Reserved Judgment **Case Numbers: 1800099/2017, 1800112/2017, 1800113/2017, 1800114/2017, 1800115/2017, 1800116/2017, 1800117/2017, 1800118/2017, 1800119/2017, 1800120/2017, 1800121/2017, 1800122/2017, 1800123/2017, 1800124/2017, 1800125/2017, 1800126/2017, 1800127/2017, 1800129/2017, 1800130/2017**

EMPLOYMENT TRIBUNALS

Claimants: [1] Mr C Jackson
[2] Miss N J Pawson
[3] Mrs J R Lane
[4] Miss K Adair
[5] Ms D A Tolson
[6] Mrs E O'Mara
[7] Mrs L Berry
[8] Mrs E M Pease
[9] Mrs C Fenton
[10] Mrs S Ross-Briggs
[11] Mrs A J Kennedy-Hawkins
[12] Mr B J Webb
[13] Miss R A Banner
[14] Ms J J Wilson
[15] Miss D S Lee
[16] Mr T Moran
[17] Mrs Y Khan
[18] Mrs A C Brooking
[19] Mrs S M Atkinson

Respondent: South West Yorkshire Partnership NHS Foundation Trust

HELD AT: Leeds **ON:** 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27 October, 1, 2 November 2017

BEFORE: Employment Judge D N Jones
Ms J Lancaster
Mr K Lannaman

REPRESENTATION:

Claimants: Mr C D Jackson, First Claimant
Respondent: Mr B Williams, Counsel

JUDGMENT

The Tribunal holds, unanimously:

1. The respondent unfairly dismissed each of the claimants.

2. Each claimant received a redundancy payment and so no basic award is payable.

3. Save for the seventh, eighth and sixteenth claimants, Miss Berry, Mrs Pease and Mr Moran, had the respondent undertaken a fair and reasonable procedure, the claimants would have been made redundant and dismissed. No compensatory award arises in such circumstances.

3. Had the respondent adopted a fair procedure, the seventh claimant, Mrs Berry, would have been redeployed. She is entitled, subject to recoupment, to compensation for the unfair dismissal in the sum of £1,221.97. The recoupment provisions, as explained in the attachment to this judgment, apply. The prescribed period is from 27 October 2016 to 27 October 2017 and the prescribed element is £614.65. The total award exceeds the prescribed element by £607.32. The respondent shall pay the said sums in accordance with the Recoupment Regulations.

4. The eighth claimant, Mrs Pease, was unfavourably treated because she had exercised her right to take maternity leave as she was not facilitated the opportunity to provide her preferences for redeployment as early as others who had not been on maternity leave. Mrs Pease was not unfavourably treated, in exercising the right to maternity leave, by not being offered a suitable alternative vacancy as none was available in the light of the procedure which was adopted.

5. The eighth claimant, Mrs Pease, would have been redeployed had she not been unfairly dismissed. A remedy hearing shall be held to calculate the compensation due for her unfair dismissal and the unlawful discrimination.

6. The sixteenth claimant, Mr Moran, had a 20% chance of being redeployed had a fair procedure been adopted. His contractual redundancy payment exceeded the basic award by such an amount as to extinguish any payment that would otherwise have been due as a compensatory award.

7. The complaints of the Miss Pawson, the fourth claimant, and Mrs Ross-Briggs, the tenth claimant, for discrimination on the grounds of pregnancy and maternity are dismissed.

REASONS

Introduction

1. By a claim form presented to the Tribunal on 21 January 2017 the claimants complained that they had been unfairly dismissed by their former employers, the respondent, and that they were owed a number of monetary sums including notice pay and holiday pay. They also claimed a protective award.

2. At a preliminary hearing on 8 May 2017 Employment Judge Little struck out the protective award claim on the ground that the claimants did not have legal standing to bring it and he struck out a breach of contract claim brought by the first claimant on the ground it had no reasonable prospect of success. On the same date he allowed an amendment to allow a complaint of pregnancy and maternity discrimination on behalf of the 4th, 8th and 10th claimants that they had been treated unfavourably contrary to section 18 of the Equality Act 2010 (EqA).

3. During the final hearing the discrimination claim was clarified. It had two aspects. The 4th, 8th and 10th claimants contended they had been subjected to detriments by the respondent and had been unfairly treated because of their maternity leave insofar as firstly, there had been a failure adequately to communicate with them with regard to the redundancy exercise and secondly, in the redeployment process there had been a failure to offer a suitable alternative vacancy in preference to other employees who were not on maternity leave at the time of the dismissal.

4. In an earlier case management order it had been determined that the Tribunal would deal with issues of liability at the listed hearing and address remedy issues at a further hearing once it had delivered judgement. At the commencement of this hearing the Tribunal discussed with the parties varying that order as the parties had already provided schedules of loss and were able to update them. In the circumstances it seemed appropriate and proportionate to deal with all issues in the one hearing. All parties consented to that. That was subject to the qualification that the Tribunal did not consider the cases concerning discrimination could be disposed of without a further hearing, if they were successful, because it would be necessary to evaluate injury to feelings that would be dependent upon which of the claims succeeded.

Evidence

5. The Tribunal heard evidence from Mr Sean Rayner, district services director, Barnsley and Wakefield, Mrs Denise Donnelly, community services manager, Mr John Lemm, human resources manager, Mr Alan Davis, director of human resources and Mrs Karen Taylor, director of delivery. Each of the claimants gave evidence. There were 3,385 documents in the Tribunal bundles, but these were supplemented with some further documents.

Background

6. The respondent is a national health provider in South West Yorkshire. Its responsibility for providing certain public health services ended on 1 April 2013 upon the abolition of primary care trusts. The Wakefield Metropolitan District Council ("the Commissioner") took over that responsibility. The Health and Wellbeing services were part of that health provision. All claimants were employed by the respondent within that field.

7. Until 30 September 2016 the Health and Wellbeing service continued to be provided by the respondent pursuant to an arrangement with the Commissioner. In 2016 the funding of the service ceased to be subject to a ring-fenced budget. This led to a decision by the Commissioner to decommission part of the service from the end of September 2016 and to reconsider another part of the service provision as from April 2017. The former concerned the Community Food Health Team and the Health Trainer Service (including the Healthy Weight Service). All claimants were employed in this part of the provision. The Health and Wellbeing Practitioner and Self Management services comprised the latter. The respondent has identified these as cohort 1 and cohort 2 respectively. A third part of the service, domestic abuse counselling, was taken over by the Commissioner on 1 October 2016.

8. The decision was communicated in one of four letters from Dr Andrew Furber, director of public health of the Commissioner, to the chief executive of the respondent dated 4 July 2016.

9. On 11 July 2016 a teleconference was arranged to consider the position. Mr Raynor, Mrs Donnelly, Andrea Horton and Mr Wright, the branch chair of Unison attended. Until that day Mrs Donnelly, the Community Services Manager of the Health and Wellbeing Service, was unaware of the Commissioner's intention. Whilst she had known that the contract, which had been renewed for 6 months on 1 April 2016 was subject to further consideration, she had not envisaged a wholesale decommissioning of the service by the end of the renewed contract. At an away day on 1 June 2016, she had discussed with the team a number of possibilities including a tendering exercise for parts of the service, taking them in-house or decommissioning. A number of the claimants, including Mr Jackson, had no recollection of this conversation at the away day, but we are satisfied from the recollection of a number of others and Mrs Donnelly, together with a note she had made, that these matters had been canvassed. Nevertheless, there seems to be little doubt that no-one in the senior management of the respondent, nor the claimants, envisaged a change which would lead to the loss of employment so soon, but the collective assumption was that the worst scenario would have been a transfer of their employment to another provider. In the telephone conference call Mr Raynor explained to Mr Wright that the information about the Commissioner's letter was confidential to those present, a so called "heads up".

10. On 12 July 2016 Ms Donnelly, Mr Rayner and Mr Drury of the respondent met with the Commissioner and made representations in respect of alternative approaches for the service provision. These were not successful. Legal advice was obtained by the respondent as to the Commissioner's proposals including whether any transfers under the Transfer of Undertakings (Protection of Employment) Regulations 1996 (TUPE) would arise. Clarification was sought from the Commissioner about his decision. He provided it in a letter dated on 26 July 2016.

11. On 19 July 2016 a management meeting was held by telephone to discuss implementation of the changes, including addressing the redundancy situation arising from the decommissioning decision. No union representative attended. A decision was made to place those in cohort 1 at risk of redundancy given that it was only these teams which would be decommissioned as of 30 September 2016.

12. On 26 July 2016 a staff consultation meeting was convened. Initially Mr Raynor and Mrs Donnelly spoke privately with the recognised Trade Unions, Unite and Unison, attended by 6 representatives. They were unaware of the discussion which had been held with Mr Wright. Ms Banner and Mr Jackson recalled that the Unison representatives told her that they had only learned of the decision in that meeting and this is supported by Mr Lemm (para 14 of his statement). The plans were explained including the selection of cohort 1 for redundancy and the consultation timeframe.

13. Mr Rayner then spoke separately to both cohorts. He explained the decision of the Commissioner and how it would impact upon the respective parts of the team, which in total amounted to approximately 60 members of staff.

14. In the meeting with cohort 1 Mrs Donnelly announced the commencement of a 30 day redundancy consultation period, to end on 25 August 2016. She informed those present that notices of redundancy would be sent out when the service was to cease on 30 September 2016, but this would be reviewed at the end of the consultation depending on any representations received from the unions and affected employees. The managers would assist in a search for suitable alternative employment as a first priority. All were to be placed on tier 1 of the At Risk register. This would give them notice of any vacancies before they were advertised externally. Mrs Donnelly explained what would happen during the consultation period. Each employee would be entitled to one-to-one meetings in the presence of a trade union representative or colleague to allow any questions to be asked about the proposal, propose alternatives, discuss redeployment opportunities, identify training needs and any preference for types of work for which any individual may be interested.

15. Letters were sent to all claimants confirming the consultation process and repeating what would be involved. They were dated 29 July 2016, but not received until 4 August 2016. The delay was due to mail merging problems. If any employee wished to take up the offer of a meeting they were told to contact the respondent. In all 38 employees were placed at risk of redundancy.

16. All affected employees were placed on the At Risk register on 27 July 2016. An email was sent to each employee's work inbox on 28 July 2016 requesting they complete a redeployment form and submit it to the human resources department. This was to enable an exercise in matching each employee at risk to suitable alternative roles. Guidance was attached.

17. The one-to-one meetings took place between the 16th and 22nd of August 2016, save for a later telephone meeting with Miss Adair and a meeting with Ms Tolson upon her return from holiday.

