



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs E Parker

**Respondents:** 1. Stockport Metropolitan Borough Council  
2. Ian Irwin

## CERTIFICATE OF CORRECTION

### Employment Tribunals Rules of Procedure 2013

Under the provisions of Rule 69, the Reserved Judgment sent to the parties on 7 December 2018, is corrected at **Page 1 at Paragraph 4** of the Judgment to read **“Indirect discrimination in relation to disability under section 19 Equality Act 2010 fails and is dismissed”**.

Employment Judge **Feeney**

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Date : 23<sup>rd</sup> January 2019

SENT TO THE PARTIES ON

29 January 2019

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FOR THE TRIBUNAL OFFICE

**Important note to parties:**

Any dates for the filing of appeals or reviews are not changed by this certificate of correction and corrected judgment. These time limits still run from the date of the original judgment, or original judgment with reasons, when appealing.



## EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Esperanza Parker

**Respondents:** 1. Stockport Metropolitan Borough Council  
2. Ian Irwin

**Heard at:** Manchester

**On:** 29-31 January 2018  
1 and 2 February 2018  
5 February 2018  
9-13 July 2018  
23 October 2018  
(in Chambers)

**Before:** Employment Judge Feeney  
Mr J Ostrowski  
Ms E Cadbury

### REPRESENTATION:

**Claimant:** Mr J Dawson, Counsel

**Respondents:** Ms R Wedderspoon, Counsel

## RESERVED JUDGMENT

The judgment of the Tribunal is that the claimant's claims of:

1. Constructive unfair dismissal fails and is dismissed.
2. Direct discrimination and Harassment on the grounds of race contrary to sections 13 and 26 Equality Act 2010 are out of time, and the tribunal does not exercise its just and equitable discretion to extend time.
3. Disability discrimination under section 20 and 21 Equality Act 2010 fail and are dismissed.
4. **Indirect discrimination in relation to disability under section 19 Equality Act 2010 fails and is dismissed.**
5. Victimisation under section 27 Equality Act 2010 fail and are dismissed.

## REASONS

1. The claimant brings claims of constructive unfair dismissal, disability discrimination, victimisation, race discrimination, including direct discrimination and harassment following her treatment by the school which resulted in her resignation on 9 September 2016.
2. The respondent resisted all the claimant's claims as set out in more detail below.

### The Issues

3. The issues for the Tribunal to decide are:

#### Constructive unfair dismissal

- (1) Was there a repudiatory breach of an express or implied of the claimant's contract of employment such that the claimant was entitled to resign in consequence?
- (2) If so, which express or implied term does the claimant seek to rely on? In respect of the breaches the claimant relied on paragraphs 2-21 of her particulars of claim and paragraphs 4-18 of her further and better particulars of claim. These are as follows:
  - (i) That following Mr Irwin joining the school in September 2013 accusations were made against the claimant which were without any substance and colleagues began to turn against the claimant, in particular Mr and Mrs Broadhurst.
  - (ii) The claimant felt Mr Irwin was unsupportive of the concerns she raised with him and Mr Whitehead, and he made changes to the claimant's contract in respect of which she was unhappy.
  - (iii) The claimant was subjected to constant verbal abuse and harassment by Mr and Mrs Broadhurst who would regularly swear at the claimant, shout at her in front of other colleagues and ignore her reasonable management instructions. Mr Irwin did nothing about the concerns even though she had raised them with Mr Whitehead at the time.
  - (iv) Mr and Mrs Broadhurst were given a bonus of £50 in 2015 The claimant had not been given a bonus for undertaking similar work.
  - (v) Mr and Mrs Broadhurst continued to subject the claimant to daily insults and threats from September 2014, including mocking the claimant's Spanish ethnicity and mimicking her accent. Even though she raised these concerns with Mr Irwin he did not do anything about them. The claimant's position was undermined as Mr and Mrs Broadhurst began to take instructions directly from Mr Irwin.

- (vi) The claimant submitted a formal grievance in February 2015 but this was not dealt with.
- (vii) The claimant agreed to be a witness in a Tribunal claim against the respondent and also gave evidence on behalf of another employee in disciplinary proceedings. Mr Irwin's attitude to her changed and became worse after this. Her management responsibility for cleaners was removed, she was excluded from meetings, ignored and her office was moved without any consultation. She was accused of discussing the Employment Tribunal proceedings and threatened if she continued to do so.
- (viii) The respondent held a sickness absence review meeting without having resolved the claimant's grievance, of which Mr Irwin denied any knowledge and the claimant had to resubmit her grievance.
- (ix) A further sickness review meeting was held. The respondent accepted it did not properly take into account the reasons behind the claimant's level of sickness absence.
- (x) The claimant's grievance was not upheld. She appealed this on the basis the original decision was not impartial. The appeal panel agreed and apologised and offer to appoint an independent person to re-hear the claimant's grievance. The claimant withdrew her grievance.
- (xi) The respondent failed to carry out a stress risk assessment, although the claimant conducted one herself and forwarded it to the Head Teacher's PA but no action was ever taken.
- (xii) The claimant found her office had been moved into a room under the stairs and left in a mess.
- (xiii) The claimant raised health and safety concerns regarding the testing of electrical equipment. Mr Broadhurst was appointed to carry out this work by Mr Irwin but he was not qualified to do this and the claimant was concerned the test would not be carried out properly. Her concerns were dismissed. She also raised concerns about the fact she had to work on her own and at night but Mr Irwin was dismissive of her concerns.
- (xiv) Following the claimant's return to work from sickness absence in February 2016 the Mr and Mrs Broadhurst continued to be rude and abusive and ignore her reasonable instructions. She complained to Mr Irwin but he took no action.
- (xv) On June 2016 the claimant was subjected to a vitriolic and unjustified outburst by Mrs Broadhurst. Mr Broadhurst also verbally attacked the claimant and said there should be an English person doing the claimant's role. The claimant met with Mr Irwin and Mrs Broadhurst but Mr Irwin did not support the claimant.

- (xvi) Mr and Mrs Broadhurst were absent due to sickness and the claimant was concerned as to how the work was going to be covered. Mr Irwin said he would look into arranging cover but at this stage did nothing.
  - (xvii) Mr Irwin ignored the claimant after receiving her witness statement for the teacher's claim.
  - (xviii) Mrs Broadhurst's role as Assistant Estates Manager was not filled after she was moved to a teaching assistant post. The claimant spoke to Mr Irwin to say she could not manage without an Assistant Manager. She also wanted to be allowed to work from home to help alleviate the pain she was suffering as a result of the added stress. Mr Irwin stated she would not be getting a replacement Assistant Estate Manager. The claimant said she could not cope with that and would have to leave. Mr Irwin replied, "It's up to you". The claimant therefore resigned following that meeting on 9 September.
  - (xix) The claimant also relies on matters relating to her disability which are set out below.
- (3) The claimant relies on paragraphs 4-18 of the further and better particulars:
- 4A The claimant states that Mr Irwin began to make changes which affected her and the staff. These changes were made without prior consultation and she was unhappy. This included changing the caretaker's duties and their overtime arrangements and insisting that the claimant remained on site between the hours of 9.00am and 5.00pm Monday to Friday. Previously the claimant had been allowed to work flexible hours due to her suffering from ME and an underactive thyroid.
  - 2 The second respondent failed to address concerns raised with him about the way the claimant was treated by her colleagues, in particular Mr and Mrs Broadhurst.
  - 3 Examples of the bullying and harassment the claimant received from Mr and Mrs Broadhurst are as follows:
    - (i) Ignoring and questioning the claimant's instructions, saying that Ian was their boss and they did not have to listen to the claimant;
    - (ii) Being sworn at by Mr Broadhurst;
    - (iii) Hiding documents and withholding information from the claimant relating to their duties, including copies of orders and invoices and health and safety checklists;
    - (iv) Shouting at the claimant in front of other staff, including saying things such as "I don't want to listen to you, I don't care if anybody can hear me shouting. Ian is the

boss, Debbie is my wife and I'm going to allow you to tell her tasks to do".

- (v) Subjecting the claimant to racist insults, including telling her to go home. Mimicking the claimant's Spanish accent and pretending not to understand the claimant because of her accent.
  - (vi) Refusing to attend team meetings and to comply with the claimant's reasonable instructions including signing off weekly health and safety checks.
  - (vii) Gossiping maliciously about the claimant to other members of staff and third parties. This included accusing the claimant of robbing the school and telling other members of staff the claimant was lazy.
- 4 In October 2013 the second respondent changed the claimant's contracted hours. She asked him to reconsider but he would not. She asked to be allowed to work from home because of her ME but this was refused, even though that adjustment had been recommended in an Occupational Health report. The claimant could easily make up time working at home as she often did in any event.
  - 5 In October 2013 the claimant resigned from her position but was then persuaded to stay as she received different instructions from the second respondent and the office staff.
  - 6 The second respondent failed to investigate issues arising from the claimant's grievance in February 2015 in a timely manner and lied about having done so when challenged about it.
  - 7 The second respondent considered dismissing the claimant around November 2015 for being on long-term sick leave when the reason for her absence was the way she was being treated at work as set out in her grievance which had not been investigated.
  - 8 The second respondent paid Mr and Mrs Broadhurst and Mauro Amadeu a bonus or one-off payment in the sum of £50 in the summer of 2015, as they had arranged the collection and delivery of some furniture for the school. The claimant believed this was incorrect and that she had made these arrangements.
  - 9 The claimant was required to carry out her own health and safety risk assessment in February 2015 which she sent to the second respondent but this was ignored.
  - 10 The claimant was responsible for health and safety in the school along with Mr Whitehead. The second respondent regularly dismissed various health and safety concerns raised by the claimant, including about electrical testing. She also raised concerns about lone working without a risk assessment being in place. The claimant believed she was side-lined by the second respondent as a result of raising these concerns. She was not

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consulted about health and safety and estate matters which were her responsibility, and the second respondent would go ahead with things without consulting her, for example allowing Mr Broadhurst to work on his own using scaffolding.

- 11 The claimant's position at the school was gradually undermined and eroded by the second respondent's support for Mr and Mrs Broadhurst and his failure to deal with the claimant's concerns. The claimant no longer had any authority over Mr and Mrs Broadhurst. They would refuse to carry out her instructions and would instead seek advice and instructions from the second respondent, which he would give.
- 12 The claimant was not consulted by the second respondent on matters which affected her and her team which had not been properly thought through. She felt undermined and the management of the cleaners was taken away from her in March 2015 and given to Mrs Broadhurst. The claimant did not agree to this change and it led to a lot of confusion.
- 13 The claimant's office was moved into a room under the stairs without prior consultation.
- 14 The claimant felt undermined, unappreciated and unwelcome and this led ultimately to her resignation on 9 September. The last straw she identifies as the refusal of the second respondent to provide her with any support once Mrs Broadhurst had moved jobs.

- (4) Did the claimant resign in response to a repudiatory breach of her employment contract or for some other reason?
- (5) Did the claimant not wait too long before resigning after the last allegation which constituted a repudiatory breach?
- (6) Did the claimant waive any alleged breach?
- (7) If the claimant was constructively dismissed, had the first respondent been able to establish a potentially fair reason for the claimant's dismissal?

Wrongful Dismissal

- (8) If the Tribunal finds the claimant was constructively dismissed is the claimant entitled to her full notice pay?
- (9) If not, why not?

Direct race discrimination and harassment

- (10) The claimant relies on the following allegations (paragraphs 6 and 15 of her particulars of claim and paragraphs 5-8 of her further and better particulars of claim) as incidents of race discrimination.

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- (i) Paragraph 6 states: “When the claimant returned to work in September 2014 Mr and Mrs Broadhurst continued to undermine and ignore the claimant and subject her to daily insults and threats. This included comments in relation to the claimant’s Spanish ethnicity by telling her to go home and mimicking her accent. The claimant raised her concerns with Mr Irwin on a weekly basis. Mr Irwin’s view was to ignore them and that they would just go away. Mr Irwin’s attitude was to let them get on with their work. However, this approach led to the claimant’s position being undermined and Mr and Mrs Broadhurst taking instructions directly from Mr Irwin.”
- (ii) Paragraph 15 states: “In June 2016 the claimant was subjected to a particularly vitriolic and unjustified outburst by Mrs Broadhurst which was witnessed by a cleaner. Mr Broadhurst also verbally attacked the claimant and said there should be an English person doing the claimant's role. The claimant met with Mr Irwin and Mrs Broadhurst soon afterwards to discuss the incident. Mr Irwin supported Mrs Broadhurst throughout and failed to take the claimant's concerns on board.

Paragraphs re further and better particulars

- (iii) The claimant was subjected to racist comments and behaviour by Mr and Mrs Broadhurst from January 2014 to June 2016. This included telling her to go back to Spain, copying her accent in an insulting and sarcastic manner and pretending not to understand the claimant's accent. The claimant told the Mr and Mrs Broadhurst she found their behaviour offensive and asked them to stop but they continued.
  - (iv) Other cleaners also told the claimant that Mr and Mrs Broadhurst were racist towards them, for example they told non English staff to speak to someone else as they did not understand them. The claimant raised these concerns with Mr Whitehead and the second respondent, and she is aware the cleaners and caretakers raised a grievance about Mrs Broadhurst in January 2016 which included allegations of racist behaviour.
- (11) In relation to the above allegations the issues are:
- (i) Did the first respondent treat the claimant less favourably than it treated or would have treated an actual or hypothetical comparator in any or all of the above ways?
  - (ii) Who was the real or hypothetical comparator that the claimant wishes to rely on for each act of alleged less favourable treatment?
  - (iii) If there was less favourable was it because of the protected characteristic of race?



- (iv) On what dates did the less favourable treatment take place?
- (v) Are any of the acts of less favourable treatment out of time? If so, would it be just and equitable to extend time in the circumstances? If not, did the alleged constitute a continuing act of discrimination?
- (vi) Has the claimant proved primary facts from which an inference of discrimination could be drawn?
- (vii) Has the first respondent shown the treatment was not because of the protected characteristic of race?
- (viii) Did the first respondent subject the claimant to unwanted conduct related to the claimant's race which had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- (ix) Are the claimant's allegations of harassment in time? If not, would it be just and equitable time? If not, did the alleged acts constitute a continuing act of discrimination?
- (x) Can the first respondent show it took all reasonable steps to prevent the alleged discriminatory acts taking place?

Disability Discrimination

- (12) The claimant relies on the allegations set out in paragraphs 3, 7, 18 and 21 of her particulars of claim and paragraphs 9-13 of her further and better particulars of claim as incidents of disability discrimination. These allegations are therefore:
  - (i) Mr Irwin had made changes to the claimant's contract which she was unhappy about.
  - (ii) In February 2015 the claimant submitted a formal grievance re Mr and Mrs Broadhurst. The claimant went to see her doctor because of the stress she was under and was diagnosed as having mental health issues and was prescribed medication to manage her stress and anxiety. Mr Irwin was fully aware of the claimant's health issues but continued to ignore the problems she was having. The claimant went off sick with work related stress in July 2015.
  - (iii) At the beginning of September 2016 Mrs Broadhurst's role as Assistant Estate Manager had still not been filled. The claimant also wanted Mr Irwin to consider allowing her to work from home to help alleviate the pain she was suffering from as a result of the added stress. On 9 September Mr Irwin told the claimant she would not be getting a replacement Assistant Estate Manager.
  - (iv) The claimant was diagnosed with chronic fatigue syndrome (ME) in 1998 and with chronic pain in August 2016. It is

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submitted these medical conditions amount to a disability within the meaning of the Equality Act 2010. As a result of her illness the claimant often feels tired and needs to rest. The previous Head Teachers agreed, following advice from Occupation Health, that the claimant could work from home when required. However, when Mr Irwin joined the school he told the claimant that this arrangement had to stop and said that she had to be on site 9.00am to 5.00pm Monday to Friday. The claimant continued to make requests for this adjustment to be made to her working arrangement. The last such request having been made on 9 September 2016 when the claimant found out that another member of the support staff had been allowed to work from home. The claimant believes that this refusal was unfavourable treatment because of something arising in consequence of her disability and/or amounted to a failure to make reasonable adjustments.

From further and better particulars

- (v) The claimant claims indirect disability discrimination, discrimination arising from disability and failure to make reasonable adjustments. She relies on the second respondent insisting that the claimant remain on site between the hours of 9.00am and 5.00pm Monday to Friday, and the second respondent taking no action to relieve the claimant of the stress she was suffering as a result of the Assistant Estate Manager's role not being replaced.
- (vi) Prior to the second respondent starting at school the previous Head had allowed the claimant to work flexibly from home when her ME or underactive thyroid flared up. This was also a recommendation in the Occupational Health report. The claimant only lives five minutes from school and therefore is close by should anyone need to contact her in an emergency. In addition the claimant's flexible working arrangements did not have any negative impact on the running of the school and the claimant was still able to answer emails and take telephone calls. The claimant would also make up for any lost time.
- (vii) The disabilities that the claimant has are chronic fatigue syndrome, chronic pain, underactive thyroid and depression.
- (viii) The effect that these disabilities has on the claimant is as follows:
  - ME – this was first diagnosed in 1998 and is ongoing. When this flares up the claimant's limbs ache and she feels tired. She finds it difficult to get up and get dressed in the morning and she looks and feels exhausted. The claimant cannot function formally and does not like people to see her like this, it makes her feel embarrassed. When this occurs the claimant needs a few hours or half a day's rest to get her energy back. This

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needs to be in a quiet and relaxed environment where she can remain relatively inactive. During this time the claimant is still able to answer emails and telephone phones and respond on the walkie-talkies but she cannot carry out those duties which are physical and which involved constant face to face interaction. Taking time to rest at home helps the claimant recover quickly. The claimant manages her symptoms with ibuprofen, tramadol, cocodamol morphine.

- Chronic pain – this was first diagnosed in August 2016 although the claimant had been suffering pain for some time prior to this. The pain is ongoing. The pain is in the claimant's abdomen and started before the claimant had her hysterectomy in 2014. The pain post hysterectomy is not as severe as it was beforehand, however it still occurs, it still affects the claimant's ability to concentrate and perform normal tasks. When the pain occurs the claimant needs to take a break until it subsides. This is not usually more than a couple of hours provided she has also taken pain relief in the form of tramadol. After that the claimant is usually able to carry on as normal. She also attends a pain management clinic.
  - Underactive thyroid – this was first diagnosed in 2012 and continues. The effects of this are that it makes the claimant feel very tired and cold, and gives her dry eyes. As a result her body starts to shut down and she cannot carry out normal tasks that she would otherwise be able to do. Noise and interruption make the situation worse. Like her ME, spending some time in a quiet environment helps relieve the symptoms and the claimant takes thyroxine to help keep her condition under control.
  - Depression – the claimant has suffered with this for several years and continues to do so. Depression was first diagnosed in 2003. It affects her ability to act in a normal and logical way. For example, the claimant does not feel like socialising or talking with her family and friends and does not want to go out. The claimant becomes very introverted and spends long spells in bed. The claimant has been prescribed sertraline for this.
- (ix) Stress also causes the claimant's ME and chronic pain to flare up. The second respondent's failure to deal with the claimant's grievances about her colleagues resulted in her taking several months off work in 2015. The second respondent's decision not to replace the role of Assistant Estate Manager or adjust her duties added to the claimant's stress as she had additional work to carry out which she could not manage. The fact the second respondent was ignoring her around this time did not help either. The second respondent's failure to take any positive action to relieve the stress the claimant was under was a further failure to make reasonable adjustments.

