EMPLOYMENT TRIBUNALS

Claimant: Miss W Sims

Respondent: The London Borough of Lewisham (1)
The Governing Body of Adamsrill Primary School (2)

Heard at: **London South, Croydon**
On: **27 January and the 11-12 March 2020 and the 17 April 2020 in chambers (by video on Microsoft Teams).**

Before: **Employment Judge Sage**
Members: **Ms Y Batchelor**
Ms N A Christofi

Representation
Claimant: In person
Respondent: Ms Patel in house Solicitor

JUDGMENT

1. The Claimant's claim for direct discrimination is well founded
2. The Tribunal orders the Respondent to pay to the Claimant a payment for injury to feelings of £20,828.71.

REASONS

1. By an ET1 presented on the 18 March 2019 the Claimant claimed race discrimination and unfair dismissal. The unfair dismissal claim was dismissed at a preliminary hearing on the 4 November 2019.
2. The Respondent defended the claims saying that the Claimant was subject to immigration controls and her right to remain or enter the UK had expired.
3. The issues of direct discrimination were on page 26 of the bundle and were as follows;
    a. The Claimant is of American nationality and she alleged that at the dismissal meeting on the 30 April 2018 Ms Hollidge of HR made the following allegations:
        i. The Claimant and her mother were illegal immigrants;
        ii. The Claimant had forged her passport;
        iii. The Claimant had somehow been evading the authorities.

Witnesses

The Claimant
Dr Eko Headteacher
Ms Donegal Grant Business Manager.

Preliminary applications

4. The Respondent pursued an application at the start of the hearing on the 11 March 2020 to introduce a large bundle of documents comprising of over 90 pages. This was at a stage in the hearing when the Claimant's evidence had finished, and she was in the middle of cross examination of Dr Eko. It transpired that the documents included Home office guidance and emails. It was the submission of the Respondent's solicitors that these documents were relevant to the case and were not contentious. It was noted that some of the documents had only been disclosed to the Claimant on the 10 March 2020 at 15.44. The Respondent was asked why these documents had not been disclosed at the appropriate time and the Tribunal were told that they had been 'found' recently and Ms Donegal Grant had been reminded of two emails. The bundle included two emails that had been exchanged between Ms Hollidge and Ms Donegal Grant after the meeting on the 30 April which should have been disclosed to the Claimant when ordered to do so by the Tribunal. These emails were not referred to in Ms Donegal Grant's statement.

5. The Claimant objected to the application.

6. The Tribunal discussed the application and it was concluded that the bundle of documents should not be allowed in. The original agreed bundle in this hearing was only 63 pages, to allow the Respondent to admit over 90 pages of documents at this stage of the hearing was disproportionate and would cause significant injustice to the Claimant. If the documents were admitted, it would be necessary to adjourn to allow the Claimant to consider the documents. It would also be necessary to put the Claimant back on the stand (even though her case had been put to the Tribunal) and to put the documents to her and allow her to prepare a further witness statement to comment on them. It would also be necessary for the Claimant to reconsider the cross examination of Dr Eko and Ms Donegal Grant. This was likely to cause delay; it will inevitably require an adjournment and will delay the completion of this case which is due to be completed by tomorrow. No satisfactory explanation has been provided by the Respondent as to why this bundle of documents was not produced earlier and why it was felt to be appropriate to attempt to admit this now.

7. It is not consistent with the overriding objective to admit these documents as it will cause delay, add to the time and cost spent in the hearing and it causes a significant prejudice to the Claimant. The Respondent's application to admit these documents is refused.

Findings of Fact

These were agreed or on the balance of probabilities are found to be as follows:

8. The Claimant commenced employment with the Respondent on the 2 March 2015 as a Teaching Assistant (scale 5). Her previous DBS checks had always been clear. The Claimant told the Tribunal that she had completed many DBS checks in her career as she had previously worked for the London Borough of Bromley and Croydon as a Teaching Assistant for over 15 years. She was aware of the importance of conducting DBS checks in her role.

9. The Headteacher of the school "the Second Respondent" was Dr Eko. Ms Donegal Grant was described as a Business Manager and we heard in evidence that she had responsibility for HR issues in the school.

Background Facts

10. The Claimant was born in the USA to an African American mother and a Scottish father. She is of American nationality. Her mother brought her to England in 1981 or 1982 when she was 4 or 5 and on her entry into the UK, she was given indefinite leave to remain. Her mother died when she was aged 12 and she was placed into care by Newham Council. The Claimant remained in care until she was 18. The Claimant was given her old American Passport from 1992 which had an Indefinite Leave to Remain (ILR) stamp and she was told that as long as she had the passport her ILR was 'fine' and could not be revoked (page 44 of the bundle).

11. In the Respondent's defence (page 21 of the bundle) it was pleaded that the Claimant was subject to immigration controls and her right to remain or enter the UK had expired and its decision to dismiss her on the 30 April 2018 was reasonable. We were taken to the advice the Claimant was given by her solicitors on the 29 July 2018 (after dismissal on page 62) which confirmed that "*the stamp in your old Passport is confirmation that you were granted indefinite leave to remain on your entry to the UK – this does not expire and means that you have (and always had since arriving in the UK) the right to stay in the UK indefinitely and to study and/or take up employment*". This was not a relevant issue before the Tribunal in this hearing; it was not pleaded that the Claimant had no right to remain in the UK or that her right to do so had expired. The evidence in the Respondent's witness statements was that the Claimant was "unable to satisfy the right to work checks" (Dr Eko's statement at paragraph 5) not that she had no right to remain.