18. On 1 September 2016 letters were sent to all claimants notifying them of the termination of their employment on notice by reason of redundancy. The claimants were informed that they would not be required to work for such periods of the notice that arose after 30 September 2016 because the service had been decommissioned from that date. They were told to take all remaining leave prior to the respective termination dates. The letter explained that the primary concern remained to try to ensure redeployment to suitable alternative employment. That would continue up until the effective date of termination of the contracts. In the event of successful redeployment any redundancy payment would be recoverable.

19. 28 employees were made redundant. 7 employees were redeployed.

20. Notices of appeal were submitted by all claimants save for Joy Lane, Yasmin Khan and Kirsty Adair, in September 2016. All 16 had common themes as well as additional grounds of appeal individual to each appellant.

21. The appeals were considered by a panel of three between 6 and 22 December 2016. They were dismissed.

The Law

22. The right not to be unfairly dismissed is governed by Part X of the ERA. It is for the employer to establish one of the identified reasons for dismissal in section 98 (1) (2) of the ERA.

23. Where that requirement has been fulfilled 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, see section 98(4) of the ERA.

24. In **Williams v Compair Maxam Ltd (1982) ICR 156**, the Employment Appeal Tribunal issued guidelines in respect of procedures which would ordinarily be expected in cases in which dismissals were by reason of redundancy. The Court

recognised that it may not be possible to pursue all of the steps and that would depend on the circumstances. It emphasised that, in evaluating reasonableness, the Tribunal must not substitute its own decision, but should determine whether the dismissal lay within the range of conduct which a reasonable employer could have adopted. The Tribunal said:

> "*in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:*
>
> 1. *The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.*
> 2. *The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.*
> 3. *Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection, that can be objectively checked against such things as attendance record, efficiency at the job, experience or length of service.*
> 4. *The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.*
> 5. *The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.*
>
> *The basic approach is that, in the unfortunate circumstances that necessarily attend redundancies, as much as is reasonably possible should be done to mitigate the impact on the workforce and to satisfy them that the selection has been made fairly and not on the basis of personal whim."*

25. In **Polkey v AE Dayton Services Ltd [1988] ICR 142** the House of Lords held that, in a redundancy case, the failure to follow correct procedures made the ensuing dismissal unfair. Unless the employer could reasonably have concluded that consultation would have been 'utterly useless' or 'futile', the procedure would fall outside a reasonable band of responses.

26. There are statutory duties in relation to collective consultation with trade unions or employee representatives. These are to be found in Part IV, Chapter II of

the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A). These obligations arise when the employer is proposing to dismiss more than a specified number of employees by reason of redundancy and, dependent on that number, a specified period is required for consultation purposes. By section 188(4) of TULR(C)A the employer must disclose in writing to the appropriate representatives the reasons for the proposal, the numbers and descriptions of employees whom it is proposed to dismiss as redundant, the total number of employees of any such description employed by the employer at the establishment in question, the proposed method of selecting the employees who may be dismissed, the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect and the proposed method of calculating the amount of any redundancy payments to be made. By section 188(2) of TULR(C)A consultation must be taken by the employer with a view to reaching agreement with the appropriate representatives as to ways of avoiding the dismissals, reducing the number of employees to be dismissed and mitigating the consequences of the dismissals.

27. Under section 122(4) of the ERA the Tribunal must reduce any basic award by any payment made by the employer to the employee on the ground the dismissal was by reason of redundancy. Further by section 123(7) of the ERA if any such payment exceeds the amount of the basic award the excess goes to reduce the amount of the compensatory award.

28. Under section 123(1) of the ERA the amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer.

29. Regulation 10 of the Maternity and Parental Leave Regulations 1999 (MAPLR) provides that when a contract of employment of a woman who is exercising maternity leave comes to an end she is entitled to be offered a suitable alternative vacancy which is such that the work is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances. This means its provisions as to the capacity and place in which she used to be employed and the other terms and conditions of her employment are not substantially less favourable than if she had continued to be employed under the previous contract.

30. In **Sefton Borough Council v Wainwright [2015] IRLR 90** the Employment Appeal Tribunal held that a breach of regulation 10 would not be inherent discrimination under section 18 of the EqA. Rather the tribunal must ask why the complainant was treated as she was.

31. The relevant provisions of the EqA are sections 18, 39 and 136.

Analysis, discussion and conclusions

Unfair dismissal

32. The reason for the dismissals was that the claimants were redundant. The question for the Tribunal is whether each dismissal was unfair or fair having regard to that reason. That depends on whether in the circumstances, including the size and administrative resources of the respondent, it acted reasonably or unreasonably in treating redundancy as a sufficient reason for dismissing each claimant, and shall be determined in accordance with equity and the substantial merits of the case.

33. There are a number of considerations which are common to all claimants and we shall consider these first. We shall address any factors which are material to any individual claimant in the sections relating to them. The discrimination complaints are dealt with, similarly, in the passages below. This concerns the 4th, 8th and 10th claimants.

Considerations common to all claimants

Provision of as much warning as possible of impending redundancies

34. In their witness statements, the claimants criticise the respondent for its tardiness in putting them on notice of the fact their jobs might be in jeopardy. Different dates are proffered, from December 2015 to June 2016, as to when would have been the proper time to warn those employed in the Health and Wellbeing team of the possibility they might be made redundant. Mr Williams observed that there had been a modifying of this criticism during the hearing. Mr Jackson, for example, concluded his own complaint by contending notification should have commenced on 4 July 2016, but he had suggested a much earlier date in his witness statement.

35. In December 2015 it was known that the Commissioner was looking to make a 10% saving on existing contracts which included the Health and Wellbeing department. Discussions took place in the beginning of 2016 between the Commissioner and the respondent as to how that might be achieved. In February 2016 discussions included the potential for taking some of the services in-house (that would be transferred to the Council) and possibly decommissioning others, in part, but the timeframe for this was unclear. The Commissioner requested information which would assist in respect of any transfer governed by TUPE. At a meeting on the 14 April 2016, attended by representatives of the Council and the respondent, it was said that the contracts would end on 30 September 2016 and that the respondent would start discussions with staff in early June to keep them updated. A report to the City Council of Wakefield of May 2016 expressly considered the Lifestyle services, which included Health and Wellbeing. At paragraphs 6.8 of that report. In-house provision of Lifestyle services was proposed and weight management services were to be commissioned via an open procurement. These were to commence in April 2017 with the need for contract extension from 1 October 2016 for six months. A cabinet meeting on 24 May 2016 approved a proposal for such extensions. It was not until 4 July 2016 that a decision was made by Dr Furber,

on behalf of the Commissioner, which reversed the earlier approved proposal of the Cabinet in May. We were not provided with any documentation as to when the Council reversed its cabinet's decision.

36. As is explained in **Williams**, the purpose of giving as much warning as possible of impending redundancies is to enable the unions and employees to be able to take early steps to inform themselves of relevant facts, consider possible alternative solutions and, if necessary, to find alternative employment in the undertaking or elsewhere. The situation prior to 4 July 2016 vacillated, in respect of what decision was to be made in respect of the provision of the service after 30 September 2016. Under the respondent's own policy, it is arguable that the claimants, and those employees in cohort 2, should have been placed on the At Risk register, Tier 3, in April 2016 because it was known then there was uncertainty as to the delivery of the service from the end of September that year. There had been contemplation of decommissioning, at least in part, in the discussions that had taken place. Mr Lemm informed the Tribunal that employees would qualify for tier 3 At Risk registration in exercises of horizon planning where organisational change could be foreseen.

37. Our task is not to determine what would be the most suitable application of the respondent's policies, but rather to determine whether, in acting as it did, the respondent acted outside the conduct of a reasonable employer. Two employers can reach different reasonable opinions on the same subject matter. Whilst the policy might have tended to suggest tier 3 registration as early as April 2016, there were sound reasons to delay issuing such early warnings of potential changes. If the respondent had commenced consultation in April 2016, it would have been at a time when there was considerable uncertainty about the Commissioner's intentions. The unions would, understandably, have driven for clarification of what was to happen, building in delay to the consultation process until a decision had been made. This could have harmed the service provision if employees chose to leave. We recognise that a balance has to be struck between protecting the interests of the employees and the service users. Given the fact that there appeared to be every prospect of an extension of the service to April 2017, by mid May 2016, we do not find that the respondent would have acted unreasonably had it delayed notification to the relevant staff and unions as late as 4 July 2016, when Dr Furber conveyed the Commissioner's decision.

38. As of 4 July 2016 the respondent was on notice of the decision. We do not accept that the letter of Dr Furber was equivocal, as a number of the respondent's witnesses contended. The Commissioner left no doubt in his letters that the part of the service in which the claimants worked would be decommissioned and the provisions of TUPE would not apply. We are satisfied that any reasonable employer would then have taken immediate steps to commence discussions with the recognised unions to allow proper planning and agreements to be put in place. The majority of the union representatives became aware of the Commissioner's plans only some three weeks later, on 26 July 2016. Mr Wright, having been given the 'heads up', respected the embargoed conditions of confidentiality. There was, on any

view, an unacceptable delay which fell outside any reasonable tolerance. Recognising that some administrative delay would have to be catered for, any reasonable employer would have commenced its discussions with the unions no later than 11 July 2016 and notified the affected individuals immediately thereafter, whereupon collective consultation could take place. Any attempts to persuade the Commissioner to reconsider could, and should, have run concurrently with the consultation process because the deadline had been set and time was running. The affected employees should not have been kept in the dark about the decision for so long, in those circumstances.

Consulting with the Union as to the best means by which the desired management result can be achieved.

40. Not only was the 'heads up' discussion with Mr Wright unorthodox, insofar as it placed him under a duty to retain the planning decision to himself, it failed entirely to comply with the collective consultation provisions contained within section 188 TULR(C)A and the respondent's own Organisational Change Policy and Guidance, which reflects the statute. The remainder of the union representatives discovered of the redundancy proposals for the first time an hour before the meeting with those affected on 26 July 2016. They did not therefore have the opportunity to consider any written proposals in advance, consult their members and make representations. The answer to this criticism from Mrs Donnelly and Mr Lemm was to say that at no stage thereafter did any of the representatives raise any objection to what they were putting into effect.

