EMPLOYMENT TRIBUNALS

Claimant: Mr H Singh

Respondents: Leicester City Council

Heard at: Leicester **On:** 25, 26 & 27 June 2018

Before: Employment Judge R Clark
Mr Z Sher
Mrs C Hatcliffe

Representatives

Claimant: Mr Bidnell-Edwards of Counsel
Respondents: Mr Linstead of Counsel

JUDGMENT

The unanimous judgment of the tribunal is that:-

1. The claim for unfair dismissal **fails and is dismissed**

2. The claim of disability discrimination under s.15 of the Equality Act 2010 **fails and is dismissed**

3. The claim of indirect disability discrimination under s.19 of the Equality Act 2010 **fails and is dismissed**.

4. The claim of failure to make reasonable adjustments under s.20 of the Equality Act 2010 **fails and is dismissed**.

REASONS

1. Introduction

1.1. This claim relates to the termination of the claimant's employment following a major staffing reorganisation within the school at which he was employed. That is the Lancaster School.

1.2. At the date of his dismissal on 20 January 2017, the Claimant was legally employed by the respondent but his employment relationship was deemed to be

with the school under the Education (Modification of Enactments Relating to Employment) (England) Order 2003. However, at or shortly after the events material to this claim the school had been placed in special measures as a result of an inadequate Ofsted inspection. The Board of Governors of the school was subsequently disbanded and, from April 2017, the school itself was converted into a new acadamey entity as part of a wider Trust group. As a result, there is no longer an entity known as "the Board of Governors of the Lancaster School" to stand as a Respondent to this claim. At a previous preliminary hearing, the parties agreed that in the absence of any other statutory transfer of liability, the proper Respondent was Leicester City Council only.

2. **Issues**

2.1. A draft list of issues was agreed between the parties. We adopt it subject to four areas of clarification agreed at the outset. They are:-

a. That there is no dispute that the legal reason for dismissal was redundancy.
b. That there is no pleaded case of justification in respect of the s.19 claim.
c. That the "something arising" in respect of the s.15 claim is the claimant's sickness absence.
d. That the disadvantage in respect of the s.20 claim is being dismissed.

2.2. There was some movement in the case during evidence. We reminded the parties at various times that these were not loose aims, but an agreed list of issues in the case which reflected the parties' respective pleading. Unless there was any application, or agreement, to amend the claim or response, they amounted to the questions we would seek to answer.

3. **Evidence and Submissions**

3.1. For the claimant, we heard from Mr Singh himself.

3.2. For the respondent, we heard from Mrs Ann Fisher and Mrs Pam Hollingshead.

3.3. We considered those pages we were referred to in an agreed bundle filling one lever arch file.

3.4. Both counsel relied on written closing submissions which they supplemented and responded to orally.

3.5. At the outset of the hearing, both parties contended they should give evidence first. After hearing argument we determined to hear evidence from the claimant first. There were two reasons. First, the concession as to the legal reason for dismissal removed any legal burden from the respondent. Secondly, and, in any event, the claimant had been advised, not unreasonably that he would give evidence first. He was nervous about giving evidence and given that anxiety is a feature of his disability it was a relevant factor for us to weigh in his favour.

4. **FACTS**

4.1. It is not the tribunal's function to resolve each and every last dispute of fact between the parties, but instead to make such findings of fact as are necessary to resolve the issues and to put them in their proper context. On that basis and on the balance of probabilities we make the following findings of fact.

4.2. The respondent is the local education authority for the city of Leicester. At the time, it delegated budgets to the Lancaster School at which the claimant was employed. The respondent is a large employer with a developed employment policy framework and in-house professional advisers. A similar level of advice and suport was available to the school at the relevant time.

4.3. The claimant was born on 28 July 1977. He commenced his continuous employment with the respondent, in the role of Community Sports Manager on 14 January 2008. It was based within the community sports college. This was a separate department of the school established when the school first acquired "Sports College" status. At the time, it received additional funding for this status which paid for the staff in this new department. Whilst there was a close relationship with the school's internal P.E. department, its role was different and externally focused. The function of the Community Sports College team was to engage with the local community and establish links to raise the profile of the school as a Sports College and promote the use of its facilities within the community, letting them at a charge. We understand it raised up to around £20k p.a. in such letting charges.

4.4. The claimant had a job description consistent with that aim and setting out the associated tasks and responsibilities of the post [437]. We find this is not a teaching role nor was it intended to be a pupil facing role although we accept that the claimant would inevitably come into contact with pupils. In the course of oral evidence, the claimant advanced a case that he had in the past undertaken tasks as both a Teaching Assistant and a Classroom Supervisor. That is not in the ET1 nor was it in his written witness statement. Seemingly, this was advanced in order to found a contention that there were other roles he could have assimilated into during the reorganisation. We find as a fact that there was, at some stage in the past, at least one occasion when the claimant set up sports equipment for class use, albeit we find it was a task that, on balance, would otherwise have been undertaken by a PE technician and not a classroom assistant as stated. Similarly, we accept that there was at least one occasion when the claimant undertook some measure of role akin to that of a cover supervisor. That is, a person employed by the school to maintain a learning plan during the unforeseen absence of the class teacher. The claimant did not establish any particular frequency or timescale for these tasks nor any surrounding circumstances in which the activity took place. We find that if these activities did in fact happen on more than the one occasion we find, they were nevertheless extremely few and far between and of no real effect in describing the nature of his actual role and what was expected of him. Certainly, the employer did not regard him or his role as providing these functions.

4.5. His role in creating links with the community to hire out the school's facilities also brought him into contact with the school's facilities and finance departments. We find facilities dealt with the practicality of security and safety in respect of any bookings whilst finance dealt with the payments and users'

accounts. This would continue after the demise of the community sports college department.

4.6. The Community Sports department was a department of 4 staff made up as follows.

a. It was headed by a director, Mat Garden. He was also a qualified teacher and undertook the director role as an additional responsibility to his teaching commitment in the school. He was the claimant's line manager. He occupied a position of seniority known in the school's hierarchy as a "middle leader". He undertook pupil contact lessons in his capacity as a teacher. He received around £12k pa as an additional "TLR" supplement to his teacher's pay.
b. The claimant was the Community Sport Manager
c. There was a tennis coach.
d. There was an administrator, Suzanne Parker.

4.7. The funding for this specialist status ended in 2010/2011. Thereafter, the school decided to retain the sports college team and fund it through its own budget.

