JB1

EMPLOYMENT TRIBUNALS

Claimant: Mr F Ahmed

Respondent: The Cardinal Hume Academies Trust

Heard at: London Central **On:** 10-16 October 2017,
20-21 November 2017 (In Chambers)

Employment Judge: Ms A Stewart
Members: Ms J Clark
Mr J F Noblemunn

Representation

Claimant: In Person
Respondent: Mr J Dawson of Counsel

JUDGMENT

1 The unanimous Judgment of the Tribunal is as follows:

1.1 The Claimant's complaints that he was subjected to disability discrimination contrary to section 13 and/or section 15 of the Equality Act 2010, are not well-founded and fail.

1.2 The Claimant's complaint that the Respondent failed to make reasonable adjustments for his disability, contrary to sections 20 and 21 of the Equality Act 2010, is not well-founded and fails.

1.3 The Claimant's claim that he is to be regarded as unfairly dismissed under section 12 of the Employment Relations Act 1999 is not well-founded and fails.

1.4 The Claimant's complaint that he was subjected to detriment on the ground that he had made protected disclosures, contrary to section 47B of the Employment Rights Act 1996, is not well-founded and fails.

1.5 The Claimant's complaint under section 26 of the Equality Act 2010 that he was subjected to harassment related his disability at a meeting on 7 September 2016, is not well-founded and fails.

2 The majority Judgment of the Tribunal is as follows:

2.1 The Claimant's complaint under section 26 of the Equality Act 2010 that he was subjected to harassment related to his disability at a meeting on 8 September 2016, is not well-founded and fails.

2.2 The Claimant's complaint that he was constructively unfairly dismissed is not well-founded and fails.

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Employment Judge Stewart on 31 December 2017

JB1

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REASONS

Introduction

1. The Claimant, Mr Faisal Ahmed, brings the following complaints before the Tribunal:-

   (a) That he was subjected to harassment related to his disability by Mr Rowland on the 7 and 8 September, contrary to **section 26 of the Equality Act 2010.**

   (b) That he was subjected to direct disability discrimination, contrary to **section 13 of the Equality Act 2010**, in that he was suspended on the 8 September 2016 and that the Respondent proposed to move the Claimant from the Teach First Programme to the Schools Direct Programme.

   (c) That, contrary to **section 15 of the Equality Act 2010**, the Claimant suffered discrimination in consequence of something arising from his disability, namely his handwriting difficulties, in that he was suspended on the 8 September 2016 and that the Respondent proposed to move him from the Teach First to the Schools Direct Programme.

   (d) That the Respondent failed to make reasonable adjustments for his disability, **contrary to sections 20 and 21 of the Equality Act 2010**, in a variety of ways, because he was put at a substantial disadvantage by the Respondent's PCP of a policy of marking pupils books within a timescale of 3 weeks and a policy or practice of requiring teachers to write by hand, including in student books.

   (e) The Claimant also complains that he was constructively unfairly dismissed from his employment because the Respondent was in breach of the implied term of mutual trust and confidence in a variety of ways.

(f) The Claimant further and alternatively contends that he is to be regarded as automatically unfairly dismissed within the meaning of **section 12 of the Employment Relations Act 1999** for assertion of his rights under **section 10 of the Act.**

(g) The Claimant also complains that he was subject to a series of detriments related to the Respondent's handling of his grievance process, as a result of having made a series of protected disclosures between the 14 September 2016 and the 31 January 2017.

2. The Respondent denies that the Claimant was constructively dismissed and contends that he resigned on the 19 September 2016. The Respondent also denies that the Claimant was subjected to any discrimination, as alleged or at all.

3. The Tribunal heard evidence from the Claimant himself and from Ms Julie Davies, President of Haringey Branch of the NUT, called on his behalf. The Respondent called the following witnesses; Mr Mark Rowland, Headmaster of the School; Mr Martin Tissot, Chief Executive of the Trust and Executive Head Teacher of all of the School's in the Trust; Ms Hannah Adams, Deputy PA to the Executive Head Teacher; Mr John Meadows, Chair of the Governors for the School; Mr John Cleary, Chairman of the Grievance Appeal Panel, appointed by the Diocese of Westminster; and Mr Kieran Costello, a Governor at the School.

The Issues

4. It was determined at a Preliminary Hearing on the 15 September 2017 that the Claimant was to be regarded as disabled for the purposes of the **Equality Act 2010**, by reason of his difficulty with handwriting, including hand pain.

5. The issues before this Tribunal were therefore as follows:

(i) Was the Claimant subjected to harassment on the 7 and/or 8 September by Mr Rowland, within the meaning of **section 26 of the Equality Act 2010?**

(ii) Are there facts from which the Tribunal could conclude, in the absence of any alternative explanation, that the Claimant was subjected to either direct discrimination within the meaning of **section 13 of the Act** or, because of something arising in consequence of his disability, within the meaning of **section 15**, in that: He was suspended on the 8 September 2016; and/or the proposal to move the Claimant from the Teach First to the Schools direct programme?

(iii) If so, in the case of the **section 15** complaint, has the Respondent satisfied the Tribunal on a balance of probabilities that its actions in relation to the Claimant were in pursuit of the contended legitimate aims of supporting and protecting the Claimant in the working environment and complying with its duty of care to pupils to ensure that they were being properly taught?

(iv) If so, were they proportionate means of achieving that/those legitimate aims?

(v) The Respondent accepts that it applied the PCPs of requiring books to be marked within 3 weeks and writing by hand in pupils' books, at least to the extent of setting out marking to pupil work by way of symbols, characters and indications. It is accepted that at least the first PCP would have placed the Claimant, as a disabled person, at a disadvantage.

(vi) Did the Respondent fail to take such steps as were reasonable for it to have to take in order to avoid that disadvantage?

(vii) Has the Claimant satisfied the Tribunal, on a balance of probabilities, that the 10 breaches of contract which he alleges, including harassment by Mr Rowland, unwarranted suspension without reasonable grounds on the 8 September 2016, failure to consider reasonable adjustments and the infringement of the Claimant's right to accredited union representation, amount, either singly or cumulatively, to a fundamental breach of the implied term of trust and confidence, so as to entitle him to treat himself as constructively dismissed?

(viii) If so, did the Claimant resign in response to that breach without having affirmed the contract of employment?

(ix) If the Claimant dismissed, was his dismissal wrongful and/or automatically unfair, insofar as his resignation was in response to his request to be represented at a meeting by his Trades Union on the 16 September 2016, contrary to **section 12 of the Employment Relations Act 1999?**

(x) Did the Claimant make the following alleged qualifying disclosures; to Mike Pittendreigh on the 14 September 2016; in his resignation email on the 19 September 2016; in a letter to Mr Tissot on the 21 September 2016; in his Stage One and stage Two grievances and in a written document on the 31 January 2017? He contends that they tended to show that the Respondent had failed, was failing or was likely to fail to comply with its legal obligation to permit the Claimant and other teachers to be accompanied at a disciplinary or grievance meeting by a certified trade union representative of his/their choice, under **section 10 of the Employment Relations Act 1999.**

(xi) Was the Claimant's belief in the Respondent's alleged failure reasonable? Did the Claimant reasonably believe that any such disclosure was in the public interest?

