**Case Number: 2302619/2015**

# THE EMPLOYMENT TRIBUNAL

**SITTING AT:** **LONDON SOUTH**

**BEFORE:** **EMPLOYMENT JUDGE H WILLIAMS QC**

**BETWEEN:**

**Miss C Baldwin** **Claimant**

AND

**(1) Cleves School**
**(2) Mr Chris Hodges**
**(3) Miss Sarah Miller** **Respondents**

**ON:** **24 January 2018**

**APPEARANCES:**

For the Claimant: In person
For the Respondent: Mr M Cole, Counsel

## PRELIMINARY HEARING: JUDGMENT

1. The Claimant complied with the "Unless Order" made by EJ Webster on 22 November 2017. Accordingly, the claim is not struck out for non-compliance.

2. The claim was presented outside of the primary time limit imposed by section 123, Equality Act 2010. However, it is just and equitable to extend the time for presentation of the claim to the date of its presentation (18 August 2015). Accordingly, the Tribunal has jurisdiction to hear it.

3. The Respondents' application that all or parts of the claim be struck out because insufficient particulars have been provided and/or because a fair trial is no longer possible, is refused.

## REASONS

### Background

1. The Claimant was employed as a teacher at the First Respondent school ("R1") from 1 September 2014 to 20 March 2015, when she resigned. The Second Respondent ("R2") was the head teacher of the school at the material time and the Third Respondent ("R3") was a teacher at the school, assigned as the Claimant's mentor. The Claim Form relies upon claims of disability discrimination only.

2. This case was listed for a Preliminary Hearing before EJ Webster on 21 November 2017, to consider: (i) if the Claimant was a disabled person within the meaning of section 6, Equality Act 2010 ("EA 2010"); and (ii) if the Tribunal had jurisdiction to consider the claim, given the time limit imposed by section 123 EA 2010. The Claimant did not attend the hearing, in the circumstances referred to by EJ Webster at paragraphs 6 – 7 of her Reasons. Given the lack of progress with the proceedings since the Claim Form was presented on 18 August 2015, the Respondents submitted the case should be struck out. A helpful summary of the proceedings to date was set out at paragraph 9 of EJ Webster's reasons. She declined to strike the case out, but she made an "Unless Order", providing the claims would stand dismissed without further order, unless by 12 December 2017, the Claimant undertook the following:

   "2.1 *The Claimant is ordered to produce a clear impact statement which sets out the effect that her conditions had on her at the time of her employment and on the date she resigned / was dismissed. This involves setting out:*
   *(a) The precise nature of her impairment or impairments*
   *(b) The extent of the effects she alleges her impairments had at the relevant time (principally during her employment at the First Respondent) on her ability to carry out normal day to day activities*
   *(c) The period or periods over which those effects have lasted and any prognosis for recovery*
   *(d) Whether or not she has been treated for the impairment(s) and what difference, if any, such treatment has had on the effects of the impairments*

   *(Note: this should not set out the current impact of any health conditions, but focus on the impact that any health conditions had at the time the claimant states she was discriminated against)*

   *"2.2 The Claimant is ordered to obtain a report or reports covering the matters set out in paragraph 17.1 above from her GP or any qualified medical consultant and send a copy of such report to both the Respondent and the Tribunal.*

> *"2.3 The Claimant is ordered to produce a clear list of incidents or acts which she relies upon as being incidents of disability discrimination. The Tribunal suggest that the following table is an appropriate format…."*
> [The order then set out a table with four column headings "*Date of incident"; "What happened"; "Who carried out the act*"; and "*If possible please state what type (or types) of disability discrimination you say this is (direct, discrimination arising from disability, harassment, victimisation, failure to make reasonable adjustments*)"]

3. EJ Webster also listed a further preliminary hearing for 24 January 2018 to consider the following issues:

> "(a) *Whether the Claimant was at the relevant time a disabled person as defined in section 6 of the Equality Act 2010.*
> *(b) If so, whether the Tribunal has jurisdiction to consider the Claimant's complaint given the relevant time limit in section 123 of that Act.*
> *(c) Whether all or part of the claim ought to be struck out because:*
> *(i) The claim has not been actively pursued and/or*
> *(ii) There has been a failure to comply with Tribunal Orders*
> *(iii) It is no longer possible to have a fair hearing"*

4. On 12 December 2017, the Claimant emailed the Tribunal and the Respondents, attaching a 17-page schedule of incidents, set out under the four column headings that EJ Webster had proposed ("the Schedule of Discrimination Incidents"); a three page "Disability Impact Statement" and some medical records, in particular a letter from Dr Frankel, Consultant Physician and Nephrologist, listing the conditions the Claimant had been diagnosed with, the date of the diagnosis and her current medication.

