EMPLOYMENT TRIBUNALS

Claimant: Mrs F Hassanzadeh

Respondents: City of Bradford MDC

Heard at: Manchester **On:** 12 to 28 February 2018
13 to 20 August 2018
16 & 17 October 2018 (In Chambers)

Before: Employment Judge Holmes
Ms F Crane
Mr T A Henry

REPRESENTATION:

Claimant: Mr R Shojaee, Husband
Respondents: Ms R Mellor , Counsel

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. The claimant's disability discrimination claims fail and are dismissed.

2. The claimant was not constructively, and hence not unfairly, dismissed, and this claim fails.

3. The claimant's claim that she was subjected to detriment for having made a protected disclosure fails and is dismissed.

4. The claimant's application to amend her claims to add claims of breach of s.44 of the Employment Rights Act 1996 is refused.

REASONS

1. By a claim form presented on 19 March 2013, the claimant brought claims of disability discrimination, race discrimination, and various other claims, which were not within the jurisdiction of the Tribunal. The claims were presented to, and proceeded before, the Leeds Employment Tribunal. There were two respondents

named at that time, the current first respondent, and the National Union of Teachers, of which the claimant had been a member.

2. Following preliminary hearing held by the Leeds Employment Tribunal, the claimant appealed to the Employment Appeal Tribunal , contending that the Leeds Employment Tribunal should not hear the claims because of a connection between a non – legal member in the Leeds Region and a trade union of which the claimant was a member, about which the claimant had complained, and been critical in relation to its representation and assistance given to the claimant . The Employment Appeal Tribunal upheld the appeal, and directed that the claims be heard in the North West Region, where they were transferred the Region following the Order of the Employment Appeal Tribunal sealed on 14 April 2016.

3. The claims have a long and complex procedural history. They have been case managed both in the Leeds and North West Regions. It is not proposed to rehearse the case management orders made here, they are contained in the Bundle. At an early stage the current second respondent, the Governing Body of Belle Vue Boys School, was added as a third respondent. As that body, however, has since ceased to exist as a legal entity, and Bradford City Council has accepted legal responsibility for any liabilities which that body that may have had as the employer of the claimant and the alleged perpetrators of the acts of discrimination complained of. In due course, the claims against the National Union of Teachers were struck out, and that party was dismissed from the proceedings, leaving the current two respondents. Since the claims were issued, however, the governance of the school has been transferred since April 2011 , to an Interim Executive Board. The school then, in 2015, became an Academy. There is thus no continuing legal entity to constitute the second respondent. The first respondent, however, has accepted that it is legally responsible for any liability to the claimant that the Tribunal may find in these proceedings. Unless otherwise indicated, references to “the respondent” in this judgment are to the management of the school at the time that the claimant was employed at it, and/or the body or bodies that have been responding to her claims since they were first made on 19 March 2013, and continue to do so. In those circumstances, there remains only one respondent.

4. By a judgment sent to the parties on 22 June 2017, the claimant’s claims of race discrimination were struck out. The remaining claims accordingly were ultimately listed for a final hearing before this Tribunal on 12 February 2018. They were initially listed for 15 days, but the Tribunal, given witness availability issues, and time taken up with applications made by the claimant, sat only until 28 February 2018, adjourning part heard. The Tribunal resumed the hearing on 13 August 2018, when the hearing was listed for a further seven days. On the sixth day, however, 20 August 2018, it was agreed that the parties would make written submissions, and the Tribunal would thereafter re-convene in Chambers on 16 and 17 October 2018 to deliberate.

5. The parties duly submitted their written submissions, the respondent’s being received on 21 August 2018, and the claimant’s on 23 August 2018. The Tribunal has re-convened in Chambers to deliberate, on 16 and 17 October 2018, and accordingly now promulgates this, its reserved judgment. It is appreciated that the parties have waited longer for it than the Tribunal hoped, and it apologises to them for this. In addition to the pressures of judicial business, the completion of this

judgment has been protracted largely by reason of the complexity of the issues, as presented by the claimant, and a lack of clarity and coherence in the Bundle, as remarked upon further below.

Procedural issues during the course of the hearing.

6. During the hearing, Mr Shojaee, the claimant's husband, and her representative throughout these proceedings, and indeed, during her dealings with the respondent during the last two years whilst she was still employed, made a number of applications, which were ruled upon during the course of the hearing, if pursued. They were an application that the claimant be permitted to give evidence with Mr Shojaee alongside her at the witness table, and able to give answers to supplement his wife's evidence and two further applications to amend as set out below. At a later stage Mr Shojaee intimated an application to amend to add claims of victimisation in relation to the conduct of the proceedings by the respondent's legal representatives, potentially adding them as parties. The implications of such an application were discussed with him as, if successful, the hearing would almost certainly have to be adjourned for an amended response, further witness evidence, and potential representation of new parties, if any were added. The application itself was also likely to take up yet more of the Tribunal's time during the hearing, further delaying the conclusion of these proceedings. After reflection, Mr Shojaee did not pursue this application.

7. Further, as the date from which the claimant's condition was to be considered a disability was an essential matter for the determination of many of her claims, it was agreed that the Tribunal would determine that issue at the close of the claimant's case. The Tribunal accordingly did so, and gave an oral judgment on 27 February 2018, determining that the relevant date was September 2011. Reasons were sent to the parties on 24 August 2018.

The claims before the Tribunal.

8. As a result of the previous Orders of the Tribunal (in Leeds and Manchester) the claims before this Tribunal at the outset of this final hearing were as set out in Annex A to this judgment, as discerned from the Scott Schedule (see pages 112 to 215 of the bundle). With no disrespect to Mr Shojaee, this is a slightly difficult to follow document. Further, it dates back to the time when the claimant still had claims against the then second respondent, her trade union, which have since been dismissed.

9. The upshot of this is that the Tribunal considered that, at the start of the hearing, it had to determine, by way of the original claims, and any amendments that have been permitted, and withdrawals that have been made, the following claims against the remaining respondents, in effect, now only one respondent, (by reference to the Scott Schedule) :

Section 3: Disability Discrimination claims:

Nos. 5, 6, 7, 8, 9, 10 , 12, 13, 14 ,16 , 17, and 18.

Section 4: Protected Disclosure claim:

No. 3

and, not contained in the Scott Schedule,

Constructive Unfair Dismissal.

Those are the matters which the Tribunal considered were before it at the outset of the hearing.

10. The Schedule is divided into sections. The first section contains explanatory notes, and the second contains what are described as "Background events". That section runs from page 114 to 168 of the Bundle, and is something of a timeline of the history of the claimant's employment going back to 1990. Accordingly, it is not until sections 3 and 4 (pages 169 to 215 of the Bundle) that the claims that the claimant is making in the proceedings are set out.

11. Of these, many have been withdrawn. For example, all claims of race discrimination have been withdrawn. All claims against the claimant's trade union, which was the second respondent, have been dismissed. Thus claims nos. 1,2, 3, and 4 have been withdrawn or dismissed. Claims nos. 5, and 6, were maintained as disability discrimination claims only. Claim no. 7, an allegation of disability discrimination going back to 2004 was maintained, as were claims 8, 9, 10, and 11 , similarly claims of disability discrimination allegedly perpetrated in June 2008, July 2011, and October 2011. Claim 12 is further allegation of disability discrimination in December 2011 , claim no. 13 is an allegation of disability discrimination in January 2012, claim no. 14 is an allegation of disability discrimination in April 2012, claim no. 15 was withdrawn, claim no. 16 is an allegation of disability discrimination between June 2012 and September 2012, claim no. 17 is an allegation of disability discrimination between October 2012 and December 2012, and claim no. 18 is an allegation of disability discrimination between January 2013 and March 2013.

12. Section 4 of the Scott Schedule (pages 210 to 215 of the bundle) contains three protected disclosure claims against the second respondent which have been withdrawn, but one claim, number 3, is made against the respondent in these proceedings. In terms of the Scott Schedule, claims numbered 8, 9, 10 and 11 could not be pursued , it was determined during the course of the hearing, given the Tribunal's findings in relation to the date of disability. Mr Shojaee for the claimant accepted this, and the Tribunal accordingly will not consider any claims of disability discrimination which are made in relation to any acts or omissions prior to September 2011.

Amendment applications.

13. Mr Shojaee made two amendment applications to the Tribunal. The first was that the Tribunal proceed to determine the application to amend that he had previously made to the Employment Tribunal and which had been considered by Employment Judge Horne in July 2017, upon which he had declined to rule, leaving the matter to this Tribunal to determine, having heard the evidence. That application was to amend the claims to add some ten (a further five having been dismissed by Employment Judge Horne) allegations of detriment under section 44 of the

Employment Rights Act 1996. The Employment Judge was somewhat surprised at this application, but it was considered.

14. The second application was to amend the Scott Schedule in relation to further protected disclosures. There had been a previous discussion during the course of the hearing in which the Employment Judge had pointed out (as he had done previously) that only one protected disclosure was pleaded in the Scott Schedule, namely that of October 2012, and that the claimant's claims in respect of protected disclosure detriment were accordingly those set out in the Scott Schedule, which related to one disclosure only. Following that the claimant's representative sought to amend the Scott Schedule, but in this second application before the Tribunal he had not specified what further protected disclosures he intended to rely upon, and, further , what alleged detriments the claimant was subjected to as a result of having made those allegedly protected disclosures. Thus, in the form in which it was presented to the Tribunal at that stage, the application to amend in relation to further protected disclosures was still incomplete, and Mr Shojaee was advised to consider it further before pursuing it with the Tribunal. He never did.

15. Turning back to the application to determine the previous application to amend, the Tribunal and the parties adjourned to familiarise themselves more fully with the history of the claimant's application in the preliminary hearings before Employment Judge Horne, and his rulings thereon. Having returned after a lengthened luncheon adjournment to consider these matters, the Employment Judge informed the parties that he, upon reading Employment Judge Horne’s Judgment, had noted that the Employment Judge had been minded to grant the applications, but felt constrained by the authority of ***Aldridge*** not to do so, on the basis that to do so at that to do so at that stage would have been to deprive the respondents of a defence in relation to time limits. This was expressly the reason why he declined to rule upon the application and left it to the full Tribunal.

16. Since then, however, the judgment of the Employment Appeal Tribunal in ***Galilee v The Commissioner of Police for the Metropolis [2017] UKEAT0207/16/2211*** was promulgated on 22 November 2017, in which His Honour Judge Hand QC reviewed the authorities on the doctrine of “relation back” as applied to amendment applications before the Employment Tribunal, and held, contrary to the authority of ***Aldridge*** and other cases, that the doctrine had no application in Employment Tribunals, and consequently the granting of an amendment in relation to claims that were potentially out of time would not have the effect of depriving the respondents of a time limit defence. That seemed to this Employment Judge to put a rather different complexion upon the application, and rather reinforced the view that this was potentially a matter which was best determined at the conclusion of the evidence. Further, for the respondents, Ms Mellor contended that , with respect to Employment Judge Horne, the respondents did not accept his analysis of the applicable time limit as applied to the alleged facts, and that to that extent arguments in relation to when time began to run, and whether the claims, if permitted, would be out of time required further submission, and was a matter best left for legal argument when all the facts had been heard.

17. The Employment Judge during this exchange did try to explore with Mr Shojaee the precise nature of the amendments that he wished to make, and how he was to contend that he claimant could potentially fall within section 44 at all, given its

precise terms, and the degree to which the evidence of Mrs Ogley, who was waiting to give evidence, would be relevant to those claims. The reason why Mr Shojaee wanted determination of these applications at this stage was so that he could know what questions he could or could not ask in cross examination of the respondent's witnesses, particularly Mrs Ogley. The Employment Judge assured him that to the extent that there was still a live application to amend in respect of these claims, he would not be precluded from asking relevant questions if they may pertain to these potential claims. The Tribunal would effectively treat the amendments as having been granted, and would allow cross examination of the respondents' witnesses, if potentially relevant to the claims as amended. He assured Mr Shojaee on that basis that he would not be limited in his cross examination unless and until the Tribunal considered that his questions were not relevant, either to any of the claims as presently made or by way of amendment. Consequently the Tribunal declined to rule upon the s.44 amendment issue for these reasons, and the hearing continued with Mrs Ogley then giving her evidence.

The hearings, the evidence and the Tribunal's findings of relevant facts.

18. On 12 February 2018, the first day of the hearing, Mr Shojaee made an application that the proceedings be recorded, which was refused. He also made disclosure applications, which were also refused. He sought striking out of the respondent's response, which was eventually withdrawn. There was a discussion of an outstanding appeal against an interlocutory order that had been made, upon which there had been a rule 3(10) hearing on 8 February 2018.At that time it was intended that the claimant would give evidence, but on 15 February 2018 an application was made that Mr Shojaee be permitted to give evidence with the claimant , sitting alongside her, and , in effect, answering for her, or assisting her with her answers if he considered that she was not answering fully or correctly. This application was opposed, and rejected by the Tribunal. It was therefore left to the claimant and Mr Shojaee to decide whether she would be fit enough to give live evidence, which, ultimately she could not do, and hence her evidence, in the form of her witness statement dated 19 February 2018, was taken by admission of that written statement. Mr Shojaee was given permission to adduce further evidence in the form of a witness statement from himself, which he made, dated 16 February 2018, and he subsequently gave evidence. After further reading the Tribunal resumed, and started to hear the evidence.

19. The Tribunal heard Mr Shojaee's evidence first. It then heard evidence from Les Hall, HR Business Partner of the respondent. On 23 February 2018 it was confirmed that the claimant would not be giving evidence, as she was not fit enough to attend the hearing. Her witness statement was received and taken as read. At that point the claimant's case was closed (Les Hall having been effectively interposed), and there was discussion of whether the Tribunal should at that stage determine the date from which the claimant was to be considered a person with a disability. Judy Hooton, Chair of Governors, was then called by the respondent. After her evidence was concluded on 26 February 2018 the Tribunal heard submissions on the date of disability, and ruled on 27 February 2018 that the date from which the claimant was to be considered a person with a disability was September 2011. Judgment was given orally on 27 February 2018, with Reasons being sent to the parties on 24 August 2018. As recorded therein, Mr Shojaee at this stage made two further applications, one, again, to have his previous application to amend to add s.44

claims, which had been considered but not determined by Employment Judge Horne, determined, and the other to amend the claims to add further protected disclosure claims.

20. In relation to the former, after consideration and discussion of the relevant caselaw, as again set out in the Tribunal's Reasons sent to the parties on 24 August 2018, the Tribunal determined that this application would be considered after all the evidence has been heard. In relation to the protected disclosure amendment application, the claimant had still not provided sufficient particulars of the alleged disclosures, nor of the alleged detriments. Mr Shojaee was advised to consider the application further, if he was pursuing it. He never did so.

21. Joan Ogley, Head of Maths was then called. Her evidence was not concluded, however, and the hearing went part heard to 13 August 2018. On that occasion a further, revised Supplementary Bundle was produced, which largely comprises of documents following the EAT judgment whereby the proceedings were transferred to Manchester, and other documents which the claimant required to be included. References to page numbers in this Bundle begin with "S". Mr Shojaee then made further applications. He had intimated these in a document sent to the Tribunal and the respondent on 10 August 2018, entitled "Attachment 1: Clarification of the Disability Claim." Other attachments were medical evidence. The first application was for the Tribunal to determine the date of knowledge of disability on the part of the respondent. This was resisted, and declined by the Tribunal, which considered that it needed to hear all the evidence before it could make such a determination. He then made an application to amend the claims to add s.15 claims, and possibly victimisation claims, arising out of the conduct of the defence of the claims by the respondent's solicitor and counsel. He contended that the Scott Schedule had been "imposed" upon him, and came about through them "misleading" him. He had not prepared a draft amendment, and was invited to prepare a written form of proposed amendment if he was pursuing such an application. Joan Ogley then continued her evidence. The respondent then called Mukesh Nar, Deputy Head.

22. At the conclusion of this evidence Mr Shojaee made his further application to amend, which he had produced in written form. This is an undated document, running to two pages and 11 paragraphs. It sought to add claims of victimisation and harassment following the "conducts of the Respondent's legal team". The allegations went back to October 2013, and related to the conduct of Mr Gallagher, the respondent's solicitor, in a preliminary hearing, and thereafter in attempting to force the claimant into a joint medical report from Dr Vincenti. Other allegations included "forcing" REJ Lee to issue an Unless Order, the intimidating tone of some letters, the failure until April 2017 to concede disability, their opposition to the hearing being recorded, and their failure to advise to their client to refrain from making up false stories to mislead the Tribunal. This application and its ramifications, if granted, were discussed, and Mr Shojaee was invited to consider it further over the luncheon adjournment, which he did. He withdrew it when the Tribunal reconvened at 2.00 p.m. Colin Willsher was then called, and was the last witness. His evidence continued into 16 and 17, and 20 August 2018. Although there remained a further day listed for the hearing, the parties agreed to prepare and submit written submissions. The respondent's submissions were filed and served on 21 August 2018, and the claimant's on 23 August 2018.The Tribunal reconvened in Chambers on 16 and 17 October 2018 to consider its reserved judgment which is now given.

23. The claimant did not, as discussed, give live evidence, but her witness statement, dated 19 February 2018, was read by the Tribunal, and given such weight as possible in the circumstances. Some of her statement, however, relates to events before those which form the basis of the claims proceeding before the Tribunal, and relate to the alleged failings of previous Headteachers (Mr Berry, then Mr Whittaker), and “concealment” by them and her trade union, against whom her claims have been struck out. Further, it contains evidence which relates to the claimant’s race discrimination claims, which have also been struck out. The Tribunal accordingly, other than as background, sees little or no relevance in these parts of her evidence, and makes no findings in relation to them. Conversely, there are parts of her claims, in particular the constructive dismissal claim, about which there is little or no evidence given at all in her witness statement. Only paragraphs 30 to 57 deal with the relevant timeframe of her remaining claims, between September 2011 and January 2014.

24. Having heard the evidence, read the documents, and considered the submissions of the parties, the Tribunal finds the following relevant facts:

24.1 The claimant was a maths teacher, commencing her employment at the Belle Vue Boys School (often referred to as “BVBS”), Thorn Lane, Bradford with effect from 1 January 1991. The school was a maintained community secondary school, but in April 2011 the governance function was transferred to an Interim Executive Board. The second respondent, accordingly, ceased to exist as a legal entity, and the (originally) first respondent has assumed any rights and liabilities that it had.

24.2 The school was a single sex, secondary school with 650 students between the ages of 11 and 19. It served an ethnically diverse community, and had a similarly diverse teaching staff.

24.3 The claimant was promoted to second in, or deputy head of department, in the maths department in 1995. She received further promotion, moving up the Upper Pay Scale grades to grade 3 in 2005. She further achieved a level 2 award in 2006 under Teaching and Learning Responsibility awards for her role as Assistant Curriculum Leader in Maths. She was considered a senior teacher.

24.4 Joan Ogley was the Head of Maths when the claimant joined the school in 1991, and remained so during most of the time that the claimant was employed there. Their relationship was initially a good one, and remained so, as far as Mrs Ogley was concerned until some time between 1998 and 2003, when she noticed the claimant became more withdrawn, and had less interaction with her colleagues , and with herself. She was unaware, however, until made aware in 2013, of the degree to which the claimant had serious issues with her , and the extensive allegations that she then made of jealousy, bullying and harassment by Joan Ogley going back over a period of 16 years.

24.5 Colin Willsher became Headteacher in 2008. On 18 June 2008 he spoke to the claimant about her recent attendance at the school. He

noted this discussion (page 1145 of the Bundle). Following this, Colin Willsher discussed the position with Joan Ogley, and they agreed to give her some 6th form teaching, something the claimant was keen to do.

24.6 After a year of this, however, Joan Ogley removed this from her timetable, as she did not consider that it went well.

24.7 By 2011 a number of issues had arisen between the claimant and her colleagues , and the claimant and Mrs Ogley. The claimant was not allocated any 6th form teaching, about which she was unhappy.

24.8 In or about February 2011 there was a disagreement between the claimant and another teacher, Usman Khan, about allocation of pupils between classes. The details are irrelevant , but the result was that the claimant complained to Colin Willsher about him, alleging that he was undermining her. The claimant's complaint was put into writing , dated 4 April 2011 (pages 1281 to 1283 of the Bundle) .

24.9 There then ensued issues that the claimant raised in an email of 23 May 2011 about her timetable, which she contended was heavily geared towards the bottom groups. She blamed Joan Ogley for this, alleged that this too was undermining her and she said this could have jeopardised her attendance at school. She said she had been emotionally hurt and upset and "at times" had found herself on the brink of a nervous breakdown (page 1342 of the Bundle).

24.10 Colin Willsher replied the following day (page 1343 of the Bundle) asking her to clarify what it was she was complaining about, and asking if was she making a formal complaint. He asked her to come and see him, but she did not.

24.11 On 8 June 2011 the claimant had a disagreement with a colleague, Saj Shabir, who she considered had made a false allegation against her and harassed her in front of colleagues over a marking scheme. Joan Ogley had become involved, and the claimant complained to Colin Willsher about this incident , in a letter dated 13 June 2011 (pages 875 to 876 of the Bundle). .

24.12 Colin Willsher looked into it, and by email of 3 July 2011 (page 884 of the Bundle) the claimant informed him that she felt that a written apology by Sajhad was the most appropriate action for closing down the file and putting the matter behind them . Colin Willsher took no formal action, but spoke to Saj Shabir. The issue was subsequently dealt with in a meeting in July, as appears below.

24.13 The claimant, in common with all teachers, was subject to lesson observations, carried out as part of the school's obligations to Ofsted, and as part of its own performance assessment and improvement procedures. Colin Willsher carried out a formal observation in the Spring 2011 term which he rated as "inadequate". He did so largely

because the students had already covered the subject matter of the lesson being taught, and told the claimant so, but she did not alter the content to the lesson. Another lesson observation was carried out that term, and in this too the claimant's teaching was ranked as inadequate. The results were tabulated (see page 1569 of the Bundle) for this period. In the rankings, "1" is "outstanding", "2" is "good", "3" is "satisfactory", and "4" is "inadequate", following the then current Ofsted classifications.

24.14 These lesson observations were not held for any disciplinary or capability procedures, but to assist staff, including the claimant, to identify and then work to improve , areas of weakness in their teaching. Colin Willsher discussed his observation with her, but she was not receptive, believing she had delivered a good lesson. She became very tearful, and reacted badly to what she saw as criticism. Colin Willsher wanted to try to support her , and to improve, so suggested in this meeting that Mukesh Nar, the deputy head with special responsibility for teaching and learning standards would work with her to improve her teaching. The claimant agreed to this suggestion.

24.15 Mukesh Nar had discussions with the claimant to arrange lesson observation, and how she might improve her practices. He found her defensive, and hard to engage with. He arranged a paired lesson observation , with himself, but an hour before it was due , he could not attend, and instead Mel Ward , an Assistant Head, carried it out on 13 July 2011, with Joan Ogley. Mel Ward was responsible for professional development, and the view of colleagues was that he was a sympathetic and supportive figure, whom most colleagues would welcome as an observer. The feedback was that this lesson was inadequate, which was communicated to the claimant.

24.16 The claimant was then absent from 14 July to 21 July 2011. Her fit note, dated 15 July 2011, referred to "work related stress" and "ongoing situation" (page 757 of the Bundle). This was the claimant's first such fit note for stress. Whilst the claimant claims (para. 32 of her witness statement) that the fact that she was, in July 2011, "on the verge of a nervous breakdown" was brought to the attention of Colin Willsher by this fit note, it says no more than that.

24.17 Colin Willsher arranged a meeting with the claimant on 21 July 2011, at which the claimant's union representative , Jane Rendle, was present. He subsequently sent an email to the claimant and Jane Rendle (page 1468A of the Bundle) setting out what had been discussed, and his hope that the meeting had helped.

24.18 On 22 July 2011 there was meeting between Colin Willsher , the claimant and Saj Shabir to discuss the incident in June. Sab Shabir apologised to the claimant, which Colin Willsher considered was the end of the matter. The claimant, however, did not view it that way.

24.19 No relevant events occurred over the summer holiday , but in September 2011, in the new term, the claimant noticed that Joan Ogley had, in her view, been falsifying departmental records for years. This came about because the claimant saw , having asked Joan Ogley for a copy, a Self Evaluation Form ("SEF") , which was sent to her by email of 8 September 2-11 (page 1546 of the Bundle) . That document, headed BVBS Leadership & Management Framework document (pages 1547 to 1566) contained entries which the claimant considered reflected badly upon her, and suggested that her teaching was unsatisfactory. In particular the section "2c Teaching" (page 1556(a) of the Bundle, page 1556 having been an incomplete printout or photocopy where random letters were not printed or reproduced successfully) caused her concern, as she believed that this falsely identifying her as a teacher whose teaching required improvement. She also believed that it contained other falsifications was seeking to portray a misleading impression to OFSTED , suggesting that she (i.e Joan Ogley) and other teachers were achieving better results than they were.

24.20 To be accurate, the document that the claimant saw, and to which she takes exception is not the SEF, which as a completed and published document in the form contained at pages 1576 to 1586 of the Bundle. That does not contain the detailed information that appears at page 1556(a) of the Bundle, but was used to feed into the rating of Teaching on page 6 of this document, page 1581 of the Bundle, where no individual teacher's teaching abilities are referred to. When, however, references are made to the "SEF" in subsequent emails and other evidence, the claimant , and others , are referring to the BVBS documentation at pages 1547 to 1566, and not the later published document, which is more accurately to be regarded as the SEF.

24.21 The claimant , in her witness statement (para. 31) says she "informed Mr Willsher of this falsification by Mrs Ogley ". It is unclear when and how she did so. There is nothing in writing around this time to suggest that she did so at this point in time, and Colin Willsher does not accept that she did so at this time.

24.22 On 15 September 2011 Mukesh Nar carried out a lesson observation with the claimant. He rated her teaching as satisfactory (page 1572 of the Bundle) . On 21 September 2011 he carried out a further observation , in which he rated her teaching as inadequate (page 1574 of the Bundle) . Whilst the claimant contends (para. 32 of her witness statement) that this was for the purpose of fabricating detrimental reports to pave the way for her dismissal on the grounds of incompetency, instigated by Colin Willsher as part of a "new wave of victimisation and bullying" against her, the Tribunal does not so find. The Tribunal accepts that Colin Willsher's purpose was to improve the claimant's teaching, and was not intended to facilitate her dismissal.

24.23 The claimant went off work sick on 23 September 2011, and was provided with a fit note for two weeks from that date (page 758 of the

Bundle) which she provided to Colin Willsher on 25 September 2011 (page 1575 of the Bundle). The condition diagnosed was "work related stress" , and in the middle box the GP had ticked that the claimant may benefit from workplace adaptations, and said that the Head of Department and the Deputy and Head Teachers were "aware", and she wrote:

"This lady needs independent occ health referral <u>*ASAP*</u> *from education authority HR"*

24.24 The claimant around this time was to meet with her union representative, Jane Rendle. She prepared some notes for that meeting (pages 1587 to 1588 of the Bundle) , which was to be held on 29 September 2011. In those notes she refers to the events at the end of the summer term, and the issue with Sajhad. She goes on to refer to the discovery that she had made about the SEF when she started the new term. She sets out what she believes are the distortions of fact in this document. She alleges that this document reveals the depths of Joan Ogley's intention to discredit her. Nowhere in this document does she suggest that she has raised this issue with Colin Willsher, nor does she mention having been "on the verge of a nervous breakdown" in July 2011.

24.25 On 30 September 2011 Colin Willsher made a referral to occupational health, "the Employee Health and Wellbeing Service" or EH&WS , (pages 1592 to 1595 of the Bundle, although it appears elsewhere as well). In a section in which the completing manager is asked to advise the service provider whether the employee has a disability which the service needed to be aware of. That struck the Tribunal as an odd question, which it rather expected would be asked the other way round. Colin Willsher crossed the box "No", as he did not know the claimant had a disability.

24.26 In his referral he gave details of the claimant's absence and the wording of her recent fit note. He set out, under the section for management actions already taken, the steps that had been taken with the claimant to improve her teaching, and the meeting in July about the incident with Sajhad Shabir. He asked the service to address what was constituting the claimant's work related stress , and to identify ways in which the school could support her return to work. An appointment was arranged for 8 November 2011, of which the claimant was notified by letter of 17 October 2011 (page 1596 of the Bundle).

24.27 The claimant remained off work, her next fit note being dated 7 October 2011 (page 759 of the Bundle) , for a further two week, with a diagnosis of "ongoing severe stress related illness", and the observation that the claimant was awaiting occupational health input – "urgent" . She remained off work, and a further fit note dated 27 October 2011 was provided (page 763 of the Bundle) with a diagnosis of "work related stress – agitated depression" was provided. (The absence of an intervening fit note may be because of half term, when

the claimant may have felt she did not need to be covered by one.) This fit note records the occupational health appointment on 8 November 2011, and how the claimant was awaiting CBT, and was on medication, with regular reviews.

24.28 Whilst there is no evidence of the claimant directly raising issues relating to the SEF with Colin Willsher, she appears to have raised it with her union representative, as on October 2011, Jane Rendle sent an email to Colin Willsher (pages 1618 to 1619 of the Bundle) referring to a conversation they had had about the claimant's concerns that the SEF was not "true", particularly in relation to KS3 (Key Stage 3 pupils) . She was seeking further data about these issues, and subsequently appears to have some email communication with the claimant about this (see page 1599 of the Bundle), and how Colin Willsher could not be forced to give them this information.

24.29 On 8 November 2011 the claimant was seen by Sandra Edwards for the purposes of an occupational health report. Her report is at pages 765 to 766 of the bundle. It is dated 20 December 2011, though that is probably an error, as Colin Willsher clearly had seen it by 14 December 2011. (There is also an identical version of the report dated 8 November 2011 at pages 1597 to 1598 of the Bundle). In it Sandra Edwards recorded the claimant's sickness absence since 23 September 2011, and her treatment under her GP. She recorded the claimant referring to a culmination of events, and stating that she had been subjected to "harassment and discrimination from her head of department". She also referred to the claimant stating that she believed there was a gang culture , guilty of duplicitous behaviour. In her opinion and recommendations, Sandra Edwards advised that she was not able to endorse the claimant's perceptions, and that her absence was likely to be protracted. She advised that HR consult with the Advisory support services.

24.30 The claimant remained off work, her next fit note being dated 11 November 2011 for a period of 8 weeks (page 764 of the Bundle), in similar terms to the previous ones.

24.31 On 14 December 2011 Colin Willsher sent a letter to the claimant (page 1601of the bundle) referring to her absence, and the occupational health report that had been received. He sought to arrange a meeting to discuss her absence, for 11 January 2012. He explained how the meeting would explore if and when the claimant would be in a position to return to work.

24.32 The same day, he sent another letter (page 1602 of the bundle) in which he also made reference to the occupational health report , and the claimant's statement to the occupational health practitioner that she had been subjected to harassment and discrimination. He expressed concern that the claimant had said this, and asked her to supply him , by 13 January 2012, with details of the incidents which had led to her making this claim, so that the school could support her.