4.8. In recent years, the school had evidently not been well managed. It had a growing financial deficit and, we infer from the circumstances, a lack of management control across most areas of management. The school's poor record led to a series of fundamental changes in a relatively short space of time.

a. The previous head teacher, Mr Kennedy, left in November 2015. He was supposed to have implemented a fundamental staffing restructure to try to control expenditure but his departure thwarted that. It seems, however, not before the plan for significant changes had been leaked by the staff side with whom he had begun consulting. We find the need for drastic staffing changes was well known throughout the staff body. There was, naturally, much speculation and rumour as to what the detail would entail.
b. Ann Fisher was brought into the school in November, initially on a form of secondment. She then became interim head teacher from January 2016 before being formally appointed as such in May. Her task was to shore up what seems to have been a failing school.
c. In January 2016, the school was judged to be inadequate by Ofsted.
d. The school would have been forced into a "special measures" status had it not surrendered to the process. The governing body was removed and replaced with an "interim executive board" which seems to have taken control of the situation.
e. Plans were put in place to convert the school to an academy under the umbrella of the Learning Without Limits Trust.
f. Mrs Fisher was tasked with turning around school performance against all measures and the urgent staffing changes began as early as January 2016 with a view, ultimately, to implementing a more fundamental restructuring to bring the finances under control.

4.9. Whilst this period in early 2016 was a time for significant change for all staff at the school, Mr Singh came to this against a background of dealing with his own ill-health, treatment and absences.

4.10. In 2014, the claimant had been diagnosed with stage 4 Hodgkins Lymphoma cancer of the blood. His chemotherapy treatment commenced soon afterwards and continued until May 2015. He was unable to work during this time and returned in June 2015 on a part time basis, just before the summer holidays. Around August/September of 2015 the claimant took a period of compassionate leave following the death of his mother. We record this only as it is yet another significant life event that we fully accept added further pressure to his psychological wellbeing. Save for a few short spells of sickness absence during late 2015 the claimant was able to get back to work.

4.11. In January 2016, the claimant began to experience the effects of what was soon after diagnosed as depression, stress and anxiety related to him being in remission from cancer. He went off sick again at the end of February until 6 March 2016.

4.12. We find there was an attempt by Mrs Hollingshead to arrange a return to work meeting with the claimant. We have seen the email exchange [89] when various dates and times were explored. It ends with Mrs Hollingshead inviting the claimant to let her know when he was available. He did not.

4.13. There was, however, a meeting between him and Mr Garden which the claimant characterises as an informal return to work meeting. He criticises the employer for the informality of this meeting. We are not satisfied this meeting was, as the claimant maintains, the return to work meeting anticipated by Mrs Hollingshead and we find that she did not delegate the task to Mat Garden. We accept the claimant's evidence that Mat Garden was "exceptionally supportive" of him. He of course knew the background to the claimant's ill health, knew he had been off work sick and we find this informal meeting said to have taken place in the staff changing room is more likely to have been no more than a natural and supportive discussion about the claimant's sickness absence.

4.14. The claimant did not go back to Mrs Hollingshead to arrange the formal return to work. Whilst she might be criticised for not chasing the claimant, it is clear to us that it takes place at a time of a number of other pressing priorities and seems to have been overtaken by the fact that the claimant went off sick again shortly afterwards on 11 April 2016. This period of absence would, to all intent and purpose, continue until his dismissal.

4.15. During this time, his doctors referred him to the Psycho-Oncology department for an assessment. That took place on 7 April 2016. He was thereafter advised to be signed off work pending referral for counselling treatment.

4.16. There was, however, an unsuccessful attempt at a return to work in early June 2016. The claimant's last fit note certificate shows an expiry of Monday 6 June. We were not told what happened on Tuesday 7 June but on Wednesday 8 June, the claimant attempted a return to work on a unilaterally determined, part time basis. We cannot see that there was any prior discussion about the half day return to work with either the employer or the claimant's doctors. From Mrs Hollingshead's perspective, the fit note had expired on 6 June and she sought confirmation of Mr Garden and the claimant as to what was happening with the absence [93]. In his response, the claimant confirmed his half day working. Once again, Mrs Hollingshead sought to arrange a return to work meeting and, again,

there was some difficulty identifying mutually convenient dates. In the course of the exchanges, and not unreasonably, she sought some medical support for the half day phased return. This was never produced and the attempt at returning to work is very short lived as the claimant would then go off sick again from Friday 10 June. In fact, it is not clear that his doctor regarded him as ever having been fit for work as the subsequent fit note produced in respect of the resumed absence records his unfitness as being from 7 June, such that his absence was recorded by the employer as continuous from April 2016

4.17. During his time in work, the claimant once again says that Mat Garden undertook a return to work meeting with him on Thursday 9 June. We find this was on the same informal basis as the previous meeting and not instead of or a delegated formal return to work. The notion of the task being delegated on two occasions is inconsistent with Mrs Hollingshead's continued attempts to arrange the meetings with herself.

4.18. We accept, however, that during that latter informal meeting, the claimant asked Mat Garden to obtain some information about his job security in light of the impending restructuring. We find Mat Garden did convey his request and asked Mrs Hollingshead what information he could give but returned to the claimant saying no information could be given. Mrs Hollingshead accepts that exchange. We therefore accept it. The claimant deemed that response to be dismissive but it is difficult to see why. Mat Garden was someone he regarded as exceptionally supportive to his situation. We find the message from Mrs Hollingshead was consistent with that being given to all staff who sought similar confirmation of job security prior to the new draft structure being announced. She treated the claimant's request in exactly the same manner. We are satisfied that was the plan the senior leadership team had adopted until the reorganisation structure was published, principally because of the destabilising effect the previous leak had had in creating rumour and gossip at the end of the previous year. This time, they were trying to keep control of the plans.

4.19. It was, of course, not at all unnatural that all members of staff feared what might be about to happen. The original plan to be implemented by Mr Kennedy had got as far as some initial collective consultation with the trade unions and they were blamed for leaking the draft plan to staff. Many staff did indeed seek reassurance of their own security. We find they all received Mrs Fisher or Hollingshead's standard response that nothing could be said at this stage. The claimant alleges a number of staff were tipped off as to their own job security. We are not satisfied that was the case. The claimant first relies on a discussion with a PE technician called Rueben Walker who he understood had been told his job was safe in the restructure. Mr Walker did not give evidence and we have no contemporaneous documentation supporting this conversation. On the other hand, Mrs Fisher did give evidence and did recall a conversation with Mr Walker about job security. It was in the context of him wanting to stay at the school but having another job to apply for. He wanted to know whether the reorganisation would be published before the closing date as he did not want to miss the opportunity of this other job. We are satisfied that Mrs Fisher told him he was "safe to wait before deciding whether to apply" and not that he was safe in the restructuring. She obviously knew the timescale for the plan to be published in the near future.