(13) In relation to the above allegations:

- (i) Can the claimant establish she was a disabled person within the meaning of section 6 of the Equality Act 2010 at the material time?
- (ii) If so, did the respondents know, or could they have reasonably been expected to have known, of the claimant's disability/disabilities?
- (iii) If the Tribunal finds the claimant was disabled within the meaning of the Equality Act 2010, and the respondents had the requisite knowledge of the claimant's disability/disabilities, then:

a. In relation to the allegations that the respondent failed to make reasonable adjustments:

- 1 What is the provision, criterion or practice ("PCP") or physical feature of the employer's premises that put the claimant at a substantial disadvantage compared to employees who are not disabled?
- 2 In what way was the claimant placed at a substantial disadvantage?
- 3 What reasonable adjustment does the claimant allege the respondent should have put in place to alleviate any substantial disadvantage?
- 4 Did the respondent make those reasonable adjustments?
- 5 Are there any other reasonable adjustments that the respondent could or should have made?

b. In relation to the allegation of indirect discrimination,

- 1 what is the PCP relied on by the claimant that has put or would put persons who share the claimant's protected characteristic at a disadvantage compared to others?
- 2 Did the PCP put or would it put the claimant at that disadvantage?
- 3 Can the respondent show the PCP was a proportionate means of achieving a legitimate aim?

c. In relation to the allegation of discrimination arising from disability:

- 1 Did the respondent treat the claimant less favourably because of something arising in consequence of the claimant's disability?

- 2 If so, was the less favourable treatment a proportionate means of achieving a legitimate aim?

Victimisation

(14) The claimant relies on allegations set out at paragraphs 8 and 17 of her particulars of claim, and paragraphs 14-18 of her further and better particulars of claim, as incidents of victimisation:

- (i) During November/December 2015 the claimant told Mr Irwin she had asked and agreed to be a witness in a Tribunal claim against both respondents which had been brought by a teacher. It was around this time the claimant had given evidence on behalf of another employee in relation to disciplinary proceedings. The claimant felt that after this Mr Irwin's attitude and treatment towards her became worse. Her line management responsibility was removed. She was excluded from meetings, ignored, and her office was moved without any consultation. In March 2016 she was called to a meeting and accused of discussing the Employment Tribunal proceedings issued by the teacher in breach of an order of the Tribunal. She alleges she was victimised as a result of agreeing to be a witness in those proceedings.
- (ii) In respect of the further and better particulars, the claimant specifies the act as –
  - a. Being excluded from meetings relating to school buildings, maintenance, budget and security training.
  - b. Being ignored by the second respondent.
  - c. Being unreasonably accused of breaching confidentiality in relation to the Tribunal proceedings and warning her that doing so was a sackable offence. The claimant does not accept she breached any obligation of confidentiality.
  - d. Moving the claimant's office and belongings without prior warning or discussion to somewhere totally unsuitable.
  - e. Being accused of upsetting a teacher when the claimant moved into the teacher's room despite the second respondent being the one that asked the claimant to move there. He subsequently denied this.
  - f. In addition after the claimant's witness statement in those proceedings was disclosed to the respondent the second respondent was going out of his way to ignore her. For example, during the summer holidays in August 2016 the second respondent was in the building but never spoke or acknowledged her and did not respond to emails she was sending him. This continued until the beginning of September and the Head Teacher failed to arrange to walk around the site on the first day back to talk through the works that had been carried out over the summer as was

usual. The claimant was only able to see him on 9 September because she insisted.

- (15) The issues to be determined are:
- (i) What are the protected acts the claimant seeks to rely on? It is agreed that the giving of evidence on behalf of the teacher was a protected act.
  - (ii) What detriments does the claimant rely on in support of her allegations of victimisation? (see above)
  - (iii) Did the respondent subject the claimant to the alleged detriments because she had done a protected act or for some other reason?
  - (iv) On what dates does the claimant allege the respondent subjected her to the alleged detriments?
  - (v) Are the claimant's allegations in time? If not, would it be just and equitable to extend time? If not, do the alleged acts constitute a continuing act of discrimination?
  - (vi) Can the first respondent show that it took all reasonable steps to prevent the alleged discriminatory acts taking place?

### **Witnesses**

4. The Tribunal heard from, for the claimant, the claimant herself as Estates Manager; Angela Martinez, former cleaner and ex partner of Mauro Amadeu; Artur Lula, caretaker and Mikel Bergara, cleaner. For the respondent the Tribunal heard from Mr Ian Irwin, Head Teacher; Mr Peter Whitehead, Deputy Head Teacher; Julie Richards, PA to Mr Irwin; Debbie Broadhurst (previously Hilton), Assistant Estates Manager; Karl Broadhurst, caretaker; Karen Tankard, Business and Finance Manager; Nicola Forrest-Drogan, Finance Officer; Mauro Amadeu, caretaker; Janice Grzywna, Director of Art.

5. AB appeared under a witness order for the claimant.

### **The Bundle**

6. There were some additional documents added during the course of the hearing regarding the school's financial benchmarking, emails regarding the same and the claimant's budget.

### **Credibility of the witnesses**

#### Credibility

#### Claimant

7. We do not accept the claimant was an entirely credible witness. The claimant agreed at the time of the investigation into MA's grievance that she had called him a coward but she failed to recognise that by publicly humiliating him she was acting inappropriately as a manager and that he had a legitimate grievance against her. She exaggerated a number of issues which made us lose confidence

in her evidence overall. for eg she said she had been moved into an office under the stairs when in fact her office contents were being stored there as there had had to be a room change round whilst the claimant was off sick. In addition, she claimed an office which JG was using and misrepresented the situation to her when the HT had simply asked her to have a look at the potential offices and advise him which she preferred. Further she sent inflammatory emails to Mrs Broadhurst and sometimes at points in time when the relationship appeared to be on an even keel. In addition, she believed that the administration staff were in a conspiracy with the Broadhursts to undermine her when they were simply doing their job. Further we have found there was something in the allegation regarding the claimant undermining Mr Broadhurst regarding the PAT testing when she went out of her way to try and ensure he was removed from doing his work in Art and design when there was no need to for him to stop working there. We also find she did take every opportunity to criticise Mr Broadhurst and draw matters which could easily have been sorted out locally to the headteachers attention.

*Claimant's dairy notes*

8. We did not accept these as contemporaneous and accurate documents. They had never been referred to before, particularly not during the iteration of the claimant's grievances and hearings

Mr Amadeu

Mr Amadeu's evidence was largely corroborated by his grievance, the investigations and the grievance outcome meeting. The only point of real relevant contention was whether he had deliberately decided with or without the Broadhursts to make the claimant's life difficult by for e.g. not answering his walkie talkie. This allegation was based on Ms Martinez's evidence who we did not find credible accordingly we do not accept there was this plan.

Mr Irwin

9. There were also inconsistencies in Mr Irwin's evidence but not as many as the claimant contended for e.g. he had said that the claimant was offered leadership/management training when in fact this had been referred on to another member of staff to arrange but they had failed to do so. This is not a matter going to credibility as we would not expect a HT to be doublechecking every instruction he had given, he could reasonably expect matters he had delegated to be carried out. There was clearly a lack of records and notes in respect of the HT dealings with the claimant and the Broadhursts. Whilst not all of Mr Irwin's evidence was reliable we have formed the view a large part of this was because Mr Irwin can simply not recall the detail as well as the claimant. The result of this is that we have made findings in line with the claimant's recollection when appropriate.

Ms A Martinez

10. We did not find Ms Martinez a credible witness – she alleged MA deliberately made up a false complaint against the claimant but in the investigation the claimant agreed she had said some of the things he had raised. She said KB would do a job particularly badly to annoy the claimant but the claimant thought he was a good worker; she alleged there was a deliberate campaign by MA and the Broadhursts to get the claimant to hate her job but the Broadhurst never brought a grievance against the claimant and indeed MA did not bring another.

Mrs Broadhurst

11. We found Mrs Broadhurst a measured witness who did not over-exaggerate nor seek to dwell on her differences with the claimant. We accepted her evidence where it assisted us.

Mr Broadhurst

12. We found Mr Broadhurst's evidence credible. He pointed out reasonably that the claimant would email the HT about any perceived failing of his, that she went out of her way to get him removed from the Art and Design work after he failed the PAT testing without good grounds. He candidly accepted he could stand his ground and was not prepared to work for 'free'. We did prefer the claimant's evidence in respect of one incident of swearing as it was corroborated.

Mr Bergara

13. We found Mr Bergara a partial witness – his evidence was a collection of everything he could think of to criticise the headteacher. The main issue in his witness statement was not being able to attend and eat at leaving dos but only go after they had finished to eat the leftovers. Whether this was down to the HT or not he could not know and it was a trivial matter. Further he referred to this happening at Christmas when he was not employed by the respondent. There was nothing unusual in that practice anyway. Further he repeated matters he must have been told by the claimant – such as the alleged MMU bonus when in fact this was for something different. His comments about Mrs Broadhurst's alleged behaviour was generalised without any detail. Accordingly, we did not find him a very credible witness.

Mr Lula

14. Mr Lula in general terms supported some of the claimant's accusations against the Broadhursts but he did not provide detail. He complained that when the claimant was off ill Debbie would start 'behaving like she was the boss', that is unsurprising she was when the claimant was off on long periods of sickness absence. He did however say that Karl had told the claimant to 'fuck off' in meetings however for reasons set out in this judgment we did not accept that was a regular occurrence. Mr Lula's evidence in effect supported the proposition that the fall out between Mr Amadeu and the claimant arose around the same time Mr Amadeu started a relationship with Ms Martinez. In addition his evidence was vague and contradictory regarding the genesis of the cleaners' grievance. We did not find him a credible witness for these reasons.

**Findings of Fact**

The Tribunal's findings of fact are as follows:

15. The claimant started working for the respondent on 30 August 2005. She was initially employed as Site Manager and her job title changed to Estates Manager in September 2009. The claimant is Spanish. The claimant was diagnosed with Parvovirus B19 and chronic fatigue syndrome in 2000, and with Guillain Barre Syndrome in 2001 although it was not recorded by her doctor until 2002. The claimant has had to use a wheelchair from time to time. The claimant stated that she had stopped working prior to her employment with the respondent because of her chronic fatigue syndrome although we had no evidence of that.



16. The claimant described the symptoms from chronic fatigue syndrome/ME as deep exhaustion and pain, unrefreshing sleep, cognitive problems including confusion, difficulty concentrating, fumbling for words and lapses in short-term memory. Other symptoms include headaches, low grade fevers, poor sleep, fatigue, cognitive difficulties, sore throat, tender lymph nodes, anxiety and depression, ringing in the ears, dizziness, abdominal pain, allergies and rashes, sensitivity to light and sound, abnormal temperature sensations such as chills or night sweats, weight changes.

17. When the claimant has a flare up she says she finds it difficult to get up in the morning and get dressed and it takes her a long time to do anything. She needs to be in complete darkness and to rest. She feels dizzy and nauseous and can lose her balance. A physiotherapist had suggested a TENS machine and the school paid for her to have one. The Head Teacher, Pam Roberts, also agreed to reimburse her for orthopaedic shoes which were recommended by a colleague. She had had a massage chair in her office which she bought herself. She also had her own massage system at home and the previous Head Teacher allowed her to take a break from work to lie on the massage bed to relieve the pain which helped her return to work the same day to work more efficiently. She also moved closer to school to reduce the stress of driving to work, and she drives an automatic car. She has a special chair at home for washing herself when mobility is poor and has installed handles by the front door. At times she sleeps downstairs as she cannot climb the stairs and she has an electrically powered chair which also helps her get up to standing. She has a reduced immune system and easily picks up bugs and infections. She takes co-codamol, paracetamol, ibuprofen and tramadol.

18. Regarding her thyroid problems, the claimant says she was diagnosed with a hyperactive thyroid in 2002. She had radioactive therapy. She then developed an underactive thyroid in 2011. This makes her tired and cold and she gets a sore throat and dry eyes. It makes her act very slowly, makes it difficult to concentrate and can make her feel very low and interacts with her CFO to make it difficult for her to cope. She would need a break or sleep in order to regain energy. Without medication she could not function normally.

### Chronic Pain

19. The claimant advised she suffered from chronic pain in her spine, hands and feet as a result of her chronic fatigue syndrome. In March 2015 she started suffering from acute abdominal pain in her lower back and pelvis. Originally it was thought to be the result of an infection but the pain continued and in June 2014 she had a hysterectomy. There was some improvement but she still had chronic pelvic pain which she was diagnosed in January 2015 and referred to a neurologist. She went to see a doctor in Spain while she was waiting due to delays in treatment in the UK. She was referred by her GP to a Pain Management Clinic. She cannot walk and lift as normal when in pain. She has to stop and rest. It makes her very tired and she has to attend A & E to get injections of morphine to stop the pain. She cannot walk or drive. The pain in her hands affects her grip making it difficult to type or write. Her speech and concentration was low and her emotional ability to deal with tasks is lower.

### Depression

20. The claimant was diagnosed with depression in 2003 and prescribed citalopram for this. Currently she is on sertraline. However, an upsetting or stressful

event can trigger a depressive episode. She feels, she says, like a zombie when she is depressed. She is tired and unable to remember things properly. She has to act slower and carefully. She could also lose her balance and bump into things, feel dizzy and nauseous. She has to then be somewhere quiet and shut herself away. She does not feel like talking to anybody and stays in bed and does not care about her appearance. She can at times feel suicidal.

Returning to the history of the claimant's employment

21. In 2008-2009 there was evidence of the claimant receiving physiotherapy from the respondent's Occupational Health due to neck and then back pain. The claimant attended a first stage sickness absence meeting in May 2012 and was referred to Occupational Health by the then Head Teacher. Their report of 14 June 2012 stated:

"Mrs Parker tells me she has had periods of absences in the last 12 months resulting in her reaching the hit trigger. She tells me that between November 2011 and January 2012 she has been experiencing symptoms such as tiredness, exhaustion, lacking energy, lethargy and generally feeling unwell. She consulted her General Practitioner and subsequently was given the diagnosis of an underactive thyroid. She is currently on medication and has also been referred to an endocrinologist who plans to review her again in August 2012. He further advised her long-term prognosis was good and her conditions likely to be covered under the disability provisions of the Equality Act 2010. In relation to adjustments she may require time off to attend medical appointments and management may wish to consider the provision of flexible working hours for Mrs Parker and for her to be able to work from home. In my opinion Mrs Parker is likely to benefit from flexible working."

22. There was no mention of Chronic Fatigue Syndrome in the report or depression.

23. Specifically, HR advised that the claimant's triggers for absence be adjusted giving her an extra 30% for this particular illness and to consider flexible working hours or working from home. HR commented, "As Mrs Parker is employed as a Site Manager would this be suitable?". There was a handwritten note on this letter which stated:

"Met with EPA 23 July 2012. Agreed flexible hours to be noted by EP in her diary in case of questions re hours. Appointment in August with consultant."

24. There was no evidence at the tribunal of any diary entries with the claimant's hours. The claimant relied on this to establish that she had been given an adjustment of flexible hours and working from home. However, there was no mention of working from home and no record of the hours she did work. Other staff who gave evidence agreed she was able to come and go as she wanted. We accept that there was an agreement about the claimant's hours but not that she could work from home as and when. Further, the HR recommendation is in the alternative so it is likely that if flexible hours were agreed that working from home was not. Further, the note also suggested it might be a temporary arrangement given the reference to seeing the consultant. In addition, this was in the context of the claimants underactive thyroid rather than CFS.

25. The claimant had a good relationship with Pam Roberts. However, she retired in summer 2013 and Mr Irwin was appointed as Head Teacher starting in

September 2013. By this time Debbie Broadhurst who had started off as a cleaner had become the claimant's Assistant Estates Manager.

26. It is the claimant's belief that after she had spoken to Mrs Broadhurst about the possibility of leaving the school to set up a language school Mrs Broadhurst was hoping to get her job. When the claimant changed her mind about this Mrs Broadhurst was disgruntled. The claimant also believed Mrs Broadhurst turned against her because of her relationship with Karl Broadhurst who was taken on in 2012 as a part-time caretaker and part-time Design and Technology Technician and whom Mrs Broadhurst (previously Mrs Hilton) married. At first all three of them got on very well and the claimant looked after their dog when they went on holiday and Mr Broadhurst helped the claimant move into her new house opposite the school.

27. In June 2013 anonymous allegations of improper conduct were raised against the claimant and investigated by the school in September 2013. The allegations were that the claimant was not following an open and transparent recruitment process when employing cleaners and that as many of them were staying in properties she rented out she should have declared a business interest. The claimant was interviewed as part of the allegations and exonerated.

28. The claimant complained that Head Teacher wished to make changes to how the estate was run in relation to the hours the caretakers worked and wanted the claimant to tell them. The claimant says she advised Mr Irwin that he needed to consult, but he asked her to do so. Karl Broadhurst and Mauro Armadeu were not happy with this. The main issue was regarding overtime, which the Head Teacher felt needed a more transparent system. He wanted to stop overtime and introduce a rota system so that the caretakers would work shifts to cover overtime within their normal working hours. The Head Teacher then denied saying this and did not introduce a rota but put an overtime rota in place instead so that they took turns to do overtime. This was obvious an improvement. However, the claimant stated that the Head Teacher would authorise overtime with Karl Broadhurst without her knowledge. She also felt the Head Teacher gave Karl Broadhurst opportunities because he was a first aider but did not let the other caretakers go on a first aid course. At this stage these appear rather trivial matters and there was no evidence of anyone asking to go on a first aid course. Nevertheless, there were no complaints from the claimant about the Broadhursts before Mr Amadeu's grievance in December 2013.

29. At Christmas 2013 the Head Teacher also advised staff that they would have to take their holidays during the time when the school was shut for Christmas and that included the Estates Team. It was apparently agreed that holidays in future could be taken up to one week in term time but this was not in writing. In December 2014 it was confirmed that the Head Teacher wanted people just to take five days' paid holiday during term time. The claimant stated that was not in her contract and that she needed to be on site during the school holidays as that was when major works and maintenance were done. She said it was a confusing situation.

30. On 3 October 2013 the Head Teacher told the claimant that she needed to be on site between 9.00am between 5.00pm. She said in evidence that she did not agree this but did so only under protest. The claimant said she would often work 11.00am until 7.00pm as the later start helped with her health issues, and that as

Mrs Broadhurst was in at 9.00am there was no desperate need for her to be there at the same time. It assisted her to control her CFS and hyperthyroidism.

31. The second respondent's evidence was that the claimant did not say that she needed to work the flexible hours because it helped her manage her conditions, she simply agreed to work those hours. We accept the second respondent's evidence here as there was no corroboration at the time that the claimant complained about the alleged change in her hours.

32. On 15 October 2013 sent an email resigning her position. She said that:

"Recent events have motivated me to re-examine my reasons for working here. These have been causing a lot of emotional and mental stress which added to the demands of my job will not be beneficial to anybody."

33. At this stage it was not to start up a business, as the respondent believed, as this had not been possible to proceed with, but because she was upset following the whistle-blowing allegations, the confusions around the instructions to the team and the change to her hours. The Head Teacher persuaded her to stay. This also suggests that she decided to accept the change to hours.

34. It was the claimant's perception that Mr and Mrs Broadhurst's behaviour towards her began to change after Mr Irwin, the Head Teacher joined, and that they took instructions from him that Mrs Broadhurst distance herself and questioned her management. However other reasons were suggested by the claimant, for example that Mrs Broadhurst was expecting to get her job when she was planning to leave to set up a language school, that Mr Broadhurst was a bad influence on Mrs Broadhurst, that their alleged bad behaviour was motivated by racist attitudes. We accept that the claimant had had a very close relationship with the previous headteacher so that staff would not make any complaints to Mrs Roberts and that it was the case that when the new HT started staff felt more able to take complaints to him.