24.33 By letter of 20 December 2011 (page 828 of the Bundle – crossed out, and possibly elsewhere as well) an appointment was made for the claimant with EH&WS for 23 January 2012. That appointment, however, was cancelled.

24.34 The claimant acknowledged receipt of both letters by email of 2 January 2012 (pages 1605/1606 of the bundle). In that email she made no mention of the content of either letter, and merely queried the venue for the proposed meeting of 11 January 2012, which she wanted to be held at her union office. This was followed up with further emails about the venue and time of the meeting on 3 January 2012.

24.35 On 3 January 2012 a further fit note was issued (page 769 of the Bundle). Although this is confusingly dated "3/12/12", the date at the top of the note, when the GP assessed the claimant is "3/1/12". Given that the previous fit note (page 764 of the Bundle) dated 11 November 2011 was due to expire on 6 January 2012, it seems highly likely that the claimant did obtain this fit note on 3 January 2012. In it the GO again gives the diagnosis of work related stress, and has ticked all four boxes as to how the claimant may be fit for work if the doctor's advice was taken into account. In the comments section the GP has added this:

" – Patient still has significant mental health problems + meeting + deadlines+ stress.

NB patient's recall of conversation limited would benefit from her husband observing meeting."

The "NB" and the word "observing" have been underlined, but it is unclear whether that was done by the GP in her original document, or has been added by a subsequent recipient to provide emphasis.

24.36 On 8 January 2012 the claimant sent a further email to Colin Willsher (page 1609 of the Bundle) requesting that he make arrangements for certain documents to be available at the meeting on 11 January. They were a copy of all the documents on her personal file, a copy of the timetable of all the members of the maths department for the last 10 years, the KS4 (Key Stage 4) results for the last 10 years by class sets and the class lists for all members of department for the last 10 years.

24.37 At some point, probably on 6 January 2012, though no email in the Bundle appears to include this, the claimant asked that her husband be allowed to accompany her at the meeting. Alternatively, that request may well have been picked up from the "NB" section of the fit note referred to above. Colin Willsher replied later that day that he would take advice from HR on this (page 1612 of the Bundle) .

24.38 The claimant then by email of 9 January 2012 explained why she wanted the documentation she had requested, which was not for consideration at the meeting on 11 January 2012. She wanted to

analyse it later, and then respond to his request in his second letter of 14 December 2011 (page 1610 of the Bundle).

24.39 On 10 January 2012 Colin Willsher replied further to the claimant, thanking her for her latest fit note , and replying to her request that her husband be present at the meeting. He explained that school policy was clear that only a work colleague or union representative should attend such meetings, but he was willing, on this occasion , to make an exception and agree to her husband being present. This was however, on condition that he was present as an observer only, rather than as a participant, and this would be a "one off" exception, which should not set a precedent for future meetings. If the claimant's difficulties persisted, there may be other mechanisms available to assist her in future meetings, such as minute taking. He went on to say that her personal file would be available at the meeting.

24.40 The meeting consequently did take place on 11 January 2012. Colin Willsher was present, with Nancy Wiles of HR. The claimant was present with Mr Shojaee., and Jane Rendle. There are no notes of this meeting. There were no issues with Mr Shojaee's presence, and Colin Willsher tried to explore with the claimant the issues she had mentioned to Sandra Edwards, as he was unaware of them, except those in March and June of the previous year. The claimant, however, was suggesting he had not treated these seriously, and had "swept them under the carpet". He did not agree. He urged her to provide further details of the issues that she had, if she wanted them taken further. He also suggested a further referral to EH&WS. The claimant has suggested in various documents (though not in her witness statement) that Colin Willsher made serious allegations against the claimant in, and before, this meeting.

24.41 The best account of what the claimant means by this is probably to be found in her document prepared for an appointment on 14 February 2012 with (what she expected to be) Sandra Edwards. This is at pages 773 to 778 of the Bundle. On the third and fourth pages of this document (pages 775 to 776 of the Bundle) there is an account of the meeting on 11 January 2012 from the claimant's perspective. She took the second letter from Colin Willsher on 14 December 2011 as questioning that she had previously raised issues with him, and his request for details of the incidents implied "a serious allegation" against her. She considered that he was suggesting that she had damaged the reputation of the school. Whatever her perceptions, and having had no other direct evidence of what occurred in that meeting, other than the evidence of Colin Willsher, the Tribunal does not accept that was what he did.

24.42 It seems likely that one of the options discussed in the meeting was transfer of the claimant to another school, a suggestion made by Jane Rendle.

24.43 On 18 January 2012 Colin Willsher sent the claimant a letter of the same date for a further appointment with EH&WS on 14 February 2012 (pages 831 and 832 of the Bundle). That appointment was to be with Sandra Edwards.

24.44 On 20 January 2012 Colin Willsher sent Jane Rendle some data relating to 2010 KS4 and KS5 groups. This was in the context of the claimant's SEF issues, and he expressed the view in tis email that he felt that the externally validated data for KS4 and KS5 painted a different picture from the purely internal data for KS3 (page 1618 of the Bundle).

24.45 Around this time the claimant then went through her personal file that she had received in the meeting of 11 January 2012. She communicated with Jane Rendle about its contents and during the rest of January was providing her with documents and giving her instructions as to what she wanted to do. This led to a letter from the claimant to Jane Rendle on 25 January 2012 (page 1660 of the Bundle, but it appears elsewhere), to which she attached a "Brief account of the events", and in which she said that she had reached the decision that the best course of action that would be in everyone's interests would be that she took early retirement at the end of August when she reached the age of 55. She then set out a formula for seeking compensation for taking retirement 5 years early, and suggested that half of the losses over that 5 year period should be paid by the school. That was, however, the maximum sacrifice that she was prepared to take, and if the school refused it she wanted Jane Rendle to facilitate legal action against the school based upon her evidence. Her "Brief account of the events" document runs to some 15 pages (pages 1661 to 1676 of the Bundle) and includes allegations of racial discrimination.

24.46 On 2 February 2012 Jane Rendle sent the claimant an email to which she attached a draft document that she had worked upon. It was a condensed version of the claimant's "Brief account" document, as she considered, and had advised the claimant, that it would be better to deal more briefly with the earlier incidents, which had not been found , on investigation, to have been harassment , bullying or undermining, and to concentrate on the time since Colin Willsher had been Head Teacher. She repeated this advice in an email of 3 February 2012 (page 1634 of the Bundle), in which she suggested how they should present any supporting documents and an index.

24.47 Jane Rendle's draft "brief account" document is some 4 pages long (pages 1630 to 1633 of the Bundle), and at its conclusion sets out various matters of which the claimant was complaining, since March 2011, as allegations of race discrimination. There is no mention of any disability, though the claimant's stress and depression are touched upon. This document, however, was never, it seems, provided to the respondent during the claimant's employment.

24.48 The occupational health assessment arranged for 14 February 2012 appears to have taken place, but there is little or no evidence as to what occurred during it. For it the claimant had prepared and (the Tribunal finds likely) handed to Sandra Edwards a document entitled "Information for Sandra Edwards Occupational Health Advisor for the appointment on 14 February 2012" (pages 832 to 837 of the Bundle). This document sets out a number of issues that the claimant had with Colin Willsher, and his handling of various issues relating to her work related stress. It ended with some suggestions namely:

"1 – School keep me on full pay so that I could concentrate on my recovery and to start applying for a job at another school.

2 – The full pay ceases on commencing of my new job.

3 – If at any stage I feel the suggestion made by Jane (Rendle) in the meeting on 11 January 2012 for my transfer to another school is helpful to the process , school to facilitate that.

4 – In the current climate school may feel that this might become on going for years. I therefore suggest a cap until August 2013 if my search for work does not bear any fruit.

If none of these are practical, I would suggest he provision of premature retirement with compensation as outline in Appendix 5 of the Local Condition of Service for Teachers maybe an alternative solution."

24.49 There is no direct evidence of what occurred in this meeting, and no report was prepared as a result of it. Rather, what ensued was a meeting which appears to have been held on 16 February 2012 with Susan Gee of EH&WS. The Tribunal surmises that this was because, faced with the claimant's document, Sandra Edwards was not being asked to give a medical opinion, but was being faced with alternative solutions to the claimant's ongoing sickness absence which were not medical, but largely managerial, and were matters for the school, with perhaps some occupational health input.

24.50 However it came about, there was then a meeting on 16 February 2012 with Susan Gee of EH&WS. The claimant attended with her husband. A report from the claimant's GP, dated "Jan 2012", and addressed to Susan Gee (pages 838 to 840, as well as at other locations in the Bundle) was sent to her in advance of this meeting. Colin Willsher did not see or receive this report, which from the fax number on the fax cover sheet (page 838 of the Bundle) was sent directly to the fax number for EH&WS, and there is no indication that it was sent to Colin Willsher.

24.51 This report sets out the claimant's medical history, and her consultations and treatment from July 2011. It also referred to the treatment of medication and counselling that she was receiving. The

GP advised that the claimant had suffered a breakdown in her mental health, due to agitated depression caused by work related stress.

24.52 After referring to the history of this breakdown starting some 15 years previously, the claimant's concerns about systematic victimisation and bullying, and the lack of strong management of the situation, she ended with this:

"Based on the evidence I have seen from Mrs Hassanzadeh it seems that there is little hope at present that the school can manage the situation effectively internally, and that until satisfactory protection of her mental health can be provided it would be unwise to return to this environment without predictable deterioration in her mental health.

I would advise Mrs Hassanzadeh to seek external advice where appropriate now to bring this matter to a conclusion, and will support her fully in seeking to restore her mental health."

24.53 Again, there is no direct evidence of what occurred in that meeting with Susan Gee from the claimant, but, from subsequent documentation, the claimant was of the view that Susan Gee had promised to resolve the situation within two weeks. It appears that there was a suggestion by Susan Gee that there be a discussion between her with Colin Willsher and Nancy Wiles (HR support), to facilitate a meeting between the claimant and school, to explore an exit strategy, with the proviso of no future litigation.

24.54 There is no evidence that Susan Gee did have any such discussion with Colin Willsher, and following this meeting the claimant wrote to Susan Gee on 18 March 2012 (pages 1683 to 1684 of the Bundle). In this letter she expressed disappointment that after four weeks there was no sign of any meeting with the school. She went on to discuss her need to consider the correct choice for her life and career. She wanted to explore the options of returning to work or an exit strategy. She pressed Susan Gee to move the matters on, and suggested an Agenda for a first meeting with Colin Willsher. She also requested an urgent meeting with Colin Willsher during the week of 19 March 2012, with a follow up during the following week, to explore the possibility of her returning to work.

24.55 The claimant's email to Susan Gee was copied to Colin Willsher. He replied on 23 March 2012 (page 1648 of the Bundle) to the effect that he was happy to meet with her, but could rarely arrange to meet at such short notice, and asked her for some dates when she was available.

24.56 The claimant received support at this time from Lesley Sharp, a support worker from Work Place Leeds. She wrote to Colin Willsher on 26 March 2012 (pages 1653 and 1654 of the Bundle) to introduce herself, and offer her support in resolving the claimant's situation.

24.57 On 27 March 2012 the claimant emailed Lesley Sharp (page 1659 of the Bundle) and enclosed copies of her “Brief account of events” document of 25 January 2012, the “Information for Sandra Edwards” document of 14 February 2012, and her letter to Susan Gee of 18 March 2012 (which are then replicated again in the Bundle).

24.58 On 29 March 2012 Colin Willsher wrote to the claimant to convene a meeting under school’s sickness absence policy, on 3 April 2012 (page 1658 of the Bundle) . In this letter he explained how he was content for the claimant’s husband to be present as an observer, as he appreciated how much the claimant valued his moral support, but not as a participant in the meeting. He also said he was happy to meet with the claimant and Lesley Sharpe in the future, but for this meeting her preferred to stick to the policy which gave her the right to trade union representation, which he understood to be John Howarth. He explained how he would be accompanied by Gail Tucker, HR partner. He had noted the claimant’s suggestions for the agenda, but felt he needed to clarify that the main purpose of the meeting must be to explore her possible return to work, and the options from which she could make a decision.

24.59 On 2 April 2012 the claimant informed John Howarth, her union representative, that she felt confident to return to the school , and was happy to move on to a meeting. On 5 April 2012 the meeting was re-arranged for 12 April 2012.

24.60 On 9 April 2012 the claimant wrote to Lesley Sharp, copied to Colin Willsher, John Howarth, Susan Gee and her GP (page 1691 of the Bundle, though this may be incomplete) about this meeting. She was due to meet with Lesley Sharp the following day. She enclosed some notes (pages 1712 to 1713 of the Bundle) for Lesley Sharp. She referred to 16 years of unresolved issues. She recognised that some progress had been made, but the risk assessment may be a minefield. She made some suggestions that she wanted to be considered at the meeting. They were:

To identify a core group for the process, with 100% transparency

Everyone in the group to the freedom of obtaining legal advice

The issues be broken into small and manageable sections and be resolved one by one

Her phased return to work be reviewed on a weekly basis

24.61 The further meeting was held on 12 April 2012. Present were the claimant with Lesley Sharp, Gail Tucker of HR, John Howarth the claimant’s NUT representative, Colin Willsher and Mr Shojaee. Gail Tucker’s notes are at pages 1697 to 1698 of the bundle. It took some time for these to be produced and provided to the claimant, and the claimant was complaining in May 2012 that she had not had them.

24.62 The purpose of the meeting was to plan a phased return to work for the claimant. Lesley Sharp made the proposal for a 12 week rehabilitation period, and suggested a working pattern for that period. Colin Willsher was agreeable to this in principle. There were the concerns raised by the claimant about the SEF which the claimant wanted to go through. She was concerned that Joan Ogley had been critical of her and was questioning her professionalism. Colin Willsher did not see it that way, but said he would ask Joan Ogley to explain her comments. The possibility of mediation between them was discussed. It was agreed that the claimant would return to work on a phased return. A handwritten note of the phased return to work plan, and the main points that were agreed is at page 1702 of the Bundle.

24.63 There was a suggestion, probably made by Gail Tucker, that there should be a “line in the sand” drawn, in terms of investigation into historic issues in the breakdown of relationships in the maths department.

24.64 Following the meeting, later the same day, Lesley Sharp sent an email to Colin Willsher (page 1696 of the Bundle) to make further arrangements for review meetings , saying that she felt very encouraged by some of the outcomes achieved in the meeting, and thanking him for the support he was offering in the claimant’s return to work.

24.65 The claimant return to work on the agreed phased return and rehabilitation programme on 16 April 2012. Her return to work was reviewed at meetings with Colin Willsher , with Lesley Sharp present. The plan was for her to build up to 5 days per week by the end of the summer term. Colin Willsher agreed to reinstate her full pay, to retain the supply teacher who had provided cover for the claimant’s absence, and not take up her full management role for half way through the period. She was exempted from normal performance management, including lesson observations.

24.66 A review meeting was held with Colin Willsher on 30 April 2012. Lesley Sharp was present with the claimant. The claimant’s timetable issues were discussed. Colin Willsher suggested that the claimant discuss these with Joan Ogley, and a meeting was arranged for this purpose on 4 May 2012.

24.67 On 4 May 2012, however, the claimant cancelled this meeting (page 1708 of the Bundle) , saying she would explain later.

24.68 The claimant then sent Joan Ogley an email, copied to the other previous recipients of her previous email, on 10 May 2012 (pages 1709 to 1711 of the Bundle) . She posed a number of questions to (although confusingly these were under the headings “Questions from....” the relevant individual, but the claimant clearly meant “to”) Lesley Sharp, Colin Willsher , Susan Gee, Gail Tucker and Joan Ogley.

24.69 Susan Gee replied by email of 11 May 2012 (page 1714 of the Bundle) saying that she had not had an opportunity to respond, and would do so when she had time to do so.

24.70 Another review meeting was scheduled for 21 May 2012. The claimant prepared a set of notes for this meeting, copied to Colin Willsher , Lesley Sharp, and John Howarth (pages 1719 to 1720 of the Bundle). She raised further timetable issues, and the rehabilitation policy, which she could not find. She asked a series of questions for the second review meeting, and said this:

> *"2. It is clear to every one of us that my stress, anxiety, depression and consequently the nervous breakdown that I am recovering from is a work related issue. It is not like a broken leg that after a certain length of time recovers fully. My recovery is directly dependent on how the sources that caused this stress in the past are examined and resolved before we expect any recovery. At the same time provisions must be put in place to prevent future occurrence of those practices that inflicted this nervous breakdown."*

24.71 She then went on to ask specific questions in bullet points relating to Gail Tucker's failure to provide the minutes of the meeting of 12 April 2012. She raised the timetabling issues, and how they were to be dealt with, and how she would communicate with Joan Ogley. She requested copies of the timetables of the individuals in the maths department for the last four years.

24.72 On 24 May 2012 the claimant emailed Susan Gee asking for sight of the Rehabilitation Policy (page 1721 of the Bundle).

24.73 On 29 May 2012 the claimant met with Lesley Sharp. What precisely was said is not in evidence (nor is there any document that the claimant prepared or took with he to the meeting), but Lesley Sharp sent the claimant an email on 31 May 2012 after this meeting (pages 1729 to 1730 of the Bundle). The claimant had apparently expressed some dissatisfaction with the meeting of 12 April 2012, which Lesley Sharp had considered to be positive. She set out her view of the points and outcomes that had been agreed. She noted that Colin Willsher had expressed an acknowledgement of the emotional pain and personal hurt that she had suffered, and how he was sorry that she had experienced this. She referred to there being some constructive agreements. This was, she noted a process, which would need to allow for some flexibility and adaptation as they moved along. She went on to comment on some negative points that the claimant had raised. She agreed that it would be useful to consult the School Stress Policy to ensure correct procedures were being adhered to. She had, however, been unable to source it. She mentioned the issue of the outstanding minutes, which needed to be raised at the next meeting.

24.74 Lesley Sharp also addressed the "line in the sand" comment, and expressed her interpretation that this meant coming to the process with a sense of addressing the problems and the issues from the present time. She sought clarification of what the claimant had understood it to mean.

24.75 The claimant, it appears, did suggest to Lesley Sharp that the meeting of 12 April 2012 had adopted the wrong approach, and had created problems. She responded to this in point 4 on page 1730 of the Bundle, being saddened by this discovery, as up until then she believed the claimant had been happy with the service she had received. She went on to mention other support services that she intended to explore, and to continue to offer her support.

24.76 The claimant replied by email of 4 June 2012 (page 1728 of the Bundle), saying that she was grateful for Lesley Sharp's support, and was feeling more confident because of it. She also provided Lesley Sharp with web links to the School Stress Policy.

24.77 A review meeting was planned for 11 June 2012, but the claimant was not well, and did not attend school that day, notifying Colin Willsher accordingly at 07.15 (page 1734 of the Bundle) and the other attendees of the meeting.

24.78 On 14 June 2012 the claimant went back to work at the school, but informed Lesley Sharp by email of that date that she was not well enough, and would only be attending for four days from the following week. She similarly informed Colin Willsher later that day (page 1742 of the Bundle).

24.79 Lesley Sharp replied to her offering to meet her on 28 June 2012. She wanted to see the claimant before the next review meeting with the School to discuss the agenda for it (page 1747 of the Bundle).

24.80 By email of 15 June 2012 (page 1742 of the Bundle) Alison Hill of the NUT sent the claimant a copy of the latest school stress policy that she had been able to find on the Council website. She made reference to a "rehabilitation policy", which appeared to have been deleted. She said, however, that she would make enquiries about that policy, and would get it sent to her if there was one.

24.81 By email of 17 June 2012 to Susan Gee, copied to her GP and to the HSE, (pages 1745 and 1745 of the Bundle) the claimant informed her that since her return to work on 16 April 2012 her recovery had taken a "U-turn". She said she had attempted to raise her concerns with the Head teacher, and HR, but to no avail. She had looked through, she said, the School Stress Policy, and the HSE website. She complained that the suggestion to "draw a line in the sand" made by HR and the School was a breach of the Stress Policy, and of health and safety law. She explained how Mr Shojaee had spoken to an Inspector from HSE, and what he had said about what he had been told. Other than to

acquaint Susan Gee with this information, her purpose appears to have been to ask Susan Gee for greater assistance. She did not, however, request any particular action on the part of Susan Gee, who did not, it seems, reply.

24.82 By email of 18 June 2012 to Colin Willsher (pages 1748/9 of the Bundle) the claimant gave her consent for her husband, Mr Shojaee, to advocate on her behalf in any meetings to be held with her. She cited as her reasons her work related stress, and the need for her husband to support her which would be beneficial to her recovery and enable her to concentrate upon her teaching. She also proposed that he be present in the next meeting arranged to discuss her timetable.

24.83 Colin Willsher replied (page 1748 of the Bundle) on 19 June 2012 saying that he was more than happy for Mr Shojaee to attend future meetings as an observer and to provide the claimant with moral support. He could not, however, agree to him advocating on her behalf, as he needed to hear directly from the claimant in dealing with her return to work.

24.84 By another email the same day, 18 June 2012, the claimant wrote to Eric Fairchild, copied to Susan Gee (page 1752 of the Bundle) , attaching he previous email of 17 June 2012 that she had sent to Susan Gee. Eric Fairchild was the Council HR manager at the time, and was advising the school. She asked that a meeting be held between her, her husband, Eric Fairchild and Susan Gee, expressing that her husband had expressed confidence in Susan Gee and Eric Fairchild. Eric Fairchild subsequently replied, on 18 and 21 June 2-012 (pages 1757 and 1578 of the Bundle), saying that that he was trying to arrange such a meeting, but was having difficulty in speaking with Susan Gee.

24.85 On 21 June 2012 Alison Hill sent the claimant a copy of the Rehabilitation Policy which she had received from occupational health (pages 1754 to 1756 of the Bundle).

24.86 On 22 June 2012 Eric Fairchild emailed the claimant (page 1831 of the Bundle) about the meeting she had asked for. He told her that Susan Gee and he were happy to meet with her, at the neutral venue of occupational health. As he and Susan Gee did not believe that they were able to sort anything out at the school without the involvement of the Head, they considered that Colin Willsher would have to be present. The claimant could have trade union accompaniment. Her husband could attend with her, but would have to wait in a side room. He would be available, however, should she need support or get upset. He proposed this meeting take place on 9 July 2012.

24.87 A meeting was apparently held between the claimant and Colin Willsher also on 22 June 2012, and Mr Shojaee was present. An email following that meeting was sent by the claimant on 24 June 2012 (page 1757 of the Bundle). The meeting discussed the timetable, and in her

email the claimant repeated her reasons for insisting that her husband was involved in meetings, or all communications would have to be in writing. She made reference to the Stress Policy, and stated that she hoped it was clear that her husband had a "full conviction to be helpful to everyone for the creation of a common ground that the issues between us would be resolved more quickly".

24.88 On 24 June 2012 the claimant sent an email to Lesley Sharp (page 1758 of the Bundle) . She was apparently dissatisfied with the support that Ms Sharp had been giving her, and suggested that the manner of her contribution has caused damage. She asked her to refrain from taking any further actions regarding her case until a meeting had been held with her (i.e Ms Sharp's) manager.

24.89 The same day, the claimant received from her union, a copy of the notes of the meeting held on 14 April 2012 which had finally been received from Gail Tucker (pages 1759 to 1761 of the Bundle).

24.90 On 25 June 2012 the claimant sent an email to Colin Willsher (pages 1828 to 1829 of the Bundle). She informed him how she had received a copy of the Rehabilitation Policy and Gail Tucker's notes of the April meeting. She made the points that the latter omitted mention of: the discussion about a working party to look at past issues, Gail Tucker's suggestion of "drawing a line in the sand" , her promise to come up with a mechanism to deal with the past issues, misspelling of the "SEF" , which she claimed victimised two members of staff, and her mention of 16 years of victimisation. She went on to say how she could not sleep the previous night, was suffering high anxiety and extreme depression. She complained of the absence from the notes of work related stress, and how it was not obvious whether her return to work was "based on rehabilitation or work related stress". She sought immediate clarification from Colin Willsher of whether he considered her return to work as rehabilitation, and would apply the rehabilitation policy or as work related stress and would apply the School Stress Policy.

24.91 Colin Willsher replied by email on 25 June 2012 (page 1828 of the Bundle). He expressed sorrow that the claimant was feeling so anxious. He did not fully understand her question. In agreeing a phased return to work he could not specify what the "issue" was, only her doctor could do that. The doctor had diagnosed stress, his role was simply to do what he could to support her return to work. He had agreed a phased return to work based on the "rehabilitation model" rather than the usual four week period. He went on to say that he had reached some decisions about timetabling issued that had been discussed, and would speak further with her.

24.92 On 26 June 2012 the claimant's GP, Dr Pearson, wrote a letter "To whom it may concern" (page 1830 of the Bundle) in which she referred to the claimant's return to work, and her increasing symptoms of stress related illness since she had done so. She went on to say how her

stress levels had deteriorated over that weekend (26 June 2012 was a Tuesday) and how she could not attend work that day. She suggested that the claimant should be fit to work three days per week, i.e. Monday, Wednesday and Friday until the end of term, as the issues which continued to cause work related stress continued and remained in need of some degree of resolution.

24.93 It is unclear precisely when and how that letter was received by the School, but it was, and Colin Willsher saw it. He was agreeable to her only working three days a week, but did not get the chance to tell the claimant before she sent the email referred to below.

24.94 On 3 July 2012 the claimant sent an email (pages 1837 to 1839 of the Bundle) to Eric Fairchild, which appears to be her response to his email of 22 June 2012 in which he proposed a meeting on 9 July 2012. In this email she set out the reasons why she had sought a meeting between only the four of them. She alleged that the meeting of 12 April 2012 had been conducted by Colin Willsher and Gail Tucker in “an ambiguous manner” to “wrong foot” her and others. Although pretending to aim for a successful return to work, she alleged that in reality they were deviating from recognising her stress at work. She considered the suggestion that a line in the sand be drawn was an improper mechanism, and went against HSE guidance. She considered that Gail Tucker had reneged on a promise to look into past issues, and had left significant points out of the notes she provided of that meeting. She went on to refer to the rehabilitation policy, and how Colin Willsher would not recognise her stress at work, and deal with it under the School Stress Policy.

24.95 She went on to accuse Colin Willsher and Gail Tucker of victimising her, and wasting 11 weeks of valuable time that could have improved her recovery. Her husband was the only person who noticed this alleged deviation from the School Stress Policy to the Rehabilitation Policy, and was the only person she had confidence in.

24.96 She did appreciate that Colin Willsher should attend the meeting, but wanted it to be informal. Her agenda would be for the meeting to pave the way for the implementation of the Stress Policy as urgently as possible. She went on to suggest that the structure of the meeting that Eric Fairchild was proposing was even less favourable to her than the meeting of 12 April 2012. He had predicted that she would become upset in the meeting. The presence of her husband in the meeting was therefore necessary to give her confidence and reduce her stress.

24.97 It seems that Eric Fairchild at some stage suggested that the meeting which he had proposed for 9 July 2012 be brought forward to 8 July 2012, as the claimant emailed him on 6 July 2012 (page 1871 of the Bundle) to tell him that it was impossible to go on with the structure that he insisted upon. Further, she had asked for a new union representative to be assigned, and this would need time for familiarisation with her case.

24.98 On 9 July 2012 the claimant emailed Colin Willsher, asking why he had referred her to Occupational Health, and had suggested that she had failed her rehabilitation period, and questioning her fitness for work. This she appeared to have understood from a conversation with Colin Willsher, and an email from Eric Fairchild, which she did not identify. She asked for a copy of the referral letter.

24.99 Colin Willsher replied on 13 July 2012 (page 1883 of the Bundle) by email to the claimant stating that he was unclear why she had written to him, as he had not written to Eric Fairchild, and had not referred her back to Occupational Health. He thought she may have misunderstood a conversation they had recently had in which he had agreed to her only working three days per week.

24.100 In fact, it seems that Susan Gee made the appointment which the claimant was referring to (see her email of 9 July 2012 at page 846 of the Bundle), which generated an appointment letter dated 13 July 2012 for an appointment with Susan Gee on 19 July 2012 (page 848 of the Bundle).

24.101 Around this time, a new union representative, Rhoda Andruchow, a full – time officer of the NUT, was assigned to the claimant, and she made arrangements with Eric Fairchild for the meeting that had been proposed.

24.102 On 13 July 2012 the Occupational Health appointment letter was sent to the claimant, for an appointment with Susan Gee on 19 July 2012. The claimant herself sent an email to Susan Gee on 15 July 2012, asking for the referral letter (pages 1886 and 1887 of the Bundle). There is no reply to this email.

24.103 It is unclear whether that appointment with Susan Gee took place, the Tribunal can see no record of it in the Bundle. What is clear is that a meeting was then arranged for 24 July 2012 between Eric Fairchild, Susan Gee, Colin Willsher, the claimant and her union representative at City Hall. The Tribunal cannot find any further referral to occupational health around this time, and from later documents it appears that Susan Gee claimed that Eric Fairchild had made the referral. It may be Susan Gee's arranged appointment was going to be the meeting that had been planned. Whatever the position, no meeting or occupational health assessment took place on 19 July 2012.

24.104 Prior to the meeting arranged for 24 July 2012 Rhoda Andruchow raised with Eric Fairchild the issue of the claimant's husband being in attendance in the meeting. He replied to her that he had previously said that he could do so, but he would have to wait in a side room. That remained his advice, as the claimant would have her union representative to support her (page 1897 of the Bundle).

24.105 She advised the claimant of Eric Fairchild's reply, and the claimant then wrote directly by email to Eric Fairchild at 9.04 a.m. on 24 July

2012 (pages 1895/6 of the Bundle). In her email she referred to her "near nervous breakdown" in September 2011, the meeting on 11 January 2012, the unlawful actions of Colin Willsher and HR, the deliberate deviation from the School Stress Policy, the meeting of 12 April 2012, and how it was only her husband's presence in the two meetings in 2012 that enabled her to recognise the problems and act appropriately. Any insistence to exclude him was extremely unreasonable, and against medical advice which she (apparently, they do not appear in the Bundle at this juncture) attached. She also made reference to a document that she had previously submitted.

24.106 Eric Fairchild replied to the claimant later the same day (page 1895 of the Bundle) agreeing that the presence of the claimant's husband would be discussed at the outset of the meeting, and asking for a copy of the document she had referred to. Finally he stated that the purpose of the meeting was to support the claimant in her continued recovery and to assist the school in normalising relations with her. The claimant sent Eric Fairchild six pages of explanation by email later that morning (page 1899 of the Bundle) and said she would bring 13 pages of evidence with her to the meeting.

24.107 The meeting was duly held on 24 July 2012, with Amanda Clegg of HR present to take notes (which are at pages 1906 to 1908 of the Bundle).

