Case Numbers: 2300864/16; 2300312/7; 2301127/17; 2302767/17; 2300964/18; 2302689/18

EMPLOYMENT TRIBUNALS

Claimant: **Ms Sharlene Edey**

Respondent: **London Borough of Lambeth**

Heard at: **London South Employment Tribunal**

On: **11 February for 15 days and 1-3 May in chambers**

Before: **Employment Judge Anne Martin**
Ms B Leverton
Mr Taj

Representation:
Claimant: **In person**
Respondent: **Mr J Arnold – Counsel**

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that all the claims made by the Claimant are unfounded and are dismissed.

RESERVED REASONS

1. The Claimant brought 8 claims against the Respondent. She withdrew one, and one was separated from the claims that are the subject of this decision. This Tribunal is dealing with claims 1-4 and 6-7. By any standard this is a complicated case with many witnesses and documents running to over 4,000 pages. The issues to be determined are extensive and complicated. Appended to this judgment is the list of issues as agreed by the parties. The Respondent defended all claims.

2. The claims are as follows:

	Claim number	Date of presentation	Jurisdictions
1	2300864/16	28 April 2016	Race Discrimination Disability Discrimination
2	2300312/17	22 December 2016	Race Discrimination Disability Discrimination
3	2301127/17	12 April 2017	Race Discrimination Disability Discrimination
4	2302767/17	6 October 2017	Race Discrimination Disability Discrimination
6	2300964/18	17 March 2018	Race Discrimination Disability Discrimination
7	2302689/18	14 June 2018	Race Discrimination Disability Discrimination Unfair Dismissal

3. Rather than consider each issue in turn, the Tribunal has grouped the issues together into themes so that the chronology of each theme is preserved and there is clarity as to how matters evolved. All the issues were considered in detail by the Tribunal even though the Tribunal has not slavishly followed the list of issues in its reasoning. There is inevitably overlap between the issues in the claims and where a finding is made in one claim, this also applies to the same issue which may arise in a different claim.

The hearing

4. The evidence was heard over 15 days. The first two days were used for the Tribunal to read the witness statements and documents referred to. The Claimant's evidence was heard from day two to five. SE's evidence was heard on day 6. The Respondent's evidence was heard from day six to day thirteen. Submission were given on day fourteen and the Tribunal was in chambers on day 15 and spent a further three days in chambers on 1 – 3 May 2019.

5. The Claimant had witness statements from two individuals who did not attend to give evidence and whose evidence was disputed by the Respondent. As a result, little weight could be attached to their evidence.

6. Given the number of witnesses, the names and brief description of the witnesses is below. As this judgment will be on the public register some names have been changed to initials.

    a. The Claimant

    b. **SE** – The Claimant's sister involved in the issue relating to Mr Green delivering documents to the family home.

c. **Mrs Linda Adams** – Executive Head Teacher (Landsdown and Turney Schools) and the Claimant's line manager

d. **SG**– Premises manager – hand delivered documents to the Claimant's home

e. **MG** – Higher Level Teaching Assistant

f. **AG** – Higher Level Teaching Assistant

g. **GR** – Finance and Administration Officer, shared office with the Claimant

h. **NM** – Assistant Head Teacher (Landsdown)

i. **Ms Sue Osborne** – Chair of Governors

j. **JT** – Head of School (Turney)

k. **Kate Andrews –** first external investigator into disciplinary allegations. She is a qualified solicitor employed by Judicum.

l. **Craig Stilwell** – second external investigator into disciplinary allegations Mr Stilwell is a qualified solicitor who is not a practicing as a solicitor but whose name is on the Solicitors Roll.

m. **CJ** – art teacher

n. **Ms Theodora Hardy** – Vice Chair of Partnership Governors. Chair of Disciplinary Panel and Presenting Officer to appeal.

o. **Mr Robert Butler** – Partnership Governor and Chair of appeal panel

7. The Claimant has medical conditions for which adjustments were made including regular breaks, the provision of a suitable chair and rearranging the furniture so that the Claimant could give her evidence more easily. Other witnesses also had adjustments made for them as needed.

8. On day three (the first day of oral evidence) the Claimant complained that one of the Respondent's witnesses had deliberately trod on her sisters' foot in the toilet in the lunch break and laughed. The Claimant and representatives for the Respondent were asked about this and it was suggested that given that the space in the ladies' toilets was limited, that this could have been an accident. The Claimant was adamant it was deliberate and her sister in her evidence said that she had wanted to call the police, but her mother had told her not to. It was agreed that the Claimant and her family would use the disabled toilet to avoid them meeting the Respondent's witnesses in the toilet.

9. The Respondent provided new bundles at the start of the hearing (there had been bundles produced for a previous hearing which had to be abandoned and claim 8 was added to those to be considered at this hearing) to incorporate all the claims now before the Tribunal. It was agreed that all the papers from the previous hearing could be disposed of and they were destroyed on the first day of the hearing. On day three, the Clamant said that the separate bundle she had produced for the previous hearing had not been reproduced by the Respondent and it had copied something else. The Respondent's position was that it had

copied what she had sent them by email. This was not raised by the Claimant at the time it was agreed the previous bundles could be destroyed. The Claimant brought with her copies of what she said was the bundle she had previously brought. The Respondent objected as there were documents in that bundle that it did not recognise from the previous hearing and did not consider to be relevant. As the previous bundle had been destroyed it was not possible to reconcile this. As the Respondent's main objection was that the documents were not relevant, rather than spend time discussing this further, the Tribunal decided to allow the documents on the basis that if they were not relevant, they would not be referred to.

The relevant law

10. The Respondent provided the Tribunal with detailed submissions on the law which are not repeated here but were considered in detail including the case law referred to therein which is accepted as being accurate.

11. **S6 Equality Act 2010** "a person has a disability if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities".

12. In Goodwin v Patents Office 1999 ICR 302 the EAT gave guidance on the proper approach to adopt when applying the DDA's provisions. This guidance is relevant when deciding matters under the Equality Act 2010. The guidance requires a Tribunal when determining disability to look at the evidence by reference to 4 different questions or conditions.

13. Did the Claimant other mental physical impairment?

14. Did the activities affect the Claimant's ability to carry out normal day-to-day activities?

15. Was the adverse effect substantial?

16. Was the adverse condition long-term?

17. In Wigginton v Cowrie and others t/a Baxter international (A partnership) the EAT held that these four questions should be closed sequentially and not together.

18. In Cruickshank v VAW Motorcast Limited 2002 ICR 729 the EAT held that the time to assess the disability is the date of the alleged discriminatory act. In Richmond Adult Community College V McDougall 2008 ICR 431 the Court of Appeal held that the date of the discriminatory act is also the material time when determining whether the impairment has a long-term effect.

19. The burden of proof is on the Claimant to show that he or she has satisfied the definition.

20. An impairment can be physical or mental. There is no requirement for the impairment to have a specific diagnosis.

21. The words “substantial adverse effect” is defined in section 212(1) Equality Act as meaning "more than minor or trivial". Whether a particular impairment has a substantial effect is a matter for the Tribunal to decide. The focus should be on what the Claimant cannot do, or can only do with difficulty as set out in Leonard v Southern Derbyshire Chamber of Commerce 2001 IRLR 19 EAT.

22. **Appendix 1 of the EHRC Employment Code** states that "normal day-to-day activities are activities that are carried out by most men and women on a fairly regular and frequent basis, and gives examples of walking, driving, typing and forming social relationships. Account should be given of how far the activities are carried out on a normal frequent basis. The guidance emphasises that in this context, "normal" should be given its everyday meaning. In Goodwin v Patent Office the EAT considered that there was no need to specify what constitutes a day-to-day activity on the basis that, whilst it is difficult to define, it is easily recognised. In this case the ET stressed that the enquiry is focused on normal daily activities, not on particular circumstances.

23. **Paragraph 2(1) of schedule 1 of the Equality Act 2010** says that the effect of impairment is "long-term" if it:

    a. has lasted for at least 12 months;
    b. is likely to last released 12 months; or
    c. is likely to last the rest of the life of the person affected.
    d. "Likely" in this context has been defined by the House of Lords in the case of SCA Packaging Ltd v Boyle 2009 ICR 1056 as something that is a real possibility in the sense that it "could well happen" rather than something that is probable or "more likely than not".

24. **Section 13(1) Equality Act 2010** provides as follows:

    13 Direct discrimination

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

    The provisions as to the burden of proof are now set out in **section 136** of the 2010 Act. They apply to all the claims made in these proceedings under the Act.

    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.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

25. In considering the claim of direct discrimination, the first task of the Tribunal is to decide whether on the primary facts as proved by the Claimant, and any appropriate inferences which can be drawn, there is sufficient evidence from which the Tribunal could (but not necessarily would) reasonably conclude that there had been unlawful discrimination. If the Claimant can prove such facts, then the burden of proof passes to the Respondent to show that what occurred to the Claimant was not to any extent because of the relevant protected characteristic as set out in the Equality Act 2010. In each case, the matter is to be determined on a balance of probabilities. The fact that a claimant has a protected characteristic and that there has been a difference in treatment by comparison with another person who does not have that characteristic will not necessarily be sufficient to establish unlawful discrimination. In all cases the task of the Tribunal is to ascertain the reasons for the treatment in question and whether it was because of the protected characteristic. The provisions of section 136 of course apply to any proceedings under the Act, and not only to claims of direct discrimination.

26. **Section 23** Equality Act 2010 provides that: "On a comparison of cases for the purposes of section 13...there must be no material difference between the circumstances relating to each case."

Victimisation

1. Section 27 of the Equality Act 2010 ("EqA") provides:

"(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.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule."

2. In **St Helens Metropolitan Borough Council v Derbyshire** [2007] IRLR 540, HL Baroness Hale endorsed the three step approach set out in **Chief Constable of West Yorkshire Police –v- Khan** [2001] IRLR 830, HL with regard to the RRA, which equally applies to the EqA**:**

"There are three relevant questions under the 1975 Act. First, did the employer discriminate against the woman in any of the ways prohibited by the Act? In this particular case, the alleged discrimination was by 'subjecting her to any other detriment' (contrary to s.6(2)(b) of the 1975 Act). Secondly, in doing so, did the employer treat her 'less favourably than ... he treats or would treat other persons'? Thirdly, did he do so 'by reason that' she had asserted or intended to assert her equal pay or discrimination claims or done any of the other protected acts set out in s.4(1) of the Act?

Harassment

3. Section 26 of the EqA provides:

(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 - . . . disability"

4. A Tribunal should consider all the acts together in determining whether or not they might properly be regarded as harassment (**Driskel –v- Peninsular Business Services Ltd** [2000] IRLR 151, EAT and **Reed and Bull Information Systems Ltd –v- Stedman** [1999] IRLR 299, EAT).

5. The motive or intention on behalf of the alleged harasser is irrelevant (see **Driskel** above).

6. The Court of Appeal confirmed in **Land Registry –v- Grant (Equality and Human Rights Commission intervening)** [2011] ICR 1390 "*when assessing the effect of a remark, the context in which it is given is always highly material*".

7. In **Richmond Pharmacology –v- Dhaliwal** [2009] ICR 724 the EAT held that the Claimant must have felt or perceived his or her dignity to have been violated. The fact that a Claimant is slightly upset or mildly offended is not enough.

8. The word 'victimisation' is specifically defined by the Equality Act 2010 and has a different meaning from the normal use of the word. In considering a claim of victimisation the claimant must prove that there has been a protected act as defined. The claimant must also establish that there has been a detriment, and most importantly the Tribunal must find that the detriment was because of the protected act. A claim of victimisation cannot succeed without that causal link being established.

27. We note that section 14 of the Equality Act 2010 referring to circumstances where an individual has a combination of two relevant protected characteristics has not been brought into force. Consequently we must consider the two characteristics of disability and race separately.

Reasonable adjustments

28. An employer is required to make reasonable adjustments under ss.20 and 21 where a provision, criterion, or practice (PCP) applied, placed a disabled person at a substantial disadvantage in comparison with non-disabled persons. Failure to do so amounts to unlawful disability discrimination. Tribunals determining whether it would be reasonable for the employer to have to make a particular adjustment in order to comply with the duty must take into account the extent to which taking that step would prevent the disadvantage caused by the PCP (Equality and Human Rights Commission's Code of Practice on Employment).

29. The case of Environment Agency v Rowan [2008] ICR 218 set out guidance on how to approach reasonable adjustment cases. It held that the Claimant must show:

    a. There was a PCP

    b. The PCP put the Claimant at a substantial disadvantage in comparison to persons who did not share his disability

    c. The adjustment would avoid that disadvantage

    d. The adjustment was reasonable in all the circumstances

    e. The failure to make the adjustment caused the losses alleged.

30. The duty to make adjustments may require the employer to treat a disabled person more favourably to remove the disadvantage which is attributable to the disability. This necessarily entails a measure of positive discrimination (**Archibald v Fife Council** [2004] IRLR 651, HL).

31. The correct approach to assessing reasonable adjustments is addressed in **Smith –v- Churchills Stairlifts plc** [2006] IRLR 41; **Environment Agency –v- Rowan** [2008] IRLR 20; and **Project Management Institute –v- Latif** [2007] IRLR 579.

32. In **Smith**, the comparative exercise required by s.6(1) of the DDA was considered by the Court of Appeal having regard to the speeches contained in the judgment of the House of Lords in **Archibald**. Maurice Kay LJ stated: ". . . Notwithstanding the differences of language, it would be inappropriate to discern a significant difference of approach in these speeches. . . it is apparent from each of the speeches in **Archibald** that the proper comparator is readily identified by reference to the disadvantage caused by the relevant arrangements".

33. With regard to knowledge the EAT in **Secretary of State for the Department of Work and Pensions v Alam** [2009] UKEAT 0242/09 held that the correct statutory construction of s 4A(3)(b) involved asking two questions: (1) Did the employer know both that the employee was disabled and that his disability was liable to affect him in the manner set out in section 4A(1)? If the answer to that question is: 'no' then (2) Ought the employer to have known both that the employee was disabled and that his disability was liable to affect him in the manner set out in section 4A(1)? If the answer to that question is also 'no', there is no duty to make reasonable adjustments.