(xii) Was the Claimant subjected to the four separate detriments which he alleges related to the conduct of his grievance hearing?

(xiii) If so, were these detriments, or any of them, on the ground that he had made a protected disclosure?

The Facts

6. The Respondent is an independent Academies Trust which runs a group of Schools under the auspices of the Roman Catholic Diocese of Westminster, including St Thomas Moore Catholic School where the Claimant was employed to work.

7. The Claimant has a background in business and investment/financial markets and, whilst studying for a graduate diploma in law, undertook

volunteer work teaching financial literacy to disadvantaged schoolchildren in the London Borough of Tower Hamlets. He has more than a decade of professional working experience in investment/financial markets and obtained a BA Hons Degree in Financial Services in 1998 and an MSC in Investment Analysis in the year 2000 and studied law in 2013. His volunteer teaching gave him the impetus and inspiration towards teaching in general.

8. Teach First is a charity in the business of recruiting and selecting specialist graduates with no prior teaching experience into state schools, judged to have the greatest need and comprising pupils from disadvantaged socio-economic backgrounds, with the aim of tackling educational inequality. It offers a 2 year fixed term contract in conjunction with these partner schools. In the first year the Teach First participant works as an unqualified teacher, assuming full and sole responsibility for all the classes which they teach in their own specialist subject, with up to 80% of a full teaching timetable. Upon successful completion of the first year and successfully passing the PGCE, Teach First participants emerge as newly qualified teachers. The second year of training allows these newly qualified teachers to complete the further statutory 12 months of teaching and emerge as fully qualified teachers. The second year also provides the opportunity of undertaking a master's degree in education at a substantially reduced cost. The Claimant was very inspired by and interested in the Teach First movement and ethos and the fast-track opportunity which it offered to qualified teacher status.

9. The Claimant was diagnosed with dyspraxia in October 2013 by an educational psychologist. Dyspraxia manifests itself, amongst other things, in difficulties with reading, comprehension speed and handwriting. The Claimant was judged at a Preliminary Tribunal Hearing on the 15 September 2017 to be disabled within the meaning of the **Equality Act 2010** "by reason of difficulty with handwriting, including hand pain." The Claimant stated that he has coped with his disability and has managed his professional and educational activities, making full use of IT.

10. In February 2016, the Claimant attended an assessment day for Teach First and in the covering email to his initial online application form, declared that he had dyspraxia "which manifests itself in a degree of reading and comprehension difficulty as well as pain in my hand from handwriting. Accordingly, the Law School I attend has incorporated recommendations from the Educational Psychologist by allowing me to write on a PC, as well as allowing additional 25% more reading time". He made a like request in his group exercise at the assessment centre. In his online personal information disclosure he stated that he had dyspraxia "which manifests itself in two ways: (1) needing a little more time to read and absorb information; (2) I also have difficulty with hand writing which results in hand pain, therefore most written preparation or activity should be done on a computer or PowerPoint. I would require the ability to conduct any writing on computer and prepare lesson plans on PowerPoint in advance to display in class when using a Projector or Smart TV and if this is not possible I would ask that I be able to provide handouts to students rather than writing on the board for them to copy."

11. On the 6 June 2016, the Claimant received a phone call from Jamie Scudamore, Teach First's Schools Partnership Manager, with a view to discussing the Claimant's placement with the Respondent school. On the 16 June 2016, the Claimant received a letter from Mr Tissot on behalf of the Governors of the St Thomas Moore's School offering a Teach First contract. The Claimant accepted the offer on the 23 June.

12. The Claimant visited the School for two placement days during June 2016 and stated that he discussed his learning disability with his subject mentor Mr Omar Henry, Head of Business Studies. He said that he would need to deliver his lessons on white board and he stated that Mr Omar replied; "don't worry, every classroom used for business studies is equipped with screens that project Word and PowerPoint".

13. During July the Claimant sent a pre-employment questionnaire to the School, via Ms Adams, marked 'private and confidential' for the Occupational Health Service, setting out his work history and medical history. This included dyspraxia, "this for me is a specific learning disability which manifests itself in below normal levels of comprehension (words not numbers). More importantly, I have extreme difficulty with hand writing which is painful, I would therefore require the ability to teach using PowerPoint and a Projector please."

14. The Claimant heard nothing back from the Occupational Health Service and therefore, on the 5 August, contacted Ms Adams again, attaching to his email his original dyspraxia diagnosis report from his educational psychologist, dated October 2013.

15. The consultation with the Occupational Health Doctor, Dr Jonathan Lubin, took place on 15 August, by telephone, because the Claimant was living outside London. On the 17 August, Dr Lubin wrote a letter reporting that the Claimant "is fit for the proposed post of Teach First Teacher" and detailing certain medical problems from which the Claimant suffered, including dyspraxia – "the main issues for him are issues with hand writing, which he finds painful, and comprehension of written tests and reading difficulties…. His main concerns are about whether he will have difficulties dealing with student written material and whether this may lead to a need for increased time to mark written material". Dr Lubin recommended the need for an overall risk assessment in relation to this matter and expressed the opinion that dyspraxia was likely to fall under the remit of the **Equality Act 2010.** This letter was dated 17 August and the Respondent's evidence was that the School was in the midst of its summer holiday until early September when term started.

16. Mr Tissot stated that on return to school in September he skim read the OH Report on the Claimant and became concerned, questioning how he might be able to cope and what adjustments should be made. A principle concern of both Mr Tissot and Mr Rowland were that Teach First teachers had a timetable of 18-25 hours per week, only 2 hours less than a full time regular teacher, and that the Claimant's business study classes involved exclusively key stage four and five 14-18 year olds who were exam classes sitting for GCSE's, BTEC and A-Levels, all public examinations, important for their futures. Further, the Teach First teachers had sole responsibility

for their classes and there was a school policy of turning around marking within 3 weeks.

17. On Monday 5 September, Mr Rowland reviewed the OH Report for Mr Ahmed, also became concerned and discussed the matter with Mr Tissot. They agreed that Mr Rowland would meet with Mr Ahmed to discuss the OH Report. Mr Tissot told the Tribunal that he did not want the Claimant to begin teaching until a plan to support him and to mitigate the risk to students could be put in place, because it would be more difficult to put things into reverse, once the classes had started. He said to Mr Rowland that they needed time to reflect on the issue, to consider the nature of the Claimant's disabilities and to speak to Teach First and others in order to find the best way forward. He had concerns that the Claimant was not going to be able to cope as a Teach First teacher and thought that consideration needed to be given to putting in place reasonable adjustments/support.