5. The conditions which the Claimant described in her Disability Impact Statement were: Guillain-Barré disorder, diagnosed in 2006; Chronic Pain and Chronic Fatigue Syndrome since 2006; Hyperhidrosis since 2010; Pinealoma since 2006; Nutcracker Syndrome since 2011; depression and anxiety since 2006 and irritable bowel syndrome. Her statement said that she was affected by all of these during the alleged discrimination in 2014 – 2015 and she described her various symptoms and the medication she was taking. She also explained that during the material period she was being tested for the possibility of MS.

## The Issues for the Hearing on 24 January 2018

6. Both Claimant and Respondents attended the hearing. At the outset, Mr Cole indicated that in light of the Disability Impact Statement and related material received, the Respondents now accepted that the Claimant was a disabled person at the time of the alleged discrimination (albeit knowledge of disability would be in issue). He also indicated that the Respondents no longer sought to strike out the claim on the full range of grounds that had

been raised with EJ Webster (as reflected in her order regarding this Preliminary Hearing). However, strike out on certain grounds was pursued.

7. I then clarified with the parties that the following were the live issues for me to decide at this stage:

   (1) Whether the Claimant had complied with the Unless Order. If not, whether it was in the interests of justice for me to set aside the striking out of the proceedings that would follow from that conclusion?

   (2) If the claim was not struck out under (1), whether it was appropriate to determine time limits issues at this stage, rather than at a full merits hearing. If it was, whether the proceedings had been brought within the primary time limit set out in section 123 EA 2010. If not, whether it was just and equitable to extend the time for doing so?

   (3) In so far as the claim survived (1) and (2), whether all or part of the claim should be struck out on the basis that it was not adequately particularised and/or it was no longer possible to have a fair trial of two of the allegations?

   (4) If and in so far as the case was not struck out, the issuing of appropriate case management directions (which are dealt with in a separate Order).

8. At the hearing I considered each of these matters in turn, hearing submissions and then giving my ruling orally with summary reasons. The reasons set out in this document reflect those that I gave orally.

**Issue 1: Compliance with the Unless Order**

9. After receipt of the information provided by the Claimant on 12 December 2017, no steps were taken by the Tribunal to strike out the claim pursuant to rule 38(1) of the Employment Tribunals Rules of Procedure. It was apparent from the file that no specific consideration had yet been given to whether the terms of the Unless Order had been met. As the claim had not been struck out, the Claimant had not made an application pursuant to rule 38(2) to have such an order set aside (on the basis that it was in the interests of justice to do so). The parties sensibly agreed that I should consider both these questions at the hearing, without the need for written application to be made.

10. The Respondents accepted that the Claimant had complied with paragraph 1.1 of the Unless Order by the Disability Impact Statement she provided. However, they submitted that she had failed to comply with paragraphs 1.2 and 1.3.

## The relevant principles

11. Mr Cole provided me with an extract from Division P1 of *Harvey on Industrial Relations and Employment* Law, paragraphs 390 – 396 setting out the applicable principles. In particular, I noted that for an unless order to be effective in attracting the sanction of automatic dismissal, it must identify with clarity what is required for compliance: paragraph 396, citing *Mace v Ponders End International Ltd* [2014] IRLR 697. Further, that the sanction embodied in an unless order takes effect without the ned for any further order if the party to whom it is addressed fails to comply with it in any *material* respect: *Johnson v Oldham MBC* UKEAT/0095/13 (paragraph 395, *Harvey*).

12. As regards granting relief from the sanction of strike out that would otherwise follow a breach, in *Thind v Salvesen Logistics Ltd* [2010] All ER (D) Underhill J stated that the exercise involved a broad assessment of what is in the interests of justice and whilst the factors material to that assessment will vary considerably, they will generally include: the reason for the default; whether it is deliberate; the seriousness of the default; the prejudice to the other party; and whether a fair trial remains possible. In *Morgan Motor Co Ltd v Morgan* UKEAT/0128/15, HHJ Eady emphasised the significance of the policy objective behind unless orders and the general importance the courts will attach to compliance with them (paragraphs 394 – 394.02, *Harvey*).