Unfair dismissal

34. It is for the Respondent to establish a potentially fair reason for dismissal. Here, the reason advanced is conduct. The question is, has the Respondent shown a genuine belief in a set of facts amounting to misconduct by the employee?

35. Did the Employer act reasonably in treating that reason as a sufficient reason for dismissal (Employment Rights Act 1996 section 98(4)(a))? That question is to be, determined in accordance with equity and the substantial merits of the case (section 98(4)(b)). It is not for the Tribunal to substitute its view of the matter for that of the disciplining officer or appeal panels. Thus the focus is on the dismissing officer's reasons and, applying the British Home Stores Ltd v Burchell [1980] ICR 303 test (here, the burden of proof being neutral), whether he had reasonable grounds for his belief following a reasonable investigation.

36. Procedural fairness is a relevant consideration, applying the range of reasonable responses test (see Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23).

37. Did the sanction of dismissal fall within the range of reasonable responses open to the employer? Dismissal will fall within the range rendering the dismissal fair if one body of reasonable employers would dismiss on the facts properly found, even if another group would impose a sanction short of dismissal.

The Tribunal's findings of fact

38. These findings of fact have been made on the balance of probabilities having considered the evidence both oral and written. The evidence was extensive, and these findings only relate to those matters that are relevant to the issues and necessary to explain the decision reached.

39. The Claimant was employed by the London Borough of Lambeth. She worked at Landsdown School ("the school"). This is a small specialist school for children with special needs. The students who have severe autism and other learning disabilities were described as some of the most disabled children in the country with these conditions. The school is in Brixton and about 70% of students come from BME backgrounds.

40. The school was in special measures when Ms Adams joined as Executive Head Teacher. It is now rated 'good' by Ofsted. When Ms Adams joined there was an interim executive board of governors ("IEB") given the special measures status, and a soft federation with Turney School which was also a specialist school. In December 2015 the soft federation became a hard federation and a new Board of Governors was appointed in 2015.

41. The Claimant was initially employed via an agency in July 2012 as administrator, then PA, to Mrs Adams. On 21 October 2013 she entered into a fixed term contract and on 1 April 2014 became a permanent member of staff.

42. The Claimant initially had good relations with her colleagues and was well thought of. The Tribunal heard that the Respondent had no issues with her performance, attendance or time keeping until she went on long term sick leave in September 2015 after which she did not return to work. The Claimant says that all was well at work until April 2015. The Respondent started capability procedures in relation to her absence, however this procedure was superseded by her dismissal for gross misconduct on 15 March 2018.

43. The Claimant's role was primarily of PA to Mrs Adams. They worked closely together. The Claimant had a job description which set out her duties. The Tribunal finds that a majority of the duties in this job description were duties that could only be carried out on the school premises and were not able to be done remotely from home. Examples of these types of duties include:

    - Being the first point of contact for staff, pupils and visitors, in person, via the telephone and the schools email. Responding to queries, providing information and advice to stakeholders and signing in visitors.
    - Signing for the bus children and ensuring registers are correct….
    - Act as Personal Assistant to the Executive Headteacher…….
    - Ensuring site security through implementation of Security Procedures
    - Maintaining the Reception as an orderly and welcoming environment
    - Dealing promptly and efficiently with school incom9ing post and delivering to staffroom trays, including salary slips

- Stamping outgoing post and ensure it is posted. It was essential that there was trust and confidence between the Claimant and Mrs Adams given the close working relationship between them.

The Claimant's full job description was included in the bundle.

When did the Respondent know that the Claimant was disabled?

44. The disability relied on by the Claimant is an impairment to her back which she says was caused by an injury following an incident when child D jumped on her back and pushed and pulled her. The Case Management summary of Judge Elliott dated 7 July 2016 records that the Claimant was very specific in relation to the disability she relied on stating the following: "**Disability. On the September 2014 (sic) the Claimant was involved in an incident with an 11-year old student which she says left her permanently disabled. The disability she relies upon is a back injury**". The Respondent conceded that the Claimant was a disabled person. The Claimant has other medical issues which she did not disclose at any time prior to the hearing and were not relied on by the Claimant at the preliminary hearing where the nature of her disability was discussed and recorded.

45. The Claimant did not disclose any medical records to the Respondent or occupational health during her employment nor to the Tribunal for this hearing. During the hearing, and from one of the documents in the small bundle of documents produced by the Claimant on day three, it was revealed that the Claimant has fibromyalgia. The Respondent was unaware of this and there is no evidence about when this condition started, the extent of it, or how it manifests itself. It is not a condition relied on by the Claimant and appears to be a condition she deliberately concealed blaming the effects of the incident with child D for all the symptoms. The Tribunal considers that had the Claimant relied on fibromyalgia, this would no doubt have been accepted as a disability. The only inference to be drawn is that the Claimant wanted to hide this as she was pursing a personal injury claim against the school in relation to the child D incident (which she withdrew). This goes to her credibility.

46. The Respondent has accepted the Claimant has a disability; however, it remains for the Tribunal to determine when the Respondent had knowledge of this or when it could reasonably have been expected to know of this. The Respondent had in a previous preliminary hearing sought to retract its concession that the Claimant was disabled on the basis that the Claimant had brought a personal injury claim and this admission may affect its defence, but this was rejected by the Tribunal. The Claimant subsequently withdrew the personal injury claim.

47. The Claimant's case is that she became disabled immediately following the incident with child D. AG administered minor first aid to the Claimant immediately following the incident as she was a first aider. The Claimant did not take any time off work. The Respondent paid for both the Claimant and MG (who was also involved in the incident) to attend an osteopath known to Mrs Adams who had used her in the past. The Claimant did not ask for more treatment when the sessions provided by the Respondent ended and crucially did not take any time off work until September 2015, over a year later, when she went on long term sick leave. In the intervening period the Claimant was involved in a minor car

accident in February 2015. She did not take time off after this accident until September 2015 when she went on long term sick leave.

48. The Claimant says she was in pain and that everyone knew she was disabled following the incident with child D. Her case is that she was disabled from the time of the incident with child D. It was explained to her that there was a difference in being injured to being disabled as defined by the Equality Act 2010 which requires the condition to either have lasted for a year or be expected to last for a year. In the absence of any medical information relating to the time between the incident and the Claimant going on sick leave, the Claimant has not shown that at that time any impairment was expected to last for twelve months or more (whatever the cause of that impairment was).

49. The Claimant's case is that her colleagues knew she was disabled as she had mobility problems especially when bending down. She says she had a cushion on her chair (this was noted by her colleagues) and had to prop her computer up on reams of paper (her colleagues deny having seen this). She complains that her colleagues made comments about her mobility problems which they all deny. Save for some back pain immediately after the incident with child D, no one said that they saw any indication that the Claimant was disabled, save that she would occasionally complain that her back hurt. Six witnesses gave evidence to this effect (Mrs Adams, GR, AG, MG, NM and CJ).

50. There is no medical information (except for the Claimant's GP fit notes) until some four months after the Claimant went on sick leave, when there was an Occupational Health Report dated 14 January 206. In this report there is an opinion that the Claimant's symptoms have lasted over 12 months but with no reasons being given of the basis for that opinion. There is no reference in this report to the advisor having sight of any of the Claimant's medical records and it appears to be based on the Claimant's word only. As such, this report does not assist with the question of whether the Respondent had the required knowledge of the Claimant's disability as there is no basis or rationale for the conclusion that the Claimant had an impairment lasting for over a year or that the impairment was likely to last for a year.

51. The Tribunal has looked at the GP fit notes which refer to 'chronic pain and stress'. It does not state what or where the pain was, and stress is not an impairment relied on by the Claimant. The Tribunal notes that the Claimant has Fibromyalgia along with other undisclosed medical conditions. There is no indication as to whether the 'chronic pain' was associated with this or with the injury she says she sustained to her back which is the disability relied on for the purposes of this claim. The only information available to the Tribunal is a letter from St George's Hospital dated 8 January 2016 referring to a visit to the Chronic Pain Service on 18 December 2015. The Claimant has redacted parts of this letter, so it is not possible to assess the letter in its totality. However, parts of the report are unredacted and says: **"My impression is she suffers from chronic widespread pain most probably in the form of fibromyalgia. To rule out any major anatomical issue in the back, I have requested a lumbar spine MRI".** The Claimant had an MRI scan but refused to disclose the results. This letter was not disclosed

until the hearing itself and therefore does not assist in assessing the Respondent's knowledge of disability.

52. The Tribunal finds that it would be reasonable to expect the Respondent to have knowledge of disability sometime after the Claimant went on sick leave given the length of her sick leave. The closer she was to having been off work for 12 months the more likely it was that her impairment would last over twelve months.

53. Given that the Claimant was not at work and there is no specific medical information provided to the Respondent until the Occupational Health report in January 2016, the Tribunal finds on balance of probabilities that the Respondent would have or should have had knowledge of the Claimant's disability from receipt of the Occupational Health Report of 14 January 2016 when there was also a return to work meeting. Therefore, any allegations of disability discrimination prior to this date are not successful.

54. Even if the Tribunal had found that the Respondent had knowledge of the Claimant's disability before January 2016 the Claimant's claims of disability discrimination up to this date would not have succeeded. The Claimant has not provided any evidence to substantiate her claims and six witnesses deny making the comments complained of or hearing others make such comments. The allegations relating to disability discrimination prior to this date have not therefore been considered further. Allegations post-dating this will be considered later in these reasons.

55. The Tribunal then considered each claim in turn.

Claim 1

Racist comments

56. The Claimant complains that she was called Golliwog and Scarface. Her complaint in relation to Scarface is easily dismissed as her evidence was that when child G, who is a gifted artist, did a portrait of her, he drew dots on the face as at that time she had bad skin. She did not relate this to her race and therefore even if the Respondent had called her Scarface (which is denied), whilst this may have been unpleasant, it was not discrimination on the grounds of race.

57. The Claimant has provided no evidence to substantiate being called 'Golliwog'. The Respondent has provided six witnesses who are alleged to have used this terminology and all deny saying this about her or hearing anyone else say it about her. The Tribunal finds their evidence to be compelling. AG and KG were affronted and indignant that they should be accused of this, especially as they had both considered the Claimant to be a friend. It was accepted by the Respondent that there was a discussion about the term Golliwog and where it originated, but it was denied that any comment was directed at the Claimant. The Tribunal believes the Respondent witnesses and find that the word was used in a neutral way as part of day to day discussions between colleagues.

58. The Claimant states that GR made racist comments and withheld the stock room key from the Claimant and other black employees. The Claimant did not call the other black employees to give evidence and it is therefore her word against his. There was no evidence of any complaint by anyone else that this was happening. This was not raised in the grievances the Claimant brought. GR's evidence was that he kept the stockroom key 80% of the time in the key safe and 20% in his drawer and did not give it out to anyone. His evidence was that once a week staff fill in a form and stock is issued for the week. If there were other times staff needed supplies, they would have to wait until he was available. GR was adamant that he did not give the key to anyone whilst accepting that on occasion AG assisted him. MG testified that they do a weekly requisition form and the stationary that they need is collected once a week, so they do not need the stock room key.

59. The Claimant says Mr Rabinarain kept stamps from her because of her race. Mr Rabinarain's evidence is that a small number of stamps are kept in his drawer and the remainder are kept in the safe given they often have in excess of £200 worth of stamps. No one other than him has access to the stamps in the safe regardless of their race. The Tribunal accepts his explanation and does not find this allegation to be made out.

60. The Tribunal finds that the Claimant has not proved that anyone from the Respondent made racist comment towards her and that the allegations against Mr Rabinarain are unsubstantiated. She has not provided any evidence other than her word and the Respondent's witnesses all deny these allegations. On balance the Tribunal accepts the evidence given by the Respondent.

SG delivery

61. The Claimant's claim as pleaded is that SG discriminated against her when he hand-delivered an envelope with documents to the Claimant's home which he had been asked to do by Mrs Adams while the Claimant was on sick leave. Hand delivering letters to Governors and other staff is something he does from time to time. His evidence was measured, and he said that he always tries to give the letter to the recipient in person and will ring the doorbell or knock to do this, but if that is not possible, he puts it though the letter box.

62. This is what he said he did when he attended the Claimant's home. He thought he saw the Claimant in the house behind a net curtain or similar. In fact, it was not the Claimant but her sister, SE. SG said that when he rang the doorbell and saw what he thought was the Claimant, he called out to her to open the door so he could deliver the envelope as he preferred to deliver documents personally to the recipient wherever possible. When this did not happen, he put the envelope through the letter box and left.

63. SE's evidence was that SG was aggressive, that he rang the doorbell repeatedly and she was frightened. When he left, she went outside and filmed him in his car on her mobile telephone. During her cross examination of SG, the Claimant put it to him that he had been instructed to discriminate and behave in a racist manner

towards her by Mrs Adams. This was a change to her pleaded case and was not something that the Respondent had therefore responded to or brought evidence to refute. In any event, the Claimant has provided no evidence to substantiate an allegation that Mrs Adams instructed SG to discriminate and SG denied that Ms Adams had done so.

64. The Claimant did not produce the recording or photos that her sister was alleged to have made either during the grievance process or to this Tribunal. For the first time, SE said in evidence that she had lost the phone which is why she could not produce the recording or photos she took despite them being asked for previously by the Respondent when they were investigating this alleged incident during the grievance process. For some reason which the Tribunal does not understand, the Claimant described this incident as a **'direct attack on my personal circumstances'.**

65. Having heard the evidence from SG and SE, the Tribunal does not find this allegation to be made out. The Tribunal preferred the evidence of SG who gave measured and consistent evidence. His evidence was more credible. The Tribunal did not find SE's evidence to be convincing.

Allegations against JO'L

66. JO'L is no longer employed by the Respondent and did not give evidence. She left in April 2016. The Claimant's allegations are that JO'L made racist comments to her and spoke to her in an abrupt manner because of her race. She purports to corroborate her allegations by her sister's evidence when she described bumping into JO'L in the street. SE's evidence is that JO'L initially ignored her and her mother, but then came over and hugged them saying she had been distracted and apologising for not acknowledging them earlier. During her cross-examination SE changed her evidence to say that she hugged Ms O'Leary. It was put to the Claimant that this does not appear to be the action of a racist, i.e hugging a black person and apologising. Similarly, it was queried why she would hug someone she believed was racially discriminating against her. The Claimant's response **"My family are very decent respectful loving people, we embrace everyone"** is not credible.