4.20. Similarly, the claimant says the school caretaker had told him his job was safe. If he did tell the claimant that, we find it was not because he had been told

as much by Mrs Fisher or Mrs Hollingshead. It may be that this related to the earlier leaked plan from 2015, we cannot tell.

4.21. Rather than seek reassurance, we find other staff took more of a direct control over the situation and sought employment elsewhere. We return to that below. First, we must consider the nature and scale of the challenge Mr Fisher and the Interim Executive Board were facing.

4.22. The school's annual budget was around £5m. It was declining as the school roll fell. The finances and performance of a struggling school are often interlinked and serve to create something of a cruel vortex. As fewer parents wished their children to attend, so the per-capita funding declined and the finances deteriorate further, often with a consequential effect on the school's performance and so the self-perpetuating downward cycle continues. The deficit in 2016/17 was around £700k. Without changes to the deficit would roll forward and effectively double up. It was clearly unsustainable.

4.23. In the first few months of her appointment, Mrs Fisher was sizing up the scale of the problems at the school. From January, she began initial changes as were necessary as part of the response to the imposition of special measures the school faced.

4.24. Her first change was to the administrative support across the school. Parent communication was a significant area of failing in need of being addressed, as was the need to remove administration from teachers. Her initial simple solution was to relocate all administration to a centralised location. This had no material effect on the existing administrative staff, all of whom retained their original roles but were now simply based in a central office. They were expected to contribute to the general administrative support. One such employee was Suzanne Porter, the Community Sports College administrator. We do not accept this amounted to a change of role or any special treatment. There was at least one other "remote" administrative assistant brought into the central office.

4.25. The next measure was that there was something close to a spending embargo imposed on budget holders.

4.26. Mrs Fisher and Mrs Hollingshead then set to work on reviewing the existing staffing structure so as to redraw it as efficiently as possible to achieve the necessary savings, whilst delivering a safe and effective education. We find there simply had to be such a fundamental restructuring of the workforce in order to achieve the necessary savings. At this stage, it was a desk top review of what was needed in the future against existing job descriptions. A detailed restructuring plan was prepared and approved at the Interim Executive Board on 21 June 2016 [95]. It is an extensive plan which dealt with both the old and proposed structure and the manner of moving between the two. That process proposed various mechanisms for assimilation, ring fencing, interim appeals and reviews, final appeals and means of matching staff to alternative employment to avoid redundancy. In particular the process included the following matters.

4.27. First there was engagement with relevant recognised trade unions. We accept their involvement led to some changes to the initial plan. The school engaged in its statutory collective consultation obligations under s.188 Trade Union and Labour Relations (Consolidation) Act 1992

4.28. Plans were made for individual consultation to take place. Significantly, this explicitly included an intention to engage with those not at work at the time such as those on maternity leave or, as in the claimant's case, on sick leave. The plan reviewed staffing need department by department and identified those staff who provisionally appeared to be in roles which could assimilate into the new structure. Where that assimilation was 1:1, they would provisionally slot in to the new role. Where there was a reduction in the number of like jobs between old and new structures, the affected staff would still be assimilated to those roles but there would be competitive interviews as a means of selection. Where the job in the old structure no longer existed in the new structure, the occupant was displaced and potentially at risk of redundancy at that stage.

4.29. We say potentially, as the plan included a process of assimilation appeals, what we understood to be a sort of interim appeal short of the final appeal against any decision to termination employment. Under the assimilation appeal process, staff affected by the proposals for assimilation could challenge the provisional decisions. That was important as it included challenging which posts they could assimilate to and, importantly, where staff had been identified as displaced without any assimilation, they could challenge that process and appeal to be considered as part of the assimilation process for other jobs in the new structure. In practice, it meant that an employee not only had the right to appeal against the final decision to terminate their employment on grounds of redundancy, but could raise an appeal mid-process to challenge the decisions relating to them and their post. We find this created an additional dynamic to the process which actively engaged staff in the process. We find many of the staff made use of this process and changes were made as a result. We find this process was available to the claimant at all times and no challenge was made by him or on his behalf.

4.30. We record the fact that the community sports college team was scrapped in this restructure in its entirety. That is, perhaps, not a surprise in view of the fact that the specific funding for it had ended some 6 years earlier. We find all 4 of the roles in the sports college department were displaced and none had new roles to be assimilated to. All staff were, or would have been, at risk of redundancy. We say would have, as Mat Garden and Suzanne Parker were two of a number of individuals who took control of their destiny and obtained alternative roles before the redundancy process was concluded. The claimant says this was as a result of being given unfair advantage that was not extended to him. There were two events arising during the early part of 2016 that are relied on by the claimant and which need us to reach further findings of fact.

4.31. The first is that, in January 2016, the head teacher advertised an additional leadership role. It was not a job as such, it was simply added duties to take the lead on a particular area of work. It was available for members of the middle leaders group as a development role for those with ambition to take on senior leadership roles in the future. In evidence, the claimant accepted that the role was genuine, or at least he could not say the school did not need it. We are satisfied it was genuine. The claimant also accepted he could not have applied for it. We find Mr Garden was one of around 10 staff at the middle leader level who could have applied for it. Perhaps unsurprisingly in this state of change, neither Mr Garden nor anyone else actually applied for it. It is suggested by the claimant that at some point after the closing date, Mrs Fisher said to him she was surprised he hadn't applied as it would have "offered him a lifeline". She denies

that. We prefer her evidence. The claimant's account is hearsay and even if there was some related conversation it is fraught with the risk that any words relayed were misunderstood or were lost in translation. In any event, even as he reports it, we do not find it affords the interpretation that the claimant sought to place on it or that there was some underlying desire to give Mr Garden an unfair advantage at any future restructuring or, more to the point to deny the claimant any.

4.32. It seems to us likely that one reason Mr Garden did not apply, apart from the fact this "role" was extra work for no extra pay, was that he did not see his future within what had been a failing school. He had applied for employment elsewhere. He was successful and he handed in his resignation on 12 April 2016. Under his terms and conditions, he remained in post during his notice until the next leaving date at the end of the summer term. We find he would have been searching for, applying and being selected for, that role for some period of time before his resignation was submitted. His role as the director of specialism was removed from new structure as a consequence of the complete closure of the Sports College Team. That saved the school around £12k. Full time PE teacher roles were retained in the new structure and, had he not moved on, he would have been pooled along with the rest of the PE department and subject to the assimilation process into those remaining PE teaching roles but, as far as the community sports college role is concerned, he would have lost that and the additional TLR.