The events that led up to the dismissal meeting.

12. On the 5 March 2018 the Claimant was asked by the Second Respondent to go through a DBS check. The Claimant produced a number of documents including her expired American Passport but also a copy of her tenancy agreement and her tax code. The on-line DBS system was a new process adopted by the Second Respondent and would not allow them to move beyond the visa section as it required the ILR to be in the current passport or for her to produce a Biometric Residents Permit (BRP). The Claimant did not possess a BRP at the time.

13. A few days later, the Claimant again attempted to complete the process this time with Ms Donegal Grant and again, they had a problem. During the meeting the Claimant explained about her past and the fact that her mother had died when she was a child and she did not have her original birth certificate, only a photocopy. It appears that the original birth certificate had been lost as it had not been found with her mother's papers when the Claimant had been taken into care. The process again could not be completed due to the fact that the visa was in an old expired passport and was not in her current American Passport. The system would only accept a visa number in a current passport (and not in an expired one) or a BRP. Although the Claimant told Ms Donegal Grant that her ILR did not expire, Ms Donegal Grant said she was unsure how to proceed and would have to take advice from HR. At the end of this meeting the Claimant felt that it was a simple matter of contacting the DBS and explaining the situation.

14. Ms Donegal Grant's statement did not refer to her attempts to complete the DBS process with the Claimant, however in cross examination she confirmed that about one week before the end of term, and after the abortive attempt to complete the DBS process, she contacted the London Borough of Lewisham HR department "the First Respondent" on the 23 March for advice. Although she confirmed that the contact was by email, this email was not in the bundle and the Tribunal was not told what evidence was provided to the First Respondent and what advice was given.

15. The Claimant's evidence in chief referred to a meeting on the last day of term with Ms Donegal Grant (which would have been the 30 March 2018). The Claimant was told that there would be a meeting on the 16 April 2018 to discuss her situation. It was the Claimant's evidence that she was told by Ms Donegal Grant that she would "*continue to get advice from Lewisham HR but there was a chance she would be suspended at the meeting*". Although it was put to the Claimant in cross examination that this meeting did not happen, the Claimant's evidence given was consistent in that this meeting took place and she said that "*I was told by Ms Donegal Grant to gather evidence. She also gave me a heads up I would be suspended*"; she stated that she was grateful for this warning. The Second Respondent's witnesses denied that there was a meeting on this date.

16. The Tribunal was taken to page 34 which was an email dated the 9 April 2018 that corroborated that advice had been given by Ms Grimshaw from Lewisham HR about how to deal with 'overseas nationals' and DBS checks. The email stated that "*for the DBS purpose a new passport must also show a stamp or a residence permit*". This email corroborated the Claimant's evidence that she had been told in the meeting on the last day of term, that the investigation was ongoing and was being followed up by HR. The Tribunal conclude that the Claimant's evidence was consistent. We find as a fact that there was a meeting on the 30 March when the Claimant was informed that there would be a meeting on her return to work when there was a chance she would be suspended. The evidence in the Claimant's statement on page 2 and her evidence given in cross examination was consistent in relation to her being told that advice was being taken from HR on this matter which was corroborated by the above email. We also find as a fact that she had been advised by Ms Donegal Grant to locate all relevant documents in preparation for this meeting.

17. Ms Donegal Grant emailed the Claimant on the 9 April 2018 and copied this to Dr Eko (page 35 of the bundle) with the subject line 'DBS expiry'. It stated that the advice from the First Respondent was "*Whilst an old passport (expiry 14/9/97) is endorsed it is no longer valid upon expiry and although you have a National Insurance number, alone it does not provide the necessary authority of your right to work as required by the Home Office*". She also stated that for the purposes of DBS the new passport had to show "*a stamp or residence permit*". It was concluded by the Second Respondent that the Claimant needed to "*obtain the endorsement in your current passport*". The Tribunal noted that the focus of this email was on the requirements to complete the DBS check. Ms Donegal Grant asked the Claimant to keep her updated on her progress.

18. The Claimant was not able to access this email during the school holidays because she had problems with her iPad so did not read this email at the time it was sent. Dr Eko confirmed that she was copied into this email and had read it. Dr Eko told the Tribunal that this was the first time that she had been informed of the problem as she had left this matter to Ms Donegal Grant to deal with. Dr Eko confirmed that she informed the Chair of Governors that there was a problem, but could not recall precisely when this was, but thought that it was after suspension had taken place. Neither of the Second Respondent's witnesses referred to the email dated the 9 April or the discussions that took place with HR in their witness statements. There was no written evidence of when the Chair of Governors had been informed and it was not referred to in Dr Eko's statement.

The meeting on the 16 April 2018.

19. The first day back to school was the 16 April 2018. The Tribunal were told that Ms Donegal Grant and Dr Eko met to discuss the Claimant's situation at 08.00. There was no reference to these discussions in either of the Second Respondents' witness statements nor were they evidenced in writing and no minutes were taken. It was the evidence of Dr Eko given in cross examination that Ms Donegal Grant

was responsible for the HR matters and she was informed that the meeting would take place on the 16 April.

20. All witnesses before the Tribunal agreed that a meeting took place and started about 9.30 and it was not disputed that this meeting resulted in the Claimant's suspension. Dr Eko was vague as to whether she took advice before suspending the Claimant and her answers given in cross examination were contradictory. Dr Eko first told the Tribunal in cross examination "*Lewisham advised me and I followed*", but then denied that she took advice before suspending the Claimant. The Tribunal conclude on the balance of probabilities that it appeared from the document at page 36 (referred to below at paragraph 23) that no advice had been taken from HR before suspension took place as this email clearly confirmed that Dr Eko had not managed to speak to HR prior to the meeting.