67. The evidence from the Respondent witnesses is that JO'L spoke directly and abruptly to everyone including white people and those from BME backgrounds. The witnesses consistently said that sometimes she was unaware of how she came across with people from all backgrounds being offended by her from time to time. The Tribunal accepts this evidence.

68. The Claimant complained in general terms in writing about how she found JO'L's manner to be difficult. She accepts that Mrs Adams reacted with understanding and sympathy in her letter of 20 April 2015 and confirmed this in her evidence. She did not say in these communications that she considered JO'L to have discriminated on the grounds of her race or anything from which this could be inferred. Simply that JO'L's behaviour was difficult.

69. On 15 September 2015, the Claimant raised a formal grievance against JO'L. In this grievance she raised many matters about JOL's manner but did not suggest that JO'L's manner towards her was to do with her race or disability. This was dealt with as an informal grievance in line with the Respondent's grievance policy with a meeting with Ms Adams on 15 September 2015. The outcome was contained in a letter from Mrs Adams dated 21 September 2015. The Tribunal finds that the outcome was reasonable and measured and reflected the grievance as raised. Each matter was considered and referred to in this letter.

70. The Claimant gave one example in her evidence of how she says JO'L spoke to her saying to the Claimant that she (the Claimant) would not have got a job in New Zealand because of her skin colour. If that had been said, the Tribunal accept this would be racially motivated and offensive. If it had been said, the Tribunal has no doubt that the Claimant would have complained about it as she had complained about many other matters. The Claimant says she spoke to Mrs Adams about this, but Mrs Adams says she did not. The Tribunal accepts Mrs Adams' evidence which it found the more credible. Significantly, the Claimant did not mention race discrimination or make any suggestion of this alleged conversation in her grievance about JO'L. This comment must have happened before the grievance given that the Claimant went on sick leave in September 2015 and did not return to work. On the balance of probabilities, the Tribunal rejects the allegations made against JO'L.

Instructions to discriminate

71. In so far as this is concerned the Tribunal has already dealt with any allegation the Claimant makes about Mrs Adams instructing SG to behave in a discriminatory manner when he hand-delivered documents to the Claimant's home.

72. The other allegations are that Mrs Adams instructed the Claimant not to get any black teaching staff from the agencies that the Respondent used, and only wanted a certain type and quantity of black teaching assistants, wanted to stop using an particular agency as they sent too many black cover staff and complained that another agency sent too many black staff.

73. In support of these allegations the Claimant had a witness statement from AB, however he did not attend to give evidence and as a result, his evidence, which was disputed by the Respondent, was given very little weight by the Tribunal. Such evidence as he gave was in any event hearsay, repeating what the Claimant told him. Mrs Adams denies these allegations. The Respondent suggests that the fact that the Claimant was recruited via an agency makes these allegations unviable. The Tribunal heard evidence that the Claimant went from being an agency worker to being employed directly by the Respondent and heard praise for the work that the Claimant did.

74. Ms Adams's evidence was that the change in agencies used was due to the calibre of the staff they were sending and not related to the race of those sent. She explained to the Tribunal that given the type of school, there were specific

skills and experience that were required which may not be required in other environments. Ms Adams also said that in her professional experience there was difficulty in recruiting black teachers across the teaching profession generally and particularly for a specialist school. Her evidence was that as far as she was concerned it was the quality of the candidate not the race of the candidate which was important. The Tribunal accepts her evidence and does not find this allegation to be made out.

75. The Claimant also alleges that there was an instruction to not to employ a black teaching assistant. This was denied by the Respondent. Ms Adams specifically denied this, and the Tribunal accepts her evidence and does not find this allegation to be made out. The same is found in relation to the employment of Australian, New Zealand or Polish staff. The Tribunal accepts the Respondent's evidence that its only concern was to employ suitable staff regardless of race or nationality.

Issues relating to the osteopath

76. Following the incident with child D, the Respondent paid for six osteopath sessions for both the Claimant and MG. The osteopath was someone Ms Adams had previously used but not a personal friend.

77. The Tribunal does not have jurisdiction to consider breach of data protection legislation or breach of The Access to Medical Reports Act. However insofar as the Claimant may be alleging this to be a complaint of race or disability discrimination the Tribunal has considered this issue. This complaint relates to a telephone call Ms Adams made to the osteopath to check whether the Claimant had attended for appointments. Ms Adams said she made this call because the Claimant had said she had been prevented from attending her appointments by GR. She wanted to check if any appointments had actually been missed. The osteopath sent a text to the Claimant to say that Ms Adams had been in touch. This text does not say that Ms Adams sought to find out medical information about the Claimant. Given that the Respondent was paying for these appointments and given the Claimant's complaint that she had not been allowed time off to attend them, the Tribunal find it was a reasonable step for Ms Adams to check with the osteopath whether the Claimant had attended appointments. The Tribunal does not find that Ms Adams was motivated by anything to do with the Claimant's race or disability.

78. The Claimant alleges that GR was unhappy about the Respondent funding osteopath treatment. GR denies this and there was no evidence to support this part of the Claimant's claim.

Failure to pay the Claimant for a year following her injury at work

79. The Claimant's case is that she should have received one years' sick pay because her sick leave had been caused by an injury at work. Ms Adams says this is a discretionary payment and not a contractual entitlement. Ms Adams's evidence was that if time was taken off due to an injury caused by work, she would consider making this payment. The Respondent's position is that such payment was not appropriate because the Claimant did not take time off

immediately after the incident with child D (it was over a year later that she went on sick leave), the Claimant did not request further medical treatment following the course of osteopathy the Respondent paid for, did not provide any medical evidence to substantiate why Ms Adams should exercise this discretion, and withdrew a personal injury claim against the school. The Tribunal accepts that there was nothing to suggest that Ms Adams should exercise her discretion and pay the Claimant for a year when on sick leave.

80. There is however a slight quirk because at some time, Ms Adams did tell the Claimant that she would be paid but this was later retracted. The reason it was not paid was that the Claimant did not qualify for the discretionary payment to be made. The error in payment was revealed during an audit conducted by the London Borough of Lambeth on sick pay payments generally across the whole organisation. It was this audit that resulted in the payments being stopped.

Failure to deal with the Claimant's complaints about GR

81. The Claimant raised a grievance against GR. Ms Osborn heard the grievance. Ms Osborn was of the opinion that the claimant had raised additional issues not in her original grievance and on that basis did not consider them as they were not relevant. The Tribunal finds that this decision was not motivated by the Claimant's race or disability and dismisses this part of the Claimant's claim.

Statements to the insurance company

82. The Claimant issued a personal injury claim (assisted by her union) against the Respondent for compensation for injuries she says she suffered following the incident with child D. She later withdrew this claim. As part of the investigation process, the Respondent's insurers asked for witness statements from relevant staff who gave statements and those statements were in the bundle. The Claimant's evidence is that they colluded in the preparation of these statements and that the statements were fabricated. The statements were given by Ms Tovey, Mrs Adams, GR and MG who all deny fabricating the statements and say that they were factually correct. During the Claimant's cross-examination of these witnesses, the Claimant changed her stance, saying that the statements were 'misleading' rather than being fabricated.

83. As an example, Ms Tovey's statement to the insurance company said:
"I confirm that it was regular practice for Landsdowne School's Office door to be shut and secured during times when students become angry or upset. This was to prevent students accessing the school office and posing a risk to themselves or others.

During my time at Landsdowne School as Assistant Headteacher and Acting Deputy Headteacher, administrative staff were not asked nor were they excepted to provide direct support to students". (sic)

84. AG's statement says simply **"I [AG] administered first Aid to Sharlene Edey".**

85. MG's statement was more detailed describing how child D became upset. She states that child D climbed through the window to the office, tumbling headfirst but that she did not see what happened inside the office. MG's evidence was

that this was correct, and she did not see what was happening with the Claimant as her focus was on child D and what child D was doing. The Claimant alleged that MG did see what was happening with her and lied.

86. Similar matters surround the other statements the Claimant refers to. The Tribunal has heard from the Respondent's witnesses about the statements they made to the insurance company and finds that what they said in their statements was factually correct and there was no collusion. The Tribunal found their evidence to be credible and the Tribunal dismisses this part of the Claimant's claim.

Pay rise issues

87. The Claimant's complaint is that she was not given a pay rise whereas GR was, despite him making errors which she says included him admitting child D to the school.

88. The Respondent's position is that GR was not responsible for admitting child D to the school and that this decision lay solely with Ms Adams as Head Teacher. The Tribunal heard from Ms Adams and GR and accept their evidence that the decision was made by Ms Adams alone. The Claimant has not specified any other specific error she says GR made. The Claimant accepted this during the evidence she gave in cross examination.

89. In relation to the pay rise, the Tribunal accepts the Respondent's evidence that there was a job evaluation done for several roles in 2015 and that as a result certain individual received a pay rise depending on the responsibilities and duties their role had at that time. GR was one of the individuals receiving a pay rise. This was because his role had changed as he was then undertaking more finance work and covering for a colleague who was absent from work on a long-term basis. His pay was £1,761 higher after the job evaluation.

90. Ms Adams wanted the Claimant to undertake more administration work to make up for the work that GR was no longer doing and proposed that the Claimant's job description be changed to reflect this. The job evaluation for this new job description would have increased the Claimant's pay by £3,285. When the job evaluation for the Claimant was completed, she was on sick leave. As the job evaluation was based on a new role (and did not reflect the work the Claimant was doing prior to taking sick leave) it necessitated the Claimant agreeing to the new job description before the increased pay could be given. The Claimant did not return to work and did not agree the new job description. Ms Adams gave evidence that had she agreed to the new job description, then she would have received the new pay rate and that this would have been backdated. Ms Adams' evidence is believed by the Tribunal.

91. The Claimant has complained she was not given training but has given no details of what training she says she should have received. The Tribunal is therefore unable to determine this issue.

92. The Tribunal does not find the factual basis of this part of the Claimant's claim to have been made out.

93. All matters contained in claim 1 are dismissed.

Claim 2

94. This claim was presented on 22 December 2016 and makes allegations of race and disability discrimination.

Appeal against grievance outcome in relation to SG incident

95. The Claimant claims that she was not allowed an appeal against the outcome to her grievance relating to her complaint against SG. The grievance was heard by Ms Osborn (who dealt with the allegations against SG and other matters) and the outcome was communicated by letter dated 8 June 2016 to the Claimant. The Claimant was informed that she had 10 working days from receipt of the letter to appeal. The Claimant sent a letter on 22 June 2016 requesting an appeal. On 4 July 2016 Ms Osborn wrote to the Claimant saying that a panel of three governors would be appointed to hear her appeal despite it being made late.

96. On 6 July 2016 Ms Hardy, who was appointed to chair the appeal panel, and she wrote to the Claimant asking the Claimant to let her know how she wished to proceed considering the Claimant's illness and absence from work. The Claimant was given the opportunity to make written representations or have a trade union representative make representations on her behalf. No response was received from the Claimant resulting in a letter chasing the Claimant on 22 September 2016 being sent. This asked whether the Claimant wish to make written representations or attend a hearing in person. Matters were slightly delayed due to personal issues relating to Miss Osborn which were understandable.

97. However, the confusion and delay in this period was exacerbated because the Claimant insisted on directing her communications to Ms Osborn rather than to the person who had written to her despite being asked to write to the author of the communication. For example, the Claimant wrote to Ms Osborn on 11 October 2016 in response to letters from Ms Hardy dated 22 September 2016 and a letter from Ms Tovey dated 7 October 2016. The Claimant did not answer the questions put by Ms Hardy and Ms Tovey as to how the appeal hearing should be conducted and given Ms Osborn's personal circumstances, there was a delay in them being forwarded to the relevant people.

98. Ms Osborn then wrote to the Claimant on 21 October 2016 explaining that Ms Hardy had been on holiday and therefore the hearing had to be delayed. This was also confirmed by Ms Smith, the school Business Manager in a letter dated 21 October 2016. This is the last communication from anyone regarding the appeal. The Claimant does not chase it up again and never gave them the information they needed as to how the hearing could be conducted. Ms Osborn had been recently bereaved; Ms Hardy had been on holiday for three weeks and it appears that the matter was forgotten by all parties.

99. The Tribunal finds that the Respondent did give the Claimant the right to appeal against the outcome of her grievance and asked the Claimant how it should be conducted given that the Claimant was on long-term sick leave. This demonstrates a willingness to conduct the appeal and there is no evidence to suggest that the reason the appeal was not in fact carried out was because of the Claimant's race or disability. Quite simply personal circumstances intervened, the Claimant did not chase, and the matter was overlooked. This had nothing to do with the Claimant's race or disability. This part of the Claimant's claim is dismissed.

Home working

100. The Claimant alleges that the Respondent refused to allow her to work from home when she said she wanted to return to work after her prolonged period of sick leave. The Claimant relies on a statement of fitness for work dated 28 September 2016 which was sent to the Respondent the following day. That statement of fitness for work states that the Claimant may benefit from working from home and to a part-time phased return to work. It appears that another statement of fitness for work was sent by the Claimant on 18 October 2016 but that was not in the bundle. However, Ms Tovey wrote to the Claimant on 25 October 2016 saying:

> **"Thank you for forwarding your statement of fitness for work, dated 28th September. I note that your doctor has indicated in the statement that you would be able to return to work if we are able to offer you menial duties, altered hours, working from home or part-time phased return.**
>
> **I am aware that you have submitted a further fit note dated 18th October which covers the period 13th October to 20 November 2016. This fit note indicates that you may be fit for work taking account of amended duties. The GP has further stated that you are 'able to work from home not fit to travel therefore unable to attend meetings. Going to see specialist soon he will review medications which will hopefully help with this.'**
>
> **You will be aware that the view of the Consultant Occupational Health Physician is it you are unfit to work in any capacity; that you will attend further specialist appointments this month; that physically attending meetings would increase your symptoms. Finally that neither a specialist nor the occupational health physician would be able to provide a timescale for your return to work.**
>
> **There is a clear conflict of advice, therefore in line with government guidance precedence has been given to the views of an Occupational Health Physician over those of your GP. The reason for taking this position is because there is concern that your return to work at this time, against the advice of occupational health would pose a serious threat to your health and safety."**

101. Somewhat bizarrely, the Claimant does not reply to Ms Tovey but instead replies to Ms Osborn on 28 October 2016. In this letter the Claimant refers to the occupational health report which was dated the 1 August 2016. She is disputing the Respondents view that she is not yet fit to return to work in any capacity. She asked to be re-referred to occupational health as there has been a change in her circumstances. This is a very long letter which deals with other matters as well. In cross-examination the Claimant conceded that the Respondents were entitled to take the occupational health report in precedence over her GP fit note.

