



EMPLOYMENT TRIBUNALS

Claimant: Ms J Hotte
Respondent: Feversham Education Trust

Heard at: Leeds Employment Tribunal
Before: Employment Judge Deeley, Ms Brown and Mr Lannaman
On: 6-16 December 2020 (by CVP), 17 and 18 December 2020 and 11 January 2021 (in chambers)

Representation
Claimant: Ms A Dannreuther (Counsel)
Respondent: Mr T Wood (Counsel)

DRAFT JUDGMENT

1. The claimant's complaints of unfair (constructive) dismissal and victimisation succeed.
2. The claimant's complaints of detriment (protected disclosure), automatic unfair dismissal (protected disclosure), direct race discrimination and direct sex discrimination fail and are dismissed.
3. The claimant has received her full notice pay and her complaint of wrongful dismissal is therefore dismissed.

REASONS

INTRODUCTION

Tribunal proceedings

4. Neither party objected to holding this hearing as a remote hearing. The form of remote hearing was "V: video - fully (all remote)". A face to face hearing was not held because it was not practicable and all issues could be determined at a remote hearing.
5. This claim has been case managed during three preliminary hearings:
 - 5.1 10 March 2020 (Employment Judge Evans);
 - 5.2 27 July 2020 (Employment Judge Brain); and
 - 5.3 2 December 2020 (Employment Judge Wade).
6. We considered the following evidence during the hearing:
 - 6.1 a joint file of documents and the additional documents referred to below;
 - 6.2 a video clip of the claimant's attendance at a friend's wedding; and
 - 6.3 witness statements and oral evidence from:
 - 6.3.1 the claimant;
 - 6.3.2 Mrs Samantha Barnes;
 - 6.3.3 Mr Paul Calderbank;
 - 6.3.4 Colette Macklin;
 - 6.3.5 Mr Richard Hanson (consisting of his original statement and a supplemental statement);
 - 6.3.6 Mrs Esther Waters;
 - 6.3.7 Mrs Angela Aspinall;
 - 6.3.8 Mr Ali Jan Haider;
 - 6.3.9 Mr Mubaaruck Ibrahim (consisting of his original statement and a supplemental statement);
 - 6.3.10 Ms Wendy Shuttleworth; and
 - 6.3.11 Mrs Sofia Beevers.
7. We also considered the helpful oral and written submissions made by both representatives.
8. The respondent disclosed a complete copy of an investigation report during the hearing. We discussed this document with the parties and included it in the hearing bundle.
9. The claimant applied to disclose additional documents on the fourth day of this hearing relating to her personal injury claim and request for CCTV footage. We heard submissions from both parties regarding this application and refused permission for the disclosure of these documents. The key reasons for refusing this application, taking into account the factors set out in the Tribunal's overriding objective, were:

- 9.1 it was not clear what the relevance was of these documents to the allegations in the list of issues;
 - 9.2 these documents were in the possession of the claimant's solicitors and could have been disclosed at an earlier stage;
 - 9.3 both parties would need to provide additional witness evidence regarding these documents, which would prejudice the respondent and delay the hearing of the evidence. We noted that the claimant's evidence had already concluded on the third day of the hearing.
10. The claimant also applied on the eighth day of the hearing for disclosure of the respondent's safeguarding policy and the handwritten statement of Pupil A on 4 July 2019. The respondent agreed to disclose the safeguarding policy but confirmed that the handwritten statement had been destroyed.

Adjustments

11. The respondent provided a fit note for Mr Ibrahim which stated that he was not fit enough to attend a hearing. The respondent also provided an occupational health report which stated that Mr Ibrahim could return to work on a reduced hours basis. However, Mr Ibrahim was adamant that he wished to provide evidence at this hearing and the respondent did not seek to make a postponement application.
12. We considered the medical information and discussed the matter with both parties' representatives and with Mr Ibrahim. We permitted Mr Ibrahim to take breaks every 15-20 minutes (or more often if required) during his evidence and his evidence was heard in two parts on the mornings of the sixth and seventh days of this hearing due to Mr Ibrahim's medical condition.
13. In addition, the respondent asked that Mr Ibrahim be permitted to provide answers to supplemental questions in a supplemental witness statement. We heard submissions from both parties and permitted this request to accommodate his medical condition.
14. Mr Hanson gave evidence on the fourth and fifth days of the hearing. He was not available to finish giving his evidence on the fifth day due to a medical appointment. The respondent said that he was unavailable on the sixth and seventh days of the hearing. We initially discussed and agreed with both parties Mr Hanson's remaining evidence (the Tribunal panel's questions and any re-examination) would be dealt with on the eighth day of the hearing. We later permitted the claimant's representative to ask some additional cross-examination questions of Mr Hanson on the eighth day of the hearing to deal with issues arising from the late disclosure of the full investigation report by the respondent.
15. We also reminded both parties that they could request additional breaks at any time if needed.

CLAIMS AND ISSUES

16. The list of issues was discussed with the parties in detail at the start of the hearing. The revised list of issues that the Tribunal considered in reaching its conclusions on this claim is set out below.
17. The claimant brought the following complaints under the Employment Rights Act 1996 (“**ERA**”) and the Equality Act 2010 (“**EQA**”):
 - 17.1 detriments on the grounds that she made protected disclosures (s43B ERA);
 - 17.2 automatic unfair (constructive) dismissal on the grounds that she made protected disclosures (s47B ERA);
 - 17.3 constructive unfair dismissal (s94 ERA);
 - 17.4 wrongful dismissal;
 - 17.5 direct sex discrimination (s13 EQA);
 - 17.6 direct race discrimination – the claimant describes herself as white (s13 EQA); and
 - 17.7 victimisation (s27 EQA).

LIST OF ISSUES

18. The claimant’s Counsel confirmed during the hearing that the claimant worked and has been paid for her full notice period. The claimant’s complaint of wrongful dismissal was therefore dismissed.

WHISTLEBLOWING DETRIMENT COMPLAINTS

Qualifying disclosure (s43B ERA)

19. The respondent accepts that the claimant made protected disclosures for the purposes of s43B ERA to Graham Waters and Sue Lovell on 25 June, 1 July and 3 July 2019 regarding Mr Karzi.

Detriment (s48ERA)

Time limits

20. Was each detriment complaint made within the time limit in section 48 ERA? The Tribunal will decide:
 - 20.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?

- 20.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
- 20.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
- 20.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Allegations

- 21. Did the respondent do the things set out at Annex 1?
- 22. By doing so, did it subject the claimant to detriment?
- 23. If so, was it done on the ground that she made a protected disclosure?

COMPLAINTS RELATING TO TERMINATION OF EMPLOYMENT

All complaints (unfair (constructive) dismissal, wrongful dismissal and automatically unfair dismissal)

- 24. Did the respondent dismiss the claimant? In particular:
 - 24.1 Did the respondent do the things set out at Annex 2?
 - 24.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:
 - 24.2.1 whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and
 - 24.2.2 whether it had reasonable and proper cause for doing so.
 - 24.3 Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.
 - 24.4 Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.
- 25. What was the reason for the claimant's dismissal?
- 26. Was the reason or principal reason for dismissal that:
 - 26.1 the claimant made the protected disclosures referred to above; or
 - 26.2 some other substantial reason ("**SOSR**"), i.e. the breakdown in the relationship between the parties.
- 27. If it was SOSR, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant?

EQUALITY ACT 2010 CLAIMS

Time limits

28. Were the discrimination and victimisation complaints made within the time limit in section 123 EQA? The Tribunal will decide:
 - 28.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 28.2 If not, was there conduct extending over a period?
 - 28.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 28.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 28.5 Why were the complaints not made to the Tribunal in time?
 - 28.6 In any event, is it just and equitable in all the circumstances to extend time?

Direct discrimination (sex and race)

29. Did the respondent do the things set out at Annex 3?
30. If the respondent did the things set out at Annex 3, was that less favourable treatment? The claimant compares herself to the comparators set out in the table below.
31. If so, was it because of the claimant's protected characteristic (identified at Annex 3 in respect of each act)?

Victimisation (s27 EQA)

32. The respondent accepts that the bringing of these proceedings was a protected act.
33. Did the respondent deliberately withhold and/or delay the issue of a reference to her prospective employers?
34. By doing so, did it subject the claimant to a detriment (or detriments)?
35. If so, was it because the claimant brought these proceedings?

RELEVANT LAW

36. The Tribunal has considered the legislation and caselaw referred to below, together with any additional legal principles referred to in the parties' written submissions.

EMPLOYMENT RIGHTS ACT 1996 (“ERA”) CLAIMS

37. Complaints of whistleblowing detriment, automatic unfair dismissal and ordinary unfair dismissal are dealt with in the ERA.

Detriment claims

38. The respondent has accepted that the claimant’s emails of 25 June, 1 and 3 July 2019 amount to a protected disclosure for the purposes of s43B of the ERA. S47B of the ERA sets out a worker’s right not to be subjected to a detriment on the ground that they have made a protected disclosure.

47B Protected disclosures

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

...

- (2) ...this section does not apply where –

...

- (b) the detriment in question amounts to dismissal...

....

39. The test of whether an act or omission is a ‘detriment’ for the purposes of a whistleblowing complaint is the same as for a discrimination complaint. The House of Lords in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 held that whether an act amounts to a detriment requires the Tribunal to consider:

39.1 Would a reasonable worker take the view that he was disadvantaged in terms of the circumstances in which he had to work by reason of the act or acts complained of?

39.2 If so, was the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment?

40. We note that the Court of Appeal in *Deer v University of Oxford* [2015] IRLR 481, held the conduct of internal procedures can amount to a ‘detriment’ even if proper conduct would not have altered the outcome. However, the House of Lords in *Shamoon* also approved the decision in *Barclays Bank plc v Kapur & others (No.2)* [1995] IRLR 87 that an unjustified sense of grievance cannot amount to a ‘detriment’.

Burden of proof and drawing of inferences – detriment claims

41. In *International Petroleum Ltd and others v Ospiov and others* EAT 0058/17, the EAT set out the correct approach to whistleblowing detriment complaints as follows:

41.1 the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which she is subject is her protected disclosure;

- 41.2 s48(2) ERA then requires the employer to show why the detrimental treatment was done. If the employer fails to do so, inferences may be drawn against the employer. However, these inferences must be justified by the Tribunal's findings of fact.

Time limits – detriment claims

42. The time limit for bringing detriment complaints is set out at s48(3) of the ERA as follows:

S48 – Complaints to employment tribunals

...

- (3) An employment tribunal shall not consider a complaint under this section unless it is present –

- (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

- (b) within such further period as the tribunal consider reasonable in a case where it is satisfied it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

- (4) For the purposes of subsection (3) –

- (a) Where an act extends over a period, the “date of the act” means the last day of that period and

- (b) A deliberate failure to act shall be treated as done when it was decided on;

And, in the absence of evidence establishing the contrary, an employer...shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

43. In *Arthur v London Easter Railway Ltd* [2006] EEWCA Civ 1358, Lord Justice Mummery held:

“In order to determine whether the acts are part of a series some evidence is needed to determine what link, if any, there is between the acts in the 3 month period and the acts outside the 3 month period.... It is necessary to look at all the circumstances surrounding the acts. Were they all committed by fellow employees? If not, what connection, if any, was there between the alleged perpetrators? Were their actions organised or concerted in some way. It would also be relevant to inquire why they did what is alleged.”

44. The courts have considered the position on time limits where a claimant has received legal advice. Lord Denning MR set out the principles to be considered when determining time limits in the case of *Dedman v British Building and Engineering Appliances Ltd* [1974] ICR 53 EWCA (restated in *Wall's Meat Co Ltd v Khan* [1979] ICR 52), including:

- 44.1 the reasons for the failure to meet the deadline;

- 44.2 whether there was acceptable ignorance of the fact, either by the claimant or her advisers; and
 - 44.3 other factors, such as awaiting information from the employer, physical impediments, illness etc.
45. The burden of satisfying the Tribunal that it was not reasonably practicable to present the claim on time rests firmly on the claimant (*Porter v Bandridge Ltd* [1978] IRLR 271 EWCA). In addition, the Tribunal must consider what would be a reasonable time within which to present a late claim taking into account the circumstances of the case. These circumstances include the claimant's knowledge (or what she reasonably ought to have known) of time limits and the reason for the further delay in presenting the complaints.
46. The test set out in *Dedman* may appear harsh where a claimant has sought legal advice from a skilled adviser, such as a trade union representative. However, it has been affirmed, for example by the Court of Appeal in *Marks and Spencer plc v Williams-Ryan* [2005] ICR 1293.
47. The Tribunal must determine whether the adviser's failure to give correct advice was itself reasonable, thus rendering it not reasonably practicable for the claimant to bring a claim in time. For example:
- 47.1 in *Northamptonshire County Council v Entwhistle* [2010] IRLR 740, the Council had informed the claimant of an incorrect time limit and the claimant's solicitor failed to spot this error. The EAT held that the claimant's solicitor had acted negligently in failing to check the date the time limit expired and it was therefore reasonably practicable for the claimant to present his claim within the time limit;
 - 47.2 in *Paczkowski v Sieradzka* [2017] ICR 62, EAT, the claimant sought to bring a complaint of automatic unfair dismissal one month after the time limit expired. She had received advice previously from the CAB, ACAS and her trade union that she could not bring a complaint of unfair dismissal because she did not have two years' service. The EAT held that the question for the Tribunal to consider was whether the adviser's failure to give complete advice was reasonable and that this depended on the status of the adviser, the context in which the advice was given, the information that the claimant provided and the questions that the adviser asked of her.

Dismissal claims

48. The right not to be unfairly dismissed is set out in s94 of the ERA.

Constructive dismissal

49. In order to bring a claim for unfair dismissal under s111 of the ERA, the claimant must first show that her resignation amounted to a 'dismissal', as defined under s95(1) ERA.

s95 - Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) and section 96, only if)—...

...

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

50. The claimant must show the following key points to demonstrate that her resignation amounted to a dismissal under s95(1) of the ERA:

50.1 that a fundamental term of her contract was breached;

50.2 that she resigned in response to that breach; and

50.3 that she did not waive or affirm that breach.

51. Employees sometimes rely on a particular act or omissions as being the 'last straw' in a series of events. In the case of *Omilaju v Waltham Forest Borough Council* [2005] IRLR 35 it was held the last straw may not always be unreasonable or blameworthy when viewed in isolation. But, the last straw must contribute or add something to the breach of contract.

Mutual trust and confidence

52. The implied term of mutual trust and confidence was held in the cases of *Malik v Bank of Credit and Commerce International SA* [1997] IRLR 642 (as interpreted by the EAT in *Baldwin v Brighton and Hove City Council* [2007] IRLR 232) as follows:

"The employer shall not without reasonable and proper cause conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

53. It is not necessary for the employer to intend to breach the term of trust and confidence (*Leeds Dental Team Ltd v Rose* [2014] IRLR 8): *"The test does not require an ET to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence then he is taken to have the objective intention..."*

54. In *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] IRLR 833, Underhill LJ considered previous caselaw and held that the Tribunal must consider the following questions:

"(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?

(2) Has he or she affirmed the contract since that act?

(3) If not, was that act (or omission) by itself a repudiatory breach of contract?

(4) *If not, was it nevertheless a part...of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation...)*

(5) *Did the employee resign in response (or partly in response) to that breach?"*

Affirmation

55. We note the cases referred to by the claimant's Counsel in which it was held that the receipt of sick pay itself does not amount to an affirmation of an employee's contract.
56. The claimant's Counsel also referred us to *Cockram v Air Products plc* UK EAT 38/14 in which it was held that post-resignation affirmation is rare.

Respondent's reason for dismissal

57. If the claimant's resignation amounted to a dismissal, then we must consider whether the respondent is able to establish a fair reason for that dismissal, together with the fairness of any procedure followed regarding such dismissal.
58. If the reason (or principal reason) for the dismissal is that the claimant made a protected disclosure, then her dismissal would be automatically unfair under s103A of the ERA. If not, the Tribunal will need to consider the respondent's contention that the claimant was dismissed due to some other substantial reason, i.e. the breakdown in the employment relationship under s98 of the ERA.

98 General

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair it is for the employer to show –
 - (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

...

103A Protected disclosure

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

EQUALITY ACT 2010 ("EQA") CLAIMS

59. Discrimination includes direct discrimination and victimisation. Direct discrimination, harassment and victimisation are defined by the EQA as follows:

13 Direct discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

...

27 Victimisation

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because -
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

- (2) Each of the following is a protected act –

...

- (d) making an allegation (whether or not express) that A or another person has contravened this Act.

...

60. In addition, s23 of the EQA states in relation to comparators for direct discrimination cases that:

23 Comparison by reference to circumstances

- (1) On a comparison of cases for the purposes of section 13...there must be no material difference between the circumstances relating to each case.

...

Direct discrimination

61. There are two key questions that the Tribunal must consider when dealing with claims of direct discrimination:

61.1 was the treatment alleged 'less favourable treatment', i.e. did the respondent treat the claimant less favourably than it treated or would have treated others in not materially different circumstances;

61.2 if so, was such less favourable treatment because of the claimant's protected characteristic?

62. However, the Tribunal can, in appropriate cases, consider postponing the question of less favourable treatment until after they have decided the 'reason why' the claimant was treated in a particular way (*Shamoon v Chief Constable of the Royal Ulster Constabulary* 2003 ICR 337 HL).

63. In relation to less favourable treatment, the Tribunal notes that:

63.1 the test for direct discrimination requires an individual to show more than simply different treatment (*Chief Constable of West Yorkshire Police v Khan* 2001 ECR 1065 HL);

- 63.2 an employee does not have to experience actual disadvantage for the treatment to be less favourable. It is sufficient that an employee can reasonably say that they would have preferred not to be treated differently from the way an employer treated or would have treated another person (cf paragraph 3.5 of the EHRC Employment Code); and
- 63.3 the motive and/or beliefs of the parties are relevant to the following extent:
 - 63.3.1 the fact that a claimant believes that he has been treated less favourably does not of itself establish that there has been less favourable treatment (see, for example, *Shamoon*);
 - 63.3.2 in cases where the conduct is not inherently discriminatory, the conscious or unconscious 'mental process' of the alleged discriminator is relevant (see, for example, *Amnesty International v Ahmed* 2009 ICR 1450 EAT); and
 - 63.3.3 for direct discrimination to be established, the claimant's protected characteristic must have had a 'significant influence' on the conduct of which he complains (*Nagarajan v London Regional Transport* 1999 ICR 877 HL).
- 64. The Tribunal also notes that if an employer treats all employees equally unreasonably, it is not appropriate to infer discrimination (see, for example, *Laing v Manchester City Council & another* 2006 ICR 1519 EAT and *Madarassy v Nomura International plc* 2007 ICR 867 CA).