21. Although Dr Eko told the Tribunal that this meeting was not planned, the evidence before the Tribunal did not support this because the Claimant had attended the meeting with the documents referred to below at paragraph 22. The Tribunal preferred the Claimant's consistent evidence that she was told to prepare for the meeting on the 16 April on the last day of term. The emails dated the 9 April 2018 also suggested that the matter was of some urgency and was marked as being of high importance, so the meeting held at the start of the school term was consistent with the importance and urgency of the matter. The Tribunal found Dr Eko's evidence that their meeting had not been planned to lack credibility.

22. We accept the Claimant's evidence that she attended the meeting on the 16 April with all her documents (NI and NHS number, old passport, council tax document, old DBS checks dating back to 2003 and mother's death certificate). In the Claimant's evidence in chief on page 3 she stated that in this meeting she was asked by Dr Eko if she could provide evidence of her right to live and work in the UK and the Claimant handed over copies of her passports and Dr Eko looked through them. The Claimant also explained her background and the reason why she did not have the originals of a number of documents. The Claimant was told by Dr Eko in this meeting that even though she had an ILR stamp in her passport, "*it was expired and the advice from Lewisham HR was that it was no longer valid*". When the Claimant informed Dr Eko that her ILR could not expire she was told by Dr Eko that "*Lewisham HR believed that [the Claimant] had a lack of evidence to continue to prove [her] right to live and work in the United Kingdom*". The Claimant's evidence was that Dr Eko told her that she had no choice but to suspend her while the local authority continued to investigate. The Claimant was suspended in this meeting. It was Dr Eko's evidence that she suspended the Claimant because if she allowed her to remain at work without a valid DBS she would be fined. The Tribunal therefore conclude from Dr Eko's evidence that this was viewed as a serious matter and corroborated that the meeting was planned and was due to take place on the first morning of term, which was consistent with the Claimant's evidence.

23. Dr Eko emailed Ms Gorter Wright and Ms Parkhouse of the First Respondent on the 16 April 2018 at 16.09 over 6 hours after the suspension had taken place (page 36 and 39). In this email it was stated that "*one of my members of staff (a scale 5 TA) does not appear to have right of stay in the country. I wanted advise (sic) on how to proceed with this situation and have taken the initial step of 'suspending' her until you are able to advise me*". The Tribunal noted that this sentence confirmed that no HR advice was taken before suspension.

24. The email went on to state that the Claimant "*Does not have her birth certificate or anything to prove her identity. Has a stamp in her passport with a right of abode in the UK but this makes link to a previous passport which she is no longer in possession of*". The email then stated under the heading '**Moving on**' that the

school "*cannot keep her in employment when she does not have the right to work in the UK, hence the suspension*". The Tribunal noted that Dr Eko had stated that the Claimant did not have a right to work or to stay in the UK, this was inaccurate. Dr Eko was asked in cross examination how she reached this conclusion and she replied that it was in relation to the DBS however this was not what she said in the email which was a specific reference to the right to remain and the right to work in the UK. The DBS check was only referred to in connection with information that had 'come to light' about the Claimant's immigration status. The Tribunal find as a fact that Dr Eko was unable to explain how she concluded that the Claimant did not have a right to live and work in the UK. The Tribunal also conclude on the balance of probabilities that the Claimant's recollection of what was said to her in this meeting referred to above at paragraph 22 was correct as the Claimant's evidence on this point was remarkably similar to the words used by Dr Eko in this email (that her right to remain had expired and she did not have evidence to prove her right to remain).

25. Dr Eko was asked in cross examination about her comment in the email that the Claimant "*did not have anything to prove her identity"* and in reply she stated *"that was on the 16 April, I did not see any documents that day, I trusted [Ms Donegal Grant]*'. This response did not appear to be consistent with what was written in her email where she used the words that there was a 'lack of evidence' which strongly suggested that some evidence had been looked at and considered at this meeting and it was concluded that what was seen was insufficient. This statement also appeared to be inconsistent with the fact that Ms Donegal Grant was able to send to the First Respondent copies of the Claimant's ILR and a later passport a few hours later. The Tribunal have also found as a fact that the Claimant attended this meeting with the above documents, which were looked at by Dr Eko, it was therefore inaccurate to say in this email that the Claimant did not produce anything to prove her identity.

26. The Tribunal conclude that the Claimant's evidence was consistent and credible, and we find as a fact that she provided documents in this meeting and they were looked at by Dr Eko who then wrote to HR. The evidence of Dr Eko that she saw no documents at this meeting was not credible and her email to the First Respondent gave an inaccurate and misleading report of what had happened at the meeting.

27. The only advice that had been provided to the Second Respondent by the First Respondent before this date was that for the 'DBS purpose a new passport must also show a stamp or a residence permit'; this advice appeared to be DBS specific. There was no evidence before the Tribunal that the First Respondent had provided advice about the right to reside and to work in the UK prior to the meeting on the 16 April and Dr Eko was unable to explain how she reached this conclusion.

28. No minutes were taken at the meeting on the 16 April 2018 however the Tribunal conclude that the Claimant's recollection appeared to be reasonably accurate and in the absence of any written minutes provided by the Respondent's witnesses and no reference to the conduct or the fact of this meeting in their statements, the Claimant's evidence as set down in her evidence in chief is preferred.