102. The Respondent did take steps to obtain a further occupational health report. There is a considerable amount of evidence about this. Respondent wrote to the Claimant on 28 November 2016 saying that they wanted to obtain another Occupational Health report and asking the Claimant to consent to them obtaining an up-to-date medical report so the school could discuss openly with her how to manage her condition in relation to her work and make any decisions on an informed basis. On 29 November 2016 a form was completed for the occupational health provider giving contact details for the Claimant. Ms Tovey wrote to the Claimant on 2 December 2016 explaining that occupational health would be contacting her to arrange a telephone appointment. It went on to explain that following the receipt of the medical report, a sickness hearing would be held to consider concerns relating to the Claimant's attendance.

103. Because the Claimant was not corresponding with the authors of letters sent to her, Ms Burns, a solicitor employed by the London Borough of Lambeth, wrote to the Claimant on 16 December 2016 asking the Claimant to correspond with Ms Tovey who was managing the sickness process and not with Ms Osborn. She further went on to say: **"My client does not agree to a return to work on a working from home basis. The duties of your post are incompatible with homeworking, other than on a very occasional basis. My client does not agree that you have any entitlement to pay or that the failure to allow you to work from home constitutes race or disability discrimination**". The Tribunal has already found that a substantial part of the Claimant's job description required her to work from the school and could not be undertaken at home.

104. On 3 January 2017 Occupational health tried to contact the Claimant in relation to a scheduled telephone appointment they had with her. The Claimant said she was unaware of the appointment and was unable to speak as she was at hydrotherapy. Annexed to the form where this is recorded, is a chronology of communications from occupational health. This records that "**the client agreed to the appointment by phone**". The Claimant tried to argue that "**client**" was the school and not her. Tribunal finds that obvious that **'the client'** was her, as she was the person who was going to speak to occupational health. This inevitably led to further delays as another appointment had to be made and ultimately an occupational health report was completed dated 30 January 2017. The report was completed following a telephone consultation and there is no indication that occupational health had any of the Claimant's medical records. Under the heading "**Capability for Work**" it is recorded "**I'm unable to give an opinion at this time**". Under the heading "**Outlook**" it is recorded "**Unable to provide an opinion at this time**". Under the heading "**Disability advice**" is recorded "**Unable to provide an opinion at this time**".

105. There are other communications between the Claimant and the Respondent regarding occupational health, for example, an email from the Claimant of 24 January 2017. Not all communications are recorded in this judgment. On 21 February 2017 Ms Tovey wrote the Claimant a long letter dealing with recent communications regarding the occupational health service, the process for engagement with occupational health service, the history of her referrals to occupational health, the history of the sickness process to date, the

Claimants fit note of 8 December 2016, reasonable adjustments to enable a return to work and future steps. It is not proposed to set out everything that is said in this letter however, the following is relevant:

> **"The fit note dated 9 December 2016 indicated that your absence would continue for a further two months although you may be fit for work taking account of the following adjustments: phased return to work [starting with two hours] increasing gradually on a weekly basis; amended duties; altered hours; workplace adaptions/suitable chair/computer. In addition your GP advises that you are to be office-based with lighter duties.**
>
> **I investigated what alternative or amended duties might reasonably be available for you, given the effects of your medical condition i.e. chronic back pain, which I understand means you have difficulty with your mobility.**
>
> **As you know the work of the PA to the Headteacher requires you to undertake a range of duties including strategic, general management and administration, personnel and human resource management, finance and accountancy, and premises/health and safety. You are required to be the first point of contact between the Executive Head and other people, including members of staff, parents, pupils, and educators and professionals outside the school. I have discussed the issue of reasonable adjustments with the executive headteacher and schools HR. Your post is administrative and clerical in nature and you are not expected to carry out heavy lifting or strenuous manual tasks. The school has arranged cover for your post in your absence. Returning for two hours is not a workable arrangement for the school. It is not possible to arrange "light duties" as you do not have heavy duties anyway.**
>
> **The Council solicitors wrote to you on 16 December 2016 to explain that the duties of your post were incompatible with homeworking save in a very occasional basis. Working from home is not a reasonable adjustment.**
>
> **The PA needs to be able to respond to personnel and telephone enquiries when the Executive Head is engaged in meetings or away from the office and to ensure that matters are appropriately filtered through to the Executive Head. The PA needs to be present in school for the vast majority of the time in order effectively to carry out these core functions.**
>
> **As you have not cooperated with the occupational health process it is not been possible to determine what adjustments a reasonable, if any, or if you are well enough to return to work.**
>
> **Your fit note indicates that you are not fit for the new normal duties of your job….."**

The Respondent said that it would wait until Occupational Health confirmed what adjustments would allow the Claimant to return to work.

106. A further occupational health report was prepared on 15 March 2017 which stated that the Claimant could return to work if she had a bespoke workplace assessment prior to her return. However, before this could be arranged, the Claimant was suspended on 7 April 2017 on suspicion of gross misconduct and was ultimately dismissed.

107. The Tribunal notes that throughout this whole process (up to and including the Tribunal proceedings) the Claimant has refused to divulge details of her medical condition. The Respondent submitted that the chronology taken together with the lack of medical information meant that it would be very difficult to identify what adjustments were needed to ensure a safe working environment if the

Claimant was to work from her home. The Tribunal accepts this submission. The Tribunal also accepts that most of the Claimant's work would need to be done at the school and could not be done at home. Where the Claimant has worked at home in the past the evidence was that it was done on a very occasional basis and appears to have been mainly during school holidays.

108. The Claimant's claim of failure to make reasonable adjustments is therefore dismissed.

109. Insofar as the Claimant says that this is an act of race discrimination, the Tribunal accepts the explanation given by the Respondent (even though it does think the process could have been handled more quickly) and there is nothing that the Claimant has said that shows the reason for the way the Respondent handled this was to do with her race. The Respondent has given an explanation that is accepted and is not related to race. This part of the Claimant's claim is therefore dismissed.

110. In her particulars of claim the Claimant relies on this as an act of victimisation for bringing her first claim to the Tribunal. The Tribunal does not find a causal connection and this part of the Claimant's claim is dismissed.

Sickness procedure

111. The Claimant complains that the Respondent escalated the sickness procedure from stage 1 to stage III, bypassing stage II. The Tribunal were taken to a letter dated 19 May 2016 which has the heading "**review meeting-formal stage II**". This records that the meeting was due to take place on 20 May 2016 and that the Claimant asked to postpone the meeting because of her continuing ill-health and inability to travel. The letter, which was written by Ms Adams set out why the meeting had been convened and set out the information and the purpose of the meeting which was: an update on the Claimant's medical condition; what prognosis she had may have received from medical professionals; whether the Claimant's health was improving to the extent that she will be able to work in the near future and what support/reasonable adjustments the school could offer to assist the Claimants return to work. Ms Adams did postpone the meeting which was due to take place on 20 May 2016 but asked if the Claimant could provide a written response to the matters set out, no later than 26 May 2016. At the end of the letter is the following **"I must warn you that failure to improve your attendance and to sustain that improvement, may result in the matter progressing to stage 3 i.e. formal sickness hearing in accordance with the schools sickness policy and procedure. You are also advised that your employment may be at risk if you intend and does not improve."** The Claimant did not provide this information.

112. The Claimant complained about Ms Adams's handling of the sickness procedure and therefore the sickness absence procedure was passed to Ms Tovey. There was an Occupational Health report dated 1 August 2016 following which Ms Tovey wrote to the Claimant on 9 September 2016 to arrange a stage 2 meeting for 22 September 2016, offering a home visit if that was required. However, the Claimant then objected to Ms Tovey handling the sickness absence procedure. In the Claimant's letter of 20 September 2016 written to Ms Osborn she gives three reasons why she thinks Ms Tovey should not handle the sickness

absence process. Advice was then sought from human resources who advised that in the light of the Claimant's refusal to meet with Ms Tovey that the procedure should move straight to stage 3.

113. The Tribunal was taken to the sickness absence policy which has a heading "**Requests for postponement.**" This provides that at the request of the employee the hearing may be postponed on one occasion and if agreed, the employee must be given an alternative date, no more than five working days after the original date for the hearing. It goes on to say **"The hearing will not normally be rearranged more than once. Further requests for postponement of the hearing will be considered on their merits by the Chair of the panel and will not always be agreed. Following one postponement the hearing may proceed in the absence of the employee**". The Claimant had already asked for a postponement because Ms Adams was dealing with the sickness procedure and therefore the Respondent were entitled to refuse a request for a further postponement and move onto stage 3.

114. The Tribunal finds that the Claimant was aware that if she did not attend the stage 2 sickness meeting that the Respondent could move straight to stage 3. This is both spelt out in the letter from Ms Adams and in the policy. Additionally, as part of her work the Claimant regularly attended sickness absence meetings and was aware of the processes and procedures. There is no evidence that the decision to move to stage 3 was related to the Claimant's race or disability. The Respondent acted in accordance with its policy. This part of the Claimant's claim is therefore dismissed.

Allegation that Ms Tovey misconstrued a report

115. There is an allegation by the Claimant that Ms Tovey misconstrued an Occupational Health report of 1 August 2016 in which it is recorded **"she is clearly unfit to return in any capacity at this moment in time**". Ms Tovey's letter of 26 September 2016 states **"I note that the latest occupational health report indicates that you are unfit to work in any capacity"**. The occupational health report also said that it was unable to advise on the timescale in which the Claimant could return to work and Ms Tovey wrote "**whilst you are hopefully eventually returning to work, it is not possible to provide a timescale for your recovery**". The Tribunal finds that these say the same thing, namely that as at 1 August 2016 the Claimant was not fit to return to work, and it was not known when the Claimant could return to work. The Claimant has not explained, how she says that this (if it was a misconstruction of the report) related to her race or disability rather than an innocent mistake. This part of the Claimant's claim is dismissed.

Anonymous emails – reporting the Claimant to the police

116. The Respondent became aware of anonymous emails being sent which were highly critical of the school and raised some very serious issues. The Respondent reported the Claimant to the police as there was a suspicion that she had committed a criminal offence in authoring these emails. The Respondent's evidence and submission, which the Tribunal accepts, is that it was under a safeguarding duty to report matters to the police such as these emails which were malicious and raised safeguarding issues and therefore under a duty to

report the Claimant. The Claimant was requested to, and did, attend the police station to be interviewed.

117. There is no evidence to suggest that the reason for the Claimant being reported to the police was because of her race or disability or that she had brought previous claims. The Tribunal accepts the explanation put forward by the Respondent in its entirety and this explanation is not based on the Claimant's race, disability or because she had brought claims to the Tribunal. The Tribunal satisfied that the Respondent would have done the same for anyone regardless of race or disability.

Overtime payments

118. The Claimant complains that the Respondent failed to pay all her overtime. The evidence was that the Claimant did not provide the Respondent with overtime sheets for authorisation by Ms Adams. Ms Adams gave evidence that it was the Claimant's responsibility to do this. The last overtime payment was 21 September 2015 when the Claimant went on sick leave. The Claimant's witness statement does not deal with this, however when asked questions by the Respondent she accepted that she did not raise a grievance about this matter and had not complained before bringing her claim on 28 April 2016.

119. The Tribunal accepts the Respondent's submission that the Claimant is out of time to bring this claim. The relevant time limit being three months from the 21 September 2015. The Claimant produced a spreadsheet during the hearing which corroborates these dates. The Claimant has not given any evidence to show why it was not reasonably practicable for her to have brought her claim in time. It is for the Claimant to say why it was not reasonably practicable to have brought her claim for unpaid overtime in time. She has not done this and therefore the Tribunal does not have jurisdiction to hear this aspect of her claim and this part of her claim is dismissed.

120. Even had the Claimant brought her claim in time, the Claimant has not proved she worked this overtime and claimed this overtime. The Tribunal accepts the Respondent's evidence that if overtime was worked then it was the Claimant's responsibility to make a claim by completing a form for Ms Adams to authorise.

Travel to meetings

121. The meetings that the Claimant is referring to were to be held at Turney school and in Vauxhall at Phoenix House to discuss her sickness absence. She said that these were further away than Lansdowne School. She also said that there were difficulties in getting public transport there. Her family drove her to these meetings.

122. The Respondent's position is that the distances were small, and the Claimant accepted in cross examination that all three venues were within a mile of each other. and almost equal between all three venues. The Respondent submitted

that Lansdowne and Turney Schools were roughly 4 miles from the Claimant's home, and Phoenix House a bit further away.

123. The Tribunal notes that the Claimant was offered a home visit for the first sickness absence meeting and that her family drove her to the other meetings. Therefore, the Tribunal concludes that the proposed venues in terms of distance were reasonable and did not put the Claimant at any disadvantage.

The Respondent's attempt to withdraw its concession regarding whether the Claimant was disabled

124. At a preliminary hearing on 29 November 2016 the Respondent applied to withdraw its concession that the Claimant was a disabled person. The reason for the application is that the Claimant had by then issued a personal injury claim and the Respondent was concerned that its concession would prejudice its defence to that claim. This was heard by Judge Martin who refused the Respondent's application on the basis that she could not see how the Respondent's concession would affect its defence. There is no evidence that the reason for the Respondent wishing to withdraw its concession was to do with the Claimant's race or her disability. It was simply part of the litigation process given the personal injury claim she had then issued.

