



EMPLOYMENT TRIBUNALS

Claimant: Agnieszka Florczak

Respondents: Powys County Council (1)
Governing Body of Welshpool High School (2)

Heard at: Aberystwyth Justice Centre

On: 4,5 & 6 December 2018 and
25, 26, 27 & 28 June 2019

Before: Employment Judge P Davies

Members: Mrs L M Thomas
Mr J Rhodes

Representation
Claimant: In Person
Respondents: Mr C Howells (Counsel)

A Polish Interpreter was present throughout the hearing.

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:-

1. The claims of direct discrimination, harassment, and victimisation are dismissed.
2. The claim of unfair constructive dismissal is dismissed.

REASONS

1. By a claim received on 21 June 2017 the Claimant, Ms Agnieszka Florczak, complains of unfair dismissal, direct discrimination and harassment on the

ground of race, and victimisation. The response filed on behalf of the first and second Respondents denies that the Claimant was unfairly dismissed or was discriminated against on the grounds of race, as well as denying the other claims.

2. A Case Management Preliminary Hearing held on 30 October 2017 set out in paragraph 6 the issues that the Tribunal would need to decide. The direct discrimination claim and the harassment claim were the subject of an Order that the Claimant is to provide further information. Also in relation to victimisation further information was ordered to be supplied by the Claimant to clarify the basis of her claims. In respect of the unfair constructive dismissal, it was recorded that the Claimant was saying that there had been a breach of the implied term of mutual trust and confidence 'mainly by the handling of her flexible working request but also by the on-going stress she experienced, inadequate treatment of herself and problems reaching agreement with management and other staff due to her race'.
3. Subsequently, a Scott Schedule of allegations was produced by the Claimant. The start date for the allegations is 20 March 2015 and ends with the last date 13 March 2017. A section says 'on-going'. There is also attached to the Scott Schedule under the heading of unfair constructive dismissal, further particulars of her claim. The Tribunal was directed to this document which sets out the way that the Claimant puts her case in relation to the constructive unfair dismissal as part of the Claimant's closing submissions.
4. The Tribunal heard from the following witnesses;

Mrs Caroline Jones (Business Manager), Welshpool High School;
Mrs Shirley Jones, (Cleaning Supervisor), Welshpool High School;
Mrs Ruth Evans, (Duty Cleaning Supervisor), Welshpool High School;
Mr Jim Toal, (Head Teacher) Welshpool High School;
Mr Jamie Loxam, (Assistant Head Teacher), Welshpool High School;
The Claimant, Ms Agnieszka Florczak and
Ms Ewelina Florczak (Daughter of the Claimant).

The Facts

5. The Claimant is a Polish National. She is now fifty years old. In September 2014 the Claimant was working as a cleaner at a company called Shimizu Limited in Welshpool. Another of the cleaners, Ms Gwyneth Andrews, told the Claimant that the Respondents required a cleaner at Welshpool High School. We accept the evidence of the Claimant that this is how she became aware that there was such a vacancy.
6. The Claimant completed a job application on 5 June 2014 (the earlier date in September must be incorrect). In the job application the Claimant says that she is not afraid of hard work and if she works she would give 100% of her to do the best. We note that in the application form the answer to the question 'please indicate where you saw the position advertised?' the Claimant has written 'lady from the step change personnel told me'. This is consistent with the evidence of the Claimant. For the avoidance of doubt, we do not find that the Claimant was aware of the standard job advert for cleaners produced by the Respondents.

7. The Claimant was interviewed for the cleaning post at Welshpool High School by Mrs Caroline Jones, Business Manager for the school, and Mrs Shirley Jones, the School Cleaning Supervisor. This interview took place in July 2014. Both Mrs Caroline Jones and Mrs Shirley Jones say that the Claimant was told at the interview that there was a requirement to undertake one week of deep cleaning during the Easter school holidays and two weeks of deep cleaning during the Summer school holidays. Both Mrs Caroline Jones and Mrs Shirley Jones say that the interview was conducted wholly in English with no interpreter present, and they both believed that the Claimant understood what she had been told.
8. The Claimant says that she was not told about the requirement for deep cleaning during these holiday periods. Her case has been firmly based on her belief that nothing was said about this at the interview, and that when a document was sent to her setting out the terms and conditions, these only referred to fifteen hours of work per week. Whilst the Claimant does have some command of the English language, she is not fluent in English and even during the course of the Tribunal hearing whilst using a small amount of English she did demonstrate that she did not fully understand all that was being said. She required the use of a Polish interpreter throughout the hearing. We find that whilst Mrs Caroline Jones and Mrs Shirley Jones did believe that what they had explained to the Claimant had been understood, we accept that the Claimant's limited understanding of English resulted in her not appreciating during the interview about the need to work for those periods of deep cleaning during the holiday period.

Commencement of Employment – 2 September 2014

9. The Claimant commenced employment as a cleaner on 2 September 2014 and describes the working atmosphere as being friendly and that she felt welcomed. On 24 October 2014 she received a copy of the statement of the particulars of employment from the first Respondents. The letter of appointment was dated 16 October 2014 and is on page 18 of the bundle. The letter confirms appointment as a cleaner and says that the Claimant is to sign one copy of the contract and return by post to confirm acceptance of the position on the terms and conditions specified in the contract. The Claimant says that what she had, she much later discovered, was only part of the statement of terms. The Claimant says that she had a document on pages 20-23 of the bundle which she signed on 23 October 2014 at home, it already having been signed on behalf of the first Respondents dated 20 October 2014 and that she returned a copy to the first Respondents. What the Claimant says was missing was the first page of the written particulars of employment which is on page 19 of the bundle. The Respondents do not accept that that was the position because the copies that the first Respondents have in their possession and what they sent to the second Respondents for their file was a full copy of the written particulars of employment.
10. Page 19 of the bundle states that the contract hours are '15/37'. This means 15 hours out of a 37 hour week. Under the heading of job title in paragraph 3 of the first page of the written particulars the following appears 'you are employed as a school cleaner. You will carry out duties and comply with such instructions consistent with your position and status as the school reasonably

determines from time to time'. We note, however, that on page 20 of the bundle in paragraph 8 headed 'hours of work' the following appears 'you will be employed for 15 hours per week, your daily starting/finishing time will be as per the requirement of the Head Teacher at the school'. There is nothing in the full particulars of employment that specifically says about the deep cleaning taking place in the holiday periods.

11. We find that the document that was sent to the Claimant was as the document that the Claimant has produced namely it was missing the front page, that is page 19 of the bundle. We accept the evidence of the Claimant regarding this matter. We accept that this omission was pointed out by the Claimant on 9 December 2016 at a meeting that involved a member of the first Respondent's HR team, Miss Sarah Christoforu. The notes made by Mr Loxam on page 94 of the bundle says as follows:- *'when Sarah started to go through the contract it was clear that Agnieszka had not received all of her contract. Page 2 is missing from her copy. Had this been a mistake by county or had it been removed. Page 2 listed the hours expected. Sarah to provide further notes on the meeting to be sent next week'*.
12. At the meeting held on 27 January 2017, Miss R Roberts of the first Respondent's HR team, was present and the following note was made which is on page 141 namely 'the Trade Union explained that they had another meeting regarding Mrs A Florczak's contract because the contract had a page missing out of it and Mrs A Florczak would therefore not understand. Miss R Roberts stated that this must have added confusion for Mrs A Florczak who would not be clear on conditions of employment and asked Mrs A Florczak if she felt she had been treated differently. Mrs A Florczak felt that it was her mistake as she complained to Mrs S Jones, should have included Mrs C Jones though felt it was not necessary as she complained to Mrs S Jones'.
13. In the course of the hearing the Respondents position is that the Claimant must have received the first page of the contract of employment. However, we prefer the evidence of the Claimant on this matter and find for, whatever reason, the first page had not been sent to the Claimant.
14. The Claimant's line supervisor, Mrs Shirley Jones said that Gwyneth Andrews did mention to her that she knew someone who was interested in a cleaning job so Mrs Shirley Jones said to Gwyneth to come and get an application form and then an interview would be arranged. This evidence confirms the evidence of the Claimant regarding how she knew about the cleaning job. Mrs Ruth Evans says that there was a good working relationship with the Claimant. The Claimant says that things started to deteriorate and she blames the Brexit Campaign. We reject that evidence as nothing specific was given by the Claimant about any deterioration in her working relationships with either supervisors or anyone else before March 2015.
15. During the Easter break commencing at the end of March 2015, Mrs Shirley Jones informed staff on the last day before the school broke up about the deep clean during the Easter period. Mrs Shirley Jones said to the staff, including the Claimant, that if there were any problems that they should see her. Mrs Shirley Jones says that at about 6.30pm the Claimant told her that her mother was very ill in Poland.

16. The Claimant says that she wrote a letter on 20 March 2015 (page 25 of the bundle) addressed to Mrs Caroline Jones making a complaint about Mrs Shirley Jones saying that if she did not turn up for the deep clean during Easter, that she would face disciplinary action. In that letter the Easter deep clean is said to be the 8, 9 and 10 April 2015. The Claimant says in that letter that she needs to go to Poland during the Easter break to help her mother, who is ill, and also to seek medical attention for herself. There is also reference to the Easter celebrations in Poland which would affect availability of doctors. It is noted in the letter that the Claimant says 'if I were not have to go to Poland that would not be a problem for me to attend at work on days mentioned. If you are happy, I can stay at work longer (6 hours) on Friday, 27 March and also I can turn up to work on Saturday, 28 March ... Please respond on my email'.
17. Mrs Caroline Jones says that she did not receive this handwritten letter. Having heard the evidence of Mrs Caroline Jones, we accept her evidence about this because there would be no reason for her not to acknowledge receipt of the letter and send an email as requested. As no email was ever sent, it seems unlikely that the Claimant would not have chased up a reply to that letter.
18. The Claimant says that this complaint that she brought against Mrs Shirley Jones was an act of direct discrimination and harassment, and also that the last working Friday before the Easter break that Mrs Shirley Jones and another employee, Caroline Bevan started shouting at her which was an act of direct discrimination and harassment. Mrs Shirley Jones denies shouting at the Claimant and says that what occurred, on which she thinks was 2 March 2016, was that there was buffer training in the gym area at 5.30pm given by herself and Mrs Caroline Bevan, and that is the only time that Mrs Caroline Bevan would have been in the sports hall. We accept the evidence of Mrs Shirley Jones that the training was in relation to the buffer machine. The Claimant says, in relation to this incident, that Mrs Caroline Bevan started to give instructions as to how the job should be done and that the way Mrs Bevan was treating her made the Claimant feel bad and less valuable as a person. It may well be that the Claimant did not consider that she should receive any training and that may have influenced her perception of what occurred. However, we do not find that there was an inappropriate behaviour by Mrs Shirley Jones or Mrs Caroline Bevan in giving this training and we reject the evidence of the Claimant about inappropriate body language or shouting and pointing fingers. Whatever did occur was not related in any way to the fact that the Claimant was being treated differently because she was Polish.
19. The Claimant went to Poland over the Easter period and missed the deep cleaning. There was no disciplinary action taken against the Claimant nor was her pay reduced in any way. Pay is spread within a twelve- month period even though the number of hours worked during school holidays is much reduced or not worked at all. Upon her return from Poland, the Claimant says in general allegations, that people would gossip about Polish people and watch her as though she was a thief and she felt isolated, shouted at and treated like dirt in front of others. She refers to the fact that sometimes she felt very uncomfortable about being made a joke of about her accent. The Claimant says that Mrs Shirley Jones gave her reprimands in front of others

and regularly updated others about issues regarding her. We reject this evidence of the Claimant. We prefer the evidence of Mrs Shirley Jones and Mrs Caroline Jones about the fact that there were no further problems with working the hours required for the school term and also in the Summer 2015 with the Claimant undertaking the deep cleaning. Mrs Shirley Jones confirms that during the Summer of 2015 the Claimant did work between the 25 August and 1 September 2015. Mrs Shirley Jones says that the problem about working the Summer holidays seems to have arisen after the Claimant had obtained another job after the Summer 2015. That is when the Claimant was required to work for an alternative employer up to 2.00pm each day.