Victimisation

- 65. There are four key questions which the Tribunal must bear in mind when considering a claim for victimisation:
 - 65.1 Did either:
 - 65.1.1 the claimant do a protected act; or
 - 65.1.2 the respondent believe that the claimant had done or might do a protect act?
 - 65.2 Did the claimant suffer a detriment (or detriments)?
 - 65.3 If so, what was the reason for such detriment (or detriments)?
 - 65.4 Did the respondent subject the claimant to such detriment (or detriments) because the claimant did (or might do) a protected act?
- 66. The respondent in this case accepts that the claimant did the protected acts set out in the List of Issues and does not seek to advance any defence under s27(3) EQA.
- 67. The law referred to above at paragraphs 39 and 40 in relation to whistleblowing detriments also applies to detriments relating to victimisation complaints.

68. In terms of causation, the respondent must subject the claimant to a detriment because he did (or might do) a protected act. The Court of Appeal held in *Greater Manchester Police v Bailey* [2017] EWCA Civ 425 that the 'but for' test does not apply.
69. If detriment is established, the issue of the respondent's state of mind is relevant to establishing whether there is a necessary link in the mind of the alleged discriminator between the doing of the protected acts and the less favourable treatment (see *Nagarajan v London Regional Transport* [1999] IRLR 572 and *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830). However:
- 69.1 there is no requirement for the claimant to show that the alleged discriminator was wholly motivated to act by the claimant's protected act (*Nagarajan*). Where there is more than one motive in play, all that is needed is that the discriminatory reason should be of 'sufficient weight' (*O'Donoghue v Redcar and Cleveland Borough Council* [2001] IRLR 615, CA); and
- 69.2 the respondent will not be able to escape liability by showing an absence of intention to discriminate if the necessary link between the doing of the acts and less favourable treatment exists.

Burden of proof – EQA complaints

70. The burden of proof for discrimination and victimisation complaints is dealt with by s 136 Equality Act 2010, as follows:

136 Burden of proof

...

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

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

...

(6) A reference to the court includes a reference to -
(a) an employment tribunal;

...

71. The Court of Appeal in *Igen Ltd v Wong* [2005] ICR 931 gave guidance as to the application of the burden of proof provisions. That guidance remains applicable under the EQA (see *Ayodele v Citylink Ltd* [2017] EWCA Civ 1913). The guidance outlines a two-stage process:

- 71.1 First, the claimant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an unlawful act of discrimination against the complainant. That means that a reasonable tribunal could properly so conclude, from all the evidence before it. A mere difference in status and a difference of

treatment is not sufficient by itself: see *Madarassy v Nomura International plc* [2007] ICR 867, CA.

- 71.2 The second stage, which only applies when the first is satisfied, requires the respondent to prove that it did not commit the unlawful act.
72. The Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054 made clear that it is important not to make too much of the role of the burden of proof provisions. Those provisions will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they are not required where the Tribunal is able to make positive findings on the evidence one way or the other.

Time limits – EQA complaints

73. The time limit for bringing a complaint under the EQA is set out at s123 of the EQA as follows:

123 Time limits

- (1) Proceedings on a complaint within section 120 may not be brought after the end of –
- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.

...

- (3) For the purposes of this section –
- (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.

Continuing acts

74. The Court of Appeal in *Hendricks v Metropolitan Police Commissioner* [2003] IRLR 96, [2003] ICR 530 held that the focus of inquiry must be not on whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but rather on whether there was an ongoing situation or continuing state of affairs during which the claimant was treated less favourably. The Court of Appeal held that the claimant was entitled to pursue her claim on the basis that the burden was on her to prove, either by direct evidence or inference, that the numerous alleged incidents of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs.
75. Where a series of acts are alleged to amount to discrimination, a finding that one or more was not discriminatory will mean that it cannot be considered to be part of a continuing act (*South Western Ambulance NHS Foundation Trust v King* [2020] IRLR 168 EAT).

Just and equitable discretion

76. The discretion to extend time limits under the 'just and equitable' test is much broader than that given to tribunals under the 'not reasonably practicable' formula (see, for example, *British Coal Corporation v Keeble* [1997] IRLR 336 EAT). However, the onus remains on the claimant to explain why it is just and equitable

to extend the time limit and any exercise of the Tribunal's discretion is the exception, rather than the rule (*Robertson v Bexley Community Centre* [2003] IRLR 434 CA). The Tribunal can take into account a wide range of factors when considering whether to exercise its discretion (*Keeble, Southwark London Borough v Alfolabi* [2003] IRLR 2020), including:

- 76.1 the length of and reasons for the delay;
 - 76.2 the extent to which the cogency of the evidence is likely to be affected by the delay;
 - 76.3 the extent to which the party sued had co-operated with any requests for information;
 - 76.4 the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and
 - 76.5 the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.
77. These factors could include consideration of:
- 77.1 the presence or absence of any prejudice to the respondent if the claim is allowed to proceed (other than the prejudice involved in having to defend proceedings);
 - 77.2 the presence or absence of any other remedy for the claimant if the claim is not allowed to proceed;
 - 77.3 the conduct of the respondent subsequent to the act of which complaint is made, up to the date of the application;
 - 77.4 the conduct of the claimant over the same period;
 - 77.5 the length of time by which the application is out of time;
 - 77.6 the medical condition of the claimant, taking into account, in particular, any reason why this should have prevented or inhibited the making of a claim; and
 - 77.7 the extent to which professional advice on making a claim was sought and, if it was sought, the content of any advice given.
 - 77.8 Where a claimant asserts ignorance of the right to make a claim, the assertion must be genuine and the ignorance – whether of the right to make a claim at all, or the procedure for making it, or the time within which it must be made – must be reasonable. The claimant's knowledge of both the facts that could potentially give rise to a claim and the existence of a legal right to pursue a claim are relevant and should be taken into account (see *Bowden v Ministry of Justice* UKEAT/0018/17).

FINDINGS OF FACT

Potential personal injury claim

78. The claimant is currently taking legal advice in relation to a potential personal injury claim relating to an incident on 20 May 2019, which the claimant alleges led to her suffering from carpal tunnel syndrome. For the avoidance of doubt, we have not made any findings of fact in relation to the claimant's potential personal injury claim.

Potential safeguarding issues

79. The parties raised with us the issue of whether certain incidents could amount to safeguarding issues, which potentially could require the respondent to report these to the relevant authorities. For the avoidance of doubt, we have not made any findings of fact as to whether any matter falls within any legislation or guidance on safeguarding matters.

Context

80. This case is heavily dependent on evidence based on people's recollection of events that happened some time ago. In assessing the evidence relating to this claim, I have borne in mind the guidance given in the case of *Gestmin SGPS -v- Credit Suisse (UK) Ltd* [2013] EWHC 3560. In that case, the court noted that a century of psychological research has demonstrated that human memories are fallible. Memories are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe our memories to be more faithful than they are. External information can intrude into a witness' memory as can their own thoughts and beliefs. This means that people can sometimes recall things as memories which did not actually happen at all.
81. The process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially *parties or those with ties of loyalty to the parties*. *It was said in the Gestmin case: "Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."*
82. We wish to make it clear that simply because we do not accept one or other witness' version of events in relation to a particular issue does not mean that we consider that witness to be dishonest or that they lack integrity.

Background

83. The respondent is a multi-academy trust company limited by guarantee. The respondent's senior leadership who look after all academies within the Trust include:

- 83.1 Mr Ibrahim – CEO;
 - 83.2 Mrs Aspinall – Director of Operations and Infrastructure;
 - 83.3 Mrs Beevers – Head of HR;
 - 83.4 Mrs Jackie Petriaho – Lead School Improvement Officer;
 - 83.5 Ms Gill Smith – School Improvement Officer;
 - 83.6 Mr Daniel Mountain – Head of Finance;
 - 83.7 Mr Mohammed Hussein – former Finance Officer (promoted to Finance Manager); and
 - 83.8 Mr Haider – non-executive Chair of the Board of Trustees for the respondent.
84. The claimant was initially employed by the Local Education Authority (Bradford Council) as a newly qualified teacher from 1 September 2012 at the Queensbury site (the “**School**”). Feversham Education Trust (the “**Trust**”) took over the running of the School in September 2016, at which point the Trust became the employer of the claimant and all other School staff.
85. The School’s Principal was responsible for the day to day running of the School. The role of Principal was held by:
- 85.1 Mrs Collette Macklin (on an interim basis) from 1 January 2018 to 1 January 2019;
 - 85.2 Mr Richard Hanson from 1 January 2019 onwards. Mrs Maria Mongahan (Vice Principal) covered his role during his sickness absence from December 2019 until April 2020.
86. The School’s Senior Leadership Team also included:
- 86.1 Mrs Lyndsey Hall – Assistant Principal, responsible for Teaching & Learning and line manager for various Heads of Departments;
 - 86.2 Mrs Esther Waters – Director of Learning and line manager for various Heads of Departments (including Modern Foreign Languages);
 - 86.3 Mr Graham Waters – Assistant Principal, responsible for Student Support and Behaviour, amongst other matters;
 - 86.4 Mrs Sue Hosker – Business Manager, responsible for the School’s finance, HR and Business Services until around October 2019.
87. In addition, Ms Sue Lovell was the Student Services Manager, reporting into Mr Waters at the relevant time.
88. The School did not have a permanent HR Officer during most of 2019. Mr Matthew Farrell performed this role on a temporary basis until the end of the school term in July 2019. There was then a vacancy until Ms Rachel Smith joined the School as a HR Officer in December 2019.

89. The claimant's role at the time that her employment terminated on 17 April 2020 was that of Head of Modern Foreign Languages. She reported into Mrs Waters, Assistant Principal at the School.

Recruitment for Head of MFL role – February and May 2018

90. Mr Ibrahim joined the Trust as its CEO in January 2018. However, he had been in contact with the Trust and its academies (including the School) since September 2017. Mrs Macklin joined the School as Interim Principal in January 2018. Both Mr Ibrahim and Mrs Macklin met with the School's Heads of Departments (both permanent and temporary) during the first few weeks of their appointment.
91. The claimant was the temporary Head of Modern Foreign Languages ("**Head of MFL**") at that time. Mrs Macklin and Mr Ibrahim had a discussion with her regarding her department. They discussed their first impressions of the claimant. Mr Ibrahim had some concerns regarding the claimant's ability to improve results. For example, he asked her questions regarding the cohort of students who had taken exams in the Summer of 2018 which she was unable to answer. Mr Ibrahim also thought the claimant had an 'abrupt' manner. Mrs Macklin did not share those concerns. She regarded the claimant as "an asset" to the School and believed that the claimant knew how to improve the delivery of her subject.
92. The School decided to advertise for a permanent Head of MFL. The claimant applied for the role, along with one external candidate. The interviews were arranged for February 2018 and consisted of a formal lesson observation and an interview. However, the external candidate was not interviewed due to the poor standard of their lesson observation. The claimant performed the teaching assessment and was the sole candidate interviewed. The interview panel included Mrs Macklin and Mrs Hosker.
93. Mr Ibrahim also attended the claimant's interview, although he did not attend the claimant's lesson observation. The respondent did not disclose any notes of the interview. We accept the claimant's evidence that Mr Ibrahim asked questions during the interview because Mr Ibrahim was unable to recall if he asked any questions or not. Mr Ibrahim was asked for and provided his opinion of the claimant's performance during the interview. Mr Ibrahim stated that he was unsure whether the claimant would be able to deliver the standards required, against the backdrop of the School's drive to improve its poor exam results.
94. There was a dispute between the parties as to whether Mr Ibrahim was also part of the formal interview panel and, if not, whether he influenced the panel's decision. Mrs Macklin and the claimant said that Mr Ibrahim was part of the panel, whereas Mr Ibrahim's evidence was that his role was that of an observer.
95. We have concluded that Mr Ibrahim was not part of the formal interview panel but that he did influence the interview process. The key reasons for our conclusions are:
- 95.1 We accept Mr Ibrahim's evidence that he was not part of the formal panel because if he were, he would have insisted on interviewing the external

candidate as well. We note that Mr Ibrahim considered that the external candidate may have been at a disadvantage during the lesson observation, compared to the claimant, because they did not know the school or students. We also accept his evidence that interviewing the external candidate would have provided a benchmark for the claimant's interview.

- 95.2 We accept Mrs Macklin would have preferred to offer the claimant the role of Head of MFL on a permanent basis because it was difficult to recruit language teachers at that time. However, Mr Ibrahim's concerns about the claimant's ability to deliver improved exam results led Mrs Macklin and Mrs Hosker to conclude that the claimant's temporary role would be extended until 31 August 2018. Mrs Macklin explained this decision to the claimant at the time, who reported in an email on 21 May 2018:

"Following the interview process, you rang me offering me [the] position as I was "by far the superior candidate", but also stated that it came with a "clause", as Mubaaruck was "unsure as to whether I could deliver results"."

96. The claimant's position was confirmed in a letter dated 17 May 2018 from Mrs Hosker which stated:

"I write to confirm that following your interview on 22 February 2018 you were promoted to Acting Head of Department and awarded a temporary TLR1b from 1 March 2018 to 31 August 2018."

97. The School decided to re-advertise for a permanent Head of MFL to ensure that a permanent Head was in place for the start of the new academic year in September 2018. Due to the timescales involved in education recruitment, the role had to be advertised before the exam results were published in August 2018. The role was advertised on the eTeach website on 30 April 2018 with a closing date of 10 May 2018. Interviews were arranged for 23 May 2018. The claimant and one external candidate, Mr Mohammed Bencherif, applied for the role.
98. Mr Bencherif had previously worked with Mr Ibrahim at Tauheedal Islam Boys' School in Blackburn, where Mr Ibrahim had previously performed the role of Principal. Mr Bencherif asked to speak to Mr Ibrahim about the Trust's plans and aspirations before his interview and they spoke in early May 2018. We accept Mr Ibrahim's evidence that he would have held similar discussions with the claimant, or another other candidate, if requested by that candidate.
99. The claimant and Mr Bencherif were not required to undergo a formal lesson observation because Mr Bencherif was working in Dubai at that time. He was originally due to return to the UK in time for the interview, but was unable to do so due to unforeseen events. Both candidates were interviewed by Mrs Macklin, Mrs Monaghan and Mrs Hosker using agreed standard questions. Mr Bencherif's interview took place by Skype.
100. The claimant confirmed at the end of her interview that she believed that the interview itself was fair, but queried why the School had not required a formal

lesson observation as part of the recruitment process. We accept Mrs Macklin's evidence that she told Mr Bencherif that a lesson observation was normally part of the School's recruitment process and, if he were appointed, his appointment would be subject to a lesson observation during his probationary period.

101. The interview panel decided that both candidates had different strengths and that they wished to appoint the two of them as joint Heads of MFL because:

101.1 both had interviewed well and had strong references;

101.2 we accept Mrs Macklin's evidence that the claimant had demonstrated her ability to perform the role during her time with the School and Mr Bencherif had achieved very good exam results; and

101.3 we also accept Mrs Macklin's evidence that it was difficult to recruit language teachers at that time and that neither candidate was likely to accept a lower grade post.

102. The interview panel also decided to allocate both the claimant and Mr Bencherif additional responsibilities to justify both of them receiving the full Teaching & Learning Responsibility Payment ("TLR") advertised for the sole Head of MFL role.

103. We find that Mr Ibrahim did not interfere in the interview panel's decision to appoint joint Heads of MFL. The key reasons for our decision include:

103.1 We accept Mrs Macklin's and Mr Ibrahim's evidence that it was the interview panel's decision to appoint joint Heads of MFL. Mrs Macklin then approached Mr Ibrahim for permission because of the financial implications of the joint appointment. Mr Ibrahim checked the School's finances and confirmed that the School could afford to make the joint appointment.

103.2 We accept Mr Ibrahim's evidence that if it had been his decision, he would not have chosen to appoint joint Heads of MFL. We also accept Mr Ibrahim's evidence that he would have had concerns about Mr Bencherif's appointment because Mr Bencherif had not stayed long in his previous roles. Mr Ibrahim did not believe that Mr Bencherif had sufficient resilience to work in the challenging circumstances at the School at that time.

104. The claimant was allocated:

104.1 responsibility for Key Stage Four (consisting of three year groups); and

104.2 Teaching and Learning Coach responsibilities (which fell within Mrs Hall's remit).

105. The claimant received a letter dated 29 May 2018 confirming the changes to her contract which stated:

"I write to confirm that you were promoted to Head of Languages and Teaching & Learning Coach. A TLR1b is attached to this post and you will take up the permanent position on Monday 04 June 2018."

106. Mr Bencherif commenced his appointment as joint Head of MFL in September 2018. Mr Bencherif subsequently resigned from his role with the School on 31 October 2018 and his employment terminated on 31 December 2018. As a result, the claimant performed the full duties of the Head of MFL role alongside her duties as a Teaching and Learning Coach.
107. The School did not re-advertise for a new joint Head of MFL. The claimant discussed the department's staffing, including with Ms Gill Smith (the Trust's School Improvement Officer). Email discussions took place between Ms Smith, Mrs Petriaho and others. During these emails, Ms Smith noted that the claimant "said she wants to continue with her whole school T&L work and wouldn't have time if she was sole leader with no other TLRs in the department".
108. Mrs Macklin then contacted the Trust's finance officers (Mr Mountain and Mr Hussain) to ask for budgetary approval for the appointment of a temporary TLR2 and other teaching staff who were recruited during 2019.

Claimant's back pay settlement

109. The claimant, with the assistance of Ms Alison Hill (National Education Union representative), raised a complaint regarding her pay progression during her two periods of maternity leave in 2015 and 2016. These periods of maternity leave took place when the School's staff were employed by Bradford Council.
110. The claimant and the respondent entered into a settlement agreement on 21 February 2019. The respondent agreed to pay the claimant a 'recruitment and retention fee' of £5000, to be paid in three instalments during February 2019, August 2019 and February 2020. These sums were paid before the claimant's employment terminated.
111. We accept the claimant's evidence that this sum was less than the back pay to which she believed she was entitled. We also accept Mr Ibrahim's evidence that he agreed that the Trust would investigate the matter and offer settlement as a gesture of goodwill towards the claimant, given the lapse in time since her maternity leave periods.

Incident on 20 May 2019

112. The claimant alleges that her wrist was injured when walking through a swing door at the School on 20 May 2019. The claimant has not brought a personal injury claim, although the claimant's personal injury solicitors have been in correspondence with the School's insurers regarding her potential claim.

Mr Farhan Kazi's relationship with staff at the respondent

113. Mr Farhan Kazi was employed by the School from 26 February 2018. His role at that time was Student Services Officer (Y11). Mr Kazi had previously worked with Mr Ibrahim at Tauheedal Islam Boys' School.
114. We accept that Mr Kazi did tell the claimant and others that he was close to senior management, including Mr Ibrahim. However, we do not accept that this reflected the reality of Mr Kazi's relationship with Mr Ibrahim. We find that Mr Ibrahim and

Mr Kazi had a good working relationship, but that they did not have a personal relationship outside of work. In particular, we find that Mr Kazi did not go for dinner with Mr Ibrahim.