35. In January 2013 check Mauro Amadeu started 'dating' the claimant's niece, Angela Martinez, who also worked at the school. The claimant was not happy with this as Mauro Amadeu was still married and living with his wife, but she maintained she did not treat Mr Amadeu any differently. The claimant's perception was that Mr Amadeu had become friendly with Mr and Mrs Broadhurst.

36. He raised a grievance in December 2013 against the claimant alleging she was treating him unfairly. It was the respondent's witnesses' perception that the claimant was treating him unfairly because she disapproved of his relationship with Ms Martinez. In his grievance he reported that on 3 October the claimant contacted him by radio. She was furious and angry that he had not responded to her radio calls effectively, but he said he had called her as soon as he heard her, and that the claimant had said to him, "There is always something with your radio, or with you. You are the only caretaker with problems and the only one who does not complete his caretaker duties".

37. Further, at a meeting with all the members of staff the claimant addressed Mr Amadeu directly and stated that his answer was very poor when he responded to a question she asked, and said: "Your colleague can't do your duties but you can do theirs. Can you respond to that or are you a coward?". Mr Amadeu said he felt humiliated and the claimant went on to say, "You have been calling your colleagues' work. Why not say it now, are you a man or a coward?" and added,

“make this an example with a bad mouth like yourself”. This was said in front of other staff including Mr Broadhurst who advised Mr Amadeu to report the matter to the HT.

38. Mr Amadeu said there were very many minor occurrences and unpleasant remarks that were affecting him. His working pattern had been changed, on Thursday 14 November when in the car park the claimant called him into the office with another member of staff and in an abrupt manner referred to his caretaking duties and responsibilities and harassed him and shouted, “I’m sick and tired you. You’re causing me a lot of problems. People are informing me of what you are saying about me”. He then went on to say:

“An argument erupted from this conversation and Mrs Parker made accusations about my family and personal life. She then threatened me to take it further and stated I would experience the consequences. Mrs Parker asked in an oppressive manner, offending me and humiliating me. At the end of the day I went home and annotated this unfortunate episode as part of my continuous diary of occurrences.”

39. On 15 November Mr Amadeu was called to a meeting with other members of staff and accused by the claimant of recording the conversation, of having a tape and breaching safeguarding.

40. On 21 November Mr Amadeu attended a meeting at the Deputy Head Teacher’s office for an informal conversation in relation to the safeguarding and recording issue, and he discussed the fact that he felt bullied and harassed but Mrs Parker justified her actions. The matter was deemed personal and related to a previous friendship.

41. On 25 November the Deputy Head Teacher had talked to Mr Amadeu and suggested a meeting between him and Mrs Parker. He said he was told on 26 November by a colleague that Mrs Parker had stated, “It’s a lot easier for a caretaker to be fired than myself as manager”. He went on to say, “I consider that comments of this nature reflect abuse of power and a deliberate attack to myself once again by relaying threatening messages”. He went on to say:

“On 3 December we had a staff meeting. Mrs Parker stated in public that some people are creating a bad working environment and those in question should leave and resign. She then continued to affirm in a loud voice that she knows how to do her job and anyone who interferes she will take it straight to the Head Teacher. Further on she emphasised that she is in that position because she is good at her job, and that this was repeated in an intimidatory tone and visual contact.”

42. On Monday 9 December whilst Mr Amadeu was on his lunch break the claimant had called him he says aggressively via her walkie-talkie. He explained he was on his break. He then heard the claimant call another caretaker using the same radio and stating that his working area (i.e. Mr Amadeu’s) was not cleaned, which he could hear. She then came along with her deputy and stated his working area was not clean and that he had ignored an emergency call. This emergency was dried mud on the floor. He had stated that he had argued against this and the Deputy Manager attempted to resolve the matter in an amicable fashion but that Mrs Parker had stated, “I want to move this forward as I feel disrespected and he does not accept me as his boss. Whether he likes it or not, I am his boss”.

43. C Yates investigated the grievance and interviewed Mr and Mrs Broadhurst, Mr Whitehead, the complainant and the claimant.

44. In her interview the claimant said that she did not know why Mr Amadeu had brought the grievance. Maybe he wanted to leave with compensation. She felt he had changed since he started going out with her niece and that they were spending too much time talking rather than getting on with their jobs. She agreed that she had said that his actions were cowardly and that he would say things in the office but would not say them in front of others. She did feel he was taking too long over his job and that he was lying about things. She felt maybe he was working too many hours, taking his other jobs into consideration. There was an issue where he had been sitting in his car because it was cold and she had remonstrated with him over that. He had said he had recorded the conversation on his mobile to take to his union. She also mentioned she thought Mr and Mrs Broadhurst were out to get her job and were trying to turn the team against her.

In relation to the issue where the claimant said Mr Amadeu was sitting in his case, this referred to 14 November 2014 when Mauro Amadeu and Efergenio were sitting in Mr Amadeu's car when they should have been doing security duties during the school's GCSE presentation. Mr Amadeu was very angry for the claimant pulling him up and said the truth was she was upset that he was living with her niece, which she denied, and he said that he could prove that the claimant had spoken badly to him in a meeting because he had recorded it. She had told him that that was illegal, especially in a school environment, and she would tell Ian Irwin, and Mr Amadeu then denied he had made a recording. Efergenio she said would be a witness to this. He later said he meant he had written it down.

## **2014**

45. MA added to his grievance on 20 January 2014.

46. On 21 January 2014 Mrs Broadhurst had sent an email to Mr Whitehead saying that the claimant had Karl and her in her office "the other day telling us about Mauro and saying that when he goes everything will go back to normal". She said that they should write down everything that Mauro Amadeu does when he comes into work. Mrs Broadhurst was asking Mr Whitehead if she had to do that. We accept that the claimant had asked Mrs Broadhurst to do this given the corroboration.

47. Efergenio had written an email on 22 January. He had said he was very distressed as he had received calls from both sides but he did not want to get involved. It appeared he had left because of this.

48. In Mr Yates' interviews with Mrs Broadhurst she said that she believed the claimant changed when Mr Amadeu started going out with her niece and she felt that the claimant was picking on him and there was really no problem with Mr Amadeu's work, and that she did call him a coward. She had singled out his area for inspection.

49. There was also a List of Issues that had been raised during the investigation but were not within the remit of the investigation as follows:

- (1) Misuse of the CCTV; (some of those interviewed had complained about the claimant spying on them using the CCTV)

- (2) Threatening Debbie Broadhurst with moving her office;
- (3) Telling staff if they could speak better English they would have Debbie Broadhurst's job;
- (4) Banning the Mr and Mrs Broadhurst from the staffroom;
- (5) Debbie Broadhurst losing her overtime;
- (6) Karl Broadhurst removed from doing any Sundays;
- (7) Debbie Broadhurst feeling her job was under threat.

50. The outside scope list however does show that the Broadhursts thought that the claimant was targeting them by this stage.

51. Ms Martinez also resigned in December to avoid any further difficulties at the school.

52. Ms Martinez gave evidence on behalf of the claimant and stated that Mr Amadeu had broken his walkie talkie on purpose so that he did not have to answer the claimant's calls, and did try and get staff to turn against Mrs Parker, including Efegenio who he had got a job at Rosso's restaurant, and convinced Efegenio to be a witness for a false complaint he had put in against the claimant. Efegenio lived with Mr Amadeu and Ms Martinez at the time. She said that Debbie and Karl Broadhurst were also planning with Mauro Amadeu to put in another complaint without the complaint being true. However, it was not clear what this referred to at all.

53. In addition, of course, a part of Mr Amadeu's complaint was true as the claimant admitted she had called him a coward in public. She said that Mr Broadhurst had said he wanted to do as much as possible to annoy Mrs Parker as did Mauro Amadeu, and he had even said he would do a job deliberately three times worse. They also plotted to take time off in October 2014 when Mrs Parker returned from surgery just to make things more difficult for her at work.

54. However, we found Ms Martinez's evidence unreliable as none of these things matched the events that actually occurred apart from potentially the walkie talkie issue. She did say that Mr Broadhurst had called Mrs Parker a "fucking bitch" and that Mauro Amadeu and Debbie Broadhurst had called her a "bitch" and "stupid". Mauro Amadeu felt he could manipulate Mr and Mrs Broadhurst and call them "common, uneducated chavs and scallies". Mr Broadhurst also said how useless and foolish the Head Teacher was and how easy it was to put him against Mrs Parker and on their side. They circulated rumours amongst the staff that the claimant was criticising them to get them to complain to the Head Teacher. She also said Julie Richards and Karen Tankard knew about that too and they were on the same side at Karl and Debbie Broadhurst and Mauro Amadeu. However, we have found the administrative staff were simply doing their jobs. The accusation is biased and partial.

55. The testimony was difficult to believe because in fact Mr and Mrs Broadhurst never brought a complaint against the claimant and so that talk of there being a conspiracy to get rid of her does not appear plausible. Accordingly for these reasons and the ones we have referred to in the credibility section we did not accept Ms Martinez's evidence.

56. Mr Yates concluded his report: "I feel the issue surrounding the grievance is recoverable on both sides, however the situation has become highly personalised and the same issue is being seen from highly differing perspectives and due to underlying suspicion of the motives of each of the individuals involved. If clear and open working practice can be established with the support of the SLT line manager/Head Teacher then it is likely we can overcome this and develop a more health working environment for all involved."

57. On 14 February the claimant did email Mr Whitehead about a dental appointment that Mr Amadeu had which he had arranged for within school hours at 16:30, and that she had not known anything about this. She ended the email by saying:

"I hope you understand that my position should not be undermined and he should be following procedures and school protocol like everybody else."

58. Mr Whitehead did reply saying that it had been arranged he was going to make up the time on Thursday morning. In the end this appointment was cancelled.

59. There was a grievance investigation outcome meeting on 19 February with Mr Amadeu and his union. The conclusion was that there had been a breakdown of working relations between Mr Amadeu and Mrs Parker because she objected to his relationship with her niece. This also said there was evidence to support the claims that Mrs Parker may not have always acted professionally with regards to how she had interacted and communicated with Mr Amadeu and on occasions in public, which left him feeling embarrassed and humiliated in front of colleagues, and that there had been a crossover of personal and professional issues, with Mrs Parker objecting to Mr Amadeu's relationship with her niece. Some of her criticisms of Mr Amadeu had been unfair. The Head Teacher said he would introduce new practices within the Estates Team and improve how the claimant communicated with her team, and that roles should be better defined. He stated he was going to meet with Mrs Parker to explain the grievance investigation findings and outline his expectations of her as a line manager. A meeting between Mr Amadeu and Mrs Parker would then be facilitated in order to conclude matters. Mr Irwin would draw up an Estates Team action plan. Mr Amadeu and his union representative agreed that they were happy with this but still feared Mrs Parker would seek to victimise him.

60. Whilst Mr Irwin did work on the Estates Team action plan there was no evidence that the Head Teacher spoke to the claimant about the grievance outcome. There is an Estates Team action plan in the bundle. The claimant said that there was no meeting to discuss it at the time. It was dated 25 March 2014. However the claimant went on sickness absence quite soon after the Estates plan was drafted.

61. The claimant then said that her daily briefings with Mrs Broadhurst and the caretakers became stressful and humiliating; that Mr Broadhurst's behaviour was aggressive and that he told her to "fuck off" if she said something he did not like or he would shout at her in response; that Mrs Broadhurst would imitate the claimant and her accent, making some of them laugh, and she would pretend not to understand her English in front of students. She said they were refusing to do a lot of jobs, were confrontational and stubborn, had too many smoking breaks and sat around in the staffroom chatting. They would switch tasks around amongst themselves. The claimant did not put any dates on these matters and there was



no evidence in what were many emails to the Head Teacher and Mr Whitehead complaining about the matters that she describes in her witness statement. Further, her many emails were very specific relating to the jobs that needed to be done. We cannot accept the swearing and the racist comments were made when there is no corroborating evidence.

62. The claimant was also concerned that other members of staff joined in a “campaign against her” (Karen Tankard, Nicola Forrest-Drogan and Julie Richards) and that she believed Mrs Broadhurst had drawn them into this. She gave examples of Karen Tankard being difficult with her by saying she was too busy, come back another time, and that Karen Tankard was difficult towards her and would question her regularly and gave an example of an email from 28 January 2014 which concerned the cleaners doing overtime on Sundays, but in fact undertaking caretaking duties, and that they would not be receiving overtime at the caretaking rate but at the cleaning rate, and she said in future lettings duties should be undertaken by the caretakers unless no caretakers are available, and it should be made clear that the cleaner will only be paid at a cleaning rate if they do that work. The claimant did reply to this and sent a copy of her reply and Mrs Tankard’s email to the Head Teacher.

63. There was also an issue regarding an invoice in relation to “Foy’s order” (Foy was a subcontractor). The claimant said that the problem arose from Mrs Broadhurst’s action rather than her own and she tried to blame the claimant for it. The claimant said that she was upset by this and told the Head Teacher how she felt. However, the emails she referred to were in June 2014 and not earlier. However, having read the emails and heard from the witnesses we had no doubt that the individuals complained about were simply doing their jobs. In particular Mrs Tankard had started around the same time as the HT and was trying to introduce better accountability into the financial management systems of the school.

64. The claimant also said she resigned as a School Governor on 5 February because she felt she was not being treated properly.

65. The claimant also said that Mr Whitehead said Mr Broadhurst had complained around this time that he did not have a job description. However, the claimant was adamant everyone did have one. Nevertheless she put one forward on 12 February and sent it to Mr Whitehead.

66. The claimant also said in the action plan that one of the recommended points was to have daily handover meetings with Mrs Broadhurst, which had been the case but Mrs Broadhurst had talked less and less and communicated less and less in these meetings, and now mainly communicated by email. She seemed to be avoiding the claimant. The claimant believed the Head Teacher knew what was going on but did not react.

67. The claimant referred to some emails in the bundle to exemplify how she was being undermined by Ian Irwin and Peter Whitehead agreeing to change hours which the claimant had already put in place. The claimant had put in hours for different members of staff over the Easter break, but there was no evidence about what the changes were except that the claimant on 4 April did email Mrs Broadhurst, copied to Mr Irwin and Mr Whitehead, which appears to suggest that the day would start at 8.00am rather than 7.30am and the hours reverted back to the ones proposed by the claimant. She also relied on emails of 16 May when Julie

Richards had asked her about changes in overtime, to which she replied that everything had been agreed with the Head Teacher. However, it was not clear what changes had been made and how.

68. The claimant went to see a doctor at the beginning of April and asked for her antidepressant, Sertraline, to be increased, as she was getting significant pains in her abdomen. She was signed off for a week and referred to the hospital for tests. She did not return to work as she was still in a lot of pain. She went to see Occupational Health at the end of May and they sent a report to the school shortly afterwards. The Occupational Health report dated 30 May stated that:

“As you are aware she has been absent from work since 1 April suffering from gynaecological problems. She gives a history of developing severe abdominal pains and was referred to a specialist. You are aware she suffers from CFS and that she was seen by your previous OH provider. *[However, we note that the previous OH report was about underactive thyroid and not chronic fatigue syndrome.]* The clinical notes and reports were not available for me today. However, you will be in receipt of previous OH reports.”

69. The claimant told the Occupational Health that she had been diagnosed with a severe gynaecological condition that required a major operation and she was unaware what her recovery time would be, but she was currently unfit to attend work but could do small projects from home while waiting for her surgery. She also said:

“On another note Mrs Parker tells me there have been some issues at work that required investigations and caused her some stress. You are aware of these issues. Mrs Parker has some concerns regarding the investigations. I feel a meeting to discuss her perception of the investigations would be helpful to her recovery.”

This was a reference to the grievance brought by MA

70. The claimant's surgery was due on 9 June and it was predicted that she should return to work 6-8 weeks after the surgery and that she should return on a phased basis.

71. The report referred to the previous advice in relation to her CFS regarding home working at times and that that advice still stood. It stated her current condition is unlikely to be covered by the disability provisions but her CFS was likely to be covered. The report went on “However, as you are aware this is a legal decision not a medical one.” It stated that it was anticipated that the claimant would recover well from the current condition, however her CFS may cause sickness absence in the future.

72. There was no evidence that the Occupational Health had ever advised the school that the claimant had chronic fatigue syndrome; however, neither was there any evidence on receipt of this Occupational Health report that the Head Teacher queried this with either Occupational Health or the claimant at the time. There was evidence from the claimant's medical records that her GP had diagnosed CFS in 2002 although the claimant advised us it was earlier however we had no further detail.

73. The Claimant raised an issue in her claim regarding a bonus the claimant thought the Broadhursts had received regarding collecting some furniture from

Manchester Metropolitan University in May 2015. However, this was not the case and the claimant was mistaken about this. The bonus had been received for arranging the collection of furniture for the school from elsewhere and had been physically undertaken by the members of staff themselves and accordingly the Head Teacher believed they should receive a bonus. The MMU furniture had been arranged by the claimant but she had not physically been involved and as senior management the HT gave evidence that a bonus would not be appropriate anyway.

74. Whilst the claimant was off sick there was evidence in June of the claimant attempting to find details of the site and cleaning staff working hours, including any overtime and who was on holiday over the summer, there being no reply from Mrs Broadhurst.

75. On 15 July Mrs Broadhurst said she had met with Mr Whitehead to give him the information and he would be drawing up a plan which he would send to her.

76. On 16 July the claimant emailed Mrs Broadhurst with a list of things that required an annual inspection and asked her:

“Has anything been organised for the information listed below over the summer? Please supply dates.”

She also said:

“Records should be made of ALL, including number of chairs, tables, and colour, type and conditions of blinds/curtains in all the rooms. Draw a plan of lockers and relocation. It’s very important when allocating a locker that the school has checked that it’s not available to anyone else, making sure the previous owner has returned the key and that it’s on record. This is to avoid thefts from lockers where the school could be found responsible for such misdemeanours.”

77. The claimant felt that during this period Mrs Broadhurst was still being difficult, ignoring requests to consult with her or giving her information. However clearly Mrs Broadhurst was mainly in charge whilst the claimant was off sick. She said she tried to maintain a pleasant relationship but this did not seem to be working, however the claimant’s emails were somewhat abrasive so we do not accept the claimant was ‘being pleasant’.

78. The claimant also complained that in August 2014 she went into her office and saw Mrs Broadhurst and said she wanted to speak to her, but that Mrs Broadhurst shouted loudly in front of the administrative staff and teaching staff “what do you want?”, “that she did not need to listen to me as I was still off sick and that she only had to listen to Pete”, (i.e. Mr Whitehead). We accept Mrs Broadhurst would have said something along these lines, it is understandable the claimant was off sick, she was in charge but the claimant was interfering.

79. The claimant returned from sick leave on 26 September 2014.

80. An issue arose in September when Karen Tankard emailed the claimant about an invoice which she said had been improperly submitted. The claimant replied saying that they needed to speak to the Head Teacher about it and that it had been difficult to follow process as Ms Tankard and Ms Forrest-Drogan had been absent. Ms Tankard replied saying she had not been absent for all of the summer holidays and that Ms Forrest-Drogan was also in. Also, it was three weeks

since they had been back at school and the matter had still not been resolved. However, she appreciated the claimant had been ill.

81. On her first day back at school the claimant had a meeting with Debbie Broadhurst asking for an update of what had gone on in her absence, but she said she appeared annoyed about this and “Antonio and Arter had worked very badly and that she and Karl had to do everything”, and that Mauro Amadeu’s English was not good enough. The office staff had also said they could not understand Antonio. The claimant said nobody had complained to her ever about these members of staff.