18. On the 6 September 2016, Mr Rowland sent an email to Mr Scudamore, Teach First School Partnerships Manager, saying "I have to say we have grave concerns about Faisal's ability to teach on a number of fronts, not only his commuting from Leicester but also now his Occupational Report", and seeking a discussion with Mr Scudamore.

19. On the 7 September, the Claimant and Mr Rowland met together, during which Mr Rowland explored each of his concerns in turn, beginning with the commuting issue and continuing through the issues of the Claimant's back and knee conditions and on to dyspraxia. The Claimant stated that Mr Rowland proceeded to insensitively interrogate him in a very negative and unconstructive manner about his learning disability and was dismissive of any of his own suggestions about how to overcome the writing issue. He said that he had found Mr Rowland's manner hostile, demeaning and unwelcome. Mr Rowland denies that he insensitively interrogated the Claimant in a negative or unconstructive manner or that he was dismissive of his suggestions. He did however state that he was alarmed at the meeting when the Claimant said he could hardly write for more than a couple of minutes, due to severe pain, and said that he needed to question how the Claimant was going to cope with the job. He told the Tribunal that he was in shock and had a lot to think about and that although the Claimant did not believe that his disability would be an issue, he Mr Rowland, had been 31 years in the job and he thought that it was definitely an issue.

20. As to the content of the meeting, the Tribunal had before it Mr Rowland's note taken thereafter and notes made by the Claimant on his journey home by tube and train, which were more detailed. However, there was no substantive dispute in relation to the content of the meeting. As to the manner, the Tribunal concluded that Mr Rowland had not been aggressive but that he had been rattled and alarmed. With commendable honesty Mr Rowland told the Tribunal that he had been sceptical because for him not being able to write as a teacher was a bombshell. He said "I am a chalk and talk old school teacher and I am not convinced by technology because I don't know how to do it." He accepted that his shock and scepticism may well have informed how he came across at the meeting, but denied being negative or dismissive as the Claimant alleged. He stated that he had never before come across a teacher who could not write.

21. The Tribunal noted that in the Claimant's instant messaging to his two mentors Omar Henry and Cheryl Rosen, Assistant Head Teacher, on the evening of the 7th September 2016, he described the meeting which had taken place with Mr Rowland, including that Mr Rowland had been dismissive of the OH Doctor's judgment that he was fit to teach, but also stating that "the conversation was civil of course". He told the Tribunal that he was thereby simply trying to be diplomatic with his mentors.

22. Following the meeting on the 7 September, Mr Rowland and Mr Tissot had a long conversation about what had happened and they agreed that they needed more time to consider Mr Ahmed's difficulties and how best he could be supported, without this having an effect on the children's education and therefore decided that they wanted Mr Ahmed to stay at home for the time being.

23. Very early in the morning of the 8 September, Ms Rosen thanked the Claimant for his instant message to which the Claimant replied "I didn't feel it appropriate to point out to Mr Rowland, and certainly not on my second day, that his line of questioning, possibly including that of my integrity, was highly likely in breach of disability discrimination legislation." Ms Rosen showed her phone containing these messages to Mr Rowland, who stated that he had possibly seen them before he met again with the Claimant on the 8 September. He said that he felt that the Claimant's texts were hostile and that he had not been questioning the Claimant's integrity. He himself had felt that he meeting of the 7 September had been quite amicable and certainly not hostile.

24. On the 8 September at 3.30pm, the Claimant had a further meeting with Mr Rowland, also attended by Ms Adams as note taker. Again, the content of this meeting as between Ms Adams' notes and those written subsequently by the Claimant were broadly not in dispute. The Claimant said that it appeared to be a reiteration of the points made on the previous day, but that he himself was more assertive in his own defence. Mr Rowland said that the Claimant was amicable but came across as rather aggressive. Ms Adams' notes state; that Mr Rowland said that the main issue was with the Claimant not being able to write and that until he had received advice he did not see how the Claimant would be compatible with a teaching post, due to his writing issue; that he would continue the Claimant's employment contract but would suspend him while a final decision was being made and that the Claimant agreed to stay at home until he heard from the School. According to the Claimant's notes Mr Rowland said "we are going to ask you not to teach until we reach a decision about your position at the school" to which the Claimant said "are you saying I am suspended" to which Mr Rowland replied "no, its more like garden leave". The Claimant asked "am I to stay at home?" to which Mr Rowland answered; "yes". The Claimant then asked; "do I have a choice?" Mr Rowland said; "no, we have not reached a decision yet, we are taking advice, I am sat on the fence". The Claimant's notes add that Mr Rowland stated that it was 'a neutral act, before we reach a decision and that the decision would be quickly made'. The Claimant stated in evidence that he was absolutely shocked and could not believe that the School had the audacity to suspend him for a disability, apparently holding the view that he should not be in a teaching position at all. He

believed that Mr Rowland and Mr Tissot intended to terminate his contract of employment.

25. On the 9th September Mr Rowland wrote a letter to the Claimant saying that "following concerns over issues with writing, you have been suspended from School. The suspension is a neutral act to enable the School to seek advice and come to a decision about your training position at this School". Also on the 9th September, the Claimant received a reply to a query from Mick Ward at Teach First confirming that they had not shared with the School the information which the Claimant had put into his personal information form about dyspraxia as it was not common practice to share any such private information with the Schools. Also on the 9th September, the Claimant wrote to Ms Adams requiring information including the typed notes and union representation details. The Claimant also wrote to Celia Silva the in-school NUT Union Representative.

26. Also on the 9 September, Mr Rowland had a telephone conversation with Dr Lubin about the Claimant's OH Report. Dr Lubin expressed the view that he had not come across severe pain and inability to hold a pen as being a symptom of dyspraxia before and that another referral to himself was possible. He also said that if reasonable adjustments could not be made, then an employer cannot be expected to make reasonable adjustments and that that issue should be part of the recommended risk assessment.

27. On the 10 September, the Claimant wrote to Ms Adams asking whether he would be on full pay during his suspension, repeating a request for the handwritten notes of the meeting and requesting a copy of the School's suspension and disciplinary policy, as soon as possible.

28. On the 13 September, Mr Rowland wrote to the Claimant informing him that his suspension would be ended on Friday the 16 September, for him to return to work on Monday the 19 September, when Mr Tissot wished to meet him at 9 o'clock in his office. This letter was emailed to the Claimant at 15.53 on the 13 of the September by Ms Adams, apparently after a meeting of the senior management team held at the end of the School day, at which the Claimant was discussed. The meeting notes show; 'Mr Ahmed - looking to support his reintegration … including might put to him a change of programme on his reintegration if this is possible (TF investigating)'.