Claim 3 – 2301127/17 - presented on 12 April 2017

Private investigator

125. The issues record that the Claimant complained that the Respondent hired a private investigator. However, she now says this is not what she meant. The Claimant said in evidence that she was referring to the Respondent's decision to employ an external person to investigate the allegations surrounding the anonymous emails. In her claim form the Claimant says that she has never known the Respondent use an external investigator before. She says this was victimisation for bringing the previous two claims to the Tribunal.

126. The Respondent's evidence is that external investigators were appointed because the Claimant had raised complaints against many of the Respondent's staff including Ms Adams and that in the circumstances it was appropriate to use an independent external person to undertake the investigation. This was especially so in view of the nature of the complaints that the Claimant had made.

127. The Tribunal takes judicial notice that employers will sometime use external investigators where the issues are particularly sensitive, as here. The Respondent's explanation is that the allegations against the Claimant were serious and it wanted to ensure that there was, and was seen to be, an impartial and independent investigation carried out. The Tribunal accepts this explanation and does not find that the reason for the appointment of an external investigator was because of the two claims the Claimant had brought to the Tribunal by this time.

Suspension

128. The Claimant's complaint is that she was suspended for an act that she had not committed. The Claimant was suspended pending the outcome to the investigation that the Respondent had commissioned. The Claimant was at that time suspected being involved with the anonymous emails and the Respondent's policy permits suspension in these circumstances. There is no evidence that the reason for the suspension was because of the Claimant's race, disability or that she had brought claims to the Employment Tribunal. The reason was to allow the investigation to proceed.

Change of line manager and duties

129. This relates back to the job evaluation the Respondent undertook when the Claimant was on sick leave. This is referred to above. The Claimant did not agree to the new terms and therefore her job title was not changed. It would have been had she returned and had accepted the new job description.

130. As part of its reorganisation, the Respondent inserted an extra line of management, Ms Smith (Business Manager) to be responsible for all administrative staff. Ms Adams told the Tribunal that even though Ms Smith would have oversight of the administrative staff, the Claimant, would still have worked to Mrs Adams. The Claimant was to be given more responsibility and a large pay rise as a result of this reorganisation. There is nothing to suggest the reason for this was because of the Claimant's race, disability or that she had brought other claims to the Tribunal. It was part of a legitimate business decision. The Respondent informed the Claimant of the reorganisation and the rationale behind it.

Failure to follow Occupational Health reports

131. The Claimant repeats her complaints that the Respondent failed to follow recommendations in the occupational health reports. These complaints have already been considered and are not considered further here.

Claims 4 , 6 and 7

Breach of data protection law in order to discriminate

132. This relates to the Claimant's subject access request. The Claimant provided no evidence in her witness statement in relation to this allegation. The letter she complains about is not in the bundle. The Claimant did not cross-examine the Respondent's witnesses on this issue. The Claimant does not include this issue in her submissions. The Tribunal dismisses this part of the claimant's claims.

Collusion with police by email

133. This allegation relates to Ms Osborn's communications with the Police about the anonymous malicious emails. The reason for the police involvement is dealt with earlier in these reasons. The reason the Claimant says that there was collusion is because Ms Osborn sent an email to Ms Cobbald, Ms Palmer and Ms Adams about the sickness process, saying inter alia: "**How do we now proceed? If the police issue a harassment order as they intend to do, she will be barred from communicating with the school**". This email was written before the Claimant had been interviewed by the police.

134. The evidence given by Mrs Osborn was that she had spoken to the police by telephone and they told her what they intended to do and that she was simply reporting this to her colleagues posing the question what they were going to do if this happened. The Claimant's case in her submissions is that it is worrying that she was not given the opportunity to put her case forward to the police before a decision was made by them, and that the police discussed it with Ms Osborn who then shared the information.

135. The Tribunal find that there is no evidence whatsoever of any collusion as the Claimant alleges. Ms Osborn received a phone call from the police, she did not initiate that discussion. The information was proffered by the Police. There is nothing to suggest that Ms Osborn told the police that this was what she expected to happen. Her question to her colleagues is legitimate and reasonable given that there were ongoing issues with the Claimant and her sickness absence for example, needed to be managed. The fact that the Claimant was initially issued with a harassment order which was later retracted after she complained to the police is not evidence of any collusion. The Claimant alleges that she was treated this way because she is black and disabled. There is no evidence of collusion and no evidence that the reason for the involvement of the police was because of her race or disability. This part of the Claimant's claim is dismissed.

The disciplinary process: Suspension, investigation and communication with the Claimant

136. The Claimant was suspended from work on 7 April 2017 on full pay until she was dismissed on 15 March 2018. She argues this was an unreasonable length of time and refers to the ACAS Code of Practice which says the period of suspension with pay should be for as brief period as possible, should be kept under review and make it clear that suspension was not a disciplinary sanction.

137. The disciplinary investigation was ultimately conducted by Mr Stillwell. The number of issues were large. The Claimant in her submissions accepts there were 17 issues for Mr Stillwell to consider. In her submissions she cites the case of **Agoreyo v the London Borough of Lambeth 2017** which held that suspension is not a neutral act "**but inevitably casts a shadow over the employee's competence"**. The Claimant suggests in her submissions that she should have been transferred to another location within the London Borough of Lambeth especially in light of her disability and availability to return to work. This decision was overturned by the Court of Appeal after the conclusion of the hearing. It is

for the Tribunal to determine whether there were proper reasons given for suspension.

138. The Tribunal finds that the reason for suspension was to investigate the authorship or involvement of the Claimant with the anonymous malicious emails. This was not related to the Claimant's race or disability.

139. In terms of the time taken for the investigation the following facts are relevant. The Claimant was suspended on 7 April 2017. The Respondent appointed external investigators and Ms Andrews was initially appointed to investigate. She started the investigation process, conducted a telephone interview with Mrs Adams and Ms Tovey on 1 June 2017 and there was a meeting with the Claimant on 19 July 2017. Regrettably Ms Andrews used injudicious terminology using the word "**coloured**" during her investigation meeting with the Claimant. The Claimant took offence and complained to the Respondent. By this time, it was the summer holidays and her complaint was not dealt with until 27 September when the Respondent sent the Claimant a written apology for the use of this word and also for the venue choice which the Claimant had also complained about. The Claimant takes issue with this letter saying that the Respondent trivialised the incident in their apology. The Tribunal does not agree and finds this to be a genuine apology. The Claimant takes issue with the fact that this letter was not written by a school governor. In her evidence she said it should have been written by Ms Osborn, the Chair OF Governors. This ties in with previous communications from the Claimant where she would only reply to correspondence to Ms Osborn even though the letter she was replying to, came from someone else. The inference is that the Claimant thought that only Ms Osborn should communicate with her. The Tribunal finds this to be unreasonable. The apology was given by the Business Manager on behalf of the school.

140. The Respondent accepted that the venue was not entirely suitable regardless of the Claimant's disability and apologised. The Tribunal finds that the choice of venue was not motivated by the Claimant's race, disability or claims to the tribunal. There was no evidence given to support this contention.

141. Part of the issue with the venue was that there was a Teaching Assistant in an adjacent room. There was a dispute about whether the teaching assistant could hear what was going on in the interview. The Claimant in her cross examination conceded that the rooms were interlinked but that the door was shut. It appears that there was a window or glass panel where you could see in and out of the room. The Claimant complained at the time about the Teaching Assistant being there and the Teaching Assistant was asked to leave. The Teaching Assistant walked through the library where the investigatory meeting was taking place which the Claimant also complained about. The Respondent's evidence was that this was necessary as there were some building materials blocking the other exit. Whilst this is unfortunate, there was no evidence to suggest that the Respondent deliberately placed the Teaching Assistant in the adjacent room or that this was because of the Claimant's race, disability or that she had previously

brought claims. This is a bare assertion by the Claimant without any evidence to substantiate it.

142. The Respondent then sought to find another independent investigator and Mr Stillwell was appointed on 27 September 2017. Both Ms Andrews and Mr Stillwell were from the same organisation but in different departments and different buildings. The claimant was notified about this on the same date. The Claimant has complained that Mr Stillwell was not impartial as he worked for the same organisation as Ms Andrews. Mr Stillwell is a qualified solicitor but is not practicing as such. Mr Stillwell told the tribunal that he had no contact with MS Andrews at work as they worked in different departments and were in different offices. The Tribunal is satisfied that Mr Stillwell was an impartial investigator. There was a proposed investigatory meeting for 8 December 2017, but this did not happen. The Claimant was invited to respond in writing instead which she did on 21 December 2017. She did not provide any evidence or suggest any witnesses that she wanted to be investigated by Mr Stilwell.

143. There is a dispute between the parties about what Mr Stillwell told the Claimant about his professional status at the start of the investigation meeting with her. The Claimant's case is that Mr Stillwell lied and told her that he was not a solicitor. Mr Stillwell's evidence that he told the Claimant that he was a qualified solicitor but that he was not acting in the capacity of a solicitor for the purposes of the investigation. The Tribunal has considered both versions of this conversation carefully and has concluded that on the balance of probabilities Mr Stillwell told the Claimant that he was a qualified solicitor but not acting in that capacity for the purpose of that meeting. The Tribunal found Mr Stillwell's evidence to be measured and credible and accept his version of conversation.

144. The Claimant's case is that she told Ms Andrews who she wanted to be interviewed. The evidence about this was rather confusing. The Claimant put it to Mr Butler (who heard her appeal against dismissal) in cross examination that she had given a verbal list of witnesses to Ms Andrews. In her cross examination she said she gave Ms Andrews a written list of the witnesses she wanted to be interviewed. Mr Stilwell said that no such list was in the papers given to him for the investigation and there was nothing to indicate any witnesses the Claimant had asked to be interviewed.

145. Whether or not the Claimant did give Ms Andrews this information, the Tribunal is satisfied that this information was not passed to Mr Stillwell when the papers were transferred to him. Therefore, he was asking in good faith when asking who the Claimant wanted him to interview. There is no good reason why the Claimant did not provide him with this information even if she genuinely believed that she had given it to Ms Andrews. It would be in her interests to ensure that Mr Stillwell had this information. The Tribunal find that Mr Stillwell cannot be criticised for not interviewing those he did not know about especially in circumstances where the Claimant refused to meet him as part of his investigation. The Tribunal notes that Mr Stillwell asked all witnesses he interviewed if they knew of any other person who could give relevant evidence.

He was therefore open to interviewing anyone who he had been told had relevant evidence to give and have no reason to doubt that had the Claimant provided a list of witnesses he would have interviewed them too.

146. It could be argued that there was a delay between Mr Stillwell's appointment, the Claimant being notified of his appointment and the start of his investigation. However, despite what the Claimant says about the investigation not being complicated, the Tribunal finds that issues were very complicated. The Claimant says there are 17 issues which required determination and Mr Stillwell interviewed 11 witnesses. There were also many documents which had to be examined and analysed. Taking all this into account, the Tribunal does not find there was any undue delay.

147. Part of the investigation conducted by Ms Andrews and by Mr Stillwell was a consideration of the wording used in the previous claims brought by the Claimant to the Tribunal to see if the language used bore similarity to the language in the anonymous malicious emails in order to ascertain whether the Claimant had involvement with the emails. As part of this, Ms Andrews at the initial investigatory meeting appears to have asked the Claimant some questions about what she had written in her claim forms. The claimant was accompanied by her trade union representative at the meeting and neither she nor her representative complained at the time about these questions being asked.

148. The Claimant's case is that the Respondent instructed Ms Andrews to ask to ask these questions in order to harass her. The Claimant did not call her trade union representative to give evidence about this. The Tribunal is satisfied that Ms Andrews was an independent investigator and conducted the investigation as she thought proper. There was no evidence to substantiate the Claimant's allegations that Ms Adams had instructed Ms Andrews to ask these questions in order to harass her on the grounds of her race, disability and previous claims to the Tribunal.

149. Mr Stillwell completed the investigation report on 4 January 2018 following which the Claimant was invited on 12 January 2018 to attend a disciplinary hearing on 8 February 2018. That meeting took place and the outcome was communicated on 13 March 2018 with a letter confirming it and terminating the Claimant's employment on a summary basis effective on 15 March 2018.

150. The Claimant has complained that no black witnesses were interviewed despite the case having racial elements. The tribunal finds that the disciplinary hearing itself did not have any racial elements because the allegations which were made were race neutral. Although the Claimant is now bringing a claim of race discrimination the Tribunal has already found that she never mentioned this during her period of employment prior to any disciplinary process. The Claimant has not identified black witnesses who would have relevant information to give. She could have provided the names of black witnesses to Mr Stillwell and he would have interviewed them. She chose not to do so. The Tribunal does not find this allegation to be made out.

151. The Tribunal accepts that there were some delays in the process. There was a delay in the initial stages before Ms Andrews was appointed as an investigator. This could have been done quicker. The circumstances about Ms Andrews investigation are very unfortunate. A delay occurred because of the school summer holidays. There appears to have been some delay in appointing Mr Stillwell as an investigator. However, at the point that Mr Stillwell was appointed matters moved forward at a reasonable pace. This is particularly so considering the number of individual allegations that Mr Stillwell had to investigate. This was not a simple investigation. Mr Stillwell produced his report in a reasonable time and thereafter the disciplinary hearing was held, and the outcome given in a reasonable time.

152. The Tribunal takes note of the long and comprehensive investigation report compiled by Mr Stillwell which must have taken some time to complete. The Claimant accepted that it was well reasoned in cross examination albeit that she did not agree with that reasoning.

153. The Tribunal finds that the Respondent acted appropriately when the Claimant complained about the language used by Ms Andrews. It did not seek to argue against the Claimant's complaint, apologised and found a different investigator.

154. The Claimant complains that she did not have any contact with the Respondent giving her updates regarding her suspension or to enquire about her health. In her submissions she says that this was the Respondent not taking their duty of care for her seriously because she is black, disabled and made complaints. In cross-examination the Claimant said that her complaints related to the period up to 27 September when the Respondent wrote the Claimant a detailed letter following her complaint about the initial investigation meeting. She has no complaint after this date.