82. Following the meeting the claimant emailed Mrs Broadhurst and copied in the Head Teacher, Mr Whitehead, stating as follows:

“Further to our short meeting today following my return to work I need the following in writing:

Site/cleaning staff working hours

Site/cleaning staff’s cleaning areas and other duties

Detail of any outstanding orders

Detail of the jobs the Head Teacher has requested

I would like this by tomorrow if possible.

Debbie, I would also like to know if you want me to take any further the negative comments you have made in our meeting about other members of staff and the unfairness in working practices.

Thank you for all the hard work done in my absence.”

83. This is an example we find of the claimant inflaming the situation by sending an abrasive email, following which the last sentence could only have a hollow ring. It also showed to Mrs Broadhurst that she could not trust the claimant as she was not treating her moans as confidential but ‘putting it up to her’ to ‘put up or shut up’ as she had done with MA.

84. Mrs Tankard also emailed the claimant on 2 October complaining that due to work not being planned in advance they had had to take a tender for work which was expensive because it was short notice, and the claimant replied she found her comments very hurtful and unfair. However on other occasions Mrs Tankard was supportive such as when some jobs need completing and there was no money left in the building maintenance budget, KT said she would think creatively and find some.

85. The claimant was also concerned on 3 October, and reported it to the Head Teacher, that Mr Broadhurst had lost his keys on Wednesday and had not reported this. She said she had checked the CCTV and it looked like he had placed them on the floor in the quad, but it is difficult to see anyone picking them up. Again strictly he should have reported it but the claimant was going out of her way to complain about him to the HT.

86. Mrs Broadhurst commenced a period of sick leave at the end of September following a meeting with the claimant where the claimant had obviously spoken to her about reporting the incident with the keys and had to complain that she had not been briefed about what had happened while she was off sick. The claimant had also mentioned the walkie talkies needed checking because she had been having difficulties getting hold of her (Mrs Broadhurst), Mauro Amadeu and Mr Broadhurst.

87. Mrs Broadhurst reacted angrily to this and said she was only going to listen to Ian Irwin and that whilst the claimant had been off sick she had done a great job, there was nothing to report and the school did not need the claimant. Mrs Broadhurst then remained off sick until 24 November.

88. The claimant reported this to the Head Teacher on 6 October that she had left school, but he did not reply at that stage.

89. The claimant felt that staff members made cruel comments to her, such as “you look too good to be ill” and that she seemed to have taken a long time to recover. She said that she had broken down in front of Julie and said that she suffered from depression and that the stress was affecting her health and her ability to do her job properly. Julie Richards agreed that the claimant was upset around this time but could not recall the details.

90. The claimant emailed the Head Teacher on 7 October and said that she had not had an update on buildings, cleaning and maintenance since her return from sickness absence, and so was unaware of what was going on. The claimant formed the view that very little work had been done in her absence. For example, log books had not been kept up-to-date, orders and invoices were missing, annual inspections had not been carried out, jobs such as cleaning out the gutters and lockers had not been done.

91. On 7 November the claimant sent some pictures to Mr Whitehead and the Head Teacher stating:

“See attached photos taken by Mikel and Feraria whilst cleaning the gutters and roof on Sunday 9 November. It’s obvious the job was not carried out by the caretakers during the summer break. I must report to you that Debbie and Mauro told me the cleaning of the roof and gutters was carried out during the summer.”

92. The next issue which arose was about the school vending machine. Karen Tankard announced that she was keeping the keys of the vending machine as things had gone missing from the machine. The claimant felt she was insinuating that the claimant was a suspect, but Karen Tankard explained that she was keeping the keys in the safe. She also asked her to stop undermining her position by asking the caretakers about the hours they worked.

93. The claimant said she wanted to discuss her phased return with the Head Teacher but did not have her back to work interview with the Head Teacher until 17 October, by which time it was too late. The claimant did return on a phased return.

94. On 11 November the claimant made the Head Teacher aware of a health and safety issue which had arisen which she believed the caretakers and Mrs Broadhurst had tried to hide from her. She raised this in a meeting and Karl

Broadhurst and Mauro Amadeu were unhappy that she would not name who she thought had done it. She said in evidence that Karl Broadhurst told her to “fuck off” in front of Artur Lula, Mauro Amadeu, Antonio, Debbie Broadhurst and a contractor but she heard nothing from the Head Teacher. However, her email did not say that Karl Broadhurst had said “fuck off” to her. It is to us extraordinary that the claimant alleges KB told her to “fuck off” on a number of occasions but never reported any of them in writing. Accordingly we find that the claimant has exaggerated this in retrospect. The first time she records such a comment in writing is in her detailed grievance of 4 December 2015.

95. On 19 November the claimant complained to the Head Teacher that the school had not been properly locked the night before and many windows were left open. The roller shutters were not down and she was wary of raising it as Karl Broadhurst was on duty and she stated, “I’m afraid he is going to take it the wrong way, saying that I’m picking on him”. She suggested she was going to have a training session about security and how to lock up the school. The claimant then reported to the Head Teacher that Karl Broadhurst had complained the claimant was bullying him when she mentioned that he left all the classrooms where the electricians were working unlocked. “He started to blame Antonio but he had left before the electricians and Karl was in charge of locking up. He’s walked away saying I’m bullying him”. She said the contractors were still on site so she had to ask Antonio to stay. She said that, “I’ve told you many times, Mauro, Debbie and Karl do not accept in a proper manner when I point out their errors, mistakes or poor working standards unlike the rest of the cleaning and site staff. Although Karl is not a bad worker he loses his temper often”.

96. On 21 November the claimant also said to Ms Richards in an email copied to the Head Teacher that: “My situation with site staff is like walking on eggs and I have to be very careful as Karl has already complained that I treat him unfairly.” However KB if he had said that had never formally escalated it.

97. It appears to us that in this period when DB was off the claimant was reporting every small misdemeanour of KBs to the HT. Matters which we would have expected her to deal with herself. We find the Broadhursts were on the balance of probabilities being more difficult with the claimant in reaction to what they perceived was her unreasonable and undermining behaviour.

98. On 25 November Mrs Broadhurst returned from sick leave. The claimant attended at 6.30am as she knew Mrs Broadhurst would not be in until 7.30am. When she came in Mrs Broadhurst was angry that the claimant was already in and accused her of coming in to spy on her. The claimant said that they needed to work together and told her that she had found out about her “insinuating to staff members that I had been forcing her to pay my weekly lottery money for the syndicate”. The claimant said this was because Mrs Broadhurst owed her some money. Mrs Broadhurst denied that she owed the claimant anything. The claimant dropped the subject. Later on, Mr Broadhurst came to the claimant's office in a threatening manner “with a finger pointing close to my face, shouting that he was not going to allow me to upset his partner, that I was a useless boss and that Debbie did a better job than me”. They both left and went to see Julie Richards in the main office. We accept that KB was annoyed that the claimant had upset his wife on her first day back after an absence caused by the claimant upsetting her on another occasion.

99. The claimant emailed the HT on 25 November to say that “After this morning’s incident with Debbie and Karl it’s clear they are looking at making it difficult for me at work. I am thinking about talking with my solicitors to stop this. I am tired of lies, threats, emotional and verbal abuse from Karl, Debbie and Mauro. I don’t want to think about suicide as it has happened in the past when all this started.”

100. The Head Teacher, on 25 November at 7.15pm, who must also have had complaints from the Broadhursts, had emailed the claimant and Mr and Mrs Broadhurst, saying:

“Thank you for various updates on issues to date which occurred while I was out at the Heads’ conference. Obviously having arrived back at school I’ve been updated as to the events this morning by Julie. In response I am also concerned that despite ongoing intervention and support from both Pete Whitehead and myself with various members of the Estate Team over the past 12 months, including just yesterday with each of you and myself, issues continue to arise. The almost continual infighting between members of the team is not conducive to an effective or harmonious working environment and is also very time consuming and at times stressful for all concerned. I feel it’s best therefore to personally direct as an interim measure, so that each of you are integrated back into school without undue stress and anxiety...”

101. He then proposed working hours so that there would be no overlap between the claimant and Mrs Broadhurst and limited overlap with Mr Broadhurst, but he would be working as a technician in Technology in any event. He went on to say:

“Esper, I would also like to meet with you before the end of the week to agree a long-term solution to ongoing personal problems that are having such an effect upon yourself and your colleagues. As part of this new formal working patterns for team members need to be agreed which includes hours of work and associated routine daily duties as I am not clear that these currently exist or that all staff are fully aware of the expectations on them, thus leading to conflict over alleged unfairness or confusion over roles.

Finally, for each of you I would like to insist that all personal issues not associated directly with professional work are left at home and not brought into the school, discussed or made reference to. It is essential that every member of the Estates Team is treated with respect and that they in turn treat each other with respect that they deserve to do their associated job. I need to inform each of you from now on that where these basic expectations are not adhered to then I will seek to apply disciplinary action as appropriate as the current situation is not acceptable going forward.”

This was a recorded example of the HT trying to sensibly resolve matters.

102. On 25 November the claimant texted the Head Teacher and said:

“I’m deeply sorry but I cannot take anymore. I’ve been under pressure for a year. I’ve been spoken to by members of the staff in a threatening manner, they are constantly making false accusations against me and enough is enough. It’s very sad to have experienced that the ones at fault here get away with murder.”

103. The Head Teacher believed that this was in response to him requesting a meeting to agree a long-term solution to ongoing personal problems at the time between the claimant and Mr and Mrs Broadhurst. He replied:

“Esper, you must make sure that you get the treatment you need as soon as you can. Don’t push yourself too hard. Best wishes, Ian.”

104. The claimant felt that the hours suggested by Mr Irwin, which incidentally included the hours the claimant said she had always wanted to work of 11.00am until 7.00pm, were not viable as she needed to speak to Debbie Broadhurst to delegate work and discuss estates issues, and she felt that Mr Irwin was blaming her and taking Mr and Mrs Broadhurst’s side. However we find it was a genuine attempt to resolve the situation and the claimant let the opportunity pass by.

105. The claimant then went off sick and Mr Irwin referred her to Occupational Health and offered counselling support. The claimant replied saying that, “Visiting Occupational Health and counselling cannot erase the humiliation, shame and embarrassment I am suffering at work”. She said she had asked him “from the very first moment this all started to have a meeting with all concerned so you can ask questions and see for yourself the vendetta against me”. She said she “had no communication from Debbie since last January” and she had had to deal with all the work that was not done in her ill health absence.

106. The claimant returned to work on 27 November. Her return to work interview stated that she was off for stress and upset due to fallout with colleagues. The agreed action was a planning meeting before 5 December to agree a way forward with the Estates Team.

107. Also on 27 November the claimant reported that she would be setting tasks for Karl Broadhurst to do on his temporary shift and she would do the same with the rest of the caretakers. She would also do a rota for overtime, but he said she would not be fair and he did not want to do overtime anymore. The claimant emailed Mrs Broadhurst with a list of requests that she had had of repairs, etc.

108. On 30 November the claimant provided Mrs Broadhurst with a list of jobs and requested a report regarding the above, which Mrs Broadhurst provided.

109. The claimant spoke to Occupational Health on 1 December. They reported that she had been absent because she was upset and alleged that she had been treated in a humiliating manner; that she had had a difficult relationship with these colleagues for the last 12 months after a grievance was submitted against her which she feels was not dealt with comprehensively. The claimant stated she was fit to attend work but that it would be worthwhile organising mediation to try and reach a resolution. She would benefit from a stress risk assessment.

110. The claimant continued to email Mrs Broadhurst about the work that needed doing, attaching photographs. On 2 December she said:

“Please see attached invoices, an order signed by you for fire safety checks June 2014 when I was on sick leave. I have checked my emails and have no certificates from Genesis. I would think that in my absence it’s your duty to get the certificates before you sign the invoice. I also sent an email to you while I was on sick leave as a reminder of all the annual tests/inspections of the school and another email to brief me of all site issues in general upon my return to work. I have not received anything yet.”



111. Clearly it was somewhat injudicious of the claimant to send an email of that nature when working relations were difficult. It was a legitimate point but could have been expressed in a more conciliatory fashion.

112. On 3 December the new Estates Team's working pattern was sent out, plus a timesheet and associated duties document.

113. On 4 December the claimant again sent a long list of duties to Mrs Broadhurst, required on 8 December.

114. Mr Irwin intervened on 10 December, which suggests that Mrs Broadhurst had been to complain to him, and he said:

"I would like to talk to you when you are in next Friday about the need for the checks that you have outlined below. I am conscious that we need to adhere to all of the relevant H & S regulations, but also that we need to apply a manageable and sensible approach in doing so. In short there might be ways in which we can adhere to all the regulations whilst also not taking up so much of the Estates Team's time each day."

115. The claimant was by this stage asking Mrs Broadhurst for the cleaner and caretaker's daily checklists:

"All cleaning storerooms, including the caretaker's, must be checked daily and recorded as it used to be done in the past. I have only had records for one cleaning storeroom and it should have been 15. All the fire safety checks must be recorded and signed by the person doing the checks. The last check still has to be signed. The school will fail inspections if not supported by accurate information and records."

116. The claimant emailed the Head Teacher back to say that the checks were necessary and there had not been an issue in the previous eight years in doing these, and that she needed the assistance with her workload and clarity about her duties. Nothing happened after that meeting as far as the claimant was concerned. Mrs Broadhurst continued not to sign the sheets and the claimant raised it with the Head Teacher again but did not receive a reply.

117. The claimant went off sick again on 15 December as her Chronic Fatigue Syndrome had flared up as a result, she says, of the stressful situation at work. She returned the next day and alleges that she advised Mr Irwin that the symptoms of her CFS were getting worse and that she wanted more flexibility in her working arrangements. This, however, was not recorded in the return to work (RTW) interview. It still said, "self management of illness longstanding" and that she was off with Chronic Fatigue Syndrome for one day.

118. We cannot accept the claimant's evidence that she mentioned this at this meeting, as she signed this return to work interview without these things being noted.

119. On 16 December the claimant was upset because a painting job had been arranged between Mr and Mrs Broadhurst and Mr Irwin without involving her, and she raised the lone working policy. She felt it would also be more expensive for this work to be done on a Sunday at overtime rate when it could be done in working time during the Christmas holidays. She was also concerned about matters being arranged without her knowing in relation to a Masterclass on 17 December.

2015

120. The claimant went off sick again from 16-23 January due to pelvic pain. While she was off work she asked her GP to write a letter to the school to confirm her hyperthyroidism and chronic fatigue. The doctor, in a letter of 20 January, said:

“I confirm this patient is currently registered at this Practice. She has a number of medical conditions which include hyperthyroidism and chronic fatigue.”

121. On her return she met with the Head Teacher and she says she told him again she needed flexible working so she could take breaks at home to regain energy. The return to work interview stated, “no phasing or reduced hours requested”. Again we cannot in the light of the interview notes accept she raised this.

122. On 27 January the claimant emailed Mr Irwin to say:

“I have to inform you that Debbie Broadhurst has been shouting at me during a meeting this afternoon. I have been trying to find out jobs that have been requested and completed so I can deal with the invoices. She is reluctant to communicate and has been shouting at me without reason. She has left the office shouting back. When I told her to be professional and to stop shouting at me she raised her voice even louder and pointed her finger at me, shouting she would shout and do whatever she wants. She also mentioned that I am not her boss and that she will see you not me for school related matters. I must out students in the corridor have witnessed her shouting at me. This is becoming very usual behaviour towards. It's disrespectful, humiliating and impossible to work with. Please, Ian, somethings needs to be done.”

123. Mr Irwin replied that he had “dealt with this today and would update her tomorrow”.

124. The claimant said Mr Irwin never updated her about it. We accept that it was remiss of the Head Teacher not to follow this up.

125. On 3 February the claimant emailed Mr Irwin to say she wanted to raise a formal grievance against Debbie and Karl Broadhurst. She said:

“In line with the grievance procedure please consider this email to constitute a formal letter of grievance against Debbie Broadhurst and Karl Broadhurst. The issue which has led me to lodging this grievance concerns bullying, harassment, discrimination, gross misconduct, all of which began in December 2013. I have been subjected to a very unhealthy, oppressive and intimidating working environment for my person on a daily basis by both members of staff at Stockport School.”

Her letter continued:

“As you are aware, I raised the issue first with Pete Whitehead and then with you, and I was told by both the matter would be investigated and suggested for all to work together to resolve it. However, [difficult to read rest of letter] the harassment and bullying has affected my health, leading to my doctor having to increase my medication for depression – stress

related. For the record, I feel harmed physically and mentally by their unpredictable behaviour and gross misconduct. After all these months without a solution and reaching now the point of Debbie and Karl shouting and threatening and slamming doors at me in front of others makes me feel undignified, embarrassed and degrading. Therefore...to solve the situation. It's my hope that in invoking the grievance procedure I will not be subject to any detrimental treatment."

126. The Head Teacher replied on 4 February, saying that they needed to meet to discuss her email and various other matters.

127. The next day the claimant reported by email that there was another outburst during a staff meeting by Mrs Broadhurst. In front of other people she said that, "Ian wanted Karl to do some job, ask him" and then she said she "was not going to meet with me" and Mr Broadhurst said to her, "Make sure you write all this down for Ian as he told you". She then raised her voice and said that the claimant "was the one not communicating because Carolina was not in and he didn't tell her". The claimant said she was not aware and said, "How can you say that when Carolina sent a text?". The claimant's mobile was off so she would not have seen a text message, and she said they were welcome to check her mobile.

128. In the meeting with the Head Teacher on 11 February the claimant said that the Head Teacher warned her against proceeding with the grievance as it would lead to counter allegations from other members of staff, but the claimant said enough was enough and she needed the issues sorted. She said it was not true that she wanted him to dismiss some of the Estates Team as had been suggested. She said she felt she was being reprimanded in this meeting as he said that Debbie Broadhurst and the caretakers did not have a job description and that Debbie Broadhurst was overloaded with too much work delegated to her by the claimant, and that Mr and Mrs Broadhurst had done an excellent job in the claimant's absence. The claimant said that they did have job descriptions and Mrs Broadhurst had done a terrible job while she had been away. She said she was very depressed and he had allowed the situation to go on for too long, that there was gross misconduct from Mr and Mrs Broadhurst and it needed to be investigated and stopped. The headteacher said the claimant should avoid contact with them. She replied saying he needed to get them to stop saying, "Ian said Ian is the boss". She said very little time was spent discussing the grievance. Job descriptions were discussed and had been drawn up when people had applied for the job. She showed him where they were kept. In the HT view he was discussing with the claimant practical solutions to the problems she was having and she agreed that the grievance should be dealt with that way. The claimant says no she was adamant she wanted to bring a formal grievance and waited for it to be dealt with.

129. The HT thought the matter was resolved following this meeting and discussions about future actions. The claimant however never raised the grievance again until she told her union representative about it around 24<sup>th</sup> November when she was due to have a sickness absence review meeting. As a result we believe the Head Teacher's version of events whereby he understood a way forward had been agreed without the grievance needing to be formally pursued.

130. The claimant attended a stage one sickness absence meeting on 24 February. The claimant was disgruntled about this as she had carried out work while she had been off, the triggers for holding a meeting had been met a long time

ago and the claimant had been working very hard. Also some of her absences had been brought on by the stress she was under at work. In her view however we find it was reasonable of the respondent to implement the sickness absence procedure at this juncture. Her recent absence had no obvious link to any other conditions nor to the alleged situation at work.

131. The claimant was advised following this that her absence would be monitored for a further six months. Because of her ongoing conditions and her Chronic Fatigue Syndrome the headteacher stated he was happy to double the normal triggers. She was advised then that if during the six months review period the following trigger points were reached (ten working days or six instances of absence) the claimant would move to stage two of the procedure.