115. We find that Mr Kazi ostensibly got on well with everyone at the School. We accept Mr Ibrahim's evidence that Mr Kazi was outgoing and appeared 'close' to people after a short period of time. Mr Kazi stated during his grievance interview that he noted that the claimant's tone was normally 'friendly towards him' and he recalled times when they went for breaks together. However, we also accept the evidence provided in the minutes of the grievance interviews with various witnesses that Mr Kazi could behave erratically.
116. We also note that the claimant has raised allegations that Mr Ibrahim had close personal relationships with other staff of the respondent, including Mr Hussein. We find that there is no evidence to suggest that the Trust promoted Mr Hussein from the role of Finance Officer to Finance Manager on any basis other than merit. We do not accept the claimant's contention that a conversation where Mr Ibrahim asked Mr Hussein to explain his nickname of 'Mabs' provides any basis to suggest that Mr Ibrahim and Mr Hussein had a close relationship outside of work.

Claimant's complaints regarding Mr Kazi – late June/early July 2019

117. The claimant was concerned about Mr Kazi's conduct towards students and spoke with Mrs Hosker because the claimant was unsure as to how she should raise these matters. The claimant raised three complaints regarding Mr Kazi's behaviour towards students by email to Mr Waters on 25 June, 1 and 3 July 2019.
- 117.1 25 June 2019 email at 7.55pm to Mr Waters, copied to Ms Lovell:
"Farhan appeared to be shouting in an aggressive fashion in very close to [X's] face...it was clear that [X] was visibly distressed by this and was almost crying...This is not an isolated incident and I have seen this behaviour happen on numerous occasions with various pupils..."
- 117.2 1 July email to Mr Waters, copied to Ms Lovell, stating that Mr Kazi had instructed two pupils *"to stand up and face the wall whilst the other pupils worked in silence"*.
- 117.3 3 July email to Mr Waters, copied to Ms Lovell, Mrs Hosker and Mrs Hall:
"Farhan Kazi physically pulled a student [A], forcefully and aggressively, by the wrist into the room forcing him around the corner of the classroom, to bend down and put his sandwich in the bin. He then screamed aggressively in his face saying "DO AS [YOU'RE] TOLD LAD"."
118. The claimant provided a handwritten statement from Student A dated 3 July 2019. We accept that both the claimant and Mrs Monaghan were present when Student A wrote this statement.
119. The claimant also mentioned these incidents to Mrs Waters during their regular line management meeting on 3 and 10 July 2019. Mrs Waters summarised their discussions in the records of the meeting as:

“Unsafe practise – concern re member of staff...These to be passed on to [Mr Waters] for follow up.”

120. We note that Mr and Mrs Waters are married. We accept Mrs Waters’ evidence that she expected the claimant to follow up on these matters with Mr Waters and it was not appropriate for her to discuss this matter with Mr Waters either inside or outside of work.
121. We find that Mr Kazi was aware that the claimant had raised allegations against him, as set out in her emails to Mr Waters. However, we find that no one within the Trust or senior management at the School informed Mr Kazi directly that the claimant had made these complaints. The key reasons for our findings are:
 - 121.1 the claimant has not identified the member of staff whom she alleges told Mr Kazi of her complaint;
 - 121.2 the claimant and Mrs Barnes both gave evidence that the fact of the claimant’s complaints regarding Mr Kazi had been discussed in the staffroom, including with Ms Kath Cox. In addition, the grievance minutes with other staff, including Ms Sarah Ling, stated that they were aware that the claimant had raised complaints regarding Mr Kazi’s behaviour;
 - 121.3 the claimant had discussed her complaints with Mrs Hosker, Mr Waters, Mrs Waters and copied her emails to Mr Waters to Ms Lovell and Mrs Hall; and
 - 121.4 Mr Kazi would have known which teaching staff were in the vicinity at the time of the incident with Student A.
122. We find that Mr Kazi’s relationship with the claimant did not change significantly following the claimant’s complaints. We note that there was only a short period between the claimant’s complaints regarding Mr Kazi and the claimant going on sick leave from 17 July 2019 until the end of the school term.
123. Mr Kazi’s own grievance interview minutes record that he said he said that he *“sometimes he isolates himself from situations to let any tensions below over”*. Mrs Barnes made a similar observation in her grievance interview minutes. Mr Kazi said that he and the claimant had a disagreement about whether a pupil should be removed from her lesson and that she complained about him. Mr Kazi also said that he was isolated by staff including the claimant following a dispute around the School’s Leaver Prom arrangements (which took place towards the end of the School year). Ms Ling’s grievance interview supports this, stating that she did not observe any hostile behaviour from Mr Kazi to the claimant. Ms Ling and another colleague (Ms Tracey Moore) said that it was the claimant who disliked Mr Kazi.
124. We find that Mrs Barnes’ witness evidence regarding Mr Kazi was inconsistent with her statement during the claimant’s grievance investigation. Mrs Barnes stated in her grievance interview minutes that the relationship between the claimant and Mr Kazi was poor, but that Mr Kazi behaved in a similar manner towards several staff. We do not accept Mrs Barnes’ explanation of the discrepancies (that she was

unable to speak openly at the time) because she had referred to other staff complaints regarding Mr Kazi during her grievance interview.

Investigation into incident regarding Mr Kazi on 3 July 2019

125. The claimant provided a copy of the handwritten statement from Student A dated 3 July 2019 to Mr Waters. Witness statements were also obtained from the following individuals as part of the investigation:

- 125.1 three other students on 3 July 2019;
- 125.2 Mrs Sue Dean (Cleaner) on 3 July 2019;
- 125.3 Mr Louis Brown (PE teacher) on 5 July 2019; and
- 125.4 Mr Callum Best (Maths teacher) on 5 July 2019.

126. The investigation report states that:

- 126.1 the CCTV footage was viewed on 3, 5 and 8 July 2019;
- 126.2 Mrs Beevers watched the CCTV footage of the incident with Mr Waters;
- 126.3 Mrs Beevers and Mr Waters then re-interviewed Student A on 8 July 2019, having viewed the CCTV footage. Student A and Mr Waters signed a typed note of that interview.

127. The report concluded that:

“It is clear that [Mr Kazi] did take the pupil’s wrist and guide them to the bin in order to dispose of the hot food the pupil had in his hand. This was confirmed by CCTV and by the pupil. The CCTV clearly shows that [Mr Kazi] did not approach this in an aggressive [manner]...None of the other allegations put forward relating to aggressive behaviour or shouting/screaming at the pupil can be collaborated with any evidence.

It is apparent that [Mr Kazi] was under a large amount of stress due to assigning 14 lessons to cover out of 18 lessons in a three-day period and expecting [Mr Kazi] to complete his ‘day to day’ job role.

The recommendation is to proceed with Management Action and issue [Mr Kazi] with a Management Instruction Letter...”

128. We find that Mrs Beevers watched CCTV with Ms Lovell. Mr Waters’ account of the investigation during the grievance minutes appears to be at odds with the investigation report unless the discussion in the grievance minutes refers to the coercion allegations of Student A detailed on 15 July 2019. The respondent has chosen not to call Mr Waters as a witness. However, based on the documents and witness evidence we find that:

- 128.1 Mr Waters watched the CCTV with Mrs Beevers and Ms Lovell before preparing the report, with input from Mrs Beevers.

- 128.2 having viewed that footage, Mr Waters and Mrs Beevers considered the statements and discussed the matter again with Pupil A, before reaching the conclusions set out in the Investigation Report.
129. Mr Hanson stated that he reviewed the Investigation Report and prepared a letter setting out a 'Management Warning' for Mr Kazi which would remain on Mr Kazi's file for six months. Mr Hanson admitted under cross-examination that he did not watch the CCTV during his oral evidence, despite the wording of his letter to Mr Kazi which stated that he had viewed the CCTV footage.
130. We accept Mr Hanson's evidence that he then met with Mr Kazi and read the letter to Mr Kazi aloud. Mr Hanson's evidence was that this sanction was equivalent to a First Warning under the School's disciplinary policy at that time.

Coercion allegations – Student A

131. Student A spoke to Mr Hanson and alleged that the claimant had 'coerced' him into making allegations against Mr Kazi regarding the 3 July 2019 incident. We find that this discussion must have taken place after his meeting with Mr Waters and Mrs Beevers on 8th July 2019. Otherwise, Student A's allegations would have been considered as part of that investigation.
132. Student A was then interviewed by Mr Waters and Ms Lovell on 15 July 2019. He alleged that the claimant told him to write a statement complaining about FK's conduct:
- "Mrs Hotte told me I had to write everything down and told me I had to tell everybody that Mr Kazi had hurt me and that I should make sure I tell my parents. She was whispering it to me and told me she had done a witness statement about what Mr Kazi had done so I had to make sure I wrote down how much he hurt me."*
133. These allegations were never formally raised with the claimant. However, Mrs Beevers did raise them with the claimant's union representative on 16 July 2019, which is considered in more detail below.
134. Mrs Beevers stated in her later email to the claimant of 19 July 2019 that the investigation was ongoing. She stated: *"...the Trust has to treat complaints relating to the well-being of pupils very seriously...We simply cannot choose not to investigate a complaint that is raised by a pupil and because of this, the complaint raised by the pupil will have to continue to be investigated in accordance with the Academy's relevant policies and procedures."*
135. We find that Mrs Beevers and Mr Hanson decided not to progress the investigation into Student A's complaints at some point during the Summer holidays, although they did not notify the claimant of their decision. We accept Mrs Beevers' evidence that the reason why this matter was not progressed was because they had concerns regarding Student A's credibility, given his previous statements during the investigation with Mr Waters.

Tenerife trip (June 2019) and investigation (July and September 2019)

136. The School arranged a student trip to Tenerife. The trip took place for around a week from 17 June 2019. It was the School's first trip abroad since the Trust had taken over the running of the School and the first since Mr Hanson had become the Principal. The teaching staff on the trip were:
- 136.1 Ms Hannah Bithell – Trip Lead;
 - 136.2 the claimant – Deputy Trip Lead;
 - 136.3 Mr Waqas Ahmed;
 - 136.4 Mr Louis Brown;
 - 136.5 Mr Paul Calderbank;
 - 136.6 Mr Jorge Berenguer; and
 - 136.7 Ms Mona Ravandi.
137. Mrs Hosker (in her role as Educational Visits Co-ordinator), Ms Bithell and the claimant prepared the risk assessments for the trip. Mr Hanson reviewed the risk assessments and sought guidance from the Local Authority Educational Visits Advisor regarding the assessments.
138. Ms Bithell contacted Mrs Hosker during the trip regarding various incidents. These included:
- 138.1 Ms Bithell reporting that she was very tired and had only managed to have around 3 hours' sleep.
 - 138.2 Ms Bithell reported to Mrs Hosker that on the night of 19/20 June 2019, six students were found not to be in their rooms during room checks and were found around 10 minutes later in another room. Mrs Hosker emailed Ms Bithell to confirm her understanding of that conversation on 20 June 2019 and copied in Mr Waters and Mr Hanson.
139. Mr Ahmed raised concerns regarding the trip with Mr Hanson on the morning of 25 June 2019. Mr Ahmed sent an email at 3.06pm to Mr Hanson recording his concerns on the same day stating:
- “Some of the issues from the Tenerife trip:*
- 1. *[Students B and C] purchasing some cannabis lollies...*
 - 2. *...Some of the transgressions that [Student D] committed:*
 - a) *She refused to sleep in her assigned room....*
 - c) *...On Saturday morning, once we had disembarked of the coaches [Student D] walked off on her own at 2am. All students were reminded that they were not to leave without their parents and that students had to see them leave with their parents.”*

140. Mr Hanson's evidence during cross-examination on this issue was confused and inconsistent. He stated that he initially spoke to staff *"to find out the substance of what had gone on"*. Mr Hanson also said that: *"I initially spoke to the people on the trip – Mrs Hosker was there – the people then wrote statements and then Mrs Waters was then appointed to investigate due to the discrepancies that emerged."* He said that Mrs Waters was not at these meetings. However, Mrs Waters' said in her witness statement that she took the fact finding statements before preparing the investigation report. We prefer Mrs Waters' evidence that she took the fact finding statements, which were then reviewed and approved by the staff members, because her evidence is supported by the investigation minutes and emails with staff.
141. We find that Mr Hanson was not involved in the formal fact finding interviews. However, he did have discussions with Mr Ahmed and other staff along with Mrs Hosker, which is how the issue of the six missing students came to light.
142. Mr Hanson asked Mrs Waters to carry out an investigation into these issues. She interviewed all the staff who attended the trip. The first interviews were carried out on 28 June 2019 with Mr Calderbank and Mr Brown. The claimant and Ms Bithell were amongst the last staff interviewed by Mrs Waters on 8 July 2019.
143. Mrs Waters then invited all staff who attended the trip to attend formal investigations meetings. The reason for this was stated to be *"due to inconsistencies provided amongst the fact finding statements provided by staff"*. All staff were informed that the allegations relating to the trip were as follows:
- 143.1 pupils purchasing cannabis lollies, whilst under the care of teaching staff;
 - 143.2 Student B attempting to walk home unaccompanied at 2am;
 - 143.3 six pupils missing for an undetermined period of time;
 - 143.4 an uncertain number of pupils found in the wrong room; and
 - 143.5 a male pupil found in a female pupil's room.
144. The meetings with staff took place on 12 and 18 July 2019. Mrs Waters then produced individual investigation reports for each member of staff, setting out her findings in relation to each allegation, any 'supplementary issues' (including staff's co-operation and/or attitude towards the investigation), conclusions and her recommendation.
145. Mrs Beevers emailed Mrs Hosker and Mr Hanson on 23 July 2019, setting out the additional information that Mr Farrell needed in order to complete the investigating officer's reports into the trip relating to risk assessments and other matters.
146. The investigating officer's reports were completed at some point before the end of the Summer holidays. Mrs Waters' recommendations to Mr Hanson were as follows:
- 146.1 the claimant and Ms Bithell should be considered for disciplinary action; and

- 146.2 all the other teachers should be considered for 'management action', rather than disciplinary action.
147. Mrs Waters' findings in relation to the claimant were that:
- 147.1 the claimant was "directly responsible" for Student B attempting to walk home. Mrs Waters noted that: *"during the investigation [the claimant] took the opportunity multiple times to cast blame towards [Ms Bithell], with no recognition of her own responsibilities or actions."*
 - 147.2 the claimant did not 'fully check' the room for the six missing pupils and her 'inadequate checks' contributed towards pupils being able to move between rooms;
 - 147.3 the claimant's statements raised: *"serious concerns over [the claimant's] conduct as well as calling into question her honesty and integrity in answering the questions put to her"*.
148. Mr Farrell emailed all staff under investigation on 17 July 2019, stating that the School was attempting to conclude its investigation before the end of term. The email also asked whether staff would prefer to hear from the School over the Summer about the investigation outcome and next steps, or whether they would prefer to wait until the start of the new term in September.
149. The School did not take any further action in relation to any staff until the start of the new school term in September 2019. Mrs Hosker emailed Mrs Waters on 12 August 2019, reporting that Ms Bithell had texted her on 8 August 2019 stating: *"Hi can you find out what is going on with the investigation please. The stress and the waiting is making me ill."*
150. Mrs Waters sought advice from Mrs Beevers and told her to respond saying that they were trying to reach a conclusion, but that matters had been delayed due to the Summer holidays, resources and staff. Mrs Waters then emailed Ms Bithell on 15 August 2019 in those terms.

Middle leadership meeting – 15 July 2019

151. Mr Hanson arranged a middle leadership meeting on or around 15 July 2019. Mr Hanson's evidence was that this meeting took place in late June/early July. However, we do not accept his evidence because it is contradicted by several witnesses who were interviewed as part of the respondent's later investigation into the claimant's grievance.
152. The meeting was attended by the Heads of Department. During the meeting, matters were discussed including:
- 152.1 the school timetable for the new academic year; and
 - 152.2 standards of professional dress.
153. No minutes were taken of this meeting. The claimant took notes of the meeting on her mobile phone. Other staff members also took notes, some using electronic devices and others in notebooks.

154. The claimant alleges at this meeting that Mr Hanson reprimanded her for taking notes on her phone, but that he did not reprimand a male teacher (Mr Chris Baines) who was also taking notes on his phone.
155. We find that Mr Hanson asked the claimant to stop using her phone when he handed out documents during the meeting. We find that he did said words along the lines of “*sorry Jo, have you got something better to do?*”. The key reasons for our findings are:
- 155.1 Mrs Barnes recalled Mr Hanson making a similar comment during the grievance meeting minutes of 7 February 2020 (“*Jo – have you something more important to do?*”);
 - 155.2 the claimant’s grievance letter referred to Mr Hanson asking her to get off her phone, but did not state the specific words used; and
 - 155.3 the other witnesses interviewed as part of the claimant’s grievance did not recall what was said (including Mr Baines, Dr Farhat Marston and Ms Khadijah Miah).
156. We find that the claimant was briefly embarrassed by Mr Hanson’s comment. However, the moment passed quickly and most of the grievance witnesses interviewed did not think there was a ‘big scene’ and ‘didn’t think anything of it’ (for example, Ms Steph Goodall and Ms Miah). Ms Goodall commented that when the claimant said that she was using her phone to take notes, Mr Hanson ‘seemed fine with her doing this’.
157. We find that Mr Chris Baines was using his mobile phone but that Mr Hanson did not see him doing so. The key reasons for our findings are:
- 157.1 Mr Baines did not recall the meeting but said that he sometimes used his phone (eg to take pictures of slides) or picked it up (eg to turn it on silent);
 - 157.2 Dr Marston recalled that Mr Baines may have had his phone out, but could not be sure;
 - 157.3 Ms Goodall stated that she had not seen the claimant using her phone until Mr Hanson mentioned it and that she did not see anyone else; and
 - 157.4 Ms Miah thought that only the claimant was using her phone but also said that she ‘wasn’t paying attention to the incident’.

Claimant’s meeting with Mr Hanson – 16 July 2019

158. The claimant emailed Mr Hanson on 15 July 2019 to ask if they could meet after school on 16 July 2019. Her email stated that she wanted “*to meet regarding my position from September*”. They arranged to meet but Mr Hanson was unable to attend the meeting due to an incident whilst he was on duty. The claimant emailed Mr Hanson saying that she came to meet him, but he was not available. Mr Hanson did not respond to that email. Neither the claimant nor Mr Hanson attempted to arrange another meeting before the end of term.

159. We accept Mr Hanson's evidence that he did not think that the claimant wanted to meet with him urgently. The wording of the claimant's email did not suggest that she had any particular concerns and she did not seek to rearrange the meeting at that time.