29. After suspension Ms Donegal Grant emailed Ms Gorter Wright of the First Respondent on the 16 April 2018 at 18.05 asking HR to provide a draft letter confirming suspension (page 39). Also, in this email it was confirmed that they had a copy of the Claimant's current passport and her previous passport with 'endorsement' which the Tribunal took to mean the ILR. Again, the evidence of Dr Eko did not appear to be consistent with Ms Donegal Grant as in her email of the 16 April (page 36 which was not copied to Ms Donegal Grant), she stated the Claimant had nothing to prove her identity but two passports appeared to be some

proof of identity. These two emails provided a contradictory picture of the facts and failed to record any of the Claimant's explanation in the meeting as to why she was not in possession of some of her documents. It was also noted that the email on page 39 referred to an earlier discussion with HR, however no evidence was provided to the Tribunal of what was discussed.

30. Ms Gorter Wright emailed Ms Donegal Grant on the 17 April 2018 at page 38. In this email it was stated that "*Something that is raising questions about this with me, is the fact that she has said she does not have any other documentation including a birth certificate. How has she managed to get a passport without? Surely even for a renewal, ID documents are required?"* The Tribunal noted that it was inaccurate to state that the Claimant did not have a birth certificate or any other documents, she had a photocopy of her birth certificate but the original was not in her possession. The email then went on in the following paragraph to say "*however having just taken a quick look at her application form, two things concern me, she has not included a full education history and the supporting statement would not have met the full selection criteria for the JD. It is also concerning the school has confirmed it has sighted evidence of her right to live and work in the UK but this is not held on file and could lead to a significant fine by the UKBA should an audit take place*".

31. It was noted that this email cast significant doubt on the Claimant's identity, on her employment history and on her suitability for the role. No concerns had been raised about the Claimant's qualifications, experience or her immigration status prior to the 16 April. It was noted that Dr Eko's reply to the email from HR (also on page 38) did not clarify the situation about the Claimant's birth certificate or about the documentation she had provided in the meeting.

32. The Tribunal saw a draft of the suspension letter at pages 40-41 which was provided by HR. The Claimant took Dr Eko to the statement in the draft letter on page 40 that stated that her previous passport was "no longer in your possession" and she was asked about this (as the Claimant made the point that it was in her possession). Dr Eko's reply was "*however it is written, one thing is consistent the right of abode was not in the current passport, I was working on what I had been told by the Claimant. I didn't have the documents*". The Tribunal conclude that Dr Eko was unable to answer the question and we find as a fact that it was inaccurate to say that her passport with ILR was no longer in her possession and there was no explanation as to why inaccurate or misleading information had been provided to the First Respondent. It was also noted by the Tribunal that the inaccurate information that had been provided by Dr Eko caused the First Respondent to question the Claimant's honesty and integrity and her right to work and remain in the UK.

The suspension letter.

33. The suspension letter was dated 19 April 2018 and was seen at pages 42-43. The Claimant did not challenge the Respondent's right to suspend or dismiss. The letter of suspension stated that "*the documentation you have provided does not meet the requirements set by the UK Boarder (sic) Agency (UKBA)"* and the reason for suspension was because the Second Respondent had taken the view that the Claimant had failed to provide sufficient evidence of her right to "*live and work in the UK*". The use of the words "the documents you have provided" in the letter appeared to confirm that documents had been provided in the meeting, which corroborated the Claimant's evidence. It was pointed out by the Claimant that the reference to the UKBA appeared to be out of date as the correct Government Department at this time was UK Visas and Immigration (page 60), this appeared to suggest that the Respondent was using out of date documentation and advice in relation to her case. Dr Eko confirmed that the guidance being used was dated 2008, which was not the relevant guidance in force at the time.

34. The Claimant asked Dr Eko in cross examination how she decided that she did not have the right to live in the UK and she replied that the "*number did not give us clearance to work*", this was in relation to inputting the documents into the DBS system. Dr Eko then added that the "*DBS was not clear the issue was with immigration status, the two were intertwined*". The Tribunal noted that Dr Eko could not provide any evidence to support her statement that, in her view, the Claimant had no right to live in the UK.

35. The Claimant was warned in the suspension letter that she may be dismissed, and her pay would be suspended from the 1 May 2018. The Claimant was asked to attend a meeting on the 30 April 2018. Even though the letter stated that the reason for suspension was due to a lack of evidence of her right to live and work in the UK; there was no reference to the Claimant's ILR.

36. In order to try and resolve the situation and to get some advice, the Claimant wrote to her MP on the 24 April 2018 (pages 44-5 of the bundle). In this letter she said that she had been getting conflicting advice from various agencies about her situation and this left her feeling "judged, alienated, scared and anxious".

37. The Tribunal noted that prior to the meeting on the 30 April 2018, Ms Hollidge of the First Respondent sent to Dr Eko a draft of a dismissal letter on the 27 April. The Tribunal did not see any written communication between the First and Second Respondent that explained why the dismissal letter was finalised prior to the meeting. Although it was referred to as a draft, Ms Hollidge only referred to the amendments as being procedural in nature. The dismissal letter was then forwarded by Dr Eko to Ms Donegal Grant and marked as the 'final draft'. It appeared from the limited evidence before the Tribunal that the Respondent had concluded that dismissal was a foregone conclusion. This was surprising as according to Dr Eko's evidence given in cross examination, she had seen no documents prior to this meeting. If Dr Eko's evidence had been correct (which we have found as a fact it was not), this suggested that dismissal was felt to be appropriate, in the absence of any corroborative evidence.