20. We accept the evidence of Mrs Shirley Jones that she was not aware of a letter of 20 March 2015 or a complaint against her. We accept the evidence of Mrs Shirley Jones that there were no issues with the Claimant until the period of the Easter 2016 deep cleaning.

Events from March 2016

21. The Claimant says that when she started in the school she was already working for another employer and those hours were from 7.30am to 2.45pm. She would then go and do the school work from 3.30pm to 6.30pm. Sometimes she would go back to the other job for 1.5 hours but that became too much so she stopped that. The other work that the Claimant had was from Monday to Friday. The Claimant said that her boss in the other work contacted her in Poland and asked her to do extra hours as originally she was finishing at 12.30pm but that changed to 2.45pm. She said that until December 2016 her boss was flexible but she could not give her the time that she wanted all the time to do other hours for the Respondents. The Claimant stressed a number of times in her evidence that she would not have signed the contract with the Respondents if she knew that there were hours other than 3.30pm to 6.30pm that required to be worked. This, indeed, seems to be a fundamental view with the Claimant and underlines all her relationships with the Respondents and the Respondent's various employees.
22. On 18 March 2016 the Claimant asked her daughter, Ms Ewelina Florczak, to go to the school to speak to Mrs Caroline Jones to say that the Claimant would not be able to work during the Easter break because of her health issues. Mrs Caroline Jones agrees that on that date Ms Ewelina Florczak did come into her office and told her that her mother was not well and that she was going to Poland for treatment. Mrs Caroline Jones told Ms Ewelina Florczak that her mother was contracted to work during the Easter deep clean period and that if she was unwell her mother would need to supply a sick note. Ms Ewelina Florczak said that a sick note would be received before the Easter holidays. Ms Florczak agrees that Mrs Caroline Jones told her that her mother must provide a medical certificate and provided her with Caroline Jones' email. Mrs Caroline Jones thought that she would be brought in a sick note from an English doctor. Mrs Caroline Jones assumed that she would be provided with a sick note that day because she said that she had agreed with the Claimant's daughter to have that on the last day of term. Mrs Caroline Jones expected it to be scanned and then an email sent to her. Ms Florczak says that Mrs Jones was not very nice to her at the time, and did not want Mrs Shirley Jones to be angry. We do not accept that evidence from Ms Florczak. There was no reason for Mrs Caroline Jones to say that Shirley

Jones would be angry or any reason why Mrs Caroline Jones should be 'not very nice'.

23. On 30 March 2016 the Claimant emailed Mrs Caroline Jones from Poland enclosing a copy of a sick note saying 'a bad chest infection'. The Claimant said that she had been ill for a week by today's date due to illness and she had to cancel all other appointments booked with the doctors. The documents were in Polish with a date on the document (on page 28) being 23 March 2016.
24. The Claimant says that she received a text message on her phone on 28 March 2016 from Mrs Shirley Jones saying 'hi, you need to come to work Thursday Agnieszka. All the staff came in today, let me know what time you starting, the staff are in at 9.00am xx'.
25. The reply, some six minutes later, from the Claimant was 'hi, the email was to Caroline today. She knows I am in Poland, as she was informed before I am leaving to see consultant at the meantime caught illness the sick note date 23.03 saying chest infection is attached'.
26. Copies of these text messages had been produced by the Claimant. The next text message is from Mrs Shirley Jones on 3 April 2016 saying 'hi, can you come in 3.30 x'. The reply on the same date, 3 April, from the Claimant is 'ok. Thanks xx'.
27. The Claimant says that on 4 April 2016 she returned to work still feeling not well enough and started her shift at 3.30pm. Then Shirley Jones approached her and told her to go home as the cleaning had started at 1300 hours. The Claimant says that she was told to await a text message to confirm whether she was allowed to return to work. She felt terrible and returned home very stressed. Mrs Shirley Jones said that she would not have sent a text to the Claimant had she known that the Claimant had supplied Mrs Caroline Jones with a sick note by email. We accept that Mrs Shirley Jones was unaware of such an email since the email would have come two days later from the Claimant.
28. Mrs Caroline Jones said that when the Claimant did not come in in Easter 2016, she did have a discussion with Mrs Shirley Jones about having a sick note from Poland at which Mrs Shirley Jones said that the Claimant did the same thing last year. Mrs Caroline Jones then realised that they had a problem and they would have to speak to the Claimant at a meeting. Mrs Shirley Jones thought that the Claimant did not understand about working the deep cleans and therefore there was a need to have a meeting to emphasise to the Claimant about what her obligations were. Mrs Caroline Jones wanted to ensure that the Claimant understood what her obligations were in respect of working. Mrs Shirley Jones did not think that the Claimant would be off sick during the period of time she was in Poland because she understood that the sick note would be handed in on the last day of term.
29. Mrs Caroline Jones looked at the information sheets about the Summer 2015 and could see that the Claimant had not come in on 1 September 2015 which was an inset day for mandatory training. Mrs Caroline Jones had concerns about the understanding that the Claimant had and if there was a problem

with the training because the Claimant had not come in for the Easter deep clean, saying that she was sick, then missed an inset day clean and spoken to staff who had been paid extra for 2015 for cleaning so she thought there was a need to discuss the contract with the Claimant.

30. The 4 April 2016 was an inset day which is why the cleaning staff had worked between 1.00pm and 4.00pm. Mrs Shirley Jones did speak to the Claimant and say she should have been in at 1.00pm but Mrs Shirley Jones said that she was not prepared or able to work until 6.30pm. Mrs Shirley Jones said that she told the Claimant that she could work until 4.00pm but the Claimant left without undertaking any work. Mrs Shirley Jones said that the Claimant was not told she would have to wait to receive a text message to find out if she was allowed to return on the following day. We accept the evidence of Mrs Shirley Jones in relation to that matter. Mrs Shirley Jones confirmed that she did discuss with Mrs Caroline Jones about the Claimant not turning up for the deep clean but she and Caroline Jones were concerned that the Claimant did not understand the terms and thought it was optional about whether to do the deep cleans.
31. Mrs Shirley Jones said that some cleaners were getting annoyed that the Claimant was not turning up for inset days and the deep cleaning days. We do not accept the allegation of the Claimant that other employees who had returned from sick leave were treated with respect and supported by management nor that she was told that she must await to be allowed to return to work on the next day. The Claimant said that in relation to the inset day, she was surprised that everyone came in and that she would not have been able to go at that time because she was already at work. The Claimant said that she had asked the boss to swop hours and when able to do so, her boss would swop hours. However, the Claimant could not risk her job because someone had not informed her about any hours in addition to 3.30pm to 6.30pm. The Claimant clearly put as her priority the other job.
32. On 5 April 2016 the Claimant said that she arrived at work and greeted everyone but her swipe card was not there. She signed in and waited. The Claimant says that Mrs Shirley Jones told her to stay after everyone had left but also present was Ruth Evans. The Claimant said that Mrs Shirley Jones said to her that she did not understand the terms of her contract and that there would be a meeting and the interpreter would be Marta, one of the other employees and during the meeting she would have to decide whether to continue working. The Claimant says that she did not want Marta as an interpreter but she wanted an interpreter. The Claimant was then about to leave when her daughter came to see her and explained that she had seen Mrs Caroline Jones. The Claimant said that she told Mrs Shirley Jones and Ruth Evans that she had a right to have Union representation.
33. Mrs Shirley Jones said that she was not correct. The incident never happened. It was not correct that there had been no clocking-in for May. Mrs Shirley Jones collects the cards. The clocking card had not been taken away. We find that the swipe-card was not taken away from the Claimant and nor was the Claimant told that the meeting was to decide whether her employment would continue or not.
34. Ms Florczak said that she was instructed by her mother to speak to Caroline

Jones and hand in documents being a medical certificate and renewed ID card. Mrs Caroline Jones had no recollection of this meeting with Ms Florczak. Part of the reason why Mrs Caroline Jones said that the meeting did not take place is that it was unlikely that Ms Florczak came to the office without being collected from reception because there is a need to go through security. Ms Florczak said that she did not sign any visitors book but walked over to the secretary before seeing Mrs Caroline Jones. We accept the evidence of Ms Florczak that she did see Mrs Caroline Jones and give medical evidence together with an ID card. However, we accept Mrs Caroline Jones' evidence that she had not asked for sight of the Claimant's new ID card. Ms Florczak says that Mrs Caroline Jones refused to take the documents, being the ID card and medical certificate. We accept that Mrs Caroline Jones did not want to have the ID card. We accept the evidence of Ms Florczak that Mrs Caroline Jones explained that Mrs Shirley Jones complained that her mother had not attended work the previous Easter because this was something that had been told to Mrs Caroline Jones by Mrs Shirley Jones. We also accept that Mrs Caroline Jones said that the Claimant needed to decide whether she wants to continue her employment at school and that a meeting would be organised. We do not accept that Mrs Caroline Jones was rude but Mrs Caroline Jones clearly expressed the view that matters needed to be looked into because of genuine concerns that she had about the attendance of the Claimant. It may be that Mrs Caroline Jones was curt in her manner but the reason had nothing to do with harassment or discrimination in the way set out in the schedule of allegations. There was an issue with the understanding of the terms of the contract of employment which required the parties to meet.

35. On 12 April 2016 the Claimant sent an email to Mrs Caroline Jones, the subject being meeting, to say that she was available for 28 April or 29 April 2016 (page 32 of the bundle). Mrs Caroline Jones replied to say 'Thank you for agreeing to meet me to discuss the issue of our Easter and Summer clean, and also attendance at our statutory Child Protection course. I should be able to let you know later on this week about the exact time and date for our meeting. I will be asking Marta who works at the school to come along and translate and also Shirley, our supervisor, and also Mr Glyn Davies, the Deputy Head. Please advise me if you are being accompanied and by whom.'