4.33. The second matter relates to Suzanne Parker. As we have already found, she had been physically moved into the central administration office. This was not a change of role. She would continue with her current role and use whatever spare capacity she had to support the general administration. She did that for a period of time. A vacancy then arose within the administration department for an "Admin Officer (Welfare)". Whether the school had centralised administration or not, we find this was a vacancy that would still have arisen and that she would have been eligible to apply for and, we find, in all probability she would have done. She applied and was considered amongst 3 candidates. She was selected after competitive interview and appointed to the role in June 2016. The claimant accepts he could not have applied for that role as he did not have the necessary administrative skills.

4.34. Ms Parker's original administrative post supporting the sports college team was therefore vacant and we see it in the "old" structure as such. The vacancy did not carry forward to the new structure with the demise of the department. Her new role did carry into the new structure and she assimilated into that.

4.35. We do not see any evidence that she was afforded preferential treatment. Had she not obtained the alternative vacancy, her role would have disappeared.

4.36. We accept the school were dealing with significant problems. Whilst it was in the process of moving towards a school-wide restructure, opportunities arose in advance to align the structure with the future capacity. As people left or moved roles, as in these two examples set out above, their posts were not filled and they were ultimately deleted from the proposed structure. We find no evidence of anything untoward or sinister in what was happening with these individuals. Of course, within a department of 4, these two examples deal with only 2 of the posts. The claimant seeks to show how the way they were treated demonstrated they were treated more favourably than him. For completeness,

we should record what happened to the 4th member of the department, the tennis coach. He was not disabled. He had not been absent on sick leave. He was, however, displaced by the closure of the sports college and ultimately made redundant in the same process as the claimant.

4.37. All staff were invited to engage in consultation. The plan was that the changes would be implemented by January 2017. On 22 June 2016, the staff body as a whole was notified of the plan by email with an attached letter [169/170]. It explicitly recognised there were staff off sick or on maternity and that the school management was trying to make contact with them. Staff in receipt of the consultation document were asked to pass on relevant information to colleagues they knew were not at school, where they were able to.

4.38. The letter proposed collective consultation meetings on 29 June 2016 or 4 July 2016. We are satisfied that whilst absent on sick leave, and for some time in advance of the 29 June, the claimant was in discussions with a number of his colleagues about the reorganisation and, in particular, his line manager Mat Garden. We find he was fully aware of the plan for change and that meetings were taking place. He was able to discuss the process and its implications. He did not attend either. At the meeting on 29 June, we find Mat Garden attended and obtained the school's plan for change. He was able to provide the claimant with this. The claimant therefore knew that the department in which he worked did not exist in the new structure. Individual consultation meetings were offered to staff and began immediately. We find the claimant had sufficient information to know the process being adopted and the opportunity to challenge the plan, through assimilation appeals, if there were posts that he felt he could be considered for in the new structure. He did not make any challenge.

4.39. As for the claimant, he remained off sick. We find, as with others absent at the time, that the respondent took steps to try to make contact with him. Mrs Hollingshead had realised in the run up to publication of the reorganisation that the contact details she had for the claimant were not accurate. We accept that she tried to phone him and received an unobtainable tone. She made enquiries with his manager, Mr Garden, on 22 June and again chased him on 27 June for the correct contact information. We reject the claimant's contention that she was lying about her efforts which we find were genuine and reasonable attempts to engage the claimant in the consultation process.

4.40. We also find that although away from work, the claimant retained the ability to log into his work emails remotely and that he did so. He had not done so previously as he had never needed to in the past but we find that he was shown how to easily log on remotely around the time of the collective consultation meetings, and certainly by the first week of July he was able to see all emails addressed to him specifically or in which he was included generally.

4.41. By 30 June 2016, Mrs Hollingshead had obtained his correct mobile phone number and the two had exchanged text messages [186]. These confirmed his home address. On 1 July, an email was sent attaching the reorganisation plan. [188] and on the same date, arrangements were made to send a hard copy to the claimant [189]

4.42. On 6 July, the claimant was informed by Mrs Hollingshead by email of the forthcoming opportunity for individual consultation meetings and encouraged him to attend or *"let her know if you wish me to arrange an alternative"* [190]

4.43. On 7 July 2016, the claimant replied by email [192]. It is clear there was by then a line of communication open between the school and the absent claimant. It is also clear that the claimant was able to engage both with the school and his trade union adviser. He stated how his preferred method of communication regarding the restructuring was via email. He stated how he was currently in no fit mental state to take part in such important discussions. He indicated how his trade union rep, Gary Garner, had advised that his consultation meeting wait until the start of the next academic year.

4.44. The school agreed to the claimant's request to delay the meetings.

4.45. We need to say something about the claimant's representation. Gary Garner was the local Unison trade union representative. The claimant was a member of Unison. He gave evidence that he had actually cancelled his membership of Unison around the time of his email of 7 July. His reasons and timing were vague. He was clear, however, that he did not contract Gary Garner to say as much. Nor did he inform his employer. Whilst he is, of course, under no obligation to notify either of his decision (however helpful that would have been to both), we find that for all the remaining period of time after his membership subscription was apparently cancelled, both Gary Garner and the school attempted to engage with the claimant believing he was still a Unison member. Numerous opportunities arose thereafter for the claimant to correct this misunderstanding which he did not take.

4.46. As the 2016 school holidays arrived, the claimant's current period of sickness absence was growing and had exceeded three months. That was a trigger point to the school's absence procedures. Moreover, there was every indication of it continuing. The school sought occupational health advice as part of the established absence management procedures. A referral was made. The referral included a statement:-

> ***"Mr Singh has had several periods of long term absence during the last 2 academic years as a result of [Hodgkin] lymphoma treatment of and anxiety relating to. Whilst the school is supportive and sympathetic, we cannot continue to sustain this amount of absence"***

4.47. We find through that referral the school was seeking guidance not only on the implications of the Equality Act 2010 but also held a genuine concern about his ill health and recovery and how to engage with him in the very serious process of restructuring where his job was obviously affected.

4.48. We find Mr Singh was able to engage with the planned meeting with occupational health. On 22 July 2016, the occupational health physician reported back to the school [197]. It noted Mr Singh's views of how he says he found out about the reorganisation and redundancies through colleagues, we find that was his line manager, Mr Garden. It identifies the anger and anxiety resulting from the diagnosis and that this is unlikely to improve before he undergoes the counselling therapy but, assuming he responded well to that, that he could return to work in the future on a 2 weeks phased return initially. At the time of the report, it was hoped that the counselling referred to would not extend into the next school term. That is, it would be concluded by September 2016.