155. There was little evidence as to what communications the Claimant had in the period up to 27 September 2017. Clearly there was communication as to the arrangements for the investigation meeting with Ms Andrews. After that meeting, there was a delay in communicating with the Claimant after her complaint however this is explained by the summer holiday. Although the Tribunal accepts that the Respondent could have been more communicative with the Claimant, there was no evidence to suggest that the reason for this was because of her race, disability or that she brought tribunal claims. As the Respondent submitted, it was always open to the Claimant to contact the Respondent to find out what was happening which she did not do.

156. The Claimant was paid in full during her period of suspension and therefore did not suffer a detriment in terms of pay. Had the Claimant remained on sick leave, she would not have received any pay as she would have exhausted her entitlement to sick pay. The Tribunal appreciates that being on suspension is difficult however in the circumstances the Tribunal accepts the reasons given by the Respondent as to why the process took as long as it did. The facts above give sufficient explanation.

Claims 6 & 7

Inconsistent treatment

157. The Claimant says that another employee A was not dismissed even though she says that the Police found him guilty of a criminal act (grooming). A is a non-black male. A was not convicted of any criminal offence and the police took no further action. The Respondent thought that the Claimant could have been the author of the emails and despite the Police taking no further action in relation to them had other evidence to consider when continuing with their investigation. The Tribunal finds the two situations to be very different and therefore this is not an appropriate comparison. In any event as the Claimant conceded in her evidence, she did not raise this at the disciplinary hearing.

158. One of the pointers to the Claimant's involvement in the emails is that in email that the Claimant forwarded to the Respondent (saying she had received it anonymously) had her sister's name in the properties of this document as being the author as noted by Ms Tovey. Ms Tovey investigated this, and it was established that the properties could be altered and therefore the Respondent did not consider this as part of its decision. The Claimant says that Ms Tovey was not the appropriate person to carry out this "technical" analysis of the document. However, the Tribunal do not consider this type of analysis to be particularly technical or to require any specific expertise. The next (and final) anonymous email of 27 November 2017 had the name of AC who was the sister of BC who is employed by the school.

159. The Respondent submitted that it was only after the Claimant had been informed by the police during her interview with them that sister's name appeared in the properties and that the sister of another member of staff appeared in the properties of the next email. The Claimant says she saved the anonymous email on her computer and then forwarded it to the Respondent which is why her sister's name appeared in the properties. The Tribunal does not understand this, as it cannot understand why her sister's name would appear as the author of the document, created on the Claimant's computer.

160. The Claimant had taken her work computer home with her when she went on sick leave and this is the computer, she says she sent the documents from. The Claimant was unable to give the computer back to the respondent (despite it being the Respondent's property) as she said that she had misplaced it in her house and could not find it. An analysis of this computer would have revealed whether the Claimant had sent the anonymous emails from that computer and it seems to the Tribunal that the Claimant deliberately withheld the computer so that this analysis could not take place. The Claimant says it is in her house and therefore had the Claimant looked for it, it would surely have been found. There is no suggestion that had been stolen, or that she had lost it outside her home.

161. However, as already found, the Respondent did not take into account the names of the properties of the word document which had the anonymous allegations.

The disciplinary hearing

162. Following the investigation report compiled by Mr Stillwell, the Respondent invited the claimant to a disciplinary hearing on 12 January 2018. This letter set out the allegations and who was attending the hearing. The disciplinary hearing was held on 8 February 2018.

163. Ms Hardy, who was vice chair of governors for the Lansdowne and Turney Schools Federation chaired the meeting, Ms Anna Boyle, a Federation co-opted governor from another school and Ms Rosemary Merrick a Federation parent governor comprised the panel. The Tribunal is satisfied that the panel was properly constituted and comprised appropriate people to hear the disciplinary hearing. The fact that Ms Hardy had previously been involved in one of the Claimant's grievances is not relevant. These issues are very different, and the Tribunal find that she was an appropriate and impartial member of the panel.

164. The Claimant has complained that there were no non-white panel members despite the racial elements involved in the case. First the tribunal does not find that the issues before the disciplinary panel had racial elements to them. The Claimant was accused of sending or being a part of the sending of the anonymous malicious emails. The Respondent did however ask a non-white governor to be on the disciplinary panel, but she was unable to attend. The lack of a black member of the panel does not affect the fairness of the disciplinary process.

165. The disciplinary panel had before it the investigation report, two packs of documents which the Claimant provided and had the benefit of support from an HR senior support person from their external HR advisers (who had also provided Ms Andrews and Mr Stillwell as investigators). Mr Stillwell attended to present the management case and the Claimant attended supported by her union representative. The Tribunal have carefully read the minutes of this meeting and find that the Claimant was able to, and did ask questions of Mr Stillwell, was able to call any relevant witnesses she wished, was able to give whatever evidence she wanted to the panel and was able to make submissions to the panel.

166. The Tribunal finds that the panel took their duties seriously and carefully read all the relevant and available documentation. The outcome letter, which terminated the Claimant's employment for gross misconduct related directly back to the allegations set out in the letter inviting the Claimant to the disciplinary hearing. Having read the minutes of the meeting and the investigation report, the Tribunal find that the outcome was based on the findings they made from these investigations. The Tribunal's finding is that the investigation was reasonable, that following the disciplinary hearing the Respondent had genuine grounds for believing that the Claimant was involved in the sending of emails and that the decision to dismiss was within the range of reasonable responses open to a

reasonable employer. Quite simply, the finding that the emails had been sent with the Claimant's involvement broke the trust and confidence that the Respondent had in the Claimant.

167. In these circumstances, the Tribunal accepts it would not have been appropriate to redeploy her elsewhere within the Respondent's organisation as the Claimant suggests. It is not for the Tribunal to substitute its view as to what the appropriate sanction should have been but simply to consider whether the Respondent's actions fell within the range of reasonable responses open to a reasonable employer. The Tribunal finds that it does fall within this range. Similarly, the Tribunal finds that the investigation undertaken was within the range of reasonable responses open to a reasonable employer.

168. The Tribunal accepts the Respondent's submission in answer to the Claimant's complaints that the witnesses at the panel used to dismiss the Claimant were the same witnesses as those the panel referred to as a reason for the breach of trust and confidence in that the two are inextricably intertwined. The witnesses having been told that the Claimant had accused them of matters which they had not done understandably did not trust the claimant and this was part of the rationale for the decision to dismiss. The Tribunal finds this to be reasonable.

169. The Clamant has submitted that the Respondent failed to follow its own policies in that she was not allowed to question its witnesses. By this she means the 11 witnesses that Mr Stillwell interviewed. She was able to and did question Mr Stillwell. The disciplinary policy states **"the employee (or their representative) will have the opportunity to question the management representative and the management witnesses".** The Respondent submitted that this presupposes that the management calls witnesses to the disciplinary hearing and that in this case management chose not to do so save for Mr Stilwell. The Respondent further submitted that the Claimant was able to call her own witnesses which she did not do. This is particularly relevant because the Respondent told the claimant by way of a letter dated 12 January 2018 that it did not intend to call any witness apart from Mr Stillwell and the Claimant could have responded to this, asking for witnesses to be present for her to question, but chose not to do so.

170. The Claimant has alleged that the investigation was not impartial because Mr Stillwell redacted crucial information. The Tribunal find that the allegation is not as the Claimant has put it in that the information which was redacted was peripheral and did not make any difference to the overall investigation.

171. The Tribunal finds that the reason for dismissal was that the Respondent believed that the Claimant was guilty of involvement with the anonymous emails. This relates to her conduct which is a potentially fair reason for dismissal. The Tribunal is satisfied that the disciplinary panel considered that where such emails are sent which are false and malicious then it is something that is serious. The Tribunal accept the Respondent's submissions that the focus was on the content of the emails rather than the audience they were sent to. This was one of the complaints the Claimant made. Although the disciplinary panel did not find that the Claimant was necessarily the author of the emails, it did find that she was involved in their preparation and distribution.

172. The Tribunal find that the panel took specific note of the timing of the emails, which ceased when the Claimant was interviewed by the police and the content of the emails which had similarities to the wording of her Tribunal claims. The Tribunal has not set out the wording of the emails as it is not appropriate to do so given that this judgment will be placed on the public register on the internet. Suffice it to say that the allegations made were very serious and unpleasant.

Victimisation – protected act and link with dismissal

173. The protected acts relied on are the Tribunal claims brought by the Claimant as at this time. On their face the Tribunal finds them to be protected acts. The Respondent submitted that they were not protected as the Claimant has not acted honestly in making her claims to the Employment Tribunal in accordance with **Saad v Southampton University Hospitals NHS Trust**. The Tribunal considered first whether the protected acts were the reason for the termination of the Claimant's employment and if they were would have considered the Respondent's submission on this point.

174. The facts of this case are highly unusual as the wording of the claim forms submitted up to this time were scrutinised by the Respondent as it investigated to establish who was the author and/or who was involved with the sending of the malicious anonymous emails. The Respondent's conclusion was that when it compared the wording of the malicious emails and the wording of the claims (together with other matters such as the timing of the emails), there was enough similarity to lead them to reasonably believe that the Claimant authored or was involved in the anonymous malicious emails.

175. The question is whether the scrutiny of the wording of the Claimant's particulars of claims can be equated to the act of her bringing Tribunal proceedings complaining of race and disability discrimination. The Tribunal's finding is that the reason for dismissal was not because of the Tribunal claims per se, but that the claims opened an avenue of investigation up for the Respondent and provided the Respondent with further evidence, to establish who the author was of the malicious anonymous emails. As already set out in these reasons, the Claimant was not dismissed because of the claims she brought to the Tribunal, rather she was dismissed because of the emails which the disciplinary panel found to be deliberately false and extreme.

176. The Claimant appealed against the decision to dismiss her by letter dated 18 March 2018. The appeal was held on 10 May 2018 and was chaired by Mr Butler. The appeal was dismissed. The Tribunal finds that the appeal was conducted appropriately and that the Claimant was able to, and did present the grounds for her appeal fully.

Wrongful dismissal - notice pay

177. The Tribunal finds that the Claimant was fairly dismissed on a summary basis for gross misconduct and therefore is not entitled to notice pay.

178. As stated at the start of these reasons the Tribunal has not slavishly followed the list of issues. The list of issues is very extensive, but in some parts difficult to fully understand. However, the Tribunal has considered all the issues as appended to this judgment. Where there is a conflict of evidence the Tribunal has preferred the evidence of the witnesses called by the Respondent. The Tribunal found each witness called by the Respondent to be consistent and credible. By contrast, the Claimant's evidence was contradictory in places, and the evidence of her sister the Tribunal found to be wholly unreliable. The Tribunal does not find that the Claimant has made out any of the issues she brought.

179. In summary, the Tribunal finds that the Claimant was fairly dismissed, and that the Respondent's explanations into all allegations of discrimination are accepted and are not related to the Claimant's protected characteristics. The Tribunal has not found the allegations in relation to the harassment claims to have been proved and find that the adjustment to work from home was not reasonable both because the Claimant had not been certified as fit to do this work and secondly because the nature of the Claimant's work meant it was not possible to do this from home.

180. The Tribunal would however like to thank the Claimant for the polite way she presented her case and her willingness to work with Mr Arnold, the Respondent's representative to ensure that the case was completed in the allocated time.

Employment Judge Anne Martin
Date: 23 August 2019

AGREED ISSUES

Case nos. 2300864/2016, 2300312/2017, 2301127/2017, 2302767/2017, 2300964/2018 & 2302689/2018

IN THE LONDON SOUTH EMPLOYMENT TRIBUNAL

HEARING DATE: 11 FEBRUARY – 1 MARCH 2018

BETWEEN:

SHARLENE EDEY

Claimant

-and-

LONDON BOROUGH OF LAMBETH

Respondent

LIST OF ISSUES v3 - CLAIMS 1-4 & 6-7

The Claimant has issued the following claims:

Subject of the aborted hearing 6 Aug 2018

1. *Claim 1* – 2300864/2016
2. *Claim 2* – 2300312/2017
3. *Claim 3* – 2301127/2017
4. *Claim 4* – 2302767/2017

   (together: the pre-dismissal claims)

Withdrawn claim on 29 June 2018

~~5. *Claim 5* – 2300924/2018~~

The dismissal claims

6. *Claim 6* – 2300964/2018
7. *Claim 7* – 2302229/2018 (the in-process claim)

Claim against Keith McMahon

8. *Claim 8* – 2302689/2018.

Preliminary matters

a.) Following the Preliminary Hearing of 3 January 2019 before Employment Judge Baron, the Tribunal held that Claim 8 would not be heard at the substantive hearing 11 February – 1 March 2019.

b.) With Claim 5 withdrawn and dismissed, the extant claims for the substantive hearing on 11 February – 1 March 2019 are **Claims 1-4 and 6-7**.

c.) A schedule of the Claimant's extant allegations as a précis in Claims 1-4 were send to Employment Judge Anne Martin on 6 August 2018 at her request, and are reproduced at the end of this document.

d.) This List of Issues has been compiled by reference to

(i) Case Management Summary of Employment Judge Elliott dated 7 July 2016 [193]

(ii) Claimant's Further and Better Particulars dated [17 November 2017] [41-55]

(iii) Notes of Discussions, para. 4, of Employment Judge K. Andrews dated 17 March 2017 [202]

(iv) Document accompanying Claim 2 [90-92]

(v) Section 8.2 of Claim 3 [117]

(vi) Attached document referred to in Section 8.2 of Claim 4 [147-9]

(vii) Case Management Summary of Employment Judge K. Andrews dated 29 June 2018 [207a]

(viii) Claimant's Further and Better Particulars dated 13 July 2018 [188a]

(ix) Section 8.2 of Claim 6 [2107]

(x) Section 8.2 of Claim 7 [2119]

(xi) Claimant's Further and Better Particulars undated [2152]

Claims no longer extant in Claims 1-4
Sex discrimination

1. The claim of sex discrimination was rejected by the Tribunal because no details of the claim were received [193].

Public interest (whistleblowing) detriment / dismissal

2. The Claimant does not bring a claim of public interest disclosure (whistle-blowing) detriment or dismissal [193] / [207b] / [188g] / [2158].