132. In this meeting the claimant had mentioned that she was not allowed to work from home as she had been previously allowed, and Mr Irwin said he would review it with the previous report from Occupational Health. There is some reference in the handwritten minutes to "CFS – not allowed to work from home". However the Head Teacher did not get back to her about the Occupational Health report and the question of working from home. The Head Teacher's thinking was that it was unnecessary as the claimant only lived 300 yards away from school but he never formally advised her of this. However, the increased triggers were noted and applied.

133. On 18 March the claimant emailed the Head Teacher to complain about Mrs Broadhurst. The email said:

"Ian, for the record today I have tried to have a meeting with Debbie to discuss that issue but as usual she is reluctant to do so. I wanted to talk about school improvements and other matters involving health and safety. She doesn't let me finish the sentences, answering with a repetitive 'like what' and 'that's not true'. I tried to explain that there are areas in need of attention and she replied that, 'if Ian has not complained it's because everything is fine' and she doesn't need to listen to me. She has also accused me of changing the caretaker's hours in order to avoid overtime. I explained that overtime and the need for flexibility was discussed in our meeting with you before Christmas and everybody understood and agreed. She replied in a loud voice, 'That is not true. You have done it'. I asked her to please stop raising her voice to shouting level but to no avail. She has also said that only thing that bothers me is that Antonio is cleaning. She left the office muttering something and totally ignoring me. I am not happy with her attitude, comments and insinuations. Debbie is delegating jobs to me as if I were her assistant, making decisions about caretaking hours without my knowledge and interfering with my admin work which makes it very difficult for me as I doubt whether I have done it or not. She is totally bypassing me. I am having to correct mistakes in what appears to be my work. As I have said to you in the past, it is very difficult to almost impossible to deliver good standards in a situation like this. I feel that I am working in a war zone with minefields and snipers all around. There is a constant outright refusal to liaise and cooperate with me to look after the school buildings and grounds. She makes inappropriate comments, shouts at me and constantly makes non verbal communications, expressions of dissatisfaction. The whole situation has destabilised my credibility at work and the ability to properly supervise and delegate. I am asking again for a solution to this as it is an ongoing situation affecting my health and work."

134. The claimant said that she had a conversation with the Head Teacher and he said he had spoken to Mrs Broadhurst about redundancy so the claimant had replied, "So if you believe me and you accept all that is going on is unhealthy why have you not done anything?". She said she also reminded him about the grievance and it was not just about Debbie Broadhurst but Karl Broadhurst too. He said he would investigate and she said she believed him. Later he also mentioned to the claimant that he was thinking of sending Mrs Broadhurst to Pendlebury (another site the school was responsible for) and that moving her or paying off were his quick fix solutions to the claimant's complaints rather than actively managing the situation, but the claimant maintains she did not want Debbie Broadhurst to lose her job, she wanted to resolve the situation. The claimant said she made it clear she wanted to pursue the grievance, however the Head Teacher's position was that the grievance was not mentioned and as far as he was aware it had been resolved by informal mediation whereby he had spoken to both parties. We accept his evidence as we cannot believe the claimant would not have referred to her grievance in the email if she truly believed it had not been dealt with. However, she was clearly flagging up problems which needed resolution.

135. The claimant then said in March 2015 she found out that the Head Teacher had given Mrs Broadhurst the management of the cleaning staff following a meeting they had had to discuss her job description. The claimant asked the Head Teacher to put this in writing but he never did. It was the claimant's case that as a result Debbie and Karl Broadhurst were allowed to do as they wanted. The claimant never complained about this in writing.

136. At the end of March, the claimant asked the Estates Team for a volunteer to go to the Pendlebury building but Mr and Mrs Broadhurst did not volunteer. Artur Lula decided to give it a try and he ended up staying there. The claimant felt the atmosphere did improve for a time around this time but she still needed to chase Mrs Broadhurst for small things.

137. On 29 April the claimant, with Mr and Mrs Broadhurst, Mauro Amadeu and Mikel Bergara attend a PAT test training course but Mr Broadhurst failed the exam. He was allowed to re-sit but failed it again. The claimant was told by the Head Teacher to advise Mr Broadhurst and she did do. He did not believe her at first and he said she was manipulating the exam results and lying about him being stop from working in Design and Technology. He said, "This is all your fucking shit. Ian is very happy with us". There was no corroboration of this and like other instances of the claimant alleging KB was constantly swearing at her it was not recorded in any contemporaneous document.

138. The tester had advised the claimant that Mr Broadhurst should not be allowed to carry out formal visual inspections and electrical safety tests on electrical appliances. However, the claimant seemed to believe this meant that Mr Broadhurst could not work in Design and Technology, but the two things were not synonymous. The claimant said that Mr Broadhurst told her to "fuck off" in this conversation, when he told her that he had to tell Gill Davies who was responsible for Design and Technology testing anymore. However again this did not mean he could not work in Design and Technology although the claimant appeared to give this impression to him. Again the swearing was not referred to anywhere.

139. The claimant also complained that the Head Teacher was ignoring health and safety procedures on lone working and that Mr Broadhurst had arranged to do some work on a Saturday in the gymnasium which the claimant knew nothing

about. It turned out that Mr Broadhurst had brought his nephew in to assist him who was not a school employee. The claimant felt this was inappropriate but the Head Teacher did not. The claimant said she raised a number of health and safety issues with Mr Broadhurst including protruding screws and a mental plate on the tennis court, which the claimant removed as she felt they were dangerous. She felt these were further examples of the Head Teacher ignoring her concerns.

140. The claimant was then absent from 20 July. On 28 July the claimant went to see her doctor as she was having dizzy spells and felt sick. Her doctor felt it might be related to stress at work and she was signed off sick for four weeks and she informed the Head Teacher of this the next day. Whilst at home she continued to answer calls and attend site meetings to ensure that the work plan for the school holidays went ahead. She was signed off for a further four weeks on 19 August. She realised she was not receiving emails from work and phoned Julie Richards to ask her to raise this with IT but Julie Richards advised that the claimant was not being sent them because she was off sick and that emails were being sent to Debbie Broadhurst. The claimant felt this was a departure from what had happened before when she had been off sick but had carried on doing some work for the school. The claimant's illness was described as vertigo.

141. The claimant was invited to a second stage sickness absence meeting on 4 September under the school's long-term sickness absence process. There were handwritten notes of the meeting which the claimant said she was never allowed to check. She reported she had been given medication for dizziness and blurring in July but it made her feel sick, and that she had bladder related problems and dental problems. She said she had known she had been ill for a long time because the relationships at work were not good and communications had broken down. The HT said she should forget about work and try and get herself well.

142. The claimant said she asked in this meeting why she was not given her reasonable adjustments of working from home but there was no record of this in her notes, nor that she had mentioned her outstanding grievance. She said that the Head Teacher had said that he had tried to sort the complaints out and the claimant should be careful about pursuing the grievance as people would bring counter allegations. She said she had told him she was not worried about this in the past. There is nothing in the handwritten notes to support these matters were discussed. As Julie Richards took the notes she would have had to know what parts of the minutes to leave out at this stage which is just not credible. Therefore we do not accept these matters were discussed. The Head Teacher said the claimant would move to third stage if she was off for a further two months.

143. The Occupational Health report of 21 September did record that the claimant was open to working from home during periods when she felt well, in the context of her absence being due to vertigo, and that the disability provisions of the Equality Act 2010 were not likely to apply. It was felt that she was likely to make a full recovery.

144. The claimant travelled to Spain and had some investigations there which showed there was no issue with her inner ear, but x-rays showed problems with her upper and lower spine and she was referred for an MRI scan, which she had in England which showed she had a cyst on her lower back.

145. In October 2015 the claimant was to attend a disciplinary hearing as a witness on behalf of a cleaner on her team however this was then changed to 26 November.

146. The claimant submitted a sick note on 22 October for a further 6 weeks stating 'nausea and dizziness'.

147. On 16 November 2015 the claimant was sent a letter inviting her to a third stage sickness review meeting. She said she was shocked to receive this. She did not expect the Head Teacher to take action so quickly once the two months was up especially in the light of ongoing tests and the failure to take any action in relation to the grievance. However we find it was entirely appropriate the claimant had been absent for nearly four months and her fit note indicated the absence would continue till at least mid-December. There was no breach of the respondent's procedures.

148. The meeting was re-arranged for 26 November but on 24 November the claimant's union representative emailed the Head Teacher to request it be postponed pending the outcome of the claimant's grievance. The Head Teacher requested a breakdown of the grievances prior to the meeting.

149. The sickness absence meeting went ahead on 26 November 2015. The claimant indicated at this meeting that she was ready to return to work and 4 December was discussed. She said she was no longer feeling sick or dizzy which appeared to be the result of changing the medication she had been taking, but she said she had not been helped with the stress at work, with problems ongoing since 2013 and she was fearful of returning. The Head Teacher said that he had tried to manage the situation for two years and there had been five complaints against the claimant. He said he had dealt with the claimant's grievance. The claimant said that Mr and Mrs Broadhurst wanted her to leave and were upset that she had planned to go into business and then changed her mind. She also referred to Mr Broadhurst telling her to "fuck off" for the first time.

150. HR then said that they needed to move forward, that she would be given lots of support but then was absent, and they asked, "how can we move forward?". The claimant said if there were counter allegations "so be it". Mr Irwin said he spent hours working with staff regarding fallout, would get results and then there would be another fallout. The claimant said that being told to "fuck off" was gross misconduct. The claimant also said she thought 30 days should be knocked off her sickness absence from working from home. HR asked for her to submit her grievance within five working days, and the claimant believed that once she saw her GP she would be able to return, and it was agreed there would be a four week phased return to work.

151. Also in the meeting the claimant was told by Mr Irwin that she had been sent an email from HR about the outcome and the claimant believed that they changed their mind about the grievance when they realised there had not been anything in writing. We accept this was the case but at the same time we have found that the HT reasonably thought the matter had been resolved.

152. On the 30 November the Head Teacher then wrote to the claimant asking for a breakdown of her grievance concerns with any evidence and asked for her suggested actions that she would see as an outcome and resolution of the grievance.

153. The claimant was signed off on 1 December 2015 for a further four weeks with work related stress. She had a telephone assessment with Occupational Health on 2 December which concluded she was not fit to return to work and recommended a phased return and a stress risk assessment when she was fit to return. It referred to the claimant reporting she believed she was suffering some symptoms due to perceived work place stress.

154. The claimant was advised by a letter sent on 2 December that if she could not return within a reasonable period a sickness absence meeting would be arranged to consider her continuing employment. The letter said that her allegations of bullying had been dealt with in February and there had been no issues since.

155. On 4 December 2015 the claimant submitted details of her grievance along with accompany documents. The claimant said she had lodged a grievance on 3 February 2015 stating that Stockport School had breached its statutory duties in relation to health and safety, and she wanted them to observe the implied term of mutual trust and confidence and not act in a manner which would likely destroy or seriously damage the trust and confidence. She also said Stockport School had failed to provide her with a safe place and safe system of working which could amount to a breach of statutory duties under the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999, the Employment Rights Act 1996 and the Equality Act 2010. The claimant set out these matters:

- (1) Breach of duty of care – Equality Act 2010 – disability discrimination: The claimant said that a combination of excessive workload and workplace harassment had exacerbated her medical condition and she had had to medicate more frequently and make many visits to hospital and her GP. This was having a detrimental impact on her health, inducing rapid heartbeat, heart palpitations, fatigue, chronic pelvic pain, headaches and dizziness. This adversely affected her abilities and capabilities to undertake her day-to-day activities in that it impeded her mobility and concentration. She was asking the school to make reasonable adjustments and act with due diligence to remedy the situation.
- (2) Breach of duty of care – Equality Act 2010 – harassment: The claimant said she had been subjected to a systematic campaign of harassment due to the school's omission to take reasonable and practicable steps or implement any preventative or protective measures to ensure a working environment free from harassment. She said neither herself nor the staff had been involved in any workplace training or stress audits relating to health and safety within the preceding 15 months. She went on to say:

“Further, this omission is creating an oppressive and intimidating working environment. I can no longer ignore the palpable risk of harm Mr Broadhurst's and Mrs Hilton's unwanted conduct has had on my mental and physical health, both of which are prejudicial. I personally find Mr Broadhurst's and Mrs Hilton's unwanted conduct abhorrent. It is undignified, embarrassing and degrading. I am having sleepless nights and night sweats while wondering what the next day might bring. This has caused unnecessary nervousness and distress. Due



to lack of sleep I often go about my duties in a state of autonomy or zombified state. This is hardly conducive to a safe working environment.”

- (3) Breach of duty of care – Employment Rights Act 1996 – workplace danger:

“It is my contention that Mr Broadhurst’s and Mrs Hilton’s unpredictable behaviour poses a palpable danger to both myself and others within the working environment. As such a foreseeable risk of harm exists to both my mental and physical health, therefore I am asking Stockport School to observe the statutory Code of Practice on Employment 2010 and suspend Mr Broadhurst and Mrs Hilton due to the aforementioned reasons. Notwithstanding I contend that a failure to do so may make Stockport School vicariously liable for any subsequent omission to act to prevent further detriments from being inflicted upon my person. For the record I can no longer work with Mr Broadhurst and Mrs Hilton. This is due to the very fact that their unwanted conduct has a detrimental effect on my health. As such I ask you to consider the magnitude of the risk of harm occurring and the gravity of the harm which may occur should management refuse this request. I know my grievance is well-founded and I expect the school manager to find out the right solution by following procedures and a just and fair investigation.”

The claimant referred to various emails she had sent the Head Teacher. She also stated that caretakers had witnessed the gross insubordination of Mr Broadhurst and Mrs Hilton:

“There is continuous and overbearing supervision of the staff and unfair treatment of site and cleaning staff in addition to threats and comments about job security from Mr Broadhurst and Mrs Hilton. Malicious comments to outside contractors about my person from Mr Broadhurst.”

156. The claimant referred to text messages to Mr Whitehead, Mr Irwin and Mrs Hilton. She listed 86 to 100 incidents.

157. There was mention of one discriminatory comment from September 2014 when the claimant said the Broadhursts complained about her and other colleagues level of English. She mentions discrimination but only in the context of believing the HT had favoured them over her in relation to the ‘bonus’ issue. She does say that KB told her to ‘fuck off’ on one occasion but gives no date but it appears to relate to the period February to December 2015.

158. On 17 December 2015 the claimant was invited to the fourth stage sickness absence meeting and was warned she could be dismissed on the grounds of ill health. She was surprised as she felt issues were outstanding which contributed to her absence. The Head Teacher wrote a report for the purposes of the sickness absence procedure setting out the facts, and it referred to the fact that at present the claimant saw no prospect of returning to work. The headteacher was criticised in cross examination for failing to include the OH report of May 2014 in his management report but he said this was because it arose outside the period he was considering which we accepted. He was further cross examined as to why

there was no specific reference to work related stress in the report and he referred to the fact the 2<sup>nd</sup> December OH report was included in the pack attached to his report which is felt was sufficient and pointed out that OH had referred to perceived stress. Again we accept his answer and find that the report was compiled in good faith.

## **2016**

159. A meeting took place in respect of the grievance on 5 January 2016, where the claimant did say that she could not come back to work until the grievance was resolved. The claimant submitted a new sick note on 5<sup>th</sup> January stating 'stress at work' previous sick notes had indicated vertigo.

160. The grievance investigation was concluded on 17 January 2016 and the report sent to the claimant soon after.

161. The fourth stage sickness review meeting was re-arranged for 19 January 2016 and was heard by a panel of governors. By this stage the claimant had confirmed that she was ready to return to work once her current fit note had run out, on the understanding that reasonable adjustments would be made starting with a phased return and that her grievance would be taken into consideration.

162. The decision regarding dismissal was then postponed to 2 February 2016 to see whether the claimant returned to work, which she did on 1 February 2016. The claimant agreed that she had no choice in the matter as she believed she would have been dismissed if she did not return to work. Nevertheless she returned and was not absent again until her resignation.

163. The grievance investigation was undertaken by Casey Beaver, Assistant Head Teacher. Mr Beaver interviewed Mr and Mrs Broadhurst, Kerry Hill (Office Manager), Karen Tankard (Business and Finance Manager), Mauro Amadeu, Ian Irwin, a second interview with Karl Broadhurst, Pauline Cummings (Cook), Janet Brown (Catering Manager) and Mr Whitehead.

164. The evidence was recorded and Mr Beaver concluded in the form of bullet points as follows:

- It is clear there is great disharmony within the Estates Team.
- Relationships are evidently broken beyond repair on a personal level.
- The claimant did not provide sufficient factual detail that there is a breach of the duty of care.
- There was very little primary factual evidence submitted by EPA. Lots of the evidence submitted by EPA was complaints to Mr Irwin about colleagues and lots of the evidence of minor complaints which should have been dealt with by EPA at source in her position as Estates Manager.
- Where no further investigation is stated it was felt that either the evidence was not of relevance to the grievance or was so minor that it did not constitute evidence towards an investigation into a breach of a duty of care.

- The witness statements contradicted claims by EP. However, there was also a lack of primary factual evidence from the witnesses and evidence was based only on witness statements.
- There were a number of allegations and counter allegations, he said/she said, where the truth could not be proven either way.

165. A grievance outcome meeting took place on 28 January 2016 where the findings were summarised and was held by the vice-chair of the governors, David Gosling. He made a list of recommendations starting with the point that whilst the grievance was not upheld further action was needed regarding locking of internal doors, overtime arrangements, fire reports, knowledge of contractors on site, school trade cards, procedure for signing in and out, the Estates Action Plan should be reissued, the expectation on estate staff regarding deliveries should be reviewed and clarified, review and remind staff of the procedure of contractors' access to keys, review and remind staff of the lone worker policy. Two members of staff required to be in attendance. Other recommendations were:

- (1) Recommend relevant leadership and management course for EP and Debbie Broadhurst.
- (2) Review or remind relevant staff of security issues re locking school: witnesses on both sides of the grievance highlighted the school was not being locked up properly.

166. The claimant felt the investigation had not been very thorough but she was happy with the recommendations. She was told of her right of appeal.

167. On 29 January the Head Teacher set out a proposed timetable for her phased return, which the claimant made amendments that he accepted. The claimant returned to work on 1<sup>st</sup> February.

168. The claimant stated that while she had been off sick her office had been moved into a tiny cupboard space. She was not consulted about this and she said her things had been dumped in the room and it was humiliating. The respondent said in fact they had been neatly stacked in the room pending the claimant's return to work and a decision regarding which room she was to use; it was never proposed that she use that room. Again we find the claimant has exaggerated the situation to support her own claim.

169. When she returned to work for a short period the claimant had to share an office and computer with Mrs Broadhurst. She was not happy that Mrs Broadhurst had changed templates there was nothing wrong with; she felt Mrs Broadhurst was doing a lot of the work that she was responsible for. However we find the claimant was being disingenuous here – she had been off for a long time and it was only natural that Mrs Broadhurst would have been doing her work.

170. On 8 February the claimant had a meeting with Pat Morgan, Head of Stockport School Support Service, to give evidence in relation to an investigation relating to an Employment Tribunal claim in which she was going to be a witness. The Head Teacher knew about this.

171. The same day the claimant met Mr Irwin for her return to work interview. The claimant said she had requested at this meeting adjustments she had requested previously, namely working from home when needed and flexibility with

her working hours. However, the actions that were listed on the return to work form which the claimant signed were: phased return (four weeks), stress risk assessment to be carried out and implemented, and actions from stage three absence meeting.

172. The claimant had a further discussion about her office with Mr Irwin and he gave her a choice of rooms to look at then come back to him. He explained that the rooms had to be rearranged as the school needed a dedicated room for diabetic pupils in addition to the first aid room. The claimant decided she wanted the Data Manager's office and she said that the Director of Arts, Janice Grzywna, was upset about this because she said she was promised that office. However, Janice Grzywna gave evidence that the claimant simply put things in her room without asking, and the Head Teacher said that he had not implemented a room change he had just asked her for a choice. We accept this was the situation from the emails we have seen.