41. There was no provision of any document containing the reasons for the proposals, the numbers and descriptions of employees it was proposed to dismiss as redundant, the total number of employees of any such description employed by the respondent, the proposed method of selecting the employees who may be dismissed, the proposed method of carrying out the dismissals, with due regard to any procedure, including the period over which the dismissals would take effect and the proposed method of calculating the amount of any redundancy payments to be made, as required by section 188(4) of TULR(C)A or paragraph 8.6 of the respondent's policy. This is an essential first step of any collective consultation process, which sets the background to the duty to consult. It is upon that information that attempts are then made to reach agreement about avoiding the dismissals, reducing the number of employees to be dismissed, and mitigating the consequence of the dismissals.

42. The primary obligation to facilitate a meaningful collective consultation process falls upon the employer. "*The protections afforded by S188 are important. The judgment of the Court of Appeal in* ***Susie Radin*** *shows that these must be strictly followed. It is not sufficient to provide an opportunity for consultation on particular topics; if they are not raised by the employee representatives it is for the employer to raise them*", see **O'Kelly v Hesley Group [2013] IRLR 514**, per Langstaff P. The respondent never set in place the essential mechanisms to ensure the relevant issues were addressed. It need have looked no further than its own

policies and guidance, which had evidently been designed to reflect the statutory provisions. They contained the timeline for meetings and pro forma letters, identifying the basic information to be provided.

43. There were a number of issues the claimants, some of whom were union members, wished to advance: different pooling of the group to be considered for redundancy, or reducing the headcount of those at risk by inviting others to consider reducing their hours or opting for voluntary redundancy or early retirement. We consider these in more detail below and whilst they may not, ultimately, have been adopted by the respondent, there should have been the opportunity for the staff representatives to ventilate them in a collective consultation exercise. In terms of the procedure, the claimants and unions were presented with a *fait accompli* on 26 July 2017.

44. We accept the submission of Mr Williams that a failure to comply with Chapter II of TULR(C)A is not, of itself, a reason to find the dismissals to have been unfair. It is a consideration, amongst others, within section 98(4) of the ERA. Bearing that in mind, we nevertheless view the shortcomings in respect of collective consultation as so fundamental that they led to a procedure which was unreasonable and unfair.

Pooling

45. All of the claimants felt there was unfairness in the way in which the pooling exercise had divided the Health and Wellbeing team into two cohorts, only the first of which was placed at risk of redundancy. They believe a reasonable and fair process would have placed all 60 employees at risk. Those within the same pay band or grade would have been considered for selection for the remaining 21 posts which survived in the Health and Development team or the Self-management Service team.

46. The decision of the Commissioner affected the service in different ways. It was only the service provided by those in cohort 1 which was to be decommissioned as of 30 September 2016. Employees who worked in cohort 2 were given a stay of execution, insofar as how that part of the service was to be delivered from April 2017 was still open for final determination. Mrs Donnelly decided to divide the groups in the way she did, principally, because of the clear delineation of which part of the service was to be decommissioned from 30 September 2016.

47. It cannot be suggested that this dichotomy was illogical. The service users would continue to reap the benefit of undisturbed and continuing provision from those in cohort 2. Had the entire team been placed at risk there could have been disruption to those who were receiving the health and development and self-management service. This was a legitimate consideration, even though such disruption would not have been as great as Mrs Donnelly and Mr Lemm had thought, given their belief as to the transferability of skills between the cohorts. Furthermore, to include all 60 employees in one pool would not have the effect of reducing the numbers at risk.

48. Miss Adair had been charged with re-profiling the job descriptions and specifications of all within the team earlier in the year, such that there would be generic job descriptions/specifications for each banding. That had been part of a planning exercise which foresaw the potential for changes because of the Commissioner's future considerations. It was felt that by creating a framework within which the employees in the team became more interchangeable, the possibilities for safeguarding its future were enhanced. This process was never concluded and was still in its early stages when the Commissioner announced his decision in July 2016. Nevertheless, this, together with the exhortations from Mrs Donnelly and Ms Poole that all were part of the same Health and Wellbeing team, working as one, created a feeling of unfairness when the decision was made to treat them differently when their livelihoods were at stake.

49. Whilst sympathising with this point of view, we do not agree that the respondent acted unreasonably in selecting the pool as it did. As we have indicated, to act otherwise would have disrupted the service provision which survived. Accepting that some of the claimants could have quickly adapted to the roles in cohort 2, contrary to the findings from the scoping exercise undertaken by Mrs Donnelly, there would still have been a process of readjustment which would have interrupted a service which had an uncertain future. It was subject to further consideration within only six months.

Reducing the numbers at risk

50. Mrs Donnelly was invited to consider the possibility of employees putting their names forward for consideration for voluntary redundancy in a number of the one-to-one consultation meetings, including that of Mr Jackson. She took advice. She believed, incorrectly, that such would be contrary to the respondent's policies.

51. Mr Lemm, on the other hand, said that he had considered this as a possibility but ruled it out because he did not consider anyone would have been likely to put their name forward and that given this would only affect cohort 2, opening up the possibility for redeployment of an employee from cohort 1, it was not a viable option. He had had regard to an earlier scheme which had been used some five years previously known as MARS. Then the voluntary redundancy package had been calculated by offering two weeks of pay per year of service, which was half as generous as the compulsory contractual redundancy scheme which was four weeks pay. Given that those in cohort 2 were alive to the fact they may be in the same situation as cohort 1 by March 2017, he thought it unlikely there would be any takers. He also considered that there were significant problems in transferring employees from cohort 1 to cohort 2. This was based upon the exercise undertaken by Mrs Donnelly as to the transferability of employees. We had reservations about the accuracy of that assessment. Miss Adair had a different view and a greater understanding of the roles, having commenced the exercise in creating generic job descriptions earlier in the year. She believed there was a far greater degree of flexibility whereby employees could diversify into each other's roles. Had there been a meaningful collective consultation exercise, Mrs Donnelly and Mr Lemm would

have been likely to have been better informed as to the capabilities of employees in cohort 1 to be able, rapidly, to pick up the requirements of those jobs undertaken in cohort 2.

52. Voluntary redundancy is expressly referred to in the respondent's Organisational Change Policy. A reasonable employer would investigate all reasonable avenues to reduce the numbers of employees at risk. Invitations to those in cohort 2 for voluntary redundancy or a desire to work reduced hours might have freed up one or more vacancies for those at risk in cohort 1. Early retirement would not seem to have been quite so straightforward. The policy of the respondent is not to allow enhanced pension terms at an early age. Anyone over the age of 50 may retire early but their pension will be reduced actuarially to reflect its early receipt. One computation produced from the pensions department factored in the redundancy payment to offset that actuarial reduction.

53. We were not impressed by the reasons advanced for not inviting expressions of interest of this type. Of itself this decision would not have rendered the dismissal unfair, but taken together with the unnecessary two-week delay in commencing the consultation exercise and the serious shortcomings in the collective consultation process, it contributed to the unreasonableness of the process.

Individual consultation

54. Although we consider features particular to individual claimants below, there are three common areas of concern.

55. The first involved a failure to notify the employees in writing of the decision, the reasons for it and the process which was to be undertaken. Mr Rayner read from a script on 26 July 2016, but it was not handed to those present or emailed to all affected employees. In evidence, the respondent's witnesses recognised that an announcement of this type would have a serious impact. What is said may not be understood or digested after the shock of learning of redundancies. Provision of written confirmation for the decision and procedure is invaluable. Any reasonable employer would have provided it at the time of the announcement or immediately afterwards. The administrative delay of three days before the information was reduced to a letter, with the further postal complication, meant written details were received nine days into the 30-day consultation exercise. This left many of the claimants in a state of heightened concern, not knowing how to prepare for the one-to-one meetings they were to attend.

56. The second concerned the respondent's failure to follow the guidance to their policy, by keeping a record of the one-to-one meetings to ensure every relevant topic had been addressed, followed up with a letter to each claimant addressing their representations. Mrs Donnelly made her own hand-written notes which were disclosed in the course of the hearing. These were relevant records which should have been disclosed by the respondent weeks before, pursuant to the Tribunal's orders.

57. In evidence, Mr Davis said that the respondent would have been responsive to any proposal during the individual consultation meetings, even to the extent that significant changes to the implementation would have been managed, notwithstanding the disruption this might have created to others such as those in cohort 2. From our point of view, the extent to which individuals' representations were meaningfully considered was impossible to evaluate, in the absence of more careful record keeping and correspondence. This rendered the process opaque rather than transparent.

58. The third concerned errors in respect of the information provided in the meetings. This related to various matters: stating that the contracts of employment would terminate on 30 September 2016, when all employees' notice periods extended beyond that date; requiring the claimants to use up all annual leave by 30 September 2016, later extended to individual employment end dates; incorrect computations of some redundancy payments; misleading information about when lease vehicle had to be returned and who would bear the cost for early surrender. These errors were subsequently corrected, but not before additional stress had been generated. As with other errors in the process, of themselves, they would not have led to the Tribunal finding that the dismissals were unfair, but they collectively created a confused and unsatisfactory picture. At a time when the employees in cohort 1 were under immense strain, a combination of such errors made a bad situation worse.

59. A number of the claimants suggested that the individual consultation process was unreasonable because, when they were informed on 26 July 2016 of the decision to decommission part of the service, they were also told that they were to be placed at risk of redundancy. They complain that the respondent had prejudged and pre-empted any meaningful representation to avoid that situation. In this respect, we accept the submission of Mr Williams. The decision of the Commissioner had been made, which meant that it was proper to place some employees at risk. Collective and individual consultation could not undo that third-party decision.

Consequences of the unreasonable process adopted (Polkey).

60. The shortcomings in the procedures which we have examined above lead to the conclusion that, in the case of each claimant, dismissal for redundancy was unreasonable. All claimants were unfairly dismissed.

61. As to the impact of the failures we have identified, it is necessary to consider to what extent the outcome would, or may, have been different in the event reasonable and fair processes had been adopted. This exercise is necessary in order to evaluate each claimant's loss for the purpose of section 123(1) of the ERA, see **Polkey v A E Dayton Services Ltd [1988] ICR 142**. If the claimants would have been dismissed in any event, even had the procedures been fair, no losses will have arisen for the purpose of the compensatory award. If the claimant's might have been dismissed by reason of redundancy, the Tribunal must quantify the prospect of that and reduce the compensatory award commensurately.

62. Even had the respondent embarked upon a consultation exercise from 11 July 2016, with due compliance with the collective consultation requirements and a fair individual consultation process, we do not consider that a different pooling exercise would have been adopted by any reasonable employer. The disadvantages of the pooling of the entire team were outweighed by the simpler and more service efficient benefits of placing those at risk in the respective teams which provided a service which was to be decommissioned by a certain date.