Registers investigation – July 2019

160. The School noticed an error in the pupil registers on its computer systems. The School thought that the claimant and two other teachers (Mr Lucien Cockroft and Mr James Parsons) had incorrectly marked students as present, when they were in fact absent.
161. The claimant, Mr Cockroft and Mr Parsons received letters regarding an investigation into this issue on or around 16 July 2019. The respondent did not disclose a copy of this letter. However, Mr Cockroft described the letter in his grievance minutes as *“very strongly worded with connotation that made him feel worried that he had done something wrong”*.
162. The School did not take any steps to progress this investigation during the Summer holidays in 2019. We accept Mrs Beevers' evidence that this was in part because the teaching staff (and their trade union representatives) were not available during the Summer holidays. However, we note that most of the non-teaching staff at the School and at the Trust continued to work during the Summer break. We find that the School could have taken steps to check its internal computer systems during this period and carried out any other checks that did not require teaching staff involvement during the Summer break.

Discussions and emails – the week of 15 July 2019

163. Mrs Beevers emailed Ms Hill (NEU trade union representative) on the morning of 16 July 2019 stating:
- “I am hoping I could seek your advice relating to one of your members.*
- I am very concerned as they are about to receive their 4th investigation invite in a week's period. Two instances are potentially Gross Misconduct. I would really like to discuss this...”*
164. We accept Mrs Beevers' evidence that her approach to Ms Hill was part of a 'gentleman's agreement' with the union that they would discuss matters concerning the union's members before any formal proceedings started.
165. However, we find that Mrs Beevers should only have referred to the two investigations regarding the Tenerife trip and the Registers matter. We find that Mrs Beevers should not have referred to a further two investigations – i.e. the coercion allegations and one further matter (which Mrs Beevers said related to a 'data issue'). At that point in time, the School had not decided whether to investigate the coercion allegations and this issue was not pursued. In addition, we were not provided with any documents and Mrs Beevers' witness statement did not contain any evidence regarding the 'data issue', which suggests it cannot

have been a matter which the School believed was serious enough to warrant an investigation at that time.

166. Mrs Beevers then spoke with John Haworth (NEU trade union representative) and asked if they could have a protected conversation regarding the claimant. The claimant was shocked that Mrs Beevers had raised this as a possibility.
167. The claimant was handed a letter regarding the registers' investigation after the school day finished on 16 July 2019. The claimant was very upset at receiving this letter and went to her see her doctor. She obtained a fit note, signing her as not fit to work due to stress for the rest of that week (the final week of the school term).
168. Mrs Beevers emailed the claimant, copying Mrs Hosker at 5.19pm that day. Mrs Beevers was due to take compassionate leave on 17 July 2019 to attend a family funeral. However, she emailed stating:

"I wanted to book some time in with you to have a chat before the end of the Summer Term.

After a conversation with your Union and Sue today there appears to be a lot of mixed messages...I do have a prior engagement tomorrow afternoon and Thursday due to a funeral, but if you are available I can be around in the morning as I am conscious I do not want to cause you any stress over the summer"
169. The claimant and Mrs Hosker spoke that evening. Mrs Hosker suggested that the claimant come into the School for 9.45am on 17 July 2019 and stated that the purpose of the meeting would be *"to try and clear some mixed messages for you and hopefully address some of your concerns"*. The claimant called Mrs Hosker at around 7am on 17 July 2019 to confirm that she would not be coming into School and that she was not fit to work due to stress.
170. Mrs Beevers was not aware that the claimant was on sick leave due to stress and came to the School to meet the claimant. Mrs Beevers was not aware that the claimant was on sick leave that day and had travelled a significant distance to attend the meeting, despite the fact that she was attending a family funeral in Wales on the same day. Mrs Hosker told Mrs Beevers that the claimant was on sick leave when Mrs Beevers arrived at the School.
171. Mrs Beevers asked Mrs Hosker to call the claimant and ask if she was willing to speak with Mrs Beevers. Mrs Beevers and the claimant then spoke for around 30 minutes. The claimant emailed Mrs Beevers after they spoke, thanking her and saying that their conversation was 'positive'. We find that this was the claimant's reaction to the conversation and that it was not, as the claimant stated, on the advice of her union representative due to the timing of the email. The claimant asked Mrs Beevers to confirm their conversation in writing.
172. During their phone call, Mrs Beevers also mentioned to the claimant that she had been told that the claimant's Facebook profile picture contained a 'gif' (a moving image) of the claimant and others using their fingers to swear at the camera. Mrs Beevers told the claimant that parents and students may also be able to see the image and she needed to be careful what she posted on social media. The

claimant alleges that Mrs Beevers' purpose in telling her about this image was to intimidate her. We find that this was not the case. The claimant described the call as 'positive' and we find that Mrs Beevers' intention was not to intimidate the claimant but to inform her of the risks around using social media.

173. Mrs Beevers emailed the claimant on 19 July 2019, having received a bounce back message from her original email. She stated that the ongoing investigations were for the purpose of 'fact finding' and they may not result in disciplinary action being taken. Mrs Beevers said that the claimant could contact her during the Summer break if she wanted to discuss anything. The claimant did not respond to the email at that time.

Discussions and emails – early August 2019

174. The claimant spoke to Mrs Beevers by phone on 5 August 2019 and followed this up with an email which stated;

"...this has been an incredibly stressful situation...I would like to arrange a meeting to conclude all of the current open investigations...in order to return to work in the best frame of mind and a more positive light".

The claimant also requested an occupational health referral in her email.

175. Mrs Beevers replied on her return from annual leave on 13 August 2019, stating that the School had to follow process. Mrs Beevers said that if the claimant confirmed her availability, she could arrange a letter and assign an investigating officer. Mrs Beevers did not mention any occupational health referral.
176. Mrs Hosker emailed Mrs Beevers on 15 August 2019, following a phone discussion with the claimant regarding the outstanding investigations. The claimant offered to make herself available on a few days in late August 2019. However, no meeting was arranged.

Meeting between the claimant and Mr Hanson – 22 August 2019

177. The claimant arranged to meet with Mr Hanson on 22 August 2019, which was the School's GCSE results day.
178. During this meeting, Mr Hanson told the claimant that he would like her to focus on her role as Head of MFL and that he would remove her Teaching & Learning Coach responsibilities.
179. There was some discussion about whether the removal of the claimant's responsibilities was due to a restructure. The parties dispute as to who raised this issue, but it is not disputed that the claimant's responsibilities were removed.
180. We find that Mr Hanson removed the claimant's Teaching & Learning Coach responsibilities because he was concerned about the Modern Foreign Languages department's GCSE results. The claimant asked whether it would affect her pay. Mr Hanson confirmed that her pay would remain the same. The claimant did not complain about the removal of her Teaching & Learning Coach responsibilities until

she raised her grievance in December 2019. The changes to the claimant's contract of employment were not recorded in writing.

Occupational health referral requests

181. The claimant had previously asked Mrs Beevers to refer her to occupational health in their phone call on 5 August 2019 (and by email on the same date). She then emailed Mrs Beevers and Mrs Hosker, copying in Mrs Waters on 7 August 2019 saying that she had received an outpatients' appointment at the hospital for her injury at work and asking for a return to work meeting. Mrs Hosker later spoke with the claimant on 15 August 2019 and recounted their conversation in an email to the claimant, copied to Mrs Beevers, Mrs Waters and Mr Hanson stating:

“Again apologies that your return to work was not done as it definitely had been requested. With regard to the results from your outpatients appointment you wanted to give advance notice that you require an operation as you now have carpal tunnel syndrome. You explained you have lost a lot of use in your hand (even using a keyboard is difficult)....”

182. We find that the respondent forgot to refer the claimant to its occupational health provider during the Summer of 2019. We note that the respondent was changing its occupational health provider following a new tender around that time to People Asset Management (“PAM”) and that their referral procedures were not finalised at that time.

Meeting on 16 September 2019

183. The claimant was absent on sick leave from 9 to 13 September 2019. The claimant returned to work at the start of the school term in September 2019. The claimant spoke with Mrs Hosker shortly before her return, to request the following adjustments for the period running up to her operation (which was scheduled for February 2020):

183.1 admin support with typing; and

183.2 a reduced timetable.

184. Mr Hanson received a picture from a member of the School's staff of the claimant at a wedding holding a glass of champagne. He emailed it to Mrs Beevers on 12 September 2019. Mrs Beevers searched on Facebook and found the photo and a video of a wedding that the claimant attended as a bridesmaid in late August 2019. The claimant was not wearing her wrist splint in that video and was dancing with her friends.

185. We accept that Mrs Beevers was providing information regarding the claimant's personal injury claim to the School's insurers and that was why she looked into this matter. The claimant stated that her Facebook settings were private. However, we accept Mrs Beevers' evidence that the photo and video were publicly available because the claimant was unable to explain how else Mrs Beevers could have obtained the video footage.

186. Mrs Hosker contacted the claimant on Saturday 14 September 2019 to arrange a return to work meeting for the claimant on 16 September 2019.
187. Mrs Beevers, Mr Hanson and Mrs Waters met with Mr Bright before the claimant arrived at the meeting and played him the wedding video. Mr Bright then met with the claimant briefly alone but did not show her the video.
188. The claimant, Mr Bright, Mr Hanson and Mrs Waters then had a meeting during which Mr Hanson played the wedding video to the claimant. Mr Hanson told the claimant that she should reflect on the video. The claimant was very upset.
189. We find that purpose of showing the claimant the wedding video was to undermine the claimant's description of her medical condition and her reasonable adjustments requests. The key reasons for this finding are:
 - 189.1 we do not accept Mrs Waters' and Mrs Beevers' evidence that the video would not make any difference to the claimant's request for reasonable adjustments. There would be no need for Mr Hanson to suggest to the claimant that she should 'reflect' on the contents of the video, if there was no potential impact on any adjustments;
 - 189.2 the meeting was arranged at very short notice (over the weekend for a Monday morning meeting). It was badged as a return to work meeting, but no discussion regarding the claimant's return to work meeting took place. The respondent did not complete any return to work form for the claimant, despite having a pro forma form for such meetings. We note, for example, that the hearing bundle contains a return to work form completed by Mrs Hosker for Ms Bithell's return to work on 19 September 2019. This form contains details including information regarding the the employee's absence, any action required (including details of any support required) and whether a referral to the Employee Health & Well-Being Unit should be made; and
 - 189.3 no attempt was made to obtain any medical evidence, either from occupational health or from the claimant's GP, beforehand.

Tenerife trip – Ms Bithell's disciplinary invitation and resignation

190. The School invited the claimant and Ms Bithell to disciplinary meetings regarding the Tenerife trip in September 2019. Ms Bithell's disciplinary meeting took place on 18 September 2019. However, Ms Bithell resigned before the hearing outcome was provided to her in her email 7.13am on 27 September 2019, with effect from 31 December 2019. The School took advice from the Local Authority Designated Officer (the "LADO") as to whether there any safeguarding issues that needed to be dealt with, regardless of Ms Bithell's resignation. The LADO advised that there were no safeguarding issues to consider.
191. Mrs Hosker wrote to Ms Bithell on 27 September 2019 stating that the disciplinary matter was "*discontinued without any sanction being applied*". The School also agreed that Ms Bithell could be placed on garden leave until her employment ended.

192. Mrs Beevers emailed a blank copy of the School's reference to Mr Hanson on 26 September 2019, asking him to complete it for Ms Bithell. Mr Hanson had not completed the template as at 4 October 2019, when Mrs Beevers emailed Mrs Hosker stating: *"I have sent a reference to Richard to complete so we can give Wendy sight of it in advance"*.
193. We accept Ms Shuttleworth's evidence that no agreement was reached regarding any reference, save that a copy would be provided to Ms Shuttleworth before it was sent to any new employer. We note that Ms Bithell's reference for a new role in January 2020 was provided to Ms Shuttleworth, before it was sent to her potential new employer.

Tenerife trip – claimant's disciplinary hearing on 24 September 2019

194. The claimant was invited to attend a disciplinary meeting regarding the allegations that:
- 194.1 Student B attempted to walk home unaccompanied, after the bus arrived at 2am; and
 - 194.2 Six pupils were missing for an undetermined period.
195. The letter stated that the outcome of the meeting may be that disciplinary action, up to the level of a final warning may be issued.
196. The claimant's disciplinary meeting took place on 24 September 2019. She was accompanied to that meeting by her trade union representative, Mr Bright.
197. The claimant saw Mrs Beevers talking to Mrs Waters and Mr Hanson before the disciplinary hearing started. Mr Hanson and Mrs Waters had both started working at the School in early 2019. In addition, the Trust had introduced a new disciplinary policy for the School in September 2019.
198. The claimant alleges that:
- 198.1 Mrs Beevers was 'coaching' Mrs Waters and Mr Hanson regarding the hearing and that they had agreed that the claimant would be given a final written warning before the hearing started; and
 - 198.2 Mrs Beevers had provided copies of the School's disciplinary policy to Mrs Waters and to Mr Hanson, with the wording 'final written warning' circled on both copies.
199. We find that Mrs Beevers did not agree a sanction of a final written warning in advance of the hearing. It was appropriate for Mrs Waters and Mr Hanson to seek guidance on the disciplinary process with Mrs Beevers before the hearing started. The claimant and Mr Bright did not raise any concerns regarding either of these issues during the disciplinary hearing. They were also not raised as part of the claimant's disciplinary appeal.
200. The claimant read out a pre-prepared statement as part of the disciplinary hearing. In her statement she said:

"The incidents that occurred on this trip were regrettable...I am sorry that there were shortcomings on the trip and accept blame where it is due."

201. The claimant did not feel well after the hearing and she did not return to teach her lessons that afternoon.
202. The claimant received an outcome letter dated 30 September 2019 after school on that date which stated that she had been given a final written warning. The conclusions regarding the allegations were:
 - 202.1 the allegation regarding a pupil attempting to walk home unaccompanied was upheld, due to discrepancies between the accounts given by the claimant and Ms Bithell; and
 - 202.2 the allegations regarding missing pupils and pupils being found in the wrong rooms were upheld on the basis that the claimant failed to follow suitable processes to check on the pupils.

Tenerife trip – other staff's outcomes

203. The respondent maintains that all staff who attended the Tenerife trip, other than the claimant and Ms Bithell, received a Management Instruction. Staff were invited to attend management meetings on 18 September 2019 with Mr Hanson and Mrs Monaghan. Their invitation letters stated that there were 'failings' by those staff but that a 'formal disciplinary sanction' was not appropriate.
204. However, these meetings were postponed due to the prior commitments of Ms Wendy Shuttleworth, who was acting as the trade union representative. Mr Hanson said that Ms Shuttleworth complained about the original arrangements for the management meetings. Mr Hanson said that he later held individual meetings with the staff to discuss the trip but he could not recall the dates of those meetings.
205. Mr Calderbank said that he did not have a meeting with Mr Hanson during which he was given a management instruction. We have considered email correspondence between Ms Shuttleworth, Mrs Hosker and Mrs Beevers regarding the management meetings and arrangements to hold those meetings. For example, Mrs Beevers emailed Ms Shuttleworth on 4 October 2019 stating: *"the management instructions are not a formal sanction but a meeting scheduled with the Principal...to discuss the failings with the Tenerife trip and future expectations."*
206. Mrs Hosker emailed Ms Shuttleworth, copied to Mr Hanson, on 15 October stating: *"I have spoken with Sofia and I have been advised that as the letters were raised prior to the new policy they are inappropriate and therefore will not be issued. I understand you are happy for [Mr Hanson] to meet with the three members of staff individually to go over concerns verbally however to advise them that there will be no further action."*
207. We accept Mr Calderbank's evidence that no management instructions were given to him. Mr Hanson could not recall the dates of giving any management instructions and accepted that had given many management instructions during

the same time period. We find that no management instructions were given to Mr Brown or to Mrs Ravandi regarding the Tenerife trip.

Weekend emails from Mrs Waters to the claimant – September 2019

208. The claimant complained that she received 13 emails during the weekend of 28 and 29 September 2019 from Mrs Waters. We note that the claimant was waiting for her disciplinary outcome at that time regarding the Tenerife trip. The claimant stated in an email to Mrs Waters at lunchtime on 30 September 2019:

“Please accept my apologies for not responding to the many emails that you sent to me over the weekend...Things have been a bit tense since the hearing and I was glad to be able to switch off...”

Can I also take this opportunity to say that I respect the fact that you were placed in a difficult position as the investigator...and that I would like put that behind us and move on...”

209. Mrs Waters responded that evening saying: *“As you know there is never an expectation that you will respond at weekends or after school, it just happens to be the time I can dedicate to focused work at home...”*. We accept Mrs Waters’ evidence that she frequently emailed her colleagues during weekends and evenings because she used those times to catch up on work. We accept Mrs Waters’ evidence that she has not retained copies of those emails and that they have been deleted under the respondent’s email retention policy.

Closing of registers investigation

210. Mr Cockcroft asked Mr Waters what the outcome was of the registers’ investigation in late September 2019. Mr Hanson then spoke to Mr Cockcroft and Mr Parsons in early October 2019 and told them that no further action would be taken. However, Mr Hanson did not contact the claimant to arrange a conversation with her. Mr Hanson said that this was because the claimant was on sick leave at that time and that she would not speak to him, other than to report her absence.
211. We find that Mr Hanson should have spoken or written to the claimant regarding the outcome of the registers’ investigation. The fact that the claimant was on sick leave at the time did not prevent Mr Hanson from contacting the claimant regarding the outcome of the registers investigation.

Tenerife trip – appeal arrangements

212. The claimant emailed the respondent on 11 October 2019, appealing against the outcome of the Tenerife disciplinary proceedings. The claimant asked the respondent to avoid scheduling a meeting around the date of her grandmother’s funeral on Friday 18 October 2019.
213. Mrs Beevers was originally appointed to hear the claimant’s appeal on Monday 21 October 2019, which was within the respondent’s internal time limits. However, the claimant objected to Mrs Beevers’ involvement in a letter emailed on 16 October 2019. The respondent instead appointed Mrs Petriaho to hear the claimant’s appeal, but refused to change the date of the appeal hearing.