173. Mr Irwin told the claimant that Ms Grzywna had stated the claimant was disclosing details of an Employment Tribunal case being brought by a member of staff. The claimant denied it as she said she did not know anything about the case only that the person concerned had also had her office moved without consultation. The Head Teacher then said that she was breaching the Court Order of Anonymity and there would be bad consequences. The claimant said to call Ms Grzywna to his office there and then and she could repeat what had been said, but he did not do so, he just said she should be careful and keep quiet. The claimant believed the Head Teacher was lying. Ms Grzywna in evidence at the tribunal she had not told the HT however Mrs Broadhurst evidence was that Ms Grzywna had told her this and she had relayed it to the HT. We accept that was the case.

174. The Restricted Reporting Order was put in place in May 2016, later than this incident. The Head Teacher said he genuinely believed it was already in place. We accept his evidence.

175. The Head Teacher then realised none of the options for the room were suitable and offered the claimant the PE room. When she approached Gill Howarth, the PE teacher, she was not happy as she said the PE equipment needed to be stored there. However ultimately the claimant did move into this room.

176. The claimant said she became aware in January 2016 that some of the cleaners had raised a grievance with Mr Irwin about Mr and Mrs Broadhurst's treatment of them and they alleged that her behaviour towards them was discriminatory. The claimant said she had no involvement in the grievance, however it is obvious that some people at school thought the claimant behind this. The grievance was not upheld and the cleaners did not appeal the outcome. Some staff believed that the claimant was behind this grievance which was couched in odd language but there was no evidence that she was behind it.

177. On 11 February 2016 the claimant appealed against the outcome of her grievance. While she accepted the measures proposed by Mr Beaver and Mr Gosling she did not think they were sufficient on their own. She said she made an effort to start afresh with Mr and Mrs Broadhurst but on 12 February she emailed Mrs Broadhurst to remind her to send her details of the cleaning schedule for the following week and of any contractors on site as she was going to be on leave; nothing was received so the claimant emailed the Head Teacher on 15 February stating that she was still having difficulties working with Mrs Broadhurst because

of this and was having to carry out her duties even though on a phased return. The Head Teacher replied he would meet with her the following week to discuss it. Mrs Broadhurst then went off sick on 15, 16 and 17 February.

178. The claimant then started to fill out the stress risk assessment and met with the Head Teacher on 11 February to discuss it. He said that they would meet to discuss it again once she had set things out in more detail. He chased this on 23 February but the claimant was not able to complete it by then. The claimant stated that handed a typed version into Julie Richards on 26 February but never heard back from the Head Teacher, and only saw his annotations allegedly made 20<sup>th</sup> February on it when it was in the bundle. The claimant stated it could not have been created on 20 February as she did not hand in her completed form until 26 February, and she believed that her metadata showed it was created on 26 February, however the metadata was not before us and Julie Richards was not asked about it. Whether the claimant returned it or not it was not chased up.

179. Around the same time the claimant found out there was only one worker on site removing asbestos and she felt the way they were working was dangerous. Mr Broadhurst was helping but he should not have been doing so as he did not have the proper PPP for asbestos removal.

180. The claimant also believed the Head Teacher made changes to the overtime rota at this time, and had made separate arrangements with Mr and Mrs Broadhurst for overtime.

181. The claimant then sent an email to Mr Broadhurst that he was getting an undue amount of overtime and she alleged that other caretakers had complained. The emails said:

“Further to our chat yesterday, please can you confirm in writing that as per your choice and decision you wish to claim only one hour overtime for opening and locking the school at weekends and weekdays, unsocial hours. This is to allow access to contractors. In order to maintain transparency and avoid future misunderstandings at work I need you to put in writing that this is your decision, that obviously it doesn't affect your work colleagues' entitlement to claim their rightful overtime and you are happy to proceed.”

182. Mr Broadhurst replied confirming this.

183. On 23 February 2016 the Head Teacher called a meeting with everyone to discuss roles and positions and the Estate Team Action Plan. The Head Teacher also said he wished to meet with the claimant on a formal basis every Friday morning to discuss matters relating to the Estates Team and health and safety. The claimant maintained these never happened. The HT said he did meet with the claimant regularly but nothing was noted and we do not accept he did but neither did the claimant complain about it.

184. An email was sent to the school's CPD coordinator asking her to identify a suitable leadership management course for the claimant and Mrs Broadhurst to attend, but the claimant never heard back from the CPD coordinator. It was clear that Mr Irwin had delegated this and reasonably expected it to be actioned.

185. The meeting on 24 February did take place and Mr and Mrs Broadhurst said they did not have job descriptions at this meeting. Mrs Parker said that they had, and Mr Irwin said he would look into it. The claimant said she said at that meeting

she wanted to work together and asked Debbie Broadhurst if she was willing to do so, but she did not reply. Mrs Parker then went on to say that it was not going to work if she (i.e. Mrs Broadhurst) was not going to cooperate.

186. On 2 March Mr Irwin invited the cleaning staff to a team meeting that day, although it did not take place until 7 March. The purpose of the meeting was to outline his expectations of the team and ensure everyone was clear on their roles and positions. He said if there were any problems they were to raise matters directly with the claimant. He hoped that by reiterating the chain of command the claimant would feel less undermined, even though he did not accept she had been undermined

187. Following this however the claimant felt Mrs Broadhurst was not being cooperative and would only send her the barest of information by email, such as on 15 March she replied to an email just saying she “already has it”. This was copied to the Head Teacher by the claimant, complaining about the lack of communication from Mrs Broadhurst. It was agreed there would be a daily task sheet.

188. The grievance appeal was held on 7 March and the outcome was sent out on 17 March. It was accepted there had been procedural shortfalls in the original investigation and the Head Teacher was asked to appoint a new investigating officer to re-investigate the grievances, but the claimant on 25 April emailed Mr Barrett who had made this decision, one of the school governors, to say she did not want the school to reinvestigate the grievance.

189. The claimant stated in her email:

“I, Esperanza Parker, do hereby voluntarily withdraw my formal grievance in its entirety. Although I feel and know that my decision supports a true miscarriage of justice I feel that the humiliation suffered throughout has caused me huge distress with its parallel consequences to my career and health, both physical and mental. My family and I are left to suffer while those who cause our grief carry on working as normal.

I fully understand that by withdrawing the grievance I waive my rights to any further appeal. I further state that my decision to withdraw did not result from any threat, coercion, intimidation, promise or inducement. Mr closing statement to Stockport School and SMBC – ‘and when [I] voice my concerns when [I] beg for something to be done, who acted on [my behalf]’ (Andrew Rawnsley 2011).”

190. The claimant said the reason she had withdrawn her grievance was because she had no faith that the HT would ensure it was done properly and that her health would suffer.

191. On 18 April the claimant had complained to the Head Teacher that she had tried to meet with Mrs Broadhurst to no avail and she went on to say:

192. “She is reluctant to work together and she is unwilling to discuss ways forward for the benefit of the school. I find her ways very rude and arrogant. I don’t know her reason for being upset but I can assure you that the way she spoke to me and the way she left my office, slamming the door, was something that nobody should be subjected to. The meeting I tried to have this afternoon was following the earlier email from Linda O’Brien and the fact that Debbie assured me that

everything was ok this morning and she didn't have to report anything and that she had checked all the areas. Her reply about the health and safety issue in 132 was that Mikel should have done something about it. 'To what' I replied, and that as part of her duties it's her job to supervise the rooms and see that they are safe and clean for staff and students, 'Regarding any areas that need covering I will sort it out'." There were some emails produced to Mrs Broadhurst communicating with the claimant around 25 April about very practical issues in the most succinct of manners, and she would email to say there was nothing to report as well.

193. On 4 June the claimant sent Mrs Broadhurst an email setting out what needed to be done while she was on holiday. She added:

"I would like that the above is followed in order to avoid the situation that the cleaners and the caretakers encounter many times (one ship and two captains). I am the Estates Manager and their line manager and need you to help me make this clear for the good running of the site. I am finding [it] very difficult to manage the changes made by Karen, Julie or the Head to yours and Karl's working patterns and the changes that you make to the cleaning and caretaking staff without my consultation, and contradicting instructions already given by me. I believe that at least I should be consulted or informed."

Not for the first time we find the claimant provoked bad feeling and fear by the tone and content of her emails.

194. On 13 June the claimant had returned from holiday and asked the Head Teacher whether anything happened in her absence. The claimant told Mr Irwin that she had passed Mr Broadhurst and he had given her a nasty look and did not reply to her "good morning". The Head Teacher said everything was fine and there was nothing to worry about.

195. The claimant asked Mrs Broadhurst to meet her in her office in the afternoon to update her on what had happened in her absence on holiday. Mrs Broadhurst was concerned as the claimant had sent her the quite sharp email before her holiday referred to above. Mrs Broadhurst because of this refused to come into the claimant's office and just stood at the door. Mrs Parker said Mrs Broadhurst needed to come in as they needed to speak confidentially, and Mrs Broadhurst said she did not want to. She said the room was too hot as an excuse and the claimant said she would open the window. The claimant said she asked Mrs Broadhurst what was wrong, and Mrs Broadhurst said "you know what's wrong", but the claimant was unaware apparently that there was anything wrong with her email. We do not accept that the claimant was unaware, the email in tone and content reasonably made Mrs Broadhurst feel threatened. The claimant alleged that she tried to reason with Mrs Broadhurst but she raised her voice. We do not accept this, there was member of staff outside the room which made it unlikely Mrs Broadhurst would raise her voice or say anything provocative. The claimant herself could not relate anything Mrs Broadhurst said which was inappropriate only that she raised her voice and would not come into the room. The claimant said she would not tolerate Mrs Broadhurst's behaviour and she was going to see Ian Irwin, and Mrs Broadhurst replied, "Fine, do what you want" and walked out whilst the claimant was ringing Julie Richards to arrange to see the headmaster. This incident in microcosm sets out the position, the claimant was trying to intimidate Mrs Broadhurst and when she could not do this because she would not come into the room sought further to intimidate her by ringing the HT's secretary in front of her.

196. The claimant then had a meeting with the cleaners as she had heard from a caretaker that part of the conversation had been overheard, and she said to the cleaners that if she found that people were taking her words out of context she would take formal action. The claimant says that the three cleaners then got up and said they were going to see Mr Irwin, but first they stopped to get Debbie Broadhurst to go with them even on the claimant's version this was intimidation. However, Mrs Broadhurst said this incident predated 13 June and that the cleaners were unhappy because the claimant had threatened them with a solicitor (her sister was a solicitor) if they said anything against her. whenever this incident took place the claimant was intimidating the cleaners to prevent them making a complaint about her.

197. Following this the Head Teacher wrote to the claimant saying:

“Just to let you know, I've sent Debbie home. She's very upset following on from an earlier conversation with you. I've told her to go home and calm herself before returning to work tomorrow.”

198. The meeting with Mr Irwin took place on 14 June. The claimant felt the Head Teacher was unsupportive and sided with Debbie Broadhurst. After the meeting the claimant said she bumped into Mr Broadhurst in the corridor and he started shouting at her and saying racist comments such as “fucking foreigners” and “an English person should be doing your role” and “Brexit will finish you all”. He also told the claimant to “fuck off” and said, “you lot should go back to your own countries”. The claimant said she was shocked and told him she would report him to the Head Teacher. The claimant started walking towards Mr Irwin's office and Mr Broadhurst continued to shout at her, she said, in front of Julie Richards and Ian Irwin who stood there saying nothing. However, their evidence was that they observed nothing of that nature. We cannot accept the claimant's evidence here as she did not confirm any of these details in an email or any other communication at the time. We find it inconceivable if this had been said that the claimant would not have reported it.

199. Mr and Mrs Broadhurst left that day and went off sick until a later date in July. The Head Teacher accepted there had been an argument and said that the claimant had upset Mrs Broadhurst and that Mr Broadhurst would clearly be affected if his wife was upset.

200. On 30 June the Head Teacher emailed the claimant to ask her to have a discussion about Mr and Mrs Broadhurst, where he told her that Mrs Broadhurst was being offered a new role as a teaching assistant starting in September but she would be helping out in the office over the summer. He said that her position would be advertised as a handyman's role and the claimant could tell the staff. Two of the cleaners said that Mrs Broadhurst had told them something different but would not say what, and therefore the claimant went to see the Head Teacher to ask him to be honest with her but he said he knew nothing different.

201. The claimant then told the Head Teacher she was overloaded with work now she no longer had an assistant, and she was acute pain and was feeling depressed. The Head Teacher said the role would be advertised during the summer. However, the claimant says nothing was done.



202. On the claimant reported that 14 July Mr Broadhurst said that he was not going to do any further overtime and blamed the claimant for being unfair. The claimant said she reported this to the Head Teacher.

203. The claimant felt that the Head Teacher had ignored her over the summer, as did Mrs Broadhurst, and that she would not speak to the claimant directly but would call Mr Broadhurst or Mauro Amadeu to give them any relevant information.

204. There was an issue over the keys where the claimant wanted Mrs Broadhurst's keys back but Julie Richards said Mrs Broadhurst could keep them. However Mrs Richards' evidence she had nothing to do with this and knew nothing about it. She was a credible witness and we accept the claimant must have been mistaken about this.

205. In July, Julie Richards had emailed the claimant to say that the telephone number on the school gates was not being answered by the caretakers and they had received complaints. The claimant objected to this as the reception staff could open the gates if they saw there was somebody there on CCTV, and that the telephone number was only to be used where there were no office staff and that the caretakers had too much work to do. The claimant felt the office staff made her life unnecessarily difficult. The claimant provided other examples of this.

206. The claimant also complained on 24 August that she had emailed the Head Teacher saying that she was not sure about keeping a probationary employee (Denise) but then the Head Teacher went ahead and decided to employ her permanently without discussing it with the claimant. Again the claimant said that the Head Teacher was in during the summer school holidays, particularly for the GCSE results, but did not speak to her.

207. On 30 August one of the cleaners raised complaints about the claimant to the Head Teacher, and the Head Teacher recommended that the claimant should have a chat with Mrs Nicholls. The complaint was that the claimant was sending in other cleaners to clean her area after Mrs Nicholls had cleaned it.

208. The claimant said that Mr Broadhurst also told her to "fuck off" at the beginning of September when she asked him if he would do overtime to get the floors polished. However again there was no corroboration and we do not accept her said this.

209. Term restarted on 5 September and an email was sent by the Head Teacher on 4 September saying that he had tried to find the claimant the previous Friday for a catch up but she was not in. The claimant replied to say she had had an accident at work on the Friday and had been working at Moat House and Pendlebury on the Thursday and Friday. She felt the Head Teacher was implying that the claimant was skiving. However it serves to show that the Ht was not ignoring the claimant as she maintained. She said she would sent the Head Teacher a list of the works carried out over the summer, which she did do the next day.

210. At a meeting on 7 September following a female Polish worker's resignation the claimant alleged that Mr Broadhurst showed how happy he was that she had left by saying, "Another of the lot gone, that's good for us, we need the jobs for us British. Now we need to get rid of her mate" [meaning Artur Lula]. The other cleaners overheard this but said they did not want to take it further. Mr Broadhurst also suggested that "we got her a ticket to leave" (i.e. a ticket back to Poland). He

also said, "We can get Spanish gypsies, a donkey or a cow", which the claimant understood to mean a leaving present for her. She asked him to explain what he meant but he asked was she accusing him of something. Again we do not accept the claimant's evidence that this was aid due to our findings on credibility and the lack of corroboration.

211. The claimant asked for absence for the Tribunal hearing of her colleague starting on 12 September but the Head Teacher put her off, saying that nothing was certain. The claimant felt this was a refusal and after speaking to the employee concerned was told that it was definitely going ahead, so the claimant went back to speak to the Head Teacher and discussed the issues regarding filling the vacant deputy's post. The claimant said the Head Teacher sounded angry and said that she did not need the absence request, and the employee concerned should not be telling her to request it, but the claimant said it was a solicitor. The Head Teacher said he was too busy to have a further meeting and the claimant felt he was angry at her.

212. On 9 September the claimant emailed the Head Teacher to say she wanted clarification on the management of the cleaning of site staff as Julie Richards, Mr Irwin's PA, had been authorising their toil, holiday and giving of references. The claimant then found out that Mr Irwin had granted flexible working arrangements to Kerry Hill, the Office Manager. She was upset about this as she felt that she had been asking for this on an ongoing basis but the Head Teacher had refused this to her. The HT said that the 'Kerry' had a data input role which required peace and quiet for a short period to complete and therefore she was allowed to work on it from home and it was not because her husband had been in a bad car accident.

213. The claimant went to see the Head Teacher at 5.00pm the same day to discuss this and other issues relating to her workload. The claimant said she pleaded with the Head Teacher to allow her some flexibility with her hours and work from home, and he said there were good reasons for giving it to Kerry Hill but that he needed her there 9.00am until 5.00pm. The claimant asked the Head Teacher what was happening with recruiting the handyman and was told that he would not be replacing Mrs Broadhurst as there was a recruitment freeze. The claimant said this was unreasonable and that he was not supporting her, and that she was resigning with immediate effect. The Head Teacher did not try and stop her or persuade her to stay, and simply said it was up to her and to put her decision in writing.

214. There was a debate in the hearing as to whether further staff were needed in the estates department in any event. Mrs Broadhurst gave evidence that after the claimant left she went back to her old role and the claimant was never replaced as there had been no need to. Further additional documentation was brought to the hearing to establish the school spent a greater amount on its estates team than other comparable schools. However we felt this was inconclusive due to the difficulties of making a comparison.

215. The claimant came into work on the Saturday to open and lock up after a school rehearsal of Grease and then she left. She confirmed her resignation and the reasons for it. Her email said:

"Further to our meeting today, please accept my resignation as Estates Manager with immediate effect. It is with regret that I have made this decision but as I have explained to you in our meeting I am very unhappy

at work and I do not feel that I am getting the support needed. I would like to make it clear that my resignation is not due to personal issues at home. I understand that this is not in accordance with my contract of employment but in our meeting you said that I could resign with immediate effect and to put it in writing to you. I understand I will be paid any holidays and overtime worked to date. I would like to add I have always put my heart into the school and this is a very painful departure.”

216. Mr Irwin replied, agreeing that the claimant could leave and a handover meeting would be arranged for 12 September where the return of keys and the collection of personal belongings could take place. He said it was a shame she had decided to resign as she had been an excellent Estates Manager in the school and he wished her good luck.

## **The Law**

### Constructive Dismissal

217. An employee may lawfully resign employment with or without notice if the employer commits a repudiatory breach. Resignation can be interpreted as an election by the employee to treat himself as discharged from his contractual obligations by reason of the employer’s breach. This is known as constructive dismissal and is a species of statutory unfair dismissal by virtue of section 95(1)(c) Employment Rights Act 1996.

218. It was described in **Western Excavating (ECC) Limited v Sharpe [1978]** by Lord Denning as follows: “If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance. If he does so then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed”.

219. An employee must act reasonably quickly in responding to a repudiatory breach of contract otherwise s/he may be taken to have accepted the continuation of the employment contract and affirmed the contract. However, mere acceptance of salary without the performance of any duties by the employee will not necessarily be regarded as an affirmation of the contract following an employer’s repudiation. In **W E Cox Toner (International) Ltd v Crook 1981 EAT** it was said that delay by itself was not enough there either had to be an additional factor(s) or continued delay. An employee can work ‘under protest’ but must make it clear that he or she is reserving their right to accept the repudiation of the contract.