24.108 It was firstly agreed that the claimant's husband could remain in the meeting, and he did so. Whilst the claimant has suggested that her husband was prevented from taking an active role in this meeting, the minutes do not support this, and Rachel Andruchow's subsequent email of 21 September 2012 (page 2677 of the Bundle), responding to the claimant's suggestion that her husband should have been allowed to present her case , is that he was allowed to be present as previously agreed with Eric Fairchild, which was clarified in the meeting. She pointed out that at this stage in the meeting she asked if the claimant and her husband wanted a brief adjournment, but they declined and agreed to continue.

24.109 In the meeting, after a synopsis of the claimant's sickness and absence history, and the steps taken up until that point, Rhoda Andruchow stated that the claimant was clearly suffering from work related stress, and a risk assessment was required.

24.110 There was discussion about who should carry this out, and how it should be done. Susan Gee explained the role of OH, and the limitations upon OH in a situation where the issues were, as she saw them, largely managerial. Eric Fairchild tried to assist by explaining what role OH had. He said the main issues were historic between the claimant and the School, with some of her complaints going back 16 years. It was not possible for HR to look at issues that far back, but the it could address those in the last two years. He identified the friction between the claimant and the Faculty Head (i.e. Joan Ogley), and that mediation could be a way forward. Rhoda Andruchow agreed that a

stress risk assessment would be helpful, and accepted that HR could not investigate issues over a 16 year period.

24.111 The claimant went over her concerns and fears, and stated that she wanted an apology from the Faculty head, and then to have a risk assessment.

24.112 Colin Willsher and Susan Gee were to liaise in respect of setting up the risk assessment. Susan Gee explained the process, and how a template would be provided to the claimant and the School. The claimant and her union representative would go through it, and then meet with OH. A meeting would then be set up with the School. The School would not be obliged to act upon the recommendations in the assessment, but would have to justify not doing so.

24.113 Eric Fairchild warned that it may not be possible to get the letter of apology, and HR could not force one to be given.

24.114 There was quite some discussion about the SEF issue, which was one which continued to exercise the claimant, and which was between her and the Faculty Head. She was still seeking an explanation, and Colin Willsher felt that mediation may be the way to resolve this.

24.115 There was further discussion about the claimant's return to work. Susan Gee stated that after her rehabilitation process and four weeks phased return, she would be expected to return to work on a full time basis. Rhoda Andruchow asked that the claimant be given an extended phased return in the autumn term, and the claimant asked for this up to the October half term. This was a management issue, which was then discussed between Eric Fairchild, Colin Willsher and Susan Gee in private.

24.116 Upon reconvening the claimant was told that the School would agree to a further six weeks phased return, two weeks working three days, two weeks working three and a half days, and two weeks at four days. Eric Fairchild suggested that there be some distance put between the claimant and the Faculty Head. He proposed that the claimant remain second in the Faculty, but she should not exercise that function during this period, during which she would be supervised by the Deputy Head.

24.117 Susan Gee was to liaise with the claimant and her union representative about the assessment over the summer, and the issues in it would be dealt with in September. The claimant would discuss what procedures she wished to follow, such as investigation or mediation.

24.118 Going forward, Eric Fairchild said that any teaching assessments would be carried out by an independent party.

24.119 The claimant asked that these conditions be put into writing, which Eric Fairchild agreed would be sent to her, and her union representative, after 8 August 2012. He was about to retire, and Les Hall would be his

successor. In response to a question from Rhoda Andruchow it was confirmed that the claimant should attend her next OH appointment.

24.120 Susan Gee provided the necessary risk assessment documentation to Rhoda Andruchow soon after the meeting, as by 26 July 2012 she was able to send them by email to the claimant (page 2651 of the Bundle) . She asked the claimant to supply her with an initial draft by filling in details under three specific headings, and to do so by 30 July 2012.

24.121 The claimant relied by email on 30 July 2012 (pages 2650 and 2651 of the Bundle) saying that she did not want to do this until they had received the minutes of the meeting and a letter that had been promised, as she understood, by 8 August 2012. She also was awaiting an assessment of her case by 2 August 2012 from Rachel Andruchow. After she had analysed these documents, she would then write further and inform her of her decisions.

24.122 There was further email communication that day, Rachel Andruchow thinking that the claimant had attached some comments for the risk assessment to her first email, when she had not, and the claimant thinking that it was suggested that there be a meeting to deliver the assessment of her case. The upshot was an email from the claimant later that day (page 2653/4 of the Bundle) in which she stated that to provide a risk assessment draft at this stage was a premature act, and it was abridge they should pass when they got there. She insisted on things being done in a particular order, which she then set out.

24.123 Rachel Andruchow duly carried out a case review of the claimant's case on 2 August 2012. She produced a document so entitle, dated 2 August 2012 (pages 2660 to 2662 of the Bundle). She noted the claimant's recent return to work, and the meeting that had been held on 24 July 2012. At para. 2 she says this:

> *"2. From the documentation made available to RA* [Rachel Andruchow] *there is no evidence reasonable to be relied on in any claim of race or disability discrimination prior to July 2011 in that the matters potentially to be complained of are out of time. Furthermore in reading through the documentation the matters where raised with management have been dealt with."*

24.124 She went on to consider the issues raised in relation to lesson observations and record keeping. She concluded that the in relation to the former, there was no evidence that the claimant was subject to scrutiny other than within the usual performance management cycle. In relation to the latter, she advised that if the claimant wished to pursue the SEF issue, she would need more information. In relation to documents missing from the claimant's personal file, she again needed more information.

24.125 She went on to express concern at the protracted delay in the arrangements for completion of the stress risk assessment, and

advised the claimant to raise a grievance, to include these three elements, which she said may be evidence of the employer's negligence in relation to the duty of care , and discrimination under the Equality Act. She advised that she may wish to apply for legal assistance in relation to a potential personal injury claim regarding her work related stress. In her "action points" she included that the claimant provide her with an initial draft for submission to Susan Gee for use in the risk assessment, and how this would be the starting point for a grievance.

24.126 Colin Willsher went on holiday shortly after this meeting, and did not return until 8 August 2012.

24.127 The minutes of the meeting and the outcome letter promised by Eric Fairchild were not completed or sent out before he left the Council on 17 August 2012. Rhoda Andruchow chased up the letter and the minutes by an email of 17 August 2012, to which Susan Gee replied later that day, explaining that she thought this had been done, and apologising for the delay. In due course, on 29 August 2012 Les Hall, now in post, sent out a letter (i.e that at pages 1912 to 1914 and, again, at pages 1917(a) to 1917(c) of the Bundle, which erroneously refers to a meeting on 24 June 2012) from Colin Willsher to the claimant. This exchange is at pages 1915 to 1916 of the Bundle.

24.128 Colin Willsher's letter summarised what had been discussed in the meeting. The claimant's return to work arrangements were discussed, as agreed. He also made reference to her being supervised by Mukesh Nar temporarily, and the discussion that it may be practical for the claimant to suspend her activity as second in department, as this would minimise her contact with the Faculty Head, though she would retain her status.

24.129 He also set out his understanding of the stress risk assessment process, which was that during the summer break Susan Gee, the claimant, and Rhoda Andruchow would meet to work on the assessment, and this would be provided to him at the start of the September term, so that it could be discussed.

24.130 The claimant's initial response to Colin Willsher's letter was made on 31 August 2012 (page 1918 of the Bundle) by email. In this letter she said, whilst this was not her full response, that she strongly disagreed with the suggestion that she did not exercise her role as second in department, and there was no need for her to be supervised by Mukesh Nar. She promised a further, and fuller response once her union representative returned from holiday. She emailed her on 2 September 2012 (page 1919 of the Bundle), by which time she had received the minutes of the meeting.

24.131 The September term started and the claimant returned to work on the phased return that had been agreed. She and her union representative had not met with Susan Gee during the summer, and hence there was

no assessment available for Colin Willsher to consider and discuss with the claimant.

24.132 On 9 September 2012 the claimant emailed Colin Willsher, following up her email of 31 August 2012 (page 1931 of the Bundle). She explained how and when she had received his letter and the minutes of the meeting, and how she was still waiting to meet with Rhoda Andruchow.

24.133 Susan Gee, when HR chased her up in early September, explained how she had been waiting to hear from the claimant and her union representative over the summer, but had not done.

24.134 On 11 September 2012 Colin Willsher sent the claimant an email (page 1957 of the Bundle) in which he apologised for any misunderstanding about when he would write to her. He went on to point out that he believed that she and her union representative would be in discussions during the summer about the assessment, and that is was important that this document was completed. He offered any help needed if a further meeting with OH was required.

24.135 On 13 September 2012 the claimant (probably with her husband) had a meeting with Rhoda Andruchow. The points that she raised are set out in an email of that date (pages 2666 to 2669 of the Bundle).

24.136 On 19 September 2012 Rhoda Andruchow sent a letter to Colin Willsher (page 1976 of the Bundle) in which she expressed concern at the length of time it took for his letter and the minutes of the meeting of 24 July 2012 to be issued, and how this had led to the claimant and her not having had a reasonable opportunity to digest the contents and respond. She indicated that she would respond more fully when she had had more time. She went on to suggest that this had caused delay in the stress risk assessment, through no fault of the claimant.

24.137 Colin Willsher replied by letter of 26 September 2012 (page 2012 of the Bundle) thanking her for her letter, and offering any support that she required from OH. He did not express his view, which the Tribunal shares, that her letter had been an attempt to lay blame for the delay in the risk assessment solely at his door, when this was not so. Indeed, it seems the blame, if any lay equally with Susan Gee, Eric Fairchild and the claimant’s union representative, all of whom appear to have contributed to the delay, for what that is worth.

24.138 In the meantime, by email of 24 September 2012 (pages 2675 to 2677 of the Bundle) the claimant sent Rhoda Andruchow further comments, and had, in the intervening time provided her with, as part of an email sent on 20 September 2012 (page2678 to 2685 of the Bundle) her suggestions for the conditions that had to be met by the school in meetings going forward, in some seven specific points (pages 2683 to 2684 of the Bundle) .

24.139 Rhoda Andruchow commented upon these suggestions specifically, advising that she considered that no. 1, every meeting to be recorded was an unreasonable expectation, no. 3, the need to share correspondence in "real time" was unclear, no. 4, the reference to "everyone" was similarly unclear, no. 6, the requirement for Colin Willsher to write a letter accepting the claimant's stress was work – related , and responsibility for the delay in implementing the school stress policy, was highly unlikely and no. 7, the requirement that her husband be allowed to advocate on her behalf , was similarly unlikely to be considered reasonable, and would not be supported by Rhoda Andruchow as her representative in any future meetings.

24.140 Her advice was to engage in the stress risk assessment, which was for the purpose of resolving workplace issues.

24.141 In or about the third week in September 2012 an issue arose in relation to a student ("H") who had returned to the School, having been previously removed from it by his parents to travel abroad. There had been issues with this student previously, and he now needed accommodation back into the school curriculum. The claimant assumed the responsibility for allocating his maths classes, with no discussion with Joan Ogley, or her colleagues. Consequently, through various email communications around 25 September 2012 she initially sought to place him in a class with the teacher with whom there had previously been issues. He advised that it would be better if he did not take him. She then sought to place him in a particular class, and involved the Student Manager, Christine Wilber, in trying to provide a temporary location for him, whilst she set him work. On 25 September 2012 (apparently at 5.40 a.m.) the claimant sent an email (page 1999 of the Bundle) to Colin Willsher, Mukesh Nar and Joan Ogley, asking them to "look after" this student whilst she was trying to sort out where he should be allocated.

24.142 She attempted to place the student in one class, whose teacher objected, on the grounds that her group was already too large, he was not at the same level as her students, and she was not a specialist maths teacher. Usman Khan was also involved, and the claimant questioned why he had, as she called it, interfered. The email exchange relating to this issue are at pages 1992 to 2006 of the Bundle.

24.143 Joan Ogley took control, and arranged for Usman Khan to provide work for the student whilst he was placed with Christine Wilber. The claimant sent her an email on 25 September 2012 (page 2002 of the Bundle) asking her to explain the rationale behind the move, and asking why she and Usman kept on creating "confusion with undue influence that wastes time and energy ?"

24.144 She similarly sent an email of the same day to Usman Khan (page 2004 of the Bundle) in which she complained that he had unduly

interfered, and said it was inappropriate to use Joan Ogley as a "messenger".

24.145 On Friday 28 September 2012 Mr Shojaee sent an email to Colin Willsher in which he said this:

"It is regrettable that in spite of all the efforts I have made to help you, Joan, the successive union representatives and Fatemeh to bring the 17 years of bullying and mobbing [sc. "to an end"] *to avoid legal action ; you have continually used every possible to ignore the stress you and the rest are inflicting on Fatemeh. In fact you have stepped up the bullying and mobbing against her since the meeting of 24 July 2012 and agitated her depression continually that eventually today it reached a stage that on the way to the school it became so unbearable for her that I had no choice but to bring her back home.*

I am going to write down the detail for you and those who need to know what you have collectively done to her that once again she might be at the verge of another nervous breakdown."

24.146 He copied this to an HSE Inspector, the claimant's GP, Les Hall (whom he had not met, and assumed was female) Susan Gee, and Rhoda Andruchow. All his subsequent emails were so copied, with some variations.

24.147 The claimant indeed did not attend work that day, and never returned to work again right up until her resignation on 14 January 2014.

24.148 On 2 October 2012 Mr Shojaee sent an email to Colin Willsher (pages 792 to 796 of the Bundle). This five page document makes a number of assertions and allegations about his conduct the matter that far, and indeed made similar allegations about the conduct and "mind – set" of Eric Hall, and Susan Gee. He was critical of the meeting of 24 July 2012, accusing the participants of breaking laws, policies and procedures, and seeking to protect themselves rather than addressing the claimant's heath issues. He stated, twice, that the claimant had sufficient evidence for legal action. He alleged breach of the Equality Act, health and safety law, breach of the duty of care, and misrepresentation.

24.149 He made specific allegations about Susan Gee, in relation to the minutes of the July meeting, contending that she had deliberately not sent out minutes of that meeting as part of a "trick" that Eric Fairchild needed to play on the claimant and her husband.

24.150 He made specific reference to the recent events relating to the allocation of the year 9 pupil, and claimed that the level of "bullying and humiliation" that the claimant was subjected to was beyond imagination. He suggested that Les Hall may now want to take the opportunity to rescue the process, and avoid legal proceedings.

24.151 He went on to set out some nine points which he suggested should be the mechanism for the start of the risk assessment. They were:

"1. Every meeting that we are going to have must be recorded either by video, my preferred option, or audio to stop this childish game of misrepresentation. All along you have used the misrepresentations as a trick to avoid addressing the main issue which is Fatemeh's work-related stress and employing the school stress policy.

2. A copy of the school stress policy and relevant HSE documents to be available in the meetings for measuring the suggestions and arguments against them.

3. All those who are part of the process or need to be part of the process to be identified and all correspondence from any of them to be sent to all others in real time.

4. A copy of the documents referred to in the risk assessment process to be made available to everyone in the process in real time too.

5. The start of Fatemeh's recovery must be the date when this mechanism is in place and the risk assessment starts.

6. You must write a letter and in explicit terms accept that Fatemeh's stress is a work related stress and you must in explicit terms accept the responsibility for this delay of one year in implementing the school stress policy and in explicit terms undertake that from now you are going to implement the school stress policy in relation with Fatemeh's stress in full.

7. Risk assessment must be carried out between you and Fatemeh directly.

8. I must be allowed to advocate on Fatemeh's behalf within the framework of the consent she has given me, in all meetings and wherever it is necessary.

9. I appreciate your concern regarding the quality of teaching that the issue of classroom observation to become the first issue in the risk assessment to put your mind at rest."

24.152 These points were largely what had been set out in the claimant's email to Rhoda Andruchow on 20 September 2012, referred to above.

24.153 He went on to set out various matters in support of these points, and invited Colin Willsher to respond to him , in the hope that he did not waste this opportunity as , said, he had done with the meeting of 24 July 2012.

24.154 Whilst the email distribution header on page 792 does not include Susan Gee (or anyone else) as an additional recipient, at the end of this email Mr Shojaee indicated that copies would be sent to , amongst others, Susan Gee. This email somewhat set the tone for what ensued in the following months in terms of the process of advancing the risk assessment.

24.155 Mr Shojaee sent a further email on 3 October 2012 (page 2030 of the Bundle) updating Colin Willsher on the claimant's absence and how she was being monitored by her GP.

24.156 On 4 October 2012 the claimant's trade union sent her an email, from Ian Stevenson , the Regional Secretary, withdrawing legal assistance in her case (pages 2690 and 2691 of the Bundle). Amongst the reasons given were :

"3. Rhoda has consistently advised since 26 July that you engage with the Risk Assessment process and this information may also be used in forming the basis of a grievance. You have decided not to take Rhoda's advice. I believe that the course of action you prefer involved several unreasonable demands are made of the School before engaging with the Risk Assessment process."

24.157 Mr Shojaee's next email to Colin Willsher was on 5 October 2012, in which he made reference to the need for open communication, and suggested that they all met early the following week. He in fact sent two emails, as he omitted to attach to the first one a copy of notes that the claimant had compiled ahead of the meeting held on 12 April 2012. This document was in fact addressed to her support worker, Lesley Sharp. The emails and attached notes are at pages 2036 to 2038(b) of the Bundle.

24.158 Colin Willsher sent an email to Mr Shojaee on 8 October 2012 (page 2045 of the Bundle) in which he thanked him for his updates, and advised him that he had forwarded the documents he had sent on to HR. He went on to say that it would be very helpful if the claimant could initiate the stress risk assessment by itemising her perceptions of stress so that he could then complete the risk assessment with her.

24.159 The claimant (though the Tribunal considers it more likely that the author of this, and indeed most emails hereinafter, if more than few lines long, was actually Mr Shojaee) replied on 9 October 2012 (pages 2039 - 2040 of the Bundle), saying that she was doing so to clarify the new situations, and make his suggestions for the way forward. She set out some 16 paragraphs in this email. In summary she went through the history from July 2011, as she saw it, covering the meetings of January and April 2012. She informed Colin Willsher that she had instructed her union representative to negotiate an exit strategy, but she had refused to do so. By this time the claimant was in dispute with her union, which, she said, would not be acting for her until those issues had been resolved. She said that Susan Gee had agreed this

was best, but that Colin Willsher had not responded to her. She referred to the notes she had prepared for the meeting in April 2012.

24.160 She continued to complain of the process that had been followed, and indeed to criticise the three union representatives that had acted for her. She alleged that the School was ignoring the stress policy, and all involved had been responsible for the undesirable consequences that had ensued. The meeting of 24 July 2012 had been an opportunity to rectify the mistakes made, but all involved, including her third union representative, had badly failed again.

24.161 She went on to say this:

"The procedure you followed in writing your letter of 20 August 2012 and assign legal credibility to it was flawed. Your failure was not only confined to the meeting of 24 July 2012, but you failed to stop the bullying during the first 4 weeks of the new academic year. The collective bullying, mobbing and humiliations that I have been subjected to in discharging my responsibility for group allocation of a year 9 student which was taking place in front of your eyes was too much to bear and led to another setback in my recovery."

24.162 She went on refer to her document for the 12 April meeting, in order to give Colin Willsher another opportunity to decide which of the "three options" he felt comfortable to pursue. By that term, the Tribunal supposes her to be referring to the three bullet points set out on the first page of that document (page 2028(a) of the Bundle), which are:

"

- *Taking legal action*
- *Accept an exit strategy*
- *Return to work with some agreed mechanism"*

24.163 In the ensuing paragraphs 14, 15 and 16 of this email, however, options one and three appear to have been reversed, in that at para. 14 the invitation, if "option one" is chosen, is to Colin Willsher to declare his letter of 20 August 2012 "void" for the reason that the procedures followed in the meeting of 24 July 2012 were flawed. If that option was chosen, an urgent meeting was sought. The claimant, in this paragraph does acknowledge that Colin Willsher's direct request for the risk assessment in his email of 8 October 2012 is the first positive step in the right direction.

24.164 Mr Shojaee, having posted in two further fit notes, wrote further on 12 October 2012 to Colin Willsher (page 2042 of the Bundle) asking for an urgent meeting to address the HR advice, the initiation of the risk assessment , and the points made in the claimant's last email.

24.165 It appears that a meeting was arranged for 18 October 2012, with Susan Gee, or at her office, which was confirmed by email of 15 October 2012. Unfortunately Colin Willsher had an Ofsted visit on 18 October 2012, at short notice so could not attend, although it appears that the claimant and her husband attended at Susan Gee's office. Nothing turns upon this, and the meeting was re-arranged for 24 October 2012.

24.166 That meeting went ahead, though there are, surprisingly, no minutes or notes of it. Susan Gee attended, with Colin Willsher, the claimant and her husband. Colin Willsher wanted to use the meeting to start the risk assessment. He sought to get from the claimant what stressors she could identify as the first part of the process. The claimant, however, did not want to approach this exercise in a holistic manner., but wanted it dealt with in stages, the first one being the topic of communication. Colin Willsher found it hard to get her to provide the necessary details, and resorted to extracting issues that she had previously mentioned, and putting those forward into the assessment to see if she would agree these were appropriate.

24.167 The claimant sent an email to Colin Willsher the day after this meeting, 25 October 2012 (page 2055 of the Bundle) in which she thanked him, and expressed satisfaction that they had at least reached agreement on the first stress factor, the communication. She went on, however, to say that she felt the most constructive approach now was to fill and sign the first risk assessment sheet with this agreed factor, and put it into practice immediately. This would boost her confidence for a return to work after the half – term holiday. This would, she said, "pave the way" perhaps for future meetings. She suggested another meeting the following week.

24.168 In the meeting the claimant provided to Colin Willsher and Susan Gee a document, which has not been specifically identified to the Tribunal, but is likely to have been either the letter of 2 October 2012 (pages 792 to 796 of the Bundle) or that of 9 October 2012 (pages 2039 to 2041 of the Bundle), or possibly both. Whichever, those documents were somewhat critical of Susan Gee, suggesting that she had behaved unprofessionally, had falsified notes of a previous meeting, and had used tricks. Whichever it was, Susan Gee took exception to it, as by email of 8 November 2012 (page 2060 of the Bundle) to the claimant she expressed her personal and professional affront at such allegations, which she felt compelled to challenge. She considered she had tried very hard to be supportive of the claimant. In the circumstances, as it was clear that the claimant had no trust and confidence in her, and in order to protect herself, she withdrew from the process.

24.169 On 26 October 2012 the claimant was provided with a further fit note by her GP Dr Pearson (page 2198 of the Bundle). It covered the period from 26 October to 5 November 2012, and thereafter from 5 November 2012 to July 2013. She added a note saying that the claimant aimed to

return to work full time if a risk assessment and work adaptation plan was in place and acceptable to all parties.

24.170 Colin Willsher sought advice on the risk assessment, and was told by HR that the whole document had to be completed before it was signed in order to ensure that it was coherent. He had been provided with a proforma document for this purpose. An example is at pages 2068 to 2076 of the Bundle. This is a document in landscape format, with six columns. The first is headed "Employee's perception of stressors", the second is headed "What action is needed to prevent employee's perception of stress?", the third "Action taken by management", the fourth "Action taken by employee", the fifth "Review date" and the sixth "Outcomes (to include any inaction by either party). The claimant had only been willing to discuss filling in the first column, but only in respect of the topic of "communication". There were a number of other topics, and it was these that also needed the first column completing before the assessment could be progressed.

24.171 Colin Willsher sent an email to the claimant on 9 November 2012 (page 2062 of the Bundle) making these points, and attaching a proforma for her to complete. He included her comments from their meeting, and asked her to complete the first column in relation to the rest of the document, in respect of any other perceived stressors. He asked her to return it to him by 23 November 2012.

24.172 The claimant replied that on 12 November 2012 that she was happy with that, and suggesting a further meeting. Colin Willsher replied that he was happy to do so, but only saw the point of doing so once the claimant had completed the first column of the assessment (page 2064 of the Bundle).

24.173 The claimant did then, on 14 November 2012, send Colin Willsher more comments for the assessment, but had found it difficult to put them into the assessment. She therefore had written them in statement form, and asked if his secretary could cut and paste them into the form (page 2065 of the Bundle).

24.174 A meeting was held on 15 November 2012 to discuss the stress risk assessment further. Colin Willsher, the claimant and Mr Shojaee present. Colin Willsher found his involvement unhelpful, as he interrupted and prevented the claimant from speaking on some four occasions. In this meeting the claimant provided Colin Willsher with a document, dated 25 January 2012, which Colin Willsher had not previously seen. This, it seems likely, was the document dated 25 January 2012 which the claimant had prepared for, and sent to , Jane Rendle, then her union representative. It is at pages 1660 to 1676 of the Bundle. The first page comprises of instructions to Jane Rendle, and a suggestion that she negotiate an early retirement package, with the school making up the shortfall she would suffer by taking her retirement 5 years early. If this could not be agreed, then legal proceedings were the only option.

24.175 She then, in the ensuing 16 pages, set out a "brief account of events", going back to 1993, making allegations about Joan Ogley's treatment of her, in particular, from 2001 onwards.

24.176 Colin Willsher had not seen this document before, and wanted to take advice from HR upon it.

24.177 On 27 November 2012 Colin Willsher sent an email to the claimant, making reference to the meeting on 15 November 2012. He enclosed his initial responses on the stress risk assessment, completing the third column "Action taken by Management". He expressed his surprise at the document that the claimant had provided to him. He told her how he would need to seek HR advice upon it. He informed her that in future he would be accompanied in meetings by HR, and the claimant accordingly could be accompanied by a work colleague or trade union representative. He expressed his concern too about the conduct of Mr Shojaee in the meeting, and reminded her that he was only permitted to attend such meetings as an observer. Their next meeting was arranged for 28 November 2012.

24.178 The claimant replied to Colin Willsher by email of 27 November 2012 (page 2109-2010 of the Bundle) expressing her upset at the baseless allegations he had made about her husband's conduct, and pointing out that his representation was essential, following the negligence of successive union representatives, and should be permitted under the school's stress policy, and health and safety law.

24.179 He, that Mr Shojaee continue to represent her, and the second that the meeting was recorded on a camcorder which she would bring with her. She warned that if these requests could not be agreed, this would be the end of "the informal process".

24.180 Finally, she asked for the "direct address and email" of the Chair of Governors, in order that she could submit her formal grievance against Colin Willsher by the following day.

24.181 Colin Willsher replied by email of the following day, 28 November 2012 (page 2109 of the Bundle) to the claimant, expressing the hope that they would be able to meet and make further progress. He was unclear what the claimant meant by the "informal" process, as the process of trying to support her return to work was a formal one, which had to be conducted according to policy, which did not cover the recording of meetings. He expressed that he was happy Mr Shojaee be present to give her personal support, but the discussion needed to be with the claimant, who could be accompanied by a union representative. He was not at liberty to share the personal contact details of the Chair of Governors, but anything addressed to her at the school would be passed to her.

24.182 The claimant replied by email later that day (pages 2112 – 2113 of the Bundle). She accused Colin Willsher of repeating the same "trick" that

he, Eric Fairchild, and Susan Gee had played in the meeting of 24 July 2012. He had started to "demonise" her husband by false allegation, deprive her of fair representation, and to deviate from the school stress policy again. She went on to explain why her husband's involvement was essential, and how he was the only person that she trusted to express her points at meetings. She therefore pressed the two requests that she had made. If Colin Willsher agreed them by lunchtime, she would attend the meeting. If not, she would submit her formal grievance to the Chair of Governors about his unlawful conducts. She ended by referring Colin Willsher to the School Complaints and Grievance Procedure for the difference between formal and informal process.

24.183 Colin Willsher replied later that day (page 2116 of the Bundle). He assured the claimant that there was no "trickery", he was trying to act in her best interests with the intention of supporting her return to work, he found her language worrying, and he had tried to allow her husband to attend meetings despite his behaviour in the last meeting with Susan Gee (i.e. the one in July), and how he had, in their last meeting, appeared to prevent her from contributing. He repeated his offer of a meeting, and how the claimant could be represented by a union representative, and Mr Shojaee could attend in the capacity of observer. He went on to say that if and should be addressed to the Chair of Governors at the school address.

24.184 The claimant replied on 30 November 2012 (page 2118 of the Bundle) to Colin Willsher saying that she had thought about his email, and was prepared to give the formal process another chance to resolve the issues. This was, however, the final, chance. She suggested, however, that in order to maintain transparency they conducted their negotiations by email for reaching a final agreement by the end of the following week. Mr Shojaee was not prepared to attend a meeting without it being recorded. Her union representation was still unresolved. She asked for Colin Willsher to confirm he was happy to proceed this way.

24.185 Colin Willsher replied later the same day (page 2120 of the Bundle) that he was more than happy to keep working with the claimant to resolve the situation. He asked to know how she wished to proceed. His suggestion was that the next stage would be for the claimant to make her comments on the suggestions he had put in the third column of the stress risk assessment.

24.186 The claimant next emailed Colin Willsher on 2 December 2012 at 00.25 a.m. (pages 2122 to 2115). In this email she set out her comments in respect of boxes 1 to 25 of the stress risk assessment.

24.187 It is not proposed to set out each box of the stress risk assessment as suggested by each party. Suffice it to say that there were a number of issues and areas identified by the claimant where she made suggestions of rather sweeping and comprehensive steps that she

wanted taking, which Colin Willsher did not agree in the comments that he made.

24.188 By way of example, in respect of Box 5, the claimant still wanted a wide-ranging examination of the last 17 years of her relationship with Joan Ogley, which she did not consider Colin Willsher's proposals adequately addressed. In relation to Box 6, whereas the claimant had proposed that everyone (including the Chair of Governors, and Susan Gee) be copied into all correspondence, Colin Willsher's response queried whether this was appropriate. In relation to Box 11, the claimant proposed that the stress risk assessment be shared with everyone, Colin Willsher also queried this.

24.189 In relation to Box 17 "Relationship", it is worth reciting the claimant's proposals, and how she was seeking that the school should approach these issues as part of this stress risk assessment. She wrote in column 1, under this Box, this:

"Wrong practices are similar to the weeds in a lawn. If they are not eradicated we end up with more weed than grass. Therefore, looking at the history of this case is crucial to identify the wrong practices that have brought us to this point and by adopting the correct practices within the frame work of policies procedures and the laws of this land to create a healthy working environment . Therefore my emphasis in looking at the past issues is to identify the wrong practices for correction rather than punitive intention against the individuals that committed them. It is exactly for this reason that I have refrained from formal action so far."

24.190 Reference was made to the document that Colin Willsher been provided with of 25 January 2012. His response in this section of the stress risk assessment was to say that this needed discussing with HR, and may require addressing through the grievance procedure.

24.191 At Boxes 19, 20 and 21 the claimant had proposed much improved record keeping and documentation. She wanted all meetings recorded. Colin Willsher was agreeable to scheduled meetings being recorded, but not others.

24.192 In summary, in her four page email of 2 December 2012 the claimant set out her areas of disagreement (and agreement, for many points were not disputed) with the proposals and suggestions that Colin Willsher made in his draft of the stress risk assessment. They were largely connected with the extent to which historic issues with Joan Ogley would be investigated as part of this process, the extent to which there was to be communication to all involved, or potentially involved, in her "case", and the extent to which future meetings would be recorded. These were not the only issues (lesson observations remained at issue) , but at this stage of the process both sides were engaging in it, and had got this far.