## Compliance with paragraph 2.2 of the Order

13. The letter from Dr Frankel set out the nature of the Claimant's impairments and the date when they were diagnosed. However, the letter did not address sub-paragraphs 2.1 (b), (d) or part of (c). Paragraph 2.2 of the Unless Order contained an error in purporting to cross-refer to paragraph 17.1 of the Order, rather than paragraph 2.1, when indicating what the report should cover. On the same day that she received the Unless Order (23 November 2017), the Claimant emailed the Tribunal seeking clarification of what was meant by the reference to paragraph 17.1 in it. Because of a delay in the matter being referred to EJ Webster, the Tribunal did not reply to the Claimant's query until 3 January 2018, several weeks after the time for compliance with the Unless Order.

14. It appears from what the Claimant told me, that she must have understood that it was at least a distinct possibility that the reference to paragraph 17.1 in the Unless Order was intended to read paragraph 2.1, as she described discussing with her GP how feasible it would be to obtain the information within the prescribed time period. Nonetheless I accepted she was genuinely unsure, hence her prompt email to the Tribunal, seeking clarification.

15. Given the lack of clarity in paragraph 2.2 of the Unless Order, the delay in providing the clarification sought by the Claimant and the importance of orders with draconian consequences being expressed in clear terms, I did

not find that the medical evidence provided by the Claimant constituted a breach of paragraph 2.2 of that order.

16. As I also indicated at the hearing, in the alternative, if I were incorrect in that conclusion, this appeared to me to be a strong case for finding that it would be in the interests of justice to grant relief from sanctions. I was, of course, conscious of the concerning history of these proceedings and the lack of progress made before 12 December 2017. Even making due allowance for the fact the Claimant indicated to me that she disputed certain aspects of EJ Webster's summary of the history and she stressed her health issues, it was clear there has been a marked lack of progress over a substantial period of time. I bore that in mind, along with the importance of Tribunal orders being adhered to. However, set against that, I regarded the following features as significant:

- The Claimant fully complied with paragraph 2.1 of the Order, as the Respondent accepted and gave at least partial compliance with paragraph 2.2;
- The combined effect of those steps by the Claimant was to enable the Respondents to assess and accept that she was a disabled person for the relevant time – the very purpose for which those orders were made;
- It followed too, that there has been no prejudice to the Respondents from any failure to comply with paragraph 2.2;
- The ambiguity in the wording of paragraph 2.2 and the potential for confusion this caused, even if not sufficient to warrant a finding of no non-compliance, was a relevant factor to weigh in the balance (as the Respondents accepted);
- Whilst the Claimant did not seek to appeal or vary the Unless Order (and it was, in turn, based on the terms of an earlier order made following a Preliminary Hearing on 28 July 2016), I noted that the time for compliance prescribed by the Unless Order was short, given the number of medical conditions the Claimant suffered from at the relevant time and the number of medical practitioners she explained she would have had to approach to obtain the details set out in subparagraphs (b) – (d) in relation to each of her conditions. To do this would have been a substantial undertaking. Furthermore, it seemed to me that a claimant should be permitted to decide whether to deploy medical evidence in support of their claim (taking the risk that if they do not do so, they may not sufficiently evidence they are a disabled person), rather than being ordered to supply specified medical evidence in support of it, on pain of strike out if they fail to do so.

**Compliance with paragraph 2.3 of the Order**

17. I then considered whether the Schedule of Discrimination Incidents provided by the Claimant complied with paragraph 3.3 of the Unless Order. I was asked to address the extent to which individual allegations were properly particularised when dealing with the third issue (below). At this

stage, Mr Cole put his submission on a global basis, namely that taken overall the document provided by the Claimant did not meet the requirements of the Unless Order. The Schedule sets out a number of allegations over 17 pages, each addressed in the four columns mentioned earlier. Whilst it is true that the entries in the second column "What happened" are sometimes quite verbose, when a more concise description would have been more helpful; I observed that it was not altogether surprising that the event was set out in full, rather that the act of discrimination being isolated, given the column heading the Claimant was addressing. I also noted that in relation to each incident, the Claimant has indicated the cause of action relied upon and completed the other proposed columns. It appeared to me that she had put a significant amount of thought into this document and I also bore in mind when judging compliance that she is a litigant in person.