220. The EAT also considered this matter in **Chindove v William Morrison Supermarkets Limited [2004]** which said that:

“He may affirm a continuation of the contract in other ways: by what he says, by what he does, by communications which show that he intends the contract to continue, that the issue is essentially one of conduct and not of time. The reference to time is because if, in the usual case the employee is at work then by continuing to work for a time longer than the time in which he might reasonably be expected to exercise his right he is demonstrating by his conduct that he does not wish to do so. But there is no automatic time, all depends upon the context. “

221. A claimant can rely on implied or express terms of the contract. Express terms can be written or oral. The claimant relied on the breach of the implied term of trust and confidence in this case as well as the duty to provide a safe working environment and to investigate a grievance.

222. In **Wood v WM Car Services (Peterborough) Limited [1982]** the Court of Appeal approved the development of the implied term of trust and confidence. It was finally given House of Lords' approval in **Malik v BCCI** in 1997 where Lord Steyn stated that the question was whether the employer's conduct so impacted on the employee that viewed objectively the employee could properly conclude the employer was repudiating the contract. It is not necessary to show that the employer intended to damage or destroy the relationship of trust and confidence. The court said the Tribunal should "look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that an employee cannot be expected to put up with it".

223. In **Malik** the formulation is that the employer "must not conduct itself in a manner calculated and likely to destroy confidence and trust" and it is relevant to consider whether the employer's conduct in question was "without reasonable and proper cause". This is not the same as the range of reasonable responses test. However clearly if there was proper cause the claim will fail.

224. In proving breach an employee may pray in aid evidence of past repudiatory breaches even though he waived his right to object to them at the time. **Lewis v Motorworld Garages Limited [1985]**.

225. A failure to make adequate investigations into allegations of bullying or harassment can amount to a fundamental breach of contract – **Reed and another v Stedman EAT [1997]**.

226. Regarding breach of a suitable work environment/health and safety this was established in **Walton and Morse vs Mrs Jill Dorrington EAT (1997)**.

227. The particular incident which causes the employee to leave may in itself be insufficient to justify resignation but may amount to constructive dismissal if it is the last straw in a deteriorating relationship. This means that the final episode itself need not be a repudiatory breach of contract although there remains the causative requirement that the alleged last straw must itself contribute to the previous continuing breaches by the employer, **Waltham Forest Borough Council v Omilaju [2004] CA**, and not be an unjustified sense of grievance.

228. In **Kaur vs Leeds Teaching Hospitals NHS Trust [2018] CA** a unjustified act contributing to a course of conduct or a breach of contract can revive early affirmed repudiatory breaches but the tribunal's decision was upheld that the application to the claimant of a properly followed and justified disciplinary procedure could not be a repudiatory breach or an unjustified act.

229. Therefore the claimant has to show that the matters he relies on either individually or cumulatively amounted to a breach of the implied term of trust and confidence. He then has to establish that that breach played a part in his decision to resign (here a resignation letter maybe of evidential value but it is not determinative of what was the effective cause for the resignation) and he has to show that he has not unduly delayed or affirmed the contract.

230. A claimant can also rely on specific breaches without a continuing course of conduct however if they are in the past an argument maybe made that the claimant has either affirmed by not doing anything about it or it may find as a fact that the claimant has not resigned because of that breach given the passage of time.

231. The respondent can argue that there was a fair dismissal if constructive dismissal is found. Here the respondent relied on the cumulative performance/conduct issues evidenced in respect of the claimant.

### Disability Discrimination

#### Disability status

232. The respondent in this case disputes disability, therefore it is relevant to consider section 6 of the Equality Act 2010 which says that:

- “(1) A person (P) has a disability if –
1. P has a physical or mental impairment; and
  2. The impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities...
- (2) This Act (except part 12 and section 190) applies in relation to a person who has a disability as it applies in relation to a person who has a disability; accordingly excepting that part and that section) –
- (a) A reference (however express) to a person who has a disability includes a reference to a person who has had the disability; and
  - (b) A reference (however express) to a person who does not have a disability includes a reference to a person who has not had the disability.”

233. A long-term adverse effect” is defined in Schedule 1 as:

- “(1) The effect of an impairment is long-term if –
1. It has lasted for at least 12 months;
  2. It is likely to last for at least 12 months; or

It is likely to last for the rest of the life of the person affected.”

234. There is a statutory code of practice to be taken into account in determining questions relating to the definition of disability issued in 2011, the relevant parts of this are as follows:

- A1. A person has a disability for the purpose of the Act if he or she has a physical or mental impairment and the impairment has a substantial or long term adverse effect on his or her ability to carry out normal day to day activities.

A2. This means that in general:

- (1) The person must have an impairment that is either physical or mental (see paragraphs A3 to A8).
- (2) The impairment must have the adverse effects which are substantial (See Section B.
- (3) The substantial adverse effects must be long term, See Section C; and
- (4) The long term substantial effects must be effects on normal day to day activities, see Section D.

235. Whilst it is not necessary for the cause of the impairment to be established the effects that are experienced must arise from the physical or mental impairment. B1 concerns the substantial adverse effect requirement and defines it as follows “a substantial effect is one which is more than minor or trivial”. The following matters should be taken into account, the time taken to carry out an activity, the way in which the activity is carried out and the cumulative effects of that impairment and how far a person can be reasonably expected to modify his or her behaviour with coping and avoidance strategies to prevent or reduce the effects of an impairment on normal day to day activities. The effects of the environment should be taken into account and in relation to the effects of treatment that should be discounted and includes therapies as well as drugs.

236. In respect of “long-term”, the meaning of long-term is set out at section C1 as follows:

“The Act states that for the purposes of deciding whether a person is disabled a long-term effect of an impairment is:

- (a) which has lasted for at least twelve months; or
- (b) whether the total period for which it lasts from time from the first onset is likely to be at least twelve months; or
- (c) which is likely to last for the rest of the life of the person affected.”

237. Section D addresses normal day to day activities. This is no longer defined as is explained in Section D2 but general day to day activities are seen as shopping, reading, writing, having a conversation, using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport and taking part in social activities. It can include general work-related activities, study and education related activities, interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, keeping to a timetable or shift pattern. They did not include activities which are normal for a particular person or a small group of people however it is not necessarily which is carried out by the majority of people.

238. Section D17 states that some impairments may have an adverse impact on the ability of the person to carry out normal day to day communication activities, for example, they may adversely affect whether a person is able to speak clearly at a normal pace and rhythm and to understand someone else speaking normally

in the persons native language. Some impairments could have an adverse effect on a person's ability to understand human non-factual information and non-verbal communication such as body language and facial expressions. Account should be taken of how such factors can have an adverse effect on normal day to day activities. Examples given of a man with Asperger's Syndrome finds it hard to understand non-verbal communication such as facial expressions and non-factual communication such as jokes, he takes everything said very literally.

239. Section D19 says a person's impairment may adversely affect the ability to carry out normal day to day activities that involve aspects such as remembering to do things, organising their thoughts, planning a course of action and carrying it out, taking new knowledge and understanding spoken or written information. This includes considering whether the person has cognitive difficulties or learns to do things significantly more slowly than a person who does not have an impairment.

240. In the case of **Morgan v Staffordshire University [2002] EAT** useful guidance was given in respect of mental impairment such as relied on here, even though this was originally in relation to the Disability Discrimination Act 2005 including as follows:

"Tribunals are unlikely to be satisfied of the existence of a mental impairment in the absence of suitable expert evidence, however this does not mean that a full Consultant Psychiatrist's report is needed in every case, there will be many case where the illness is sufficiently marked for the claimant's GP to prove it, whoever deposes it will be proven for the specific requirements of a legislation to be drawn to that person's attention. If it becomes clear that despite a GP's letter or other initially available indication an impairment is to be disputed on technical medical grounds then thought will need to be given to further medical evidence. The EHRC Employment Code makes it clear that the term mental impairment is intended to cover learning disabilities".

241. Regarding whether the impairment is likely to have lasted 12 months where it has not actually lasted 12 months at the time of the alleged discrimination paragraph C3 of the guidance states that the test for this is if "it could well happen". In **SCA Packing Limited v Wall [2009] HL** the test of "it could well happen" was endorsed rather than more probable than not and it was explained that likely meant something that was a real possibility rather than something that was probable or more likely than not. The issue of how long an impairment is likely to last has to be determined at the date of the discriminatory act and not at the date of the Tribunal hearing. Anything that happens after the date of the discriminatory act is not relevant. Account should be taken both of the typical length of such an effect on an individual and any other relevant factors specific to the individual such as general state of health and age.

242. In respect of determining the question of disability the tribunal should disregard the effects of medication (Paragraph 5(1) Schedule 1. The tribunal should also take into account how far a person uses coping strategies to manage their condition and if without them there would be a substantial adverse effect bearing in mind what behavioural modifications it would be reasonable to expect the person to adopt in any event.

243. Paragraph B6 of the guidance also states that account should be taken of multiple impairments. Where none in isolation has substantial adverse effects account should be taken of whether taken together they would do.

Reasonable Adjustments

244. The claimant makes a reasonable adjustment claim. Section 20 says:

“(1) Where this Act imposes a duty to make reasonable adjustments on a person this section, sections 21 and 22 and the applicable schedule apply, and for those purposes a person on whom the duty is imposed is referred to as A.

245. The duty comprises the following three requirements. The first requirement is that the respondent has applied a provision, criterion or practice (PCP), that the PCP puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, that the respondent knew or ought to have known that the claimant was disabled and put at a substantial disadvantage. If these matters are established the respondent is then obliged to take such steps as it is reasonable to have to take to avoid the disadvantage.

246. In **The Royal Bank of Scotland v Ashton [2011] EAT** it was stated that the PCP must be a disadvantage which is substantial and which is not to be viewed generally but to be viewed in comparison with persons who are not disabled, and by comparing to non disabled comparators it can be determined whether the employee has suffered a substantial disadvantage. The correct comparators are employees who could comply or satisfy the PCP and were not disadvantaged.

247. In **Environment Agency v Rowan EAT [2007]** the EAT said:

“A Tribunal must go through the following steps:

- i. Identifying the PCP applied by or on behalf of the employer;
- ii. The identity of non disabled comparators where appropriate;
- iii. The nature and extent of the substantial disadvantage suffered by the claimant.”

248. Serota J stated:

“In our opinion an Employment Tribunal cannot properly make findings of a failure to make reasonable adjustments...without going through that process. Unless the Employment Tribunal has identified the four matters we have set out above it cannot go on to judge if any proposed amendment is reasonable. It is simply unable to say what adjustments were reasonable to prevent the provision, criterion or practice, or feature, placing the disabled person concerned at a substantial disadvantage.”

249. Paragraph 21 of schedule 8 to the Equality Act provides that:

“A person is not subject to the duty if he does not know and could not reasonably be expected to know that an interested disabled person has a disability and is likely to be placed at a disadvantage by the employer’s PCP,



the physical features of the workplace or a failure to provide an auxiliary aid.”

250. This encapsulates the idea of constructive knowledge i.e. that either someone within the respondent’s organisation who is responsible for these matters, such as Occupational Health, knows of the substantial disadvantage, or that the respondent should have known from all the factors available but closed their eyes to it.

251. The adjustment has to be reasonable and effective. Section 18B(1) of the Disability Discrimination Act 1996 (these matters are no longer in the Equality Act but they are useful to have in mind in considering what would be a reasonable adjustment) set out some factors to take into consideration as follows:

- “(1) The extent to which the step would prevent the effect in relation to which a duty was imposed.
- (2) The extent to which it was practical for the employer to take the step.
- (3) The financial or other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of its activities.
- (4) The extent of the employer’s financial and other resources.
- (5) The availability to the employer of financial or other assistance with respect to taking the step.
- (6) The nature of the employer’s activities and size of its undertaking and matters relevant to a private household.”

### Indirect Discrimination

252. Under section 19(1) of the Equality Act 2010 indirect discrimination is defined as occurring when:

“A person (A) applies to another (B) a provision, criterion or practice (PCP) that is discriminatory in relation to a relevant protected characteristic of B’s.

253. A PCP has this effect if the following is established:

- (1) A applies or would apply the PCP to persons with whom B does not share the relevant protected characteristic.
- (2) The PCP puts or would put persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share the characteristic.
- (3) The PCP puts or would put B at that disadvantage; and
- (4) A cannot show that the PCP is a proportionate means of achieving a legitimate aim.

254. In respect of an indirect discrimination claim relating to disability, section 6(3)(b) of the 2010 Act states:

“A reference to persons who share a protected characteristic is a reference to persons who have the same disability.”

255. It is for the claimant to show that the PCP puts persons with whom B shares the relevant protected characteristic at a particular disadvantage when compared with persons with whom B does not share it, and puts or would put B at that disadvantage.

256. There was nothing in section 19 to say that the employer must be aware of the disability, but in reference to any remedy arising no financial compensation is payable if the PCP was not applied with the intention of discriminating against the claimant. It is for the employer to objectively justify the PCP if the claimant overcomes the other hurdles.

### Race Discrimination

257. The claimant brings a claim of race discrimination in respect of direct and harassment.

258. Section 13 of the Equality Act 2010 sets out the definition of direct discrimination. This is where (1) A person (A) discriminates against another (B) if because of a protected characteristic A treats B less favourably than A treats or would treat others.

259. Section 136 of the Equality Act 2010 sets out the burden of proof to be applied in discrimination cases. This says that if there are facts from which a court could decide in the absence of any other explanation that a person (A) contravened the provision concerned the court must hold that the contravention occurred.

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

260. The shifting burden of proof rule assists Employment Tribunals in establishing whether or not discrimination has taken place. In **Martin v Devonshires Solicitors [2011]** the EAT stressed that “While the burden of proof provisions in discrimination cases are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination – generally that is facts about the respondent’s motivation ... they have no bearing where the Tribunal is in a position to make positive findings on the evidence one way or another and still less where there is no real dispute about the respondent’s motivation and what is in issue as its correct characterisation in law”, and in **Laing v Manchester City Council** Justice Elias then President of the EAT said that if the Tribunal is satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination then that is the end of the matter. It is not improper for the Tribunal to say in effect there is an open question as to whether or not the burden has shifted but we are satisfied here that even if it has the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race. At the same time he also said the Tribunal cannot ignore damning evidence from the employer as to the explanation for his conduct simply because the employee has not raised a sufficiently strong case at the first stage. That would be to “let form rule over substance”. So if the matter is not clear a claimant needs to establish a prima facie case of discrimination, which is shorthand for saying he or she must satisfy stage one of a two-stage shifting burden of proof then the burden shifts to the respondent to explain the conduct.

261. In **Laing** Elias suggested a claimant can establish a prima facie case by showing that he or she has been less favourably treated than an appropriate comparator. The comparator must of course be in the same or not materially different circumstances. A paradigm case is where a black employee as well qualified as a white employee is not promoted where they were the only two candidates for the job. However, the case obviously becomes complicated where there are a number of candidates and there are other unsuccessful white candidates who are equally well qualified. If there are no actual comparators of course hypothetical comparators can be used.

262. The question was asked in **Madarassy v Nomura International Plc [2007] CA**, is something more than less favourable treatment required? Lord Justice Peter Gibson stated in **Igen v Wong [2005]** that “The statutory language seems to us plain. It is for the complainant to prove the facts from which the Tribunal could conclude in the absence of an adequate explanation that the respondent committed an unlawful act of discrimination. It does not say that the facts to be proved are those from which the Tribunal could conclude that the respondent could have committed such an act ... The relevant act is that the alleged discriminator treats another person less favourably and does so on racial grounds. All those facts are facts which the complainant in our judgment needs to prove on the balance of probabilities. **Igen v Wong** also said it was not an error of law for a Tribunal to draw an inference of discrimination from unexplained unreasonable conduct at the first stage of the two-stage burden of proof test. It seems the difference between the approach in **Madarassy** of Mummery in saying that a difference in treatment and a difference in status is not enough, and that of Elias in **Laing v Manchester Council**, which followed **Igen v Wong** stating that it was sufficient to establish genuine less favourable treatment if at the first stage the employer cannot rebut by evidence and it takes into account the fact that a claimant will not have overt evidence of discrimination but could have evidence of how they had been treated differently to other employees who do not share the relevant protected characteristic.

263. In the recent case of **Efobi v Royal Mail [2017] EAT** it was suggested that there was no burden on the claimant to establish a prima facie case before looking to the respondent’s explanation, and that the Tribunal was required to look at all the facts of the case and draw its own conclusions as to whether the burden had shifted. However, in another recent case **Ayodele vs Citylink Ltd (2018) Court of Appeal** decided that the correct position was as stated in **Madarassy**.

264. Another approach is to consider whether a Tribunal should draw inferences from the primary facts which would then shift the burden, and if a non-convincing explanation is provided then discrimination would follow.

265. Regarding inferences Employment Tribunals have a wide discretion to draw inferences of discrimination where appropriate but this must be based on clear findings of fact and can also be drawn from the totality of the evidence. In **Glasgow City Council v Zafar [1998]** unreasonable conduct by itself is not sufficient. However, where it is said that the unreasonable conduct is displayed ubiquitously an employee would need to provide proof of that, i.e. A was treated badly not because of his race but because the employer treated all employees badly. There must be some evidence of this and it not just be an assertion, and likewise with unexplained unreasonable conduct.

266. Inference can be drawn from other matters such as breaches of policy and procedures, statistical evidence, breach of the EHRC Code of Practice, failure to provide information.

### Harassment

267. Harassment is defined in section 26 of the Equality Act 2010, which states:

- “(1) 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 –
    - (ii) Violating B’s dignity, or
    - (iii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) ...
- (3) ...
- (4) In deciding whether conduct has the effect referred to in subsection 1(b) each of the following must be taken into account:
- (a) The perception of B;
  - (b) The other circumstances of the case; and
  - (c) Whether it is reasonable for the conduct to have that effect.”

### Victimisation

268. Section 27(1) of the Equality Act 2010 states that:

“A person (A) victimises another person (B) if A subjects B to a detriment because –

- (a) B does a protected act, or
- (b) A believes that B has done or may do a protected act.”

269. A protected act for the purposes of section 27(1) are:

- Bringing proceedings under the Equality Act;
- Giving evidence or information in connection with proceedings under the Equality Act;
- Doing any other thing for the purposes of or in connection with the Equality Act;

- Making an allegation, whether or not express, that A or another person has contravened the Equality Act.

270. Therefore, it needs to be established that the protected act comes within the definition, then that the claimant was subjected to a detriment of less favourable treatment, and finally that that detriment or less favourable treatment was because the claimant had done a protected act or because the employer believed he or she had done or might do a protected act.

271. The types of detriment situations which arise are set out in section 39(3) and (4). Section 39(4) states that:

“An employer (A) must not victimise an employee of A’s (B) – as to the terms of B’s employment; in the way A affords B access or by not affording B access to opportunities for promotion, transfer or training, or for any other benefit, facility or service; by dismissing B, or by subjecting B to any other detriment.”

### Time Limits

272. Under section 123 Equality Act 2010 a claim must be presented to the Employment Tribunal within a period of three months beginning with the date of the act complained of. Where there has been a dismissal or resignation, time will run from any earlier acts a claimant wishes to rely on unless it can be argued it is a continuing act. In **Barclays Bank PLC v Kapoor [1991] House of Lords** a distinction was drawn between a continuing act and an act that has continuing consequences.

273. In **The Commissioner of the Police of the Metropolis v Hendricks [2003] Court of Appeal**, the Court of Appeal stated that:

“Tribunals should not take too literal approach to the question of what amounts to continuing acts. A policy of discrimination against a particular individual need not be established. If there was an ongoing situation or a continuing state of affairs in which the claimant was discriminated against then that would be sufficient. The question was whether there was an act extending over a period as distinct from a succession of unconnected or isolated specific acts for which time would begin to run from the date when each specific act was committed.”

