set out her evidence to the effect that she could have done the job.

233. Her paragraphs numbered 3, 8, 9 and 10 do not relate to the suitability of the offered employment.

234. We note that Mr Edwards was making strenuous efforts to seek to persuade the claimant to accept the offered role with this attitude persisting even after the claimant had rejected it.

235. We note that the claimant refused to meet with Mr Edwards so the matters of concern raised by her were only dealt with in writing rather than orally in discussion.

236. Taking all of these matters into account we find that the claimant unreasonably refused the new employment offered to her under section 141 of the Employment Rights Act 1996 and we conclude that she is not entitled to a redundancy payment.

237. We find that the dismissal of Ms Vince-Cain was fair because there was ample consultation with her in connection with the question of alternative employment and that she unreasonably refused the offer of a new job.

Miss S Harty

238. Did the respondent treat Ms Harty unfavourably for the purposes of section 18 of the Equality Act 2010 given that she was absent on maternity leave until 22 August 2018? We have set out the particulars of the treatment complained of at paragraph 80 above.

239. We remind ourselves that a person discriminates against a woman if she is treated unfavourably because she has exercised the right to ordinary or additional maternity leave.

240. At item (1) the claimant maintains she was treated unfavourably because she took a period of maternity leave. Assuming the unfavourable treatment to be the process started by the respondent in the protected period leading to the subsequent termination of Ms Harty's employment we find that the claimant was treated unfavourably because the loss of employment was unfavourable to Ms Harty.

241. Was this done because she exercised the right to take maternity leave? In our judgment the reason for the treatment was because she was a member of the CHAMP team and all the members of the CHAMP team were subjected to the respondent's redundancy process. We therefore conclude that the respondent's unfavourable treatment of the claimant was not because she had taken a period of maternity leave.

242. At item (2) the claimant maintains that she was subject to a course of discriminatory treatment amounting to direct discrimination because she took a period of maternity leave. We shall take this reference to direct discrimination as a reference to allegations of unfavourable treatment because she took a period of maternity leave and we shall ignore her references to comparators because we are considering allegations of unfavourable treatment of the claimant not less favourable treatment of the claimant when compared to others.

243. At (2)(a) the claimant refers to receiving a letter dated 4 July 2018 telling her that her employment would be ending as funding was not being extended with no contact details of anyone she could call to discuss the matter with.

244. Looking at the letter of 4 July Ms Ganley provided her email address and her office address but did not provide a telephone number. As well as providing her own details Ms Ganley also gave the name of the HR Business Partner who would also be attending the meeting scheduled to take place on 11 July. As a matter of fact

we do not find that the claimant was given no contact details of anyone she could call to discuss the matter with.

245. At (2)(b) the claimant alleges she was left with no contact or offer of the same until a meeting on 11 July. For the reasons just given we do not accept that the claimant was left with no one to contact before the scheduled meeting on 11 July just a week later. There was no formal offer of contact prior to the meeting but we do not find that this amounts to the claimant being treated unfavourably given the short period of time between her receiving the letter and the meeting.

246. At (2)(c) the claimant rightly states that she was told that she should regularly check the respondent's job vacancy section. She alleges no consideration was given to the fact that she was on maternity leave. The claimant does not complain that she did not have access to MFT job vacancies. The claimant in her evidence has not explained why this amounted to unfavourable treatment.

247. We do not consider that this instruction amounted to unfavourable treatment of the claimant whilst on maternity leave but if we had found it unfavourable then in our judgment the treatment of the claimant was because she was going through a redundancy exercise with the respondent and not because she had taken a period of maternity leave.

248. At 2(d) the claimant complains that the respondent made no allowance for her being on maternity leave in respect of responding to vacancies within the timescale identified and in a timely manner.

249. We do not find that an instruction to respond to vacancies within the timescale identified and in a timely manner amounts to unfavourable treatment of the claimant. Again, if we had found the treatment unfavourable then we would have found the reason why the claimant was asked to act in this way related to the fact that she was undergoing a redundancy process, involving a search for alternative employment, and not because she was on maternity leave.

250. As to 2(e) and (f) the claimant complains that the respondent provided no assistance in identifying suitable alternative roles, did not help her in her search and did not meet with her to identify her experience and job history to match her to other roles.

251. In keeping with our conclusions in respect of the redundancy process we do consider this to be unfavourable treatment but in our judgment the treatment was related to the redundancy process and not because the claimant was on maternity leave. Although comparators are not strictly relevant in section 18 claims we know

that the claimant's colleagues who did not take maternity leave were treated in the same way as part of the respondent's redundancy process.

252. At 2(g) the claimant complains that a redundancy calculation was not sent until 12 days later with no explanation for the delay. The figure was not correct. We do not find any connection between this administrative delay and error and the fact that the claimant had exercised her right to take maternity leave.

253. At 2(h) the claimant claims that there was no communication from the respondent between 11 July and 22 August which left her feeling isolated. We do not find that this was the case as there was a letter dated 26 July sent with an email on 27 July by Lorraine Ganley which provided a mobile phone number as well as an email and a physical address and a request to contact Ms Ganley if the claimant had any queries or if there was anything she could do by way of support. As a matter of fact, therefore, we do not find that there was no communication whatsoever.

254. Ms Harty's claims under section 18 of the Equality Act 2010 are therefore dismissed.

Remedy

255. The parties are invited to seek to reach an agreement on the question of remedy but any successful claimant can write to the Tribunal to ask for a remedy hearing.

Employment Judge Sherratt

13 March 2020

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
16 March 2020

FOR THE TRIBUNAL OFFICE

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RESERVED JUDGMENT

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