24.193 Colin Willsher received the claimant's email on 3 December 2012. He did not immediately respond to it, but sought advice from HR. Consequently, he had not replied by the time that the claimant sent him a further email on 10 December 2012 at 13.23 (page 2126 of the Bundle) asking him to tell her, by the end of the day, why she had not heard anything further form him since her email of 2 December 2012.

24.194 Colin Willsher did not see her email on 10 December 2012, as he was not in school that day, and so did not reply to her by the end of the day on 10 December 2012. So at 09.51 the following morning the claimant emailed Colin Willsher again (pages 2128 to 2129 of the Bundle) noting that she had not heard from him, he had "ignored" her email of 10 December, and informing him that she was ending the informal process, and was starting the formal process by taking out a formal grievance against him, and whoever was necessary. She said that she had been advised she could address the Chair of Governors directly, but if this was incorrect Colin Willsher should tell her in writing why this was not so.

24.195 Colin Willsher replied to the claimant on 11 December 2012 (page 2130 of the Bundle) saying he was sorry to hear her decision. He explained how he had only seen her email of 2 December on 3 December, and had not been in school on 10 December, and had not ignored her email of that date. As she had now raised a grievance, he was not going to reply to her comments of 2 December. He told her to address her grievance to the Chair of Governors at the school address, he was not at liberty to give out personal data such as home addresses.

24.196 Later, at 19.30 ,on 11 December 2012 the claimant emailed Colin Willsher (page 2134 of the Bundle) asking him to consider two points. The first was whether it would have been reasonable of him to drop her a line to tell her of the delay in sending her a response, instead of keeping her in suspense? The second was that she would postpone her grievance until 14 December if Colin Willsher wished to send her his response to her email of 2 December 2012 by then. He replied the following day merely to tell her he was in a disciplinary meeting, and would respond by Friday.

24.197 Colin Willsher sought advice from Les Hall, and following receipt of that advice wrote to the claimant on 17 December 2012 (pages 2140 to 2141 of the Bundle). He set out his responses, which were largely that he considered the management responses to have been reasonable, but in relation to Box 3, counselling support would be provided. He said that the school would arrange and pay for an initial consultation, if she was willing to participate. He asked her to let him know if she wanted this, and he would inform occupational health. In relation to items 17, 18 and 22, which related to "relationships" and "record keeping" where the claimant had referred to previous wrong practices, and the need for responsibility to be accepted, Colin Willsher said this:

"I am of the opinion that the only way we are going to move forward from this (and a number of other issues you have raised) is for a full list of your Grievances to be submitted to the Clerk of governors so that they can be fully investigated by an independent investigator."

24.198 He went on to encourage the claimant to submit a grievance to the clerk of Governors as he had previously sent the details, assuring her that this would be passed onto the Governors for their consideration, and that he would not in any way oppose any investigation into these grievances. He urged her to do this so that this element could be fully investigated, and would no longer be a barrier to progressing her return back to work.

24.199 The claimant replied on 20 December 2012 (page 2142 of the Bundle) accepting the offer of counselling, and because of her difficulty with representation by the NUT, her husband would continue to represent her, and would respond to his email during the Christmas Holiday, in particular in relation to the suggestion of an investigation. Colin Willsher replied by short email the same day (page 2144 of the Bundle) telling her that he would let her know when there was any news about counselling.

24.200 The claimant then contacted Janet Hartley ACAS on 4 January 2013, providing her with the contact details for Colin Willsher and Les Hall (page 2162 of the Bundle).

24.201 On 7 January 2013 the claimant sent a six page email to Colin Willsher, copied her GP, Susan Gee, Les Hall, members of the HSE, the NUT and ACAS. In it she expressed disappointment at Colin Willsher trying to cover up his past mistakes with further mistakes and misleading suggestions. She said that at this stage on regulatory bodies had the statutory authority to investigate the issues. She then set out eight headings of breaches of various pieces of legislation, his duty of care, and statutory responsibilities. She then set out twenty one questions for Colin Willsher, going back to 2008 and 2011, which she said were not the full list. She also said that the conduct of successive union representatives should be investigated for their illegal conducts in acting in harmony with Colin Willsher and HR.

24.202 In response to Colin Willsher' suggestion of an independent investigation, she said this was an "unlawful act" at this stage, and then set out eleven points, going back to 2011.

24.203 In this email, in relation to the risk assessment, she summarised the position thus. Her husband had in October 2012 established that this must be completed between her and Colin Willsher, and under the School Stress Policy. She went through the process they had completed, and how they had agreed the first column, but had then been told of HR's advice that the whole document had to be completed before it could be signed off, which she had agreed. After they had then started to complete the second column in the meeting on 15

November 2012 Colin Willsher had then started what she called "delay tactics" , and had made "unfounded" allegations against Mr Shojaee, and had forwarded "unlawful suggestions" in the third column of the assessment.

24.204 She contended that the suggestion of an independent investigation was "an unlawful trick to avoid completing the risk assessment" complying with the school stress policy and his statutory responsibility. She went on to say why this suggestion was unlawful.

24.205 She also brought to Colin Willsher's attention that , following the "recent trick" she was so depressed that for the first time in her life she had suicidal thoughts, in conversation with her husband. After his research she was convinced that mediation by ACAS was the last chance to resolve the issues informally. She ended by setting out what she was seeking, namely:

"1. Rahim to represent me until the completion of the risk assessment.

2. No more tricks or allegations against Rahim.

3. Completion of the risk assessment within the framework of the School Stress Policy and HSE Management Standard by 18 January 2013 and my return to the school by 21 January 2013.

4. Start of my representation by the union from 21 January 2013.

5. Rahim to continue to speak on my behalf in all meetings from 21 January 2013 as a coping strategy that I can concentrate on my teaching and recovery, as I requested in June 2012."

24.206 On 9 January 2013 the claimant sent, via Colin Willsher, an email to Judy Hooton, Chair of Governors (pages 2171 to 2172 of the Bundle). In this email she referred to being "currently on an imposed sick leave without the fault of my own." She did not, however, wish to go into the details at that stage, saying that sooner or later she would become aware of them. Instead she made reference to a meeting that Judy Hooton was about to hold for reviewing the School Health and Safety Policy, and the Staff Attendance Management Policy. She offered, with assistance from her husband, to meet with her, to assist in improving on these policies, utilising their experiences, which she considered would be extremely valuable. She suggested that they have a short meeting on the following day. This was, accordingly, not framed or advanced as a grievance, and was not the claimant acceding to Colin Willsher's suggestion that she raise a formal grievance with Judy Hooton.

24.207 Judy Hooton replied, precisely when is unclear, but it seems likely to have been the same day by email (pages 2176 to 2177 of the Bundle). She thanked her for her offer of assistance. She explained that she had a full diary, and could not meet with her on Thursday as she requested. She asked, therefore, instead, that the claimant send her, via the

school, six or seven short bullet points that she thought could be pertinent to the discussion.

24.208 The claimant replied later on the following day, 10 January 2013 (pages 2179 to 2180 of the Bundle). This is a three p[age email, which is very generic and non – specific. It relates to her "mind – set", and makes a number of somewhat philosophical points, ambitions and suggestions for how these might be achieved. Again, this is not, and was not intended to be taken as, a formal grievance.

24.209 In the meantime, the claimant having been in contact with ACAS about the stress risk assessment, Janet Hartley contacted Les Hall. She sent an email to the claimant on 11 January 2013 to inform her of this contact, and inviting her to review the completed risk assessment that Les Hall would be sending her, and to let her have her comments upon it (page 2184 of the Bundle). Les Hall duly emailed the claimant on 11 January 2013 enclosing the stress risk assessment, which he attached to the email (page 2185 of the Bundle). He copied Janet Hartley into this email, and stated that he was happy to continue utilising the ACAS service to assist them in attempting to resolve any issues on it. As Colin Willsher was now named in a grievance, he did not feel it appropriate to copy him into his email.

24.210 The claimant replied to Les Hall by email of 13 January 2013 (page 2192 of the Bundle). She pointed out that although he was of the opinion that the stress risk assessment was complete, she had not signed it. She said she would respond by the following Tuesday.

24.211 By email of 14 January 2013 (pages 2194 to 2197 of the Bundle) the claimant, though again this is likely to have been authored by Mr Shojaee, wrote to Janet Hartley at ACAS. She referred to Les Hall's communication, and pointed out that the stress risk assessment was not complete. She then set out over four pages various unlawful acts on the part of Colin Willsher and Les Hall. In short she considered that the suggestion of an independent investigation was unlawful, and that direct contact with the Chair of Governors was now necessary. She considered, as she had apparently discussed with Janet Hartley previously, there were three options:

"1. Completion of the risk assessment within the legal framework of School Stress Policy, the HSE Management Standard as the statutory responsibility of the Governors, that I return to work as urgently as possible to avoid further harm to my health.

2. Premature retirement with compensation which described in the Appendix 5 of the document called "Local Conditions of Service for Teachers" based on "in the interests an authority's efficient exercise of its functions" I am going to send you the whole of Appendix 5 ...... This document is available on the HR section of the Education Bradford.

3. Employment Tribunal."

24.212 She went on to say that option one was her preferred option, but would consider the second "as a sign of good will", with appropriate level of compensation, rather than being victimised. She ended with bringing to the attention of Janet Hartley "a point of law" by considering that:

"1. Les as the Head of HR has an advisory role rather than an executive role.

2. Therefore it is the Chair of Governors, with her executive role, who must be involved in the conciliation process.

3. Any delay in involving her in this process brings the legality of this conciliation under question."

24.213 Janet Hartley spoke to Les Hall, and referred him to the Premature Retirement Compensation scheme, and he had agreed to look into that. She also discussed the claimant's request that communication be through the Chair of Governors. Les Hall had asked that this not occur, and that he remain as the representative of the School. She reported this exchange to the claimant by email of 16 January 2012 (page 2218 of the Bundle). She pointed out that where there was a nominated representative, a conciliator would deal with that representative unless and until instructions are received to the contrary. She asked if the claimant had any comments regarding the stress risk assessment that could be fed back to Les Hall.

24.214 The claimant emailed Les Hall on 17 January 2013 (pages 2222 to 2223 of the Bundle). She largely reiterated what she had said to Janet Hartley. She explained how the risk assessment was not complete, and that his suggestion, or impression, that it had been, and was ready for signing, was wrong. She went on to reiterate the three options she had expressed to Janet Hartley. She went on to state that the involvement of the Chair of Governors was essential, to consider and discuss these options. She asked for a meeting with her, and alleged that he and Colin Willsher had kept on blocking the involvement of the Chair of Governors, leaving her with no option but to involve ACAS. She suggested that this reluctance was not a lawful act. She also raised a query about the ACAS email address that Les Hall was using.

24.215 Janet Hartley had further discussions with Les Hall. This led to an email exchange between them on 18 January 2013 (page 2226 to 2227 of the Bundle). In her email to Les Hall she explained why she appeared to have two email addresses. She also discussed, as they had done orally, her understanding of the Council's position on compromise agreements, from what Les Hall had already said. He replied to her, and confirmed that his response to the claimant's request for Premature Retirement Compensation was:

"the policy of Bradford Council is not to enter into compromise agreements". The 'Premature Retirement Compensation' scheme, from my understanding, is in effect a similar scheme and it is my opinion that it would only be set up as part of a compromise agreement. We would therefore not be able to support this scheme for this reason."

24.216 Janet Hartley sent the claimant that day an email explaining the two email addresses and apologising for not reading her email properly (page 2228.of the Bundle).

24.217 Later that morning (page 2230 of the Bundle) Janet Hartley sent the claimant a further email setting out, verbatim, Les Hall's response to the request for Premature Retirement Compensation.

24.218 At 13.02 on 18 January 2013 the claimant sent a further email (pages 2231 to 2233 of the Bundle, unhelpfully not reproduced in colour) to Les Hall. This was, in effect, a composite document made up, presumably by cut and pasting, of Les Hall's emails, the claimant's emails and reiterating points that had already been made.

24.219 At 13.10 the same day the claimant wrote to Janet Hartley (page 2238 of the Bundle) expressing gratitude to her for her assistance, and asking for an urgent meeting between Janet Hartley, herself, her husband and Les Hall for "laying down the legal foundations for the initiation of this process". She requested a copy of the policy of the Council not entering into compromise agreements that Les Hall had referred to. She followed this up by an email in similar terms to Les Hall at 14.19 the same day (page 2239 of the Bundle).

24.220 At 15.02 that day Les Hall sent the claimant an email (page 2246 of the Bundle) in which he explained how he was looking at the stress risk assessment, which was on his computer screen. He went through the various boxes, setting out what had been completed and what remained to be done. He said that the fourth column – "action taken by employee" – was what now needed completion. He asked if they could look at ways of progressing this. He acknowledged that this was a big document that did not load up well on the computer. He would try to format it better. He asked if it would be easier to look at one element at a time. He asked that if she was happy to progress in this way she let him know, and he would set up the document so they could easily track the 25 items that they needed to address.

24.221 At 15.29 that day Les Hall sent the claimant a further email, answering specifically the two points she had raised in one of her emails. The first, described as point 1, was the question raised about the Council policy of not entering into compromise agreements. Les Hall explained how this was an instruction given to him by the Legal Department. He would see if he could get this instruction in writing, and get back to her. On point 2, he referred to his earlier email (i.e that referred to above) as to how the stress risk assessment be progressed. He also said that he did not understand what she meant by "agreeing on the legal aspects of

the risk assessment", saying that the assessment was part completed and they needed to work together to complete it.

24.222 Janet Hartley similarly emailed the claimant at 15.40 that day (page 2267 of the Bundle) saying that she was not sure what the claimant meant in her email to her by the phrase "laying down the legal foundations of this process". She went on to explain her role as a conciliator, and how she was not qualified to comment on risk assessments and the legalities of them. She went on to say how she could not impose outcomes, or make judgments. If an agreed outcome was possible, she could then produce a legally binding document which captured the agreement between the parties. If such an outcome was not possible, the Employment Tribunals would make decisions on legality.

24.223 The claimant replied on 18 January 2013 at 16.02 (page 2259 of the Bundle) that as he and Janet Hartley had raised some points that required detail explanation in answering them, so would do so that weekend.

24.224 The claimant's next email was sent on 20 January 2013 (pages 2271 to 2272 of the Bundle) to Les Hall, copied to Janet Hartley. She addressed their respective queries about the "legal aspects" and "legal foundations" she had raised. Addressing both their questions, around the suggestion she had made for a meeting with regard to the risk assessment, she said this:

"1. The reason we entered into the conciliation process was to reach an agreement informally to avoid legal proceedings over the disagreement that has developed between us and we reached a deadlock that halted the completion of the risk assessment.

2. Without going into their details, as they are clear from my previous e-mails, I offered you two options for avoiding legal action.

3. You rejected the option of "premature retirement with compensation" by claiming that the policy of Bradford Council does not approve this, which I am awaiting to receive a copy of that policy as you agreed to send me a copy. I hope you do that as urgently as possible.

4. You eventually accepted that the risk assessment is not complete and indicating your intention of completing it. I am glad at last a positive outcome has emerged from the effort of all of us in the conciliation process so far, which is in line with my first option for avoiding legal action.

5. This clearly indicates that the conciliation has served its purpose and we have reached this final stage of agreeing terms of a settlement agreement and signing it to conclude this process.

6. As the settlement agreement is a legally binding document we need to make sure that it is agreeable to both of us as well as addressing all the issues that we do not reach another deadlock in the process of completing the risk assessment after signing the agreement.

That is what I meant in making that suggestion. I hope these explanations have answered the questions of both of you."

24.225 Les Hall responded by email of 21 January 2013 at 08.29 (page 2270 of the Bundle). He again said that the claimant's email was not clear about the "legal aspects" of completing the risk assessment. He explained how the format had been used throughout schools in Bradford, for teaching and non – teaching members of staff. Union representatives had been present with staff members during the process. He was not aware of any challenge to the legality of the documents that were used, but invited the claimant to inform him of anything she was aware of.

24.226 He pointed out that the stress risk assessment had been completed by the School, but was now being held up by the need for completion of the section "action taken by employee". He sought to find out what would be the best way for this to be progressed.

24.227 Going through other points in the claimant's email of 20 January 2013, in relation to point 3, the query about the instruction from the Legal Department as to the policy on compromise agreements, he was still awaiting anything in writing to confirm this, but expressed the hope that this would not be a hurdle that blocked completion of the assessment.

24.228 In relation to point 4, he reiterated that he was trying to facilitate completion of the "action by employee" section of the assessment.

24.229 In relation to point 5, he simply said he hoped this would lead to the completion of the assessment.

24.230 In relation to point 6, he said this:

"Again I am unsure of what you mean by "settlement agreement is a legally binding document" if you mean completion of the risk assessment, then I am in favour of progressing this the speediest way forward so we can start to work towards returning you to your substantive post in a safe managed process through the cooperation of both parties."

24.231 The claimant chased Janet Hartley for a response to her email of 20 January 2013 by email of 22 January 2013 (seemingly at 03.12, page 2274 of the Bundle). In this email she said:

"I would like to let you know that while any suggestions and actions which are within the framework of appropriate laws and policies that match appropriate circumstances are a remedy to my depression, 22

months of deliberate delay in carrying out this risk assessment with unreasonable suggestions , actions, omissions and time wasting with excuse after excuse has inflicted such harm to my health that is close to a critical stage."

24.232 She went on to refer back to her email of 7 December 2012.

24.233 Janet Hartley did reply by email of 22 January 2013 (page 2278 of the Bundle). She explained, again, her role as a conciliator. She said:

"As the parties now seem so (sic) *have some dialogue the next step is for the parties to go through the risk assessment to come up with an acceptable way forward agreed by both parties. Once this is done then this can be captured as part of an agreement through Acas."*

24.234 She went on to offer help if there was some form of deadlock. She went on to refer to uncertainty as to what the claimant was alluding to in her email, and to refer to her need to remain impartial and how she could not advise her of any financial remedy (it is unclear when and how she did so – there may be a missing email). She discussed discrimination awards in Employment Tribunals, but said she may wish to take some legal advice. She ended thus:

"I did however understand from our previous conversations that you wanted to complete the risk assessment and just return to work."

24.235 Later, at 22.31 on 22 January 2013 the claimant wrote again to Les Hall (page 2279 of the Bundle). She said she was happy to get on with the risk assessment. She wished, however, to look at what had brought progress to a deadlock, and who was responsible for that. She went on to refer to three points, alleging delay by Colin Willsher, false allegations being made against Mr Shojaee, and suggestions made in the third column of the stress risk assessment that were unlawful as contradicting the school stress policy and the HSE management standard. She then said this:

"Therefore the first thing that we have to address is to agree on certain principles that we are not going to face another deadlock again. These principles are:

1. My work related stress which has now advanced to a disability, covered by the Equality Act 2010 (Disability Discrimination), must be recognised explicitly by the school.

2. Any suggestions in the risk assessment must comply with the School Stress Policy and the HSE Management Standard."

24.236 She said that if the school could agree these principles, they could then discuss and complete the risk assessment. She again sought the written policy in relation to premature retirement with compensation.

24.237 That same night, at 22.40 on 22 January 2013, the claimant emailed Janet Hartley (page 2273 of the Bundle). In this email she said that she would welcome the restart of the risk assessment. She went on, however, to suggest that there had been some "hiccups" that worried her, in terms of impartiality and breach of the ACAS jurisdiction. She therefore sought a meeting with Janet Hartley and her manager.

24.238 Les Hall replied to the claimant on 23 January 2013 (pages 2280 to 2281 of the Bundle). In this email he cut and pasted the claimant's email of the previous night, and responded to each part in a different font. In relation to the first three points made in that email, which effectively sought to lay responsibility for the delay on Colin Willsher, and to complain of his and the Council's dealings with the risk assessment, he suggested that the claimant deal with these in the grievance that she had been encouraged to raise with the Chair of Governors. He also expressed his lack of understanding of the contention that suggestions for the third column of the stress risk assessment were unlawful, and invited her to indicate in relation to each of the 25 perceived stressors what she did not like.

24.239 Turning to the further two specific points that had been made, Les Hall explained how the school had been acting on Occupational Health advice. The completion of the stress risk assessment was a vital part of the School's plan to work with her to get her back to work in as safe an environment as possible. He was trying to get this process completed in order to move the process forward. He offered further Occupational Health involvement, and a further visit, if the claimant felt this would be of benefit. Further, counselling could be arranged, which the School had agreed to support. This should not, he said, be an obstacle to completing the stress risk assessment.

24.240 In relation to point 2, Les Hall stated that he was not aware of which suggestions in the stress risk assessment did not comply with the School Stress Policy of HSE Management Standard, and invited the claimant again to inform him of what the problems were. In relation to the claimant's request for sight of any policy relating to the Council not entering into compromise agreements, he reiterated that this was an instruction he operated under. Her was still chasing its source, and would let the claimant have a copy of the instruction when he got it. He encouraged her not to see this as an obstacle to the completion of the stress risk assessment. He ended his email with an encouragement to deal with each of the perceived stressors in turn, and inform him of what she did not like about each of the management proposals, and, where applicable, indicate what she would like to see instead, so that he and School could look at the reasonableness of her suggestions and make the necessary adjustments where possible.

24.241 On 23 January 2013 Sofyanah Ramzan, a Conciliation Manager of ACAS, who managed Janet Hartley, wrote to the claimant in response to her request for a meeting with the two of them (pages 2283 to 2284 of the Bundle). She asked the claimant firstly to explain the hiccups

that she felt had developed, and then a meeting could be arranged. The claimant replied (page 2283 of the Bundle) that considering the degree of her depression, and that she had to respond to HR emails, it would take her a few days to do this.

24.242 On 28 January 2013 the claimant, though again this was clearly authored by Mr Shojaee, sent an 8 page email to Les Hall (pages 2286 to 2293 of the Bundle), copied to Janet Hartley at ACAS, Judy Hooton and the HSE. It is not intended to recite its contents in full , but the main and most significant aspects that the Tribunal takes from this document are as follows.

24.243 Firstly, in the second paragraph, the claimant says this:

"From Friday 18 January 2013 it was clear that the ACAS jurisdiction, according to the booklet "Pre –claim Conciliation Explained", had reached its final stage and the last thing we needed to do to complete the process was signing a "settlement agreement", as it is identified in the conciliation booklet. Then we could get on with completing an appropriate risk assessment to address the present circumstances."

24.244 Pausing there, the version of the ACAS booklet "Pre – claim Conciliation Explained" dated June 2010 at pages 2151 to 2159 of the Bundle makes no reference to "settlement agreements" at all. On page 7 of the booklet (page 2156 of the Bundle), under the heading "What happens if I settle the complaint through Acas", reference is made to a "legally binding agreement" that then precludes any employment tribunal claim being made. The document goes on to say how such agreements do not have to be in writing to be legally binding, but that the conciliator would record the terms of the agreement on an Acas form (presumably this would be a COT3) and send this to the employer and the employee as proof of the agreement. No mention is made in that section, nor any other, to any "settlement agreement".

24.245 Returning to the email of 28 January 2013, the claimant goes on to make allegations that Colin Willsher, and HR, had been guilty of negligence and a cover up. Some nine allegations are made of breaches of various legal obligations. Allegations are then made against Les Hall of victimisation, and of protecting Colin Willsher, by covering up his misconducts, with a risk assessment full of "unlawful terms", and blocking her direct contact with the Chair of Governors. After further contentions about the SEF, and lesson observations in September 2011, she alleged that Les Hall had tried to derail the process with "misrepresentation, false allegation and wrong footing of others."

24.246 The email goes on to set out five headings, described as pieces of the jigsaw, namely:

"1. Premature retirement with compensation

2. Risk Assessment

3. The reasons I asked for assistance from ACAS and the options

4. Direct contact with the Chair of Governors

5. My request from Judy and what I believe is the correct approach and the first step in the right direction."

24.247 After setting out how she had sought two options in the conciliation process, either the completion of a lawful risk assessment, or premature retirement with compensation, she then addressed each of the five headings.

24.248 In relation to the first, she made (page 2288 of the Bundle) some eleven points. In summary she referred to the policy which Les Hall had referred to the Council not entering compromise agreements. She referred to her attempts to obtain a copy of such a document, and contended that his statement was not valid, as Appendix 5 of the Local Conditions of Service for Teachers clearly showed. She suggested that he had changed his stance, initially claiming to be acting under a policy, but then changing it to an "instruction". She said that she did not consider this an obstacle to completing the stress risk assessment, but went on to say that Les Hall was using one excuse after another to pursue two objectives, the first to "dilute" his misrepresentation, and the second to mislead others, in particular the conciliator. Colin Willsher and HR were those who were delaying completion of the stress risk assessment.

24.249 Under the second heading – "Risk Assessment" – the email goes on to make twelve points over three pages (pages 2289 to 2291 of the Bundle). She set out the recent history of events, from 11 January 2013. She alleged that Les Hall had falsely claimed that the risk assessment had been completed. At para. 4 of this section she said this:

"4. Eventually on Friday 18 January 2013 after a series of e-mails that we exchanged between the three of us you, the conciliator and I, you accepted that the risk assessment is not complete and you suggested a method for looking into the risk assessment for its completion."

24.250 At paras. 7 to 10 of this section of the email the claimant contended that, in accordance with the terms of the ACAS advice booklet under the heading "What happens if I settle the complaint through ACAS" , at that point as she suggested in her email of 20 January 2013, they had to agree on terms of the "Settlement Agreement" and sign it to conclude the conciliation process, and start completing the risk assessment after that. She then described Les Hall's response of 21 January 2013 as him trying to create confusion, by making reference to the format of the stress risk assessment which had never been an issue. She went on to allege that he was trying to use the conciliation

process for completing the risk assessment, and that he was "refusing to accept the legal framework of the conciliation process". She continued in this vein, and at para. 12 in this section complained that Les Hall had kept encouraging her to complete the risk assessment by ignoring the fact that the "first step" was the signing of the settlement agreement. With this "unlawful suggestion" he was again trying to wrong foot everyone to the belief that she was not willing to complete the risk assessment. She also suggested in this part of the email that Les Hall (and presumably Colin Willsher) kept insisting that the management suggestions in the third column of the risk assessment were all lawful, and in line with the School Stress Policy and HSE Management Standard.

24.251 Under heading 3, "The reason that I asked for assistance from ACAS and the options", the claimant referred to the two options, and said that "the conciliation jurisdiction only goes as far as we agree on one of these two options".

24.252 Under heading 4, "Direct contact with the Chair of Governors", the claimant set out allegations that contact with the Chair of Governors was being blocked, and that all the unlawful suggestions in the third column of the risk assessment were designed to avoid her involvement. After further allegations of all kinds of tricks and excuses she detailed her belief that she had to contact her directly, and explained how she had done so.

24.253 Under the final heading 5, "My request from Judy", the claimant went on to set out what she was proposing, and ended by suggesting that the first step was to sign "the settlement agreement" (though there was no such draft document in existence at that time) to terminate the pre-claim conciliation, and then to start working on completing the Stress risk assessment in accordance with the relevant policy and standard. To that end she requested a meeting as urgently as possible.

24.254 Les Hall replied the following day, 29 January 2013 (page 2294 of the Bundle) , that he was not available to read her email fully until later that week, and that he would get a response to her at the earliest opportunity.

24.255 At 23.38 on 28 January 2013 the claimant emailed Sofyanah Ramzan of ACAS again (pages 2299 to 2300 of the Bundle). She informed her of her intention to forward to her the email that she had sent to Les Hall that day, which had been copied to Janet Hartley. She referred to her contentions that Les Hall had been guilty of misrepresentation and false allegations, and was breaching the ACAS jurisdiction. Her questions were:

"1 – Why does Janet allow him to do so?

2 – Why has Janet made an unjustifiable allegation against me in her e-mail of 22 January 2013 but happily accommodates misrepresentation and false allegations of Les?

3 – Why does she keep on misunderstanding the clear explanations that I have provided her and Les?

4 – Why does not she (sic) *observe the jurisdiction of the ACAS in line with the "Per – claim* (sic) *Conciliation" process as it is explained in the booklet she has provided to both parties herself?"*

24.256 She went on to say that she was happy to substantiate these matters when the meeting she had requested was arranged. It is unclear what the claimant meant by the term "unjustifiable allegation" allegedly made by Janet Hartley in her email of 22 January 2013, but it is presumably her comment that the next step was for the parties to go through the risk assessment, and once this was done this could be captured as part of an agreement through ACAS.

24.257 Sofyanah Ramzan replied on 31 January 2013 that she would contact her once she had a chance to look into the issues.

24.258 On 30 January 2013 Colin Willsher wrote to the claimant a brief letter (not, it seems, by email) to remind her that the proper procedure for contacting the Chair of Governors was through the school address (page 2295 of the Bundle).

24.259 That same day the claimant wrote further by email directly to the Chair of Governors, Judy Hooton (pages 2296 to 2298 of the Bundle). She referred to her previous email of 28 January 2013, and sought to explain why she kept the "line open" with her, and the HSE, about concerns the school. She went on to make reference to Hillsborough and Jimmy Saville, and to discuss the "culture of cover up".

24.260 In the course of this email, on the second page, the claimant makes reference to employment law, and the time limit of three months in which to bring claims.

24.261 She then went on to make more generalised comments upon unlawful tricks, and a "network of cover up". She explained how the dispute, which had its origins at a departmental level, and could have been resolved by reasonable measures by the Head Teacher, was now heading towards a scandal "of the dimensions of Stafford Hospital". She then went on to set out seven points about the dispute, which had its roots as far back as 1996. She made reference to the Head of Department (i.e. Joan Ogley, but did not mention her by name) and her jealous, bullying and discriminatory treatment of the claimant. This had worsened under the headship of Colin Willsher, who did nothing about the issues, but covered up all her gross misconduct. He, HR and three successive union representatives had collectively ignored OH advice and her GP's recommendations for appropriate risk assessment and

workplace adjustments. They were deliberately harming her health and pushing her stress and depression to a stage of disability. This was in its initial stage, and there was a hope , that with appropriate steps and workplace adjustment, she would recover from it.

24.262 She concluded by making further allegations that Colin Willsher had played another trick to derail the process, by making false allegations against Mr Shojaee, refusing him permission to represent her, and seeking to impose unlawful terms in the risk assessment. In her final paragraph she expressed the view that she had no doubt that she, Kirsty Hurst of the HSE, and Chistine Blower, of the NUT were best placed to find a solution for stopping this network of cover up, and avoid a scenario similar to Stafford Hospital. As will be apparent, she did not, in terms, ask Judy Hooton to do anything specific, nor did she frame this as any form of grievance.

24.263 On 1 February 2013 Les Hall replied further to the claimant (pages 2304 to 2305 of the Bundle). He informed her that he had arranged a meeting for 8 February 2013 to discuss the stress risk assessment for two hours at Future House (his offices). He also told her that she could be accompanied by a work colleague or union representative. If this was not possible at short notice, he could arrange another day or time.