29. Mr Rowland and Mr Tissot met with Mr Scudamore from Teach First on the 13 September, during which Mr Tissot expressed the view that the Claimant would be better suited to switching to a Schools Direct route, which he felt would facilitate the best support for him, since teachers on that programme did not have sole responsibility for their classes. Mr Scudamore agreed to enquire into the possibility of such a switch. However, it was common ground that the Schools Direct route was regarded as being of far lower prestige and did not lead to the same qualifications and status as the Teach First programme. Mr Tissot had also arranged to meet with a business graduate the following week, since he felt that the school would need additional business studies teaching support, irrespective of whether the Claimant remained on Teach First or move to Schools Direct.

30. On the 13 September 2016, the Claimant wrote to Mr Pittendreigh, the Assistant Director of the Diocese of Westminster Education Commission, setting out the fact of his suspension and his view that the school's behaviour appeared to be potentially in breach of the disability discrimination legislation.

31. On the 14 September 2016, the Respondent was informed by Teach First that it was not possible for the Claimant to join the Schools Direct Programme during the current year. This came from the UCL Institute of Education and stated that the school and Teach First had to be careful that the Claimant had disclosed his dyspraxia and had been passed fit to teach with adjustments and therefore equality issues probably came to the fore. The UCL added that with its inclusive ethos, it would wish to give the participant every chance to succeed. "Why the School was so surprised and took the steps they did is a question to be explored." This communication was from the UCL Institute of Education to Nick Ward at Teach First.

32. Also on the 14 September, the Claimant wrote an email to Ms Adams regarding the ending of his suspension, seeking further information and requesting the School's grievance policy, since he was contemplating making a complaint against the Headmaster. He requested details of the exact nature of the proposed meeting upon his return. Mr Tissot replied on the same day that the reason for the meeting was to discuss the way forward on the Claimant's return and that he may attend with his Union Representative as he expressed the wish to do, but that that would make the meeting more formal and "I consider this not to be necessary". The Claimant replied that he did deem his representative's attendance to be necessary in all the circumstances in order to provide support and to take verbatim notes on his behalf. He stated that Julie Davies would be therefore attending. Also on the 14 September, Mr Rowland sent the Claimant a copy of the School's grievance policy.

33. Ms Davies, who had been copied into the Claimant's email, replied that she was very sorry but it was impossible for Union Reps to attend meetings at schools who had not bought into Haringey's pooled funding arrangements for facility time, during the working day. She added, on the 15 September, that the school may well suggest their in-house rep Celia Silva to represent the Claimant but that Ms Davies' strong advice was that either herself or Ed Harlow should accompany the Claimant at any meetings, until matters are resolved, as Celia "is not ACAS accredited and she would not want to be involved in case work of this kind."

34. On the 19 September, at 05.18am, the Claimant submitted a formal grievance on the grounds that he had been discriminated against, in breach of the disability equality legislation, by Mr Rowland and Mr Tissot and felt that he had been subjected to harassment by Mr Rowland insensitively interrogating him in a very negative and unconstructive manner at a meeting on the 7 September and that he had been suspended by Mr Tissot and Mr Rowland without reasonable grounds and that this was unnecessary, discriminatory and wholly unreasonable.

35. At 07.47am on the 19 September, the Claimant wrote a letter of resignation stating that he considered the school's Head Teachers to have acted in a discriminatory manner towards him regarding his dyspraxia and related handwriting difficulties, in breach of the Equality Act, and that Mr Rowland's line of questioning on the 7 September was 'insensitive, hostile and tantamount to harassment with regards to my having dyspraxia'. He also stated in this letter that the decision to suspend was unnecessary and ill considered and also stated that the school's choosing not to contribute to Haringey's pooled funding arrangements precluded their staff from accessing accredited union representation during working hours, unless the school had other arrangements in place to meet their legal obligations. He stated that he regarded himself as constructively dismissed.

36. On the 20 September 2016, Mr Tissot wrote to the Claimant saying he was distressed to have received his letter of resignation and had arranged for Celia Silva, the school's NUT rep, to be in attendance at the planned meeting, as Julie Davies had declined to attend. He continued that he had an obligation to ensure that the Claimant was medically fit to teach and that the school was meeting its obligations as an employer 'and that you have a manageable workload'. He stated that meetings had been arranged with various persons, mentors under Teach First and a business graduate with a view to how Teach First and the school could support him, including the engagement of a business studies graduate, and that these arrangements would have been discussed at the meeting planned for the previous day. He also raised discussions which had been held with a potential view to the Claimant transferring to Schools Direct, if he would be interested in doing so, although remaining employed by the School and at the same salary. He continued; 'Notwithstanding, should this not be of interest, your employment and Teach First option remains as the default position'. He ended by urging the Claimant to reconsider his resignation and asking him to attend a reconvened meeting 'this Thursday at 9am to discuss the above proposed arrangements'.

37. On the 21 September, the Claimant replied to Mr Tissot's letter reiterating his position. He told the Tribunal that he was offended and insulted by the proposal to move him to the Schools Direct Programme, which he considered would have been a demotion.

38. The Claimant's grievance was dealt with at Stage One by Mr John Meadows, Chair of Governors of the School, in accordance with the School's grievance procedure where a complaint is brought against the executive head and/or head of school. The Claimant chose not to attend the grievance meeting. By letter dated the 23 October, following investigation, Mr Meadows concluded that the Claimant's grievance should not be upheld. This included the finding that it would have been unacceptable and perhaps discriminatory to have kept the Claimant in the school and placed him on other duties and would have 'muddied the waters', it being far better if support was in place before he began work. The Claimant appealed the grievance Stage One decision on the basis that there had been insufficient interviewing of relevant persons and insufficient critical analysis. Mr Costello, foundation governor, was asked by the school to chair the appeal panel. There was a legal advisor in attendance for the School and at the meeting on the 23 January 2017 the panel heard from Mr Rowland, Mr

Tissot and Mr Meadows as well as from the Claimant, accompanied by his representative Julie Davies, (now free to attend during the working day because she had retired from her employment with Haringey). By a detailed letter dated 3 March 2017, Mr Costello gave the panel's decision that the appeal against the grievance would not be upheld. It was clear that this letter had been drafted by the Respondent's lawyer in attendance.

39. Also on the 23 January 2017, Mr Cleary chaired a panel to deal with the discrete matter contained in the Claimant's grievance appeal related to the School's funding of Trade Union Representation. Mr Cleary was appointed to chair this panel by Mr Pittendreigh, of the diocese. Again the Claimant attended the meeting with Ms Davies. On the 30 January 2017, Mr Cleary wrote his panel's findings, setting out the statutory right to be accompanied contained in **section 10 of the Employment Relations Act 1999** but concluding that this was not a case where the Claimant had a right to be accompanied and therefore the section did not apply. The letter also stated that it was Haringey Council, as Ms Davies employer, who had forbade her to advise or support during working hours at schools which were not signed up to the facility time agreement. The letter further explained that the school NUT in-house union representative, Ms Silva, 'has been apparently in that role since 1990 and has represented staff members at internal meetings and has been given time off work to attend training events' and that it was open to the NUT to certify Ms Silva so that she could be a companion under Category B as well as Category C.