214. Mr Bright prepared a draft email for the claimant to send to Mr Ibrahim regarding the date of the appeal hearing. Mr Bright sent an email with similar wording to Mr Ibrahim at 10.30am on 18 October 2019, copied to the claimant, Mrs Beevers and the respondent's solicitor. Mrs Beevers responded on Mr Ibrahim's behalf (copied to the same individuals) and offering to rearrange the claimant's appeal hearing to 25 October 2019. There were then a further two emails between Mr Bright and Mrs Beevers, copied to the same individuals on 18 and 21 October 2019.
215. The appeal hearing was postponed. Mr Bright and Mrs Beevers exchanged further emails, during which Mr Bright stated that:
- "...whilst I have been supporting and representing Jo, it is not appropriate for you to exclude her from any communication that you have with me regarding her. I made the point in my last email that Jo is off with work related stress and not opening work emails so any communication with Jo should be by post..."*
216. Mr Bright and Mrs Beevers also had a discussion regarding a potential settlement of the claimant's claims on or around 7 November 2019. Mr Bright had a conversation with the claimant but no settlement was agreed.
217. The claimant received her subject access report before 11 November 2019. She emailed Mr Bright saying:
- "It has come to light through some of the information...that Jacqui Petriaho, who should be acting as the appeals officer, has in fact been involved in the process previously and is very aware of all that is going on."*

Tenerife trip – appeal hearing and outcome

218. The claimant's appeal hearing was held on 15 November 2019. Mrs Petriaho held the appeal and the claimant was represented by Mr Bright. Neither the claimant nor Mr Bright raised any issues regarding Mrs Petriaho acting as the appeal officer during the hearing.
219. The claimant prepared a written submission for the appeal hearing, including questions that she raised with various other members of staff who attended the trip.
220. Mrs Petriaho provided a letter to the claimant dated 25 November 2019, setting out the outcome of the claimant's appeal. The key reasons why Mrs Petriaho upheld the original appeal decision included:
- 220.1 the claimant failed to take responsibility for the issues that arose during the trip, despite being the Deputy Trip Lead;
 - 220.2 the claimant failed to raise her concerns with the Trip Lead and/or the School;
 - 220.3 Student B, who attempted to walk home unaccompanied, was in the claimant's care at that time; and
 - 220.4 The claimant failed to show any 'remorse' regarding the allegations against her as part of the disciplinary hearing.

Claimant's subject access request

221. The claimant raised a subject access request (the “**SAR**”) in her email of 9 October 2019 to Mrs Hosker and Mr Hanson. She requested information (including documents, correspondence, text messages and social media messages) relating to particular topics including her performance, sickness absence and her contract of employment. We note that the claimant did not make a specific request for copies of CCTV footage as part of her initial request. The claimant also requested further information in her email of 11 March 2020.
222. Greg Rogers, the Trust's Head of Compliance & Governance and Data Protection Officer, dealt with the SAR. There was some dispute between the parties as to whether the respondent's response to the SAR in early to mid November 2019 contained all of the information requested. The claimant complained about missing data in her email to Mr Rogers on 11 November 2019, to which he responded on 15 November 2019. There were further emails between the claimant and Mr Rogers in November 2019 and March 2020 regarding the SAR.
223. We note that the claimant raised a complaint with the Information Commissioner's office (the “**ICO**”) regarding the response to the SAR and that the ICO wrote to the respondent on 27 February 2020. Mr Rogers responded to the ICO's letter and set out the way in which the respondent's SAR response was prepared.
224. It is not within this Tribunal's jurisdiction to determine whether the respondent's response to the SAR was adequate for the purposes of the Data Protection legislation. We also note that the parties did not provide copies of all documents relating to the SAR (such as the information provided by the respondent to the SAR) in the hearing bundle.
225. However, for the purposes of the claimant's Tribunal claims we find that:
 - 225.1 the respondent carried out a reasonable search for the information requested by the claimant in her SAR;
 - 225.2 the respondent did provide the claimant with access to the vast majority of the documents requested by claimant in her SAR, albeit that some documents were missed from the respondent's original response and that others had been redacted;
 - 225.3 the claimant refused the respondent's offer of viewing CCTV footage at an off-site location.
226. In reaching these conclusions, we have taken into account the email correspondence between the parties and the ICO's correspondence. We also note that the claimant was unable to identify any specific documents that she alleges were not disclosed during cross-examination. The claimant said that there were a 'lot' of documents that were not disclosed in response to the SAR that were disclosed during these proceedings. However, we also note that some of these documents may have been subject to exemptions under the data protection legislation, such as third party data.

Claimant's sickness absence – 1 October 2019 to 12 March 2020

227. The claimant was absent on sick leave from 1 October 2019 due to work-related stress. She underwent an operation on her wrist for carpal tunnel syndrome in February 2020 and returned to work on 23 March 2020.
228. Paragraph 6.1 of the respondent's sickness absence policy states that the Trust expects each establishment to *"take swift action if the absence is work related"*. The policy recommends referral to occupational health at *"an early stage"* to ensure that *"adequate support is put in place at an early stage based on medical advice"*. The policy also provides for absence review meetings.
229. The claimant met with the respondent's new occupational health provider (known as **"PAM OH Solutions"**) on 1 October 2019. PAM OH Solutions produced a report dated 2 October 2019 which focussed on the claimant's injured right hand. The report noted that the claimant's GP had recommended some temporary adjustments, including a reduction in the claimant's teaching timetable and administrative support. The report stated that the claimant should be able to carry out her role, with those temporary adjustments.
230. The report also stated that:

"Joanne tells me that she is currently absent from work (as of today) as there are also ongoing work related issues, that she feels have become too much. She tells me that also she feels there is a lot of hostility towards her in the workplace, and at present she does not feel able to work in this environment..."

Management Advice

...In relation to the work related stress, it would be recommended that prior to a return to work, a stress risk assessment is carried out, and that a meeting takes place to discuss and resolve the work related issues. This is likely to have a positive impact on Joanne's mental wellbeing...A further OH review would be recommended in 2-3 weeks' time in order to assess Joanne's progress.

Review

We will await your instruction in relation to any further OH review."

231. During October and November 2019, the respondent did not provide the claimant with a copy of the occupational health report and did not discuss its contents with her. The respondent did not arrange the meeting suggested by PAM OH Solutions and did not arrange a further occupational health assessment.
232. The respondent did not provide evidence of any other telephone discussions or meetings that took place during October and November 2019 to discuss the claimant's wellbeing. We note that:
- 232.1 the respondent's witnesses said that this was because there was the School did not have a HR officer until December 2019 (the previous temporary HR officer had left the School in or around July 2019). Mrs Hosker had moved roles to work elsewhere within the Trust and Mrs

- Waters did not regard managing sickness absence as part of her line manager responsibilities;
- 232.2 Mrs Beevers stated during her interview as part of the claimant's later grievance process that stated that the School was responsible for maintaining contact with their staff during periods of sickness absence, not the Trust;
- 232.3 Mr Hanson said that the claimant rang him to inform him that she had a further doctor's note stating that she was still absent, but that the claimant would put the phone down on him as soon as she had informed him of her next note. Mr Hanson did not ask any other member of the School's Senior Leadership Team to carry out wellbeing discussions with the claimant or help to assist manage her sickness absence. Mr Hanson was then absent on sick leave from December 2019 to April 2020.
233. Ms Rachel Smith started her role as a HR Officer with the respondent in December 2019. However, she did not make contact with the claimant to discuss her sickness absence and any support that the respondent could provide. The claimant stated at her grievance meeting on 13 December 2019 that she had been off sick with work-related stress since 1 October 2020 and had received no contact from the School during that time regarding her sickness absence.
234. The claimant did not receive any contact from the School or the Trust to follow up on the welfare issues that she raised during her grievance meeting. The claimant contacted Mrs Aspinall on 7 January 2020, reminding Mrs Aspinall of her outstanding occupational health referral. The claimant said that she had not received a copy of the October 2019 report. Ms Smith replied on Mrs Aspinall's behalf and said that she would organise a further referral. Ms Smith also told the claimant that she would need to complete a subject access request form, in order to receive a copy of the October report. The claimant flagged that she had asked to see the report before it was sent to the School.
235. The claimant's emails to Ms Smith from 10-20 January 2020, highlighted that she had not received any welfare checks, phone calls or contact from the School regarding supporting a return to work. She also said that she had been asked to be re-referred to occupational health on 13 December 2019 and that she had had to chase this referral again on 7 January 2020. Ms Smith responded stating that the School had followed its sickness absence policy and offered to arrange a return to work meeting. She also said in her email of 20 January 2020: *"I would be happy to support you in any way possible"* but she did not seek to arrange a meeting or a telephone call with the claimant to discuss any support that the School could provide.
236. The claimant had a telephone assessment with PAM OH Solutions on 21 January 2020. The report was addressed to Ms Smith stated that:
- "As you are aware Joanne is currently absent from work. Joanne reported that her absence is due to her suffering from stress/anxiety which she solely attributes to perceived ongoing work place issues. Joanne reported that she is currently being*

treated for the above with medication prescribed via her GP and has also been referred for counselling which she has been advised could take some months as there is a long waiting list. Joanne reported that she does not feel supported by the workplace and highlights that in relation to her ongoing issues she does not feel able to return to work until they have been resolved. Joanne reported no history of mental health problems but did highlight that she is due to have surgery for carpal tunnel release on 3rd February 2020 which she tells me will most likely impact on her absence as she will require a suitable recovery period.

OH Opinion

...Following assessment, I am of the opinion that Joanne is currently unfit for work due to the ongoing symptoms mentioned above. The prognosis for Joanne's recovery and return to her substantive role is good but the time frame unknown at the moment. It is dependent on her response to the planned and ongoing medical interventions in place and also her ongoing workplace issues being addressed with a mutual resolution. Given the above I do not feel that further OH input would be of benefit at present. I would recommend that you refer again once you are aware that Joanne's health has improved and she is at a stage whereby she can plan a return to work.

Management Advice

... Please note I have not provided a copy of this report to the employee; this is the responsibility of the referring manager."

237. The respondent did not disclose either the October or the January occupational health reports to the claimant. The claimant again requested copies of the reports on 28 January 2020. The claimant said in her email of 30 January 2020 that she had spoken with PAM OH Solutions and that they said that the reports had been sent to the School. Ms Smith eventually provided both reports to the claimant on 31 January 2020.
238. Ms Smith did not discuss the contents of PAM OH Solutions' 21 January 2020 report with the claimant. This was in part because the claimant had surgery to correct carpal tunnel syndrome on 3 February 2020 and would need time to recover from that surgery. The claimant resigned on 14 February 2020. Ms Smith did not refer the claimant to occupational health again and did not seek to arrange any wellbeing or return to work meeting with the claimant at any time before the claimant returned to work on 23 March 2020.
239. We note that other contact did take place between the claimant and the respondent during this period, including:
 - 239.1 correspondence regarding the claimant's disciplinary appeal and the appeal meeting;
 - 239.2 discussions between Mrs Beevers and Mr Bright (the claimant's union representative) regarding potential settlement discussions; and

- 239.3 correspondence regarding the claimant's grievance and the claimant's grievance meeting with Mr Haider.
240. However, these matters did not relate to the claimant's sickness absence and any support that the claimant may need to return to work. We find that no one from the respondent contacted the claimant on a regular basis to discuss her condition and its prognosis or to consider ways to support the claimant to return to work. We appreciate that the respondent had to be mindful that the claimant's absence was due to work related stress. However, we note that:
- 240.1 the respondent did not take any pro-active steps to arrange any wellbeing meetings or telephone discussions with the claimant during her absence;
 - 240.2 the respondent failed to discuss the occupational health advice with the claimant;
 - 240.3 the respondent failed to act on occupational health advice contained in the report dated 2 October 2019;
 - 240.4 the respondent did not refer the claimant for her January occupational health assessment, until she chased the respondent; and
 - 240.5 the respondent did not hold any return to work meeting with the claimant before her return to work on 23 March 2020.

Claimant's grievance – 2 December 2019

241. The claimant raised a grievance on 2 December 2019. The key allegations included many of the matters which form part of the claimant's Tribunal claims.
242. The respondent appointed Mr Haider to chair the grievance. However, Mr Haider worked full time for the NHS and the Trust asked Mrs Aspinall to support Mr Haider with the grievance investigation.
243. Mr Haider met with the claimant on 13 December 2020. She was accompanied by Mr David Hunt (a trade union representative and friend/colleague of the claimant). Mrs Aspinall also attended the meeting, with Mrs Bedford taking notes. The respondent provided the claimant with a copy of the notes of their meeting, which she reviewed and commented on by 10 January 2020.
244. Mr Haider did not attend any of the witness meetings. These were conducted by Mrs Aspinall, with support from Mrs Bedford. There were twenty witness meetings over a 3 month period. Mr Haider then reviewed all of the documents relating to the grievance. He did not raise any questions regarding any of the meeting notes.
245. The claimant was provided with a grievance outcome letter on 13 March 2020, which partially upheld some of the claimant's complaints and rejected others.

Claimant's resignation – 14 February 2020

246. The claimant resigned on 14 February 2020. Her resignation letter stated:

“...I feel that I am left with no option to resign in light of the treatment the Trust has displayed towards myself including bullying, discrimination, harassment and victimisation.

As a result of the Trust’s behaviour, and the inability to follow policy and procedure, as well as the lack of good practice and disregard for the mental wellbeing of staff shown by the HR department, a fundamental breach of contract has taken place on the Trust’s part....

After reporting serious incidents that I was witness to, I was subject to a hostile campaign by some of the senior leaders, in an attempt to ruin my long-standing clean record and force me to resign...the Trust has breached the trust and confidence between employer and employee, acting in a manner to damage my reputation and long-term career prospects...”

247. Mrs Monaghan, as Acting Principal, wrote to the claimant on 27 February 2020 accepting her resignation and confirming that her last day of work would be 17 April 2020.

Claimant’s reference – February and March 2020

248. The claimant was offered a role as Head of MFL at Parkside School on 13 February 2020, subject to satisfactory receipt of references.
249. The claimant provided Mrs Macklin and (who was no longer working for the School at that time) and Mrs Hall’s contact details for her reference. Mr Hanson was absent on sick leave during this time. The claimant did not provide the details of Mrs Monaghan, who was the Acting Principal in Mr Hanson’s absence on sick leave.
250. Parkside School contacted Mrs Hall on 25 February 2020 with a reference request. Mrs Hall did not respond. Parkside School chased again on 27 February 2020 and Mrs Hall responds, saying she was in the process of writing it and would send it to Parkside School as soon as she could.
251. Parkside School emailed the claimant on 4 March 2020 to say that they had not received her reference. She responded saying that Mr Hanson was absent and that she would contact Mrs Hall. The claimant emailed Mrs Hall. The claimant emailed Karen Crowley at the Trust at 10.47am on 5 March 2020 (copying in Mrs Monaghan (then Acting Principal) and Ms Smith) asking for the reference to be sent urgently.
252. In the meantime, Mrs Hall responded at 10.48am on 5 March 2020 saying:

“Hi Jo

I hope you are well and I have received the request. 😊 Your reference is written and will be with Park Side asap. It will absolutely reflect the work we have done together in the capacity of teaching and learning and my observations of you in the classroom etc. I hope this is ok.

Lyndsay”

253. The respondent maintained that the claimant should have provided Mrs Monaghan's contact details to Parkside School because Mrs Monaghan was the appropriate person to provide a reference (as Acting Principal), in Mr Hanson's absence. However, Mrs Hall did not tell the claimant that she should direct her reference request to Mrs Monaghan at any time.
254. The claimant then called the School on 6 March 2020 and spoke to the receptionist asking for an urgent call back. Mrs Monaghan emailed Mrs Aspinall saying:
- "Hi Angela, just received this. Do not want to be in a vulnerable position. Neither Lyndsay nor myself replied."*
255. The claimant also contacted Mrs Bedford and Mr Haider regarding her outstanding reference. Mrs Aspinall responded on 6 March 2020 to Mrs Monaghan saying: *"In terms of Jo's reference request, I was cc'd into an email trail where Jo was chasing this. I don't need to see this as it is a school matter, but please can you confirm that you have sent this, so that we aren't holding up the process. For info, I just asked Lyndsay to pass this request to you in your capacity as Acting Principal (i.e. the employer – the reference just needs to go from you, but Lyndsay would be fine to provide a personal reference as I explained to her yesterday"*.
256. Mrs Monaghan then filled in the completed reference and Ms Smith sent the claimant's reference to Parkside School on 10 March 2020. We note that this was the same day as the first Preliminary Hearing of this claim.
257. The claimant's reference was accepted and she started working at Parkside on 20 April 2020 as planned. However, we accept the claimant's evidence that the delay in the provision of her reference caused her additional stress and anxiety.
258. The respondent chose not to call Mrs Hall or Mrs Monaghan to give evidence at this hearing, despite confirming that they were still employed by the respondent as at the date of the hearing. None of the respondent's witnesses gave any evidence as to whether Mrs Hall or Mrs Monaghan were aware of these proceedings at the time that of the claimant's reference requests and we have not been provided with any documentary evidence on this issue. We find that Mrs Hall and Mrs Monaghan were aware that the claimant had brought proceedings. Mrs Monaghan and Mrs Hall held the roles of Acting Principal and Assistant Principal. Both were part of the respondent's senior leadership team and it is highly unlikely that they would not have been aware of the claimant's claim.
259. Both parties' representatives referred to evidence regarding the way in which Ms Bithell's reference request was dealt with, providing us with a comparison to the respondent's handling of the claimant's reference request. We find that Ms Bithell's reference was delayed because Mr Hanson had agreed to provide a copy to Ms Shuttleworth (as Ms Bithell's union representative) before it was provided to any prospective employer. Ms Bithell's reference request was sent to Mrs Beevers on 22 January 2020 by her prospective employer. It was not sent initially to either Mr Hanson (as Principal) or to Mrs Monaghan (as Acting Principal). Mrs Beevers emailed Mrs Monaghan asking her to complete Ms Bithell's reference form urgently on 30 January 2020. Mrs Monaghan completed Ms Bithell's reference on the same

day. There appears to have been a delay from 31 January 2020 onwards when the reference was with Ms Shuttleworth for her approval. We were not provided with any evidence confirming when Ms Bithell's reference was returned to her prospective employer, but we have seen an email dated 6 February 2020 which evidenced that her reference had not been returned by that date.

Claimant's return to work

260. The claimant returned to work on 23 March 2020, which we note was the date of the first Covid-19 pandemic lockdown. The claimant worked from home for a short period before the Easter school holidays.

APPLICATION OF THE LAW TO THE FACTS

261. We have applied the law to our findings of facts as set out below.

ANNEX 1 – WHISTLEBLOWING DETRIMENT ALLEGATIONS

262. We will consider whether the respondent did the acts/omissions set out below before considering the issue of time limits.

263. We have considered the following issues and reached the conclusions set out below for each of the allegations:

263.1 Did the respondent do the things set out at Annex 1?

263.2 By doing so, did it subject the claimant to detriment?

263.3 If so, was it done on the ground that she made a protected disclosure?

Allegation 1 - Informing Mr Kazi that the Claimant had made the Protected Disclosures in breach of the Respondent's whistleblowing policy.

264. We have concluded that the respondent did not inform Mr Kazi that the claimant had made the complaints set out in her emails of 25 June, 1 July and 3 July 2019 for the reasons set out at paragraph 121 of our findings of fact.

Allegation 2 - Mr Kazi refusing on a daily basis to speak to the Claimant, failing to reply to her emails and refusing to look at her.

265. We have concluded that Mr Kazi's relationship with the claimant did not change significantly after she made the complaints set out in her emails of 25 June, 1 July and 3 July 2019 for the reasons set out in paragraphs 122, 123 and 124 of our findings of fact.