24.264 The claimant replied by email of 4 February 2013 (pages 2301 to 2304 of the Bundle), copied again to Colin Willsher, Judy Hooton, Janet Hartley, the HSE and her GP. She initially thanked Les Hall for arranging the meeting for 8 February. She went on, however, to make some suggestions to avoid the risk of the mistakes of the meeting of 24 July 2012 being repeated. She said that the meeting on its own was not a sign of progress, the most important point was the agenda that the meeting was following. After a page or so reflecting upon the history of the matter to date, and repeating a number of points that had previously been made , to demonstrate her good intentions, she went on to make the following suggestions for the structure and agenda for the meeting of 8 February 2013 as follows :

"1. The most suitable person to chair and take leadership of this and any other meetings for the completion of the risk assessment is Judy. As she has not been involved in any part of this dispute so far, therefore she is better placed to move this dispute towards a solution. This is only my suggestion, the decisions (sic) *is yours and Judy's.*

2. Those who I suggest to take part in the meeting are:

- *Janet from ACAS, for the completion and signing of the "settlement agreements"*
- *Rahim, to represent me, I will explain this latter* (sic) *in this e-mail.*

3. The Agenda for the meeting:

i) First part of the meeting which may take about half an hour , to complete and sign the "settlement agreement" to finalise the ACAS conciliation process.

ii) This will leave us one and a half hour for Looking into the third column of the risk assessment and bringing the suggestions there in line with the School Stress Policy and HSE Management standard.

4. Arrangement for the next meeting for continuation of completing the Risk assessment."

24.265 She went on then to make suggestions of terms for inclusion in the settlement agreement, which were:

"1. School recognises Fatemeh's stress as work related stress which has now advanced to disability.

2. School accepts to employ reasonable work adjustments based on the recommendation of Fatemeh's doctor and the OH doctor.

3. The terms to be included in the risk assessment should be within the framework of the School Stress Policy and HSE Management Standard.

4. The guide lines to be followed in resolving the dispute should be within the framework of the three principles laid down by the Parliamentary and Health Service Ombudsman in three booklets:

- *Principle of Good Administration*
- *Principle of Good Complaint Handling*
- *Principle for Remedy"*

24.266 The reference to the claimant in the third person, and the further references to principles contained in three booklets published by an Ombudsman with no immediately apparent relevance to the dispute in hand, are clear indicators to the Tribunal of the authorship of Mr Shojaee.

24.267 The email goes on to ask Les Hall what terms he wished to be included in the settlement agreement.

24.268 Finally, the email goes on to turn to the issue of representation by Mr Shojaee. The claimant refers to him being fully aware of all the issues and being more aware of her viewpoints than anyone else. She describes this as a coping mechanism, as she was not able to put forward her views. She then says that the suggestion that a work colleague represent her does not indicate a "good intention" on the

employer's part for a number of reasons, including confidentiality, lack of understanding, and undue imposition upon a colleague.

24.269 She said that the request for her husband to represent her was in line with the recommendations of the School Stress Policy, The Ombudsman Principle of Good Complaint Handling, and the recommendations of her doctor and psychologist, whose comments she attached. These were, it seems likely, the letter from her GP of 23 July 2012 (page 2313 of the Bundle), and the report, a Discharge Summary, which is undated and unattributed, prepared after completion of 20 sessions of CBT (page 2314 of the Bundle). In the former the GP did indeed express concern that her request that the claimant required the presence of her husband during ongoing discussions concerning stress related illness. In the latter, the author said it was "advisable" that her husband "have some involvement in liaising with the school".

24.270 After reference to the school's reliance on the School Grievance Policy, she went on to say that Les Hall should consider that his suggestion contravened the Equality Act 2010, disability discrimination, but she was not any more specific. She ended by expressing the hope that Les Hall would not try to repeat the mistakes of Colin Willsher and HR with respect to the meeting on 24 July 2012.

24.271 At 08.51 on 5 February the claimant sent a further email to Sofyanah Ramzan of ACAS (page 2316 of the Bundle). In this email she expressed the hope that she and Janet would take all necessary steps for completion and signing of the settlement agreement in the meeting on 8 February 2013.

24.272 Sofyanah Ramzan replied to this, and the claimant's previous email of 28 January 2013 to her, by an email to her at 14.58 on 5 February 2013 (page 2315 of the Bundle). She explained how ACAS was an impartial organisation, which did not take sides or represent either party. The role of the conciliator was to help facilitate an agreement that was agreeable to both parties, which was often done on a COT3 agreement, though sometimes matters were resolved in other ways without a formal agreement.

24.273 She went on to say this:

"In terms of your situation, there is no requirement to have a formal agreement or 'settlement agreement' in place before the risk assessment is carried out. The process of conciliation can run alongside the risk assessment process. If an agreement were to be drawn up now, it would possibly be a very general one as there is nothing specific agreed in relation to the risk assessment."

24.274 She went on to refer to the booklet that the claimant had received, and the section headed "What happens if I settle the complaint through Acas". She suggested that the claimant considered her situation, and

what was best for her. An agreement could be drawn up at any time when both parties felt they had reached the point where it was agreeable to do so. She suggested that she may like to seek some legal advice.

24.275 She ended by noting the claimant's request for a meeting with her. Having looked into the matter, she felt that a meeting would not add anything to the information she had provided, which she could clarify by telephone if required. If the claimant still wanted a meeting, she was happy to arrange one, but would be re-iterating the points in her email.

24.276 The claimant having indicated that she was able to attend the meeting on Friday 8 February 2013 Les Hall wrote to her on 6 February 2013 (page 2318 of the Bundle). He confirmed the arrangements and the time of the meeting. He repeated his previous position on representation and accompaniment. The meeting was to discuss the risk assessment and to try to move forward with it. He responded to the claimant's indication that she wished to be represented by her husband by saying that he was unfortunately unable to agree to this for two reasons. The first was that he wanted the meeting to fully represent her views, and second that there was no right in the Council's procedures for this. He would, however, as a "special adjustment" be willing to allow Mr Shojaee to accompany her to the meeting for moral support, but this must be in a support/observation role only. This was in addition to the right to have union representation or a work colleague.

24.277 The claimant replied to Les Hall (copied to the usual other recipients) by email of 7 February 2013 (page 2332 to 2334 of the Bundle). In her opening paragraph the claimant expresses her view that whilst she had made every effort possible to resolve the dispute with every possible goodwill and sacrifice, the only objective of the school and HR since March 2011 had been the cover up of the unlawful conducts of Joan Ogley and Colin Willsher. Referring back to her email of 7 January 2013, she explained how approaching ACAS had been the last chance for keeping the informal process alive, after it had been brought to a deadlock by Les Hall and Colin Willsher.

24.278 She went on to say how the risk assessment must address her work – related stress "that was initiated by the negligence and the lack of as duty of care by the school and HR", which had now reached the stage of disability, as a result of further negligence., lack of duty of care and successive cover up.

24.279 Addressing the reasons for the deadlock she said they were:

".. refusal of the school and HR:

1 – To accept my stress was a work – related stress

2 – To accept negligence

3 – To follow the school stress policy

4 – To follow HSE Management Standard"

24.280 She went on to say how during the ACAS process he had demonstrated a refusal to accept these points, which showed that they were heading towards another deadlock straightaway if they restarted the risk assessment while he was sticking to the same intention and approach. She went on to set out the five requirements for restarting the stress risk assessment that she had previously set out , which she insisted be done on a COT3 agreement through ACAS, and she said was "our road map". If the respondent accepted these five items (the second of which was an acceptance of negligence and causation of the harm to her health) she would attend the meeting on 8 February 2013. If the respondent refused to do so, and as ACAS did not have jurisdiction to make the judgment of which of them had been walking on the right side of the law, then the Tribunal would need to decide on the issue.

24.281 Les Hall replied by email of 08.55 on 7 February 2013 (page 2335 of the Bundle). He noted that there appeared to be a reluctance on the part of the claimant to attend the meeting or cooperate with the process. He stressed how he too was not intent on confrontation, and his task was to get the claimant to participate in the process of completing the stress risk assessment. He went on to say that he and the school did not consider that the internal procedures had not yet been exhausted, and how it was hoped that with his assistance they could work together to complete the assessment, which the school had done as far as it could without her cooperation. His offer of a meeting following day still stood, and he asked her to confirm her attendance. He expressed the hope that the claimant would attend the meeting.

24.282 The claimant replied by email at 13.30 that day, copied again to the usual recipients, (page 2339 of the Bundle) saying this:

"I am afraid once again by resorting to unreasonable conduct:

1 – Misrepresentation

2 – Advertising one thing but delivering something different

You try to portray a false image to wrong foot others.

If you agree to sign the COT3 agreement through ACAS as I explained in my previous e-mail today, we can meet tomorrow with the agenda that I suggested in my e-mail of 4 February 2013. Otherwise, I will write to you hopefully or perhaps on Monday."

24.283 At 15.38 Les Hall wrote back to her. He noted that her email indicated that she was unwilling to cooperate, and he could assure her that there was no misrepresentation. He could not see where her claim of unreasonable conduct was based, as he was trying to progress the stress risk assessment. He still had the meeting room booked, but if the claimant informed him that she did not wish to attend the meeting,

he would, as he had previously said, he would have to advise the school accordingly.

24.284 On 8 February 2013 the claimant did not attend the meeting. Les Hall emailed her at 11.28 that day (page 2344 of the Bundle) to note that fact, and to check that this was through choice, and not some other cause. He went on to say that if it was through choice, he would have to inform the school that he had failed in his attempts to get the claimant's cooperation in completing the stress risk assessment. He would therefore be advising the school that it needed to continue with the appropriate internal procedures.

24.285 On 11 February 2013 the claimant next sent an email to Les Hall (pages 2347 of the Bundle), copied again to the usual recipients. She referred to his emails of 7 February, which had agitated her depression, due to the unreasonable attitude he had demonstrated. She went on to allege that the school and HR had unreasonably delayed for 23 months, and he was still adamant (sc."not") to accept the five points that she had previously made, which included that her stress was work related stress, and that the negligence of the Head Teacher and HR were the source of her stress. She went on to claim that Les Hall's email of 8 February 2013 clearly demonstrated that he was so entrenched in the mind set of covering up the negligence and unlawful actions and omissions of the Head Teacher and HR, and that he had even resorted to bullying her into a meeting, with an arrangement that put her in a disadvantaged position, that could subject her to another act of discrimination.

24.286 She went on the refer back to Mr Shojaee's email of 2 October 2012. She alleged that Les Hall was "religiously" refusing to accept the matters that she had previously required to be accepted, and similarly was pursuing deprivation of fair representation. She referred again to members of the department ganging up with the Head of Department in bullying and harassing her.

24.287 She then set out nine points which she said illustrated that he and Colin Willsher had been executing a well calculated plan to achieve the covering up of the negligence of the school and HR, rather than address her work related stress. In these nine points she again contends that there had been unlawful suggestions in the risk assessments, there were misleading and unlawful suggestions of an independent investigation, Les Hall had made unreasonable as well as unlawful suggestions in his email of 8 February 2013. She said he had made bullying suggestions in his email, quoting extracts from his email, which she said were ample evidence of his failure in his duty of care, and duty of trust and confidence, with misrepresentation, false allegation and unlawful tricks to cover up the negligence of the school and HR.

24.288 She concluded by saying that all these experiences had not left her room for any trust and confidence in him.

24.289 She went on to set out the terms of an email that she was sending to Judy Hooton (in effect by copying her into this email) . This started by referring to the fact that the clock was ticking, and the 3 months deadline was fast approaching. She told Judy Hooton of the "playing of tricks" by Les Hall, and made seven points that she claimed had left her victimised after 23 months. She referred to the ACAS pre-conciliation booklet, and how she would lose her right to claim if she did not launch her claim in time. In particular she said:

"His unreasonable and unlawful insistence to complete the risk assessment during the conciliation process is only a trick for wasting time."

24.290 She referred to the COT3 agreement, and her suggestions for the bare minimum that needed to be included in such an agreement. She invited Judy Hooton to sign the COT3 during that week, and complete the risk assessment during half term, with the claimant's husband representing her for the completion of the risk assessment. She ended by warning that if she did not hear from her in the early part of the week, she would have no option but to launch the claim.

24.291 Les Hall replied at 16.21 on 11 February 2013 (page 2356 of the Bundle) to express his disappointment that he could not persuade her to participate further in the risk assessment process. He told her how he would now inform the school of the failure of this process, and pass on all her comments. Judy Hooton did not reply.

24.292 On 14 February 2013 Janet Hartley wrote to the claimant (page 2367 of the Bundle) to say she was sorry to learn that the completion of the risk assessment did not go ahead. She asked the claimant to inform her if it was now her intention to submit an Employment Tribunal claim to inform her, and she would close down the pre – claim conciliation case. She reminded her that if a claim was submitted, ACAS could still help the parties resolve the matter before a hearing.

24.293 On 14 February 2013 an occupational health referral was made by Les Hall, or possibly Colin Willsher (pages 2368 to 2370 of the Bundle). In the box on page 3 of this document, under the heading "What issues do you want the Employee Health & Wellbeing Service to address?" the referrer wrote:

"To explore the likely timescales of Fatemeh's return to work and the possibility of her condition permitting her to attend a meeting to discuss ways of returning to work."

24.294 On 16 February 2013 the claimant took an overdose of medication (it is unclear what), and had to be admitted to A & E. This is said to have been a deliberate overdose, and the Tribunal accepts that this was an attempt by the claimant to take her own life.

24.295 An O H appointment was made for the claimant to attend Dr Suleman on 26 February 2013. This was, however, inconvenient for the claimant.

24.296 On 24 February 2013 the claimant asked Colin Willsher for a copy of the referral (page 2374 of the Bundle), which he supplied the following day (page 2375 of the Bundle).

24.297 It appears there was some problem with appointment dates, and there was direct contact between EH&WS and the claimant, and her husband over re-arranging the date of the appointment. This led to an email being sent by Mr Shojaee on 4 March 2013, to Susan Ingram, Manager of EH&WS, which was copied to Colin Willsher, Janet Hartley, Judy Hooton, the claimant's GP, and now the claimant's MP, Fabian Hamilton, to whom the claimant had written on 2 March 2013 (pages 2377 to 2382 of the Bundle) . The complaint to Susan Ingram was about the handling of the re-arrangement of the appointment, and the suggestion that had apparently been made that the claimant or Mr Shojaee had cancelled an appointment, when they had not. The suggestion was made that EH&WS was trying to "demonise" Mr Shojaee's personality, with vexatious claims and false allegations, as Colin Willsher and HR had done.

24.298 At point 12 of this email, Mr Shojaee alleged that he had ample evidence of negligence by EH&WS since April 2012, and its active collaboration with the school and HR to cover up their unlawful conducts.

24.299 On 8 March 2013 Michelle Moverley, Operations Area Manager replied to this complaint by email (pages 2387 to 2388 of the Bundle). She did so as she had overall responsibility for the OH service. She stated that she considered that Mr Shojaee's comments were inappropriate, and she could not agree with his derogatory remarks. She was also aware of his previous comments around the professional credibility of her team (as reference to the comments made about Susan Gee) , and she would not place her staff at risk of any further perceptions of the situation. Her team would not, therefore be accepting or responding to any further emails or telephone calls from him on the matter.

24.300 She did, however, arrange a further appointment with Dr Suleman for 12 March 2013, in order that management could be provided with current medical advice. She ended by stressing that it was important the claimant attend this appointment, and reminded her that under her contract of employment she should cooperate with these processes to enable relevant and timely information to be obtained.

24.301 The claimant herself, for the email purports to be from her, replied on 11 March 2013 (pages 2308 to 2309 of the Bundle). She picked upon the reference made to the contract of employment, and went on to thank Michelle Moverley for reminding her of her responsibilities, but pointing out that reasonable employers remind employees of their

rights too..As she had discovered that the contractual term referred to (from Local Conditions of Service for Teachers) provided that the "private medical attendant of the teacher may be present at the teacher's request", she sought to exercise this right, and asked that her GP, Dr Pearson be present at the appointment with Dr Suleman, if this could be arranged.

24.302 Later that day, however, having contacted her GP, the claimant wrote further to Michelle Moverley (page 2392 of the Bundle) and on her advice agreed to attend the appointment without her. She did, however, say that the presence of her husband was vital, based on the recommendations of her GP and psychologist.

24.303 That same day, the claimant wrote to Nicholas Dover, Director of ACAS (Yorkshire and Humber) (pages 2389 to 2391 of the Bundle). This email is, in effect, a complaint about the conduct of the pre – claim conciliation process by Janet Hartley, and the lack of action by Sofyanah Ramzan when she complained to her. She alleged that both were in breach of the ACAS jurisdiction by failing to follow the pre-claim conciliation process, and that they had breached s.112 of the Equality Act 2010 by aiding Les Hall to continue to victimise her. She asked for a meeting between the four of them, with her husband representing her.

24.304 Dr Suleman carried out his O H assessment on 12 March 2013. The claimant's husband was present, but not her GP. His report is at pages 2396 to 2397 of the Bundle. It appears that Dr Suleman was provided in this meeting (and perhaps after it as well) with a large amount of material by Mr Shojaee in a binder, which he reviewed. This is likely to have been the letter at pages 2398 to 2399 of the Bundle, with 28 attachments. The letter set out the history of the matter, and repeated the allegations made in other documents of "tricks", cover up, negligence and ill – intention. At one point (page 2400 of the Bundle) the claimant questioned the point of the assessment, when the respondent had proved that it would not accept that her stress was work related. She raised a number of questions, in bullet points, most of which were either rhetorical, or which Dr Suleman could not have been expected to answer.

24.305 Nowhere in this document, or the attachments as far as the Tribunal can tell, was any mention made of the claimant's overdose on 16 February 2013.

24.306 Dr Suleman produced his report, dated 12 March 2013 (pages 2396 to 2397 of the Bundle). In it he sets out the claimant's absence history, and her diagnosis of agitated depression. The referred to the perceived cause as being the breakdown in the relationship between the claimant and her line management. He referred to the fairly serious allegation being put forward by the claimant and her husband, and he strongly recommended them to seek the appropriate guidance. He reviewed her occupational health notes, and noted that she was having counselling

and treatment from her GP. He did not refer to her overdose on 16 February 2013, and it seems most likely that he was not told about it.

24.307 He concluded that she would be fit for a stress risk assessment to be carried out, and he urged that this be carried out as soon as possible. He believed she would be fit to attend meetings, but would advise that she given enough notice to be allowed to prepare suitably, and that any meeting take place at a neutral and mutually acceptable venue. He also suggested (though in no stronger terms than that) that she be accompanied by a friend or relative to help her emotionally and psychologically. He also advised that she be allowed to make any submissions in writing rather than give oral evidence if necessary, and she be allowed sufficient breaks if she felt upset.

24.308 On 19 March 2013 the claimant presented these claims in Leeds Employment Tribunal. At that time she also made claims against the NUT, her union. There was, at that time, no requirement for the claimant to obtain an early conciliation certificate form ACAS, as the relevant provisions did not come into force until April 2014.

24.309 Having received Dr Suleman's report Colin Willsher wrote to the claimant on 27 March 2013 (page 2402 of the Bundle) inviting her to a meeting on 17 April 2013 at Future House. He hoped she could attend and that they could work towards completing the stress risk assessment, and work towards returning her to her post. He enclosed a copy of the assessment, and said that they would need to revisit the time frames, and he would need her feedback for column 4 of the document.

24.310 On 15 April 2013 Mr Shojaee wrote to the Tribunal, copied to other parties, including the respondents' legal team, to the effect that as the Tribunal was not yet in a position "to provide the parties in this dispute any indication of its decision on the issues submitted to the Tribunal by both sides in their correspondence since 28 March 2013". He went on then to ask that the meeting requested by Colin Willsher for 17 April 2013 be postponed, so that the aim and consequences of such a meeting could be discussed at a Case Management Discussion.

24.311 Mandy Hill of the legal team replied to the claimant, on 16 April 2013, having informed Colin Willsher of the fact that the meeting was being postponed. Mr Shojaee replied later that day that it was best for all parties for issues regarding the risk assessment "to be dealt with through the Tribunal" at that stage. He expressed the hope that Colin Willsher would realise that he and other had inflicted on the claimant's health was extremely severe and he should refrain from causing her further harm.

24.312 It is unclear precisely what Mr Shojaee expected the Tribunal process to do at this stage. It was never the case that the Tribunal would get involved in the completion of the stress risk assessment, but that was

what he wrote. Dr Suleman had, of course, advised that she was fit to attend a meeting.

24.313 On 30 April 2013 Dr Pearson wrote "To whom it may concern" (pages 2407 to 2408 of the Bundle). In her letter she referred to Dr Suleman's recent O H report, and its recommendations. She remarked upon the claimant's recent overdose, and how there was no mention of that in the report. She commented upon the observations in his report about the stress risk assessment process, and how the claimant had already made written submissions, but the school was delaying the process, by its failure to complete and implement the policies, and include the claimant's husband constructively in the discussions. She said this was adding to her extreme distress. She was also concerned at the suggestion, despite Dr Suleman's request that a family member be permitted to be present where appropriate, a recent letter from Colin Willsher had stated that only a union representative or member of staff could accompany her. She said that the suggestion of another member of staff was entirely inappropriate , and the claimant should clearly have been offered the opportunity for her husband to be present. She ended by saying that she thought the whole situation represented a state of impasse, and that "independent arbitration" needed to continue, rather than be delayed.

24.314 Colin Willsher and Les Hall accept that they saw this letter. The letter clearly repeats what the claimant and her husband had told the GP, and this led to her expressing their perception of the process. It is not an accurate portrayal, as it suggests that there was nothing more that the claimant could have done to complete the process, whereas the reality was that the school required her to complete the fourth column, and revise the timescales in the previous drafts, which was the purpose of the meetings that Colin Willsher was trying to arrange. Further, the GP seemed under the impression that the Tribunal proceedings were some form of "independent arbitration" which could resolve these issues, when clearly they would not be likely to do so.

24.315 No mention was made of this letter from Dr Pearson by the claimant or Mr Shojaee in any subsequent communications with Colin Willsher or Les Hall. They took the view that this was going behind the O H report that they had received, and remained of the view that Mr Shojaee was not a suitable person to have present with the claimant in meetings, though they were prepared to let him attend nearby for support as the claimant needed it.

24.316 On 4 June 2013 Colin Willsher tried to arrange a further meeting with the claimant on 14 June 2013 by letter of that date (pages 2408A and 2408B) sent to the claimant, but wrongly addressed to a previous address at 2 Primley Park, Garth. In this letter Colin Willsher informed the claimant that the Chair of Governors would be writing to her with details of an independent investigator. This was because as the claimant would not instigate a formal grievance, Judy Hooton felt that

the issues she had raised required investigation, and had decided to initiate such an investigation.

24.317 Colin Willsher asked the claimant to communicate about the stress risk assessment with himself at the school address, and to communicate with the Chair of Governors through the Clerk to the Governors, at the Governors Service at Bradford City Council.

24.318 The claimant received this letter, notwithstanding that it had been wrongly addressed. She emailed Colin Willsher about it on 9 June 2013 at 23.03 (pages 2410 to 2411 of the Bundle). She queried why it had been sent from Britannia House, why it had been sent by special delivery, and whether it was the original. Colin Willsher replied on 10 June 2013 explaining how it had been sent and when, and assuring her it was the original. In her reply the claimant then raised the question of the letter having been sent to an address she had left 12 years previously. Colin Willsher replied on 11 June 2013 that he must have looked up her address on an old record. The claimant responded further by saying she would write to him further regarding her attendance at the meeting arranged for 14 June 2013 (pages 2409 to 2410 of the Bundle).

24.319 There is no evidence that any meeting actually took place on 14 June 2013 , and the Tribunal assumes that it did not.

24.320 Judy Hooton wrote to the claimant in 19 June 2013. A copy of this letter does not appear anywhere in the Bundle. It seems highly likely to have stated how Judy Hooton proposed to initiate an independent investigation, and that she wanted to arrange a meeting with the claimant on 26 June 2013 to hear her complaints.

24.321 The claimant replied by email to Judy Hooton, using her private email address, of 21 June 2013 (pages 2412 to 2414 of the Bundle). In this email she made an initial eight enumerated points. She went through the history of the past two years, and her previous attempts to make direct contact with Judy Hooton, which she had ignored. She had tried again to make direct contact in January 2013, but Judy Hooton had only responded by her letter of 19 June 2013, in which she was "embarking on taking a direct action in an unlawful direction". She went on to say that the meeting suggested for 26 June 2013 was an unreasonable suggestion by her employer, and was an unlawful act. She said she was willing to assist in avoiding legal proceedings, and offered what she said was the only constructive approach possible.

24.322 She then went on to refer to the completion of the risk assessment. She made reference to asking the Tribunal for an urgent "Judicial Review" of the risk assessment. She had done so because most of the suggestions by Colin Willsher in the column "actions taken by management" were in breach of policies, contrary to medical opinion, and must address her disability. She went on to say this:

"The documents that have been falsified by Joan and Colin must be declared void and Rahim is the only person I trust to represent me in any negotiation or meetings.

24.323 She went on to ask that both sides be allowed to video record the meetings and negotiations, as this was the only way to start to re-establish the trust and confidence that Joan Ogley, Colin Willsher and Les Hall had shattered. She continued:

"If you give me an assurance by an email before the end of the day on Monday 24 June 2013 that for the completion of the risk assessment you observe:

- *The School stress Policy.*
- *The HSE Management Standard for Work – related Stress.*
- *An appropriate work adjustment based on the opinion of medical professionals.*
- *All falsified documents to be declared void.*
- *Some kind of reasonable remedy for my sufferings.*
- *The risk assessment to be completed by 15 July 2013.*
- *You accept Rahim to represent me.*
- *You accept that I video the meetings and the negotiations.*
- *You accept to meet at a neutral place that I name, because Future House is the office of the Bradford LEA and is not a neutral place.*

In completion of the risk assessment I withdraw the claim from the Tribunal."

24.324 The email continues with a heading "Early Retirement with Reasonable Compensation". Under this heading the claimant said she would accept, should the risk assessment be hard to achieve, some kind of offer of early retirement with reasonable compensation, provided that the agreement was finalised by 15 July 2013, Mr Shojaee represented her, she video recorded all meetings and negotiations any meetings were held at a neutral place.

24.325 She repeated that she would withdraw her Tribunal claims on completion of the agreement, and would then hand over all video recordings. She gave Judy Hooton until the end of the day on 24 June 2013 to respond, and if she did not do so, she would take that as an indication that she (i.e. Judy Hooton) preferred legal proceedings.

24.326 Judy Hooton responded by email of 24 June 2013, at 09.49 (page 2412 of the Bundle). She reminded the claimant to use her professional

address, through Governors' Services at Future House, and said she would be responding further to her during the day.

24.327 Judy Hooton did reply further by email on 24 June 2013, but, again, the Tribunal cannot see a copy of this email in the Bundle, but can gather its gist from the claimant's response. The email contained an invitation to meet with Claire Powis on 26 June 2013.

24.328 The claimant acknowledged this email by an email at 13.20 on 25 June 2013 (page 2415 of the Bundle). She expressed upset that Judy Hooton was ignoring her email of 21 June regarding the unlawful nature of the meeting she had suggested for the following day, but had chosen to agitate her depression again. She said she would reply further when she felt better. She requested the email address for the clerk to the Governors. Judy Hooton responded later the same day, saying that the contact details were as per her previous letter.

24.329 On 8 July 2013 Judy Hooton sent the claimant a letter (pages 2416 and 2417 of the Bundle) setting out how, the claimant having declined the invitation to a meeting on 26 June, or to submit any documents to support her grievance, she had decided that an investigation should still take place, and that an external investigator would be appointed to carry it out. She enclosed the terms of reference for the investigation (page 2418 of the Bundle) , which in eight paragraphs, encompassed the allegations that the claimant had been making of mob culture and bullying within the Maths department, possible race discrimination, failure of the Head Teacher, and other senior teachers to act upon complaints received, possible victimisation on the part of the Head Teacher in managing the claimant's absences from work, as potentially acts of race, or disability discrimination.

24.330 Judy Hooton repeated her invitation to the claimant to engage with this process, and asked her to agree the terms of reference. She asked her again to submit documents to support her grievances, or to be interviewed. She went on to provide the claimant with the details of how to present any such information for use in the investigation. She informed her that Claire Powis had been appointed the Investigating Officer.

24.331 The claimant did not agree the terms of reference, nor did she submit any documents in support of her grievance. Instead, by email of 14 July 2013 to Judy Hooton (copied to the usual recipients, now including her MP, the Area Director of ACAS, The Chief Executive of the HSE, and the Department for Education) she alleged that Judy Hooton too had as her only focus the covering up of the unlawful conducts of Colin Willsher and Joan Ogley, and her own shortcomings. She alleged that Judy Hooton was ignoring the Governors' Guide to the Law in not acting upon information about the conduct of Colin Willsher. She alleged that after five months of "negligence", and only when a Tribunal preliminary hearing was imminent, the claimant had been "bombarded"

by five letters from Judy Hooton in the space of a month, to “force” her to take part in a “so called independent investigation”.

24.332 She went on to give some history of the maths department, and the misconduct that had taken place. From July 2011 , the only responses she had been receiving were continuous misrepresentations, misleading suggestions, negligence and failure to comply with policies, disregard of her doctor’s advice, no counselling and continuous deception at every stage.

24.333 She contended that the five letters had been written by the respondent’s legal representatives, and her signature had been scanned or copied. She said that there was no sign of good faith in any of the letters. She said that the terms of reference for the investigation “let the cat out of the bag”, as they did not mention the work related stress or violation of the policies, procedures and laws in this respect.

24.334 She said that Judy Hooton had only conformed her “ill intention” one more time, being only interested to cover up all the unlawful treatments she had been subjected to, and:

“are trying to bully me and force me to a so called independent investigation that you could manufacture false evidence to deceive the Tribunal and pervert the course of justice.”

24.335 She went on to say how she had forwarded a complaint to the Secretary of State for Education under the Education Act 1996. There was the same deceitful intention that had caused her nervous breakdown in September 2011, which was designed by the respondent’s legal representatives to “wrong foot” the Tribunal.

24.336 She ended by expressing how her home had been her only refuge where she could have some peace. Since June 2013 however she felt the school’s bullying had extended to her home, and she could no longer have any degree of peace and tranquillity even in her home.

24.337 Claire Powis started her investigations. On 18 July 2013 she interviewed Joan Ogley, and Colin Willsher

24.338 On 29 July 2013 a preliminary hearing was held at the Leeds Employment Tribunal. The claimant is recorded as having appeared in person, but it seems highly likely that her husband was with her. Prior to this hearing, in correspondence to the Tribunal, and in the hearing, Mr Shojaee complained that the claimant was being bullied and harassed by the fact this investigation was being undertaken.

24.339 On 1 August 2013 Judy Hooton wrote to the claimant (page 2422 of the Bundle). She had been made aware of the claimant complaining at the preliminary hearing that the investigation was more bullying and harassment of her. She expressed regret that the claimant felt that way, as this had not been her intention, which was to provide her with re-assurance that the respondent was taking her complaints seriously.