Allegations as background only

3. The following allegations are relied upon as background only [202]:

    3.1 *Allegations 1.4(a) & (g)-(i)* [41];

    3.2 *Allegations 2.1(d) up to "However…", (g), (p), (u) – excluding e-mail of 4/1/16, (v)* [44-48];

    3.3 *Allegation 5.1(a)* [51];

    3.4 *Allegation 6.1(a)* [52];

    3.5 *Allegation 9.1(b) – but C is claiming unlawful deductions and that the last in the series was in October 2015* [55].

Further possible withdrawals by C

4. It is not known whether the Claimant provided Further Particulars of Case Management Order 2 of 17 March 2017 [203].

The remaining allegations in Claims 1-4
Claim 1 [41-54]

5. Allegations 1.4(b)-(f), (j)-(n);

6. Allegations 2.1(a)-(c), part of (d), (e)-(f), (h)-(o), ~~(q)~~-(t), ~~part of (u)~~, (w)-(y);

7. Allegations 3.1(a)-(e);

8. Allegations 4.1(a)-(e);

9. Allegations 5.1(b)-(d);

10. Allegations 6.1(b)-(f);

11. Allegations 8.1(a)-(c);

12. Allegations 9.1(a) (and see [203] re. 9.1(b));

Claim 2

13. Allegations ii) to xiv) at [90-92];

Claim 3

14. The allegations in section 8.2 of claim 3 [117]:

    14.1 Investigated by a private investigator;

    14.2 Suspended for an act that the Claimant had not committed;

    14.3 Changed line-manager, and changed job title without notice;

    14.4 Failing to make the reasonable adjustments in the Occupational Health report;

Claim 4

15. The allegations found at [147-149]:

    15.1 The School Governor colluded with the police by way of an e-mail in order to reach an outcome whereby the Claimant would lose her job;

    15.2 Failing to deal with the Claimant's suspension in a quick manner;

    15.3 Continued suspension with no updates other than a meeting on 19 July 2017;

    15.4 The investigatory meeting was unsuitable due to the Claimant's disability;

    15.5 The investigator used racially-aggravated language, describing black people as 'coloured' during the Investigatory meeting of 19 July 2017;

15.6 The Respondent did not respond to the Claimant's complaint of the same until 27 October 2017, blaming the delay on the Summertime holiday, which was untrue;

15.7 A Teaching Assistant walked in on the Investigatory Meeting and heard private and confidential matters;

15.8 During the Investigatory meeting, the solicitor Mrs. Andrews wanted to discuss matters in the Claimant's ET1 form;

15.9 The Respondent are still pursuing the Claimant for the anonymous e-mails and set up a meeting with Judicium;

15.10 Ben's sister's name appeared [in the allegations that were investigated?] in the same way as the Claimant's sister's name has appeared, but Ben [Creffield] was not suspended or investigated;

15.11 In a letter dated 27 September 2017 from the Respondent to the Claimant, the Respondent lied about the reasons for the delay in responding to her, and trivialised the incident in their apology. A governor of the school should have responded.

Allegations in Claims 6-7
Unfair dismissal

16. The Claimant was not dismissed for a statutorily-fair reason, but was instead negligently accused of sending malicious e-mails [2153].

17. The dismissal was not s.98(4) fair:

17.1 It breached its own policy (see paragraph 17.6.4 herein), despite having sizeable resources;

17.2 Another member of staff was able to keep his job in a similar situation despite the police finding him guilty of a criminal act;

17.3 The Claimant's impeccable working record and sickness record were not taken into account when deciding whether or not to dismiss her;

17.4 A fair procedure was not followed in that the Burchell test was not satisfied;

17.5 The Respondent failed to take into account that the Claimant had started work in July 2012 (as an agency worker) and not in February 2014, when the e-mails had started;

17.6 The investigation was not carried out properly in that:

17.6.1 Thea Hardy, the Chair of the Disciplinary Panel, was not impartial, having previously dealt with a grievance raised by the Claimant;

17.6.2 Ms. Tovey was not suitably qualified to be lead investigator in the technical aspect of the e-mails, or as a witness;

17.6.3 Both the Claimant's sister's name and another member of staff's sister's name appeared in the (changeable) properties of the documents. That member of staff did not suffer the same detriment that the Claimant did;

17.6.4 The Respondent breached its own policy by not allowing the Claimant to question their witnesses;

17.6.5 The Respondent failed to interview the Claimant's witnesses;

17.6.6 The Respondent used two solicitors to investigate the Claimant, but this has not been done to other past members of staff;

17.6.7 During the discipline investigation meeting, the solicitor Katherine Andrews used racially aggressive language and subjected the Claimant to a 4 hour meeting without the use of toilet facilities;

17.6.8 The investigation was not impartial:

(i) The investigator / solicitor redacted crucial information;

(ii) Paragraph 17.6.7 herein is repeated. Having complained about this, the Respondent then used another investigator from the same company, which would create bias;

17.6.9 The (second) investigator denied being a solicitor at the disciplinary hearing. The Claimant was able to prove otherwise, but the investigator's lie, going to his credibility, was not properly considered by the Respondent;

17.6.10 No black witnesses were interviewed despite the case having racial elements;

17.6.11 The witnesses interviewed lacked credibility – the Claimant had raised complaints about them and all had received promotions and pay rises;

17.6.12 The investigator failed to interview relevant and crucial witnesses, having been instructed not to speak to them;

17.6.13 The Respondent ignored evidence that the Claimant put forward regarding the e-mails and information regarding an anonymous telephone call;

17.6.14 Little weight was given to the fact that the police took no further action against the Claimant and they withdrew the Harassment Warning Notice letter;

17.6.15 Little weight was given to the fact that the Head of the Governors, Sue Osborn, had constructed[1] (sic) with police to issue the Harassment Warning Notice before the Claimant had been interviewed by the police;

17.6.16 Evidence provided by the Claimant was ignored;

17.6.17 The witnesses that the Panel used to dismiss the Claimant were the same witnesses as those the Panel referred to as a reason for the breach of trust and confidence;

17.6.18 The Respondent dismissed the Claimant for the volume of allegations made in Employment Tribunal proceedings;

17.6.19 The panel had no non-white panel members despite the racial elements involved in the case; and

17.6.20 The length of time that the Respondent took to deal with the Investigation, the Disciplinary Hearing and the Appeal Hearing.

17.7 The Respondent has failed to evidence 'business pressure' in contending Some Other Substantial Reason for dismissal, namely breach of trust and confidence;

17.8 The Respondent failed to consider the audience that the e-mails were sent to, namely only Lambeth – the Claimant, the Assistant Head of Lansdowne School, Safeguarding Teams and the Head of Lambeth;

[1] conspired?

17.9 There is no evidence directly linking the Claimant to the e-mails. The Panel concluding that the Claimant was involved in the sending of some or all of these communications. With such a low threshold, it would have been more reasonable for the Respondent to offer alternative employment or a lesser sanction;

17.10 The conduct of the Claimant and the sanction of dismissal were not within the band of reasonable responses;

17.11 There was not a sufficiency of reason to dismiss the Claimant, the Panel having concluded that the Claimant did not send the e-mails but instead felt that she was involved in them.

Victimisation [2156]

18. See paragraphs 50 and 51.5 herein.

Direct discrimination – disability [2156] / sex [2157] /race [2157]

19. See paragraphs 38 and 41.5 herein.

Wrongful dismissal

20. Was the Claimant wrongfully dismissed in breach of contract by the Respondent failing to pay her 4 weeks' notice pay?

Limitation

21. Are any of the Claimant's allegations out of time?

22. Does the Claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

23. If so, whether time is extended under the relevant jurisdiction?

Preliminary issue of disability

24. The Respondent accepts that the Claimant is disabled by way of back injury within the meaning of section 6 of the Equality Act 2010 (**EqA**).

25. What is the material period of that disability?

26. Whether the Respondent had the requisite knowledge of the disability during the material period?

Harassment related to race (s.26)

27. The Claimant protected characteristic of race is described as 'Black other'.

28. The unwanted conduct relied upon is found at:

Claim 1

28.1 Allegations 1.4(b)-(f), (j)-(n) F&BPs [41-44];

Claim 2

28.2 Allegations ii) to xiv), once identified as such by the Claimant;

Claim 3

28.3 The Claim 3 allegations (paragraph 14 herein), once identified as such by the Claimant;

Claim 4

28.4 The Claim 4 allegations (paragraph 15 herein), once identified as such by the Claimant.

29. Was the conduct related to the Claimant's race?

30. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment?

31. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

32. In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Harassment related to disability (s.26)

33. The unwanted conduct relied upon is found at:

Claim 1

33.1 Allegations 2.1(a)-(c), part of (d), (e)-(f), (h)-(o), (q)-(t), part of (u), (w)-(y) F&BPs [44-49];

Claim 2

33.2 Allegations ii) to xiv), once identified as such by the Claimant;

Claim 3

33.3 The Claim 3 allegations (paragraph 14 herein), once identified as such by the Claimant;

Claim 4

33.4 The Claim 4 allegations (paragraph 15 herein), once identified as such by the Claimant.

34. Was the conduct related to the Claimant's disability?

35. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

36. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

37. In considering whether the conduct had that effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Direct race / sex discrimination (s.13)

38. The less favourable treatment relied upon is found at:

Claims 6-7

38.1 Dismissal. The comparators relied upon are Armando – white / male and/or a hypothetical comparator.

39. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of her disability?

40. If so, what is the Respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

Direct disability discrimination (s.13)

41. The less favourable treatment relied upon is found at:

Claim 1

41.1 Allegations 3.1(a)-(e) F&BPs [49-50];

Claim 2

41.2 Allegations ii) to xiv), once identified as such by the Claimant;

Claim 3

41.3 The Claim 3 allegations (paragraph 14 herein), once identified as such by the Claimant;

Claim 4

41.4 The Claim 4 allegations (paragraph 15 herein), once identified as such by the Claimant.

Claims 6-7

41.5 Dismissal. The comparators relied upon are Armando – non-disabled and/or a hypothetical comparator.

42. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of her disability?

43. If so, what is the Respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

Discrimination arising from disability (s.15)

44. The unfavourable treatment relied upon is found at

Claim 1

44.1 Allegations 4.1(a)-(e) F&BPs [50-51];

Claim 2

44.2 Allegations ii) to xiv), once identified as such by the Claimant;

Claim 3

44.3 The Claim 3 allegations (paragraph 14 herein), once identified as such by the Claimant;

Claim 4

44.4 The Claim 4 allegations (paragraph 15 herein), once identified as such by the Claimant.

45. If there is such unfavourable treatment, was it because of something arising in consequence of the Claimant's disability, namely [*C TO ADD DETAILS*]?

46. If so, does the Respondent show that the treatment was a proportionate means of achieving a legitimate aim?

Knowledge of disability

47. Alternatively, has the Respondent shown that it did not know, and could not reasonably have been expected to know, that the Claimant had a disability?

Victimisation (s.27)

Protected act

48. Has the Claimant carried out a protected act?

49. For Claims 1-4, the Claimant relies upon her grievance of 15 September 2015 and a verbal complaint to head teacher Mrs Adams in October 2014. The Claimant said that she told Mrs Adams that she had been shouted at because of her disability.

50. For Claims 6-7, the Claimant relies upon her previous claims to the Tribunal [2156]. The Respondent asserts that the protected acts were false information made in bad faith [2140].

Acts of victimisation

51. The acts of victimisation relied upon are found at:

Claim 1

51.1 Allegations 5.1(b)-(d) F&BPs [51-52];

Claim 2

51.2 Allegations ii) to xiv), once identified as such by the Claimant;

Claim 3

51.3 The Claim 3 allegations (paragraph 14 herein), once identified as such by the Claimant;

Claim 4

51.4 The Claim 4 allegations (paragraph 15 herein), once identified as such by the Claimant;

Claim 6-7

51.5 Dismissal

Reasonable adjustments (s.21)
From Claim 1:

Reasonable adjustment 1 [188(28)] / [53] – allegation 6.1(b)

52. Did a physical feature (an unsuitable chair or desk) or the lack of provision of an auxiliary aid (a suitable chair or desk) place the Claimant at a substantial disadvantage in comparison with a non-disabled person, namely back pain?

53. If so, was the provision of a suitable chair (offering back support) and desk (offering a higher screen) a reasonable step for the Respondent to take?

Reasonable adjustment 2 [188(28)] / [53] – allegation 6.1(c)

54. Did the Respondent apply a PCP that the review meeting would be held at another Lambeth location other than the employee's workplace if the matter was contentious?

55. If so, did that place the Claimant at a substantial disadvantage, attributable to her disability, in comparison with non-disabled employees, in that she found it difficult to get to the other school on several occasions due to suffering pain from disability?

56. If so, was it a reasonable step for the Respondent to take to have a meeting at the Claimant's house or carry out a telephone interview as an alternative?

Reasonable adjustment 3 [188(29)] / [53] – allegation 6.1(d)

57. Did the Respondent apply a PCP that staff were not provided with parking?

58. If so, was the Claimant substantially disadvantaged in comparison with non-disabled employees in that she suffered increased pain because of the further distance to get to the office?

59. If so, was it a reasonable step for the Respondent to take to provide parking on site (as such parking was available)?

Reasonable adjustment 4 [188(29)] [53] – allegation 6.1(e)

60. Did the Respondent apply a PCP that employees were to take breaks at certain times?

61. If so, was the Claimant substantially disadvantaged in comparison with non-disabled employees in that she suffered increased pain because she was not able to take regular frequent breaks?

62. If so, was it a reasonable step for the Respondent to take to provide the Claimant with regular frequent breaks?

Reasonable adjustment 5 [188(29)] / [53] – allegation 6.1(f)

63. Did the Respondent apply a PCP that employees were to be on time for work?

64. If so, was the Claimant substantially disadvantaged in comparison with non-disabled employees in that she did not have more time in the morning to relax and take her medication so that she would not be in as much pain in the day?

65. If so, was it a reasonable step for the Respondent to allow the Claimant to start at a later time, rather than morning cover at 7am?