4.49. There was no further contact with the claimant until the start of the next term, in line with his earlier request. On 1 September, Mrs Hollingshead wrote to the claimant inviting him to attend a 1:1 meeting to discuss the implications of the reorganisation. The letter noted that Mr Garner had also been contacted. He was invited to get in touch if he could not attend so that alternative arrangements could be made. That meeting was clearly planned by the school at least the day before as, on 31 August, Mrs Hollingshead sought the assistance of Mr Garner in respect of an intention to hold a second meeting with the claimant about the occupational health report after their discussion about the restructuring on 7 September. There was no response from the claimant. The TU rep stated that he could not make contact with him either.

4.50. The planned meeting on 7 September came and went without any contact from the claimant.

4.51. We reject the claimant's assertion that Gary Garner was lying to the school when he stated he had not been able to make contact with the claimant. In evidence to us, the claimant explained his non-attendance as being because he could not face the prospect of being in the presence of the two individuals who had previously not shown any concern and contributed to ill health. We found that difficult to reconcile with what had happened so far. We fully understood the circumstances that the claimant was in in respect of his health, remission and the consequential mental ill health, particularly in view of the number of significant life events he had recently had to deal with, but there was nothing that he could point to which rationally and reasonably singled out either Mrs Fisher or Mrs Hollingshead as having done anything wrong or insensitive towards the claimant so as to warrant his view that he couldn't bring himself to engage with them. Whilst we recognise that this might have been the claimants own genuine reality, it was not a view that was sustainable on an objective assessment of what was actually happening and, perhaps more to the point, he did not articulate this to the school where alternative arrangements might have been possible. We do accept that his health was such that his ability to engage was likely to have fluctuated from day to day or week to week, but there is clear evidence of him engaging with the issues at certain times and, in any event, this is not the explanation the claimant relies on. We therefore find the claimant's health did not prevent him from engaging with the school either directly at the proposed meetings, or indirectly through email correspondence at a time to suit him.

4.52. On 9 September, Mrs Hollingshead sent a further letter of invite for a rescheduled meeting for 15 September. Again, Unison were included in the invite. The claimant did not respond to that letter immediately. He did however, contact Mrs Hollingshead on 10 September to ask for a copy of the OH referral and confirmation of who his line manager was now that Mr Gardener had left [206]. In that email, he made no mention of the meeting he had not attended 3 days earlier. He made no mention of the mistrust he allegedly had in Mrs Hollingshead or Mrs Fisher that he suggested in evidence to us. Mrs Hollingshead responded promptly and actioned his request within a couple of days. She indicated that she would be his line manager. That news did not prompt any adverse response, despite what we are now being told.

4.53. On 15 September, the second planned review meeting came and went again without the claimant attending. Later that day, he emailed Mrs Hollingshead [208]. He first of all thanked her not only for the information she had

sent him, but for calling him earlier that day to check on his welfare. He updated her, as his new line manager, of his health. In particular, the cancer related counselling had not taken place but was going to commence within a week. He felt there had been a deterioration in his mental health and that his stress and anxiety was having an effect on his physical health leading to gastro oesophageal reflux. He apologised for not making the school aware that he would not be attending the meeting that day which he puts down to not being in a particularly solid state of mind. He invited Mrs Hollingshead to "contact him at any time" with regard to any more information about his health or, alternatively, that he was happy to attend a follow up appointment with occupational health. He repeated that his preferred method of communication is email.

4.54. The email makes no mention of him no longer being represented by Unison.

4.55. That email prompted a response from Mrs Fisher on 3 October 2016. There was some consultation with HR about the drafting of this letter in advance and the only difference between the draft and the final letter seems to be the removal of the penultimate paragraph relating to a risk of ill–health termination. It was removed by Mrs Fisher on the basis she felt the first draft was "a bit harsh". We find that to be supportive of our conclusion that there was a genuine sympathy for the claimant's situation and a genuine desire for him to engage with the school. The letter set out the following points. It expressed disappointment that he had not let the school know would not be attending. That the dates had been arranged after inviting the claimant to comment on his availability. It expressed sympathy for his situation but reminds him of his duty to keep in touch with school. It referred to the concern about him learning about the reorganisation through colleagues and sets this against the attempts the school had made to engage the claimant in the consultation process during his absence from work. The letter invited him to a further meeting on 12 October, assisted by his union representative to explore the implications of the restructuring. It offered alternative venues if that would assist him to engage.

4.56. The claimant responded by email on 6 October [358]. He gave notice that he would not be attending the meeting as he was medically unfit to do so. He did not express any view as to the personalities of the individuals involved or otherwise raise the issues that are now before us that might have led the school to consider any alternative arrangements. We find the level of engagement in correspondence to be inconsistent with someone who could not deal with the issues. He plainly could and was doing so, albeit he was choosing not to engage in the meetings.

4.57. On 24 October, Mrs Fisher wrote to the claimant again [360]. Her letter repeated her disappointment at the lack of engagement in respect of both the health issues and, more pressingly, the restructuring and how it affects him. It offers the claimant a further opportunity to meet to discuss the situation at the school. It warned him that if he did not take up the option, then the review process would continue without his input. The option was to meet her at the school or to consider an alternative venue. She proposed he contact the school with suitable dates.

4.58. This letter also sought some further medical input from the claimant's GP to understand why it was that even though he was unfit for work, he could not engage in a meeting, particularly given the adjustment of an alternative venue.

In evidence, the claimant's position was that if his GP says he was not fit for work, that meant any engagement with work. He didn't say as much to the school at the time and we found that stance was not consistent with his other attack that the school should have re-referred him to occupational health for that purpose.

4.59. The claimant did not respond to that letter.

4.60. By 26 October 2016 [362], vacancies in the new structure had begun to emerge as the assimilation process concluded and other staff left to move to new employment. Those vacancies were ring-fenced and available only to those staff who had been displaced or had been unsuccessful following the assimilation process. Two vacancies arose. They were a level 1 mentor and a level 2 teaching assistant. No one asserted they were suitable alternatives for the claimant in the legal sense, but it was not for the school to assume he would not be interested. We find he would not have obtained either role either through a lack of skill set or that he would have self-selected out due to not wanting to suffer anything more than a marginal salary reduction

4.61. Those vacancies came out on the same day as the school sent its letter of notice of termination of employment on grounds of redundancy [363]. The letter gave notice to expire on 20 January 2017. It referred to a "talent match" process for finding alternative employment. Details of it were given. We find it significant in that it opened up to the claimant all of the vacancies across Leicester City Council, not just those in the school itself. Furthermore, as an employee at risk of redundancy his application process would have benefited from some degree of preferential treatment. All the claimant had to do was make contact with the talent match redeployment officer. We find he did not follow this up and explore any opportunities that might have presented. He chose not to as he felt he had been treated unfairly, was still unfit for work and felt it was too little too late. The letter also gave the claimant a right of appeal. That was over and above the "assimilation appeal" and was in the more familiar sense of an appeal against the decision to dismiss.