63. On the other hand, had proper and fair procedures been implemented all of the claimants would have been placed on the At Risk register a fortnight earlier, providing them with opportunities for redeployment over a longer period. They would also have had a little more time to search in the wider job market outside the respondent.

64. Given there would have been no foreseeable extra cost to the respondent of considering expressions of interest for voluntary redundancy, early retirement or reduced hours, there was a reasonable prospect of this policy being adopted. In their submissions that this would have made a difference, the claimants rely upon conversations of 2 employees in cohort 2 with Mr Jackson. During the consultation process these individuals, who were over the age of 50 years, had said to Mr Jackson that they would have been happy to go voluntarily to allow other staff to take over their posts. Mrs Ross-Briggs said she knew of two other employees in cohort 2 who would have been interested in voluntary redundancy or early retirement.

65. The claimants did not call any of these potential candidates for voluntary redundancy to give evidence. Mr Williams drew attention to the fact that the two who had spoken to Mr Jackson were not made redundant in April 2017, when 7 further jobs were lost as a consequence of the Commissioner's decision about the services provided by cohort 2. There was no evidence as to why these two employees remained.

66. We consider the anecdotal evidence in respect of the four individuals with some caution. It is difficult to evaluate whether their expressions to colleagues who were to lose their employment were fully informed and genuine or conditional upon what package would be offered. Moreover, it may have been the case that the respondent would have reserved the right to reject any such application in their individual cases, perhaps because they would have been too expensive or were too invaluable to the service which remained to be dispensed with.

67. There is, frankly, no reliable evidence upon which to predict whether any of the 21 employees remaining in cohort 2 might have volunteered to reduce their hours or to leave under an alternative financial package. In the absence of any reliable material to evaluate that, we cannot find any quantifiable lost chance to any of the claimants of being redeployed into cohort 2 to a vacancy which might have been freed up. The exercise is too speculative. In so finding, it does not follow that the significance of this procedural failure comes to nothing. Even if the ultimate

outcome was that this would not have created any redeployment opportunities, an attempt by the employer to explore this option would have been significant to the claimants. It would have demonstrated a responsiveness to their representations and willingness to strive to avoid job losses.

68. In summary, even had the procedures been fair, there was a very real chance the outcome would have been the same, unless the claimants lost an opportunity for obtaining redeployment over the greater and longer consultation period which should have taken place. We consider that next, in respect of each claimant.

The individual claimants

Mr Craig Jackson (first claimant)

69. Mr Jackson commenced employment on 19 November 2012 as a Health Trainer Locality Lead, banded at Grade 5. He did not receive the letter of 29 July 2016 until 8 August 2016 because it had been sent to his previous address. He attended two one-to-one meetings on 16 and 31 August 2016. He made a number of suggestions, not least that vacancies could be created by a voluntary redundancy exercise. He submitted a grievance letter on 7 October 2016 complaining about the requirement to use annual leave in the notice period.

70. Mr Jackson was offered opportunities for redeployment by the At-Risk Team but it was acknowledged that these were not suitable. In his cross-examination Mr Jackson identified a post which might have been suitable had the consultation exercise commenced earlier. That was for a community mental health practitioner which had been advertised up until 13 July 2016. Upon further consideration of the post, Mr Jackson conceded he did not have the relevant qualification post and so it would not have been suitable.

Remedy

71. No basic award is payable because Mr Jackson received a redundancy payment.

72. Mr Jackson mitigated his loss of earnings by obtaining alternative employment with the Wakefield Council but there was a continuing differential loss of earnings. He conceded that, subject to the arguments about pooling or the creation of vacancies in cohort 2 by means of voluntary redundancy or reducing hours, there were no other redeployment opportunities which were missed or would otherwise have been available had the process been longer.

73. In the light of our findings that the pooling was reasonable and there were no quantifiable opportunities for alternative vacancies, even had procedures been appropriate and fair Mr Jackson would have been dismissed by reason of redundancy. It follows he has sustained no financial losses as a consequence of the unfairness of the dismissal, but he is entitled to a declaration that he was unfairly dismissed.

Miss Natasha Pawson (second claimant)

74. Miss Pawson commenced employment on 8 January 2007 as a Health Trainer Locality Lead. She was graded at Band 5. She attended the meeting on 26 July 2016 and had her one-to-one meeting on 22 August 2016. She was matched to a stop smoking job only. She was interviewed and had to enquire after 3 weeks to discover she had been unsuccessful. She lodged an appeal against her dismissal.

75. Miss Pawson obtained employment with Age UK on 14 November 2016 and has recently obtained a second job with the same organisation undertaking advocacy work.

Remedy

76. No basic award is payable because Miss Pawson received a redundancy payment.

77. In the light of our findings and the fact that there were no alternative job opportunities identified within the redeployment exercise, we are not satisfied that Miss Pawson would have had any prospect of avoiding redundancy had the exercise been undertaken reasonably and fairly. It follows that no financial losses arise as a consequence of the unfairness of the dismissal. Moreover, Miss Pawson received a redundancy payment which exceeded the statutory entitlement by £16,796. This exceeds her net losses, after excluding £985 she had sought for the equivalent of a protective award, and so would extinguish them, given the obligation to offset them. She is entitled to a declaration she was unfairly dismissed.

Mrs Joyce Lane (third claimant)

78. Mrs Lane commenced employment in 2000 and her final job was as Health Trainer Locality Lead from November 2011. She was on leave during the meeting on 26 July 2016, but received the 29 July letter on 8 August. She contacted her union but it added little additional information.

79. She had a one-to-one meeting on 19 August 2016. She was offered two potential posts but it was accepted they were not suitable.

80. Mrs Lane did not appeal her decision.

Remedy

81. No basic award is payable because Mrs Lane received a redundancy payment.

82. In the light of our findings and the fact that there were no suitable alternative vacancies identified, we were not satisfied that a fair and proper procedure would have led to any other outcome than Mrs Lane becoming redundant. In the circumstances no losses flow from the unfair dismissal. Moreover her redundancy payment exceeded her statutory entitlement by £26,692.83. That would have extinguished the sum claimed in her schedule of loss.

83. She is entitled to a declaration that she was unfairly dismissed.

Miss Kirsty Adair (fourth claimant)

84. Miss Adair was a Health Trainer Manager, responsible for 30 staff at Band 7. After having maternity leave in 2014, she returned to work part time for 23.5 hours per week and was seconded to other duties, losing management responsibility. She was unhappy with this situation. She felt excluded and under-worked throughout her second pregnancy, taking her maternity leave in May 2016. Her second daughter was born on 30 May 2016. She had been aware of discussions about cost savings and the request of the Council for TUPE information but she never envisaged decommissioning. Within 2 days of taking maternity leave, following representations from her Unison official, she was confirmed as being engaged on a substantive post at 37 hours per week, which was the basis upon which her redundancy payment was subsequently calculated.

85. Miss Adair was invited to the meeting on 26 July 2016 but she was unable to attend. Mrs Donnelly contacted her by telephone that night to inform her of the situation. She received the letter placing her at risk, dated 29 July 2016.

86. Miss Adair did not receive the email from Mr Eades of 27 July 2016 requesting she complete her redeployment preference form, because he had sent it to her work email. She contacted Mrs Donnelly to request the form having received her letter of 29 July. Mrs Donnelly sent her the form on 5 August. Miss Adair returned the completed form on 17 August 2016. She received an email at her home address to say her details had been placed on the At Risk Register on 19 August. In fact, she had been placed on the register with the others on 27 July but any informed matching exercise could not have taken place without her completed form.

87. She requested and had her one-to-one meeting by phone. Her union representative attended. She was not matched with any post in the redeployment exercise. She did not appeal.

88. Miss Adair received her dismissal letter on 5 September 2016 giving her notice to end on 24 November 2016. Her redundancy pay had been wrongly calculated and this had to be taken up at a meeting with Mr Davis on 23 September 2016. Concerns were also raised about maternity pay during her notice and the proper period of reckonable service. Ultimately this was resolved in favourable terms for Miss Adair, but she was not paid the proper sum when her employment ended and the shortfall of £9,000 had to be chased up.

<u>Unfair dismissal</u>

89. We find that the incorrect information in respect of redundancy pay and the need for the claimant to have to request further information and ultimately attend the meeting to address that issue added to the general unsatisfactory nature of the procedures in her case. This would add to the procedural unfairness which we have already identified as having caused her dismissal to be unfair.

90. Although Miss Adair criticised the amount of consultation and information provided while she was on maternity leave, we accept that Mrs Donnelly did have relatively frequent contact with her. They were on friendly terms. In fact, Miss Adair had a greater opportunity to raise issues of concern with Mrs Donnelly than others who did not have this level of telephone communication. Albeit Miss Adair is critical of Mrs Donnelly for discussing her own difficulties in dealing with the process and other social matters, the opportunities for Miss Adair to raise any issue was available. She was facilitated a one-to-one meeting via telephone with the attendance of her representative. This provided the opportunity for her to comment upon any of the matters which had been alluded to in the letter dated 29 July 2016.

91. Whilst it is true that she did not have her laptop and was not therefore in receipt of her work emails, we do not consider this disadvantaged her in any significant way. As is clear from paragraph 20 and 21 of her witness statement, and section 3 of her earlier statement prepared for the preliminary hearing, Miss Adair had decided to accept the redundancy and not seek redeployment. The reasons for this included dissatisfaction with how her employers had handled her return from her earlier maternity leave, but this could not be attributed to the redundancy exercise of 2016. In her evidence, Miss Adair suggested that she would have looked at retraining opportunities and other redeployment avenues had she been aware of the redundancy situation earlier in the year for example from April 2016.

92. We considered that this retrospective analysis, of how Miss Adair would have sought to retain work with the respondent, did not sit comfortably with her views and opinions during July, August and September 2016. For example, although she had to request the redeployment preference form she did not submit it until 17th of August 2016, nearly 2 weeks after it was sent to her. The claimant was very frank about the pressures she was under, coping with two small children at the time. We were not satisfied that she would have sought redeployment had the procedures measured up to those of a reasonable employer.

93. The argument that the claimant should have been considered for the post occupied by Jill Poole, who managed cohort 2, faced the difficulty that we were not satisfied that the pooling decision was unreasonable. Moreover, the alternative posts Miss Adair identified in the situations which were vacant in mid-July would not have been ones to which she was matched or, in all likelihood, able to take up without significant retraining. We do not consider Miss Adair would have wanted to undertake such extensive reskilling at the commencement of her maternity leave. She had informed her employers in May that she anticipated being away from work on maternity leave for 9 to 12 months. One of the posts she identified was at a higher band and the other involved handling procurement which was a very different skill to that the claimant had developed in her employment in the Health and Wellbeing service.