18. In essence the Respondents' complaint was that the list was not a "clear" one (to use the phraseology of the Order), or at least not a sufficiently clear one, given the rather long descriptions provided. The achievement / non-achievement of clarity is a somewhat subjective concept. It seemed to me that whilst the list could have been clearer, there has been material compliance with the terms of the order. Further, that the extent and presentation of the information provided was such that remaining uncertainty appeared to be capable of resolution.

19. Again, I indicated that if I were wrong in that conclusion, the same features would have caused me to grant relief from sanctions, applying the interests of justice test.

## Issue 2: Time limits

### The primary time limit

20. The relevant dates were as follows:

| | |
|---|---|
| 14 February 2015: | Last incident of alleged discrimination on Claimant's Schedule |
| 20 March 2015: | Claimant resigned her post with R1 |
| 19 June 2015: | The "A date" in relation to R2 and R3 |
| 26 June 2015: | The "A date" in relation to R1 |
| 19 July 2015: | The "B date" in relation to R2 and R3 |
| 26 July 2015: | The "B date" in relation to R1 |
| 18 August 2015: | When Claim Form presented |

21. The primary time limit for presentation of the disability discrimination claim was three months less one day from the discrimination complained of (or the last discrimination complained of, in so far as it was an act extending over a period): section 123, EA 2010. The Respondent submitted that this date expired before the time when the Claimant made contact with ACAS as required by section 18A Employment Tribunals Act 1996 ("the A date"). This is because if time ran from the last act of alleged discrimination, the three months less one-day period expired on 13 May 2015. In a situation where time has already expired before the A date, the Claimant cannot take advantage of the extensions provided by section 140B(3) and (4), EA 2010, which would suspend time from running between the A date and the date when the certificate is issued by ACAS ("the B date") and provide an additional month after the B date for presentation of the claim.

22. The Claimant did not dispute that analysis and I accepted the Respondents' submission that the claim was presented outside of the primary time limit.

**Whether just and equitable to extend time**

23. However, the Claimant submitted that it was just and equitable for me to extend the time for the presentation of her claim, pursuant to section 123(1)(b), EA 2010. In relation to this issue, I first considered whether now was the appropriate time to make this determination. The Respondent submitted that it was, accepting I would not be able to make any evaluation of the merits, one way or the other, at this preliminary stage. Given that the question I had to determine was not dependent upon findings of fact that could only be made at the full merits hearing (as is usually the case where there is an issue over whether there was an act extending over a period) and given I was able to assess the particular factors that the parties urged upon me, I decided I could and should determine the point at this juncture.

24. The Claimant explained why she did not issue proceedings earlier. She was told by a lawyer who she obtained some advice from under the legal aid scheme and by the ACAS employee she dealt with, that time would run from the date she left her employment. Accordingly, she believed she could take advantage of the extension of time provided in relation to early conciliation and believed she had a month from the first of the B dates and thus submitted her Claim Form on 18 August 2015, just before the end of this period. She did not submit it earlier as she was still formulating her claim and also was affected by health issues at the time. However, had she appreciated that time expired earlier, she would have ensured she presented her Claim Form in accordance with that. Further, when she filled in the initial form with ACAS, she thought she had given sufficient information to include R1, as well as R2 and R3. However, she was texted by ACAS on 22 June 2016 asking her to get in touch; she did so and they pointed out that she needed to fill in another form in relation to R1. She did this promptly, submitting it on 26 June 2015. The Respondents raised no free-standing issue in relation to this latter point.

25. As regards her main explanation, whilst pointing out that we did not have the full context in which this advice was given, Mr Cole did not dispute that the Claimant was given this advice, nor that she relied upon it (and he did not seek to cross examine her on these points). That she did receive and rely upon the advice she described, is consistent with the date upon which the Claim Form was presented, as I indicated above. Furthermore, although the Claimant had not included the loss of her employment as an act of discrimination (as opposed to a consequence of it), it is not uncommon for a claim to be formulated in a way that time would run from the effective date of termination in such circumstances, so it is credible that such advice was given out of a mistaken assumption in this instance.