The meeting on the 30 April 2018.
The Claimant's recollection of the meeting

38. The Claimant dealt in detail with the conduct of this meeting in her statement on pages 3-4. The Claimant explained in the meeting that she arrived in the UK when she was a child. Her mother had died when she was 12 and she was taken into care. The Claimant explained that her passport was given to her when she was 16 by her social worker and she was told not to lose it as it bore the stamp that was her indefinite leave to remain permit. She explained in the meeting that she had been working for a number of local authorities as a Teaching Assistant without incident. The Claimant stated that she was asked why she did not have her mother's passport or her original documents and the Claimant was said to have replied that "*no responsible parent would give their 12 year old child the most important documents they have and tell them to look after them safely".*

39. The Claimant stated that Ms Hollidge asked to see her current and previous passports and she showed them to her. She stated that Ms Hollidge asked her why she did not transfer the visa to the current passport; she replied that she had been advised that she did not need to and it was expensive to transfer a stamp (a fee that she could not afford).

40. The Claimant said that after Ms Hollidge had looked at her passports, she said "*that was a very good story but your mum was obviously an illegal immigrant which would make you an illegal immigrant".* The Claimant denied this and became angry. The Claimant then said that Ms Hollidge's next question was how she had

"*avoided detection for all this time considering [she] had no official identification documents*". The Claimant denied she had avoided or evaded detection and again said she had been employed by Bromley and Croydon and had used her passport as identification when she applied to the Respondent for a job. The Claimant then said that Ms Hollidge told her that her passports were a forgery. At this the Claimant became extremely distressed. The Claimant then stated that she had been on the Gov.UK website and her stamp was valid and Ms Hollidge's reply was that she was lying as they had taken advice from the UK Border Agency.

41. Ms Hollidge then told the Claimant that she had not seen the documents "*needed to meet the necessary requirements set by the UK Border Agency to allow [the Claimant] to live and work in the UK and she would be passing all of the information from her investigation to the relevant authorities*". At this stage of the meeting the Claimant described how she became extremely distressed and began to cry and then to sob. The Claimant had to leave the meeting for a while to gather her composure and to tidy herself up. When she returned to the meeting room, she gathered up her papers and was handed the letter of dismissal by Dr Eko.

42. In cross examination the Claimant confirmed that all of the above was said and she added that Ms Donegal Grant and Dr Eko did not *"open their mouths in the meeting or defend me. They let her rip me apart*". The Claimant told the Tribunal in answers to cross examination that Dr Eko lost her the "*job, house, man. I lost everything. She helped to circulate an unfounded assumption that I had no right to be in the country. I did not expect the Headteacher to do this*".

43. The Claimant denied when it was put to her that Dr Eko delivered the decision to her after a short break in the meeting. The Claimant replied that Dr Eko did not relay the decision to her; the dismissal letter was put in her hand and she left. The Claimant also stated that the letter was written on the 27 April and there was no evidence that they were investigating as the letter had been written and the decision made. The Claimant denied when it was put to her that she was told that they were sorry for the outcome and she would be missed.

The Second Respondent's evidence of the meeting

44. The Tribunal wish to make some observations about the Second Respondent's evidence provided in respect of this meeting. This meeting was where the discriminatory acts were said to have taken place. The Tribunal expected to have some evidence in chief from the Respondents' witnesses about the meeting. It would have been of assistance to have some evidence from those in the meeting from the Respondent about the words spoken, the demeanour and language used by all present and precisely what happened. It was also relevant that the Respondents have had the benefit of legal representation throughout and were aware of the case against them.

45. The Respondent's witnesses before the Tribunal did not provide any detail of their recollections of the conduct of the meeting in their witness statements. All Dr Eko was able to say was contained in two very brief paragraphs in her statement. The entirety of Dr Eko's evidence in chief was limited to confirming that the note taken by Ms Donegal Grant was "fairly accurate" and she denied that Ms Hollidge made any of the comments referred to above at paragraph 40. What was absent however was any detail of what happened at the meeting, what was said and how the meeting was conducted.

46. Ms Donegal Grant's statement was similar in its lack of detail. Her evidence as to what happened in this meeting was at paragraphs 3-7. Ms Donegal Grant confirmed she attended the meeting as the note taker and stated that the notes were "accurate and give a fair sense of what was said at the meeting". She provided no evidence of her recollection of what happened or what was said. She

also stated at paragraph 7 that "if any such remarks were made, I'm confident that Dr Eko would have stopped any continuation of such..". She did not suggest that she would have stepped in even though the Tribunal were told by Dr Eko that Ms Donegal Grant was responsible for HR matters.

47. Ms Hollidge did not give evidence to the Tribunal and did not provide a statement. The Tribunal were told that she had left the employment of the First Respondent. We would have benefitted from hearing from this vital witness and no evidence was provided to explain what steps had been taken to secure the attendance of this witness even though she had left. The Tribunal also did not hear from any other HR adviser from the First Respondent despite the fact that they had involvement in the case and had provided advice throughout.