Be that as it may, rather than risk causing her any more upset, she was discontinuing the investigation.

24.340 The claimant remained off work sick. She submitted a further fit note to Colin Willsher by email on 3 September 2013 (page 2466 of the Bundle) though no copy of it appears in the Bundle.

24.341 By October 2013 the claimant had been off work on sickness absence for a year. From 5 October 2013 the claimant had been in receipt of no pay.

24.342 Colin Willsher, with the assistance of Les Hall, on 5 November 2013 made a further referral for an O H assessment (pages 1024 to 1028, and also at pages 2485 to 2487 of the Bundle). The questions posed in this referral addressed her fitness to carry out her duties as a teacher, the prospects for a return to work, her ability to undergo performance management reviews and assessments, the need for ongoing medication or treatment, and the likelihood of recurrence of sporadic or prolonged absences. The referral also asked whether, if the claimant remained unfit for work, she was a suitable candidate for ill – health retirement under the Teachers Pension scheme.

24.343 Les Hall sent the referral to Susan Ingham at O H, by email of 5 November 2013, asking specifically for the assessment to be referred to one Dr Vincenti, who had the requisite expertise in this area, and had no prior involvement (pages 1024 of the Bundle).

24.344 On 12 November 2013 the claimant was issued with a further fit note (page 2484 of the Bundle), for 13 weeks. Other than to record that the claimant was receiving counselling, no other notes were made on this document.

24.345 Although not apparent from documents in the Bundle, it appears that the claimant was contacted, and an appointment with Dr Vincenti was arranged, probably for early December 2013. Mr Shojaee, however, contacted Susan Ingham and informed her that the claimant was not well enough to attend that appointment, which Susan Ingham then reported to Les Hall by email of 4 December 2013 (page 1029 of the Bundle). An attempt was made to arrange a further appointment, but this was not taken any further at the time.

24.346 That was probably because by email of 14 November 2013 sent to Colin Willsher and Judy Hooton the claimant had herself sought ill – health retirement (page 2467 of the Bundle). She completed and enclosed the relevant forms, and medical information. She went on to add some five points, as follows:

"1. The reason I have asked my doctor to provide the medical information is based on the notes at the top of page 2 of the Medical Information Form.

> 2. *My first choice is still to return to my job and it is with reluctance that I have accepted to submit my application for ill – health retirement as a respect to medical opinions.*
>
> 3. *If Teachers' Pensions approves the application, I have no choice but to resign to the fact that I have to agree to take ill – health retirement.*
>
> 4. *However, if the Teachers' Pensions disapprove the ill – health retirement, my expectation is a swift return to my job with an appropriate risk assessment and appropriate work adjustment.*
>
> 5. *In either situation I will expect appropriate compensation and remedies for the detriment and the hardship that I have been subjected to. I will send you my terms for compensation and remedies soon."*

24.347 The claimant's GP had signed the necessary medical declaration at page 5 of the application form, and had dated it 30 October 2013 (page 2472 of the Bundle). She provided answers to the specific question posed on the form by a separate letter of the same date (pages 2473 and 2474 of the Bundle). In providing her assessment that the claimant was , due to her extremely fragile mental health, incapable of any gainful employment in the foreseeable future, she also said this in answer to specific questions on the form:

"Question 7: This lady is unable to carry out any of her current role in teaching or management. Where previously, I felt it would be possible for her to return in a part-time capacity or be redeployed in a different establishment, due to the ongoing severity of her problem, despite all efforts at treatment, I now feel she would be incapable of a part – time role in any school.

Question 8: There has been an ongoing dispute with the senior management team of the school regarding this lady's work related stress and request for increasing support with her health issues relating to this. Unfortunately, things have become extremely tense and there is a complete breakdown now, in my opinion, with the senior management team. I do not feel that she is able to return in any capacity to this school and/or any other given the level of mental breakdown."

24.348 Les Hall completed the sections of the application form required, and dated them 27 November 2013 (pages 2502 to 2504 of the Bundle).

24.349 The application was accepted by letter from Teachers' Pensions to Les Hall of 10 January 2014 (page 2505 of the Bundle), and he in turn wrote to the claimant to inform her of this by letter of 15 January 2014 (page 2506 of the Bundle). In his letter Les Hall commented that as the school had not received any communication from her requesting the ending of her employment contract. He asked her to send a signed

letter of resignation to Colin Willsher, and advised that this was best done with immediate effect, so as to expedite the commencement of her pension payments.

24.350 The claimant duly did resign by email of 15 January 2014 (pages 2507 to 2508 of the Bundle). She enclosed with that email a short email of the same date, addressed to Colin Willsher in which she asked him to accept her resignation which she said she considered *"as unfair constructive dismissal"* with immediate effect. In the covering email, she said this (page 2507 of the Bundle):

"This ill – health retirement and resignation has been imposed on me due to the continual unlawful treatment that I have been subjected to, which in reality is an unfair constructive dismissal on top of the claims already flied (sic) at the Tribunal. I have accepted it as a coping mechanism to protect myself from ever increasing harm to my health as a result of the continual victimisation and harassment that I have been subjected to by you and other including your legal representative and his advisors, even after the submission of my application to the Employment Tribunal."

24.351 The claimant then went on to refer to a further attachment (which the Tribunal has not seen) which is apparently a formula for a settlement of the claimant's Tribunal claims. This was presumably intended to be "without prejudice", and the Tribunal should not see it. Finally, the claimant raised a query about her length of service, for the purposes of calculation of her pension.

24.352 Colin Willsher replied on 17 January 2013 (page 2510 of the Bundle), enclosing information relating to her employment at the school which had been provided to Teachers Pensions. He noted her comments, but disagreed with them. He had referred her schedule document to the school's solicitor. He expressed the hope that the decision to retire would improve her medical condition, and thanked her for her past service to the school.

24.353 The claimant's employment accordingly ended on 15 January 2014.

25. Those, then are the relevant facts found by the Tribunal. The Tribunal's fact finding task, it has to be said, has not been an easy one. The unavailability of the claimant to answer questions to clarify her statement, to deal with several significant omissions from it, and to explain precisely what she meant in documents written by her, or on her behalf, has hampered the Tribunal's fact – finding ability. Further, the state of the Bundle, which lacks a coherent chronological order, and contains many documents which were never referred to at all in the hearing, the relevance of which was never explained (e.g. many pages of maths teaching materials, presumably used in class), and many documents which were repeated over and over again for no apparent reason, has further hampered the Tribunal in its task, and has contributed to the time that it has taken to perfect and promulgate this judgment. The early part of Volume 4, for example, is particularly exasperating, with continual repetition, often out of chronological order, of email trails with interposed comments,

not reproduced in colour, passing between the parties and ACAS around 13 to 18 January 2013. Further, the lack of , or erroneous , correlation of page numbers in the claimant's and the respondent's witness statements has further hindered and delayed the Tribunal in the production of this judgment.

26. It is regrettable that the claimant was unable to give live evidence. Mr Shojaee in his submissions refers to the Tribunal "exempting" her from cross – examination. This is not quite accurate. It was a matter for the claimant, and Mr Shojaee, as to whether she gave live evidence, and they decided, in the light of her medical condition, that she could not do so. That means, inevitably, that less weight can be attached to the evidence in her witness statement, where it is challenged, than if the Tribunal been able to see her cross – examined, or been able to put its own questions to her. Further, if her witness statement omits evidence that is necessary for, and relevant to, her claims, the Tribunal cannot determine the claims as if that evidence had been before it, when it was not. It cannot be a reasonable adjustment for the Tribunal to make to put the claimant in a better position when she has not given live evidence, than she would have been if she had. It cannot be a reasonable adjustment to attach more weight than is appropriate to untested written evidence, when tested against live evidence from the respondent's witnesses, solely because the cause of the claimant's inability to give live evidence is her disability.

27. Nor can the Tribunal do justice between the parties if it makes findings on the basis of evidence that the claimant has not actually given, but which she might have done, but for her disability. Hence, however, unfortunate it may be, the Tribunal has had to determine the claims on the basis of the evidence before it, and can make no further allowances or adjustments in reaching its conclusions merely because the claimant's disability may have impeded the presentation of her case in this way. The Tribunal has made such adjustments as it possibly can to reduce any disadvantages to the claimant caused by her disability, mainly by gleaning what her evidence might have been from the documents, but to go any further, and disapply the principles upon which any judicial body must act when assessing evidence , and making findings of fact, is a step too far which the Tribunal cannot take.

28. It will also be apparent from the foregoing findings of fact that the Tribunal has confined itself largely to findings in relation to the years of 2011 to 2103, and not any earlier. This is because matters prior to those dates are not relevant to the remaining claims made. They may be background, but the Tribunal has no role to determine whether Joan Ogley was responsible for the breakdown of the relationship with the claimant in the maths department, or whether her actions, or those of any previous Head, or of Mr Willsher or anyone else, have caused, or contributed to the claimant's illness. Causation of the claimant's illness is largely irrelevant in these proceedings. Such matters would be of course, be highly relevant to any personal injury claim (and it is noted that the claimant's trade union appears to have been advising at one stage that one be brought), but not to these claims. It is important to make this point because much of the evidence that the claimant has sought to adduce before the Tribunal, and indeed, the approach the claimant took towards the stress risk assessment process appears to have been continually directed at these very issues. Whilst appreciating that to some extent understanding the causes of an illness may assist to cure or manage it (the former is not, however, a reasonable adjustment, the latter may be) , the proper focus of the Tribunal's enquiries has to be upon how, going forward, it was to managed in the workplace, if, indeed, it ever could be.

The submissions.

29. The Tribunal received the parties' written submissions. To assist Mr Shojaee the respondent was ordered to serve and file its submissions first, with the claimant's to follow, and this is what occurred. Mr Shojaee clearly had sight of the respondent's submissions when he prepared his, as he makes reference to them. As both parties' written submissions can be read, the Tribunal does not propose to rehearse them extensively in this judgment. It is a little unfortunate that Mr Shojaee has not responded specifically to the points made in the respondent's submissions, although he was told that his submissions need not be solely responsorial. That said, the first 7 pages of his submissions dwell upon the more historic aspects of the evidence relating to events in and before 2011, which are no longer the subject of discrimination claims before the Tribunal by reason of its ruling upon the date of the claimant's disability as September 2011. Further, there is something of a theme in this part of the submissions, as there has been throughout the case, of the claimant alleging that the respondent's historic treatment of the claimant being responsible for her illness. As has been pointed out to Mr Shojaee on several occasions during the hearings, this is not a personal injury claim, and causation of any medical condition from which the claimant has suffered is not a relevant issue before the Tribunal.

30. There are other features of Mr Shojaee's submissions which require particular comment. Firstly, he has sought to introduce a new allegation of disability discrimination, namely that of the respondent "refusing to accept" the claimant's disability. This is relied upon as supporting a claim of "continuing" discrimination from November 2011 to February 2013. This is, (given that it is raised in para. 25 of his Submissions which respond to the Miss Mellor's submissions on time limits) intended to meet time limit issues, but it cannot be sustained as a new head of claim. Refusal (if such it be) to accept that a person has a disability cannot, of itself, the Tribunal considers, amount to a form of discrimination. It would have to be accompanied by something which amounts to one of the other forms of discrimination proscribed by the Equality Act 2010. It may, therefore, be a feature of a failure to make reasonable adjustments, i.e. a refusal, or failure, to acknowledge a person's disability, once the employer has actual or constructive knowledge of the disability , it may be the reason why the employer failed to make reasonable adjustments, but it would have to be determined whether there was or was not any such failure. Similarly, with harassment, it would have to be established that the employer's conduct in so "refusing" to accept or acknowledge a person's disability, of itself, had the requisite subjective and objective effects upon the claimant. The Tribunal can see circumstances where that may arise – for example, a disabled employee is told in no uncertain terms by their employer that there is nothing wrong with them, and they malingering – but that is not the allegation here.

31. Mr Shojaee's submissions also speak of this meaning that the respondent was "denying the Claimant from the legal protection that she was entitled to under the Equality Act 2010". This, he says, is why the claimant was seeking assurances from the respondent to accept her disability as a precondition for completion of the stress risk assessment.

32. None of the claimant's claims have been previously pleaded this way, and to the extent that the claimant may be seeking to advance new claims, the Tribunal would not permit her to do so at this late stage. On a factual point, the Tribunal

cannot, in any event, see any "refusal" to accept the claimant had a disability, there may have been a slowness to acknowledge it in terms of the legal definition, but the Tribunal is not aware of any communication from either of the two employer respondents prior to her resignation in which it was expressly ever disputed that she was a person with a disability.

33. A further, and probably only minor, issue arises from para. 26 of Mr Shojaee's submissions, in which he invites the Tribunal to consider all the conduct of the respondent from September 2011 or from November 2011 as acts of discrimination under sections 15, 20, 21, and 26 of the Equality Act 2010. This is the only mention of section 15, which is discrimination arising from disability. This may be a typographical error for section 13, but to the extent that the claimant may now be seeking to raise s.15 claims, there have been none raised in the long procedural history of these claims, at least until applications to amend during the hearing. For completeness, Mr Shojaee makes no mention of s.27, victimisation in his submissions. He is correct not to do so, as there are no victimisation claims before the Tribunal. Frequent mention is made in the documents to "victimisation", and the claimant uses the term several times in her witness statement. Those uses, however, are clearly in the lay sense of the word, synonymous with "being badly treated", and not within the legal meaning of s.27 of the Equality Act 2010. No such claims have been made in the proceedings after extensive case management and amendment applications, save for Mr Shojaee's email to the Tribunal of 10 August 2018, in which he intimated an application to amend he claims to include both s.15 and s.27 claims, which he did not, ultimately, pursue.

34. For the respondent, Miss Mellor paints with a broad brush. She takes the Tribunal through the background and procedural history, and the finding on the date of the claimant's disability. She then sets out the issues to be determined, as follows (abbreviating he claimant and the respondent to "C" and "R") :

<u>Disability Discrimination</u>

<u>Failure to make reasonable adjustments contrary to section 20 Equality Act 2010 (EqA 2010)</u>

a. When did R have actual or constructive knowledge?
b. What is the provision criterion or practice (PCP)?
c. Did that PCP put C at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?
d. Who is the comparator?
e. What steps were reasonable to take to avoid the disadvantage?
f. Is this claim in time?

<u>Section 123 EqA 2010</u> *(1) (a) proceedings may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates; (3) for the purposes of this section – (b) failure to do something is to be treated as occurring when the person in question decided on it and (4) in the absence of evidence to the contrary a person is to be taken to decide on failure to do something (a) when he does something inconsistent with doing it, or (b) if P does no inconsistent act, on*

the expiry of the period in which he might reasonably have been expected to do it.

Direct Disability Discrimination contrary to section 13 EqA 2010

a. Was C subjected to less favourable treatment?
b. Who is the comparator?
c. Was that less favourable treatment because of her disability?
d. Is this claim in time – is there conduct extending over a period so as to fall within section 123(3)(a) EqA 2010?

Harassment contrary to section 26 EqA 2010

a. Did R (if so whom) engage in unwanted conduct?
b. Did that unwanted conduct relate to her disability?
c. Did that unwanted conduct have the purpose or effect of violating C's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B ('the proscribed effect').
d. Is this claim in time?

Extension of time limits

a. If it is found that any of the disability discrimination claims are out of time is it just and equitable to extend the time for presentation under section 123(1)(b) EqA 2010?

Constructive Unfair Dismissal

a. Was there a breach of the employment contract?
b. Was that a repudiatory breach?
c. Did C resign in response to that repudiatory breach?
d. For the avoidance of doubt this claim is in time.

Detriment on the ground that C made a protected disclosure contrary to section 47B ERA 1996.

a. Did C make a qualifying disclosure as defined by section 43B ERA 1996?
   I. Has there been a disclosure of information?
   II. Did the claimant reasonably believe that the information tended to show one of the matters listed at a-f in s43B?
   III. Was the disclosure made in good faith? (this is a pre 2013 reform case).
b. Was C subjected to a detriment?
c. Was the detriment on the ground that she made a protected disclosure?

Section 44 ERA 1996 – Health and Safety detriment (if permitted as an amendment)

a. Why was it not reasonably practicable to raise the matter through a health and safety representative?

b. Were the steps relied on protected steps?
c. What was the detriment/failure to act?
d. Was that detriment/failure to act done on the ground that C brought to R's attention matters which she reasonably believed were harmful or potentially harmful?

35. The Tribunal agrees with that legal analysis of the issues. In terms of the specific issues, in relation to the date of knowledge on the part of the respondent of the claimant's disability, she concedes that whilst actual knowledge did not arise until late 2012, constructive knowledge should be attributed to the respondents from November 2011. She cites in particular how the claimant was only off sick for one week in July 2011, and then again in September 2011. She returned to work in April 2012. The OH report in autumn 2011 , following the GP's diagnosis on 27 October 2011 , was the time from which the respondents should be fixed with constructive knowledge.

36. Miss Mellor goes on to deal with the reasonable adjustments claims, pointing out that the claimant has not specified a PCP, but identifying a number from the risk assessment documents, including at (i) "the requirement for her to carry out her full contractual duties", encompassing the previously identified specifics. She goes on to discuss the law on reasonable adjustments, referring to ***Romec v Rudham [2007] All E R (D) 206 Jul.*** and ***Tarbuck v Sainsbury's Supermarkets Ltd. [2006] IRLR 664*** . She argues firstly that the risk assessment was not a reasonable adjustment, and, in the alternative that responsibility for the failure to complete rests with the claimant in any event. She raises the time limit issues, and invites the Tribunal to dismiss the adjustment claims as out of time. She goes on to address the direct and harassment claims, and finally the constructive dismissal, protected disclosure and s.44 amendment application.

Discussion and findings.

The Law and the Claims.

37. The applicable law, in terms of the statutory provision, in so far as it not apparent from the judgment, is set out in Annexe B. The Tribunal must now address the issue of what claims it has before it. This requires, at last, a determination of the remaining, unresolved amendment application.

The s.44 ERA claims sought by way of amendment.

As discussed on 27 February 2018, and above, the application to amend to include claims of breach of s.44 of the Employment Rights Act 1996 was not determined previously, but was left over to the final hearing. Whether the claimant is permitted to amend to add such claims is therefore live issue, and requires determination by this Tribunal.

Determination of the amendment application.

38. It is to that application that the Tribunal will now turn, as it will assist to determine what claims are and are not before the Tribunal for final determination. The application to amend to add claims based on s.44 of the ERA was first

foreshadowed in an agenda for a preliminary hearing on 20 April 2017. The Tribunal required that application to be properly particularised. The formal application was then made, and at a preliminary hearing on 19 June 2017 Employment Judge Horne directed that it be considered at a preliminary hearing on 3 July 2017. At that hearing, also before Employment Judge Horne, he did not rule upon it, and after further written submissions, by a reserved judgment of 20 September 2017, sent to the parties on 6 October 2017 , left the final decision , save for five allegations, which were refused, to this Tribunal, or has been taken to have done so. He did not, we are satisfied , grant the amendment, which therefore falls to us to consider.

39. The principles to be applied in considering whether or not to grant permission to amend have been long established in the case of ***Selkent Bus Co Ltd v Moore [1996] IRLR 661***, in which the court set out well established principles now that should be applied in relation to applications to amend, it being the case, (as it has been for many years under all of the Tribunal's rules however much may have changed but this has not changed), that basically the matter of amendment is a matter for discretion for the Tribunal . What the ***Selkent*** case did, and has been approved countless times by the EAT in the Court of Appeal , and possibly even higher , that the formulation has been approved of the test that should be applied. That is set out in the judgment of what was then Mummery J., in his judgment, where he gives guidance to the Tribunal as to how it should exercise its discretion , and what it should take into account, which is all the circumstances of an application to amend , and how it should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

40. In terms of the relevant circumstances, he asks in the course of the judgment "what are the relevant circumstances?", but goes on to say it is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant. First is the nature of the amendment, the second is the applicability of time limits and the third is the timing and manner of application. Each of those paragraphs he expands upon, in various aspects, but he ends the third paragraph, the one headed "the timing and manner of the application", as follows:

> *"whenever taking any factors into account the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment, questions of delay as a result of adjournment and additional costs, particularly if they were likely to be covered by the successful party are relevant in reaching a decision"*

41. The applicability of time limits has always been a significant factor in amendments, and in terms of how they are factored in, if the claim is to be amended but the amendment would have been in time if included in the claim originally, then that is obviously a persuasive but not definitive argument for allowing the amendment. Conversely, the mere fact that an amendment would be out of time is not a reason in itself for not granting an amendment. It has been said that, in terms of weighing up the justice or injustice of allowing a refusal and amendment, if a claim had been presented with the original claim which would even then have been out of time, a claimant who is denied the benefit of an amendment in these circumstances loses nothing that they would not otherwise have had. This is because if the claim had been originally included, but was out of time, it would then be dismissed upon the Tribunal finding it had no jurisdiction, so an amendment should not put a claimant

in a better position than they would have been if they included that claim in the first place. The applicability of time limits is thus a highly relevant consideration in terms of whether or not to grant the application.

42. Turning to this application, the amendments sought relate to alleged detriments suffered by the claimant on the ground that she brought to her employer's attention circumstances connected with her work which she reasonably believed were harmful or potentially harmful to health and safety, so as to fall under s.44(1)(c)(ii) of the ERA. She also relies upon the same facts to found an alternative claim under s.44(1)(d), or s.44(1)(e). The essence of all such claims, however, the cause of action, is the suffering of the detriment.

43. The provisions providing a remedy for such conduct are set out in s.48(1) of the ERA, which provides that an employee may present a complaint that she has been subjected to a detriment in contravention of (amongst others) s.44 of the Act. S.48(3) sets out the relevant time limit, as follows:

> *48(3) An employment tribunal shall not consider a complaint under this section unless it is presented—*
>
> *(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*
>
> *(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*
>
> *(4) For the purposes of subsection (3)—*
>
> *(a) where an act extends over a period, the "date of the act" means the last day of that period, and*
>
> *(b) a deliberate failure to act shall be treated as done when it was decided on;*
>
> *and, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected do the failed act if it was to be done.*

44. Thus, it is necessary to determine when the appropriate time limit for such claims would have expired. The proposed amendments were set out in tabular form by Employment Judge Horne in the Schedule to the Case Management Order he made on 19 June 2017(sent to the parties in 29 June 2017, at pages S17 to S21 of the second supplementary bundle), and again in the Reasons in a further Judgment sent to the parties on 6 October 2017 (S52 to S54). In that table he identified the relevant dates of the detriments. The first, no. 6 goes back to 2008, and the last, no. 16 is expressed to be "from July 2012".

45. At paras. 70 to 90 of the Reserved Judgment of Employment Judge Horne (pages S69 to S72) he recites the arguments for and against allowing the amendment, and discusses the relevant time limits. He made the observation that it would require findings of fact to determine whether the claimant could establish that the relevant time limit should run on the basis of there being conduct extending over a period of time , for the purposes of s.123(4) of the Equality Act 2010, and did note that the last detriment relied upon, in or about December 2012 may be in time, depending upon when the alleged failure to act was found to have occurred, which might have been within the 3 months preceding the issuing of the claims on 19 March 2013. It is to be remembered that this claim was made before the provisions requiring early conciliation came into force, so no extension of time issues will arise.

46. Taking all these factors into consideration, we find that the last of the detriments alleged and relied upon for these purposes occurred well before December 2012. The claimant's case is that Colin Wisher decided not to complete the risk assessment long before December 2012. Indeed, that is one of her complaints in Section 3, at claims 16 and 17, where she alleges that between June 2012 and September 2012 Colin Wisher and HR used "deceptions and falsification of minutes" to deviate from the School Stress Policy in carrying out an appropriate Stress Risk Assessment, and used misrepresentations, false allegations and trickery to avoid following the School Stress Policy in completion of such a Assessment.

47. In the box in which the detrimental act or failure is identified by Employment Judge Horne, for proposed amendment 16, he has recorded:

> *"Mr Willsher refused to complete the stress risk assessment. In particular he refused to address all the issues going back to 1993."*

48. The preceding amendment, no. 15 alleges, as the detrimental act or failure, that Mr Willsher falsified the minutes of "the meeting", which the Tribunal takes to be the meeting of 24 July 2012, and then "wrote a letter purporting to set out how he was going to address the issues raised at the meeting, but which actually was a form of bullying." The dates are not specified, but in terms of the minutes in question, the claimant had received these by 20 August 2012, and the letter that the claimant refers to must be that from Mr Willsher which is undated, wrongly refers to a meeting on 24 June 2012, and which was received by the claimant on or by 16 August 2012. All other detriments, going back to no. 6 occurred earlier, in 2012, 2011, or 2008.

49. Thus all claims based upon the alleged detriments up to no. 16, if included in the claim form as presented on 13 March 2013, would have been out of time. In relation to no. 16, the position is less clear cut. To examine the date from which the relevant time limit would have run from in relation to this allegation requires an analysis of the events of late November and early December 2012. From the evidence Colin Willsher was clearly seeking to further the risk assessment in November 2012, and he had two meetings, one on 15 November 2012, and one on 28 November 2012 , in order to do so. The subsequent e-mail traffic of 28 November, 30 November, 2 December, 10 December, and 11 December 2011 (pages 2112 to 2130) shows that by 11 December 2012 the claimant was dissatisfied with Colin Willsher's response, or lack of response, to the claimant's proposals for the stress risk assessment, and by 11 December 2012 was alleging that he had failed to progress the risk assessment properly, was delaying it, and

breaching various policies and duties owed to the claimant. In other words, the claimant was, by 11 December 2012 identifying a number of detriments, including failure (or refusal) to complete the risk assessment. She sought to raise a grievance against Colin Willsher.

50. Accordingly, any detriments that she alleges she was subjected to in relation to the risk assessment had occurred by, at the latest, 11 December 2012.

51. On that basis, had amendment no. 16 been included in the original claim form presented on 19 March 2013, it would have been out of time, as would all the preceding claims.

52. As indicated in para. 86 of the Reserved Judgment of Employment Judge Horne, if the allegations would have been out of time even if they had been included in the original claim form, it is likely that a Tribunal would refuse the amendment. That indeed is our inclination, but before doing so, we will consider what further factors may be relevant to take into account in terms of our decision whether to permit amendment.

53. The test for extension of time to present such claims, contained in s. 48(3) of the ERA 1996 is that of reasonable practicability, i.e. if a claim was presented out of time, the Tribunal can only extend time for its presentation if it was not reasonably practicable for it to have been presented in time. This is, of course, not the same as the just and equitable test applied for extension of time in discrimination claims. The claimant's case on want of reasonable practicability is unclear, and has not really been advanced. Doing the best it can, the Tribunal assumes that the claimant would rely upon her lack of legal representation, and lack of awareness of the possibility of including such claims in her original claim form.

54. The difficulty with that argument is that she has throughout been represented and assisted by her husband, Mr Shojaee, who, when preparing the claims form, and in his prior dealings with this case, was able to research and refer to a wide range of policies, legal requirements, and other material. He included in the original claim form claims of protected disclosure, unfair constructive dismissal, race and disability discrimination, as well as breach of the Human Rights Act 1998, under the Health and Safety at Work Act, the Education Act 2005, the Unfair Contract Terms Act 1997, for personal injury, negligence, and in relation to the HSE Management Standards for Work Related Items, amongst others. In short, he had clearly carried out much research, and whilst some of the claims were struck out as not being justiciable by the Tribunal, he clearly had been assiduous in his research into possible claims.

55. The only reason, therefore, that these s.44 claims were not included in the original claims must be that Mr Shojaee had not been aware of these provisions. That is ignorance of the law, which generally will not excuse failure to make a claim.

56. The claimant would, therefore, we consider have had considerable difficulty in avoiding these claims being struck out as being presented out of time, had they been included in the original claim. Since ***Galilee***, however, and the abandonment of the "relation back" doctrine, the relevant time at which time limits are to be considered is at the time of the application to amend. In this case April 2017 at the earliest.

57. The manner and timing of the application to amend is thus highly relevant. The application was first foreshadowed in a draft Agenda prepared for a preliminary hearing held on 20 April 2017. At that hearing the claimant was ordered to provide further details of these amendments, which was done by a document dated 9 May 2017. In a subsequent hearing on 19 June 2017 the amendments were considered, Mr Shojaee arguing that these were merely a re-labelling exercise.

58. Thus, the timing of the application to amend is some four years after the claims were first submitted, and had been extensively case managed, both in Leeds and Manchester. No explanation has been proffered for why the application was made so late in the day, and well after the claims, but for the appeal and transfer to Manchester, would probably have been heard.

59. That delay, and lack of reason for it, in seeking to amend to bring claims which would have been out of time if included in the original claim form, is serious and highly significant factor in this Tribunal's assessment of whether it should allow the amendments. Whilst taking into account, as Employment Judge Horne did, the relative lack of prejudice to the respondents in dealing with the amended claims (as they in fact have done), and the balancing exercise of weighing up comparative hardship to the parties, the Tribunal sees no good reason to allow these amendments at such a late stage.

60. Further, the Tribunal also considers it legitimate to take into account the prospects of success of such claims. The Tribunal now, having heard all the evidence, is in a better position to asses this, and indeed, could actually determine these claims if the amendments were permitted.

61. The amendments sought are to bring in claims under very specific provisions of the ERA, whose principal purpose is to protect from detriment, firstly health and safety representatives, candidates or consultees, to prevent them being deterred from, or penalised for, carrying out their duties. Secondly, to similarly protect individual employees, where there are no health and safety representatives, or a committee, or where raising issues by those means was not reasonably practicable, the employee took it upon themselves to raise such matters with their employer. Those provisions are contained in s.44(1)(a) to (c) of the ERA.

62. Pausing there, the claimant, in her witness statement makes no reference whatsoever to why she allegedly raised such matters with the respondent, and whether there was or was not a health and safety representative or committee at the School where she worked, and, if there was , why she did not raise such matters through these channels. The oral evidence of Les Hall was that there was a health and safety representative. This was not controverted. Consequently the claims under s.44(1)(c) could not possibly succeed, and there would be no point in allowing an amendment to include claims with no reasonable prospect of success.

63. In relation to the s.44(1)(d) or s.44(1)(e) claims, these too are unsustainable. Sub – section 44(1)(d) is intended to cover situations where in "circumstances of danger" which the employee reasonably believed to be serious imminent he or she left, or proposed to leave, or refused to return to, their place of work. This is intended to cover situations such as, for example, an employee leaving a building which is, or he reasonably believes is, or is about to be, on fire, or at risk of, say, an explosion, or

who refuses to return, say, after an evacuation, when he or she reasonably believes that the serious and imminent danger has not been averted. The section is intended to protect from detriment employees who take these steps for their own protection. Sub-section 44(1)(e) applies to the same circumstances, but where the employee takes "appropriate steps" to protect him or herself from the danger. The "appropriate steps" have not been specified by Mr Shojaee, but are presumably the claimant seeking the completion of the stress risk assessment before she could contemplate returning to work.