274. This test was confirmed in **Lyfar v Brighton & Sussex University Hospitals Trust [2006] Court of Appeal**.

275. Where a claim is out of time, the time limit can be extended on a just and equitable basis (section 123(1)(b) Equality Act 2010). This is a wider discretion than under Employment Rights Act claims in general.

276. In **Robertson v Bexley Community Centre (t/a Leisure Link) [2003] Court of Appeal**, the Court of Appeal stated that:

“There is no presumption time should be extended, it has to be justified. A Tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time – the exercise of the discretion is the exception rather than the rule.”

277. A Tribunal can also consider the checklist contained in section 33 of the Limitation Act [1980] as modified by the EAT in 1997 in **British Coal Corporation v Keeble** which says that:

“The court should look at the prejudice each party would suffer as a result of the decision reached, to have regard to all the circumstances of the case and in particular the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party sued has cooperated with any request for information, the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action, and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.”

278. The situation on time limits has changed to some extent now by the introduction of the compulsory ACAS conciliation process whereby a claimant has to apply to ACAS before bringing a Tribunal claim. The procedure is set out in sections 18A and 18B of the Employment Tribunals Act 1996 and in the early conciliation Rules of Procedure contained in the schedule to the Employment Tribunals (Early Conciliation: Exemption and Rules of Procedure) Regulations 2014. Under this procedure a claimant has to inform ACAS they intend to bring a claim, whereupon ACAS instructs a conciliation officer who has, in most cases, one month to attempt to resolve the dispute between the parties. That can be extended if the parties agree for up to two weeks. If a settlement is not reached ACAS the ACAS conciliation officer issues the claimant with an early conciliation certificate, following which the claim may then be brought.

279. Under section 207B of the Employment Rights Act 1996 the new time limits are explained. This says:

“(2) In this section –

- (a) Day A is the day on which the complainant or applicant concerned complies with the requirements in subsection (1) of section 18A of the Employment Tribunals Act 1996 (the requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought; and
  - (b) Day B is the day on which the complainant or applicant concerned receives or if earlier is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section;
- (3) In working out when a time limit set by a relevant provision expires the period beginning with the day after day A and ending with day B is not to be counted.
- (4) If a time limit set by a relevant provision would, if not extended by this subsection, expire during the period beginning with day A and ending one month after day B, the time limits expires instead at the end of that period.

- (5) Where an Employment Tribunal has power under the Act to extend a time limit set by the relevant provision the power is exercisable in relation to the time limit as extended by this section.”

280. In this case there was not really an issue about this extension as the matters which were out of time were discrimination matters which arose more than three months before the claimant resigned, except in one instance where the claimant relied on 16 June which was less than three months before she resigned, but certainly three months before she went to obtain her certificate from ACAS. Accordingly, without continuing conduct that would ostensibly be out of time and would require the Tribunal to exercise its just and equitable discretion.

### **Parties' Submissions**

The parties submissions( both written and oral) were lengthy and helpful. They are not set out in detail here but were considered in full and are incorporated into our conclusions

### **Conclusions**

#### Disability Status

281. The claimant relies on the following disabilities:

- (1) Chronic fatigue syndrome/ME;
- (2) Underactive thyroid;
- (3) Depression;
- (4) Chronic pain.

282. Our findings are as follows:

- (1) that the claimant was disabled by way of underactive thyroid; clearly if the effects of medication are ignored there would be substantial adverse effect on the claimant's day to day activities. Further it had lasted for a significant number of years (since 2012) by the date of the events relied on.
- (2) In respect of depression the claimant's medical records show that she was receiving treatment for depression for a number of years. It was diagnosed in 2003.
- (3) In respect of chronic pain we find the claimant did not provide sufficient detail of substantial adverse effect further her operation reduced it and she had no absences following her operation because of it.
- (4) In relation to CFS, the medical evidence was strange in that an OH report of 30 May stated that C had CFS "as the R knew" but there was no evidence the respondent had been advised prior to this OH report. It is not clear on what basis OH confirmed the CFS diagnosis. There was reference in the claimant's medical notes from 2002 but nothing further. That reference was also before the claimant's underactive

thyroid was diagnosed and the effects are similar. The issue of whether the claimant is disabled is not a matter however simply to be gleaned for medical records the test in the Equality Act has to be met. We find that the claimant was not disabled at the relevant time in relation to CFS, she had only one day off due to CFS and there was no evidence that she was persistently late for work or had to go home early or even lie down at work to rest as would be expected with such a condition. There was lack of evidence regarding substantial adverse effect. We have taken coping strategies into account but there was no evidence of them during the working day and therefore we find these strategies could not have been needed, we cannot accept that even if the claimant rested during her free time this would be sufficient to alleviate such a serious chronic condition. In any event we only had general evidence regarding coping strategies, the claimant did not point how she had coped at any specific time during her employment.

- (5) We have considered whether it is appropriate to consider the overall effects of the claimant's conditions but as they were quite distinct and we have found she was disabled in respect of two of them we have not considered it further.

Reasonable adjustments claim

Regarding the requirement to work 9-5/work from home

283. We find that there was no evidence that working 9-5 put the claimant at a substantial disadvantage as she had only one day's absence in the period in question which could arise from alleged stress of working these hours. Most of her absences were for operations or stress/depression or vertigo which were unrelated to the hours of work and therefore it cannot be said she was at a substantial disadvantage when compared to other colleagues.

284. Further did the respondent have the requisite knowledge? as the claimant relied on her CFS as the basis of requiring the flexible hours we find that the respondent had been told she had CFS and that it was a disability and they were told that flexible working would assist therefore they had some knowledge but the respondent was entitled to take the view that there was no actual substantial disadvantage in requiring the claimant to work these hours as she had worked them without any major problems arising.

285. If we are wrong in relation to the above and there was a demonstrable substantial disadvantage we would find that the respondent could have made a temporary adjustment to the claimant's hours and then reviewed whether it had a detrimental effect on the running of the estates department, therefore it would have been a reasonable adjustment. In respect of working from home we do not accept that the bare fact 'Kerry' was allowed to work from home for a time limited period is determinative of the reasonableness of the adjustment. In our view given that the claimant had whilst recovering from operations worked from home this would have been a reasonable adjustment.

286. In respect of time the claimant did ask for flexibility with her hours at the X stage sickness review meeting and the respondent's failure to make an actual decision in that regard means that there was a continuing failure so that the claim



would not be out of time. In relation to working from home however this was raised at the last meeting with the HT so it is in time.

*Being expected to work without an assistant*

287. We do not accept that the absence of an assistant would have caused the claimant a substantial disadvantage in comparison with person's who are not disabled. The claimant's disadvantage would be the same as any other employee in her situation where there had been a recruitment freeze. Neither would the respondent have known this would place the claimant at a substantial disadvantage – she had agreed to her assistant's post being replaced by a handyman therefore she had accepted since June/July that she would be working without an assistant of the type Mrs Broadhurst had been. Further the claimant has complained in these proceedings about her cleaning supervisory duties being given to Mrs Broadhurst which is inconsistent with a contention she was overworked

Indirect discrimination

288. Re the requirement to work 9 to 5 without flexibility or being able to work from home. The claimant had had no time off save for one day due to CFS or any of the other disabilities which could have been alleviate by home working so we find the claimant was not put at a particular disadvantage by not being able to work different hours or from home. Further the respondent had a legitimate aim, her effectiveness required her to be onsite and it was a proportionate means of achieve effective management as there was no evidence working on the premises was causing the claimant any ill health and she only lived 300 yards away in any event.

289. In relation to not having an assistant for the reasons we have referred to above in relation to substantial disadvantage we find the claimant was not put at a particular disadvantage. The respondent could objectively justify the decision not to recruit a handyman (which the claimant had agreed to in July as an acceptable response to Mrs Broadhurst being moved) on the basis of the recruitment freeze, which was a legitimate aim and threw as no evidence it would have a severe effect on the claimant, given the points we have made in relation to the reasonable adjustments claim. It also goes to objective justification that the claimant resigned immediately and did not allow any time for discussion about this.

Victimisation due to a protected act in connection with disability discrimination

290. The claimant's protected act was giving evidence in relation to a colleague's discrimination claim. The claimant refers to several detriments that she says she suffered because of this. We have found factually some of these are incorrect:

- (i) Her office being moved without any consultation – we do not accept this is what occurred. While the claimant was absent on sick leave there was a reorganisation and the matter of which office she was going to have on her return was a moot point which was subject to consultation with her. The claimant was never expected to work under the stairs and she has exaggerated this. Her items were stored there pending her return to work.
- (ii) That Mr Irwin ignored her – the claimant had no cogent evidence that the Head Teacher ignored her after she had agreed to be a witness as the claimant could point to nothing concrete other than he did not

Speak to her over the summer holidays when he was in the building. However, the fact that the Head Teacher denied deliberately doing this, and in the absence of any other cogent evidence, we find that the factual basis of this allegation was not substantiated. Neither did we find the claimant was excluded from meetings relating to school buildings, maintenance budget and security training. Again there was no cogent evidence regarding these specific matters.

- (iii) Being unreasonably accused of breaching confidentiality in relation to the Tribunal proceedings and being warned to do so was a sackable offence. It was established that at the time there was not an anonymity order in place at the Tribunal. However, it is well known that the claimant in that case was seeking one and therefore we find that the Head Teacher genuinely thought that this was the situation and the reason therefore why he approached the claimant about this matter was because he was concerned there would be a breach of the Tribunal's rules of orders and not because she had done a protected act. We have made a finding that Mrs Broadhurst gave information to the HT which genuinely led him to conclude the claimant had been talking about AB's case.
- (iv) In respect of moving the claimant's office and belongings, we have found this was an exaggeration.
- (v) Being accused of upsetting a teacher when the claimant moved into the teacher's room despite the second respondent being the one that asked the claimant to move there – the claimant accepted in evidence this was completely incorrect and that she alleged a colleague of hers who she line managed moved her things into the office without her specific say so. We do not accept the claimant's evidence on this. She has exaggerated the situation. It was clearly under discussion and no final decision had been made, and yet all her belongings were unilaterally moved in. We have little doubt that this was at the instigation of the claimant given the person who moved the belongings was under her line management control.
- (vi) Failure to have the first day back talk through the works that had carried out over the summer – the claimant has not established that this was the normal procedure. We accept the Head Teacher's evidence that he was incredibly busy at the beginning of term. There was evidence he tried to see her in early September but she was not on the premises. The claimant managed to see him within a reasonable period of term beginning.

291. Accordingly, the alleged detriment is not established and therefore the claimant's claim of victimisation fails and is dismissed.

#### Race discrimination

292. The last incident the claimant relied on was 14<sup>th</sup> June 2016 accordingly it is out of time. There was no particular reason advanced for extending time on a just and equitable basis and accordingly we do not exercise our discretion.

293. In any event we do not accept the claimant's contentions regarding the comments made as they were not corroborated at the time when many other things

were recorded by the claimant, we did not accept the claimant's dairy notes as they were not referred to at the time and because of our doubts about the claimant's credibility.

294. The only mention of a specific act of harassment was in the claimant's grievance, there was date attached was September 2014. Accordingly that is also out of time. As we have found no continuing conduct that is in time the claim is outside our jurisdiction.

### Constructive Dismissal

295. We will go through each matter the claimant relies on for constructive dismissal and then take an overall view:

#### Hours

- (1) We do not accept that the claimant had an open-ended agreement with the previous Head Teacher that she could work at home whenever she wanted. Whilst the Head Teacher prior to Mr Irwin may have allowed her to work flexible hours. We accept the respondent's position that at the highest the previous headteacher had agreed she could work 11.00am until 7.00pm when she could not get in early. The claimant when this was raised accepted working from 9-5pm and did so throughout her employment. She withdrew her resignation that was based on the change in hours. Accordingly we find the claimant accepted this change.
- (2) We accept that the claimant did raise the issue of working from home in her first stage sickness absence meeting and the Head Teacher failed to deal with it at that stage. However he had always made it clear he needed her at the school in working hours. This was a reasonable requirement. In these circumstances the failure to look at again was a breach although not a fundamental one.
- (3) In addition we find that the withdrawal of her grievance indicated that she was accepting the failure to look at the matter again following the stage one hearing.

#### Problems with her colleagues

- (4) The Head Teacher took the view that there were practical things he could put in place in order to improve the situation between the claimant and her colleagues, and he did this by way of an action plan. He took the view that the claimant had caused some of the difficulties herself, for example in humiliating Mauro Amadeu, and that she was not impartial because of the situation with Mauro Amadeu and her niece. He had reasonable grounds for forming this view.
- (5) Failure to deal with the claimant's grievance in February 2015. We have accepted the HT's evidence that he spoke to both parties at the time and the claimant was happy with his informal approach.
- (6) Alleged swearing at the claimant and racist comments: we have found that these allegations are not factually made out save that the claimant mentioned one incident of swearing in her grievance and one of

discriminatory comment from September 2014. These were not set out until the grievance details on 4 December 2015. They were not dealt with properly in the grievance, the school proposed to reinvestigate but the claimant then withdrew her grievance. We find that by withdrawing the claimant has affirmed the contract and taken the view she wanted to put it all behind her.

- (7) Removing the claimant's responsibilities and giving them to Mrs Broadhurst in March 2015 the claimant did not complain specifically about this; we cannot see how it can be a breach of contract where the claimant was complaining she had too much work to do. If it was a fundamental breach of contract either the claimant affirmed the contract by continuing to work without protest or she left it too long to resign in relation to it.
- (8) However, having found that the claimant was to blame for some of the problem, i.e. she sent abrasive emails, she was very ready to pick fault in writing with DB and KB she bullied people in public. Nevertheless the question remains whether the Head Teacher's response to resolving these problems was sufficient in the light of the obligation to resolve grievances and maintain trust and confidence. We find that it was not. There was the action plan. We accept there was discussion about the action plan and there were numerous attempts to implement it. There were numerous meetings with the claimant and the Broadhursts. Given that the problems were clearly continuing some new strategy was needed. However, the suggestions made by the Deputy Chair of the School of Governors in were not followed up. It was clear that mediation of some sort was necessary. In the end the matter was solved by moving Mrs Broadhurst in July 2016.

296. Therefore, we find there was a failure on the Head Teacher's part to resolve what was a very difficult situation with fault on both sides, although we would say significantly on the claimant's side. This was a fundamental breach of contract.

297. *Implementation of the respondent's sickness absence procedure:* the claimant relied on the following – that discretion should been exercised to not implement the process because the claimant's absence was due to problems at work which the HT had failed to resolve; that the headteacher promised to look at flexible work for the claimant and failed to do so; that the HT's report for the third stage meeting was deliberately misleading; that the process was continued even though the claimant had raised a grievance; that there was no consideration of the impact of the claimant's disabilities. We find that there was nothing remarkable about the implementation of the process the claimant had had a considerable period of time off over a number of years, as far as absence was related to disability there is no bar on taking action in relation to disability related sickness absence and the claimant did not bring a claim about that; it was a very long process with four stages which was fair to any employee involved in it given the number of stages, the length of the meetings and the detail of the reports available. We did not find the headteacher had been deliberately misleading.

298. Accordingly, we find the HT had reasonable and proper cause to implement the absence procedure.

299. *The bonus issue*: the claimant believed that the Broadhursts had received a bonus for collecting furniture which she had arranged for the school to receive from MMU. We accepted the respondent's evidence that the bonus related to a different occasion and in any event there were differences – the claimant had not physically been involved and the claimant was in a position where this was part of her role as a senior manager. Accordingly, we find it was not a breach of contract or even a matter which contributed to a course of conduct that this one bonus was paid.

300. *Issues with Karen Tankard* – we do not accept that any of the matters raised by the claimant in this respect had any substance to them. Mrs Tankard was simply doing her job. There was nothing for the HT to sort out.

301. *Allegations relating to discrimination* – colleagues making fun of her accent. This allegation was not dealt with, in the myriad of complaints we find it was a breach but not a fundamental breach to fail to deal with this given how vaguely it was expressed and how old the allegation was.

302. *Failure to deal with the stress risk assessment in a timely way* – we accept Mr Irwin's evidence that he was waiting for the claimant to come back to him with more details. Further he believed that by moving Mrs Broadhurst to a teaching assistant post the matters would be resolved.

303. If there was a delay which was the respondent's fault it was not a fundamental breach of conduct but only a matter which could have contributed to a course of conduct.

#### Affirmation

304. Did the claimant affirm the fundamental breach of contract by withdrawing her grievance? We find that the claimant did affirm by withdrawing her grievance in April 2016? We cannot accept that the claimant can simply say that she had no faith in the respondent when she had already put in an appeal. This was her grievance coming to its apex in a transparent and public way. In the absence of any clear explanation and the only documentary evidence being the claimant's letter saying she had not been coerced or intimidated into it, we find this was an affirmation of the any repudiatory breaches in respect of the failure to deal with the grievance and the problems alleged with the Broadhursts.

305. In addition once Mrs Broadhurst was moved the matter was resolved and the claimant need to act quickly if she wished to rely on any incidents either generally or post affirmation and before Mrs Broadhurst was moved. She did not as her resignation was not until September.

306. Therefore, the claimant cannot rely on the matters arising prior to April 2016 unless **Kaur** applies.

#### Further Breaches

307. The matter the claimant relies on following April 2016 is the respondent's failure to replace Debbie Broadhurst and her allegation that she again raised the issue of working from home but this was refused.

308. In respect of the working from home, there were particular reasons why the Head Teacher allowed the particular member of staff to work from home: she

required the peace and quiet to undertake her role. It was a temporary and not a permanent decision. The headteacher had good reasons for requiring the claimant to attend the school premises (indeed even more so now there would not be a deputy) as it was the lynchpin of her job – she needed to supervise the caretakers and cleaners and she needed to check that any contracted work was proceeding properly. We therefore find there was reasonable and proper cause for the Head Teacher's decision in that respect. Accordingly the claimant had an unjustified sense of grievance in respect of this.

309. In respect of the Head Teacher not replacing Mrs Broadhurst, it was stated that there was a freeze on all recruitment and therefore although it had been planned she would be replaced with a handyman this was not going to take place. Again we find the Head Teacher had reasonable and proper cause for making this decision. Further the claimant had complained about Mrs Broadhurst throughout and in the main had given indications that she was not bringing any value to the table and therefore we are unconvinced that the claimant genuinely thought she could not manage without Mrs Broadhurst. In particular the claimant has complained about her cleaning responsibilities being removed and given to Mrs Broadhurst which is inconsistent with her complaint here.

310. Further, if the claimant accepted that Mrs Broadhurst could be replaced by a handyman as she had in June/July she had accepted that she would be working without a deputy. We find it was disingenuous of the claimant to complain then regarding her deputy not being replaced and as far as a handyman was concerned if they had been recruited they would not have undertaken any of the matters the claimant relies on as necessary to reduce her burden of work.

311. Accordingly, we find there was no act subsequent to the affirmation which would serve to "resurrect" the claimants pre affirmation breach of contract in accordance with the Kaur principle. Whilst it would have been pleasanter for the claimant to have a deputy (potentially) the recruitment freeze affected everyone and was on a par with Kaur when the proper application of a disciplinary procedure was found not to be a last straw or an act allowing the revival of affirmed repudiatory breaches.

312. Accordingly the claimant's claims fail and are dismissed.

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Employment Judge Feeney

Date: 4<sup>th</sup> December 2018

RESERVED JUDGMENT AND REASONS  
SENT TO THE PARTIES ON

7 December 2018

FOR THE TRIBUNAL OFFICE

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