48. Turning to the notes of the meeting, these were at pages 49-50. It was recorded that those in the meeting were the Claimant, Dr Eko, Ms Donegal Grant as note taker and Ms Hollidge from Lewisham HR. The notes were brief and gave no indication of the conduct of the meeting. The minutes did not record when it started and finished, however in response to the Tribunal's questions Ms Donegal Grant stated that it lasted about 20-25 minutes. The minutes did not record what was said or what was discussed. Although the Claimant attended the meeting with documentary evidence no record was made of the documents produced and it appears that no copies were taken. It did not record that at the end of the meeting the Claimant became distressed and tearful. Ms Donegal Grant accepted in response to the Tribunal's question that the minutes gave no indication of what happened in the meeting. The Tribunal conclude therefore that these minutes did not give an accurate or a fair sense of what happened in the meeting and so could not be said to be 'fairly accurate' as described by Dr Eko in her statement at paragraph 8 or 'accurate' as described by Ms Donegal Grant.

Ms Donegal Grant's evidence of the meeting.

49. In cross examination Ms Donegal Grant accepted that most of the talking in the meeting was done by Ms Hollidge and the Claimant; she accepted that she did not minute that Ms Hollidge had said at the start of the meeting that she was present from HR and was there to "view the documents". She accepted that she only minuted one question being asked by Ms Hollidge which was "why only addressing now" however the response to this question was not recorded.

50. Ms Donegal Grant accepted that she failed to make a note of the documents the Claimant brought with her but confirmed that the Claimant produced her tax documents her old and current passports and NHS documents. Ms Donegal Grant confirmed that the Claimant said in the meeting that she "*didn't have old documents but had relevant documents*" but failed to record this in the minutes. Ms Donegal Grant also conceded in cross examination that Ms Hollidge asked the Claimant why she did not have her old documents, but this question was not recorded in the minutes. The minutes however recorded the Claimant provided a response to Ms Hollidge that her "old documents were in archives". Ms Donegal Grant conceded that she wrongly failed to minute that it was Ms Hollidge that looked through the Claimant's documents when the Claimant was in the room, not Dr Eko (who she confirmed only looked at the documents after the Claimant had left the room).

51. In cross examination it was put to Ms Donegal Grant that Ms Hollidge said to the Claimant that she was lying and was "an illegal" immigrant; she denied this was said. The Claimant put to Ms Donegal Grant in cross examination that she had told the meeting how she had worked for the London Boroughs of Bromley and Croydon; this was admitted. Ms Donegal Grant also conceded in cross examination that the Claimant was told in the meeting that *"[she] didn't match the job description and there was a discrepancy*" and accepted that again this

comment was not recorded in the minutes. The Tribunal noted that this comment had been made in the email by the First Respondent dated the 17 April (see above at paragraph 30). The Claimant's evidence put to Ms Donegal Grant in cross examination reflected the consistency of her evidence as compared to the lack of consistent evidence provided by this witness on behalf of the Second Respondent. It would have been distressing for the Claimant to have been told that her qualifications and experience for the role had been called into question without being given an opportunity to respond or defend herself. It was again noted that this was put as an accusation rather than a question and did not call for any response from the Claimant.

52. The Claimant put to Ms Donegal Grant in cross examination that Ms Hollidge was referring to old guidance in the meeting (with reference to the UKBA) and she replied that she could not recall what guidance was being referred to. She considered HR to be the specialists and the experts and did not question what was going on in the meeting or to record accurately what took place. This response further highlighted the considerable deficiencies in the notes where official documents were not recorded, and evidence was not properly considered by either the First or Second Respondent.

53. It was put to Ms Donegal Grant that Ms Hollidge had asked the Claimant "*how she avoided detection*" she denied this but accepted that Ms Hollidge asked the Claimant how she had "*managed without documentation*". The Tribunal asked her why she did not write this down and she replied, "I don't know". Ms Donegal Grant also conceded in answers to the Tribunal's questions that she had not recorded faithfully the contributions of either the Claimant or Ms Hollidge in the meeting. It was noted by the Tribunal that the comment about the Claimant 'managing without documentation' appeared to be similar to the comment about avoiding detection, both implied that the Claimant had somehow been dishonestly remained in the UK without the right to do so, even though she had ILR .

54. The Respondent's view that the Claimant had somehow avoided detection was also consistent with the minutes written down by Ms Donegal Grant on page 50 which said "UKBA needs to be informed – potential fine for school". Although Ms Donegal Grant denied in cross examination that Ms Hollidge told the Claimant that she was going to pass all the documents on to the relevant authorities, this comment appeared in the notes she took. Ms Donegal Grant's recollection of the meeting lacked consistency or reliability on this point. This minute supported the Claimant's evidence that the comments were made which called into question her honesty, her right to remain in the UK and the validity of her documentation. It was consistent with the notes that Ms Hollidge reached the conclusion that the Claimant was in the country illegally and needed to be reported to the authorities in order for them to investigate.

Dr Eko's evidence of the meeting.

55. Dr Eko's evidence of what happened in the meeting given in cross examination was vague and was not consistent with Ms Donegal Grant's recollection. It was her recollection that Ms Hollidge only asked one question, this was contradicted by Ms Donegal Grant in cross examination as she conceded that a number of questions and comments had been made as we have found as a fact above. She recalled that the meeting lasted 35-40 minutes, considerably longer than Ms Donegal Grant's recollection which was that the meeting lasted 20-25 minutes. Dr Eko conceded that there was "*a lot spoken and not everything was written down*", the Tribunal conclude that her evidence in her statement at paragraph 8 that the notes were "fairly accurate" was inconsistent with her evidence given in cross examination and not credible. Dr Eko also confirmed that "*I remember that Ms Hollidge brought out the guidance and a lot was spoken between the two of you*" and she confirmed that much of this conversation was not recorded. To simply

state that "a lot was spoken" indicated the lack of care taken in this meeting and reflected the dismissive attitude of those in the meeting towards the Claimant.