40. At the material time, there were thirteen Academies in the Borough, eight of which had signed up to the Facility Time Agreement and five of which did not, including the Respondent's School. Mr Cleary stated in evidence that there was absolutely no legal obligation on a school to join the funding arrangement of the local authority. A school has to have a union representative on site, which the Respondent does.

41. The Claimant presented his complaints to the Tribunal's on the 18 December 2016.

42. On the 31 January 2017, the Claimant sent a statement of case following the hearing of his grievance on the 23 January 2017 in which he set out and outlined his concerns in some detail over some 21 pages. This was for the attention of the Cleary Panel. Again, on the 4 February 2017, the Claimant sent another statement of case, running to some 25 pages, for the attention of the Costello Panel, in both cases because he felt he had not been fully able to get his case across at the meetings and therefore felt it necessary to state his case in writing.

The Law

43. As to the law, the Tribunal directed itself as follows:

(i) **Section 13 (1) of the Equality Act 2010** provides that "a person (A) discriminates against another (B) if, because of a protected characteristic (including disability) A treats B less favourably than A treats or would treat others".

(ii) **Section 15 of the Equality Act 2010** provides that "a person (A) discriminates against a disabled person (B) if; … (a) A treats B unfavourably because of something arising in consequence of B's disability and (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim." **Sub-section (2)** of this section provides that **sub-section (1)** does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had a disability.

(iii) **Section 20 (3) of the Equality Act 2010** provides that where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter, in comparison with persons who are not disabled, there is a duty upon A to take such steps as it is reasonable to have to take to avoid the disadvantage.

(iv) **Para 20 (1)(b) of Schedule 8 to the Equality Act 2010** provides that A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know … that the person has a disability and is likely to be placed at the substantial disadvantage referred to in **section 20 (3).**

(v) **Section 21 of the Act** provides that "a person discriminates against a disabled person if they fail to comply with a duty to make reasonable adjustments".

(vi) **Section 26 (1) of the Equality Act 2010** provides that "a person (A) harasses another (B) if; **(a)** A engages in unwanted conduct related to a relevant protected characteristic and **(b)** the conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B." **Sub-section (4) of section 26** provides that "in deciding whether conduct has the effect referred to in **(1) (b)** above, each of the following must be taken into account; (a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect."

(vii) **Section 39 (2) and (4)** provide that an employer A must not discriminate against an employee of his, B, … by dismissing B or subjecting B to any other detriment".

(viii) **Section 136 (2) of the Equality Act 2010** provides that "if there are facts from which the Tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Tribunal must hold that the contravention occurred … **(3)** but this does not apply if A shows that A did not contravene the provision".

(ix) The Tribunal reminded itself that discrimination may not be deliberate and may consist of unconsciously operative assumptions on the part of the employer. It is therefore incumbent upon the Tribunal to examine indicators from the surrounding circumstances and events, both prior and subsequent to the acts complained of, in order to assist it in determining whether or not particular acts were discriminatory (**Anya v University of Oxford [2001] IRLR 337).**

(x) Inferences of unlawful discrimination may not properly be drawn solely from the fact that the Claimant has been unreasonably treated, although they may properly be drawn from the absence of any explanation for such unreasonable treatment. (**Bahl v The Law Society [2004 IRLR 799).**

(xi) The Tribunal had regard to the cases of **Igen v Wong [2005] ICR 931** and **Madarassey v Nomura International Plc [2007] IRLR 246** in setting about its task, as well as to the cases of **Shamoon v Chief Constable of the RUC 2003 ICR 337 HL** and **Laing v Manchester City Council 2006 ICR 1519 EAT.**

(xii) In the light of his resignation, it is for the Claimant to show, on a balance of probabilities, that he was dismissed; that is, that he terminated his contract of employment, whether or not with notice, "in circumstances in which he is entitled to terminate it without notice by reason of his employer's conduct." (**Section 95(1)(c) of the Employment Rights Act 1996)**.

(xiii) It is a repudiatory breach of the employment contract for an employer, "without reasonable and proper cause", to conduct itself in a manner "calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties" (**Courtaulds Northern Textiles Ltd v Andrew [1979] IRLR 84, EAT**).

(xiv) The Claimant must also show, on a balance of probabilities, that any such repudiatory breach or breaches were the effective cause of his resignation.

(xv) A repudiatory breach may consist of a series of lesser breaches culminating in a 'final straw', which may not in itself be a serious breach, but must however relate in some way to the earlier breaches with which it is alleged to be cumulated and must not be entirely innocuous **(London Borough of Waltham Forest v Omilaju [2005] IRLR 35).**

(xvi) The Claimant's right to resign and claim constructive unfair dismissal may be lost if he conducts himself in such a way as evinces an intention to continue to be bound by the contract, after having discovered the employer's repudiatory breach or breaches.

(xvii) If the Claimant shows that he was dismissed within the meaning of **section 95(1)(c),** then it is for the Respondent to show the reason for dismissal and that it was a potentially fair reason falling within **section 98(2) of the Employment Rights Act 1996.**

(xviii) If the Respondent so satisfies the Tribunal, then the dismissal is actually fair if the Respondent acted reasonably in treating the reason shown as a sufficient reason for dismissing the Claimant, in all the circumstances, and this question shall be determined in accordance with equity and the substantial merits of the case **(section 98(4) of the Employment Rights Act 1996).**

(xix) If the dismissal is found to be procedurally unfair, the employee's compensation will be reduced to the extent that the Tribunal finds that correcting the procedural irregularities would have made no difference to the dismissal outcome (**Section 123(1)** of the **Employment Rights Act 1996** and **Polkey v Dayton Services Ltd [1988] ICR 142).**

(xx) Compensation shall be further reduced to the extent that the Tribunal finds that the employee's own actions caused or contributed to his own dismissal (**Section 122(2)** and **123(6)** of the **Employment Rights Act 1996**).

(xxi) **Section 10 of the Employment Relations Act 1999**, so far as material, provides that where a worker is required by his employer to attend a disciplinary or grievance hearing, the employer must permit the worker to be accompanied by a companion who is chosen by the worker and is an official of a trade union or a person reasonably certified by the union as having the necessary experience or training …

(xii) **Section 12 of the Employment Relations Act 1999** provides that 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 he exercised or sought to exercise the right to be accompanied contained in **section 10** … and … a worker who is dismissed shall be regarded as unfairly dismissed for the purposes of **Part X of the Employment Rights Act 1996** if the reason or the principal reason for dismissal is that he exercised or sought to exercise his right to be accompanied under **section 10.**

(xiii) **Section 47B of the Employment Rights Act 1996** provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that he has made a protected disclosure.