Formal Complaint Against Mrs Shirley Jones - 19 April 2016

36. On 19 April 2016 the Claimant wrote to Mr Mark Evans, Head of Business Services, Powys County Council, saying that she 'would like to raise a formal complaint against my supervisor, Shirley Jones, as I was the subject of unlawful discrimination, harassment and victimisation. As the affect of that I am exposed to stress at workplace. I am writing this to you as I raised a complaint previously to Caroline Jones, which the complaint was not taken seriously. In regards to work meeting, I provided two dates which will be the most suitable, 28 April or 29 April, but I have not heard anything'. It was suggested on behalf of the Respondents that the Claimant was in effect bullying the school by sending the complaint to the First Respondents. We reject that criticism. The Claimant was entitled to communicate to the First Respondents.
37. On 20 April 2016 the Claimant sent a copy of that complaint to Mrs Caroline

Jones (page 35 of the bundle).

38. On 21 April 2016 Sharon Nicholls of Powys County Council acknowledged receipt of the formal complaint and said that it was being passed onto Rachel Hudson, Human Resource Business Manager Schools, who would be allocating one of the HR team to the Claimant. There would be contact no later than the beginning of the week commencing 25 April 2016.
39. On 21 April 2016 Ms Sarah Christoforu, Human Resources Business Partner (Schools), sent an email to the Claimant saying that the Claimant needs to follow the schools' procedure that Welshpool High School had adopted and that there was a meeting booked with Caroline Jones and that she could advise her about this complaint.
40. On 21 April 2016 Mrs Caroline Jones sent an email to the Claimant saying 'please can we meet at 2.00pm on 28 April 2016'. The Claimant asked to change the time of the meeting to 3.30pm because working hours are 3.30pm to 6.30pm and that she has other responsibilities to which she must fulfil. Mrs Caroline Jones was not able to meet and suggested the following Thursday at 3.30pm.
41. On 26 April 2016 Ms Jackie Jones, Interim Operations Manager HR at Powys County Council, sent a letter to the Claimant asking for further information in relation to the complaint including any examples of situations where she was made to feel discriminated, harassed or victimised. That information was to be sent to Ms Jackie Jones.
42. On 27 April Ms Caroline Jones asked the Claimant for a reply to her email regarding the meeting and that as she was in school perhaps the Claimant could call and see her, and they could sort out the time and date of the meeting instead of emails going back and forth as a resolution to sorting the meeting. The Claimant replied asking for confirmation of the time and date of the meeting by 2.00pm tomorrow, 27 April 2016. Mrs Caroline Jones replied suggesting a meeting on 5 May 2016 at 3.30pm.
43. On 28 April the Claimant emailed Sharon Nicholls asking her to forward this message to the Head of the Welshpool High School office that she would like to take a one-day holiday on 28 April 2016 because Ms Caroline Jones is coming to her workplace and putting pressure on her. The Claimant said that it was not appropriate for Mrs Caroline Jones to have a discussion during her work because it is stressing her even more. Miss Rachel Roberts, HR Resources Business Partner, then gave the email address to Mr Jim Toal, Head Teacher, and said that the Claimant could send anything direct to him.
44. Mrs Caroline Jones emailed the Claimant on 28 April to say that the meeting that was trying to be organised had to be postponed as they were unable to obtain translation services. Mrs Caroline Jones says that it did not happen as alleged by the Claimant about the incident on 27 April 2016. However, we accept that Mrs Caroline Jones did speak to the Claimant at school because she thought it was easier to speak about dates of meeting directly to the Claimant rather than with the exchange of emails. However, we do not accept that Mrs Caroline Jones shouted and pointed her finger at the Claimant and that this was harassment. It would have been legitimate for

Mrs Caroline Jones to speak to the Claimant at school to see if the dates could be sorted out. We accept the evidence of Mrs Caroline Jones that she has never, in twenty-five years, exhibited the sort of behaviour which the Claimant alleges was directed towards her.

45. On 5 May 2016 Mrs Caroline Jones wrote to the Claimant

'to invite you to a meeting to discuss any concerns you may have regarding the terms of your contract and your working conditions in Welshpool High School. At this stage the meeting is of an informal nature to explore your concerns and to clarify policy and process. As I recognise that there is some difficulty with communication in English, it is my intention to arrange for a translator to be available to ensure full understanding in the meeting. Whilst this is an informal meeting, if you wish to bring a friend or representative to the meeting then you will need to inform me of their availability to attend so that suitable arrangements can be made. It is my intention to arrange the meeting during your normal working hours as soon as it is mutually convenient, but within ten working days of the date of this letter'.

46. The Claimant alleges that other employees would not receive post continuously reminding them about their issue. We reject that as being something which other employees would not have received such a letter because this was a matter which required clarification as Mrs Caroline Jones set out. This was not victimisation as alleged by the Claimant.

Letter from Mr J Toal dated 9 May 2016

47. Mr Toal wrote to the Claimant on 9 May 2016 to say that it had come to his attention that the Claimant had not attended for work on Thursday, 28 April 2016 and no-one notified the school of absence on the day. He then sets out the process for sickness absence and concludes by saying if there is anything in the content of the letter which is unclear or which the Claimant does not understand then please do not hesitate to contact him via his PA, Helen Muir, at the school address.
48. On 11 May 2016 the Claimant wrote to Miss Jackie Jones at Powys County Council saying that Mrs Caroline Jones is going to organise a meeting to discuss terms and conditions, and that she would like to use the occasion to bring an issue of harassment, victimisation, discrimination regarding the ongoing situation at the work place.
49. On 13 May 2016 the Claimant wrote to Mrs Caroline Jones saying that she 'would like to request a formal meeting as the explanations of absence during the Easter break and other issue were provided to her on several occasions. However, the following explanation were not satisfied'.
50. On 17 May 2016 Mrs Caroline Jones asked the assistance of the first Respondent in providing a Polish translator for the meeting because 'our Polish lady doesn't want to do it for personal reasons and we can't find anyone willing ...'. The first Respondent could not assist.
51. On 18 May 2016 Mrs Caroline Jones acknowledged receipt of the Claimant's letter regarding the meeting and said that she would be contacting the

Claimant as soon as possible to make arrangements. On the same date, 18 May 2016, Miss Sarah Christoforu, wrote to the Claimant acknowledging receipt of her letter to Ms Jackie Jones saying that any concerns should be directed to the line manager in the first instance at Welshpool High School and if the complaint is about the manager write to their line manager or else the Head Teacher.

52. On 19 May 2016 Mrs Caroline Jones wrote to say that a meeting had been arranged for the 9 June 2016 to discuss any concerns that the Claimant may have regarding the terms of her contract and working conditions at the school. This would be an informal stage of the implementation of the Fairness and Dignity at Work Policy. A copy of the policy was enclosed with the letter. The Claimant was told that she could bring a friend or a Union Representative to the meeting and that her Human Resources Officer would also attend to provide clarity and guidance of policy and procedure. Notes from that meeting would be kept. The Claimant replied saying that she would be at the meeting.
53. On 9 June 2016 Mrs Caroline Jones was at the school awaiting the attendance of the Claimant. Present with her was Miss Sarah Christoforu. The Claimant, her daughter and Union Representative arrived, not at 3.30pm but 4.15pm. The Claimant's daughter was not allowed to attend only the Union Representative and the Claimant. The Union Representative spoke English and Polish but Mrs Jones said that it became apparent that the Claimant was not happy that they had been unable to obtain an interpreter. The Union Representative declined to interpret. The meeting was then ended as the Claimant was unhappy for it to continue. We accept the evidence of the Mrs Jones that she had made efforts to obtain an interpreter but had failed. The Claimant believes that an interpreter was not provided because of the previous grievance against Mrs Caroline Jones. We reject that belief of the Claimant since it is clear that Mrs Caroline Jones did make efforts to obtain an interpreter but without success. However, we understand the position of the Claimant and the Union Representative that there should have been an interpreter present and for that reason the meeting was abandoned. We do not accept the Claimant's assertion that other employees would not be treated in the same manner as the Claimant.
54. On 10 June 2016 the Claimant says that Mrs Shirley Jones was not happy when she saw her working. Mrs Shirley Jones says that she did not know that the Claimant was meeting Mrs Caroline Jones. In any event, she would not have believed that the Claimant would have been dismissed. The Claimant says that if she was using her mobile phone then it would be to get advice from her Trade Union representative. The Claimant says that before she complained, there had been no complaints about her. This unparticularised allegation about Mrs Shirley Jones we reject. The Claimant appears to have been convinced that every action or inaction on the part of others were designed to ensure that she was dismissed. There is no evidence in relation to this belief and we reject the evidence of the Claimant regarding any such allegations.
55. On 28 June 2016 Mrs Caroline Jones wrote to the Claimant to say that a meeting had been arranged for 3.30pm on Wednesday, 13 July 2016. That meeting did take place and on page 61 of the bundle there are notes of that

meeting. On page 64 is a letter dated 15 July 2016 from Mr Loxam, Assistant Head Teacher, about that meeting. Mr Loxam was standing in for Mrs Caroline Jones who was unable to attend the meeting. Miss Sarah Christoforu was present together with Lukasz Bernka, Bakers Food and Allied Union, and Natalie Marta Yurdanova, interpreter. The main issue discussed was the insistence of the line manager, Shirley Jones, that the Claimant works during the school Easter and Summer holidays deep clean. The Claimant explained that she had another job during the day and that this should be taken into account and Shirley Jones spoken to about the matter. Mr Loxam said it was agreed that the matter would be discussed with Shirley Jones and Caroline Jones over the Summer, and that he would write again in September to the Claimant.