Discrimination

Unfavourable treatment in failing to offer a suitable alternative vacancy

94. Because Miss Adair was graded at band 7, there were limited opportunities to match her employment in the redeployment process. Although her preference would have been to be able to compete for the post occupied by Miss Poole, for the reasons we have set out, this was not a route the respondent had to take. Having considered the documentation provided as to available vacancies, it is apparent that none would have satisfied the requirements in regulation 10 of Maternity and Parental Leave Regulations 1999. No unfavourable treatment can thereby be established, aside and apart from the difficult question of attributing it to her being on maternity leave.

Unfavourable treatment in failing to communicate adequately during the absence from the workplace on maternity leave

95. Although she did not have her laptop, Mrs Donnelly did make relatively frequent contact with Miss Adair, in many respects far greater than the communication she was having with others. Miss Adair was notified of the meeting when the news was broken of the redundancy exercise, could not attend but was directly contacted that day by Mrs Donnelly. Miss Adair had the same opportunity as others to make any representations at her one-to-one meeting which was facilitated by way of phone call.

96. There was one aspect of the communication which causes concern, namely the delay in forwarding to Miss Adair her redeployment preference form, overlooking the fact that she did not have access to her work emails. This meant that there was up to 9 days when the claimant did not have the appropriate form and the At Risk team did not have access to her preferences in order to search for a suitable match. The other employees who had received the email could have returned their preferences on 27 July 2016 but Miss Adair received the form only on 5 August 2016, after having contacted Mrs Donnelly the previous day. Had it not been for the fact that she had decided not to seek redeployment, this would have been a detriment, a disadvantage which was directly attributable to her having been absent on maternity leave. We would have found, in other circumstances, this to be discrimination under section 18 of the EqA. For the reasons we have set out, however, we do not find this was a detriment and disadvantage to Miss Adair, because she had made a decision to accept redundancy for a combination of reasons, before that time.

97. In her evidence Miss Adair made the point that there had been a failure to follow up the one-to-one meeting with a letter recording what had been said and responding to it. This is a valid criticism which we have noted in our earlier consideration of the shortcomings in the process. Insofar as this is unfavourable treatment, it is not because Miss Adair had been exercising her right to maternity leave. No employee in cohort 1 received any written follow-up to their one-to-one meeting and the same unsatisfactory paper trail permeated the entire process.

98. The claim for discrimination does not succeed. There are no facts from which we could decide, in the absence of any other explanation, that there was unlawful discrimination.

Remedy

99. Miss Adair is entitled to a declaration that she was unfairly dismissed.

100. The redundancy payment she received extinguishes any entitlement to a basic award.

101. For the reasons we have set out, had there been a fair procedure we are not satisfied that Miss Adair would have accepted being made redundant. It follows that there is no loss of earnings which is attributable to her unfair dismissal. In any event her redundancy payment exceeded her statutory entitlement by £26,855.33, and that would have extinguished her claim for losses.

Ms Debra Tolson (fifth claimant)

102. Ms Tolson commenced employment as a health trainer in 2007 and transferred to the employment of the respondent in 2011. She was on annual leave on 26 July 2016 but was subsequently contacted by her locality lead to be informed of what had occurred. She had her one-to-one consultation meetings on 31 August 2016 and 12 October 2016. The At Risk team suggested possible matches to 11 vacancies but ultimately these were accepted as not suitable.

103. Ms Tolson appeal against the dismissal.

104. Ms Tolson has found alternative employment but is receiving a lower salary. In her evidence, she agreed that there were no suitable vacancies to which she could have been redeployed.

Remedy

105. Ms Tolson is entitled to a declaration that she was unfairly dismissed. She received a redundancy payment which extinguishes her basic award.

106. Given her concession in respect of alternative options for redeployment, a fair and proper procedure would not have avoided the same outcome. In the circumstances, no losses arise from the unfairness of the dismissal and no compensatory award is made.

Mrs Eileen O'Mara (sixth claimant)

107. Mrs O'Mara commenced employment on 2 February 2009 as a Health Trainer. She had to take sick leave due to a carpal tunnel operation from 21 June 2016. She attended the meeting on 26 July but did not receive any communication thereafter having moved house and not having access to her work email.

108. She had two one to one meetings, on 16 August 2016 and on 12 October 2016. She informed the At Risk team she had problems using her right hand and

had no laptop. She was told she would have to pay a penalty for the early return of her lease car but subsequently this was withdrawn. She was confused by the information she had been given, about paid holidays then notice pay. She was given different calculations in respect of her redundancy payment but is now satisfied with the calculation, notwithstanding it differs from one of the latest calculations.

109. Mrs O'Mara was asked to consider applying for fifteen different roles but because of her medical condition these were not suitable. She has now obtained alternative employment with Age Concern but was out of work for a number of months. In her evidence Mrs O'Mara said that given she is now working in the older health sector she should have been considered for a number of administrative roles. She identified two which were advertised, one until 15 July and another until 1 August 2016. She said she would have been interested in those jobs at the time. However, in her evidence she also said that she had developed lumps in the hands by July 2016 and so had not expressed any interest in administrative jobs on the redeployment preference form. She felt that the redundancy process had adversely affected her fibromyalgia. There was no medical evidence produced to assist the Tribunal in respect of that.

110. Having regard to all the circumstances we do not find Mrs O'Mara would have applied for any of the administrative posts had the consultation period commenced from 11 July 2016 given the medical condition she had. There is no medical evidence to confirm her belief that her medical condition was aggravated by the redundancy process and we are not satisfied Mrs O'Mara could have avoided having been made redundant had there been a fair and proper procedure. No financial losses arise from her unfair dismissal.

111. Mrs O'Mara is entitled to a declaration that she was unfairly dismissed.

Mrs Lisa Berry (seventh claimant)

112. Miss Berry commenced employment with the respondent on 14 April 2008 as a secretary, then became a Health Trainer for 6 years. She attended the meeting on 26 July and felt compelled to join a union that day. She had a one to one meeting on 22 August 2017, 27 days into the 30 day consultation period and 5 days before her wedding. She was given conflicting information about a number of matters, the date when she would receive her redundancy payment, when she could work for NHS again and her entitlement to a guaranteed interview.

113. In respect of redeployment opportunities Mrs Berry was invited to consider 8 vacancies. It was accepted these were not suitable, but not before having to attend a meeting on 21 October to explain why she could not do three of those suggested. This added to her trauma.

114. Mrs Berry applied for a vacancy in Castleford, as a part-time administrative assistant in the Occupational Health department. It was advertised at 15 hours per week. She had been encouraged to apply, having enquired of the At Risk team, and spoken to Helen Whitham. Mrs Berry explained that she had been engaged on an

18.5 hour contract. Miss Whitham informed her that would be fine as it was likely they would be to find her the extra three hours. The role was at the same banding, level 3, as she had previously been employed. Mrs Berry had a relevant qualification and the experience needed. Having heard nothing for a fortnight she contacted the At Risk team again. She was informed that she had not been shortlisted because the position was full time. In her evidence Mrs Berry informed the Tribunal that she subsequently learnt that the job had been obtained by Catherine Eberall who had previously worked in the food and health team. It was not full time. We accepted this evidence, there being none to contradict it. This unsatisfactory handling of Mrs Berry's redeployment contributed to the unfairness of the dismissal. One can assume she would have been interviewed as well as Miss Eberall had the process been handled properly. We are satisfied she would have had a 50% chance of obtaining this job, on the limited information available.

115. Mrs Berry was matched to a vacancy as an administrative officer at Drury Lane in Wakefield. She submitted an application form for the post on 26 October 2016. She heard nothing further until 14 November 2016 from the At Risk team to be informed that the post had received extra funding and was now a full-time post. The claimant believed it would have been a perfect match for her. The respondent's record of matched jobs confirms this.

116. In a redeployment exercise of this nature, in which a primary consideration is the avoidance of redundancies, reasonable efforts should be made to accommodate those at risk. That would include considering offering the full-time post as a job share. It would appear this was never contemplated. The succinct record produced by the respondent which summarises alternative posts proposed by the At Risk team confirms what Mrs Berry said.

117. We are satisfied that Mrs Berry would have had a very good chance of obtaining this job. Taken together with earlier chance she lost, in respect of the Castlefield vacancy, we are satisfied that had proper procedures been taken the Mrs Berry would have been redeployed into a suitable role.

Remedy

118. There is no basic award as Miss Berry received a redundancy payment.

119. The compensatory award it is calculated by reference to Mrs Berry's schedule of loss. There is a loss of earnings of £4,687.58, being £3,615.61 past lost earnings to the date of the hearing, having deducted mitigating earnings in new employment and disregarding the jobseekers allowance, plus future loss of earnings to April 2018 of £1,072.07. There is a loss of child tax credit for November and December 2016 being £464.74, and loss of pension contributions of £1,724.40. We add loss of statutory rights which we calculate at £500. That gives a potential compensatory award of £7,376.72. We do not award any sum relating to the failure to undertake a proper collective consultation exercise, as the protective award claim has been dismissed. Any claim for Tribunal fees should be recouped through HMCTS.

120. We deduct from the potential compensatory award the excess of the redundancy payment over the statutory entitlement being the sum of £6,154.75, leaving a compensatory award of £1,221.97.

121. As jobseekers' allowance was received the recoupment provisions apply. The prescribed period is from 27 October 2016 to 27 October 2017 and the prescribed element is £614.65 (that being the past loss of earnings of £3,615.61 reduced by 83%, to reflect the proportionate reduction of the compensatory award to reflect the excess of the redundancy payment).

Mrs Emma Pease (eighth claimant)

122. Mrs Pease commenced her employment in January 2014 as a Health Trainer in Pontefract and Castleford. She commenced her maternity leave in March 2016 initially for 9 months. She planned to return to work on 3 January 2017, but with the possibility of extending this by using some holiday entitlement.

123. Mrs Pease attended the meeting on 26 July 2016. No-one contacted her immediately afterwards about the At Risk process so she phoned the union who emailed John Lemm. She heard nothing so rang Helen Cherry of human resources on 4 August 2016. She was advised she would be put on the At Risk register. Mrs Pease believed this was 9 days after everyone else, but we are satisfied all employees in cohort 1 had been placed on the register at the same time. Mrs Pease received the redeployment preference form on 4 August 2016 and returned it completed the same day.

124. Mrs Pease had her one-to-one meeting on 22 August 2016. She was asked to consider 13 potential posts, but these were not suitable. Mrs Pease had turned down an administrative assistant role in occupational therapy because it was for only 15 hours per week and not her contractual hours of 37.5. In the one-to-one meeting she had been led to believe her salary would have been ring-fenced, regardless of the hours for one year, but upon further enquiry she was informed this would apply only to a 10% to 15% difference in hours.