26. I was not provided with any of the case-law relating to the exercise of the just and equitable discretion, but when I raised the point, Mr Cole suggested we referred to the summary of the principles and related cases in *Harvey*. This is to be found in Division P1 at paragraphs 277 – 279.08, which I then had the opportunity to consider. I noted the following in particular: it is a broad discretion, but there is an onus on the Claimant to establish that it is just and equitable to extend time. The factors relevant to the exercise of the discretion were discussed in *British Coal Corp. v Keeble* [1997] IRLR 336; see also paragraph 279 of *Harve*y. In particular, it appeared to me that I should consider the Claimant's explanation for the delay; and weigh the relative prejudice to the parties.

27. As regards the receipt of inaccurate legal advice, which the claimant then relies upon in presenting a claim out of time, the general thrust of the authorities appeared to me to be that whilst the claimant's own fault is relevant; if the fault lies with those who advised the claimant, then it is unfair to lay that failing at the claimant's door: see *Virdi v Commissioner of the Metropolitan Police* [2007] IRLR 24 EAT; *Benjamin-Cole v Great Ormond Street Hospital for Sick Children NHS Trust* [2010] All ER (D); and *Robinson v Bowskill* (2014) ICR D7. In this regard, it seemed to me that there was no distinction of principle between advice given by a solicitor and advice given by another person who the claimant reasonably relied upon in the circumstances; in both instances fairness suggests that the error is not the fault of the claimant.

28. Mr Cole placed particular emphasis on *Thompson v Ministry of Justice* UKEAT/0004/15 (which is also referred to in the *Harvey* text), submitting that the case showed there must be negligence on the part of the advisor, rather than simply some failing, for the principle to apply. I therefore read the case over the lunchtime break. Having done so, as I indicated, I did not agree with this interpretation of the EAT's decision in *Thompson* (dismissing an appeal against an Employment Judge's finding that it was not just and equitable to extend time in the circumstances). The determining features appeared to me to have been that the claimant was told that 'on balance' there was no need for him to bring an action yet and that he was 'taking a risk' by not doing so; so that in the circumstances he knew the position was doubtful and understood he was taking a chance in not issuing sooner: see paragraphs 44 and 48. In other words, the crux

was that there was some fault on the part of the claimant himself; this was the crucial point, rather than the claimant's inability to show negligence in the legal sense. Furthermore, such a rigid approach of requiring negligence as such to be proven, would be inconsistent with the broad and flexible nature of the just and equitable discretion; and it would be odd if the question of whether the claimant was to be held responsible for the errors of others for the purposes of this discretion, turned upon questions such as whether the person giving the advice owed a legal duty of care to the claimant or not.

29. Mr Cole did not identify analogous failings to those in *Thompson* on the part of the Claimant. Accordingly, I found that the Claimant had provided a satisfactory explanation for why she did not issue proceedings earlier and I accepted that she would have issued them in time, had she been told the correct date for doing so.

30. However, that conclusion, though relevant to the experience of my discretion, was not in itself determinative; I still had to consider the respective prejudice the parties would suffer. Plainly the Claimant would suffer considerable prejudice if I did not exercise the discretion in her favour, as she would be unable to litigate the entirety of her claim. On the other hand, if I did extend time, the Respondent would lose the benefit of the limitation point. However, this was not a case, as Mr Cole fairly accepted, where it was said that there had been any forensic prejudice caused to the Respondents as a result of the three months delay between the last date for bringing proceedings in time and the actual date of issue.

31. I bone in mind the subsequent delay in the conduct of the proceedings. However, I accorded less weight to this factor, given that I was to separately assess if that delay has impacted upon whether a fair trial could still take place and I was currently focused particularly upon the effects of the three-month period I referred to in the previous paragraph, rather than later events.

32. I acknowledged that there were factors pointing both ways and I weighed them carefully. On balance I considered that the Claimant has shown that it was just and equitable for me to extend time for the presentation of her claim to cover the date when it was lodged with the Tribunal. Accordingly, the Tribunal had jurisdiction to hear this claim.