4.62. On 21 Nov 2016, a further vacant post of receptionist became available. It was remunerated at a level substantially less than the claimant had previously earned. The claimant was notified of the vacancy nonetheless. He told us he would not have had the skills to apply even if the pay had been better.

4.63. The claimant effectively worked his notice on sick leave. He was by now on half pay. He did not appeal against the decision to terminate his employment. He says this was on medical advice. We do not accept this. The claimant's evidence recounting the discussion with his GP included statements we found it difficult to imagine would be said, including how an employer such as this would throw all its resources at defending its position and hire lawyers. It may be that there was some discussion about putting the matter behind him and moving forward but the contemporaneous medical notes suggest that the decision not to appeal came from the claimant and his family, not his GP.

4.64. Nevertheless, two days before his employment was due to end, on 18 January 2017 the claimant lodged a lengthy letter which is difficult to categorise in terms of ordinary employment procedures [367]. It raises complaints, but is not a grievance. Similarly, the letter was not only ***not*** expressed as an appeal against the decision to terminate his employment but in its terms it :-

> ***"fully accepted the decision made by the school***"

and that he

> ***"did not wish to contest the decision to make me redundant, hence why I did not make a formal appeal. I simply hope that the points raised are taken on board by all concerned and not repeated in the future***

4.65. Of the various complaints raised, it alleged Mrs Fisher moved other staff into safe positions and tried to get rid of the claimant. It expressed concerns about the official communication and the rumours. It accused the school of inviting him to meetings only for the purpose of "ticking a box" which he gives as the reason for not attending. He cites the actions of Mrs Fisher and Mrs Hollingshead as showing a lack of compassion and understanding.

4.66. A written response was sent by the chair of the interim executive Board, Mr Summers on 23 February 2017 [373].

4.67. The claimant's effective date of termination was 20 January 2017 on the expiry of his notice.

4.68. After his employment ended, the claimant did not sign on with the job centre or DWP. He told us that he felt too unwell through much of 2017 to work but that he did start a home study course which he has just completed. He has undertaken some voluntary work to test his resolve on getting into the workplace and is only about now ready to consider returning to work.

5. **Discussion and Conclusions**

5.1. We approach the questions posed in the claim, as articulated in the list of issues, in reverse order. In that way, the outcome to the reasonable adjustment claim may inform the other discrimination claims and the outcome to all the discrimination claims may inform the fairness of the dismissal.

6. **The Disability Issue**

6.1. It is not disputed that the claimant meets the definition of disability at the material time by virtue of his diagnosis with lymphoma, a form of blood cancer. For some time during the preliminary stages of the claim there was an issue whether the claimant also sought to rely on his anxiety and depression as a separate basis of disability status. In the final analysis, it seems to have been realised that this did not add anything and it is accepted that the anxiety and depression that he suffers arise as a result of the diagnosis and treatment he was undergoing in respect of the cancer. It is not necessary for it to be considered as a free-standing impairment.

6.2. Similarly, we are satisfied that the respondent had knowledge of the claimant's disability and its effects so far as is relevant to the issues in this case.

7. **The Reasonable Adjustment Claim.**

Law

7.1. So far as is relevant, the duty to make adjustments arises under section 20(3) of the Equality Act 2010 where: –

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

7.2. In determining whether the duty has arisen, the Tribunal must identify each element of the section in turn. That is, to identify the PCP; the identity of a non-disabled comparator (where appropriate) and the nature and extent of the substantial disadvantage suffered by the Claimant. Only by breaking down those elements can a proper assessment be made of whether the adjustment contended for was reasonable or not. **(Environment Agency v Rowan [2008] IRLR 20 EAT)**

7.3. Paragraph 20 of part 3 of schedule 8 imports a requirement of knowledge on the employer in respect of both the employee's disability and that he is likely to be placed at the disadvantage created by the PCP. The duty to make a reasonable adjustment does not arise unless the respondent has knowledge of both but in this case, it is agreed that knowledge is not in issue.

7.4. Whether an adjustment is reasonable or not is a question of fact for the Tribunal taking into account all the relevant circumstances and applying the test of reasonableness in its widest sense. There is no longer a statutory equivalent of the old Disability Discrimination Act section 18B, but similar provisions are reflected in the code of practice which still direct us to factors such as the extent to which the adjustment would have the desired effect of eliminating or substantially mitigating the effects of the disadvantage.

7.5. The PCP contended for at para 4.1(i) of the list of issues is that the respondent applied a policy of supporting staff without high levels of sickness absences to avoid redundancy and/or moving them into roles which were not at risk of redundancy. No disadvantage was explicitly contended for. We identified this as a consequential risk that such person faced a greater risk of being dismissed by reason of redundancy.

7.6. A PCP may exist and create the disadvantage without it being a conscious or deliberate intention of the employer that it be applied. The existence of a PCP need not be explicit or written. It can simply be a known state of affairs that exists in a particular situation and which is within the control of the employer. In the course of this hearing, there was repeated reference to a "policy" but this language can often give a wrong steer to the existence and nature of a PCP. We have therefore considered the existence of the alleged PCP not just in the sense of whether it is something that the respondent explicitly or consciously applied, but also whether it simply existed as a state of affairs within the employer's control.

7.7. Against that direction the claimant's case immediately meets a significant difficulty. That is that the evidence simply does not support the contention such a PCP existed at all. His two examples to illustrate the alleged PCP simply vanished on the slightest scrutiny. Mr Bidnell-Edwards all but abandoned reliance on the

example relating to Mr Garden. We found Ms Parker's relocation to a central office had no material bearing on her application for the post she subsequently obtained after a competitive interview. All posts within the Sports College Department were removed from the new structure. The Tennis Coach, who did not have any sickness absence of note, ultimately suffered the same outcome as the claimant. There is nothing to support the contention that the claimant, or others with high levels of sickness, were disadvantaged compared to others' being advantaged. Still less can it be said that there was any conscious policy adopted by the respondent. Further, there is nothing from which an inference of that natuer could properly be drawn. We are quite satisfied the alleged PCP did not exist. If the asserted PCP does not exist, the claim fails in its entirety at the first hurdle.