From Claim 2:

Reasonable adjustment 6 [188(29)] / [90] – allegation iv

66. Did the Respondent apply a PCP that the Claimant had to work at Lansdowne School as part of a phased return?

67. If so, was the Claimant substantially disadvantaged in comparison with non-disabled employees in that she was not allowed to work from home and thus be gradually reintegrated into work, resulting in a greater sickness record and loss of pay?

68. If so, was it a reasonable step for the Respondent to allow the Claimant to work at home?

Reasonable adjustment 7 [188(30)] / [90] – allegation v

69. Did the Respondent apply a PCP that the Claimant was not allowed a phased return to work?

70. If so, was the Claimant substantially disadvantaged in comparison with non-disabled employees in she would have benefitted from a phased return to work?

71. If so, was it a reasonable step for the Respondent to allow the Claimant a phased return to work, starting with 2 hours per day and/or 3-4 hours per day and gradually increasing?

Reasonable adjustment 8 [188(30)] / [90] – allegation iv

72. Did the Respondent apply a PCP that employees were not allowed garden leave?

73. If so, was the Claimant substantially disadvantaged in comparison with non-disabled employees, attributable to her disability, that she lost money?

74. If so, was it a reasonable step for the Respondent to allow the Claimant to have garden leave?

Reasonable adjustment 9 [188(30)] / [90] – allegation vi

75. Did the Respondent apply a PCP of conducting Stage 2 meetings in person?

76. If so, was the Claimant substantially disadvantaged in comparison with non-disabled employees in that she was unable to attend the stage 2 meeting in person?

77. If so, was it a reasonable step for the Respondent to allow the Claimant to attend by telephone or have an impartial member of the senior leadership team attend the Claimant's house?

Reasonable adjustment 10 [188(31)] / [91] – allegation ix

78. Did the Respondent apply a PCP of reporting the Claimant to the police (for an act she did not do)?

79. If so, was the Claimant substantially disadvantaged in comparison with non-disabled employees, attributable to her disability, that she had to travel to the police station, which exacerbated her condition through stress?

80. If so, was it a reasonable step for the Respondent to inform the Claimant of its intention to report her to the police and take a less aggressive approach, allowing the Claimant to prepare herself and causing her less stress so as not to impact on her condition?

From Claim 3:

81. Issues are as above.

From Claim 4:

Reasonable adjustment 11 [188(31)] / [148]

82. Did the Respondent apply a PCP that the Claimant would be disciplined using the disciplinary procedure?

83. If so, was the Claimant substantially disadvantaged in comparison with non-disabled employees, attributable to her disability, that it would exacerbate her back condition through stress?

84. If so, was it a reasonable step for the Respondent to take a less aggressive approach, including not using 2 solicitors?

Reasonable adjustment 12 [188(31)] / [148]

85. Did the Respondent apply a PCP that the disciplinary investigatory meeting would be held at Turney School?

86. If so, was the Claimant substantially disadvantaged in comparison with non-disabled employees attributable to her disability in that she unable to use the toilet and/or it was a 4-hour meeting at a location that was more arduous to get to?

87. If so, was it a reasonable step for the Respondent to have a shorter meeting at a suitable location that would allow the Claimant to use the toilet facilities and was easier to get to, resulting in a shorter travelling time?

Knowledge of disability

88. Did the Respondent not know, or could the Respondent not be reasonably expected to know, that the Claimant had a disability or was likely to be placed at the disadvantages set out above?

Instruction to discriminate (s.111)

89. NB – see [54]: Allegations 8.1(a) to (c) [54], but also [195] and [203] (Order 2.1).

90. Did the Executive Head Teacher, Mrs. Adams, instruct the Claimant:

    90.1 to discriminate by telling her not to order any more black teachers from the agency and expressing a preference for young 'Aussie' or New Zealand teachers; and/or

    90.2 by telling her to ask the agency for male black teaching assistants to handle challenging black male students, whilst remaining adamant that the Claimant should not hire black teachers?

Unlawful deduction of wages (s.13 ERA)

91. The claimant's case is that she had been underpaid for overtime during the course of her employment. The claimant says that she has been paid at half rate on the following occasions:

    91.1 Allegation 9.1(a).

ACAS

92. The Claimant raised a grievance about Jo O'Leary on 21 September 2015. It did not contain allegations of race or disability discrimination.

93. The Claimant raised a grievance about Stuart Green on 17 May 2016. It did not contain allegations of race or disability discrimination.

94. Did the Claimant fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures by not raising a grievance?

95. If so, should any award of compensation be reduced, and if so, by how much?

Chagger / Polkey

96. Whether the Claimant would have been dismissed in any event?

Contribution

97. Whether the Claimant contributed to her circumstances by:

    97.1 Her failure to properly engage with School's attendance policy, whose purpose was to return absent employees to work;

    97.2 Her failure to mediate; and/or

    97.3 Her conduct?

98. If so, whether there should be a reduction for contribution, and if so, what %?

Remedy

99. If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy.

100. Whether the Tribunal should be concerned with issues of remedy before determination of the dismissal claims?

101. There may fall to be considered a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings, [breach of contract?] and/or the award of interest

James Arnold
Outer Temple Chambers
Temple

28 January 2019

SCHEDULE OF EXTANT ALLEGATIONS, CLAIMS 1-4

CLAIM 1

Allegation 1.4(b) – alleged racist comments by Jo O'Leary

1.

Allegation 1.4(c) – further alleged racist comments by Jo O'Leary

2.

Allegation 1.4(d) – alleged racist / disablist comments by Ganesh Rabinarain / being undermined about disability in front on parents / prevented from going to medical appointments

3.

Allegation 1.4(e) – alleged racist comments by Ganesh Rabinarain & failure to provide key to stockroom to black employees

4.

Allegation 1.4(f) – African names difficult to pronounce, as well as C's surname

5.

Allegation 1.4(j) – Mrs. Adams' husband – denied Holocaust / struck off as a solicitor / xenophobic comments about Polish and black people, including calling Magdalena a "Polish Bitch" and telling the Claimant that she was "an inbred of a small island"

6.

Allegation 1.4(k) – Mr. Rabinarain prevented C from leaving the office, reprogrammed the telephone lines to assist this / racist comments

7.

Allegation 1.4(l) – alleged racist / disablist comments by Ganesh Rabinarain

8. This is a duplicate of Allegation 1.4(d).

Allegation 1.4(m) – further ill-treatment by Jo O'Leary

9.

Allegation 1.4(n) – scarface / golliwog / shouting at Cc in front of parents & colleagues

10.

Allegation 2.1(a) – daily teasing about not being able to carry out tasks

11.

Allegation 2.1(b) – management dismissive of the Claimant's injury

12.

Allegation 2.1(C) – Mr. Rabinarain unhappy re. payment of osteopath / increase workloads so C would be unable to attend appointments

13.

Allegation 2.1(d) (part)

14. The remaining part of Allegation 2.1(d) is (in essence).

Allegation 2.1(e) - further ill-treatment by Jo O'Leary

15. This allegation is a continuation of Allegation 1.4(m).

Allegation 2.1(f) – daily bullying / scarface / golliwog

16. Allegation 2.1(f) is a repetition of Allegation 1.4(n).

Allegation 2.1(h) – unreasonable time constraints imposed on C's work which failed to take into account her disability

17.

Allegation 2.1(i) – Mr. Rabinarain instructed C to move heavy boxes

18.

Allegation 2.1(j) – C not given pay rise, Mr. Rabinarain was despite making errors

19.

Allegation 2.1(k) – further ill-treatment by Ms. O'Leary

20. This allegation is a continuation of Allegations 1.4(m) and 2.1(e).

Allegation 2.1(l) - further ill-treatment by Ms. O'Leary

21. This allegation is a continuation of Allegations 1.4(m), 2.1(e) and 2.1(k).

Allegation 2.1(m) – Nicola Mitchell shouted at C / appeal to Grievance 1 denied

22.

Allegation 2.1(n) – treatment by Jo O'Leary in July 2015 / handling of informal procedure

23. This has been dealt with at Allegation 1.4(b)

Allegation 2.1(o) - Mr. Rabinarain prevented C from leaving the office, reprogrammed the telephone lines to assist this / racist comments

24. This is a repeat of Allegation 1.4(k).

~~Allegation 2.1(q) – Text message from Jo O'Leary~~

25. Conceded as background by C – Day 1.

Allegation 2.1(r) – comments and actions made by Ganesh Rabinarain

26. Allegation 2.1(r) forms part of the allegations made by the Claimant at Allegation 1.4(d), to which the reader is referred. Paragraphs **Error! Reference s ource not found.**-**Error! Reference source not found.** herein are repeated.

Allegation 2.1(s) – further treatment by Jo O'Leary

27. This allegation is a continuation or repetition of Allegations 1.4(m), 2.1(e) and 2.1(k), combined with part of Allegation 1.4(n) (abuse on a daily basis).

Allegation 2.1(t) – the conduct of the sickness review meeting

28.

~~Allegation 2.1(u) (part) – e-mail from Claire Cobbold received in error~~

29. Conceded as background by C – Day 1

Allegation 2.1(w) – delivery by Stuart Green

30.

Allegation 2.1(x) – breach of data protection act / access to medical reports act

31.

Allegation 2.1(y) – failure to deal with the complaint about Mr. Rabinarain

32. This allegation is part of Allegation 2.1(m).

Allegation 3.1(a) – failure to pay the claimant for 1 year following an injury at

work

33.

Allegation 3.1(b) – pay rise

34. This allegation is a repetition of Allegation 2.1(j).

Allegation 3.1(c) – delivery by Stuart Green

35. This allegation has already been addressed at Allegation 2.1(w).

Allegation 3.1(d) – Jo Tovey, Linda Adams, Ganesh Rabinarain and Mikita Grant supplied false statements regarding C's disability to insurance company

36.

Allegation 3.1(e) – review meetings were too far away to attend

37.

Allegation 4.1(a) – bullying on a daily basis

38. This allegation has already been addressed at Allegation 1.4(n)

Allegation 4.1(b) – waste of money – osteopath appointments

39. This allegation is a repetition of Allegation 2.1(c).

Allegation 4.1(c) - review meetings too far away to attend / taxi given to Joe Samby but not C

40. The first part of this allegation is a repeat of Allegation 3.1(e).

41.

Allegation 4.1(d) - failure to pay the claimant for 1 year following an injury at work

42. This allegation is a repeat of Allegation 3.1(a).

Allegation 4.1(e) - not given pay rise

43. This allegation is a repeat of Allegation 2.1(j)

Allegation 5.1(b) - false statements regarding C's disability

44. This allegation is a repeat of Allegation 3.1(d).

Allegation 5.1(c) – various allegations

45. This allegation appears to be a conglomeration of many of the complaints already addressed above.

Allegation 5.1(d) – delivery by Stuart Green

46. This allegation has already been addressed at Allegation 2.1(w).

Allegation 6.1(b) – new chair & desk

47.

Allegation 6.1(c) - review meetings too far to attend / taxi

48. This allegation has already been addressed at Allegation 4.1(c).

Allegation 6.1(d) – denied parking

49.

Allegation 6.1(e) – denied regular breaks

50.

Allegation 6.1(f) – constantly penalised for being late

51.

Allegation 8.1(a) – instruction to discriminate

52. The Claimant's allegation is found at [54]. The allegation includes Mrs. Adams:

52.1 did not want to employ back teachers;

52.2 only wanted a certain type and quantity of black teaching assistants;

52.3 wanted to stop using the Sugarman Agency as they sent too many black cover staff; and

52.4 complained that Education 365 sent too many black staff.

Allegation 8.1(b) – employ a black male teaching assistant

53.

Allegation 8.1(c) – employ Australian / New Zealand / Polish staff

54.

Allegation 9.1(a) (and see [203] as well) – unlawful deduction of wages

55. .

CLAIM 2

Allegation ii) – general, unparticularised complaints

56.

Allegation iii) – Stuart Green incident / failure to allow appeal – Grievance 2

57.

Allegation iv) – failure to allow the Claimant to work from home

58.

Allegation v) – prevented from returning to work

59.

Allegation vi) – Escalated sickness procedure from Stage 1 to Stage 3, and failed to conduct Stage 2

60.

Allegation vii) – Jo Tovey misconstrued Occupational Health report of 1 August 2016

61.

Allegation viii) – Stage 3 sickness absence meeting cancelled without giving reasons

62.

Allegation ix) – false allegations made re. anonymous e-mails

63.

Allegation x) -continued prevention against taking out grievance

64.

Allegation xi) – meetings too far to attend

65. This allegation is a repetition of Allegation 3.1(e).

Allegation xii) – application to withdraw concession

66.

Allegation xiii) – false statements regarding C's disability

67. This is a repetition of Allegation 3.1(d).

Allegation xiv) – never paid all of overtime

68.

CLAIM 3

Investigated by a private investigator;

69.

Suspended for an act that the Claimant had not committed;

70.

Changed line-manager, and changed job title without notice;

71.

Failing to make the reasonable adjustments in the Occupational Health report;

72.

CLAIM 4

The School Governor colluded with the police by way of an e-mail in order to reach an outcome whereby the Claimant would lose her job

73.

Failing to deal with the Claimant's suspension in a quick manner

74.

Continued suspension with no updates other than a meeting on 19 July 2017

75.

The investigatory meeting was unsuitable due to the Claimant's disability

76.

The investigator used racially-aggravated language, describing black people as 'coloured' during the Investigatory meeting of 19 July 2017

77.

The Respondent did not respond to the Claimant's complaint of the same until 27 October 2017, blaming the delay on the Summertime holiday, which was untrue

78.

A Teaching Assistant was present at the back of the Investigatory Meeting and heard private and confidential matters, and walked into the meeting halfway through

79.

During the Investigatory meeting, the solicitor Mrs. Andrews wanted to discuss matters in the Claimant's ET1 form

80.

The Respondent are still pursuing the Claimant for the anonymous e-mails and set up a meeting with Judicium

81.

Ben's sister's name appeared [in the allegations that were investigated?] in the same way as the Claimant's sister's name has appeared, but Ben [Creffield] was not suspended or investigated

82.

In a letter dated 27 September 2017 from the Respondent to the Claimant, the Respondent lied about the reasons for the delay in responding to her, and trivialised the incident in their apology. A governor of the school should have responded

83.