125. Mrs Pease had a second one-to-one meeting on 21 September 2017. She was told that should be paid for her annual leave but not offered any extension to her contract or the option of taking annual leave as others had. She emailed the pay roll department to ascertain when redundancy and maternity pay would be received. She received a redundancy payment in September and her maternity pay and leave pay in October 2016. This was contrary to what she had been led to understand at an earlier stage.

126. The respondent contended that Mrs Pease had been offered a post known as the "Walk Well" job which was situated in Barnsley, on 29 September 2016. Mrs Pease was adamant that the job had never been offered. The respondent relied upon an email chain to support their contention, but this was not contemporaneous with when it was said Ms Poole made the offer and was her recollection of what had happened. During the proceedings, the respondent sought permission to admit a

further, more detailed email from Ms Poole about this matter. The Tribunal rejected that application. It had been known since the appeal that this was a relevant issue and the respondent had not decided to call Ms Poole. For them to seek to adduce a further hearsay account during the course of the proceedings would have occasioned delay and created unfairness to Mrs Pease, who had not had the opportunity to respond to it in her evidence. Mr Williams also sought to rely on what Mrs Pease had said about this job in the appeal, but that was at best equivocal and did not particularly undermine her recollection in evidence that it had never been mentioned.

127. On balance, we prefer the evidence of Mrs Pease and we accept this role was never offered. However, we did not accept her contention that she would have taken this job. She modified this somewhat in her evidence to say that she would have 'considered' working in Barnsley. It was a 25 to 30 minute journey to Barnsley and Mrs Pease had excluded that town from her location preferences which she had limited to Castlefield and Wakefield. Mrs Pease lived in Wakefield.

128. Mrs Pease's contract of employment terminated on 2 October 2016. She received a letter from Mrs Donnelly after that date asking why she had not responded to an assistant therapist role at Baghill House in Pontefract. Mrs Pease replied by email pointing out that post had never been offered. She had received other posts to consider after her employment terminated and she made it clear she regarded this as harassment. She said she did not believe she had been treated fairly as a member of staff on maternity leave.

Remedy: Unfair dismissal

129. Mrs Pease identified three roles which were on the vacancy register between 11 July and 26 July 2017, for administrative assistants. One was based in Wakefield with the older people's mental health service and was a full-time permanent role. It was open for applications until 15 July 2016. The other two were also based in Wakefield in adult mental health services, but were for fixed terms of six months. Because of her preferential status, being on maternity leave, Mrs Pease would have been entitled to first refusal of any suitable alternative vacancy. We are satisfied the first of these roles should have been offered to her had the consultation process commenced from 11 July 2016. By 15 July 2016 the claimant would have been on the At Risk register and, given her diligence in returning her redeployment preference form, we are satisfied she would have been considered for and offered this role by the At Risk team. It is possible she would have considered the other two roles, albeit they were only for fixed terms of six months, but this becomes academic given our findings in respect of the first.

130. We are satisfied that Mrs Pease would have taken the full-time administrative role, had the procedure commenced earlier, as it should have. It had fallen within the remit of what she had specific specified a preference for in her redeployment form. She is now working in an administrative capacity in a local school.

131. In the circumstances, we are satisfied that the claimant has established losses of earnings which arose as a consequence of the unfairness of the dismissal. They will be the differential between what she would have earned had she been redeployed on 15 July 2017 and the earnings she has received at the Kings School. These are not particularised in her schedule of loss and it will be necessary therefore to consider this further at a remedy hearing.

Discrimination

Unfavourable treatment concerning communication

132. The email sent by Mr Lemm informing employees in cohort 1 that they had been placed on the At Risk register and requesting they return the redeployment form which he attached was not received by Mrs Pease when it was sent, on 27 July 2016, because it went to her work email. She did not have her laptop at home and was not accessing work emails. It was she who had to chase her employers for this form and as soon as she received it she returned it the same day. In addition, three of the jobs which were sent for her to consider before that time were not received. Although it was not expressly addressed, we infer this was also because the communication was being made to Mrs Pease's work email. After a preference form was received it notified the At Risk team of her personal email and thereafter she received information as to what jobs may be suitable.

133. The delay in contacting Mrs Pease to give her the opportunity to return her preference form was a detriment and unfavourable treatment because it arose as a consequence of her exercising her right to maternity leave. She was anxious that she was not on the at-risk register and therefore contacted her union and the human resources department. She believed there may have been missed opportunities for a period of nine days in considering her for redeployment opportunities. Whilst it is fair of the respondent to point out that Mrs Pease had been on the register from 27 July 2016, unbeknown to her, she was nevertheless at the disadvantage of not having been able to submit her preferences. We are satisfied this would have impacted upon the ability suitably to match her to jobs and this was a detriment.

134. Moreover, the communication with her work email which she was unable to access left her in ignorance of three job opportunities. It was not suggested by Mrs Pease that these were suitable, but it was a consequence of her being on maternity leave and not having access to that information led to a legitimate concern that she was being kept out of the loop. It might be said that these disadvantages were shared by others who were on sick leave and not maternity leave. They were not disadvantages shared by those who are at work and who had access to their emails. Given that section 18 of the EqA relates to unfavourable treatment and not less favourable treatment, a comparison of this type does not assist the respondent. We are satisfied that the causal connection is established, in that the missed opportunity to furnish her details to the At Risk team and the ignorance of three potential job matches was a direct consequence of Mrs Pease's maternity leave whereby she was out of the workplace.

135. From 4 August 2016, we are satisfied that this unfavourable treatment ceased. Although the levels of communication were unsatisfactory, including the misinformation as to when her payments were to be received, this was not because the claimant was pregnant or had exercised her right to take maternity leave. The same unsatisfactory communication applied to all, regardless of whether they were on maternity leave.

Unfavourable treatment: not offering a suitable alternative vacancy

136. The administrative assistant vacancies which Mrs Pease identified, and which we have found she should have been offered preferentially, were at a period when the consultation process had not commenced and the workforce were unaware of the proposed redundancies. In the circumstances, they were not suitable alternative vacancies which the respondent failed to offer, because the process they had adopted meant that they were not available at the time the At Risk team were considering redeployment. For these purposes, we do not consider a hypothetical alternative exercise which should have arisen. That was material for evaluating what loss had arisen as a consequence of the unfair procedures which led to our finding that the dismissals were unfair.

137. The only other suitable alternative vacancy contended for by Mrs Pease was the Walk Well role in Barnsley. The provisions of regulation 10 expressly require consideration of location in determining whether a vacancy is suitable. Given that Mrs Pease herself eliminated Barnsley as a place where she would wish to be considered for work, we cannot conclude that this was an offer which would have fallen within that provision. It was less favourable in its terms and conditions because of where it was based and so was not suitable.

138. In the circumstances we are not satisfied that any discrimination arises in this regard.

139. Mrs Pease complained that she was not informed of her rights under Regulation 10 as she believes she should have been by her employers. There is no doubt that that would be proper and appropriate practice, but there is no obligation under the Regulations to inform. Moreover, in her evidence Mrs Pease conceded that, contrary to an earlier response, she had told the appellate panel that she had been aware of this entitlement following discussions with Mrs Donnelly.

Remedy

140. A further hearing will be convened to consider what award for injury to feelings is appropriate in respect of the discrimination claim and to evaluate what losses arose and for what period they should be awarded in respect of the unfair dismissal claim.

Mrs Susan Fenton (ninth claimant)

141. Mrs Fenton commenced her employment as a Health Trainer on 2 September 2009 and her employment was transferred twice. She worked 26.75 hours per week. Her one to one meeting was on 30 August 2016 after the collective

consultation period ended because she had a pre-booked holiday. Because of a back injury she could not apply for several jobs she had been matched to. Mrs Fenton attended a further one-to-one meeting in October 2016. She felt she had been insensitively questioned about an attack she had been the victim of, some 5 years previously, as a consequence of which she had enduring physical and psychological effects.

142. Mrs Fenton believed she should have been offered a package under the MARS scheme because of her age; she was 55. This would appear to be a misunderstanding of that scheme as we are satisfied it would have been no more beneficial than the redundancy payment she was entitled to under the contractual scheme.

Remedy

143. In cross-examination Mrs Fenton acknowledged that she was not contending she had missed out on a role which should have been offered. She has not been able to obtain further employment and believes that the whole process has made her pre-existing conditions worse.

144. Even had the respondent adopted a fair procedure, bearing in mind the criticisms we have made, there was no real prospect of Mrs Fenton having avoided being made redundant. In the circumstances she has suffered no loss of earnings as a consequence of the unfair dismissal. In any event the redundancy payment exceeded has her statutory entitlement by £6,740.80 such that any compensatory award would have been extinguished.

145. Mrs Fenton is entitled to a declaration that she was unfairly dismissed.

Mrs Sophie Ross-Briggs (tenth claimant)

146. Mrs Ross-Briggs commenced employment on 8 July 2010 as a Community Food and Health Worker and was later promoted to Band 4 in Wakefield. She attended the meeting on 26 July 2016. She was 3 months pregnant at the time and asked what would happen to her as she was to go on maternity leave. She recalls being told she would not receive maternity pay as she was not yet on maternity leave. Mr Lemm could not remember what he might have said and we accept the claimant's recollection. This caused her distress and she broke down in tears. She was unable to take in what had been said at the meeting.

147. Mrs Ross-Briggs had her one-to-one meeting on 16 August 2016. At the meeting Mrs Ross-Briggs said her due date was 15 January 2017 but corrected this the following day by email to say it was 14 January 2017. In a subsequent email Miss Cherry informed Mrs Ross-Briggs that her employment would terminate on 18 October 2016 and that she would receive statutory maternity pay as well as redundancy pay but not occupational maternity pay. Mrs Ross-Briggs queried this because she believed, correctly, that the wrong date had been used to calculate the last day of her employment with which was in fact 27 October 2017. This would have meant that her earliest maternity leave entitlement would have been from 23

October 2016 and not the 30th, thereby entitling her to occupational maternity pay. On 6 September 2016 Mr Elvin agreed with the earlier advice of Miss Cherry and it was only on the day after the claimant's final day of employment, 28 October 2016, that it was acknowledged the earlier advice been incorrect and she was in fact entitled to occupational maternity pay.