Allegation 3 - Investigating the Claimant's conduct during a pupil visit to Tenerife although no complaint had been made by any parent, pupil or staff member and although no allegation had been made against the Claimant.

266. We have concluded that the investigation into the Tenerife trip took place because of a complaint raised by Mr Ahmed, a teacher who attended the trip.

267. The investigation itself could amount to a detriment. However, we have concluded that the reason for the investigation into the claimant's conduct was not due to her

protected disclosures. The respondent investigated the conduct of all staff who attended the Tenerife trip due to the serious nature of the issues raised.

Allegation 4 - *Mr Hanson inappropriately participating in the investigation concerning the Tenerife visit by taking Fact Finding statements although he had been appointed Disciplinary officer.*

268. We have concluded that Mr Hanson did carry out the initial discussion with the staff involved, although Mrs Waters interviewed staff and prepared the fact finding statements. We have concluded that Mr Hanson's conduct could amount to a detriment because it was not within the respondent's procedure.
269. However, we have concluded that the reason for Mr Hanson's conduct was not the claimant's protected disclosure. Mr Hanson was aware of the missing students issue on 20 June 2019 and Mr Ahmed spoke to Mr Hanson about his concerns on the morning of 25 June 2019. The claimant did not email Mr Waters regarding her initial concerns regarding Mr Kazi until 7.55pm on 25 June 2019 and did not copy in Mr Hanson to that email. Mr Hanson was therefore not aware of the claimant's concerns at the time Mr Ahmed first spoke to him.
270. We have concluded that Mr Hanson carried out the initial discussions with staff because Mr Ahmed approached him directly, rather than because the claimant had made any protected disclosure.

Allegation 5 - *Being handed a letter on 5 July 2019 concerning a further disciplinary investigation regarding a wrongly marked register and then not being informed that the matter would not be pursued further although two male employees (Mr James Parsons and Mr Lucien Cockroft) against whom similar allegations were made were so informed. The Claimant only discovered the matter was not to be pursued when she approached the data and exams officer.*

271. We have concluded that the claimant was subject to a detriment in respect of Allegation 5 but that the relevant date was on or around 16 July 2019. It was not disputed that the claimant was given a letter regarding a further disciplinary investigation regarding a wrongly marked register. It was also not disputed that Mr Hanson told Mr Parsons and Mr Cockroft that the allegations would not be pursued against them, but that he did not inform the claimant that the allegations would not be pursued against her.
272. We have concluded that the investigation letter was not provided to the claimant on the ground that she made a protected disclosure. The reason for our conclusion is that similar letters were provided to two other teachers who had not made protected disclosures.
273. We have also concluded that the respondent's failure to inform her that the investigation was not continuing was not on the ground that she made a protected disclosure. We reached this conclusion because we accepted Mr Hanson's evidence that he did not speak to her because she was absent on sick leave.

Allegation 6 - *Being embarrassed and belittled by Mr Hanson in a staff meeting for taking notes on her mobile phone when nothing was said to a male member of staff (Mr Chris Baines, Head of Art) who was doing the same thing.*

274. We have concluded that the claimant was not subject to a detriment in respect of Allegation 6. We found that Mr Hanson did ask the claimant to stop using her mobile phone during the meeting and that Mr Hanson did not see Mr Baines using his mobile phone. We have concluded that a reasonable worker would not have taken the view Mr Hanson's conduct was to their detriment. We found that the claimant was only briefly embarrassed by Mr Hanson's comment because the witnesses attending this meeting (who were interviewed as part of the claimant's grievance) either did not recall Mr Hanson's comment or stated that there was no 'big scene'.

275. We find that even if this were a detriment, this was not on the ground that the claimant made a protected disclosure. Mr Hanson made his comment because he wanted staff to focus on discussions during the meeting and was concerned that the claimant was distracted by her phone.

Allegation 7 - *Being approached via her union representative by Mrs Beevers about the possibility of a protected conversation being held in light of the investigation into the Tenerife visit, the further disciplinary regarding the wrongly marked register, and an allegation that she had coerced a student to make a complaint about the incident on 3 July 2019 concerning Mr Kazi, and, on the same day, Mr Hanson failing to attend a pre-arranged meeting.*

276. We have concluded that Mrs Beevers' email to Ms Hill could amount to a detriment because she referred to a total of four investigations, two of which had not been communicated to the claimant at that time.

277. However, we have concluded that Mrs Beevers did not mention the other two matters because of the claimant's protected disclosure. We accepted Mrs Beevers' evidence that her approach to Ms Hill was part of a 'gentleman's agreement' with the union that they would discuss matters concerning the union's members before any formal proceedings started. In addition, our view is that if the respondent had intended to 'pressure' the claimant into resigning, then the respondent could have taken other steps against the claimant. For example, the respondent could have sought to pursue the coercion allegations as part of a further disciplinary investigation.

278. We have also concluded that Mr Hanson's failure to attend the meeting with the claimant on 16 July 2019 was not a detriment. We accept Mr Hanson's evidence that he was delayed due to an incident whilst he was on after school duty. The claimant's email did not suggest that she was particularly concerned by his absence and she did not seek to re-arrange the meeting before the end of term. However, even if the claimant were concerned, we have concluded that a reasonable worker would not have viewed Mr Hanson's conduct as a detriment. The nature of the Principal's role was such that Mr Hanson could be required to deal with urgent matters at any time.

Allegation 8 - *Mrs Beevers seeking to arrange a meeting with the Claimant for 17.07.19 despite having been told on 16.07.19 that the Claimant had been signed off sick with stress for a week.*

279. We have concluded that the claimant was not subject to a detriment in respect of Allegation 8. We found that Mrs Beevers was not aware that the claimant had been signed off on sick leave with stress when she attempted to arrange the meeting on 16 July 2019. Mrs Hosker did not tell Mrs Beevers that the claimant had been signed off until Mrs Beevers met with Mrs Hosker on the morning of 17 July 2019.

Allegation 9 - *Mrs Beevers telephoning the Claimant on 17.07.19 whilst she was off sick and telling her she needed to be careful what she posted on social media.*

280. We have concluded that Mrs Beevers' discussion with the claimant did not amount to a detriment because we found that the claimant regarded their conversation as 'positive', as set out in the claimant's email thanking Mrs Beevers for their conversation.

Allegation 10 - *Failing to refer the Claimant for an occupational health assessment in a timely fashion after agreeing to do this on 17.07.19. No referral was made until 17.09.19.*

281. We have concluded that the respondent did subject the claimant to a detriment in failing to refer the claimant for an occupational health assessment.

282. However, we have concluded that the respondent's failure was not due to the claimant's protected disclosure. Mrs Beevers and Mrs Hosker were communicating with the claimant about her condition during the School Summer holidays. However, the respondent was in the middle of changing its occupational health provider at that time and no referral was made until mid-September 2019 because they had forgotten to do so during the Summer break.

Allegation 11 - *Removing the Claimant from her position as Teaching and Learning Coach. The Claimant was informed of this on 22 August 2019.*

283. We have concluded that the respondent did subject the claimant to a detriment when removing her from her position as a Teaching and Learning Coach.

284. However, we have concluded that this was not because she made a protected disclosure. Mr Hanson decided to remove the claimant from her position as a Teaching and Learning Coach to reduce her workload, following Mr Bencherif's resignation as joint Head of MFL with effect from 31 December 2018. In addition, Mr Hanson was concerned by the poor examination results produced by the MFL department and wanted her to focus her efforts on improving the MFL results.

Allegation 12 - *Inappropriately raising the matter of a video obtained from the Claimant's social media at a return to work meeting on 16.09.19 and playing the video with resulting embarrassment to the Claimant.*

285. We have concluded that the respondent did subject the claimant to a detriment in respect of Allegation 12 because of our findings at paragraphs 189.

286. However, we have concluded that the respondent did not show the video to the claimant because of her protected disclosure. We have concluded that they showed the claimant the video because they wished to undermine her description of her medical condition and her reasonable adjustments requests.

Allegation 13 - *Seeking to ensure that the result of the disciplinary hearing in relation to the Tenerife visit on 24 September 2019 was pre-ordained by Mrs Beevers coaching Mr Hanson and Mrs Waters, who both openly displayed a booklet with the words 'Final Written Warning' obviously circled.*

287. We have concluded that Mrs Beevers did not 'pre-ordain' the outcome of the claimant's disciplinary hearing, as set out in our findings of fact at paragraphs 194 to 202.

Allegation 14 - *Mrs Beevers inappropriately being appointed the appeal officer in relation to the appeal against the final written warning imposed in relation to the Tenerife visit.*

288. We have concluded that Mrs Beevers' initial appointment as an appeal officer did not amount to a detriment to the claimant because the respondent replaced her quickly with Ms Petriaho when the claimant objected. A reasonable worker would not have regarded this conduct as a detriment because it had no impact on the claimant's appeal hearing.

Allegation 15 - *Disciplining the Claimant in relation to the Tenerife visit when other members of staff on that visit were not subjected to disciplinary sanctions or had the opportunity to leave under settlement agreements.*

289. We have concluded that the claimant's final written warning in respect of the Tenerife trip could amount to a detriment. We found that no other members of staff who attended that trip were subject to disciplinary sanctions, but that Ms Bithell resigned (and did not enter into a settlement agreement).

290. However, we have concluded that the claimant was not provided with a final written warning because she made a protected disclosure. We found that it was open to the respondent to provide the claimant with a final written warning, based on their findings from the disciplinary investigation and the serious nature of the allegations.

Allegation 16 - *Mrs Waters emailing the Claimant 13 times over the weekend of 13 September 2019.*

291. We have concluded that Mrs Waters did email the claimant and other staff members on several occasions on many weekends, including over the weekend of 28 and 29 September 2019 (rather than 13 September 2019). However, we have concluded that Mrs Waters' emails did not amount to a detriment because the claimant was aware that she did not need to respond to those emails outside of working hours. The claimant's own email of 30 September 2019 made it clear that she was willing to continue working with Mrs Waters.

Allegation 17 - Mrs Beevers contacting the Claimant on the evening prior to and during her grandmother's funeral.

292. We have concluded that the claimant was not subject to a detriment in respect of Mrs Beevers' emails on 17 and 18 October 2019. Mrs Beevers and Mr Bright (the claimant's trade union representative) were corresponding with each other regarding the claimant's appeal arrangements for 21 October 2019 and the claimant was copied into that correspondence by both Mrs Beevers and Mr Bright. Mrs Beevers did not email the claimant directly. However, the claimant accepted that she had spoken with Mr Bright regarding a draft email to Mr Ibrahim on 17 or 18 October 2019 which indicated she was reviewing correspondence during that period.

Allegation 18 - Failing to support the Claimant during the period of sickness absence which began on or around 1 October 2019.

293. We have concluded that the claimant was subjected to a detriment in respect of Allegation 18. The respondent did not contact the claimant to discuss her wellbeing during her sickness absence, as set out in our findings at paragraphs 227 to 240.

294. However, we have concluded that this conduct was not on the ground that the claimant made a protected disclosure. We accepted Mr Hanson's evidence that the claimant did not want to speak with him when she rang to confirm her sickness notes, because she put the phone down on him. We note that the respondent struggling with staffing issues – Mrs Hosker had left her role and the School did not have a HR Officer at that time. Mr Hanson, Mrs Waters and others failed to ensure that this task was carried out by the School. However, this was because of a failure on the part of the claimant's managers to take responsibility for managing the claimant's absence under their procedures, rather than the claimant's protected disclosure.

TIME LIMITS

295. We do not need to consider the issue of time limits in relation to the claimant's detriment (protected disclosure) complaints because we have found that each of the claimant's complaints either:

295.1 did not amount to a detriment; and/or

295.2 if they did amount to a detriment, the respondent did not subject the claimant to such a detriment on the ground that she made a protected disclosure.

ANNEX 2 – TERMINATION ALLEGATIONS

296. Annex 2 relates to the claimant's complaint of constructive dismissal. Many of the allegations in Annex 2 also formed part of the claimant's detriment complaint in Annex 1. However, we have dealt with the complaints separately because:

296.1 the factual pleadings for many of the complaints of constructive dismissal differ to the factual pleadings for many of the detriment complaints, even when they ostensibly relate to the same incident; and

296.2 the test for establishing a breach of contract for the purposes of constructive dismissal is different to that for establishing detriment for the purposes of a protected disclosure complaint.

297. We will consider whether:

297.1 the respondent did the additional acts alleged in Annex 2, which were not alleged in Annex 1; and

297.2 whether each individual allegation that we have found took place on the facts amounted to a breach of contract;

before we go on to consider whether any of those acts (taken collectively) amounted to a breach and the other issues relating to the issue of dismissal.

Allegation 1 - *The Respondent breached the Claimant's confidentiality by informing a member of staff about the Protected Disclosures made on 25.06.19, 01.07.19, and 03.07.19.*

298. The member of staff referred to here was Mr Kazi. We have concluded that the respondent did not inform Mr Kazi of the protected disclosures, for the reasons set out in our findings on Allegation 1 of Annex 1.

Allegation 2 - *Mr Hanson participated in the Tenerife investigation by taking Fact-Finding Statements. This was inappropriate as he was appointed as the Disciplinary Officer of the investigation. The meeting took place two weeks after the alleged complaint was made, and was not carried out in a timely fashion, leading the Claimant to believe this was simply an excuse to force her out of her position at the school.*

299. We have concluded that Mr Hanson was involved in the initial discussions with staff, although he did not take the fact finding statements, for the reasons set out in our findings on Allegation 4 of Annex 1. We found that Mrs Waters took the fact finding statements.

300. We note that Mr Ahmed made his complaint on Tuesday 25 June 2019, the first interviews took place on Friday 28 June and the claimant was interviewed on Monday 8 July 2019. Seven members of staff were interviewed during this period. We concluded that the timescales involved were not unreasonable and there is no evidence that this was part of an attempt to force the claimant to leave the School.

Allegation 3 - *An investigation was launched into the Claimant's conduct by Mr Hanson and Mrs Beevers, where no specific complaint had been raised against her.*

301. We have concluded that the investigation did not amount to a breach of contract. The investigation into the Tenerife trip took place because of a complaint raised by Mr Ahmed, a teacher who attended the trip. It was reasonable for the respondent to carry out that investigation, given the serious nature of the complaints raised by Mr Ahmed.

Allegation 4 - *The Claimant was handed a letter regarding a second disciplinary. Two other male members of staff, Mr James Parsons and Mr Lucien Cockroft, were handed the same letter at the same time. The Claimant approached the data and exams officer, to explore the claim made against her, and found out that it was in fact a different party, the Attendance Officer, Ms Amanda Patchett, who had made the alleged mistake. The two male members of staff have been informed no further action will be taken, and provided with an apology. To date, the Claimant still has not been spoken to regarding this, despite asking Mr Graham Waters, Assistant Principal, on numerous occasions, raising this in a formal grievance with Mr Haider, and Mrs Aspinall on 13/12/19 and raising this at the Preliminary Hearing in this case on 10/03/2020. The Claimant feels she has been excluded and treated differently, as a female, and this is a deliberate attempt by Mrs Beevers, to make her feel vulnerable.*

302. We have concluded that the respondent's failure to inform the claimant of the outcome of the registers investigation was a breach of contract because the implied term of mutual trust and confidence requires any disciplinary issues to be resolved in a timely manner. Mr Hanson said that he did not inform the claimant of the outcome of the investigation because she was absent on sick leave and refused to speak with him. However, Mr Hanson could have written to the claimant to inform her of the outcome.

Allegation 5 - *Middle leaders were requested to attend a meeting after school. After reading the Respondent's policies, there is no policy stating what method staff must use to take notes on. Members of staff often use their phones to take notes. The Claimant was addressed openly in the meeting for using her phone to take notes in the meeting, in front of other colleagues and was left feeling embarrassed and belittled by Mr Richard Hanson, Principal and the male member of staff who was using his phone for the same means was unaddressed.*

303. We have concluded that Mr Hanson's conduct at the meeting on 15 July 2019 did not amount to a breach of contract. We found that Mr Hanson did ask the claimant to stop using her mobile phone during the meeting, but that Mr Hanson did not see Mr Baines using his mobile phone. We also found that the claimant was only briefly embarrassed by Mr Hanson's comment because the witnesses attending this meeting (who were interviewed as part of the claimant's grievance) either did not recall Mr Hanson's comment or stated that there was no 'big scene'.

Allegation 6 - *Mrs Beevers contacted John Haworth, NEU Branch Manager, with allegations about the Claimant's conduct. This excluded the Claimant from a conversation about her performance and breached her trust.*

304. We have concluded that Mrs Beevers' discussions with Mr Haworth did not amount to a breach of contract, save to the extent that they referred to the two additional allegations of which the claimant was not aware that time. We accepted Mrs Beevers' evidence that it was part of the respondent's 'gentleman's agreement' with the trade union to discuss performance issues with union representatives at an early stage. However, Mrs Beevers referred to two further investigations, neither of which were subsequently pursued by the School. The claimant was not

aware of any such additional investigations and Mrs Beevers did not provide Mr Haworth with details of either of those investigations.

305. Mrs Beevers stated in oral evidence that these matters related to 'potential investigations'. However, if that were the case then she should not have raised these issues at this point in time. In addition, Mrs Beevers did not later inform the claimant or her trade union representatives that the School had decided not to pursue these matters. We concluded that this was a breach of the implied term of mutual trust and confidence because employees are entitled to be provided with details of any disciplinary issues in a timely manner.

Allegation 7 - *Continued harassment from Mrs Beevers who tried to arrange a meeting with the Claimant after she was aware doctors had signed the Claimant unfit for work due to work-related stress and anxiety on 16.07.19 and Mr Dave Hunt, NASWUT representative, advised this was not appropriate. Mrs Beevers made a telephone call to harass the Claimant further, which intimidated her and created a toxic working environment.*

306. We have concluded that Mrs Beevers was not aware of the claimant's sickness absence until 17 July 2019, as set out in our findings of fact. Mrs Beevers' contact with the claimant on 16 July 2019 to arrange a meeting could not amount to a breach of contract in those circumstances.
307. We have also concluded that Mrs Beevers' telephone call on 17 July 2019 was not intended to 'harass the claimant further', that it did not 'intimidate' the claimant or create a 'toxic working environment'. As set out in our findings of fact, the claimant emailed Mrs Beevers after their call stating that it had been 'positive' and thanking her for her time.

Allegation 8 - *The Claimant convened a meeting with Mr Hanson to discuss her position as Teaching and Learning Coach. Mr Hanson informed her that she would no longer be doing this role as it was not in his restructure. A restructure was not sent to the Unions for consultation.*

308. We have concluded that the removal of the claimant's Teaching and Learning Coach role did amount to a breach of contract. This is because the claimant did not agree to the removal of the role and the change to her contract of employment was not recorded in writing. However, we found that Mr Hanson did not inform the claimant that this was part of a restructure.
309. However, we have found that the claimant waived this breach for the reasons set out in our findings of fact. In particular, we found that the only concern raised by the claimant was whether she would remain on the same pay. Mr Hanson reassured the claimant that her pay would not be changed.