64. The term "circumstances of danger" is not defined, and is not necessarily to be limited, the Tribunal appreciates, to physical danger. That said, given that the claimant's health issues were mental, and not physical ones, it is rather hard to conceive of circumstances in which there was an "imminent" danger to her mental health by her, for example, merely returning to work. At its highest, it seems to the Tribunal the claimant was seeking to obtain assurances as to the future conduct of colleagues towards her, and other issues, so as to avoid the risk of her illness recurring or being exacerbated. The actual act of returning to work, in itself, would not put her in serious and imminent danger.

65. An essential element of liability under both s.44(1)(d) and (e) is therefore the belief of the employee. In the circumstances of serious and imminent danger. There must therefore be some evidence of the employee having that belief, and if that is established, the Tribunal would then have to consider whether that belief was reasonably held.

66. There is no evidence from the claimant that she held that belief. Whilst Mr Shojaee would doubtless invite the Tribunal to find that she did, despite the absence of any reference to this in her witness statement, we cannot do so. Even if we did, we would then have to consider whether any such belief was reasonably held. Our view is that it would not be reasonably held, no one could reasonably believe that have believed that was the case, for the purposes of s.44(1)(d) r s.44(1)(e), and these claims would fall at that hurdle.

67. Finally, even if the claimant could establish either her entitlement to bring matters to her employer's attention under s.44(1)(c), and the qualifying belief in the relevant circumstances for the purposes of s.44(1)(d) and (e), the final issue would be causation. The Tribunal wold be quite satisfied that there was no causal link whatsoever between any treatment of the claimant that is complained of, and her allegedly doing act which could conceivably be found to have been done by her so as to bring her within s.44.

68. For all these reasons, the Tribunal refuses the application to amend the claims to add these further claims. It is unfortunate that Mr Shojaee has seen fit, at a late stage, to seek to seek to introduce what are rather obtuse and highly technical elements of claim which even the most experienced employment lawyers would have been unlikely to argue, based on these facts, and which have further unnecessarily complicated and prolonged these proceedings, with no benefit to the claimant.

The remaining claims.

a)The disability discrimination claims

69. Now that the amendment application has been determined, the Tribunal can determine the claims which are before it. The starting point must be the claims as they were before the Tribunal at the start of the hearing, following amendments and withdrawals up to that date. They are initially to be found in two sections of the claimant's Scott Schedule, Section 3 and Section 4, pages 169 to 209, and 210 to 215 of the Bundle. Section 1 of that document are "Explanatory Notes", and Section 2 is "Background events". Thus, whilst many factual allegations are made in Section 2, the actual claims are contained in Sections 3 and 4. Section 3 originally related to all three respondents, but the claims against the original second respondent, the claimant's trade union, have been dismissed, and the claimant's claims of race discrimination have been withdrawn. Consequently, whilst Section 3 still contains references to "R2", and to race claims, these are no longer live claims. The disability discrimination claims against the remaining respondents, at the start of this hearing, were therefore:

Nos. 5, 6, 7, 8, 9, 10, 12, 13, 14, 16, 17, and 18 .

70. Of these, nos. 8, 9, and 10 must fail, given the Tribunal's ruling on the date from which the claimant as to be considered as a person with a disability. Mr Shojaee appeared to accept that in hearing, but in his submissions he seeks to revisit this finding, in that he makes copious references to matters before September 2011. He cannot do so. The Tribunal has made its ruling as to the relevant date from which the claimant is to be regarded as a person with a disability. The claims made in nos. 8, 9, and 10 of section 3 of the Scott Schedule are:

8 – June 2008 – Direct discrimination or failure to make reasonable adjustments

9 – 13 July 2011 – Direct discrimination or harassment

10 – 21 July 2011 – Direct Discrimination, or harassment or Failure to make reasonable adjustments

71. The duty to make reasonable adjustments could not arise until the claimant was, in fact, a person with a disability, which the Tribunal has determined, was not until September 2011. That duty in fact did not arise until the respondent had constructive knowledge of the disability, which the respondent concedes was November 2011. Similarly, the claimant could not be directly discriminated against if she was not a person with a disability, hence all these claims must fail.

As, for the same reasons, must claims nos. 5, 6, and 7, which are:

5 – 29 March 2011 – Direct discrimination

6 – 8 June 2011 – Direct discrimination

7 – July 2014 – Direct discrimination or failure to make reasonable adjustments.

As nos. 1 to 4 had been withdrawn, and no. 11 relates solely to the trade union, the former second respondent, the remaining disability discrimination claims are:

Nos. 12, 13, 14, (15 was against the second respondent) 16, 17, and 18.

In summary, taking them from the Scott Schedule, they are:

12 – December 2011- Mr Willsher making false allegations against the claimant in a letter or letters (i.e. those dated 14 December 2012, at pages 1601 and 1602 of the bundle) which is alleged to constitute direct discrimination or harassment of the claimant.

13 – January 2012 – Mr Willsher (claims were also made against the trade union) refused to discuss the occupational health report and to carry out an appropriate stress risk assessment, conduct which is alleged to constitute direct discrimination, harassment or failure to make reasonable adjustments.

14 – April 2012 – Mr Willsher (claims were also made against the trade union) refused to discuss an appropriate stress risk assessment, conduct which is alleged to constitute direct discrimination, harassment or failure to make reasonable adjustments.

16 – June to September 2012 – Mr Willsher (claims were also made against the trade union) committed "deceptions and falsifications" of a meeting in July, and deviated from the school stress policy in carrying out an appropriate stress risk assessment, conduct which is alleged to constitute direct discrimination, harassment or failure to make reasonable adjustments.

17 – October 2012 – Mr Willsher and Mr Hall committed "misrepresentations, false allegations and tickery" to avoid following the school stress policy in the completion of an appropriate stress risk assessment, conduct which is alleged to constitute direct discrimination, harassment or failure to make reasonable adjustments.

18 – January to March 2013 – Mr Hall committed "misrepresentations, false allegations and deceptions" during the ACAS pre – claim conciliation process to agree to following the school stress policy for the completion of an appropriate stress risk assessment, or a "premature retirement, conduct which is alleged to constitute direct discrimination, harassment or failure to make reasonable adjustments.

b) The protected disclosure claims.

72. Section 4 contains the protected disclosure claims. Again, originally some of these three claims were made against the original second respondent , the trade union, and all relate to one allegedly protected disclosure, the date of which is alleged to have been "October 2012". Nos. 1 and 2 however related to the second respondent, leaving only no. 3 as pursued against the remaining respondents.

c) The unfair dismissal claim.

73. The unfair dismissal claim is not set out in the Scott Schedule. This is probably because it was added by way of amendment, pursuant to the Order of the Leeds Tribunal on 1 April 2014 (pages 85 to 86 of the Bundle).

Discussion and findings.

(i) The disability discrimination claims.

a) Time limit issues.

74. Before proceeding to determine the merits of any of the discrimination claims, the Tribunal needs to consider the time limit issues which have been raised and identified as issues in previous preliminary hearings. The claims were presented on 13 March 2013. Consequently, no discrimination claims which pre – date 13 December 2012 will have been presented in time. Miss Mellor submits that the claims relating to failure to make reasonable adjustments, and any other claims which relate to the failure or refusal to carry out the stress risk assessment must be out of time, as the matters complained of occurred in January 2012.

75. This is so, in one sense, but given that the claims nos. 13,14 and 16 all relate to specific instances of alleged failure to make the reasonable adjustment of completing the stress risk assessment, which carry on into early 2013, particularly in relation to the claims relating to the ACAS conciliation, the Tribunal considers these claims to have been presented within time. In addition to failure to make reasonable adjustments, of course, these claims are also put as harassment or direct discrimination claims. To that extent, regardless of the relevant limitation date in relation to the reasonable adjustments claims, as pleaded as other claims they are in time.

76. If the Tribunal were wrong on that, it would exercise its discretion to extend time for the presentation of these claims in any event. Whilst appreciating that there has been no direct evidence from the claimant expressly addressing why the claims were not made sooner, the Tribunal can accept from the documentary evidence that the claimant was ill at the material time, was seeking some form of internal resolution, and was continually seeking to avoid litigation by her suggestions and negotiations. That is an explanation for the delay, which is apparent from the documents, and the Tribunal accepts it. It may not have been wise, the claimant was advised by her union, and was aware of the relevant time limits from an early stage, which are also relevant factors to take into account. Against that, however, the respondent has clearly been able to deal with these claims, and the cogency of the evidence has not been greatly affected by the delay, which is only relevant, of course, to the remaining claims, the oldest of which dates from January 2012. That is, it is appreciated a potential delay of some 11 months, but as these were really events which were interlinked and ongoing, and the claim was presented whilst the respondent was still very much engaged in the process, there is no prejudice to the respondent in allowing these claims, if out of time, to proceed, as they have, in all practical senses, now done. The Tribunal accordingly does not determine these claims on the basis of time limits, but will consider them on their merits.

b) The direct discrimination claims.

77. Before taking the claims in order, we will address all the claims of alleged direct discrimination, which are common to all six of them. As ever with direct discrimination, the Tribunal has to assess the treatment of the claimant with that of a non – disabled comparator. That comparator can be actual or hypothetical. No actual comparator has been identified by the claimant, unsurprisingly, and hence a hypothetical comparator is relied upon. For these purposes, of course, the circumstances of the hypothetical comparator must not be not materially different from those of the claimant (s.23(1) of the Equality Act 2010).

78. Ms Mellor submits that the claimant has not established facts from which the Tribunal could find that the burden of proof shifts to the respondent, pursuant to s. 136 of the Equality Act 2010. It is again unfortunate that Mr Shojaee has not addressed this submission directly, in terms of what facts the claimant relies upon to show that she was treated less favourably than a non – disabled comparator was, or would have been, treated. It is crucial to bear in mind, of course, that the only claims that the Tribunal is considering of direct discrimination are from December 2011. The first is claim no. 12, that which relates to the sending of the letters at pages 1601 and 1602.

79. The other allegations of direct discrimination thereafter at nos. 13 to 18 all relate, in general terms, to the failure of the risk assessment process. The claimant's case, as the Tribunal can discern it, is that the respondent, in the persons of Mr Willsher and latterly Mr Hall effectively blocked the risk assessment, and thereby prevented the claimant from returning to work, thereby forcing her into medical retirement. The implication was that this was deliberate, i.e. they did this "because" the claimant was disabled, or, if not they would not have treated a non – disabled person this way.

80. The Tribunal has no hesitation in dismissing these direct discrimination claims, on either basis. As ever in direct discrimination claims, the prime issue for the Tribunal is the "reason why" the treatment was meted out to the claimant. In terms of motive, conscious or subconscious, the reason for any particular treatment is pre-eminently one that is within the knowledge of the alleged perpetrator. Ultimately (and it is appreciated that on the respondent's case, the Tribunal does not get as far as seeking an explanation for the treatment), and it ultimately becomes a matter of credibility as to whether the Tribunal accepts any non – discriminatory explanations.

81. In this case, the Tribunal agrees that the claimant has failed to demonstrate a prima facie case of direct disability discrimination. She can show no other non – disabled person, with similar circumstances, who was treated more favourably than she was, nor has she established any facts from which the Tribunal could find that any hypothetical non- disabled comparator would have been more favourably treated. As mentioned above, any hypothetical comparator must have circumstances which are not materially different from those of the claimant. Those therefore include, it must be observed, being represented and assisted by a person who conducted matters in the manner that Mr Shojaee did. Rightly or wrongly, Mr Willsher, Mr Hall and others acting for the school, or the local authority, found Mr Shojaee's conduct less than helpful. They found him pedantic, excessively focussed on policy and procedural issues, and demanding of concessions and acknowledgements of fault which they could not meet. This is what led to the impasse in relation to the risk assessment. The Tribunal is quite satisfied that whether the claimant had a disability

or not, had the same process been followed with Mr Shojaee involved, the result would have been just the same, namely impasse. This is not to be critical of Mr Shojaee, who is a devoted husband, and who doubtless was doing his utmost to save his wife's employment in these difficult circumstances. The manner in which he did so, however, has, in our view has much to do with the unhappy outcome, or lack of it, from the process. What is crystal clear to us, however, is that there is no basis upon which we could conclude, firstly, that the claimant was treated the way that she was because she was disabled, and , secondly, that a non – disabled comparator , in the same circumstances, which would include being represented by Mr Shojaee, would have been treated more favourably. For those reasons, all the remaining direct disability discrimination claims are dismissed.

c) The harassment claims.

82. Again, harassment is claimed in each of the six disability discrimination claims before the Tribunal. It is important, therefore, to remind ourselves of the provisions of s.26 of the Equality Act 2010 which require us to ask:

(i) Did the respondent engage in unwanted conduct?

(ii) If so, did that unwanted conduct relate to her disability?

(iii) Did that unwanted conduct have the purpose or effect of violating the claimant' s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant ('the proscribed effect').

The unwanted conduct differs in each case, but in claim no. 12 it was the sending of the letters at pages 1601 and 1602 that is complained of. In claims nos. 13, 14, 16, 17 and 18 it is, in essence the failure, or refusal, by means of misrepresentations, deceptions and tricks, to complete the risk assessment.

83. Dealing first with claim no. 12, the respondent does not dispute that the sending of the letters was unwanted conduct and was relating to the claimant's disability. The issue therefore is whether the conduct had the required effect. Section 26(4) of the Equality Act 2010 sets out what must be taken into account in determining whether conduct has the proscribed effect, namely, the perception of the claimant, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect. There is thus a subjective, and an objective element to consider. The respondent's submissions (paras. 40 to 43) focus upon the latter element, but an examination of the claimant's witness statement reveals no mention at all of these letters. Nor is it mentioned in Mr Shojaee's witness statement. There is no documented complaint to Mr Willsher or anyone else following receipt of these two letters. Indeed, in her reply on 2 January 2012 (pages 1605/1606) the claimant said nothing about the content of the letters, and merely suggested that the meeting take place at her NUT office. There is thus no evidence of the letters being perceived by the claimant as harassing, and the claim fails at that stage. In any event, even if there were such evidence, the next issue would be whether it was reasonable to receive the letters as harassing, on an objective test, and the Tribunal agrees with the respondent's submissions that it would not be reasonable to do so. At most it was unfortunate that there were two letters rather than one, but the most that can be

said about the one that did expressly refer to the claimant's statement to the occupational health that she was being subjected to harassment and discrimination is that Mr Willsher was trying to get more details of these potentially serious allegations. The claimant, through Mr Shojaee appears to have regarded this as some sort of denial, or questioning, of previous complaints that the claimant had made, but it was no such thing. It merely sought details of the matters that the claimant had mentioned to occupational health. It could not reasonably be considered as having the proscribed effect.

84. The next alleged act of harassment is at claim no. 13, dated "January 2012". Mr Willsher is named as a perpetrator, along with Miss Wiles, HR from the local authority. The claim was also made originally against the claimant's trade union representative as well. It is unclear how this is put as a harassment claim. Again, nothing about this appears in the claimant's witness statement. It appears to relate to the meeting held on 11 January 2012. There is an account of that meeting in a document "Information for Sandra Edwards Occupational Health Advisor" at pages 773 to 778 of the bundle. That is in the claimant's name, but is likely to have been written by Mr Shojaee. The third page (page 775 of the bundle) recounts the meeting on 11 January 2012, and what the claimant found objectionable about it which appears to be that Mr Willsher asked the claimant for further details of the matters that she had mentioned to the occupational health adviser (i.e Sandra Edwards). She says that this raised her stress and anxiety level because he was "implying a serious allegation" against her, and suggesting that she had damaged the reputation of the school. Pausing there, this is, of course, not direct evidence, it is an account of the meeting, written by, or on behalf of the claimant after it. Mr Willsher did not agree that was what he was doing, he agreed he simply wanted more details of these matters. He had, he considered, previously dealt with some issues prior to the summer break, and did want to check that these were not the same matters.

85. That, however, is not the way in which the claim is put in the Scott Schedule. Assuming, however, that the claim is really as suggested in this document (which is the closest there is to any evidence from the claimant about it) the Tribunal would not find that this was harassment. The claimant arguably could satisfy the subjective element of s.26(4), but would fail on the objective element. She does not say Mr Willsher <u>said</u> that she had damaged the reputation of the school. She makes reference to Mr Willsher "implying" various things, but we would not find that it was reasonable of her to read such implications into what he actually said. However viewed, and doing the best we can, by reading evidence into the case which was not actually expressly put before us, we cannot find this allegation well – founded.

86. Turning now to claim no. 14, that relates to April 2012, and the alleged refusal of Mr Willsher and Gail Tucker (HR of the Council) to discuss an appropriate stress risk assessment (again a claim originally also made against the trade union). This appears to relate to a meeting on 12 April 2012. At this meeting the claimant was represented by John Howarth, her trade union representative, and had the support of Lesley Sharp, a support worker from Work Place Leeds. Mr Shojaee was also there. The meeting was primarily to discuss a phased return to work for the claimant, which was agreed in principle. The claimant still had issues with the SEF, and Joan Ogley's comments therein, which the claimant took to be critical of her. That issue was somewhat "parked" however, with Colin Willsher making further enquiries with Joan Ogley about what she had said in the SEF. The ensuing email traffic, whilst

continuing to raise the issues about the SEF and Joan Ogley made no complaint that Colin Willsher had not suggested or actioned any stress risk assessment. It is again hard to see what complaint of harassment is being made here. Harassment is unwanted conduct. It is theoretically possible for a lack of action to amount to harassment, but it is hard to see how this claim can be framed as harassment. As it was, it clearly was not perceived as such by the claimant as such at the time, nor would it have been reasonable for her so to have perceived it. It may be a failure to make a reasonable adjustment, but that is not the same thing. As a harassment claim, this cannot succeed.

87. It is also to be borne in mind that the provisions of s.212(1) of the Equality Act 2010 provide that harassment and direct discrimination are mutually exclusive. In many instances in the Scott Schedule the claims are put as both. They cannot be, they must be one or the other. As set out above the direct discrimination claims are dismissed. For the reasons above, the Tribunal does not find that the harassment claims are made out either, and they are dismissed.

d) The reasonable adjustments claims

88. Turning to the reasonable adjustments claims, a substantial part of the claimant's claims relates to the failure to complete the stress risk assessment, and the breakdown of the ACAS conciliation process in early 2013. To put this into a legal context, these claims are primarily put on the basis that this was a failure to make reasonable adjustments.

89. There is an inherent flaw in such claims. The stress risk assessment would not, of itself have been a reasonable adjustment. It would not, of itself , have diminished the disadvantages to which the claimant's disability put her, it would merely have been the first step on the way to such adjustments being made once she returned to work. That view is supported by the authority of ***Tarbuck v Sainsburys Supermarkets Ltd. [2006] IRLR 664*** where the EAT held (Elias P) that failure to consult with the employee was not, of itself , a failure to make reasonable adjustments. It is appreciated that in this case it is failure to complete the risk assessment that is complained of, but all that really amounts to is a particular form of consultation with the claimant. As pointed out in a number of authorities, the test of whether a measure is a reasonable adjustment is to be applied by using the words of the statute. An adjustment is a reasonable adjustment if, and only if, it has some prospect (it need not be guaranteed to , it is enough if there is some prospect of it doing so – ***Noor v Foreign and Commonwealth Office 2011 ICR 695***) of preventing the PCP from putting the claimant at the substantial disadvantage in question.

90. It is trite to observe that identifying and providing reasonable adjustments in cases of physical disability is considerably easier than in cases of mental impairments. It is a feature of the latter that the employee's perceptions will be key, and the employer will have to discover what they are, and then prescribe, what, if anything, can be done to change or manage those perceptions, so as to remove the disadvantages of the disability. That is what the employer sought to do in the risk assessment.

91. But the risk assessment itself, even if completed, would not have been a "magic wand" meaning that the claimant could return to, and remain at, work. Her problems stemmed from her interactions with colleagues, and her perceptions of how they had treated her. The various stratagems, procedures and other steps that may have been put in place following the risk assessment would only have been a start , it would then require implementation of the results of the assessment on the part of the claimant's colleagues and managers. The actual adjustments would have been the future conduct of those persons towards the claimant, perhaps including, if the claimant was to be satisfied, some acknowledgement of past perceived wrongs inflicted upon her. By way of further demonstration of this point, it is significant the Tribunal finds that the claimant had two periods of absence, in July and September of 2012 when she did return to work, without a risk assessment being carried out. The former, it is appreciated was before that mechanism was identified during the summer of 2102, but her return to work in September 2012 was at a time when the risk assessment was being completed, and she clearly was able to return to work without one. Looking at what led to her absence on that occasion, it has to be observed that it was nothing to do with any issues such as the SEF, or her lesson observations, it was a "spat", for want of a better word, between her and her colleagues about a decision she herself made to move a pupil.

92. It also is not to be overlooked that it is not the purpose of a reasonable, adjustment to cure any condition from which the employee suffers. Its purpose is to reduce any disadvantage to which that condition puts the employee in the workplace. It is therefore about managing the condition reducing its effects upon the employee in the workplace. Much of what the claimant sought as part of this process, the Tribunal considers, went way beyond what could be considered as reasonably necessary to managing her condition in the future. That is enough to entitle the Tribunal to dismiss the reasonable adjustments claims put on this basis. For completeness, however, and in the alternative that completion of the risk assessment would have amounted to a reasonable adjustment, the Tribunal would then have to consider whether the respondent did so fail. It is appreciated that a central tenet of the claimant's case is that the school should have started this process earlier (indeed, had "concealed" its availability) , it is to be borne in mind that the Tribunal has fixed the date from which the claimant is to be regarded as a person with a disability as September 2011. The duty to make reasonable adjustments, therefore arose then, at the earliest.

94. In fact, the duty does not arise until the date of knowledge on the part of the respondent, either actual or constructive. The respondent has conceded the latter from November 2011, and the Tribunal finds that was indeed the date upon which the respondent was fixed with constructive knowledge, for the reasons set out in paras. 21 to 24 of Miss Mellor's submissions. It is appreciated that Mr Shojaee has argued, and continues to argue, that the respondent had such knowledge from much earlier. He cannot, however, argue for knowledge before the date from which the Tribunal has determined the claimant was a person with a disability, whatever his submissions as to the claimant's previous illnesses.

95. As it was, the stress risk assessment was identified as a way forward by late July 2012. Whilst there are various arguments and recriminations as to who delayed it, the initial delay in getting it started seemed initially to lie equally with Susan Gee and the claimant's union representative in terms of what their respective

responsibilities were during the summer break. It is, however, to be noted from an examination of the contemporaneous documents, that the claimant's union representative, Rhoda Andruchow, was provided with the necessary paperwork by Susan Gee as early as 26 July 2012, for she then sent it to the claimant. She pressed her to complete, or at least to start to do so. The claimant, however, sought to delay this process, insisting on receipt of the minutes of the meeting on 24 July 2012, and the outcome letter, plus the case assessment by her union, before she would contemplate completing it. Whilst it was sought to attribute blame to the respondent at this time, it is now clear that the claimant herself did not start to engage the process until several months had elapsed. Indeed, this was one of the reasons why her union withdrew legal assistance support in October 2012.

96. Whatever the position, by October 2012 the stress risk assessment document was available for the claimant to start completing. Thereafter the delays, the Tribunal finds, were attributable to the claimant's position that she would not complete the rest of it unless various conditions were met. This reached its nadir when ACAS became involved, and the claimant, against their advice, and what she was told by the respondent and her union, insisted on some form of "settlement agreement" before she would engage with the process any further.

97. In 2013 she delayed and thwarted the process, by insisting upon completion of a settlement agreement before proceeding any further, and then insistence upon the school accepting that her stress was work – related, and negligence. In relation to the former, as Sofyanah Ramzan of ACAS explained on 5 February 2013, completion of a settlement agreement was at that time likely to be in very general terms, and was <u>not</u> a requirement to be in place before the risk assessment was carried out. In relation to the latter, the school and HR had <u>not</u> refused to accept that the claimant's stress was work – related – they were carrying out a work related stress risk assessment after all, but had, it is right to observe refused to accept negligence. That was not unreasonable, as to do so would have potentially exposed the school (and possibly others) to liability for personal injury claims. It was, the Tribunal notes, contemplated by the claimant's trade union as long ago as 2 August 2012 that she may bring a personal injury claim, and this may have been a better route for her to have taken, but it cannot be a reasonable adjustment, as part of the stress risk assessment process, itself not a reasonable adjustment, to require either that the respondent conclude some form (for no draft was ever produced) of settlement agreement at that stage, or to admit negligence, as a condition of completion of the stress risk assessment.

98. A critical point in the chain of events as found in its facts set out above came on 20 January 2013, when the claimant first set out her demand that a settlement agreement had to be made at that stage, before the stress risk assessment could be taken any further. That was the start of the impasse that then ensued for the next five months. There was a stalemate.

99. Further, on this topic, it is unclear why the claimant or Mr Shojaee considered that anything occurred on 18 January 2013 which meant that some form of agreement had been reached under auspices of ACAS, so as to give rise to the need for any form of agreement. As can be seen from the email exchanges that day, and that followed, the claimant was not saying that all matters had been agreed, or that any matters had been agreed to such an extent that they would have been

capable of forming the subject matter of any agreement. The stress risk assessment had not been completed, the claimant was complaining that it not been completed, and was blaming the respondent for this state of affairs. The Tribunal is at a complete loss as to what the claimant, or Mr Shojaee, imagined could, at that stage be the subject matter of any agreement, whatever type of agreement it was. From what is further said in the email under the heading "Risk Assessment" at paras. 4 to 10 of that section of the document, what the claimant appears to be suggesting is that, at that stage any agreement would simply have recorded that the parties had agreed to complete a risk assessment as a way of resolving the claimant's issues at work and getting her back into work.

100. As she herself, or Mr Shojaee, observes, at para.10 (page 2290 of the Bundle):

> *"ACAS has neither the expertise nor jurisdiction for getting involved in the completion of the risk assessment or to make any judgment on the rights or the wrongs of the content of the risk assessment."*

Les Hall agrees, and it was the claimant, not the respondent who engaged with ACAS at this stage of the process. The claimant accuses the respondent of doing the very thing that it appears the claimant was doing – using ACAS to assist in the completion of the stress risk assessment.

102. From what the claimant says in her email of 28 January 2013 any settlement agreement at that time could only have contained a recital of the fact that the parties had agreed to undertake an appropriate risk assessment with appropriate work adjustment for the claimant's return to work, to quote from her "option 1" at page 2291 of the Bundle". Quite what that would have achieved is unclear, but that is the only agreement that the parties had by then come to. Sofyanah Ramzan herself tried to explain that there was no more meaningful agreement that could be made at that time in her email of 5 February 2013 (page 2315 of the Bundle).

103. For the avoidance of doubt, and as whether pleaded as claims or not, Mr Shojaee for the claimant has previously suggested as much, it would not have been a reasonable adjustment to accede to the claimant's demand for some form of compromise or settlement with premature retirement with compensation. The purpose of reasonable adjustments is to reduce the disadvantage to which a person's disability puts them. That disadvantage in this case was the inability of the claimant to return to work. That would not have been reduced or extinguished by early retirement with compensation. That would have had the opposite effect of ending the claimant's employment, not enabling her to return to it. Whilst doubtless an "advantage" to the claimant, which would mitigate the effects of her being unable to return to work if granted, that does not make it a reasonable adjustment. It is an unfortunate recurrent theme of the claimant's case that the respondent's failure or even refusal to enter into such an arrangement was a failure to make reasonable adjustments. It clearly was not.

104. In short, even if failure to complete the stress risk assessment was capable of amounting to a failure to make a reasonable adjustment, we do not consider that any such failure can be established on the part of the respondent after, at the latest, October 2011. That is not to say we would hold that it failed prior to that, but this

must the latest date by which any failure can be laid at its door. (As the claims were not presented until 19 March 2013, of course, it follows that any claim of failure to make reasonable adjustments which pre – dated 19 December 2012 is out of time). That disposes of these claims as reasonable adjustment claims.

105. In terms of other reasonable adjustment claims, the Tribunal has considered whether the respondent failed to make reasonable adjustments following the O H report of Dr Suleman of 12 March 2013. That confirmed the claimant's fitness to attend stress risk assessment meetings, but advised that she accompanied by a friend or relative, and be allowed to make written submissions. A frequent complaint of the claimant is that she was not allowed to have Mr Shojaee present in meetings. This is said to be (or could potentially be seen as) a failure to make reasonable adjustments. The Tribunal does not find that it as. Firstly, as observed above, the risk assessment was not, of itself a reasonable adjustment, so failure to make any adjustment to assist the claimant to complete it would equally, not, of itself amount to such a failure. Secondly, even if it was, Dr Suleman's report of 12 March 2013 did not state that it was necessary for the claimant to be accompanied, he merely "advised" it. Further, he did not specify that such a person must be the claimant's husband. It is appreciated, however, that there may well have been no one else that the claimant could have taken. Ultimately, however, whether it would have been a reasonable adjustment must be considered in the context of the history of Mr Shojaee's involvement, and his communications during this process. Whilst the claimant and he may not agree, the respondent's view that he was a hindrance, and not a help to the process, is one that the Tribunal considers was reasonable, and one which is borne out in the history of the relationships between him (or the claimant through him) with O H, ACAS, the HSE, and the claimant's trade union, all of which he , for we are quite satisfied it was he, complained about. Whilst not doubting for one moment his natural and deep concern for, and affection for his wife, and his understandable strong desire to try to assist her, the fact remains that the manner in which he went about this with ever increasing levels of complexity and legalese, making serious allegations about the bona fides of all involved, rendered the respondent's decision that he could not participate in meetings, a reasonable one. The Tribunal finds it not without significance that John Howarth, a Branch Secretary who represented the claimant in meetings in 2012, found Mr Shojaee's behaviour in a meeting at the NUT office unacceptable (see page 2555 of the Bundle). Similarly, Ian Stevenson, NUT Regional Secretary , made reference to his belief that Mr Shojaee had acted on her behalf in a way that interfered with the conduct of her case in his email to the claimant of 4 October 2012 (pages 2690 to 2691 of the Bundle) in which the union withdrew legal assistance.

106. The respondent's position was not an unreasonable one, given that he was not prevented from being at hand to support the claimant, he was always welcome to attend and be nearby. If that meant that, having fallen out with her trade union, and having no work colleague or other person available to attend in the meeting, this was unfortunate, but there was no other reasonable adjustment that the respondent could have made in this regard.

107. Further, one of Dr Suleman's other suggestions, that the claimant be allowed to make written submissions, was one which was never denied to the claimant. It was, however, she who kept seeking face to face meetings.

108. A further feature of the evidence in this case is the letter from the claimant's GP dated 30 April 2013 (pages 2407 and 2408 of the Bundle). This was a strongly worded letter from the claimant's GP, after Dr Suleman's report, in effect insisting that the claimant's husband be allowed to be present with her in meetings. Subsequent letters inviting the claimant to meetings, however, recited the "standard" provisions as to accompaniment by a colleague or trade union representative. Nothing is said again, though it had previously been, about Mr Shojaee being allowed to attend as support, but not to participate in the meeting itself.