148. Between 3 August 2016 and 26 October 2016 the At Risk team invited Mrs Ross-Briggs to consider seven potential opportunities for redeployment. In respect of the first two, stop smoking advisers in Barnsley and Pontefract, Mrs Ross-Briggs said in evidence that, had she known of her preferential status of being entitled to 1st refusal of a suitable alternative vacancy because of her forthcoming maternity leave, she would have accepted the role. Mr Williams drew attention to 2 documents Mrs Ross-Briggs had completed on the 3 and 4 August 2016, in which she had stated that the roles were not a suitable match because she had no qualification, was unable to train and had no up-to-date experience. In respect of the post in Barnsley she stated it was far too much travelling. This was consistent with her preference form, of 8 August 2016, in which she stated she would only be able to work in Castlefield, or Wakefield, which was a further 15 minutes' drive. She pointed out that she was a carer for her mother which meant that commuting further would be difficult.

149. On 5 October 2016 Mrs Donnelly wrote to Mrs Ross-Briggs to offer her a post as an occupational therapist in Wakefield. She drew attention to the fact that, because the claimant was on maternity leave, the job would be held for her until a response was received. From this point in time Mrs Ross-Briggs was aware of her entitlement to preferential treatment as a consequence of her pregnancy and forthcoming maternity leave. She did not consider this a suitable match. Further communication from Mr Davies suggested it was. Mrs Ross-Briggs replied and set out the reasons she disagreed. On 25 October 2016 Mr Lemm withdrew the offer of redundancy on the ground Mrs Ross-Briggs had declined to accept a suitable alternative vacancy. Upon further consideration, this decision was reversed.

150. On 21 October 2017 Mrs Ross-Briggs received an email in respect of an exercise instructor post in Barnsley. Attached was a job description and person specification. She was invited to consider applying for the post and was told to return the response form if she did not wish to apply to explain why it was not a suitable post. Mrs Ross-Briggs did not express an interest in the post. She relies upon this vacancy as one which should have been given to her without the requirement to undertake a competitive interview because she was a woman on maternity leave.

151. Mrs Ross-Briggs' employment came to an end on 27 October 2017. She appealed the decision to dismiss her and submitted written argument for consideration of the appeal panel.

Unfair dismissal

152. We are not satisfied that had the respondent adopted fair and reasonable procedures that the outcome would have been any different in the case of Mrs Ross-Briggs. There is no doubt that the miscommunications in respect of her entitlement to occupational maternity pay were distressing and should not have occurred. Moreover the decision to withdraw her redundancy payment on the ground she had refused alternative employment must have added to her trauma. Nevertheless, in spite of what Mrs Ross-Briggs said in evidence, we are not satisfied she would have accepted any alternative role. She was very clear in her preference form that she did not wish to travel very far. That was perfectly acceptable but created an important restriction upon what would be classed as suitable alternative employment, either for the purpose of denying Mrs Ross-Briggs the opportunity to have a redundancy payment or for the purpose of regulation 10 of MAPLR.

153. We do not consider Mrs Ross-Briggs would have accepted either no smoking advisor role if she been informed they were offers rather than expressions of interest followed by a competitive exercise. The response forms are very clear in respect of the view held by Mrs Ross-Briggs.

154. Nor do we accept that the exercise trainer post would have been one Mrs Ross-Briggs would have been interested in because of its location in Barnsley. By that stage Mrs Ross-Briggs knew of her preferential entitlement to suitable vacancies. Had it been of genuine interest to her she would have spoken to the At Risk team to request the vacancy and point out that the post should not be open to a competitive exercise. We infer she did not do that because of its location.

155. In the circumstances we are not satisfied that any losses that flow from the unfairness of the dismissal, because we do not consider Mrs Ross-Briggs would have been able to avoid redundancy, given the limitations on where she could work and the available redeployment opportunities.

156. No basic award is payable because the claimant received a redundancy payment. Mrs Ross-Briggs is entitled to a declaration that she was unfairly dismissed.

Discrimination

Unfavourable treatment concerning communication

157. Mrs Ross-Briggs has identified a series of miscommunications and errors which had to be corrected and necessitated her having to challenge a series of calculations and assertions. These related to her entitlement to maternity pay, when her maternity leave could commence and whether she had disentitled herself to a redundancy payment for refusing an offer.

158. Whilst these matters arose against the context of Mrs Ross-Briggs' pregnancy and maternity related issues, the errors and miscommunications, which were unfavourable treatment, were not because of her pregnancy or because Mrs Ross-Briggs was on maternity leave or seeking to exercise her right to such leave.

Many of the claimants have identified errors made by the human resources and payroll team. In determining the reason why Mrs Ross-Briggs received such treatment, we are satisfied it was because of maladministration and error and not because the decision makers were in any way influenced by Mrs Ross-Briggs' protected characteristic.

Offer of suitable alternative employment

159. We are not satisfied that either of the stop smoking advisor roles or the exercise trainer role constituted suitable alternative vacancies within the meaning of regulation 10 of MAPLR. The employee's own preference of work location is a relevant factor in determining whether the post is suitable or on less favourable terms. Mrs Ross-Briggs was unequivocal in her expression of where she would be prepared to work. The respondent cannot be criticised for not offering her these roles as two of them were in Barnsley, a place Mrs Ross-Briggs would have found inconvenient to travel to and from. Mrs Ross-Briggs complained, however, that the At Risk team matched her to such roles and therefore they must have been suitable. We do not agree. It is one thing for an employee to be given the opportunity to undertake other work which may not be a suitable match and may require the employee to adjust their circumstances. It is another for the purposes of determining whether a refusal of an offer disentitles the employee to a redundancy payment or whether the vacancy is suitable within the terms of regulation 10 of MAPLR. In respect of the Pontefract stop smoking role, Mrs Ross-Briggs made it clear she did not think that was suitable and we do not accept the argument she advanced that she would have taken a wholly different approach if she regarded it as a non-competitive guaranteed post.

Mrs Amanda Kennedy-Hawkins (eleventh claimant)

160. Mrs Kennedy-Hawkins commenced employment on 22 November 1995 at the Pontefract Infirmary as an Assistant General Office Manager. After a number of transfers she became a Health Trainer in January 2007. Although she had two chronic disabilities she managed well in employment.

161. She attended two one-to-one meetings on 17 August and another on 24 October 2016. She was provided with incorrect redundancy pay details in the letter of 1 September 2016. This was subsequently corrected.

162. Mrs Kennedy-Hawkins was invited to consider 5 posts but they involved a lot of travelling and were not suitable for her disabilities or involved 7 day per week shifts. She was advised to seek redundancy on health grounds but she was informed that the redundancy process had been frozen because no-one at risk had applied for the vacancies. Ultimately the respondent agreed these were not suitable.

163. Although Mrs Kennedy-Hawkins initially said, in cross-examination, there was no job she could point to in the At Risk process which should have been offered to her, she subsequently identified a number of jobs in the spreadsheet prepared by the respondent. In particular Mrs Kennedy-Hawkins drew attention to administrative posts. However, upon examination these posts had either expired before 11 July

2017, when we found the consultation process should reasonably have commenced, or were for fixed term posts. We do not consider there was any likelihood of Mrs Kennedy-Hawkins choosing to take a fixed term post. It must be borne in mind that her redundancy payment was in excess of £30,000. We do not consider she would have considered such a proposition as suitable in the light of what she would sacrifice in financial terms. She also identified a non-smoking adviser post but upon further examination this was one which had been taken up by Mrs Khan and so was not available.

164. The process took its toll on Mrs Kennedy-Hawkins' health. She was unable to obtain employment as a consequence, initially, having to apply for employment support allowance. In April 2017 she successfully obtain alternative employment working as a clerk on the main reception of the local medical practice.

Remedy

165. As Mrs Kennedy-Hawkins received a redundancy payment she is not entitled to a basic award. She calculated her differential loss of earnings as £7,148 to the date of the hearing. She should not have deducted, in that calculation, the employment support allowance which was £1,462. Nevertheless, even giving due allowance for that, a claim for all the losses she seeks would be wholly extinguished by the excess of the contractual redundancy payment over her statutory entitlement of £26,763.92. Moreover we do not consider, had a fair procedure been adopted, that Mrs Kennedy-Hawkins would have any prospect of avoiding having been made redundant. Mrs Kennedy-Hawkins is entitled to a declaration she was unfairly dismissed.

Mr Benjamin John Webb (twelfth claimant)

166. Mr Webb commenced employment with the respondent on 6 January 2014 as a health trainer. He attended the meeting on 26 July 2016. Ms Webb attended his one-to-one meetings on 22 August 2016 and 21 September 2016. He attended a meeting with Mr Alan Davis on 26 September 2016 with other employees who had raised their collective concerns. Although Mr Davis offered assistance Mr Webb regarded this as too little too late. He was asked to consider 11 potential opportunities for redeployment but it is acknowledged these were not suitable. Mr Webb said, in cross examination, that there were no jobs he should have been offered on the vacancy register.

167. Mr Webb exercised his right of appeal which was heard on 21 December 2016. Mr Webb commenced a search for work a month after his employment was terminated on 2 October 2016. He has been working on a zero hours contract at the B&Q warehouse and has recently started training as a student police officer.

Remedy

168. Given that no alternative vacancies would have been suitable, and in the light of our findings in respect of the generic complaints, we were not satisfied Mr Webb would have been able to avoid redundancy had a fair and proper procedures been undertaken by the respondent.

169. In the circumstances, he is entitled to a declaration that he was unfairly dismissed. The basic award is extinguished because he received a redundancy payment. No compensatory award arises as Mr Webb would have been dismissed in any event. Mr Webb said that his main concern was for an acknowledgement of the failures and errors made by the respondent. It is hoped that is reflected in the declaration and these reasons.

Miss Rachel Banner (thirteenth claimant)

170. Miss Banner was employed from 2 April 2013 as Health Trainer on Band 3. She was employed on a temporary contract which was renewed. She had her one-to-one meeting on 17 August 2016. She was invited to consider 11 vacancies from the At Risk register but it was acknowledged that they were not appropriate.

Remedy

171. Miss Banner is entitled to a declaration that she was unfairly dismissed. She has no entitlement to a basic award as she received a redundancy payment.

172. She said in evidence that she had managed totally to mitigate her losses, in regard to employment income. We would have awarded £500 for loss of statutory rights and, potentially, lost pension contributions had she established a loss of a chance as a consequence of the unfair procedures. She would not have been entitled to nine days pay for the failure to comply with the collective consultation exercise as that claim has been struck out. Given her contractual redundancy payment exceeded her statutory entitlement by £4,702 .77, on any assessment her compensatory award would be extinguished. However, for the reasons we have given, there was no prospect of Miss Banner having avoided redundancy had a fair procedure been adopted.