56. In comments made on Mr Loxam's letter on the 20 July 2016, the Claimant pointed out that the hours between 1.00pm and 4.00pm do not suit her because she had another job. The Claimant criticised the interpreter who was telling her that she was in a hurry and would not have time to say this or that. The Claimant said that she is seeking to have holiday leave from 22 August until 26 August. A large part of the letter written by Mr Loxam on 15 July 2016 was not commented upon by the Claimant. Therefore we find that it was an accurate account of what was discussed.
57. On 7 September 2016 Mr Loxam wrote to the Claimant as he said he would. It was pointed out that in relation to the holiday request, that the request would have been declined because that is when the Summer deep clean takes place. Mr Loxam also says '*there has also been explained to me that the hours for the recess clean are on display in the office by the clocking-in machine. Leading up to the Summer, they had been on display for two months*'. Mr Loxam says that he has spoken to both Mrs Caroline Jones but Mrs Shirley Jones was not in school at the moment. Mr Loxam concludes by saying that there will be a need to consult with the Claimant about working hours for the future and that he will be in touch regarding further discussion. Mr Loxam says if there are any questions or queries in the meantime, please not to hesitate to contact him and that he hopes that the information he set out would be helpful and supportive.
58. The Claimant criticises Mr Loxam and Miss Sarah Christoforu because the investigation procedures or meetings would have been carried on in a more professional manner if the person, other than the Claimant, was the subject of the meeting. The Claimant says that that is because she did not receive a complaint procedure. We find that she did receive the procedure as referred to in the earlier letter and/or if she did not then it would be accessible upon request by the Claimant through her Trade Union representative. We reject the suggestion that the way the meeting was conducted was because the Claimant was Polish and that it led to this alleged unprofessional behaviour.
59. On 20 September 2016 the Claimant says when Shirley Jones returned to work she started to receive more letters in regards to her understanding of the contractual terms. The Claimant said that this related to the letter on page 71 from Mr Loxam. It is very difficult to see how that relates to Mrs Shirley Jones or that it has anything to do with Mrs Shirley Jones because the letter says that Mrs Shirley Jones is not in school at the moment. The Claimant's allegation seems to be that Mrs Shirley Jones, when aware of her alleged

behaviour, continued to pressurise the Claimant and pick on her, and this was because she was Polish. Again, these matters are unparticularised and we reject the generalisations made by the Claimant. We accept the evidence of Mrs Shirley Jones that she did not pick on the Claimant at all.

60. On 27 September 2016 the Claimant received a letter from the school (page 72 of the bundle) about voluntary severance scheme. This was from Mr Toal, the Head Teacher. Mr Toal said that that letter was sent to every employee and indeed, one letter was sent this year in similar terms and last year, and maybe over the last three years. This is county wide initiative and it is sent to everyone. We accept the evidence of Mr Toal. Insofar as it appears as an allegation in the schedule of allegations of discrimination, we find that the explanation given by Mr Toal is a non-discriminatory explanation and we accept that the sending of the letter to the Claimant had nothing to do with her being Polish. It was to do with her being an employee along with other employees of the Respondent.
61. On 5 October 2016 Mr Loxam wrote to the Claimant following up his letter of 7 September 2016 to confirm that the Claimant's supervisor returned to work and that he had spoken to Mrs Shirley Jones. Mr Loxam says that he has attempted to take appropriate steps to help improve working relationships with all parties. The Claimant says that she had to wait a few months for the outcome whereas if Shirley Jones had made a complaint, the Claimant would be invited to meetings during her sick leave. This is a reference to the fact that Mrs Shirley Jones was on sick leave for a period of time. Mrs Shirley Jones believes that when she returned in October to work when she had a conversation with Mr Loxam. The reason by Mr Loxam for not discussing the matter with Mrs Shirley Jones was because she was absent from school on sick leave. We accept this as being the reason and that the situation would not have been different had the Claimant been away from school on sick leave.
62. On 20 October 2016 the Claimant was invited by letter to a consultation meeting by Mrs Caroline Jones (page 74 of the bundle). The date of the meeting was to be the 24 November 2016 at 3.30pm to discuss the Claimant's understanding of her contractual terms including the school holiday periods and to discuss the requirements that the school had in relation to the school cleaning post. It was said that the meeting would be held at the school and an interpreter would attend the meeting, and that the Claimant was entitled to be supported at the meeting by a Trade Union representative or work colleague. Mrs Caroline Jones said that the purpose of the consultation period is to explore how they can match the Claimant's understanding or contractual obligations with what is required by the school and also to discuss other potential options such as flexible working requests. No decisions regarding the Claimant's contract of employment has yet been taken and will not be made until consultation has concluded.
63. The Claimant believes that the meeting was as a result of the on-going issue with Shirley Jones and also because she did not volunteer to be made redundant. She says that this is an act of victimisation. Bearing in mind the content of what was discussed in July 2016, it is perhaps not surprising that there was a need for further discussion. We reject the evidence of the Claimant regarding the reason for this meeting and accept that there was a

reasonable and legitimate reason to arrange another meeting as explained by the Respondents.

64. On 21 October 2016 the Claimant's daughter rang the school and informed them that the Claimant would be absent that day as she had arranged an appointment with a solicitor. Mrs Caroline Jones informed the Claimant's daughter that that would require the Head Teacher's approval and that she should complete a 'pink form'.
65. On 7 November 2016 the Claimant asked Mr Loxam whether he could have a conversation with Mrs Caroline Jones about re-scheduling the consultation meeting.
66. On 8-10 November the Claimant was unwell. Mrs Shirley Jones said that the Claimant did come in late as she had been to the doctors and Mrs Shirley Jones instructed her to go home. Mrs Shirley Jones says that she did not tell her the Claimant to stay or suggest that the Claimant might not be paid if she went home. It was put to Mrs Shirley Jones that she said that if the Claimant was late by three minutes then there would be no pay. Mrs Shirley Jones denied that she had said this and said that when the Claimant was late, she refused to make up the hours. She was never told her wages would be deducted. The Claimant gives examples of other employees being sent home and nothing said to them about being punished in relation to pay. The Claimant says that nothing was said and there was no disciplinary action taken against, for example, Caroline Bevan when she was off for three days after a Christmas party. There was, in fact, no disciplinary action taken against the Claimant in relation to her sick leave and we accept the evidence of Mrs Shirley Jones that if a person was unfit, she would send them home and this is what she did on this occasion. Nothing was said by Mrs Shirley Jones about disciplinary action or curtailment of wages, or anything of that nature. We reject the evidence of the Claimant in relation to this allegation.
67. On 15 November 2016 the Claimant emailed Mrs Caroline Jones to say that she had been informed that the meeting will take place on 24 November 2016 and that the work-related stress has negative impact upon herself and her relatives, and the most suitable date for the Claimant is 15 December 2016. Mrs Caroline Jones replied in an email of 16 November 2016 saying that she was not available on 15 December 2016 but proposed a new date of 28 November at 3.30pm. Mrs Caroline Jones also said that in the light that the Claimant had been unwell, that she would like to arrange to come and do a stress risk assessment with the Claimant or refer the Claimant to the Occupational Health Service. The Claimant replied on 16 November 2016 by email saying that she disagreed with the date of the 28 November 2016 but was willing to re-arrange the dates on any day on the week commencing 12 December 2016. Mrs Caroline Jones says that she said that it was her job to be at the meeting having returned from compassionate leave and that in her absence Mr Loxam had picked up the issues.
68. Mrs Caroline Jones emailed on 18 November 2016 to the Claimant and said that they had believed that they had given sufficient notice to attend the meeting and to arrange representation and what was suggested was the last week of school term before the Christmas holidays, was not a suitable week for Mrs Caroline Jones to attend as she had a number of commitments and

therefore would like to confirm the meeting for 28 November 2016. The Claimant says that the Respondents did not take into account her well-being in relation to these matters and that Caroline Jones made the Claimant believe that she is a nobody and her needs were not taken into consideration. However, we accept the evidence of Mrs Caroline Jones that she had to balance the needs of the Claimant with the needs of herself and the school trying to arrange a date and the long period between the correspondence and the date of the proposed meeting would have allowed time for the Claimant to have recovered from her illness and to make appropriate arrangements with her Trade Union representative.

A formal complaint against Mrs Caroline Jones – 24 November 2016

69. On 24 November 2016 the Claimant made a formal written complaint to Mr Toal about Mrs Caroline Jones (page 86 of the bundle). The Claimant complained that she was the subject of unlawful harassment and victimisation, and that the conduct had been on-going since April 2016. The Claimant asks for Mrs Jones to be removed as she strongly believes that the matter will not be resolved and a conflict of interest will occur. The Claimant also asks for the date of the meeting to be re-arranged to either Friday, 2 December or 9 December 2016. The Claimant says that on the same day approximately 6.00pm she received an email from Caroline Jones stating that the meeting would be re-arranged only if the Trade Union representative is unable to do it. That email is on page 85 of the bundle. Mrs Caroline Jones said that when she sent this email, she was not aware of the complaint made against her. Mrs Jones believes that it was on 29 November that she had knew about the Head receiving a letter from the Claimant as Mr Toal told her that she should no longer take part in any engagement with the Claimant. She was not shown a copy of the complaint letter. Mr Toal wrote a letter in response to the Claimant's complaint on 29 November 2016 in which he said this:

'I write in response to your letter dated 24 November 2016 and received by special delivery on 25 November 2016'.

70. We accept that assertion and the evidence of Mr Toal about receiving this letter on 25 November 2016, in which case Mrs Caroline Jones' email on 24 November 2016 could not have been sent in response to the formal complaint. Further, we do not consider that there is anything in Mrs Caroline Jones' response which is discriminatory. Mrs Caroline Jones was wanting to ensure that the meeting took place unless the Trade Union representative was unable to attend. This was an entirely reasonable stance in the light of the difficulties regarding a meeting.
71. On 25 November 2016 the Claimant said that the date was not suitable for the Trade Union representative and herself, and that they would not attend the meeting and that the dates available were the 2 or 9 December 2016. In Mr Toal's response on the 29 November, Mr Toal asked for more information about the complaint made by the Claimant and also said that he understood that a new date of 9 December had been arranged. As for the request for Mrs Jones to be removed from the management process, Mr Toal said that he needed to consider this through liaison with the HR department and that

the Claimant would be informed of his decision prior to the meeting on 9 December 2016. Mr Toal also referred to the fact that the complaint would be dealt with in accordance with the process set out in the Fairness and Dignity at Work Policy. The letter said 'copy enclosed' but the Claimant says that she did not receive a copy of this policy. If it was not enclosed then the Claimant could have asked for a copy of the policy at this point.