7.8. Having reached that conclusion it is somewhat artificial to consider the remaining elements of the claim which, in many respects are simpkly the other side of the same coin on which the alleged PCP is struck. So far as we are able to, we reach this conclusion. In this case the entire department was shutting down. The redundancy process was significant and far reaching across the entire school. The others who are said to have received favourable treatment, in fact did not. Whilst that is fatal to the PCP, it is also relevant when considering the adjustment contended for. That is said to be "equal and equivalent attempts to find the claimant an alternative role". That equivalence is a reference to the ill-founded allegation that Mr Garden and Ms Parker received favourable treatment from the employer. Whichever way it is considered, the adjustment does not get off the ground. In fact, the respondent took extra steps to seek to engage the claimant in the consultation process. It did more to ensure that happened than it did for others. There is also no case advanced before us of a step that could have been taken or a post that could have been offered which would have avoided redundancy or even substantially reduced the risk. Such alternatives as did exist were not suitable for the claimant either by reference to his skills or the pay and he accepts he would not have applied. It therefore seems to us that even if we were wrong about the existence of the PCP and the duty was engaged in this case, the adjustment contended for was either not reasonable as it would not have had any effect on the disadvantage or there was no failure as the respondent did not in fact fail to treat the claimant "equally and equivalently" as contended for.

8. **The Indirect Discrimination Claim**

Law

8.1. Section 19 of the Equality Act 2010 provides: –

> ***(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.***
> ***(2) For the purposes of subsection (1), the provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if –***
> ***(a) A applies, or would apply, it to persons with whom B does not show the characteristic,***
> ***(b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared to persons with whom B does not share it,***
> ***(c) It puts, or would put, B at that disadvantage, and***
> ***(d) A cannot show it to be a proportionate means of achieving a legitimate aim.***

8.2. We were referred to **Essop v Home Office (UK Border Agency) [2017] UKSC 27** on the approach to this statutory provision.

8.3. The PCP contended for is the same as that relied on for the reasonable adjustment claim. The particular disadvantage is a greater exposure to the risk of dismissal by reason of redundancy. There is no pleaded case of justification. The respondent says there is no PCP.

8.4. There is little to say in respect of this claim. We have already found the PCP contended for simply did not exist. Without the PCP, it is impossible to show any particular disadvantage either collectively or individually from which a prima facie case could be made out.

9. **The s.15 Unfavourable Treatment Claim**

Law

9.1. Section 15 of the Equality Act 2010 Act provides:-

> ***(1) A person (A) discriminates against a person (B) if-***
> ***(a) A treats B unfavourably because of something arising in consequence of B's disability, and***
> ***(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.***
> ***(2)Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.***

9.2. Having regard to the 2011 Code of Practice in Employment, in particular chapter 5, and **Basildon & Thurrock NHS Trust v Weerasinghe UKEAT/0397/14/RN** and **Pnaiser v NHS England and Another [2016] IRLR 170** , this statutory provision requires analysis in stages. First is the identification of unfavourable treatment. Secondly, the identification of the "something arising" and whether that does actually arise in consequence of the disability. Thirdly, if it does, whether that was the reason for the unfavourable treatment.

9.3. As is not unusual, this claim essentially restates the facts of the reasonable adjustment claims but viewed through a different lense. The unfavourable treatment asserted is that the claimant was not afforded the favourable treatment that Mr Garden and Ms Parker were afforded and as such he was (a) selected for redundancy and (b) dismissed with effect from 20 January 2017. He says the "something arising" was his sickness/absence from the workplace which arise in consequence of his disability.

9.4. It goes without saying that being dismissed by being selected for dismissal/dismissed is unfavourable treatment. However, we were not able to discern a material difference between the decision to dismiss and the dismissal taking effect in the circumstances of this case and consider them as one. We are also quite satisfied that the sickness absence in this case arises in consequence of the claimant's disability. To that extent the first of the staged causation tests is made out. The critical question is whether the unfavourable treatment arose because of the "something arising". We are satisfied it did not for the following reasons.

9.5. There is clear evidence of a genuine redundancy situation affecting the entire workforce. The department in which the claimant worked was closed in its entirety. The claimant's concerns that others received favourable treatment is not made out. Further, and in any event, there is evidence that others who were not

off sick were also selected for redundancy. Further still, there is no evidence of any possible opportunity that the claimant was denied within the new structure that could have avoided his selection for and dismissal on grounds of redundancy. We understand the attempt to expand the claimants past role to include teaching assistant and/or Classroom Supervisor to be a means to suggest he should have been assimilated into the new structure in such roles. The evidence of this was far from cogent and we were not persuaded that he had done anything which could reasonably be described as performing these roles to the level where it would have been appropriate to assimilate him into any equivalent roles in the new structure. But in any event, we concluded his absence had not prevented him from engaging with the employer if he genuinely believed those roles were suitable to assimilate to. The manner in which that part of the claim has emerged does not support the contention that that was something he believed at the time, or, if there had been some consultation, would have been raised. The fact that he was selected for redundancy and ultimately dismissed is because his role no longer existed and his previous role and skills did not have a fit in the new structure. The sickness absence had no bearing on that and we are satisfied had he not been absent at this time, the same outcome would have occurred. Moreover, there was opportunity for the claimant to engage in alternative methods of sharing his views and he did not.

10. **The Unfair Dismissal Claim**

Law

10.1. As dismissal is conceded, it would be for the respondent to show the reason for dismissal meets one of the potentially fair reasons as defined in Section 98(1) of the 1996 Act. Where the reason is said to be redundancy, we must also be satisfied that the facts do engage one of the statutory tests for redundancy as set out in s.139 of the 1996 Act. In this case, the claimant agrees redundancy was the reason for dismissal and, in any event, that is the conclusion we would have come to.

10.2. It is then for us to determine on the evidence put before us whether the employer acted reasonably in relying on that reason as sufficient to dismiss the claimant having regard to Section 98(4) of the Employment Rights Act 1996. At this stage, the burden is neutral. This being a redundancy dismissal, we have had regard to the general guidance applicable to redundancy cases set out in **Polkey v A E Dayton Services Ltd [1987] IRLR 503** and **Williams v Compair Maxam Ltd [1982] IRLR 83**. We were further referred to **Mugford v Midland Bank [1997] IRLR 208** in respect of the fairness of the consultation process.

10.3. During the course of submissions on this part of the claim, reference was made to **Fulcrum Pharma (Europe) Limited v Noassera and another UKEAT/10198/10** , **Taymech Ltd v Ryan [1994] UKEAT/663/94** and **Halpin v Sandpiper Books Ltd UKEAT0171/11**, in respect of pools for selection for redundancy. A short adjournment allowed copies of **Fulcrum** and **Halpin** to be obtained and considered.

10.4. The fairness is attacked on three fronts. They are failure to carry out any pooling in the claimant's selection; failure to consult and adopting an unreasonable approach to redeployment.