Ms Jenny Wilson (fourteenth claimant)

173. Ms Wilson commenced employment with the respondent on 29 August 2006 as a smoking cessation adviser. She became a shape your pregnancy coordinator on 1 July 2013. Ms Wilson was on annual leave on 26 July 2017. She was contacted by her line manager, Ms Pawson, who communicated the information by Facebook that evening. She returned to work on 1 August 2016.

174. She attended her one-to-one meeting on 22 August 2016. She was informed she would have to pay a sum of nearly £800 upon surrendering her lease car because of its early release. At a later date the respondent agreed to pay that sum. Ms Wilson had booked a holiday in Spain but, because of the foreshortened holiday entitlement which would arise from the early termination of her employment, she was advised she would exceed her holiday entitlement and nine days pay would be deducted from the final wage. When she received her letter of termination of employment she was advised she would have to take her leave during her notice period. This would have led her to taking the holiday, but it had been cancelled because of the earlier information she had been given.

175. Ms Wilson was matched to 9 potential alternative redeployment opportunities. She applied for a post as stop smoking advisor but later withdrew it and in respect of the others it was accepted there were not suitable. In evidence, Ms Wilson said that she would have been interested in being redeployed to administrative roles. However she had not ticked that option in her redeployment preference form. There were no other roles she pointed to, to which she could have been redeployed.

Remedy

176. Ms Wilson is entitled to a declaration that she was unfairly dismissed. The false information she was provided with, in respect of the lease arrangement for her vehicle and the lack of clarity in respect of her holiday entitlement, were additional unsatisfactory features in her case which added to the unfairness of the dismissal.

177. Ms Wilson is not entitled to a basic award because she received a redundancy payment. For the reasons we have given, no losses arise from the unfairness of the dismissal, because Ms Wilson would have been made redundant had a fair procedure been adopted.

Ms Denise Lee (fifteenth claimant)

178. Ms Lee commenced employment on 6 September 2006. She was employed as Senior Health Trainer. She had an accident on 9 July when she fractured her elbow and damaged her shoulder and hip. She could not attend the meeting on 26 July, but her Union convenor reported back to her and informed her of the situation the following day. She had a one-to-one meeting with Mrs Donnelly on 16 August 2016.

179. Her injuries from the accident were not healing but she was told she would have to attend interviews like everyone else. She was too unwell to drive. As she was off sick, Ms Lee did not have access to her work email, so asked if she could be given access to it so she could consider job vacancies. She was invited to consider nine potential job opportunities but it is accepted these were not suitable. In her evidence, Ms Lee said that the accident of 12 July had, in effect, knocked her out of the job market. She feels that she could have continued working in her old role as a senior health Trainer and have coped with her health conditions, but to have to re-adapt a new job would have been too difficult. She did not identify any other post which would have been suitable in the light of these problems.

Remedy

180. No basic award is payable as Ms Lee received a redundancy payment.

181. In the light of our findings relating to the generic complaints, we are not satisfied, had the respondent adopted a fair and reasonable procedure, that Ms Lee would have been able to avoid redundancy. There is no medical evidence to confirm Ms Lee's belief that the procedure impacted upon her ability to do alternative work. In the circumstances, no financial losses flow from her unfair dismissal.

Mr Terence Moran (sixteenth claimant)

182. Mr Moran commenced employment on 08 January 2007 as a Health Trainer. He missed the meeting on 26 July as he had been on leave. He returned to work on 27th July and asked people about it. His manager, Dan Eades, contacted him the next day and said Mrs Donnelly would be in touch to arrange a meeting.

183. Mr Moran's one-to-one meetings took place 16 August and 12 October. He explained he was willing to do any job but not night shifts as he was the carer for his disabled wife.
They discussed the matching process. He applied for one job, the stop smoking advisor post, but he had to withdraw due to holiday. He was matched potentially to ten jobs but none were suitable.

184. In his evidence, Mr Moran said that he was only two years from retirement age, 60 years, and that he believes there would have been jobs available to him to take if he had the chance. He was asked to identify such roles. Those he identified in the list of vacancies were either for a fixed term or bank work. He said that he would have taken a bank job if guaranteed a number of minimum hours. This was a misunderstanding of bank work. There are no guaranteed fixed hours. Mr Moran did not make any reference to having been interested in administrative roles in his witness statement, although it is fair to say he had included this in redeployment preference form. He, as with other staff on the at risk register, was informed that he could apply for any of the vacancies in the organisation, albeit they would not be given first preference if not matched. Mr Moran did not apply for any other posts. In this difficult situation Mr Moran would also have to have factored in the loss of the redundancy payment he subsequently received of £17,250 if he remained in employment.

185. There were a number of other opportunities for administrative roles in Batley, Huddersfield, Wakefield and Halifax, had the respondent embarked upon its consultation exercise and placed Mr Moran at risk from 14 July 2016. Mr Moran did not identify these as lost opportunities. Moreover, had he applied he would have had to compete with others in the redundancy pool. The posts were at a lower banding than his. The list of relevant experience in his redeployment preference form did not include any administrative roles. We consider that he would have had, at best, a 20% chance of obtaining any such post had he expressed an interest.

Remedy

186. There is no entitlement to a basic award because Mr Moran received a redundancy payment.

187. Mr Moran has obtained new employment, assisting adults with autism. The schedule of total net losses amounts to £21,236. This would have to exclude £1,400 which Mr Moran sought for a failure to follow statutory consultation, which would be a claim for a protective award which has been struck out. Having regard to the relatively remote chance of 20% that he could have been redeployed had the respondent adopted reasonable and fair procedures, the excess of the contractual

redundancy payment over his statutory entitlement of £11,419 .56 would extinguish any compensatory award.

187. In the circumstances Mr Moran is entitled to a declaration that he was unfairly dismissed.

Mrs Yasmin Khan (seventeenth claimant)

188. Mrs Khan commenced employment on 8 September 2008 as a Health Trainer and was promoted to Band 4 Senior Health Trainer for BME clients. She attended her one-to- one meeting on 22 August 2016. She was matched to a stop smoking adviser role and interviewed the same day. She was offered the job and felt she would have to accept it or lose her redundancy pay. She found the new role unsuitable because of its anti-social hours and it was agreed, after 4 weeks, that she could leave and receive her redundancy payment.

189. Mrs Khan obtained a job in Leeds with a charity, for fewer hours. There is a shortfall in pay of about £100 per week including the additional travelling costs.

Remedy

199. No basic award is payable because Mrs Khan received a redundancy payment.

200. In cross-examination Mrs Khan said that she did not see any job she could have applied for, on the At Risk register, which was suitable. She was one of the few employees who were successful in obtaining alternative employment with the respondent, albeit it did not ultimately suit her. Given our findings, we are not satisfied that, had the respondent pursued reasonable procedures, Mrs Khan would have had any greater opportunity of avoiding redundancy. It follows that no financial losses are attributable to her unfair dismissal. In any event her redundancy payment exceeded the statutory entitlement by £11,878 .25 and this would have extinguished the compensation she sought in her schedule of loss. She is entitled declaration that she was unfairly dismissed.

Mrs Andrea Brooking (eighteenth claimant)

201. Mrs Brooking commenced her employment on 8 September 2008 as a Band 3 Health Trainer, having previously worked for the Ambulance Service from 2001. She was based in Pontefract.

202. She attended her one-to-one meeting on 19 August 2016. She asked why she had been given a 3 year lease car if her employer knew the funding was at risk. Mrs Brooking was invited to consider applying for 7 potential suitable alternative posts but it was subsequently accepted that these were not appropriate.

203. Mrs Brooking successfully obtained a job which was to commence on 4 October 2016 and asked Mrs Donnelly, prior to commencing her holiday, if she could be released from her notice period which was to end on 20 October 2016. Mrs Donnelly agreed. Unfortunately, the human resources department contacted her

after her holiday to inform her that she would have to work her notice, notwithstanding this service had been decommissioned. This matter was taken up on her behalf by Mrs Lane. Mrs Donnelly's decision was respected. Mrs Brooking found the whole process very traumatic and upsetting. This was a further aspect of administrative inconsistency which contributed to the unfairness of the dismissal in her case.

Remedy

204. No basic award is payable because Mrs Brooking received a redundancy payment.

205. Having taken account of the new employment which mitigated her loss, the differential in earnings was £10,219.79. Even taking into account a sum for loss of statutory rights and loss of pension contributions of £1,464.98 the contractual redundancy payment received by Mrs Brooking exceeded her statutory entitlement by £19,372.17 and so this would have extinguished any compensatory award. Moreover, we were not satisfied Mrs Brooking would have had any prospect of avoiding redundancy, even had the procedure been fair and reasonable.

206. In the circumstances, no compensation is payable but Mrs Brooking is entitled declaration the dismissal was unfair.

Mrs Sharon Atkinson (nineteenth claimant)

207. Mrs Atkinson had been employed as a Senior Health Trainer since 2006 and was graded at Band 4. She attended the meeting on 26 July 2016. Mrs Atkinson found the entire process intimidating and upsetting. She did not feel supported, but said in evidence that she was bombarded with information such that she could not consider any alternative redeployment opportunities.

208. The At Risk team found 6 potential alternative posts within the redeployment exercise which they communicated to Mrs Atkinson. She did not think they were suitable and the respondent agreed. In cross-examination Mrs Atkinson said she thought there probably were posts she could have undertaken but she had not had time to consider which they were. After a short break, during which Mrs Atkinson considered the documentation, she said there was nothing she felt she should have been offered.

209. Mrs Atkinson said she had not been provided with the appropriate appeal pack. Although this was not put to the respondent's witnesses it would constitute a further inadequacy to the procedure which we have already found was deficient and unreasonable. There is little doubt from the evidence she gave that Mrs Atkinson felt very let down by the way in which the respondent managed the process and, to the extent that we have made criticisms, these are well-founded.

Remedy

210. Like the other the claimants, Mrs Atkinson felt the pooling exercise was unfair and that she would have had the opportunity to remain in other employment if it had

been undertaken with a wider pool. We have rejected this argument. As no other opportunity would have been available to redeploy Mrs Atkinson, even with an earlier consultation exercise, we are not satisfied that a fair procedure would have, ultimately, made any difference to her having been made redundant.

210. We make a declaration that her dismissal was unfair. Mrs Atkinson received a redundancy payment which extinguishes any basic award. We are not empowered to require the respondent to offer the apologies, provide a reference or to make recommendations as to future practices, the other remedies Mrs Atkinson has requested.

Employment Judge D N Jones

Date: 8 December 2017