(xiv) **Section 43A** defines a protected disclosure as a qualifying disclosure made …in good faith to his employer.

(xv) **Section 43B** defines a qualifying disclosure as any disclosure of information which, in the reasonable belief of the worker is made in the public interest and tends to show … that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

(xvi) The Tribunal was referred in argument to the following cases; ***Richmond Pharmacology v Dhaliwal*** **[2009] IRLR 336; Hensman v Ministry of Defence UKEAT/0067/14/DM;** ***Weston Excavating (ECC) Limited v Sharp [1978] IRLR 27; Graham Oxley Tools v Firth [1980] IRLR 135; BCCI v Mallik [2007] IRLR 462; Doherty v British Midland [2006] IRLR 90; Amnesty International v Ahmed [2009] IRLR 884; Lomas v Peek [1947] 2 All ER 574; Korashi v Morgannwg University Local Health Board [2012] IRLR 4; London Underground Limited v Ferenc-Batchelor [2003] ICR 656; South Staffordshire NHS Trust v C Billingsley [2016] WL 04191412; Project Management Institute v Latif [2007] WL 1292710; Gogay v Hertfordshire County Council [2000] WL 989480; Mezey v St George's Mental Health NHS Trust [2007] EWCA Civ 106; Agoreyo v London Borough of Lambeth [2007] EWHC 2019 QB; Toal & Hughes v GB Oils Limited UKEAT/0569/12/LA; Cavendish Munro Limited v Geduld UKEAT/1095/09/DM; Babula v Waltham Forest College [2007] EWCA Civ 174; Chesterton Global Limited v Nurmohamed [2017] EWCA Civ 979; NHS Manchester v Fecitt [2011] EWCA Civ 1190; Deer v University of Oxford [2015] EWCA Civ 52.***

Conclusions

45 Harassment under section 26 of the Equality Act 2010: The Claimant

states that Mr Rowland insensitively interrogated him as to his disability in a negative, dismissive and hostile manner at their meeting on 7 September and was dismissive of all of his suggestions. He contends that this created an intimidating, hostile, humiliating or offensive environment for him, so as to constitute harassment related to his disability. The Respondent does not dispute that what was said at both meetings, on 7 and 8 September, was related to the Claimant's disability.

46 The Tribunal found on the evidence before it, as set out in paragraphs 19 to 21 of these Reasons, that at their meeting on 7 September Mr Rowland was shocked to learn that the Claimant was unable to write for more than a minute or two due to severe hand pain and he could not believe, from his experience, that a teacher could function in the classroom and in marking pupils' work without being able to write. He was sceptical about the Claimant's IT suggested solutions, stemming from his own ignorance of IT. He accepted that he was rattled by the discovery and that his scepticism no doubt informed his manner at the meeting. However, the Tribunal found that he was not aggressive and noted that the Claimant's own reporting of the meeting to his mentors, that evening, stated that the "conversation was civil, of course". The Tribunal did not accept that the Claimant would have been diplomatic in this reporting to the extent of concealing aggression or harassment, since he was subsequently forthright in his communications with Mr Pittendreigh and Ms Adams, on 13 and 14 of September.

47 The Tribunal accepted that Mr Rowland's conduct on 7 September was certainly unwanted by the Claimant. However, the circumstances were that the headmaster was profoundly concerned about whether a new and inexperienced teacher, who was unable to write for more than a minute or two, was able to undertake sole responsibility, beginning the following week, for 9 different classes (18 hours) of 14 to 18 year old pupils who were preparing for public examinations. The Tribunal accepted that Mr Rowland had a responsibility for the education of these pupils, as well as for the welfare of his teachers, and Mr Tissot stated that in his view, given the gossipy nature of schools, to allow the Claimant to start off as their business studies teacher and then have to pull him out and replace him with someone else, as yet unspecified, would be disruptive for the pupils and potentially humiliating and embarrassing for the Claimant himself.

48 The Tribunal concluded therefore that in all the circumstances it was not reasonable for Mr Rowland's questioning and manner at the meeting of 7 September to be regarded as constituting harassment, within the meaning of **section 26(4) of the Equality Act 2010.**

49 As to the suspension meeting on 8 September, Ms Adams told the Tribunal that she remembered the meeting being quite civil and that she did not come out of the meeting feeling surprised or uncomfortable about the tone of the meeting. However, a minority of the Tribunal concluded that it was reasonable for the Claimant to feel, under **section 26(4)(c) of the Act**, that being suspended and told to go home, the second day after he had arrived, violated his dignity and that therefore his complaint of harassment should succeed. The minority of the Tribunal accepted that Mr Rowland had little choice but to send the Claimant home temporarily, in the circumstances, but not under "suspension", a term which imported notions of the Respondent's disciplinary process. The word

'suspension' was also used in Mr Rowland's formal suspension letter of 9 September.

50 The majority of the Tribunal concluded that it was not reasonable to regard the Claimant's sending home on suspension as amounting to harassment within the meaning of **section 26(4)(c) of the Act**, because; (i) The use of the word 'suspension' was unhelpful and inaccurate, in as much as it incorporated a term which was part of the Respondent's disciplinary procedure, as was the use of the phrase 'garden leave', in as much as it is capable of importing the notion of serving out one's notice away from the office. (ii) Mr Rowland told the Tribunal that he didn't understand this meaning of the term 'garden leave' at the material time and that he latched onto the word 'suspension' because he believed that this was the only procedural option available to him to make the Claimant stay at home, of which he was aware, the Claimant having refused to go home. (iii) Nevertheless, the Claimant's own notes of the meeting, as set out in paragraph 24 of these Reasons, make it clear that the substantive reality of what was being done was explained to him and that he understood it – namely that he was going to be at home on 'a sort of garden leave' whilst advice was taken and a decision reached about his position at the school – irrespective of the word 'suspension' being used, which he was also informed was a 'neutral act'.

51 Direct disability discrimination under **section 13 of the Equality Act 2010**: there were no facts found by the Tribunal from which it could find, in the absence of an alternative explanation, that the Claimant was suspended or that any proposal to move him from Teach First to the Schools Direct programme was because of his disability, per se. This claim must therefore fail.

52 Discrimination because of something arising from the Claimant's disability under **section 15 of the Equality Act 2010**: It is not in dispute that the Claimant was suspended because he was unable to write for more than a minute or two due to hand pain and that this arose from his disability. Being sent home while a decision was made, rather than being able to start taking his classes as planned, constitutes unfavourable treatment and it therefore falls to the Respondent to satisfy the Tribunal that it acted in pursuance of a legitimate aim and that its treatment of the Claimant was a proportionate means of achieving that legitimate aim.