72. On 28 November 2016 the Claimant says that Mrs Shirley Jones and Mrs Caroline Bevan shouted and bullied her during her work when she said that she was unable to come to work on 2 January 2017 at 1.00pm to 4.00pm. Although in the schedule there is reference to Mrs Caroline Jones the Claimant accepted that that was a mistake and there was only Mrs Shirley Jones and Mrs Caroline Bevan who treated her in this way. Mrs Shirley Jones says that this incident never took place. Mrs Shirley Jones said that she puts a list of inset days for the staff to see but does not go around with a list. We accept the evidence of Mrs Shirley Jones that this incident did not take place.
73. On 6 December 2016 Mr Toal wrote to the Claimant to say that Mrs Caroline Jones would not be present for meetings whilst her complaint was being investigated and that Mr Jamie Loxam would chair the meeting arranged for 9 December 2016.
74. On the 9 December 2016 the Claimant and her union representative attended the meeting with Mr Loxam and Miss Sarah Christoforu together with an interpreter. It was explained that the meeting was not about the Claimant's complaint but about the contractual hours and to explain what the requirements of the contract are. Miss Christoforu started to go through the contract and the Claimant said that she had not received the page listing hours expected. The Claimant says that the Trade Union representative made a suggestion of a flexible working request whilst Miss Christoforu stated that it was unlikely for the school committee to accept it. The notes indicate that the conclusion was that Miss Christoforu would write to the Claimant with an option reducing her hours so that she does not work some of the recess clean and then they would ask the governors about flexible working hours. Miss Christoforu would send a letter explaining the hours. It was at that meeting that the Claimant complained about Mrs Caroline Bevan's behaviour with a black bag when she found out that the Claimant had not signed the recess clean sheet for 3 January 2017.
75. Mr Loxam says that at the meeting on 9 December that Miss Christoforu provided the Claimant with the full terms and conditions taken from the HR file. Mr Loxam wrote a letter on 16 December 2016 (pages 99-101 of the bundle), which sets out his record of the meeting. It is a detailed letter and records that the Claimant had said that she was in difficulty working the hours because she had other employment between the hours of 6.00am and 2.45pm. Mr Loxam says that the issue for the Claimant is that these hours clash during some of the holidays and inset days so that the Claimant was not able to come to work any earlier than 3.30pm. The Claimant also explained that she needed to visit her family in Poland and that sometimes these visits clashed with the weeks of the school holidays when the deep clean takes place. Mr Loxam also enclosed a stress assessment form for the Claimant to fill in because the Claimant said that being invited to the meeting had had an effect on her health. Mr Loxam also said that he enclosed a

request for absence for 3 January 2017 as the Claimant stated that she could not work on that day. Mr Loxam asked that it be put in writing the request for flexible working.

76. The Claimant says that Miss Christoforu did not observe correct procedures and completely ignored her complaints, and the way that she had been treated. The Claimant says that other employees would be treated in a better manner than the Claimant. She complains of direct discrimination against Mr Loxam and Miss Christoforu. We accept the evidence of Mr Loxam that this was a meeting concerned with the contractual hours and that, with the help of the interpreter, he had carefully gone through the various issues that had arisen and made a note of what the Claimant had been saying and her point of view. We find that he responded appropriately to those matters and his letter following up the meeting of the 9 December 2016 was entirely appropriate in the circumstances and was not discriminatory.
77. The Claimant complains that on the 15 December 2016 she came to work feeling unwell. The Claimant says that she asked Shirley if it was possible to finish earlier. The Claimant says that Mrs Shirley Jones went to see Mrs Caroline Jones and then came back yelling that she could either come to work to fulfil her contractual obligation or go home. Mrs Shirley Jones said that the Claimant did ask if she could go home on this day which she did and that Mrs Shirley Jones did not go to Caroline Jones. Mrs Shirley Jones could not remember anything about this particular incident. We accept that on this day the Claimant was feeling poorly and did not think that she could stay until the end of the shift. It may be that Mrs Shirley Jones did speak to Mrs Caroline Jones about this and told the Claimant that she should go home. We accept that when staff are ill, Mrs Shirley Jones will tell them that they should go home. There was nothing unusual about this response and it was a response that would be expected in the circumstances. Mr Loxam wrote a letter on 16 December to the Claimant saying that he had been informed that the Claimant was unwell on 15 December and could work only one hour of the shift and

'that Mrs Shirley Jones, your supervisor, explained to the Head Teacher that you had seen a doctor, who indicated that you should only work one hour on 15 December 2016. Please can you provide a doctor's note for this period and send it to me at the High School. I wish you a full recovery'.

78. That letter was received by the Claimant on 17 December and the Claimant says that Mrs Shirley Jones twisted the Claimant's words. However, the gist of what happened is that the Claimant was unwell and asked Shirley Jones if she could finish earlier. It is difficult to see what complaint there is about the actions of Mrs Shirley Jones. In a text message of 17 December 2016 the Claimant emailed Mr Loxam to say that she had received a letter from him and she said

'I went to work to work on Thursday for one hour to help them as I was unwell and I told Shirley what doctor suspects. I did not say that that was a doctor recommendation. I told her that I came because I wanted to help. Then she went to Caroline and she gave me a condition either I stayed because my contract or leave. So I took sick. Shirley twisted my words. I am still unwell. Whatever I say or do I have got problems. I am really sorry for bothering

you.'

79. We do not accept that this was direct discrimination because Mrs Shirley Jones was not supportive of the Claimant. Bearing in mind that the Claimant mentioned what the doctor suspects, it would not have been unusual for the school to have requested a doctor's note for this period and for it to be sent to the school.
80. On 19 December 2016 the Claimant wrote to Mr Toal with examples of Mrs Caroline Jones' behaviour towards herself. In that letter the Claimant says that she feels the situation could be linked with Brexit as in previous year when she brought a complaint against Shirley Jones, she was not a victim of such conduct. In the letter the Claimant says that other examples will be provided in the meeting.
81. In that letter of 19 December 2016 the Claimant refers to Mrs Caroline Jones' conduct in very similar terms to that of what she said was Mrs Shirley Jones' conduct towards her from 2015. The Claimant refers to Ms Jones coming up to her shouting at her, she felt like dirt and could see no respect towards the Claimant's person in her tone and body language, and felt under pressure.
82. The Claimant says that on 10 January 2017 Shirley Jones was making enquiries about Summer cleaning and approached all cleaners except herself. The Claimant says that Shirley Jones was aware that the Claimant would not be able to attend the 10.00am to 1.00pm hours because of the other job. A few days later the Claimant says that on the notice board the Summer cleaning list was displayed and that both Shirley and Caroline Jones had arranged for the cleaning to be done during the hours that the Claimant was not able to attend. A notice showing the hours was displayed in the caretaker's office, and a copy produced to the Tribunal. This was normal for this to be done and was arranged by the school. Mr Loxam says that the Claimant came to him to say that she had difficulties and she could not work to which Mr Loxam said they were all trying to deal with the situation. Mrs Shirley Jones said that she never mentioned anything to other cleaning staff and that around January she would set out the deep clean for the Easter inset and Summer, and asked staff if they had a copy. If there were any problems, the staff could come and see her. Staff were also told that there would be no annual leave in the term time and the deep clean time except in emergency. We accept the evidence of Mrs Shirley Jones that other staff were not asked about coming in and the Claimant was not forced to come in.
83. Mr Toal wrote to the Claimant on 9 January 2017 saying that Mr Glyn Davies had been appointed as the investigator and would be supported by Miss Rachel Roberts from HR in relation to fact finding.
84. Mr Glyn Davies wrote to the Claimant on 11 January to say that he was appointed as the investigator and invited the Claimant to a meeting at 3.30pm on 19 January 2017. A different interpreter would be provided because of concerns that the Claimant had with the previous interpreter. The Claimant says that on 12 January she received a copy of the missing page of her written statement and that there was direct discrimination by the Respondent because other employees were provided with full contractual terms and were in a better position than the Claimant. We reject this as a claim of

discrimination and if the Claimant did not receive a copy, it had nothing to do with the fact that she is Polish but because of a possible mistake made in the copying and provision of the terms to the Claimant.

85. On 16 January 2017 Mr Loxam wrote to the Claimant a follow-up letter about the meeting on 9 December 2016. Mr Loxam said that the Claimant needs to put her request in writing for flexible working and sent it to the school so that next steps can be followed. Mr Loxam also asks for the stress risk assessment questionnaire to be completed and returned.
86. The Claimant responded on 16 January 2017 saying that she declared the working hours and holiday period to her other employment but the working hours between the school break announced on 13 January 2017 was the subject of dispute again. The Claimant also wrote on 17 January 2017 to Mr Glyn Davies and Mr Toal saying that the closest suitable date for a trade union representative to attend a meeting was 27 January 2017. Mr G Davies replied on 18 January 2017 suggesting a re-scheduling of the meeting to 27 January 2017. In Mr Davies' letter of 19 January 2017 to the Claimant it was said that school remained committed to meeting with the Claimant to talk through the concerns as soon as possible.
87. In the letter of 16 January 2017 Mr Davies wrote to say that he was commencing the investigation and that this investigation must remain confidential and cannot be discussed with any colleagues. If there were to be complaints of a confidentiality breach or witnesses being intimidated, this could result in disciplinary action being taken. Although in the schedule of allegations the Claimant says that it was Mr Toal who victimised her because other employees were not disciplined for rumours and other comments, and it is correct that the letter begins Mr Toal requested Ms Rachel Roberts and himself, Mr Glyn Davies to commence the investigation, it was a letter written by Mr Glyn Davies not Mr Toad. Mr Toal never gave any instructions about this matter and the paragraph is a paragraph that confirms that the investigation is confidential and is in terms which would be unnecessary regarding warning of disciplinary action. We do not consider because other employees may be discussing the Claimant's case and they were not disciplined. The fact is the Claimant was not disciplined either.
88. On 23 January 2017 the Claimant sent a text message to Mrs Shirley Jones informing her that she would come to work late. On 24 January 2017 the Claimant says that when she arrived at work she realised that Mrs Shirley Jones was unhappy and that she took the Claimant to her office, shut the door after letting Ruth Evans in and started to yell at the Claimant to say if she arrived to work late she must ring the main office and money would be deducted from her wages. Mrs Shirley Jones said that she told the Claimant not to send a text but to call the school on 24 January 2017. Ruth Evans was present but Mrs Shirley Jones did not shout at the Claimant or say money would be deducted from her wages. We accept the evidence of Mrs Shirley Jones about the fact that she did not shout at the Claimant or tell her that her wages would be deducted.

Grievance Meeting – 27 January 2017

89. The notes from the meeting are on pages 133-143 in the bundle. The

meeting started at 3.30pm and concluded at 6.50pm. Mr Glyn Davies stated that the meeting was an investigatory interview being conducted in line with the school's Fairness and Dignity at Work Policy and that he had been appointed to undertake an independent investigation in respect of the Claimant's fairness and dignity at work complaint against Mrs Caroline Jones. Mr Davies informed the Claimant that a statement would be taken from the meeting and sent to her, and her Union Representative for them to read. They could amend it if necessary before signing it as a correct and accurate version of the answers given.