56. Dr Eko denied that Ms Hollidge called the Claimant a liar but said that the conversation was "about the DBS". However the minutes made no reference to the DBS application and it was inconsistent with her witness statement at paragraph 8 where she stated that the meeting was to discuss whether she was able to satisfy the 'right to work checks'. The Tribunal did not find this evidence to be corroborated in the written documentation or supported by the evidence given by Ms Donegal Grant in cross examination. Although Dr Eko denied that anything inappropriate was said in the meeting, she produced no contemporaneous notes and was unable to provide any recollection of what was said in the meeting by either Ms Hollidge or by the Claimant. The Tribunal felt that if she could provide no evidence to the Tribunal of what was said in the meeting, it was difficult to understand how she could be sure that nothing inappropriate was said. Again, her evidence was found to be lacking in credibility.

57. Dr Eko denied when it was put to her that Ms Hollidge said that *"[your] mum was obviously an illegal immigrant, which would make you an illegal immigrant*" and she was evading the authorities. Dr Eko was then taken in cross examination to page 53 which was an email from Ms Hollidge to Dr Eko dated the 30 April 2018 at 15.27 (after the dismissal meeting) where she stated that "Karen will notify the relevant authorities who will then conduct an investigation". The subject line was "Re: Home Office/UK immigration notification". Dr Eko denied that this email referred to reporting the Claimant to the Home Office, she stated that this was a reference to reporting the school, where a fine would be imposed. However, this was inconsistent with what had happened in the meeting as the focus was on the Claimant's perceived illegal status and to consider whether she had a right to remain and work in the UK. As it had been concluded by Ms Hollidge that the Claimant had no such right, it would follow that she would then report the Claimant to the authorities. If the comment was about an investigation of the school only, it was difficult to understand why Ms Hollidge would inform the Claimant of this and why it would be recorded in the notes of the meeting with the Claimant. The Tribunal find as a fact and on the balance of probabilities Ms Hollidge told the Claimant that she would report her to the authorities for them to conduct an investigation.

58. The Tribunal are faced with a conflict in the evidence of what was said in the meeting. The Claimant stated that the above comments were made by Ms Hollidge but Dr Eko and Ms Donegal Grant deny that any comments of this nature were made. We have found that the Second Respondent's witness evidence of the meeting were not consistent with the documents or with each other. They were unable to corroborate each other's recollection of what happened in the meeting and the notes which both had stated were thought to be accurate, were conceded by Ms Donegal Grant not to be so. The Tribunal raise an adverse inference from this.

59. Dr Eko's evidence was unreliable on a number of matters, she told the Tribunal that Ms Hollidge only asked one question but in cross examination Ms Donegal Grant had conceded that a number of questions had been asked. They also were unable to agree how long the meeting lasted. It was Dr Eko's view that in the meeting the DBS application was discussed, but there was no evidence to corroborate this. In the light of the contradictory and inconsistent evidence provided by the Second Respondent's witnesses and no corroborative evidence being provided by Ms Hollidge, we therefore prefer the evidence of the Claimant as to the conduct of the meeting and on the words spoken by Ms Hollidge.

60. We then had to consider whether on the balance of probabilities the comments above were made by Ms Hollidge. The thrust of the three comments were that the

Claimant (and her mother) were illegal immigrants, she had forged her American Passport and had been evading the authorities. These were serious accusations and suggested that the Claimant was dishonest, in the country illegally and had knowingly misrepresented her status to the Second Respondent. It was also suggested in the emails from the First Respondent that the dishonesty extended to the Claimant's CV, work history and to her ability to perform the role. These were assumptions and were unsupported by any evidence in the bundle. The prejudicial comments appear to have emanated from the email of the 16 April from Dr Eko where she stated that the Claimant had no right to live and work in the UK. Although Dr Eko could provide no explanation of how she had reached this conclusion, the First Respondent appeared to accept this statement without question and without conducting any investigation.

61. The alleged comments made by Ms Hollidge in the meeting were consistent with the views expressed by Dr Eko on the 16 April and by Ms Gorter Wright on the 17 April. As it had been stated that the Claimant had no right to live and work in the UK and this had not been challenged by the First Respondent, it was entirely consistent for Ms Hollidge to then accuse the Claimant of being in the country illegally, or of being an illegal immigrant. It would also be entirely consistent if they had formed the view that the Claimant entered the UK with her mother, to accuse the Claimant's mother of being an illegal immigrant. As the Claimant had documents that could show her ILR, it was evident that the First and Second Respondent did not believe these documents to be genuine as by the date of the meeting, the Claimant's honesty and integrity had also been called into question. It was also consistent that if the Respondents were of the view that the Claimant was in the country illegally, the documents that could evidence her right to remain would then be rejected as being forgeries.

62. We have found as a fact that Ms Hollidge made the comment that the Claimant had evaded the authorities as it was conceded by Ms Donegal Grant that she was asked how she had 'managed without documentation'. We have concluded that the two comments were remarkably similar; they both inferred that the Claimant had somehow avoided detection. We also took into account the reference in the email dated the 17 April which questioned how the Claimant had 'managed to get a passport' without documentation. The word managing in this sense suggested that the Claimant had dishonestly worked around the immigration rules and had avoided detection. It was evident from the few emails the Tribunal saw and from the evidence of the witnesses that the First and Second Respondents had concluded that the Claimant was dishonest and was remaining in the country illegally despite her producing evidence to the contrary. The Tribunal also concluded that Ms Hollidge had told the Claimant that she intended to 'make a referral to the authorities' meaning to report the Claimant to the Home Office as this was in the notes of the meeting and referred to in email evidence. Again, it was entirely consistent with their erroneous view of the Claimant's honesty and their view that she was illegally in the country to make such a referral.