53 The Tribunal concluded unanimously that the Respondent's legitimate aim was to protect its pupils, and also the Claimant himself, from the possibility of his not being able to cope alone in the classroom, with a relatively demanding timetable, in his first formal teaching role. The school had a primary responsibility for the education of its pupils. The Tribunal was also unanimously satisfied that removing the Claimant from the school for a limited period of time in order to research and investigate further and, if necessary, to put support in place, was a proportionate means of achieving that legitimate aim, in all the circumstances. The Tribunal accepted that it may well have occasioned gossip and been more embarrassing for the Claimant to have been kept in school, but not teaching the business studies classes for which he had been timetabled.

54 As to the proposal to transfer the Claimant from Teach First to Schools Direct: this was no more than an idea, floated because it seemed to offer more support and a more gradual route towards taking sole charge of his own classes. It had been firstly sounded out with Teach First, who informed the Respondent on

14 September that it would not be possible during the current school year. In any event, it was made clear to the Claimant by Mr Tissot on 20 September that, should he not be interested in such a switch, his employment on Teach First remained the default position (paragraph 36 of these Reasons). The Claimant was therefore not treated unfavourably in this regard. His complaints under **section 15 of the Act** accordingly must fail.

55 Failure to make reasonable adjustments under sections 20 and 21 of the Equality Act 2010: The Respondent accepted that both of the alleged PCPs applied and the Tribunal unanimously accepted that both of the alleged PCPs would put the Claimant, as a disabled person, at a substantial disadvantage and therefore that the Respondent was under a duty to take reasonable steps to avoid that disadvantage. The Claimant contends that the Respondent only explored and considered one adjustment, namely the possibility of switching him from Teach First to Schools Direct, which the Claimant asserts was disproportionate. He contends that there were a variety of other reasonable adjustments which could and should have been considered and made, including the use of various IT solutions for delivering lessons and marking, relaxing the PCPs, printing out typed feedback and pasting it into students' books.

56 The Respondent contends that it had already begun exploring possibilities by contacting the OH doctor, who recommended a risk assessment, contacting and meeting with Teach First, discussing the reintegration and support of the Claimant at the Senior Management Team meeting and contacting a variety of professional development officers at Teach First and an external business graduate, all prior to the Claimant's return to the workplace on 19 September, when a meeting with the Claimant for discussion and exploration of the various options was envisaged. The Respondent contends that proper time for assessment of the challenges and potential solutions was necessary in this case. However, the Claimant resigned early on 19 September, before the envisaged discussion could take place and did not return to the workplace.

57 The Tribunal unanimously accepted that assessment and exploration was necessary before deciding what adjustments were necessary and reasonable in this case and that the Respondent had promptly begun to take steps in that regard, in particular since the pupils' educational needs had to be protected. It may well have resulted in a combination of IT support and the employment of a business studies support teacher, in some combination, following discussion with the Claimant. However, the Claimant did not give the Respondent any opportunity to explore the possibilities of reasonable adjustments because he resigned before the planned meeting on 19 September. The Tribunal's unanimous conclusion was that up to the time of the Claimant's resignation, the Respondent cannot be said to have failed to take reasonable steps to make reasonable adjustments. Specific steps could not be fixed upon without discussion with the Claimant himself. After his resignation and his refusal to re-consider, as invited by Mr Tissot's letter of 20 September, the duty to make reasonable adjustments ceased. His complaint under **section 21 of the Act** accordingly fails.

58 Constructive Dismissal: Having resigned, it is for the Claimant to satisfy the Tribunal, on a balance of probabilities, that he was entitled to terminate his contract, without notice, because of the Respondent's conduct and was therefore constructively dismissed. His resignation letter stated that he considered the

school's Head Teachers to have acted in a discriminatory manner towards him regarding his dyspraxia and related handwriting difficulties, in breach of the Equality Act, and that Mr Rowland's line of questioning on the 7 September was 'insensitive, hostile and tantamount to harassment with regards to my having dyspraxia'; that the decision to suspend was unnecessary and ill considered and that the school's choosing not to contribute to Haringey's pooled funding arrangements precluded their staff from accessing accredited union representation during working hours, unless the School had other arrangements in place to meet their legal obligations. (paragraph 35 of these Reasons). His pleaded case sets out 10 alleged breaches of contract contended to amount to a fundamental breach of the implied term of trust and confidence, but he contends that the suspension was unlawful and manifestly unreasonable, amounting to fundamental breach of contract in its own right.

59 The Respondent denies that it was in breach of the implied term of trust and confidence and contends that regard must be had to the reasons for its actions, it not being disputed that these were genuine in this case, the wider context and what it communicated to the Claimant in taking the actions which it did. **(The Amnesty International case).**

60 The Tribunal considered each of the 10 alleged breaches of contract in the order pleaded by the Claimant:

60.1 Insufficient notice and failure to provide the opportunity to bring a companion to the suspension meeting: This was not a breach of contract. There is no requirement to give notice of, nor allow accompaniment at, a suspension meeting, under the provisions of **section 10 of the Employment Relations Act 1999** or otherwise. **Section 10** gives the right to be accompanied at a disciplinary or grievance hearing. This meeting was neither of those.

60.2 Harassment by Mr Rowland during the meetings on 7 and 8 September: As set out in paragraphs 49 and 50 above, the majority of the Tribunal concluded that the Claimant's complaint of harassment relating to these 2 meetings was not well-founded because, in all the circumstances, it is not reasonable to regard Mr Rowland's conduct as having the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading or humiliating environment for him. The use of the word 'suspension' was unfortunate and clumsy. However, it was clearly explained to the Claimant, according to his own notes of the meeting, that he was being sent home while it was urgently explored as to how he could take his classes. A minority of the Tribunal concluded that it was reasonable to regard Mr Rowland's conduct in sending him home under 'suspension' as violating his dignity, on only his second day in the school, and that this was a breach of the implied term of trust and confidence.

60.3 Leading me to believe that they were considering terminating my employment: Although the phrases used by Mr Rowland at the meeting on 8 September, as set out in paragraph 24 of these Reasons, made clear that the school was considering and investigating the Claimant's capacity to undertake his Teach First timetable, it included considering additional support and a wider range of options than termination of the Claimant's contract. He was in fact assured on 8 September that his contract was ongoing. In any event, it is not a breach of contract for an employer to consider an employee's capacity to do a job, including the possibility of termination, provided that the proper consultation and process is undertaken.