90. The Claimant says that the meeting, which she attended with Mr Singh, her Trade Union representative, was such that she was treated like a suspect rather than a person who had made a complaint and was not treated with respect by either Mr Glyn Davies, or Mrs Rachel Roberts of HR, or by Mrs Helen Muir who was taking the minutes.
91. The Claimant says that she was not listened to and that some of the matters could not be resolved. The Claimant alleges that other employees would be treated with respect but because the Claimant was Polish she was treated in a less favourable way. That allegation is made against Mr Glyn Davies but in the particulars of the complaint it is said that Rachel Roberts did not treat the Claimant in a polite manner. The Claimant made it plain that she was not alleging discrimination in respect of Mrs Helen Muir. It is noted by the Tribunal that Mr Singh and the Claimant requested that the meeting was not recorded and also requested a copy of the minutes immediately after the meeting. It is recorded that Mr Davies informed the meeting that they could request time-out for a break at any point during the process. It is noted on page 134 that it was agreed to go back to complaints since April 2016. It is noted on page 136 that when asked to begin with the letter of complaint on 19 December 2016, the Claimant insisted that she needed to explain circumstances from the beginning. Mr Davies told the Claimant that she needed to understand that the investigation team needed to seek clarity on what had happened from April and asked the Claimant to keep the descriptions short to enable accurate minuting. On page 141 Miss Roberts asks the Claimant where she thought the situation was at the moment. Miss Roberts explained that the school had taken her allegations seriously and would investigate further. Miss Roberts also said that the meeting had established that the formal complaint of 24 November 2016 seemed to go back further and facts needed to be established before being able to find a solution, as issue could be a grievance and/or evidence of wrong doing or disciplinary. However, Miss Roberts emphasised that this was not about the Claimant. The Claimant says that she was told if she starts seeking legal advice, she would be disciplined. This is contradicted by the notes of the meeting and we reject that suggestion since if that had been said, her Trade Union representative would have been alert to a wholly improper threat from the Respondents and it is inconceivable that a formal complaint would not have been made about this matter by the Trade Union representative.
92. The Claimant was asked by Miss Roberts to write everything down in a written chronological order of all that had happened. Mr Davies added that the investigation team required structured information to proceed which would add to the information that they already had. The issue of the contracted hours was mentioned and the Trade Union representative said

that the Claimant was in the process of completing a flexible working application and was waiting to hear more about pay and hours before it goes to the Governors.

93. There was a break in the meeting and when the Claimant came back, it was noted on page 142, the Trade Union representative asked the Claimant if she was happy to return to work. The Claimant replied that she was very stressed and not happy to come back to work as she was so stressed. The Claimant informed the meeting that she has two part-time jobs and now needs time off which has not happened before. Miss Roberts reminded the Claimant of the Powys Counselling Service and that if she was not well for work then a request for Occupational Health would be made to ask if she needed time off and what mediation could be provided. The Claimant was asked what resolution she had in mind to which she said that she did not know what would make it better although she felt that both Mrs Shirley Jones and Mrs Caroline Jones were to blame. She felt that Mrs Shirley Jones and Mrs Caroline Jones were plotting against her and should be removed from their posts. Mrs Shirley Jones and Mrs Caroline Jones were not the right people for their positions. There was then a discussion about the mediation service.
94. As an inspection was coming, it was suggested that the meeting could be convened at a later date after the inspection. The Trade Union representative agreed that it would take time for the Claimant gather and forward her documents and they were happy to wait until after the Estyn inspection for a further meeting. Miss Roberts stated that witnesses would not be interviewed until further information had been received from the Claimant. Mr Davies stated that the investigation would start again once written information had been received. The Claimant confirmed that she had a sick note until 9 February 2017.
95. We reject the suggestion that at that meeting the Claimant was treated like a suspect. There was clearly a need for the investigator, Mr Davies, to have all relevant information and the suggestions made by Miss Roberts were reasonable and helpful in the circumstances. There is nothing in the notes which indicate that the Claimant was being treated like a suspect at all. Clearly there was a need to carefully go through what the allegations were so that the matter could proceed to the next stage.
96. On the 10 February 2017 the Claimant handed to Mr Loxam the request for flexible work dated 7 February 2017 (page 184 of the bundle). The request was directed towards flexibility in regards to the deep cleaning periods which was scheduled in Easter and late August. It was submitted that both Easter and later Summer cleaning hours were not fixed. The Claimant suggests that the issue could be dealt with by allowing her to have time off on Easter and work the hours from 3.30-6.30pm during the Summer term. The Claimant asks for the new working pattern to come into force immediately for no fixed time.
97. The Claimant wrote a further letter on the 15 February 2017 (page 186-187 of the bundle) to Mr Toal in response to the letter of Mr Loxam dated 15 February 2017 in which it is confirmed that the stress risk assessment questionnaire had been received and necessary action would follow and that the request for flexible working would be passed on to the Head Teacher who

would convene a meeting with the Staffing (Pay) Committee, Mr Loxam says that because there will be a delay in that meeting, the Claimant was expected to work on the recess cleaning day on Friday, 17 February 2017. If the Claimant did not attend during this day that would be considered unauthorised absence and therefore would be unpaid. In the letter written to Mr Toal the Claimant says that during the meeting in December 2016 it was clearly explained by herself and her Trade Union representative that there are certain days within the academic year that she is unable to work and can only work those contracted hours due to her second employment. The Claimant says that she works for another employer from 6.00am to 2.45pm and that Mr Toal was aware of the on-going problems since June 2016. Therefore the Claimant did not want this to be treated as an unauthorised absence.

98. On 15 February 2017 Mr Toal responded to say that the request for leave of absence is not approved. The reason for his decision was because the Claimant had informed him that she had other paid employment during the contracted hours for recess cleaning and therefore the request does not apply to leave of absence. Mr Toal says that he understands that the Claimant has been involved in detailed discussion concerning the Claimant's contract with Mr Loxam and Miss Christoforu and that the issue would be referred to them.
99. Mr Loxam wrote on the 15 February 2017 to the Claimant saying that in the Claimant's recent request it was stated that she worked 51 hours per week although Government legislation states that no employee should work more than 48 hours per week and therefore a form was sent to the Claimant for her to sign concerning working more than an average of 48 hours per week.
100. The Claimant wrote a letter dated 16 February 2017 to Mr Toal saying that she had recently returned from sick leave due to work related stress but that she feels frustrated and victimised, and seeks her rights under the Working Time Regulations Act 1998. The Claimant says that she cannot any longer manage the stress, sleepless nights and worrying. Mr Toal wrote in reply to say that the stress risk assessment questionnaire had been received and that would be reviewed in the light of the Claimant's recent letter. Mr Loxam and Miss Christoforu would be contacting the Claimant in due course to arrange for the process to take place. On 27 February 2017 Mr Davies sent to the Claimant draft minutes of the meeting which took place on 27 January 2017.
101. On 3 March 2017 Mr Loxam wrote to the Claimant to say that the absence of the Claimant on 17 February 2017 would be unpaid and recorded as an unauthorised absence. A record had been made of this absence and any further unauthorised absence would be investigated using the Disciplinary Procedure. In general, there is concern around the Claimant's level of absences and this will need to be addressed to support the Claimant and the school. The Claimant said that the Head Teacher informed her that disciplinary proceedings would take place because of her absence. This letter contradicts that understanding and is an example of how the Claimant has misread the situation.
102. On 3 March 2017 Mr Loxam wrote to the Claimant regarding her request for flexible working to say that they need further information to clarify the request and, in particular, how workloads would be managed, what potential impact

the new pattern would have, how any particular difficulties might be managed. If the Claimant wanted a further copy of the flexible working policy then she should let Mr Loxam know as soon as possible.

103. On 3 March 2017 the Claimant's daughter, Miss Agnieszka Florczak, said that she was sitting at home when she heard a letter being pushed through the letterbox and saw a person running away. This was a letter dated 23 January 2017. She then said that she rang her mother and her Trade Union representative. Miss Florczak could give no further details in relation to the person alleged to have posted the letter through the letterbox. The Claimant says that this was undertaken by the school or someone on behalf of the school, and that it is the first that she had seen of the letter of 23 January 2017. We did not find Miss Florczak convincing in her description of what happened on the 3 March 2017 and accept the evidence of the Respondents that they did not deliver this letter or cause it to be delivered in the way alleged. In any event, the information that was required was addressed in a letter of 7 March 2017 which the Claimant delivered. The Claimant says that she is unable to work for three weeks in the year during the cleaning process in the Easter and Summer holidays and asked for a 'permanent elastic contract and to make sure it was done as soon as possible'. The Claimant says that she is giving twenty-four hours to provide her with a final decision in respect of her flexible working request.
104. Mr Toal wrote on 19 March 2017 a number of letters dealing with points raised relevant to the Claimant's position. In one of the letters Mr Toal refers to the fact that the letter of 23 January 2017 was posted first class to the Claimant. Mr Toal says that no letters or correspondence had been hand delivered to the Claimant's house by a member of school staff. In respect of flexible working, Mr Toal says that the letter regarding flexible working will be considered by the Governing Body Panel shortly.
105. On 10 March Mr Mark Hart, Chair of Governors, wrote to the Claimant to say that the Governing Body Pay and Conditions Committee met on 9 March 2017 to consider the request for flexible working but the request was rejected. There were four reasons given:-
1. There would be a burden of additional costs to the school;
 2. There would be a detriment and effect on the ability of the cleaning staff to meet service delivery requirements in relation to deep cleaning;
 3. There is no capacity to organise work among existing employees or recruit additional employees for deep cleans and
 4. There would be a detriment or impact on work quality as well as supervision arrangements.
- These reasons given were rational and appropriate.
106. Mr Hart said that there was a right to appeal to the Governing Body Pay and Conditions Appeals Committee and that should be sent by no later than 27 March 2017.
107. On 13 March 2017 at 5.00pm the Claimant says that she was cleaning the classroom when Ruth Evans approached her and told her that it was 5.00pm

and she was supposed to have finished the cleaning. The Claimant says that she was told to work faster and then Ruth Evans left to see Shirley Jones. After some time both Ruth Evans and Shirley Jones came to the classroom in which the Claimant was present. Shirley Jones raised her voice and told the Claimant she has to finish her work quicker and move to another department by 5.30pm. The Claimants says that other employees were allowed to carry on their duties at their own pace and that Caroline Bevan used to stand by the clock-in machine ten to fifteen minutes before the actual finishing time to click out and she gives another example of about when another cleaner left dirty stairs but Shirley Jones did not remind her to wipe them.