10.5. We are not satisfied the facts point to a wider pool from which the claimant's selection could reasonably have been considered. We start from the fact that the entire department in which he worked was being closed. The claimant's role was unique within that department and across the school staff as a whole but, even if his work was of a particular kind found elsewhere within the department, all of those undertaking work of that particular kind were at risk of dismissal on the ground of redundancy. We reject the contention that only two of the four in the department were put at risk of redundancy. The other two found new employment and their posts in the department were not filled. Had they remained in post they would also have lost their jobs in the sports college team by reason of redundancy. There is no absolute prohibition on a pool of one being the appropriate pool for selection as long as the employer gives proper consideration to the issue. We are satisfied that the school did give proper consideration to the question of selection pools throughout the course of its staffing restructuring plans. It is clear that the proposals did consciously consider the various pools across the various departments which reflected the work of that particular type. Whether the claimant was considered to be in a pool of one, so far as his role was concerned, or a pool of 4 so far as the department was concerned, this is not a case of an employer needing to reduce the requirement for employees to do work of a particular kind, but removing it altogether. We are content that the school's approach to pools generally, and the claimant in particular, was reasonably open to a reasonable employer.

10.6. We are no more satisfied that the pooling argument is made out in respect of the notion that the claimant should have been pooled alongside Teaching Assistants or Classroom Supervisors. Firstly, the claimant's role as stated in his job description was no longer required at all. That role did not include class supervision or tasks of a teaching assistant. Secondly, the example given of undertaking the teaching assistant role seemed, if anything, to align closer to that of a PE technician which, together with how this evidence has unfolded, seems to show this to be an aspect of the claim that has only recently been constructed and was not something genuinely considered by the claimant as unfair at the time. Thirdly, the claimant has not established before us anything more than the fact of some limited past participation in certain tasks which would fall within those roles, which for present purposes we extend to include PE technician, albeit that is not how the claim is put. As a general proposition, at any point in their employment an employee may perform tasks outside their job role or they might simply have wider skills and experience which could be deployed in areas outside their current role. The fact that the employer does not, on that basis, automatically include them in a wider pool is unlikely in itself to be a basis of unfairness and we are satisfied that is so in this case. The consultation process, however, is the point at which any wider opportunities to avoid dismissal can be explored. This was reasonably available to the claimant and within it there was ample opportunity, either informally through email or formally through the assimilation appeals, to raise any contention he might have had that, despite his formal role definition, he was actually undertaking tasks akin to classroom supervisor or teaching assistant (or PE technician) and should therefore be considered alongside those staff in the assimilation process. He did not do so and in view of the extremely limited performance of any such tasks in the past, we are satisfied it was not something known to the employer, nor should it reasonably have been. For those reasons the approach taken by the employer does not fall outside the range of reasonable responses.

10.7. As to consultation, the challenge focuses on the fact of the claimant's sickness absence. It is right that the claimant was absent throughout the time of all of the proposed consultation meetings. In the absence of a successful disability discrimination claim to influence the test of reasonableness, it falls to be considered in respect of the usual range of reasonable responses test. In this case, the respondent actively sought to engage the claimant in the process despite his absence. It enrolled his trade union representative in trying to engage with him (and continued to do so after the claimant's apparent resignation from Unison). It offered alternative venues. It delayed the initial consultation discussions at his request. It provided correspondence in the manner requested by him. The evidence shows that the claimant was able to participate in meetings generally and was able to engage with the topic of the restructure. The obstacle to his engagement, as articulated in his evidence, was that he was not prepared to engage with Mrs Fisher or Mrs Hollingshead due to the way he perceived they had treated him without compassion. We did not find any rational basis for that view but, even to the extent that it was a view genuinely held by the claimant, he did not articulate it in any way that provided an opportunity to consider the involvement of alternative managers. In fact, the is evidence in correspondence from him at times that would reasonably suggest the contrary. We found the claimant was able to correspond by email on a number of occasions and, even allowing for the ups and downs of his mental health, there was no reason shown before us why some of the issues that he now raises could not have been raised in an email. Alternatively, as he stated in his parting letter of complaint, the desire to engage him in meetings was no more than a "tick box" exercise. In the circumstances of this case, that is a sentiment that may arise more out of the inevitability of the situation, rather than its unfairness. In summary, we have concluded that the school's approach in these circumstances falls within the range of reasonable responses of a reasonable employer.

10.8. Beyond that specific challenge, we are satisfied that the typical standards of a fair consultation process were engaged. There was ample advance notice. There was consultation with the staff representative body. There was collective consultation to which the claimant was invited. There was opportunity for individual consultation which included scope for interim appeals on the assimilation process. All of which was in line with the actions of a reasonable employer.

10.9. As to redeployment, the claimant submits that the respondent has not provided any or any adequate evidence to show that it could not have moved the claimant to a different role to avoid redundancy. We observe that there is no legal burden at this stage of the analysis on either party but that the claimant has equally not identified any role he could have taken up. In our judgment, the approach to redeployment fell within the range of reasonable responses of a reasonable employer. In this case, it operated at two levels. The first was the limited scope for filling the few vacancies that emerged after the assimilation process. As a displaced employee, the claimant was included in correspondence notifying him of these vacancies. We are satisfied it was open to a reasonable employer to take this approach even though there were obvious grounds for suspecting the available vacancies would be unsuitable to the claimant, a conclusion he himself reached. Nevertheless, it was not for the employer to deprive him of the opportunity of considering them. There is no evidence there were other vacancies in existence that were not shared with him. The second level of opportunity arose in respect of gaining access to vacancies across the entirety of Leicester City Council. We are satisfied this would be a substantially

larger pool of vacancies and was also likely to include roles closer to the claimant's skill set, and other vacancies based in other schools. This process came with the added advantage to the claimant that he would have benefited from some preferential treatment in the recruitment process due to being at risk of redundancy. In our judgment, it is not outside the range of reasonable responses to apply a system to such a process across such a large employer that required the claimant to simply contact the person that would manage this preferential process. He neither did that nor raised any basis why he could not. We therefore conclude there is no unfairness in the approach to redeployment.

10.10. In summary, the claimant presents a genuine sense of grievance amplified by a recent period of traumatic life events. However, the circumstances he found himself in and the process adopted does not demonstrate unfairness. In all the circumstances of this case, we are satisfied the claimant's selection for dismissal on ground of redundancy was fair according to s.98(4).

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Employment Judge Clark
Date 8 August 2018

JUDGMENT SENT TO THE PARTIES ON

11 August 2018

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FOR THE TRIBUNAL OFFICE