## Issue 3: Other Grounds for Striking Out the Claim

33. The submission that a fair trial was no longer possible in relation to two allegations, was based of witness unavailability, as set out in the statement made by R2 for these purposes. During submissions, Mr Cole indicated that the point raised at paragraph 6 of the statement was no longer pursued.

34. This simply left the suggestion that a fair trial of the allegation involving Karen Cummings was no longer possible because she was not now employed by R1. However, upon inquiry, it emerged that the Respondents had yet to take steps to see whether Ms Cummings could be traced or not. In the circumstances I indicated that I was not prepared to strike out the allegation. I also indicated that this would not preclude the Respondents from raising the matter again, once the position concerning Ms Cummings had been clarified.

35. The Respondents' other submission concerned the lack of particularisation of specific allegations within the Claimant's Schedule of Discrimination Incidents (as opposed to the global submission I considered under Issue 1). However, as I went through the Claimant's Schedule with her, it was possible to obtain additional clarification of the acts of discrimination that she relied upon, such that, in the main, Mr Cole indicated he was now content with the level of particularisation provided. Furthermore, there were some instances where the Claimant decided, after discussion, that she did not pursue the allegation in question. I set out these matters below, identifying where the Respondents still had some reservations about the level of particularity provided. However, in terms of the striking out submission, it was clear to me that any remaining ambiguity was not of a kind or degree that would warrant the striking out of any of the claims.

## Clarification of the Claimant's Schedule of Discrimination Incidents

36. The Claimant's Schedule was not numbered, but I will refer to its contents by reference to the relevant page and the date given for the incident:

**Discrimination arising from disability:**

Page 1

27.11.14 The Claimant confirmed the alleged discrimination related to the manner and content of R2's questioning of her. With this clarification, the Respondents accepted the allegation was sufficiently particularised.

03.12.14 The Respondents accepted this allegation was sufficiently particularised.

09.12.14 The Respondents accepted this allegation was sufficiently particularised.

06.11.14 The Claimant clarified the essence of this complaint was that the Respondents had divulged her personal medical information to wider school staff. She was not able to name the member of staff who had spoken to her on this occasion. With this clarification, the Respondents indicated they did not seek to strike this allegation out.

Page 2

22.09.14 – 02.02.15 The Claimant accepted she would not pursue this allegation as her latex allergy was not a disability relied upon in her impact statement.

Page 3

12.12.14 The Claimant clarified that the essence of her complaint was that she was pressurised by Emma Turner, the School Business Manager, into signing a form that referred to her depression. Part of that pressure was an ultimatum given in relation to her reference for a mortgage. After this clarification, the Respondents did not seek to strike the allegation out.

Page 4

22.09.14 – 18.12.14 The Claimant clarified the essence of this allegation was that R2 had spoken to her union representative without her knowledge and in her absence and this had led to her being given the ultimatum about leaving the school which she set out. With this clarification, the Respondents did not seek to strike the allegation out.

**Direct discrimination:**

03.12.14 The Respondent accepted this allegation was sufficiently particularised.

Page 5:

02.02.15 The Claimant confirmed the allegation related to R2's grading of her lesson. The Respondents accepted this allegation was sufficiently particularised.

14.02.15 The Claimant confirmed the allegation related to a groundless accusation of her using inappropriate language in the classroom, made by R2 in the email referred to. The Respondents accepted this allegation was sufficiently particularised.

Page 6:

03.12.14 The Claimant clarified the essence of this allegation was the lack of support she received from R3 regarding the preparation of her supporting evidence file. She compared herself to a fellow NQT, Danielle Hamlyn. With this clarification, the Respondents accepted the allegation was sufficiently particularised.

27.11.14 The Claimant indicated she did not pursue this matter in so far as it related to her latex allergy, but that she did pursue the complaint that R3 had been unsupportive when she tried to raise breaches of her medical confidentiality with her. The Respondents did not pursue an application to strike out this matter.

29.09.14 The Respondents accepted this allegation was sufficiently particularised.

Page 7:

29.10.14 The Claimant clarified her complaint related to the email that R3 had sent to her PGCE mentor and the way that R3 reacted when she raised this, telling her that she was 'disappointed in me and my unprofessionalism'.