108. Mrs Ruth Evans is employed as a duty cleaning supervisor and has worked at the school for five years. She assists Mrs Shirley Jones who is the main cleaning supervisor for the school. Ruth Evans would have occasions to supervise the Claimant in the absence of Mrs Shirley Jones. Mrs Evans says that on 13 March that she did approach the Claimant at about 5.00pm and the Claimant was still doing the tables, and she did say to the Claimant she needed to work faster because the Claimant had to do the toilets and the vacuuming. Mrs Evans says that she did not shout at the Claimant and that she went up to ask the Claimant something but when she saw the Claimant, she mentioned about her needing to hurry up a bit. Mrs Evans says that a couple of days before this she had found the Claimant sitting on a desk using a mobile phone whilst her vacuum cleaner was still switched on and unattended. What Mrs Evans observed a couple of days before seems to have influenced her reaction on the 13 March 2017 to the Claimant. We accept the evidence of Mrs Evans that she did speak in the way that the Claimant says she spoke to her about hurrying up. That is common to the evidence of the Claimant and to Mrs Evans. We accept the evidence of the Claimant that both Mrs Evans and Mrs Shirley Jones did speak to the Claimant about doing the work more efficiently or faster. We do not accept the evidence of the Claimant that there was any shouting by Mrs Evans. Mrs Evans also made the point that the Claimant was a hard-working worker and that they were satisfied that she was doing her work properly most of the time. We accept the evidence of Mrs Evans and Mrs Shirley Jones that, as part of their duty as a supervisor, they would speak to cleaners and that the Claimant was not singled out in relation as to what happened on the 13 March 2017 compared to other cleaners.
109. Mrs Evans confirmed that on the 10 June 2016 that they did check in relation to the work carried out by the Claimant because there had been a complaint from other cleaners about the Claimant not working properly and being on her phone. It seems that other cleaners had seen the Claimant and had complained. Mrs Evans believes that Mrs Shirley Jones spoke to the Claimant about being on the phone but does not believe that the complaints started after the Claimant herself made a complaint.
110. In relation to fellow colleagues stopping speaking to her, there is evidence as Mrs Ruth Evans indicated that there had been complaints of the Claimant by other cleaners and there would appear to be discontent by other cleaners about the Claimant not turning up for the deep cleans. We reject the Claimant's assertions that Mrs Shirley Jones kept the cleaners up-dated about every single step of the Claimant's situation and that, as a result of

complaints made by the Claimant against Mrs Shirley Jones and Mrs Caroline Jones, the colleagues stopped communicating with her. There may have been a degree of tension arising from the Claimant's non-completion of deep cleans and her attitude towards them when asked by Mrs Shirley Jones or becoming aware of them from lists put up but we do not accept that they were caused by the complaints made by the Claimant as she alleges.

111. On the 24 March 2017 the Claimant says that she sent a letter to Mr Glyn Davies and also Mr Toal setting out the chronological list of incidents which happened from 20 March 2015 (page 222 of the bundle). The Claimant was asked about why the incident alleged on 13 March 2017 did not appear in the list. The Claimant said that it slipped her mind because there was so many other things going on. However, bearing in mind the proximity of what is alleged on 13 March to when this letter was written, we find it improbable that the Claimant would have not included that incident if, indeed, it had been in the way that the Claimant gave evidence about. We prefer the evidence given by Mrs Evans and Mrs Shirley Jones.

Resignation of the Claimant - 27 March 2017

112. By letter dated 27 March 2017 addressed to Mr Toal, the Claimant said that she resigned due to a lack of mutual trust and confidence, and unsatisfactory working conditions (bad treatment). The Claimant said that she was serving a one months' notice. The Claimant mentioned 'the on-going stress, inadequate treatment of my person, problems with reaching an agreement with management and other staff due to my race, refusal of my flexible working application, all these issues made me take a step towards termination of employment'. The Claimant mentions the situation as being on-going for nearly twelve months and that she raised concerns on many occasions but 'there is no hope of improvement' from Mr Toal's side.
113. The Claimant said that she expected the school to investigate over the weekend from the 24 March 2017. Further, from the 4 April 2016 that was a long period of time.
114. Mr Toal replied on 30 March 2017 to say that he would be responding to the resignation letter in full in due course.
115. On 31 March 2017 the Claimant wrote to Mr Toal to ask that a formal grievance meeting should be organised to conclude the investigation.
116. Mr Loxam wrote to the Claimant on the 3 April 2017 to say that Friday, 7 April was an inset day and that the hours of work would be 12.00pm to 3.00pm. All the cleaning staff would also be required to complete the deep clean on 18 to 21 April 2017 and the hours of the deep clean at 10.00am to 1.00pm. Mr Loxam said that that information had been on display in the caretaker's office since 17 January 2017. The Claimant replied on the 5 April 2017 to say that she is unable to work on five days that is Friday, 7 April 12.00pm to 3.00pm, Tuesday, 18 April 2017, 21 April 2017 10.00am to 1.00pm. The reasons for this were known to the manager and supervisor. The Claimant says 'I do remind you about the conflict with working hours, therefore I would like to request a holiday, as my flexible working request was rejected'. It is therefore clear from this letter that the Claimant was unwilling, as she had been in the past, to undertake the hours of working required by the

Respondents.

117. On 12 April 2017 Mr Toal wrote a detailed letter to the Claimant regarding what had happened since 24 November 2016 and the Claimant's formal complaint concerning 'unlawful harassment and victimisation'. Mr Toal asks for clarification about what outcome the Claimant actually wants given that she resigned on 27 March 2017. Mr Toal asked for quantification about the allegations and complaint as agreed on numerous occasions and that he would have no alternative but to conclude the investigation. Mr Toal says that without clear details he has been unable to progress. Mr Toal also says that there is insufficient time because of the school holiday closure to do so before the end of the Claimant's employment. Mr Toal also says that the school is not in a position to approve a request regarding leave during the Easter deep clean.
118. On 25 April 2017 the Claimant wrote to Mr Toal to say that correspondence should not be posted at the school break as this is time for personal use and family. The Claimant says that the fact that correspondence was sent while her on annual leave interfered with her rights to privacy and family life. The Claimant says that she was abroad between 10 April and 23 April 2017. The Claimant says that the letter sent to her by Mr Toal was opened yesterday, 24 April 2017, and that demanding her response by 24 or 25 April is unfair. The Claimant says that she wishes her grievance to be resolved.
119. On 27 April 2017 Mr Toal wrote to the Claimant that correspondence was intended to be received by the Claimant during the period she was expecting to be in work between 18 April to 21 April 2017. The chronology was received on 24 March 2017 and that prior to the school having an opportunity to consider the content of this letter or offer a date to meet that he received the letter of resignation on 27 March 2017. Mr Toal says that following the letter of resignation, the concerns raised cannot be managed by the school grievance procedure as this focuses on resolving disputes with current employees. Therefore, if the Claimant feels that there are concerns that the school should deal with, the Claimant can raise these concerns under the school's complaints procedure if she wishes. The Claimant's non-attendance from 18 April to 21 April 2017 would be classed as unauthorised absence. Therefore, there would not be payment for 15 hours related to the Easter deep clean.

Respondent's Submissions

120. It was submitted that it was for the Claimant to prove the facts that she had suffered less favourable treatment. There was an overlap between the claims of harassment and/or unfair dismissal. The significant date was the 4 April 2016. The Claimant now having two consecutive Easters with her colleagues having to cover her work. The Respondent had reasonable grounds to believe that the Claimant was unaware of her particular obligations. Some of the complaints made by the Claimant are just absurd. For example, in relation to the redundancy letter. Others such as Mr Loxam being criticised as being unprofessional and Mr Glyn Davies, and Rachel Roberts and even the interpreter. It highlights the large number of people criticised by the Claimant and the diverse range of responsibilities they had. It shows the unreasonable way that the claim has been presented.

121. The Claimant says that in relation to her working hours, that the Respondent would not accommodate her need to work. In relation to other persons, they benefitted from being absent when they needed time off as did the Claimant. But what the Claimant wanted was very different which is to get paid despite not working her full hours so that she could get paid work for another employer. Her complaint was not treated less favourably than her colleagues. The claims of discrimination and harassment should be dismissed.
122. In respect of her constructive dismissal/unfair dismissal, the Claimant says that there was delay and a failure to deal with complaints so it is a relevant breach of an implied term. It is not accepted that there was a delay without reasonable cause and it is clear from the grievance meeting that the Claimant wanted to present a complaint against many others than Mrs Caroline Jones and that there was a need for information. An employer should not be expected to investigate all the complaints over a weekend. Although the Tribunal may have some views regarding the matter not being investigated at any time, that issue cannot affect the constructive dismissal claim because of the timing. It may be that the school took HR advice regarding policies and were mistaken but a relevant comparator to the Claimant would have been treated the same.
123. As to victimisation, it is accepted that the 19 April 2016 complaint was a protected act but not accepted that there were any detriments arising from that.

Claimant's Submissions

124. The Claimant emphasised that she is not a solicitor and that she has written as she is able to in circumstances where she finds it difficult to explain the experience that she had had. It was not until 9 December 2016 meeting that she realised that she had a missing page of her contract. Everything changed after the Brexit campaign then unfriendly looks and different treatment. The Claimant had tried, with the assistance of her Trade Union, to solve the issues but the Respondents had done nothing to end the issues. The Claimant criticises the fact that a number of her documents were not put in by the Respondents because they wanted to hide any document that she had.
125. The Claimant did complain in March 2015 to Caroline Jones. She handed in a complaint to her. She was threatened with disciplinary and non-payment if she had time off. She had swapped hours to avoid any problems but then her other employers said that she could not continue with that arrangement because of what managers above her boss in that employment had said.
126. Shirley Jones was waiting for an opportunity for revenge and they did not like the fact that she was not at work. The Claimant referred to her schedule of allegations and that Shirley Jones knew everything.
127. The Claimant went to the Council. That was not to try to bully Caroline Jones but to go for justice. The Claimant wanted to come to work and to inform the Council to inform the school. The Claimant said she was unhappy with the interpreter and asked to change the interpreter.

128. The Claimant said that she always sent texts to the school and she proved that Shirley Jones had sent a text message, and that she is fifty years old and a responsible woman with adult children and she does her work responsibly. The Claimant said that she was a stranger here and that others were protecting their British colleagues. Other people would not come to work and there were no problems. The work that she was doing in the boys' section was very hard and difficult because it was a large section with a lot of work. Everything happened after she complained and after the meeting. Mrs Caroline Jones and Mrs Shirley Jones were good colleagues and they would tell each other everything and they were looking for an excuse to dismiss her. Everything had been going on for over a year and she needed time to recover from what had happened. After she had left her job her body calmed down because she was exhausted. She was going to work and did not know what happened and was not in the right condition to work.
129. At the 27 January 2017 meeting there was smirking between people and people would put things in a different way, sometimes fifteen times. The Claimant said that she did provide sufficient evidence and the investigation could have been conducted and they could have replied over the weekend. There was time in the term time to speak to individuals and witnesses. During her notice period no one talked to her and said to her to please stay or thank her whereas another member of staff, Maria, was leaving, Mrs Christine Jones asked her to stay.
130. Ms Sarah Christoforu should not have been present at meetings as the Claimant had complained about her. The Claimant said that she was not lying about any of these incidents and she would not come to the Tribunal to lie. Her resignation was said by Mr Toal and Mr Loxam to be a surprise but it was not surprising as the issue had not been resolved. The Respondents had not improved her situation. The redundancy was produced after she came back from sick leave and they were basically trying to get rid of her. The Respondents did not want any agreement.
131. The Claimant emphasised that part of her submissions were contained in the schedule of allegations document under the heading of unfair constructive dismissal. It is not necessary to repeat everything that is written down in that document. The Claimant says that she provided reasons for her resignation and there was a lack of mutual trust and confidence, and she could no longer tolerate the poor treatment that she had experienced during her employment with the Respondent. The Claimant says in that document that she wishes to highlight that she had been trying to reach agreement with the Respondents on many occasions but she gave up after twelve months. The dismissal is unfair because the Respondents discriminated against her by way of members of the staff and that when she enforced her rights under the Equality Act, they did not act reasonably in order to prevent further acts of discrimination. Due to the bad working environment, she had to resign.