60.4 An unwarranted suspension without reasonable grounds – suspension was only available under the disciplinary policy, alternatively, no policy was used,

which is still unreasonable: A majority of the Tribunal concluded that Mr Rowland's sending the Claimant home was warranted, because he refused to go home whilst the Respondent made inquiries into his capacity to take his classes without writing and, if necessary to arrange support/cover for his classes, rather than to allow him to start teaching and then potentially and at short notice have to pull him out and find a replacement. This latter possibility was seen by Mr Tissot and Mr Rowland as being highly undesirable for the pupils and also for the Claimant himself, as was having him sitting in the staffroom while they made their inquiries, where they feared that other staff and pupils would comment and draw inaccurate conclusions. The minority of the Tribunal accepted the necessity of sending the Claimant home to wait, but concluded that to do this under 'suspension', a word imported from the disciplinary policy, was a fundamental breach of the implied term of trust and confidence. The majority of the Tribunal regarded the use of the word 'suspension' as highly unfortunate and misguided on Mr Rowland's part but accepted that Mr Rowland had made it explicitly clear at the suspension meeting that it was 'a sort of garden leave' while advice was taken and a decision made and that it was a neutral act. The Claimant therefore, according to his own notes of the meeting, understood the underlying reality and that it was not a disciplinary situation. Mr Rowland mistakenly believed that he only had 'suspension' open to him, because that was the only procedure for sending someone home of which he was aware.

60.5 Ignoring repeated requests for hand written notes of the meeting of 8 September and not notifying me that the evidence had been destroyed or would not be sent prior to destruction: The Tribunal accepted Ms Adams' evidence that she took short scribbled notes during the meeting, since she does not take shorthand, and whilst fresh in her head she typed them up at once after the meeting; that her typed notes were fuller than the hand written note had been and were an accurate reflection of them; that she then shredded the hand written notes after the Claimant was supplied with the typed notes and invited to make any amendments he wished. He did not respond. She told the Tribunal that she did not feel comfortable sending her handwritten notes as they were just for her own aide memoire. She consulted Mr Rowland and Mr Tissot and they agreed that she should not have to send them. The Tribunal noted that the Claimant's notes of this meeting were more favourable to the Respondent's nuanced position regarding 'suspension' than were Ms Adams' notes. This does not constitute a breach of contract and in any event not a fundamental breach.

60.6 Failing to send the suspension and disciplinary policies when requested: The Claimant requested the policies on 10 September and the grievance policy was sent to him on 14 September. The disciplinary policy was not sent before the Claimant resigned on 19 September because the Respondent did not regard itself as disciplining the Claimant. The Claimant eventually obtained the disciplinary policy by way of a Freedom of Information request. The non-sending of a disciplinary policy which the Respondent was not intending to apply to the Claimant was not a breach of contract and in any event not in the given timeframe up to his resignation.

60.7 Ignoring whether suspension was on full pay: The Claimant raised this query with Ms Adams and she had not provided an answer by the date of the Claimant's resignation. There was no evidence of deliberate withholding of this information. Mr Rowland stated at the suspension meeting that the Claimant's contract was continuing. This was not a breach in the timeframe before resignation, and in any event not a fundamental breach of contract.

60.8 Failure to make reasonable adjustments: The Tribunal concluded, on the evidence before it, that there was no such failure, for the reasons set out above,

and there was therefore no breach of contract in that regard.
60.9 Ignoring my comment that I had not been sent the basis and rationale behind the suspension being lifted: This was simply a comment by the Claimant. Mr Tissot then invited the Claimant to a meeting to discuss matters. The Claimant said that he would attend with his union representative but resigned before the meeting could take place. There is no breach of contract here.
60.10 The Respondent's attempt to infringe the right to accredited union representation: There was no right, under **section 10 of the Employment Relations Act 1999**, to have a representative at the Claimant's meeting of 19 September. This was not a disciplinary or grievance meeting (**the London Underground Ltd v Ferenc-Batchelor case).** More generally, the duty imposed upon an employer under **section 10** is to "permit" the employee to be accompanied. There was no evidence that the Respondent refused to permit the Claimant to be accompanied when he wished to be, even where the meeting in question did not fall within the ambit of **section 10**. It was Ms Davies' own employer who refused to permit her to attend a meeting with the Claimant during working hours and it was clear that the Respondent would have been open to a request from the Claimant to alter the time of the meeting to enable this, had the Claimant made any such request, which he did not. There was no infringement of the Claimant's rights and no breach of contract.

61 The majority of the Tribunal therefore concluded that there was no fundamental breach of the implied term of trust and confidence, as alleged, either cumulatively or singly. The minority of the Tribunal concluded that the Respondent's actions in paragraph 60.2 and 60.4 above, both singly and cumulatively constituted a fundamental breach of the implied term of trust and confidence. By majority therefore the Claimant's complaint that he was constructively dismissed is not well-founded and fails.

62 Automatic unfair dismissal within the terms of **section 12(3) of the Employment Relations Act 1999:** The Tribunal concluded unanimously that this complaint is not well-founded and fails because he was not dismissed and further and in any event, he had no right under **section 10** to be accompanied at the meeting of 19 September and therefore had no right to exercise or seek to exercise, within the meaning of **section 12(3)(a).**

63 The Claimant contends that he made a series of disclosures tending to show that the Respondent was in breach of its legal obligation to allow access to accredited/certified union representatives for its teaching staff, under the **Employment Relations Act 1999.** He had not read the statute at the material time but had clearly been informed that the Respondent had decided not to pay in to Haringey's pooled funding arrangements. He was also given to understand that Haringey had therefore refused to allow Ms Davies to attend meetings during working hours and that, in some sense, the in-school NUT representative of some 20 years, Celia Silva, was in some (unspecified) sense not 'accredited'. The Tribunal accepted that the Claimant held these views in good faith.

64 However, there was no failure on the Respondent's part to comply with its legal obligations under **section 10 of the 1999 Act**; the Claimant had no right under **section 10** to be accompanied to the meeting in question on 19 September; had he had such a right, he could have requested a change to the time of the meeting to enable Ms Davies to attend after working hours, as he had a right to do under **section 10(4).** He did not do so. Further, there is no legal

obligation on a school to buy into any pooled arrangements. The Respondent has a longstanding in-house NUT representative. There was no clear evidence before the Tribunal as to why Ms Silva was 'uncertified' or what this meant. The Respondent stated that she was given an office and time off for her union duties and for any training which she needed to attend in that regard. Without more, the Claimant's belief that the Respondent was failing in its duties under **section 10** cannot be said to be reasonable. Any such disclosures/assertions which he made were therefore not qualifying disclosures within the meaning of **section 43B of the Employment Rights Act 1996.**

65 Further and in any event, although the 'appointment' of the various grievance appeal panel chairs and the attendance of the Respondent's legal advisor but without provision for attendance by an equivalent person for the Claimant, did not appear to the Tribunal to conform with best practice standards of independence, apparent impartiality and natural justice, there was no evidence that this system would have been any different for the Claimant, or for any other member of staff, who had not made alleged protected disclosures.

66 Further, there was no evidence that the various grievance panels' decisions were in any way on the ground that he had made alleged protected disclosures. His complaint under **section 47B of the Employment Rights Act 1996** accordingly fails.

Employment Judge Stewart on 31 December 2017