**Harassment:**

29.09.14 The Respondents accepted this allegation was sufficiently particularised.

14.10.14 The Respondents accepted this allegation was sufficiently particularised

21.10.14 The Respondents accepted this allegation was sufficiently particularised

Page 8:

03.11.14 The Claimant clarified the essence of this allegation was R2's behaviour towards her in the discussion on 05.11.14. With this clarification, the Respondents accepted it was sufficiently particularised.

Page 9:

The Respondent accepted that both allegations on this page (14.11.14 and 02.02.15) were sufficiently particularised.

Page 10:

02.02.15 onwards The Claimant clarified her complaint concerned the frequent telephone calls she received from the receptionist and from Sharon Durnan during her sickness absence, which she said were instigated by R2. The 'inappropriate times' referred to calls received late at night and at times when she had medical appointments. The Respondents accepted with this clarification the allegation was sufficiently particularised.

29.10.14 The Claimant confirmed the complaint was as clarified in relation to page 7 above (but here alleged to constitute harassment.).

Page 11:

27.11.14 The Claimant clarified the essence of this allegation concerned R3 divulging her personal medical information and she gave as examples of recipients a Year 5 teacher, Linda and all the Claimant's School Learning Assistants. With this clarification, the Respondents accepted that sufficient particularisation had been provided.

09.12.14 The Claimant clarified the focus of the allegation was the contents of her failed NQT report. The Respondents accepted this was properly particularised.

22.09.14 - 02.02.15 The Claimant accepted this was a 'catch all' that did not add materially to her allegations. She indicated that she would not pursue it.

06.11.14 The Claimant clarified the essence of the allegation was as per the same allegation raised as discrimination arising from disability (see page 1). The Respondents accepted it was sufficiently particularised.

27.11.14 The Claimant agreed this allegation did not add to the first allegation on the same page and that she would therefore not proceed with it.

Page 12:

05.12.14 The Claimant indicated she did not pursue this matter as it related to her latex allergy.

22.09.14 The Claimant indicated she did not pursue this as a separate allegation, as it was a 'catch-all' and an articulation of the effects of the discrimination on her.

Page 13:

02.02.15 The Claimant accepted this merely repeated earlier allegations and/or addressed consequences, so that she did not pursue it as a separate allegation.

**Victimisation:**

None of the Claimant's allegations of victimisation identified the protected act relied upon. This was not something covered by the Unless Order, so the Respondents accepted that the Claimant was not in default in this regard. As the

Claimant was not able to deal with this topic comprehensively at the hearing it was dealt with by case management orders. In addition:

03.12.14 The Claimant clarified the allegation related to what R2 said to her at the meeting on this date.

Page 14:

09.12.14 The Claimant confirmed this allegation against R2 related to the contents of her failed NQT report.

18.12.14 The Claimant clarified she was not pursuing this allegation.

02.0215 This allegation related to R2's grading of the Claimant's lesson.

Page 15:

14.02.15 The Claimant clarified this allegation related to the contents of R2's email sent on this date.

29.10.14 The essence of the treatment complained of was confirmed to be as per the clarification obtained for the same incident when raised as an allegation of discrimination arising from disability (see page 2 above).

29.10.14 The Respondent accepted the essence of this complaint was clear.

Page 16:

27.11.14 As with the related allegation of direct discrimination, the only aspect that was pursued was the contention that R3 had been unsupportive to her when she raised the medical confidentiality issue.

09.12.14 The Respondent accepted the essence of this complaint was clear.

29.10.14 The Claimant clarified the essence of her complaint was that R3 had revealed to other members of staff that she had made complaints, including to the Year 5 teacher, Linda.

09.12.14 The Claimant indicated this was not pursued as it simply repeated earlier allegations.

**Failure to make reasonable adjustments:**

Page 17:

The Claimant indicated that she did not pursue the first two allegations on this page (18.12.14 and 22.09.14 – 29.10.14).

The other three allegations all related to lack of support the Claimant said she had received from the Respondents. She clarified that the reasonable adjustment she relied upon was the provision of more support to her from R2 and R3, the latter in her capacity as mentor. The extent of the support she would receive had been discussed at a meeting on 18.12.14 and the Claimant had listed the additional support sought. The Respondents did not accept this provided sufficient clarity. I indicated I was not prepared to strike out the allegations; the essence of the complaints was apparent, bearing in mind too that the Claimant was unrepresented.

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Employment Judge H Williams QC
Date:31 January 2018