Allegation 9 - *The Claimant was contacted by Mrs Sue Hosker, former business manager, on a Saturday afternoon (non-working hours), requesting a meeting for Monday 16.09.2019.*

310. We have concluded that Mrs Hosker's request for a meeting did not amount to a breach of contract because the claimant and Mrs Hosker would frequently

exchange emails outside of working hours. For example, the claimant contacted Mrs Hosker during the School's Summer holidays, on the evening of 17 July 2019 and early in the morning of 18 July 2019.

Allegation 10 - *Mr Hanson and Mrs Beevers attended a meeting with the Claimant and her union representative, Mr Tom Bright. Mr Hanson and Mrs Beevers played a video of the Claimant, her friends, and her family dancing at a family wedding which took place on 31.08.19 (during the school holidays and on a Saturday) in an attempt to bully and intimidate her in front of colleagues. Intrusive behaviour into personal life.*

311. We have concluded that the manner in which the respondent showed the video to the claimant was a breach of contract. We found that the purpose of showing the claimant the wedding video was to undermine the claimant's description of her medical condition and her reasonable adjustments requests. This was completely at odds with Mrs Hosker informing the claimant that the purpose of the meeting was to discuss her return to work.

Allegation 11 - *Mrs Waters, in an attempt to harass the Claimant further, sent 13 emails to the Claimant over a weekend, against union advice, requiring action for the following week.*

312. We have concluded that Mrs Waters did email the claimant and other staff on several occasions on many weekends, including over the weekend of 28 and 29 September 2019 (rather than 13 September 2019). However, we have concluded that Mrs Waters' emails did not amount to a breach of contract because the claimant was aware that she did not need to respond to those emails outside of working hours. The claimant's own email of 30 September 2019 made it clear that she was willing to continue working with Mrs Waters.

Allegation 12 - *Harassment via numerous emails from Mrs Beevers. Mrs Beevers was informed this was the evening prior to the Claimant's grandmother's funeral.*

313. See Allegation 13 below.

Allegation 13 - *Harassment via numerous emails from Mrs Beevers sent during the Claimant's grandmother's funeral.*

314. In respect of Allegations 12 and 13, we have concluded that the claimant's contract was not breached by Mrs Beevers' emails on 17 and 18 October 2019. Mrs Beevers and Mr Bright (the claimant's trade union representative) were corresponding with each other regarding the claimant's appeal arrangements and the claimant was copied into that correspondence by both Mrs Beevers and Mr Bright. Mrs Beevers did not email the claimant directly. However, the claimant accepted that she had spoken with Mr Bright regarding a draft email to Mr Ibrahim on 17 or 18 October 2019.

Allegation 14 - *The Claimant was issued with a final written warning for safeguarding after following the appeal process. No offer to retrain or support improvement. Warning was issued purely to encourage resignation as no complaint to answer to.*

315. This matter relates to the Tenerife trip disciplinary investigation. We found that it was open to the respondent to provide the claimant with a final written warning, based on their findings from the disciplinary investigation and the serious nature of the allegations.

Allegation 15 - *DSAR submitted by the Claimant to the Respondent. The Respondent failed to comply accordingly, withholding important data. Images found from the Claimant's social media shared between Mr Hanson and Mrs Beevers at 21:45 in the evening.*

316. We have concluded that the respondent complied substantially with the claimant's subject access request. The claimant was unable to identify during her evidence what data she states was withheld and the emails between the claimant and Mr Rogers suggested that all key data had been provided.

Allegation 16 - *The Claimant raised a formal grievance with the Chair of the Board, Mr Haider.*

317. It is not disputed that the claimant emailed her formal grievance to the respondent on 2 December 2019.

Allegation 17 - *Formal grievance hearing with Mrs Kath Bedford, PA to Mr Ibrahim, Mrs Aspinall and Mr Haider. Mr Hunt supported the Claimant during the meeting. All of the issues raised in this claim were highlighted. Mr Haider stated an investigation would take place, directed by Mrs Aspinall. Disclosure made about the Claimant's mental well-being, which was ignored.*

318. Please refer to our conclusions under Allegation 18 below.

Allegation 18 - *From 01.10.19 to 12.03.20 no welfare checks, visits or phone calls from any member of the Trust. The Claimant sent an email to Ms Rachael Smith on 17.01.20 expressing how the Trust are affecting mental wellbeing by breaking their own policies and procedures.*

The lack of communication left the Claimant feeling isolated and developed an atmosphere that does not encourage her to return work. The Claimant's absence is work-related and the Claimant did not consider six months to be taking swift action.

The Claimant asked again to be referred to Occupational Health on 13.12.19 and had to chase this on 07.01.20. The Respondent was not proactive in helping the Claimant return to work.

319. We have concluded that in respect of Allegations 17 and 18 that the respondent's failure to support the claimant during her sickness absence was a breach of the implied term of mutual trust and confidence. We found that the respondent delayed referring the claimant to occupational health during 2019 and 2020 and failed to act on occupational health advice. We also found that no one from the respondent contacted the claimant on a regular basis to discuss her condition and its prognosis or to consider ways to support the claimant to return to work. The claimant highlighted the respondent's failings on a number of occasions, but the respondent did not seek to make any arrangements to hold any such meetings or discussions.

We accept that the claimant was in contact with the respondent during this period regarding other matters, including disciplinary and grievance issues, but these matters did not relate to the claimant's sickness absence.

Allegation 19 - *Two months waiting to hear outcome of grievance, trust has been broken beyond repair despite reporting to the highest level, and ignored by the Trust for 5 months, meant it was impossible for the Claimant to return to work. The Claimant submits her resignation as she had no other option but to resign.*

320. We find that the time taken by the respondent to conduct its grievance investigation was not unreasonable, given the volume of grievance complaints and the large number of witnesses involved. Mr Haider, the Trust's Chair of Governors, held the grievance due to the senior roles held by the Trust's employees who were the subject of the claimant's complaints. We note that Mr Haider had a full time job outside of the Trust. The claimant's grievance meeting took place on 13 December 2019, following which the School had a two week Christmas holiday.

Allegation 20 - *The Claimant still has no outcome of the grievance hearing. The Respondent agrees to provide this by 13.03.20 at the Preliminary Hearing in these proceedings but this deadline is not adhered to.*

321. This allegation post-dates the claimant's resignation and therefore does not form part of her claim for constructive dismissal.

Allegation 21 - *No outcome of the grievance hearing communicated to the Claimant at the date of the Preliminary Hearing in these proceedings.*

322. This allegation post-dates the claimant's resignation and therefore does not form part of her claim for constructive dismissal.

DID THE CLAIMANT'S RESIGNATION AMOUNT TO A DISMISSAL?

323. We have reminded ourselves that we must consider the questions set out in *Kaur*, that is:

323.1 What was the most recent act (or omission) on the part of the respondent which the claimant says caused, or triggered, her resignation?

323.2 Has she affirmed the contract since that act?

323.3 If not, was that act (or omission) by itself a repudiatory breach of contract?

323.4 If not, was it nevertheless part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation.)

323.5 If so, did the claimant resign in response (or partly in response) to that breach?

324. The most recent acts that the claimant states caused her resignation were:

324.1 the failure of the respondent to provide the claimant with an outcome for the grievance hearing by the date of her resignation on 14 February 2020;

- 324.2 the ongoing failure by the respondent to provide the claimant with the outcome of registers investigation; and
 - 324.3 the ongoing failure by the respondent to support the claimant adequately during her long term sickness absence (which started on 1 October 2020).
325. We find that the claimant did not affirm her contract since those acts:
- 325.1 the claimant was still awaiting the outcome of her grievance, as part of which she raised many complaints regarding her treatment by the respondent (including the handling of her sickness absence and the respondent's failure to inform her of the conclusion of the registers investigation);
 - 325.2 the fact that the claimant was receiving sick pay is not sufficient to amount to an affirmation of her contract; and
 - 325.3 we concluded that the claimant's return to work on 23 March 2020 until 17 April 2020 did not amount to an affirmation of her contract. The claimant was working from home for two weeks of that period due to the national lockdown and was on holiday for a further two weeks.
326. We then need to consider whether each of those acts or omissions amounted to a repudiatory breach of contract on their own. We have concluded that:
- 326.1 the fact that the respondent had not concluded the claimant's grievance by 14 February 2020 did not amount to a repudiatory breach of contract. The detailed nature of the grievance and the number of witnesses involved, together with the two week Christmas break, required the respondent to undertake a lengthy grievance investigation lasting over two months;
 - 326.2 the ongoing failure by the respondent to provide the claimant with the outcome of the registers investigation did not amount to a repudiatory breach of contract on its own. The claimant was notified of the registers investigation on or around 16 July 2019 and had returned to work in September 2019, despite the lack of any outcome at that time;
 - 326.3 the ongoing failure by the respondent to support the claimant adequately during her long term sickness absence did amount to a repudiatory breach of contract on its own. We found that the respondent delayed referring the claimant to occupational health during 2019 and 2020 and failed to act on occupational health advice. We also found that no one from the respondent contacted the claimant on a regular basis to discuss her condition and its prognosis or to consider ways to support the claimant to return to work. The claimant highlighted the respondent's failings on a number of occasions, but the respondent did not seek to make any arrangements to hold any such meetings or discussions. We accept that the claimant was in contact with the respondent during this period regarding other matters, including disciplinary and grievance issues, but these matters did not relate to the claimant's sickness absence.

327. We have concluded that the claimant resigned partly in response to the respondent's ongoing failure to support her adequately during her long term sickness absence from 1 October 2020 onwards. The claimant had been employed by the respondent for over eight years, having joined them as a newly qualified teacher, and had been promoted to Head of MFL. The claimant's resignation letter states that the reasons for the claimant's resignation included a statement that:
- “As a result of the Trust's behaviour, and the inability to follow policy and procedure, as well as the lack of good practice and disregard for the mental wellbeing of staff shown by the HR department, a fundamental breach of contract has taken place on the Trust's part...”.*
328. We accept that the timing of the claimant's resignation was in part due to the offer of a new job at Parkside school. However, we note that the vast majority of employees would seek alternative sources of income before resigning from a stable job because they could not otherwise afford to meet their financial obligations.
329. We have concluded that the claimant's resignation did amount to a dismissal by the respondent.

WHAT WAS THE REASON FOR THE CLAIMANT'S DISMISSAL

330. The claimant contended that the reason, or the principal reason, for her dismissal was not because she had made a protected disclosure. We have found that the respondent dismissed the claimant by its conduct in failing to support her adequately during her long term sickness absence. The claimant did not provide sufficient evidence of any connection between that conduct from 1 October 2020 onwards and her protected disclosures on 25 June, 1 and 3 July 2019. We note that:
- 330.1 the respondent investigated Mr Kazi's conduct in July 2019 and issued him with a management instruction. The claimant did not raise any concerns regarding the outcome of Mr Kazi's investigation until her grievance in December 2019;
- 330.2 the School did not have a HR officer in the Autumn of 2019 until Ms Smith joined in that role in December 2019. None of the respondent's Senior Leadership Team at the School took on responsibility for managing the School's HR duties towards the claimant in the absence of the HR officer. The Trust's view, as expressed by Mrs Beevers, was that this was a matter for the School to manage, rather than the Trust. However, the reason for the School's managers' failure to take responsibility was not due to the claimant's protected disclosures;
- 330.3 Ms Smith did not seek to arrange a wellbeing discussion or meeting with the claimant. However, Ms Smith was not employed at the time of the claimant's protected disclosures and there was no evidence that she was aware of them when she joined the School in December 2019;

- 330.4 the delays in dealing with the claimant's occupational health referrals were in part due to the respondent changing its occupational health provider in the Summer/Autumn of 2019 and in part due to a lack of HR support at that time. Ms Smith dealt with the claimant's request for occupational health reports in January 2020 and, as stated above, there was no evidence that she was aware of the claimant's protected disclosures.
331. We then need to consider whether the respondent had a potentially fair reason for the claimant's dismissal, under s98 of the ERA. The respondent pleaded that the reason for dismissal was some other substantial reason, i.e. a breakdown in the employment relationship between the claimant and the respondent.
332. However, we have found that the respondent's failure to support the claimant adequately during her sickness absence was not due to a breakdown in relationships for the reasons set out in this section of the judgment.

ANNEX 3 – DISCRIMINATION AND VICTIMISATION ALLEGATIONS

DIRECT DISCRIMINATION COMPLAINTS

Time limits

333. We have considered whether the claimant's were submitted within the time limits in the EQA and, if not, whether such time limits should be extended. The claimant submitted her ACAS early claim conciliation request on 11 December 2019 and conciliation ended on 11 January 2020. The claimant submitted her claim form on 14 January 2020.
334. Any complaints relating to matters that took place before 12 September 2019 may have been submitted outside of the normal time limit, unless either:
- 334.1 they formed part of a continuing act; and/or
 - 334.2 the Tribunal exercises its discretion to extend the relevant time limit under s123 of the EQA.
335. On the face of it:
- 335.1 both of the complaints of race discrimination (Allegation 1 – May 2018 and Allegation 4 – 22 August 2019) are out of time;
 - 335.2 two of the complaints of sex discrimination are out of time (Allegation 4 – 22 August 2019); and
 - 335.3 two of the complaints of sex discrimination are in time (i.e. Allegation 2 (regarding a continuing failure by the respondent to confirm the outcome of the registers investigation) and Allegation 5 (regarding the claimant's final written warning dated 30 September 2019 resulting from the outcome of the Tenerife trip disciplinary hearing)).

Sex discrimination complaints – was there a continuing act?

336. We cannot consider whether there was a continuing act (which would bring the claimant's earlier sex discrimination complaints in time) without first considering

whether either (or both) Allegation 2 and Allegation 5 amounted to an act of sex discrimination.

Allegation 2 (direct sex discrimination) - *Handing the claimant a letter on 5 July 2019 concerning a further disciplinary allegation regarding a wrongly marked register and then not informing her that the matter would not be pursued further although two male employees (Mr James Parsons and Mr Lucien Cockroft) against whom similar allegations were made were so informed. The claimant only discovered the matter was not to be pursued when she approached the data and exams officer.*

337. We have concluded that the claimant was subject to less favourable treatment in respect of this allegation but that the relevant date of the letter was on or around 16 July 2019. It was not disputed that the claimant was given a letter regarding a further disciplinary investigation regarding a wrongly marked register. It was also not disputed that Mr Hanson told Mr Parsons and Mr Cockroft that the allegations would not be pursued against them, but that he did not inform the claimant that the allegations would not be pursued against her.

338. However, we have concluded that this was not related to the claimant's sex. We accepted Mr Hanson's evidence that he failed to inform the claimant of the outcome of the registers investigation because the claimant was on sick leave and she refused to speak to Mr Hanson.

Allegation 5 (direct sex discrimination) - *Disciplining the claimant in relation to the Tenerife visit when other members of staff on that visit were not subjected to disciplinary sanctions or had the opportunity to leave under settlement agreements*

339. We found that the respondent investigated all members of staff who attended the trip. The claimant was given a final written warning regarding the Tenerife trip, that no other members of staff were disciplined in respect of that trip and that Ms Bithell resigned (but did not enter into a settlement agreement).

340. We have concluded that the claimant was not subject to less favourable treatment in respect of this allegation. We found that the reasons why she received a final written warning included:

340.1 the respondent decided that the claimant was responsible for the pupil who attempted to walk home unaccompanied at 2am; and

340.2 the claimant was the Deputy Trip Lead and she, together with Ms Bithell, had a greater degree of responsibility for the trip than the other members of staff.

341. We note that another female member of staff, Mrs Ravandi, was not subject to any disciplinary action as a result of the Tenerife trip investigation. We find that a male member of staff in materially similar circumstances to those of the claimant would also have received a final written warning.

342. Having reached this conclusion, there can be no continuing acts of discrimination in relation to Allegations 1, 3 or 4 which would bring them within the time limits.

Sex and Race discrimination complaints – is it just and equitable to extend the time limits to bring these complaints?

343. We have then considered whether it would be just and equitable to extend the time limits to permit the claimant to bring Allegations 1, 3 or 4. The extensions of time required would be as follows:

Allegation – Date	Normal time limit	Just and equitable extension requested (subject to any continuing arguments)
1 – 23 May 2018	22 August 2018	1 year and 5 months
3 – 15 July 2019	14 October 2019	3 months
4 – 22 August 2019	21 November 2019	1 and a half months

344. We have concluded that it would not be just and equitable to extend the time limits to permit the claimant to bring these complaints. The key reasons for our conclusion include:

344.1 the claimant was advised on these matters by her various trade union representatives. The claimant gave evidence that her union representatives advised her that she should raise her complaints under the respondent’s internal processes before bringing any legal proceedings. The claimant chose to follow her union’s advice;

344.2 the claimant did not raise a grievance regarding these matters until 2 December 2019, by which point the time limits referred to above would already have expired. The claimant was aware of the respondent’s grievance procedure, having already raised a complaint regarding her pay review during earlier periods of maternity leave;

344.3 the claimant was on sick leave for parts of these periods, however she was still able to participate in other processes (including her the disciplinary process in July and September 2019 and her disciplinary appeal in November 2019) during these periods.

345. However, if our conclusions in relation to time limits are incorrect, we have considered the claimant’s complaints and concluded that her complaints of discrimination would not success for the reasons set out below.

Allegation 1 (direct race discrimination) - Requiring the claimant in May 2018 to re-interview in order to obtain the position as Head of MFL on permanent basis when she had been fulfilling it from August 2018 on a temporary basis.

346. We found that the claimant was required to re-interview for the permanent Head of MFL role on 23 May 2018, having worked in that role on a temporary basis previously.

347. However, we have found that requiring the claimant to re-interview on May 2018 was not less favourable treatment. We found that the reason why the claimant was not offered the Head of MFL role on a permanent basis following her interview in February 2018 was because of Mr Ibrahim's concerns about the claimant's ability to deliver improved exam results. We have concluded that the respondent would have required a comparator (i.e. an Asian male about whom Mr Ibrahim had similar concerns and who had been appointed to the Head of MFL role on a temporary basis) to re-interview in the same way.

Allegation 3 (direct sex discrimination) - *Mr Hanson embarrassing and belittling the claimant in a staff meeting for taking notes on her mobile phone when nothing was said to a male member of staff (Mr Chris Baines, the Head of Art) who was doing the same thing.*

348. We have concluded that the claimant was not subject to less favourable treatment in respect of this allegation which related to the middle leadership meeting on 15 July 2019. We found that Mr Hanson did ask the claimant to stop using her mobile phone during the meeting, but that Mr Hanson did not see Mr Baines using his mobile phone. However, we have concluded that this did not amount to less favourable treatment. We found that the claimant was only briefly embarrassed by Mr Hanson's comment because the witnesses attending this meeting (who were interviewed as part of the claimant's grievance) either did not recall Mr Hanson's comment or stated that there was no 'big scene'.