109. No mention is ever made, however, of this GP's letter in any subsequent emails from the claimant, or when any further attempt is made to arrange a meeting with the claimant. Indeed, the claimant in her reply to an invitation to attend a meeting on 14 June 2013 (page 2409 of the Bundle) did not mention this point.

110. The Tribunal in questioning Colin Willsher did raise with him these letters in which this concession was not mentioned. He accepted that, in hindsight, the letters should have reminded the claimant that Mr Shojaee could attend in this limited capacity.

111. The Tribunal has considered whether this amounted to a failure to make any reasonable adjustment. We have concluded that it was not. Firstly, the respondents had agreed to make that adjustment, what occurred in mid - 2013 was not a failure to make it, it was a failure to remind the claimant that it had been made. Had the claimant raised the issue again and asked for Mr Shojaee to be permitted to attend in this limited capacity, and been refused, the position may have been different. The fact was that neither she, nor Mr Shojaee on her behalf, responded to these letters with any challenge to the absence of any reference to this previously granted adjustment. Further, it was not failure, if such it was, to allow Mr Shojaee to attend in this limited capacity that was, by mid – June 2013, preventing the claimant attending a meeting to complete the stress risk assessment. It was a number of other factors, including the refusal, which we have found was not a failure to make reasonable adjustments, to allow him to participate in the meetings.

112. Further, it has to be borne in mind that the purpose of a reasonable adjustment is to reduce the disadvantage at which a person's disability puts them. The claimant (or perhaps Mr Shojaee's) communications to the respondent in which his participation in meetings as more than an observer was requested, asserted that he was to only person that the claimant trusted to put forward all the points that she needed to. That may have been her perception, but there is no evidence that no one else could possibly have assisted her in the process. It is not claimed anywhere that she would have been totally incapable of , for example, answering questions for herself. It is of note, for example, that the claimant was able to engage with Rhoda Andruchow in the early stages of the risk assessment process.

113. Nor, for completeness, even though this is not pleaded, is this sustainable as a direct discrimination claim. There is no evidence of any actual non – disabled comparator being afforded this advantageous treatment, nor any from which the Tribunal could be satisfied that any hypothetical non – disabled comparator would have been either.

114. It has to be observed that in the course of the two years or so with which the Tribunal has been concerned, from 2012 to 2014, the claimant, and/or Mr Shojaee, for one cannot tell how much of what was written represented the claimant's views, or those of her husband, criticised and complained about:

Lesley Sharp

Susan Gee

EH&WS

ACAS

Her own Trade Union

Virtually anyone the claimant came into contact with, at some stage or other , was alleged to have failed her, breached their legal obligations, colluded with HR and the school or otherwise behaved negligently or improperly. Similar allegations the Tribunal notes were levelled at the respondents' (and that includes the NUT's) legal advisers and representatives throughout the course of the Tribunal proceedings. That may be or have been the claimant's genuine perception, but the Tribunal does not find that it accords with reality. It made, however, constructive progress on addressing what reasonable adjustments to make for her to return to work virtually impossible for the respondents. Thus, whatever the perceptions and strength of feelings of the claimant and Mr Shojaee, this is a case where there was no failure on the part of the respondent to make reasonable adjustments, as it was never possible to identify what those could be, let alone actually implement them on a return to work by the claimant, the prospect of which was remote from January 2012.

115. Indeed, the reality of the position was perhaps recognised by the claimant's GP as long ago as January 2012, when in her medical report to Susan Gee (pages 839 to 840 of the Bundle) she said this:

> *"Based on the evidence I have seen from Mrs Haasanzadeh it seems that there is little hope at present that the school can manage the situation effectively internally, and that until satisfactory protection of her mental health can be provided it would be unwise to return to this environment without predictable deterioration in her mental health."*

The Tribunal considers that this is good support for its own view that there was, in reality, no reasonable adjustment that the school could have made by that stage, or indeed by September 2011, which would have been likely to have had any prospect of enabling the claimant to return to work, as the events of September 2011, and then September 2012 themselves rather demonstrated. The reasonable adjustment claims are accordingly all dismissed.

The unfair dismissal claim.

116. The claimant resigned on 15 January 2014. She did so having successfully applied for early retirement, under the terms of which she could access her pension. Section 95(1)(c) of the Employment Rights Act 1996 provides that there is a dismissal when the employee terminates the contract with or without notice in

circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct.

117. The classic statement of the law on constructive dismissal is set out in the judgment of the Court of Appeal in ***Western Excavating (ECC) Limited v Sharp [1978] ICR 221*** which held that for an employer's conduct to give rise to a constructive unfair dismissal it must involve a repudiatory breach of contract. There are three elements to a constructive unfair dismissal, namely:

(1) That there was a fundamental breach of contract on the part of the employer;

(2) The employer's breach caused the employee to resign; and

(3) The employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

In order for a Tribunal to deal with these matters it must identify the contractual term or terms, either express or implied, which have allegedly been breached. They must then go on to identify a fundamental breach of that contract on the part of the employer. The implied term of trust and confidence was the term of the contract which had allegedly been breached by the respondent by various acts or omissions over a period of time which, the claimant says, cumulatively amounted to a fundamental breach. The Tribunal, therefore must firstly decide whether 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.

118. That term, as recognised in cases such as ***Wood v. W M Car Services (Peterborough) Ltd [1981] IRLR 347*** and ***Mailk v BCCI [1997] IRLR 462*** is that the respondent will not , without reasonable and proper cause, conduct itself in a manner which is calculated or likely to destroy or seriously damage the relationship of confidence and trust between the employer and the employee.

119. It is clear that in order to establish that there has been a fundamental breach of contract it is not necessary to show one fundamental act or omission. There does not need to be one event, there can be a series of events which cumulatively amount to a breach of that implied term. In such circumstances, where there is not one individual act or omission relied upon, but a series of actions that are alleged to amount to that breach, where they culminate in one particular act that is known as the "last straw", and in order to establish that a claimant has been constructively dismissed there has to be a last straw. Indeed in the leading case which the Tribunal is considering on this issue, ***London Borough of Waltham Forest v Omilaju [2005] IRLR 35,*** a decision of the Court of Appeal and the judgment of Lord Justice Dyson, it is clear from the discussion in that case of the nature of constructive dismissal, that in order for there to be a constructive dismissal where there is a series of acts, the final straw must be there, and although the final straw may be relatively insignificant, it must not be utterly trivial. There must be a final straw, otherwise there can be no constructive dismissal. If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and

confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. The judgment goes on to say:

> *"A claimant cannot subsequently rely on those acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle."*

Moreover, and this is an important part of the judgment:

> *"An entirely innocuous act on the part of the employer cannot be a final straw even if the employee genuinely but mistakenly interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence have been undermined is objective."*

120. So to the extent that the claimant might have perceived that as being the case, the Tribunal cannot rely solely on that, it must look objectively on the act complained of.

121. In ***Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR 833*** the Court of Appeal (Underhill LJ) gave the following practical guidance as to approaching such a case:

> *"I am concerned that the foregoing paragraphs may make the law in this area seem complicated and full of traps for the unwary. I do not believe that that is so. In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:*
>
> *(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?*
>
> *(2) Has he or she affirmed the contract since that act?*
>
> *(3) If not, was that act (or omission) by itself a repudiatory breach of contract?*
>
> *(4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation ….)*
>
> *(5) Did the employee resign in response (or partly in response) to that breach?*
>
> *None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy."*

122. One difficulty for the Tribunal in determining the claimant's unfair dismissal claim is the absence of evidence about it in her witness statement. She resigned by email of 15 January 2014. Her intention to make a claim of constructive dismissal

was first indicated in a preliminary hearing on 7 November 2013. She had not, however, resigned at that stage, so such a claim would be premature. She applied for ill – health retirement. Her application was accepted, and she resigned by email of 15 January 2014 (pages 2507 to 2508 of the Bundle). In that letter she does indeed make reference to being constructively dismissed, but prior to that she had not given any indication that she considered any action on the part of the respondent to be likely to trigger her resignation.

123. The permission granted by the Tribunal on 1 April 2014 to amend the claims to include constructive unfair dismissal (pages 85 and 86 of the Bundle) allowed the claim to be made on the basis of pages 2 to 6 (omitting the last bullet point on page 6) of an email from Mr Shojaee of 21 March 2014. That is at pages 87 to 92 of the Bundle. In it the claimant refers to breaches of express terms of the contract of employment, and also breach of the implied terms thereof. In relation to the former, he refers to some six documents – policies and procedures mainly – which he contends that Colin Willsher breached regularly from 2008. He then recites many details of the allegations made in support of the discrimination claims.

124. In relation to the implied terms, Mr Shojaee does indeed refer to the duty of mutual trust and confidence. In support of this argument he cites the conduct of Colin Willsher and Les Hall since March 2013, with what he alleges are "continual misrepresentations, false claims, time wasting to mislead and wrong foot the Conciliator at the Pre – claim Conciliation." He goes on to provide "More Detail", most of which is a series of rhetorical questions, and bullet points.

125. In the claimant's resignation letter she says this:

> *"This ill – health retirement and resignation has been imposed on me due to the continual unlawful treatment that I have been subjected to, which in reality is an unfair constructive dismissal on top of the claims already flied (sic) at the Tribunal. I have accepted it as a coping mechanism to protect myself from ever increasing harm to my health as a result of the continual victimisation and harassment that I have been subjected to by you and other including your legal representative and his advisors, even after the submission of my application to the Employment Tribunal."*

126. Two issues arise. The first is whether there was in any event a resignation, as opposed to a termination on agreed terms. The essence of constructive dismissal is that the employee resigns in response to a fundamental breach of contract on the part of the employer. Resignation is a unilateral act. It is to be contrasted with a consensual termination, such as a termination upon agreed terms. In this case, the claimant applied for, was offered, and then accepted ill health retirement. Those were the terms upon which she resigned. It seems to this Tribunal that it is open to doubt whether in these circumstances there can be a constructive dismissal, rather than a consensual termination.

127. Surprisingly, perhaps, there appears to be no direct authority on the point. The Tribunal appreciates that the claimant could, and doubtless would, argue that she was "forced" to take early retirement, as the only way of resolving the difficult position that the actions of the respondent had put her in, and hence this was not "consensual" at all. The counter argument, however, would be that a reluctant

agreement is nonetheless an agreement, and the claimant cannot have it both ways, on the one hand take the benefits under the contract of the ill – health retirement scheme, whilst on the other claiming to have been constructively dismissed.

128. As indicated, there is a dearth of authority directly on the point. It has long been the case that an enforced resignation can be found to amount to a dismissal (***East Sussex County Council Walker 1972 ITR 280***) , and the Scottish case of ***Chivas Brothers Ltd v Millar UKEATS/0032/10/RN*** is an example of a finding that an ill health retirement following a period of sickness absence will often be considered to amount to a consensual termination , and another can be found in ***Thomas v Commissioner of Police for the Metropolis EAT 1311/98*** (although any report thereof , other than a reference in the IDS Handbook on Contracts of Employment has been impossible to find). Such cases, however, have focussed upon whether there has or has not been a consensual termination in circumstances in which the alternative finding contended for has been an actual, rather than a constructive, dismissal. What these, and other, cases show, however, is that Tribunals should only find consensual termination when there is clear, unequivocal evidence of a truly voluntary agreement being made between the parties that the employment should end on agreed terms. Anything short of that will not suffice. Thus, in this instance, the Tribunal would stop short of determining the constructive dismissal claim on the basis that there was in fact a consensual termination.

129. The claimant's letter of 14 November 2013 sets out what she saw as her options. At that point she does not say that she cannot return to work. Indeed, she anticipates returning to work, with appropriate action being taken by her employers. This letter, which also includes the oft - repeated demand for compensation, smacks of a continued negotiation, and a claimant who was considering her options.

130. What, if anything, happened between 14 November 2013 and the claimant's resignation on 15 January 2014? The Tribunal cannot see that anything did, other than the claimant's application for ill – health retirement being accepted. Thus, if this was merely one of her options as at 14 November 2013, but she still felt able to return to work, her resignation was not a response to the respondent's breach of contract, but to the acceptance of her ill health retirement application. Regardless of whether this was, strictly speaking, a consensual termination, more importantly she did not resign in response to any alleged breach, but because she had been granted ill health retirement. Her letter of 14 November 2013 is clear – if she had not been successful in that application, she would have continued in her employment with the respondent

131. An alternative argument may be that by invoking the ill – health retirement provisions, the claimant affirmed any breach of the employment contract that may have entitled her to claim constrictive dismissal.

132. A more relevant enquiry is therefore whether, by seeking and then accepting the ill -health retirement option, the claimant thereby affirmed the contract, waiving any fundamental breach which may be established. In terms of affirmation, the law has been considered in a number of authorities, the leading one being ***W E Cox Toner (International) Ltd v Crook [1981] IRLR 443***. This was approved, and applied by the EAT in ***Mari (Colmar) v Reuters Ltd UKEAT/0539/13***, where HHJ Richardson considered the effect of the employee receiving sick pay for 39 weeks

before her resignation. The issue of affirmation has commonly arisen in cases where employees who resign do so after a period of receiving sick pay, and the Tribunals have had to consider in these instances whether that, of itself, or when combined with other factors , amounts to affirmation and the loss of the right to claim constructive dismissal . Here, of course, the argument is that not only did the claimant receive sick pay, but she sought and was granted ill – health retirement.

133. In terms of the law, the position as reviewed in ***Mari (Colmar)*** is that receipt of sick pay in not a neutral factor, but is simply one which may be taken into account in deciding whether there has or has not been any affirmation. Sick pay, of course, is a more passive act than applying for ill – health retirement.

134. As ever, therefore, whether the claimant did or did not affirm the contract is a question of fact. Determination of such an issue, however, has not been made any easier by the inability of the Tribunal to hear the claimant's evidence on this issue. Two facts are clear, firstly, the claimant received sick pay during her absence between September 2012 and October 2013, secondly she applied for ill health retirement under the terms of the scheme applicable to her employment.

135. It is to be noted that in ***Mari (Colmar)*** the claimant's application to be considered for ill health retirement was one of the four factors, receipt of sick pay being another, that led to the Tribunal's conclusion, upheld by the EAT that she had affirmed the contract. All the circumstances need to be taken into account. Delay, of course, of itself can be a factor. A significant factor, the Tribunal considers is that as early as 27 November 2013, in the course of a preliminary hearing, the claimant intimated that she would be bringing a constructive dismissal claim. She had not, of course, resigned at that time, so could not do so. What is clear, however, is that she considered that she had the grounds upon which to resign and claim constructive dismissal. Why then, did she not do so? The obvious answer, the Tribunal considers, is that she was waiting for her ill – health retirement to be approved. She did not want to resign until that was in place. That is, of course, understandable, but it is a serious factor to be taken into account when determining whether she has affirmed the contract. It is clear from ***Western Excavating (ECC) Limited v Sharp 1978 ICR 221*** that an employee who seeks to claim constructive dismissal must resign reasonably promptly in response to the breach. That requirement has been mitigated in the ensuing caselaw, and whether or not there has been affirmation is a question of fact. Delay itself is not fatal, depending upon the reasons for it, nor is receipt of sick pay. Applying for ill – health retirement has been found to be a relevant factor, and in this case there are accordingly all three factors in place – delay, the resignation not being until January 2014, receipt of sick pay and application for ill – health retirement. Whilst appreciating that the claimant wanted to ensure she was in as good a position as possible, it is to be remembered that ill – health retirement was not something which was only first considered by her in late 2013, or in response to the respondent's alleged breach of contract in the manner in which it dealt with her from when she went off sick in September 2012. She had raised the possibility of early retirement as early as 2011 Her decision to seek it in November 2013, accordingly, was not necessarily simply a response to the respondent's alleged breach of contract.

136. The claimant was contending as early as February 2013 that she had lost trust and confidence in Colin Willsher, and the respondents generally. Mr Shojaee

was claiming that there were sufficient grounds for a legal claim for some time. Without hearing directly from the claimant as to her reasoning for not resigning sooner, or for resigning when she did, the Tribunal would be satisfied that she had indeed affirmed the contract, and was thereby precluded from bringing any complaint of unfair dismissal.

137. That, however, begs the question of whether the claimant was entitled to resign in any event, i.e. whether she has established that the respondent acted in fundamental breach of contract, and that she reigned in response to that breach. No express term is relied upon, and given the nature of the claims, the claimant must be relying upon some event, some act or failure to act, as amounting to a last straw. The nature of the last straw necessary to support a claim of constructive dismissal in these circumstances has long been established (see ***Omilaju*** cited above). It need not be a breach in itself, but it must be something akin to one.

138. This requires the Tribunal to analyse what could be considered to amount to any last straw in response to which the claimant could be found to have resigned, and whether, that, taken with any antecedent conduct on the part of the respondent can and should be found to amount to a fundamental breach of contract entitling the claimant to resign.

139. The claimant resigned on 15 January 2014. She had not been in work at the school since 28 September 2012, a period of 15 months. In the intervening period attempts had been made to get her back to work by the completion of a Stress Risk Assessment. Mediation through ACAS had also been attempted. All that, however, did not resolve matters, and by 27 March 2013 the ACAS process had broken down, and Colin Willsher sought to move on the stress risk assessment process after an occupational health report had indicated that the claimant was fit enough to attend a meeting which he proposed to take place on 17 April 2013. The claimant did not, however, wish to progress the process with this meeting, preferring to leave matters to the Tribunal (having presented her claim on 19 March 2013). Colin Willsher tried again to progress this process by arranging another meeting for 14 June 2013, although his letter was unfortunately sent to the wrong address.

140. The Tribunal has considered the investigation initiated by Judy Hooton, as to whether its instigation , or its discontinuance could possibly be a breach of the implied term of trust and confidence, or any kind of last straw. The former cannot be, in our view, as it was what the claimant had asked for. Even if it was not, it cannot objectively be considered as breaching the implied term of trust and confidence, designed, as it was to look into issues which the claimant had claimed were causing her stress related absence, and to assist her getting back to work. But even if it was, it was stopped once the claimant made it clear that she did not want it to proceed. That could not, therefore, as it was what the claimant had requested, be seen as a breach of the implied term either.

141. Nothing then happened until the claimant applied for ill health retirement on 8 October 2013. That, of course, was not any act on the part of the respondent, so cannot amount to any breach of contract or last straw. In short, an examination of the events from 1 August 2013, when Judy Hooton informed the claimant that she was ceasing the investigation she had started, until the claimant's letter of resignation on 15 January 2014, the only event that occurred was a further referral on 5 November

2013 to O H for a further assessment. The claimant did not attend such an assessment, nor was she then required to. She had by then, of course, already applied for ill – health retirement. What then, was there which was capable of amounting to any final straw on the part of the respondent? The Tribunal can see nothing. The Tribunal finds that, firstly, the respondent did not act in a manner amounted to a breach of the implied term of trust and confidence, and, in any event, there was no "last straw" in response to which the claimant was entitled to, and did, resign. Quite apart from any issues as to mutual termination, or affirmation, the constructive unfair dismissal claim accordingly fails on the lack of a last straw in response to which the claimant could have, or did, resign.

The Protected Disclosure claim.

142. Finally, there is a claim that the claimant was subjected to detriment, pleaded vaguely (allegation 3 in section 4 of the Scott Schedule at page 213 of the Bundle "The Head Teacher and HR with all kinds of tricks blocked the completion of the Stress Risk Assessment" by reason of having made a protected disclosure.

143. Only one disclosure is alleged, and relied upon, and it is the email of 2 October 2012 (pages 792 to 976 of the Bundle). This is important to bear in mind, as the claimant's witness statement (paras. 30 to 32) refers to her complaint to Colin Willsher in September 2011 about Joan Ogley's alleged falsification of documents, including the SEF, and (para. 39), the discovery of further alleged falsifications in May 2012, as "whistleblowing", but this has not been relied upon as a protected disclosure in the Scott Schedule. In paras. 41 and 42 the claimant makes further reference to "whilstleblowing" to the HSE in June 2012. None of these, however, are pleaded as relevant protected disclosures. Thus there is also one, and only one protected disclosure, in October 2012. This requires the Tribunal to address two issues, the first is whether the claimant did make a protected disclosure within the meaning of s.43B of the ERA 1996, and secondly, if she did, whether she was subjected to any detriment because she had done so.

144. In relation to the first issue, the respondent does not accept that the claimant did make such a disclosure. It argues that the document in question does not satisfy the criteria for protected disclosure.

145. This requires an examination of the document. The first matter to note is that this is not from the claimant, it is from Mr Shojaee. In order to fall under the protected disclosure provision, the disclosure has to be made by the claimant. Whilst he was at the time clearly assisting the claimant, and attending meetings with her, speaking on her behalf, there is nothing in this document which suggests that it is being written on the claimant's express instructions, or on her behalf. It is about the claimant, but it is not, directly or indirectly, from the claimant. Indeed, its terms make it clear that Mr Shojaee is having direct involvement, and the matters that he then sets out are clearly ones that he is disclosing, as he has knowledge of them. The evidence that the claimant asked Mr Shojaee to send such an email, or that she was even aware that he was doing so, is contained in para. 45 of her witness statement, where she says this:

> *"With further intensification of victimisation, they caused my second nervous breakdown in late September 2012. In such circumstances, again with further*

> *constructive approach and good faith, I asked my husband to make the second whistleblowing to the HSE, which he did on 2 October 2012.In the letter I highlighted the unlawful conducts of the respondents after the first whistleblowing and offered the most reasonable practical solutions for resolving the issues based on the expressed terms and the procedures in the "School Stress Policy". Concurrently I sent a copy of the letter of 2 October 2012 to the Head Teacher, Bradford HR, Bradford Occupational Health, the Union and my GP. In this letter I also raised the issue of my disability specifically."*

The underlining is the Tribunal's, as in three places the claimant uses the term "I" as if she were the author of this email. She was not. She does not even say she read and approved it. The Tribunal has, of course, not had the opportunity for this evidence to be tested. The Tribunal does not accept it. The Tribunal considers it far more likely that, as its express authorship demonstrates, Mr Shojaee composed it, and was the source of the various allegations made within it. The claimant was, of course, on her own case, very unwell at the time. The Tribunal accepts that the claimant may well have had a general awareness that her husband was going to send an email to the HSE, and others, but that does not make what was then sent a disclosure by her. The claimant, therefore, was not making any protected disclosure, Mr Shojaee was. Protection from detriment is afforded to workers who make protected disclosures, they are not afforded the same protection because another person has made a protected disclosure which is about them.

146. That would dispose of this claim but, if, however, that is incorrect, and we need to consider whether the disclosure is protected in terms of its content, we would find that this email does convey information (in parts, though not in its entirety) that it tended to show that the respondent was in breach of its legal obligations – breach of the Equality Act is alleged, for example – and/or that the health and safety of the claimant was being endangered. Further, whilst accepting Miss Mellor's submission that the claimant has not given evidence of her belief in these matters, and that she reasonably held any such belief, the Tribunal, if the disclosure were to be found to have been made by the claimant, would be satisfied, if only just, that the claimant probably believed that the respondent had breached the various legal obligations referred to , and that the claimant's health and safety were being endangered, and that in respect of some, but by no means all of these beliefs, that she reasonably believed that was the case.

147. That would surmount the hurdle of the claimant showing that she had made a protected disclosure, which would then require the Tribunal to determine whether she had suffered any detriment. The detriment relied upon is a wide ranging one, in the Scott Schedule (Section 4 is the relevant section containing the protected disclosure claims) and is put as:

> *"The Head Teacher and the HR with all kinds of tricks blocked the completion of the Stress Risk Assessment."*

The date of the disclosure is 2 October 2012, so only any alleged detriment after that date are relevant. Accepting for these purposes that "blocking" the stress risk assessment could amount to a detriment, the first factual issue, is did the respondents, in the persons of Colin Willsher and Les Hall in fact "block" the

completion of the assessment after October 2012? As will be apparent from our findings above, the Tribunal does not consider that they did. The findings clearly demonstrate that the respondents tried on numerous occasions to get the assessment completed, but reached an impasse when conditions were imposed upon further participation in it by the claimant from February 2013. The claim fails on that basis, in any event.

148. Even if, however, that conclusion was wrong, and the respondents were "blocking" the stress risk assessment, for this claim to succeed the Tribunal would have to be satisfied that the reason, or principal reason, for the treatment was that the claimant had made a protected disclosure. If the making of a protected disclosure, and then detriment were established, the burden would be on the respondents to show that the detrimental treatment was not because of the making of the disclosure. The Tribunal would be so satisfied that any such treatment was nothing to do with the making of any disclosure. The claimant's own case undermines any other conclusion. The treatment of which she complains had started long before any disclosure on 2 October 2012. Her case is that these "tricks" and attempts at wrongfooting had started long before October 2012. There was no change of treatment, of the type which sometimes entitles a Tribunal to draw the inference that the making of the disclosure had some bearing on the treatment.

149. There were many other reasons for the claimant's "treatment" from October 2012, some of which have been relied upon in support of her other claims in this case. The Tribunal has found that there were not discriminatory reasons, and would similarly find that they were not, even if satisfied of the other elements of protected disclosure, by reason of the claimant having made any alleged disclosure .In short, there is no causation between the making of any disclosure and the detriment complained of, and this claim fails on several bases.

Conclusion.

150. All the claimant's claims, therefore, fail. In his closing submissions Mr Shojaee invited the Tribunal to "ignore a few shortcomings that have taken place on the side of the Claimant for reasons of observing the equal footing." He continues "It has been a massive task for the Claimant and I to be able to digest the legal information and overcome the numerous hurdles that the respondents were throwing on our way." He went on to refer to his own depression, and some of the symptoms which he had set out in para. 8 of his Submissions. He repeated his request in para. 32 that the claimant's case, in effect, , should not be prejudiced by her inability to give evidence , which is the result of her disability.

151. It has to be observed that in his representation of the claimant throughout these proceedings Mr Shojaee has wanted it both ways. On the one hand it has been he who has, from an early stage raised highly technical, complex and obtuse legal arguments, of which his application to amend to make s.44 claims is a prime illustration. On the other, he has sought allowances for the fact that he is only a lay person, struggling with his own health, and is being disadvantaged by the might of the respondent's legal representation. The respondent and the Tribunal, at all stages of these proceedings, have struggled to understand, and respond to, the way in which he has put his wife's case. He has added greatly, and needlessly, to the complexity of the proceedings, and the matters he has raised what have been largely

irrelevant matters, much of which was more appropriate for a personal injury claim, which the claimant could, and perhaps should, have made long ago, as her trade union was advising and indeed, seemed to be preparing for.

152. That is not to be unduly critical of Mr Shojaee, who has been understandably highly emotionally involved in this case, and has been for a long time, which may have clouded his ability to view things objectively. Be that as it may, the Tribunal has made all due allowances for that, and for his wife's disability, which is clearly very serious. However much sympathy the Tribunal feels for her, and Mr Shojaee, who obviously has also been very upset by his wife's illness and the premature loss of her career, the Tribunal cannot decide these claims by making adjustments, such as making findings based upon evidence which has not been given by her, or was not otherwise before it.

153. It is hoped that, if nothing else, the claimant can now achieve some form of closure, put these matters behind her once and for all, and receive the treatment which will hopefully enable her to enjoy the retirement that she has undoubtedly earned after her many years of service.

Dated 12 March 2019

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

15 March 2019

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

ANNEXE A - THE DISABILITY CLAIMS

The disability discrimination claims from the Scott Schedule, and the Tribunal's findings, are:

Section 3: the remaining claims against the respondent at the start of the hearing:

Nos. 1, 2, 4, 5, 6, 7, 8, 9, 10

All these claims of disability discrimination, whether framed as direct, harassment or failure to make reasonable adjustments pre – date September 2011, the date from which the claimant's was found to be a disability, are dismissed.

No. 12

This is a claim of direct discrimination and harassment made in respect of Colin Willsher allegedly making "false allegations" about the claimant in December 2011, and relates to pages 1601 to 1602 of the Bundle. Direct and harassment claims are mutually exclusive, and the Tribunal finds that neither are established. These claims are dismissed.

No. 13

This is a claim of direct discrimination and harassment, and failure to make reasonable adjustments made in respect of Colin Willsher's alleged refusal in January 2012 to discuss the report of Occupational Health and carry out an appropriate Stress Risk Assessment. Direct and harassment claims are mutually exclusive, and the Tribunal finds that neither are established. Further the Tribunal does not find that this was a failure to make reasonable adjustments. These claims are dismissed.

No. 14

This is a claim of direct discrimination and harassment, and failure to make reasonable adjustments made in respect of Colin Willsher's further alleged refusal in April 2012 to discuss an appropriate Stress Risk Assessment. Direct and harassment claims are mutually exclusive, and the Tribunal finds that neither are established. Further the Tribunal does not find that this was a failure to make reasonable adjustments. These claims are dismissed.

No.16

This is a claim of direct discrimination and harassment, and failure to make reasonable adjustments made in respect of Eric Fairchild and Colin Willsher's alleged deceptions and falsifications of the minutes of a meeting in July 2012, committed between June and September 2012, and their conduct to deviate from the School Stress Policy in carrying out an appropriate Stress Risk Assessment. Direct and harassment claims are mutually exclusive, and the Tribunal finds that

neither are established. Further the Tribunal does not find that this was a failure to make reasonable adjustments. These claims are dismissed.

No. 17

This is a claim of direct discrimination and harassment, and failure to make reasonable adjustments made in respect of Les Hall and Colin Willsher's alleged misrepresentations, false allegations and trickery, between October 2012 and December 2012, to avoid following the School Stress Policy in completion of an appropriate Stress Risk Assessment. Direct and harassment claims are mutually exclusive, and the Tribunal finds that neither are established. Further the Tribunal does not find that this was a failure to make reasonable adjustments. These claims are dismissed.

No.18

This is a claim of direct discrimination and harassment, and failure to make reasonable adjustments made in respect of Les Hall's alleged misrepresentation, false allegations and deceptions during the pre – claim conciliation with ACAS, between January 2013 and March 2013, to agree with either following the School Stress Policy for completion of an appropriate Stress Risk Assessment, or a premature retirement based on the contract of employment. Direct and harassment claims are mutually exclusive, and the Tribunal finds that neither are established. Further the Tribunal does not find that this was a failure to make reasonable adjustments. These claims are dismissed.

ANNEXE B – THE STATUTORY PROVISIONS

Equality Act 2010

13 Direct discrimination

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

(2) [N/a]

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) to (7) [N/a]

(8) This section is subject to sections 17(6) and 18(7).

20 Duty to make adjustments

(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.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in

relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

(a) a feature arising from the design or construction of a building,

(b) a feature of an approach to, exit from or access to a building,

(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d) any other physical element or quality.

(11) – (13) [N/a]

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

26 Harassment

(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—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) – (3) [N/a]

(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;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

disability;

<u>Employment Rights Act 1996.</u>

43B Disclosures qualifying for protection

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following—

> *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
>
> *(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
>
> *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*
>
> *(e) that the environment has been, is being or is likely to be damaged, or*
>
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.*

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).]