The Law

132. Direct discrimination is defined by section 13 of The Equality Act 2010 as follows: -

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

133. Section 4 of the Act says that:-

Race is a protected characteristic.

134. Section 26 of the Act defines harassment as follows:-

(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.

...

(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 –

... **race**

135. Section 27 of the Act defines victimisation as follows:-

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

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

136. Section 136 of The Equality Act is headed burden of proof and says:-

136. Burden of Proof

(1) This section applies to any proceedings relating to a contravention of this Act.

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

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

137. Section 85 of the Employment Rights Act 1996 says under the heading Circumstances under which an Employee is dismissed

85. Circumstances

- (1) *For the purposes of this part an employee is dismissed by his employer if (and subject to subsection (2)) ... only if –*
- (c) *the employee terminates the contract under which she is employed (with or without notice) in circumstances he is entitled to terminate it without notice by reason of the employer's conduct*

138. Section 98 of the Employment Rights Act 1996 says:-

“(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer show –

- (a) *the reason (or, if more than one, the principal reason) for the dismissal, and*
- (b) *that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of any employee holding the position which the employee held*

(4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

- (a) *depends on whether, in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
- (b) *shall be determined in accordance with equity and the substantial merits of the case.”*

139. In *Western Excavating (ECC) Limited v Sharp* 1978 (ICR221), the Court of Appeal ruled that for an employer's conduct to give rise to a constructive dismissal it must involve a repudiatory breach of contract. As Lord Denning MR put it

“if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.”

140. Therefore, there must be established a fundamental breach of contract on the part of the employer; the employer's breach caused the employee to resign; and the employee did not delay too long before resigning thus affirming the contract and losing the right to claim constructive dismissal.

141. In the case of **Essop and Others v The Home Office (UK Border Agency)**

2017 (UKSC27), Lady Hale after referring to section 9 of The Equality Act 2010 which explains what is meant by race, which includes (a) colour; (b) nationality; (c) ethnic or national origins, said that

***“The concept of discrimination obviously involves comparisons between groups or individuals. Section 23(1) of The Equality Act provides that on a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.*”**

142. Having defined what is meant by discrimination, Lady Hale goes on to say that the Act defines the circumstances in which it is unlawful. Section 39 under the heading Employees and applicants says:-

- (2) An employer (A) must not discriminate against an employee of A's (B)***
—
(a) as to B's terms of employment;
(b) in the way A affords B access, or by not affording B access to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
(c) by dismissing B;
(d) by subjecting B to any other detriment.

143. In the case of Essop, Lady Hale says:-

“direct discrimination is comparatively simple: it is treating one person less favourably than you would treat another person because of a particular protected characteristic that the former has”.

144. In paragraph 17 of the Judgment, Lady Hale said:-

“Under Section 13(1) of The Equality Act 2010 this has become treating someone less favourably ‘because of’ a protected characteristic. The characteristic has to be the reason for the treatment. Sometimes this will be obvious, as when the characteristic is the criteria employed for the less favourable treatment. At other times it will not be obvious, and the reasons for the less favourable treatment will have to be explored|. An example is Nagarajan v London Regional Transport 2000(1)AC 501 where the Tribunal's factual finding of conscious or sub-conscious bias was upheld in the House of Lords confirming the principle established in R v Birmingham City Council Exp Equal Opportunities Commission 1989 AC1155 and James v Eastleigh Borough Council 1990 (2AC751) that no hostile or malicious notice is required. James v Eastleigh Borough Council also shows that, even if the protected characteristic is not the overt criterion, it would still be direct discrimination if the criterion used exactly corresponds with the protected characteristic and is thus a proxy for it.”

Conclusion

145. We have set out the findings of fact in relation to the allegations in the Scott Schedule. We accept the evidence of Mrs Christine Jones about the interview and the fact that the Easter and Summer deep cleans were mentioned. However, it was clear that the Claimant has a limited command of English. With no interpreter being present at the interview, we find that it was a difficult conversation and that the Claimant would not have got the full content of what was discussed. We have also found that the Claimant did not know about the job advert but knew about the job from her friend who was also working with her in the other employment.
146. In March 2015 the Claimant believed that she did not have to work during the Easter deep clean and had made other plans. Indeed, at every Easter period, for various reasons, the Claimant found it inconvenient for herself to do these deep cleans. Mrs Shirley Jones did not understand why the Claimant was so insistent about not doing the deep cleans. The Claimant has alleged that Mrs Shirley Jones treated her differently because other employees were not treated in the same way. The Claimant at best confuses the situation about the contracted hours to work during the Easter and Summer breaks, that cleaners are expected to do, with situations where for various personal reasons cleaners are unable to attend their work and are excused. We reject the allegations that Mrs Shirley Jones treated the Claimant in a discriminatory way because she was Polish. We accept the evidence of the Respondents that the treatment of the Claimant had nothing to do with the fact that she was Polish. It was to do with the fact that the Claimant was not undertaking her role regarding deep cleaning during the Easter period at this time.
147. We accept the evidence of Mrs Caroline Jones that she became aware there was a problem with the Claimant working during the Easter and Summer deep clean periods when the Claimant's daughter came into her office and informed Mrs Jones that her mother was not well and was going to Poland for treatment. The content of communications between the Claimant and other employees of the Respondents has to be seen in the light of the fact that the Claimant was insistent that she would not come for personal reasons to the school to carry out her contracted hours. As we have found the Claimant did not receive the page of the contract. The Claimant may have been acting under a misapprehension. However, the contract that was provided said that the Claimant would be employed for 15 hours per week with a daily start and finishing time as per the requirement of the Head Teacher at the school. This is precisely what the Respondents were telling the Claimant was the position. We have accepted the evidence of Mrs Caroline Jones and Mrs Shirley Jones regarding the events in March 2015 and that no formal complaint had been received by Mrs Caroline Jones. Mrs Shirley Jones does not have a perfect memory of events but we reject the accusations that Mrs Shirley Jones picked on the Claimant because of any reason connected with her nationality or ethnic origin. There were appropriate communications between Mrs Shirley Jones and the Claimant by way of text and supervision by Mrs Shirley Jones.
148. When matters had been set in motion leading to meetings organised by the school, the Claimant made criticisms about, for example, the fact that Mrs Caroline Jones had not booked an interpreter, but we reject the Claimant's

evidence that all these sequences of events from then and going forward were because she had made complaints and that she was victimised as a result. The complaint of discrimination in April 2016 was a protected act but we find that the Claimant suffered no detriments because of it.

149. We accept that the meetings were properly organised and professionally carried out by, amongst others, Mr Loxam and Mrs Christoforu who were anxious to get a resolution of the matters raised by the Claimant. The Claimant clearly felt, as she said a number of times, the pressure during that period of time, for example, in relation to receiving letters about the contractual terms. That was an inevitable consequence of the raising of the matters by the Claimant and the way that there were properly being treated by the Respondents. The Claimant believed that everything that was done was because she was Polish and arose from the way that the Respondents were not sympathetically dealing with her request not to work the hours that she was contracted to work. We find that it became clear from April 2016 what the position was regarding the contractual hours but this was something that the Claimant was not prepared to accept. It is clear from the letters that the Claimant wrote up to the time and after she resigned that she was not prepared to accept what was being required of her as a cleaner employed by the Respondents. The Claimant was clearly frustrated by the refusal to accept the flexible working which she had put forward. The Claimant says that she received the missing page in January 2017 and makes an allegation that there was discrimination because other employees were provided with full contractual terms of their employment. We have no hesitation in rejecting this as a claim of discrimination. We accept the explanations that the Claimant may not have received this but it had nothing to do with the fact that she was Polish.
150. It is unfortunate that the Claimant was feeling under stress and had to be sent home or had to take leave. Whether this was due to the amount of work that she was trying to do in her two jobs or not, or because of other reasons personal to herself is unclear. Whatever the reasons we do not consider that it arose from the actions or omissions of the Respondents in the way alleged and as we have found in our findings of facts.
151. We accept that the investigation was protracted because of the need to have the full picture of the allegations being made by the Claimant. It was reasonable of the Respondents to write the letters they did to the Claimant and to conduct the meetings in the way that they did in order to properly investigate complaints made by the Claimant. However, we do not consider that after the Claimant had resigned, that there was a proper interpretation by the Respondents about whether the complaint of the Claimant, as set out in her March 2017 letter, could not be investigated under the Grievance Procedure for Schools as opposed to the School's Complaint Policy. The definition of grievance in the Grievance Procedure for Schools' policy under paragraph 2 is that it is a concern, problem or complaint that an employee raises with their employer. This is what the Claimant had done when she was an employee. It should have been investigated in accordance with that policy and a determination given. Even though paragraph 10 of the Grievance Procedure for Schools which is headed 'grievances raised by ex-employees' and states that an employer is not required to deal with 'a grievance' raised by an ex-employee, as the grievance procedure focuses on

resolving disputes with employees and that issues raised by ex-employees should be considered under the school's complaints policy, this can only be appropriate where someone has left the employment and then raises a grievance. It cannot be applicable where a person is an existing employee who raises a grievance at the material time whilst still employed by the Respondents. Whilst it is unfortunate that there has not been an investigation and conclusion reached under the Grievance Procedure for Schools, which would possibly have meant that a number of the matters raised during the course of the Employment Tribunal hearing, would have been either not raised at all or in part, since they would have given the Claimant at least the Respondent's answers to the matters which had been raised. Nevertheless, this observation is one which is not material to the findings that we make because the Claimant resigned within a short space of time of the giving of full particulars to the Respondents and before the reply about the procedure was sent to the Claimant.

152. In reaching our conclusions we have applied the burden of proof relevant to discrimination cases, but have accepted the explanation of the Respondents regarding events which occurred and the reasons why various meetings were held and explanations given to the Claimant regarding her employment. We reject the assertions that the Claimant was victimised for making protected acts since it is clear that the Respondents took the Claimant's allegations seriously and initiated, with the assistance of HR, an investigation into those matters.
153. The Claimant said that the reasons for her resignation were because of a mutual lack of trust and confidence. We find that there was no breach of the implied term of trust and confidence that would entitle the Claimant to resign. We find that there was no dismissal within the meaning of section 95 of the Employment Rights Act 1996. The reality is that the Claimant was not prepared to adhere to the terms and conditions of her employment as a cleaner and work during the times specified by the Respondents and that that was the reason for the resignation. There was no breach of contract by the Respondents.
154. The unanimous decision of the Tribunal is that the complaints of discrimination, harassment, and victimisation are dismissed. The claim for unfair dismissal is also dismissed.

Employment Judge Davies

Date: 23rd August 2019

JUDGMENT SENT TO THE PARTIES ON

.....23 August 2019.....

FOR THE TRIBUNAL OFFICE