349. However, even if our findings regarding Mr Hanson's conduct did amount to less favourable treatment, we find that this treatment was not because of the claimant's gender. We have concluded that Mr Hanson asked the claimant to stop using her mobile phone because he wanted to ensure that all staff were concentrating on the matters being discussed during the meeting and that he would have asked a male member of staff to do the same.

Allegation 4 (direct sex and race discrimination) - *Removing the claimant from her position as Teaching and Learning coach. The claimant was informed of this on 22 August 2019.*

350. We have concluded that the claimant was not subject to less favourable treatment in respect of this allegation. We found that the reason why Mr Hanson removed the claimant's Teaching and Learning coach role was to provide her with more time to focus on the Head of MFL role. The claimant had been performing the Head of MFL role on her own, following Mr Bencherif's resignation, and the department's exam results that year were poor.

351. However, even if our findings regarding Mr Hanson's conduct did amount to less favourable treatment, we find that this treatment was not because of the claimant's gender. We have concluded that Mr Hanson would have removed this role from a male and/or Asian male member of staff whose circumstances were materially similar to those of the claimant.

VICTIMISATION COMPLAINT

Time limits

352. The respondent contends that the claimant's victimisation complaint was submitted outside of the applicable time limit. We have concluded that the 3 month time limit for submitting the claimant's victimisation complaint expired on 9 June 2020 at the latest (i.e. 3 months after the respondent provided the claimant's reference to Parkside school). The claimant was permitted to amend her claim to include a victimisation complaint on 27 July 2020, around seven weeks after the time limit expired.
353. The claimant received advice from her union representatives regarding her disciplinary and grievances during her employment. However, the claimant's solicitors were not acting for her when she submitted her claim form on 14 January 2020 and she did not have the benefit of legal representation at either of the preliminary hearings on 10 March and 27 July 2020. The claimant's solicitors came on record from 18 August 2020. The respondent has been represented by solicitors throughout these proceedings and was legally represented at both preliminary hearings.
354. The claimant's claim form referred to 'victimisation' complaints. However, Employment Judge Evans clarified at the Preliminary Hearing on 10 March 2020 that the claimant was referring to her detriment complaints relating to her protected disclosure, rather than any freestanding victimisation complaints. We note that the claimant's claim form pre-dated the issues regarding her reference, which arose after Parkside requested a reference from the respondent on 25 February 2020. We also note that the claimant was permitted to amend her claim to bring an additional complaint of constructive dismissal at that hearing and that the Judge recorded that the claimant had no other additional complaints.
355. Employment Judge Brain permitted the claimant to amend her claim to bring a complaint of victimisation relating to her reference at the Preliminary Hearing on 27 July 2020. We note that the respondent did not object to that amendment and that the respondent's additional Grounds of Resistance (submitted on 14 August 2020) did not raise any issues of time limits. Both parties prepared their disclosure and witness evidence on the basis that the Tribunal would consider the claimant's victimisation complaint. We note that the respondent did not call Mrs Hall and Mrs Monaghan to provide witness evidence, but that they are both still working for the respondent. The respondent's representative stated that this was because the respondent's position was that the reference request should have been directed to Mrs Monaghan, rather than Mrs Hall, when the Tribunal asked during submissions why those witnesses were not called.
356. The Tribunal has the discretion to extend time limits in discrimination complaints where it is 'just and equitable' to do so. We have considered the factors referred to in *Keeble* (cited above) and concluded that it would be just and equitable to extend the time limit for submission of the claimant's victimisation complaint until 27 July 2020. In reaching that decision, we note that:

- 356.1 the respondent was not prejudiced by the submission of the victimisation complaint, which was submitted around seven weeks late. The respondent did not raise any issues regarding time limits in relation to the amendment of the claimant's complaint (whereas the respondent did raise time limit issues regarding the claimant's detriment and other discrimination complaints). The respondent had ample time to prepare to defend this complaint as part of the proceedings because the hearing of this claim took place over four months later and all potential relevant witnesses were still employed by the respondent as at the date of the hearing;
- 356.2 the claimant would be prejudiced if her complaint were not permitted to proceed because she could not seek an alternative remedy for this complaint;
- 356.3 the claimant did not receive legal advice regarding her victimisation complaint. We note that Employment Judge Evans did discuss the claimant's complaints with her during the preliminary hearing on 10 March 2020, however it is not clear whether they discussed the claimant's concerns regarding her reference (which could not form part of her original claim because no reference request had been made at the date her claim form was submitted). We also note that the claimant was still on sick leave at that point in time, in part due to work-related stress; and
- 356.4 the claimant would not have seen the respondent's internal emails regarding the claimant's reference request and the correspondence relating to Ms Bithell's reference request until disclosure had taken place in April and May 2020 because she was not party to this correspondence.

Victimisation issues

- 357. The claimant alleged that the respondent withheld and delayed the issue of a reference to her prospective employers. The claimant alleges that a reference was sought on 25 and 27 February 2020, and on 4, 5 and 9 March 2020 and was provided on 10 March 2020 (which was the date of the first Preliminary Hearing of this claim).
- 358. The respondent accepts that the bringing of these proceedings was a protected act. The questions that we must consider are:
 - 358.1 Did the respondent deliberately withhold and/or delay the issue of a reference to her prospective employers?
 - 358.2 If so, was it because either:
 - 358.2.1 the claimant did a protected act (i.e. bringing of proceedings); and/or
 - 358.2.2 the respondent believed the claimant had done, or might do, a protected act?
- 359. We found that the respondent delayed the issue of the reference to Parkside school. The timeline of Parkside's request for a reference regarding the claimant

and the respondent's handling of that request are set out in detail in our findings of fact. By way of contrast, the respondent prepared Ms Bithell's reference on behalf of her prospective employer much more quickly. The delay to Ms Bithell's reference was due to Mr Hanson's agreement that Ms Shuttleworth should approve Ms Bithell's reference before it was sent to her prospective employer.

360. The respondent's delay in providing the reference did not prevent the claimant from starting her new role at Parkside on the date that she had arranged. However, we accepted the claimant's oral evidence that the respondent's delay in providing her reference caused her additional stress and anxiety. We note that this occurred during the period that the claimant was on sick leave, one cause of which was work-related stress.
361. We have concluded that the delay to the claimant's reference was caused by Mrs Monaghan and Mrs Hall's concerns that they felt 'vulnerable' in their dealings with the claimant, as stated in Mrs Monaghan's email of 6 March 2020. We have concluded that the reason why they felt 'vulnerable' was because they were aware that the claimant had brought legal proceedings against the respondent and they therefore sought Mrs Aspinall's advice before taking any further action.

CONCLUSIONS

362. We have concluded that:
- 362.1 The claimant's complaints of unfair (constructive) dismissal and victimisation succeed.
 - 362.2 The claimant's complaints of detriment (protected disclosure), automatic unfair dismissal (protected disclosure), direct race discrimination and direct sex discrimination fail and are dismissed.
 - 362.3 The claimant has received her full notice pay and her complaint of wrongful dismissal is therefore dismissed.
363. A remedy hearing will be listed in due course.

Employment Judge Deeley

Employment Judge Deeley
Date: 18 January 2021

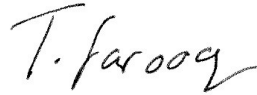
JUDGMENT SENT TO THE PARTIES ON

19 January 2021

AND ENTERED IN THE REGISTER

19 January 2021

FOR THE TRIBUNAL OFFICE

A handwritten signature in black ink, appearing to read 'T. Farooq', is written in a cursive style.

Public access to Employment Tribunal judgments

Judgments and written reasons for judgments, where they are provided, are published in full online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the parties in the case.

ANNEX 1 – WHISTLEBLOWING DETRIMENT ALLEGATIONS

1.	07.19	Informing Mr Kazi that the Claimant had made the Protected Disclosures in breach of the Respondent's whistleblowing policy.
2.	From 05.07.19	Mr Kazi refusing on a daily basis to speak to the Claimant, failing to reply to her emails and refusing to look at her.
3.		Investigating the Claimant's conduct during a pupil visit to Tenerife although no complaint had been made by any parent, pupil or staff member and although no allegation had been made against the Claimant.
4.		Mr Hanson inappropriately participating in the investigation concerning the Tenerife visit by taking Fact Finding statements although he had been appointed Disciplinary officer.
5.	15.07.19	Being handed a letter on 5 July 2019 concerning a further disciplinary investigation regarding a wrongly marked register and then not being informed that the matter would not be pursued further although two male employees (Mr James Parsons and Mr Lucien Cockroft) against whom similar allegations were made were so informed. The Claimant only discovered the matter was not to be pursued when she approached the data and exams officer.
6.	15.07.19	Being embarrassed and belittled by Mr Hanson in a staff meeting for taking notes on her mobile phone when nothing was said to a male member of staff (Mr Chris Baines, Head of Art) who was doing the same thing.
7.		Being approached via her union representative by Mrs Beevers about the possibility of a protected conversation being held in light of the investigation into the Tenerife visit, the further disciplinary regarding the wrongly marked register, and an allegation that she had coerced a student to make a complaint about the incident on 3 July 2019 concerning Mr Kazi, and, on the same day, Mr Hanson failing to attend a pre-arranged meeting.
8.	16.07.19	Mrs Beevers seeking to arrange a meeting with the Claimant for 17.07.19 despite having been told on 16.07.19 that the Claimant had been signed off sick with stress for a week.
9.	17.07.19	Mrs Beevers telephoning the Claimant on 17.07.19 whilst she was off sick and telling her she needed to be careful what she posted on social media.
10.	17.09.19	Failing to refer the Claimant for an occupational health assessment in a timely fashion after agreeing to do this on 17.07.19. No referral was made until 17.09.19.
11.	22.08.19	Removing the Claimant from her position as Teaching and Learning Coach. The Claimant was informed of this on 22 August 2019.

12.	16.09.19	Inappropriately raising the matter of a video obtained from the Claimant's social media at a return to work meeting on 16.09.19 and playing the video with resulting embarrassment to the Claimant.
13.		Seeking to ensure that the result of the disciplinary hearing in relation to the Tenerife visit on 24 September 2019 was pre-ordained by Mrs Beevers coaching Mr Hanson and Mrs Waters, who both openly displayed a booklet with the words 'Final Written Warning' obviously circled.
14.		Mrs Beevers inappropriately being appointed the appeal officer in relation to the appeal against the final written warning imposed in relation to the Tenerife visit.
15.		Disciplining the Claimant in relation to the Tenerife visit when other members of staff on that visit were not subjected to disciplinary sanctions or had the opportunity to leave under settlement agreements.
16.	13.09.19	Mrs Waters emailing the Claimant 13 times over the weekend of 13 September 2019.
17.		Mrs Beevers contacting the Claimant on the evening prior to and during her grandmother's funeral.
18.	03.10.19 onwards	Failing to support the Claimant during the period of sickness absence which began on or around 1 October 2019.

ANNEX 2 – UNFAIR (CONSTRUCTIVE) DISMISSAL ALLEGATIONS

1.	On or around 05.07.19	The Respondent breached the Claimant's confidentiality by informing a member of staff about the Protected Disclosures made on 25.06.19, 01.07.19, and 03.07.19.
2.	On or around 05.07.19	Mr Hanson participated in the Tenerife investigation by taking Fact-Finding Statements. This was inappropriate as he was appointed as the Disciplinary Officer of the investigation. The meeting took place two weeks after the alleged complaint was made, and was not carried out in a timely fashion, leading the Claimant to believe this was simply an excuse to force her out of her position at the school.
3.	08.07.19	An investigation was launched into the Claimant's conduct by Mr Hanson and Mrs Beevers, where no specific complaint had been raised against her.
4.	15.07.19	The Claimant was handed a letter regarding a second disciplinary. Two other male members of staff, Mr James Parsons and Mr Lucien Cockroft, were handed the same letter at the same time. The Claimant approached the data and exams officer, to explore the claim made against her, and found out that it was in fact a different party, the Attendance Officer, Ms Amanda Patchett, who had made the alleged mistake. The two male members of staff have been informed no further action will be taken, and provided with an apology. To date, the Claimant still has not been spoken

		to regarding this, despite asking Mr Graham Waters, Assistant Principal, on numerous occasions, raising this in a formal grievance with Mr Haider, and Mrs Aspinall on 13/12/19 and raising this at the Preliminary Hearing in this case on 10/03/2020. The Claimant feels she has been excluded and treated differently, as a female, and this is a deliberate attempt by Mrs Beevers, to make her feel vulnerable.
5.	15.07.19	Middle leaders were requested to attend a meeting after school. After reading the Respondent's policies, there is no policy stating what method staff must use to take notes on. Members of staff often use their phones to take notes. The Claimant was addressed openly in the meeting for using her phone to take notes in the meeting, in front of other colleagues and was left feeling embarrassed and belittled by Mr Richard Hanson, Principal and the male member of staff who was using his phone for the same means was unaddressed.
6.	16.07.19	Mrs Beevers contacted John Haworth, NEU Branch Manager with allegations about the Claimant's conduct. This excluded the Claimant from a conversation about her performance and breached her trust.
7.	17.07.19	Continued harassment from Mrs Beevers who tried to arrange a meeting with the Claimant after she was aware doctors had signed the Claimant unfit for work due to work-related stress and anxiety on 16.07.19 and Mr Dave Hunt, NASWUT representative, advised this was not appropriate. Mrs Beevers made a telephone call to harass the Claimant further, which intimidated her and created a toxic working environment.
8.	22.08.19	The Claimant convened a meeting with Mr Hanson to discuss her position as Teaching and Learning Coach. Mr Hanson informed her that she would no longer be doing this role as it was not in his restructure. A restructure was not sent to the Unions for consultation.
9.	14.09.19	The Claimant was contacted by Mrs Sue Hosker, former business manager, on a Saturday afternoon (non-working hours), requesting a meeting for Monday 16.09.2019.
10.	16.09.19	Mr Hanson and Mrs Beevers attended a meeting with the Claimant and her union representative, Mr Tom Bright. Mr Hanson and Mrs Beevers played a video of the Claimant, her friends, and her family dancing at a family wedding which took place on 31.08.19 (during the school holidays and on a Saturday) in an attempt to bully and intimidate her in front of colleagues. Intrusive behaviour into personal life.
11.	30.09.19	Mrs Waters, in an attempt to harass the Claimant further, sent 13 emails to the Claimant over a weekend, against union advice, requiring action for the following week.
12.	17.10.19	Harassment via numerous emails from Mrs Beevers. Mrs Beevers was informed this was the evening prior to the Claimant's grandmother's funeral.
13.	18.10.19	Harassment via numerous emails from Mrs Beevers sent during the Claimant's grandmother's funeral.

14.	30.09.19	The Claimant was issued with a final written warning for safeguarding after following the appeal process. No offer to retrain or support improvement. Warning was issued purely to encourage resignation as no complaint to answer to.
15.	03.10.19	DSAR submitted by the Claimant to the Respondent. The Respondent failed to comply accordingly, withholding important data. Images found from the Claimant's social media shared between Mr Hanson and Mrs Beevers at 21:45 in the evening.
16.	2.12.19	The Claimant raised a formal grievance with the Chair of the Board, Mr Haider.
17.	13.12.19	Formal grievance hearing with Mrs Kath Bedford, PA to Mr Ibrahim, Mrs Aspinall and Mr Haider. Mr Hunt supported the Claimant during the meeting. All of the issues raised in this claim were highlighted. Mr Haider stated an investigation would take place, directed by Mrs Aspinall. Disclosure made about the Claimant's mental well-being, which was ignored.
18.	17.01.20	<p>From 01.10.19 to 12.03.20 no welfare checks, visits or phone calls from any member of the Trust. The Claimant sent an email to Ms Rachael Smith on 17.01.20 expressing how the Trust are affecting mental wellbeing by breaking their own policies and procedures.</p> <p>The lack of communication left the Claimant feeling isolated and developed an atmosphere that does not encourage her to return work. The Claimant's absence is work-related and the Claimant did not consider six months to be taking swift action.</p> <p>The Claimant asked again to be referred to Occupational Health on 13.12.19 and had to chase this on 07.01.20. The Respondent was not proactive in helping the Claimant return to work.</p>
19	21.01.20	Two months waiting to hear outcome of grievance, trust has been broken beyond repair despite reporting to the highest level, and ignored by the Trust for 5 months, meant it was impossible for the Claimant to return to work. The Claimant submits her resignation as she had no other option but to resign.
20	14.02.20	The Claimant still has no outcome of the grievance hearing. The Respondent agrees to provide this by 13.03.20 at the Preliminary Hearing in these proceedings but this deadline is not adhered to.
21	10.03.20	No outcome of the grievance hearing communicated to the Claimant at the date of the Preliminary Hearing in these proceedings.

ANNEX 3 – DISCRIMINATION AND VICTIMISATION ALLEGATIONS

Date	Allegation	Type of discrimination alleged	Comparators
1. May 2018	Requiring the claimant in May 2018 to re-interview in order to obtain the position as Head of MFL on permanent basis when she had been fulfilling it from August 2018 on a temporary basis.	Direct race discrimination	an Asian man who had held the position of Head of MFL on a temporary basis since August 2018
2. 5 July 2019	Handing the claimant a letter on 5 July 2019 concerning a further disciplinary allegation regarding a wrongly marked register and then not informing her that the matter would not be pursued further although two male employees (Mr James Parsons and Mr Lucien Cockroft) against whom similar allegations were made were so informed. The claimant only discovered the matter was not to be pursued when she approached the data and exams officer.	Direct sex discrimination	James Parsons and Lucien Cockroft
3. 15 July 2019	Mr Hanson embarrassing and belittling the claimant in a staff meeting for taking notes on her mobile phone when nothing was said to a male member of staff (Mr Chris Baines, the Head of Art) who was doing the same thing.	Direct sex discrimination	Chris Baines
4. 22 August 2019	Removing the claimant from her position as Teaching and Learning coach. The claimant was informed of this on 22 August 2019.	Direct sex discrimination Direct race discrimination	DSD: a hypothetical male teacher who was the head of MFL DRD: an Asian man who had held the position of Head of MFL on a temporary basis since August 2018

Date	Allegation	Type of discrimination alleged	Comparators
5.	Disciplining the claimant in relation to the Tenerife visit when other members of staff on that visit were not subjected to disciplinary sanctions or had the opportunity to leave under settlement agreements	Direct sex discrimination	Waqas Ahmed, Lewis Brown, Jorge Berenger and Paul Calderbank
6. Withholding of and/or delay in issuing reference	The respondent withheld and delayed the issue of a reference to her prospective employers. A reference was sought on 25 and 27 February 2020, and on 4, 5 and 9 March 2020 and was provided on 10 March 2020.	Victimisation	N/A