63. Lastly, we referred to the evidence of Ms Donegal Grant where she conceded in cross examination that this meeting was emotional, and the Claimant became upset and cried and then had to leave the meeting to recover her composure. The Claimant told the Tribunal that she did not cry easily. The Tribunal noted that the Claimant's demeanour in Tribunal was measured and professional. She only displayed distress when being taken back to considering evidence of the meeting when the comments were made. It was at that time that the Claimant became upset and cried. We accept the evidence of the Claimant that this meeting was distressing because of the comments made by Ms Hollidge that accused her of dishonesty and of being an illegal immigrant despite the evidence to the contrary. It was noted by the Tribunal that the memory of what was said to the Claimant in the meeting still caused her considerable distress.

64. The Tribunal then have to consider why the comments were made by Ms Hollidge. The parties agreed that the meeting was called for Ms Hollidge to look at the Claimant's documents and to consider whether she could show that she had a right to live and work in the UK. However, the Tribunal noted that from the 16 April 2018, Dr Eko had concluded she did not have a right to do so and in the absence of any evidence to support this conclusion we conclude that it was because of her nationality. The Tribunal saw no attempt by the First Respondent to take advice on this or to conduct any investigation. The dismissal letter had been finalised prior to the dismissal meeting. Ms Hollidge rejected the Claimant's evidence by accusing her and her mother of being illegal immigrants and of forging her documents. The meeting was conducted in a hostile manner and there was no evidence to suggest that Ms Hollidge carefully studied the documents or considered their legality. We also found as a fact that accusations were made about the Claimant's ability to perform the role (above at paragraph 51) again with no investigation and no evidence to support this. This was not a meeting but an ambush, the sole purpose of which was to terminate her contract. The Tribunal conclude that the words used, and the allegations made in this meeting were unfavourable treatment of the Claimant because of her nationality. It had been decided on the 16 April that she had no right to be in the UK and this meeting delivered the decision, even though this decision itself was based on misinformation, conjecture and prejudicial preconceptions about the Claimant's past and the circumstances of her arrival in the UK. We conclude that those prejudicial preconceptions were because of her Nationality.

The dismissal letter.

65. At the end of the meeting the Claimant was handed a letter confirming her dismissal by Dr Eko. This was at page 51-52 of the bundle. It was noted that the previous draft of the letter dated the 27 April 2018 stated that if the Claimant could provide evidence that she had a right to work and live in the UK, the school would consider a job application, should a vacancy be available. These words were not included in the letter that was handed to the Claimant. We heard Dr Eko say in answers to cross examination that the Claimant was a good employee who was well thought of and the school did not want to see her go. This evidence appeared to be inconsistent with the letter of dismissal which did not indicate that they would be happy to take her back. However, the Tribunal conclude on the balance of probabilities that the wording of the dismissal letter was consistent with the hostile views provided by the First Respondent in their emails to the Second Respondent, that they had started to question the Claimant's qualifications, experience and her suitability for the role. It was also consistent with the hostile views expressed by Ms Hollidge, that the Claimant was perceived to be an illegal immigrant

66. The Claimant confirmed in cross examination that she got her biometric resident's permit at the end of November 2019 and now works between 12-18 hours a week earning £8.21 per hour. This permit confirmed that the Claimant was in the country legally and had a right to work.

The Law

Equality Act 2010
Section 13 Direct discrimination

67. (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.

Closing Submissions

68. The **Claimant produced written submissions** that she read out to the Tribunal and in outline they are as follows:

69. The Claimant stated that she pursued the case in good faith; she stated that she had not changed her story or tried to add to the allegations. Although she could not show what was said to her in the meeting, evidence was provided to show that before the meeting took place the Respondents were emailing each other with inaccurate information that 'heavily implied' that she was not allowed to live in the UK. The Claimant stated that this was incorrect information and the headteacher began the degradation that followed.

70. The Claimant stated that when she learnt of the problem with the DBS, she felt sure that this was a problem that could be easily fixed. She stated that she knew she would be suspended until she was able to rectify the situation and she felt that she would be given time to do this.

71. The Claimant stated that Ms Donegal Grant wanted the Tribunal to believe that Dr Eko was not informed of the problem before the 16 April but the email on page 35 dated the 9 April and Dr Eko's response given in cross examination shows otherwise. The Respondent did not seek to find out any details or record any information and documentation that was provided on the 16 April to ensure that they were following due diligence. The Respondent denied that a meeting was set up on the 16 April by Ms Donegal Grant even though the suspension letter on page 42 showed that a meeting took place and she was obliged to bring evidence of her right to work and live in the UK to that meeting.

72. The Respondent told the Tribunal in cross examination that they had a previous case involving the DBS system and it was Dr Eko's evidence that her decision to suspend the Claimant was solely based on advice she had received from a different person with a different problem at a different time. There was no evidence to suggest that the Respondent took advice from the DBS checking service or the Home Office to support what Dr Eko said in her email on page 36 (that the Claimant did not have a right to be in the country and did not have anything to prove her identity). Ms Donegal Grant stated that she did not give Dr Eko this information and there is no indication as to where this came from. However, this appeared to lead Lewisham HR to think that the Claimant was 'illegal' and had no identity. Ms Gorter Wright of HR in her email on page 38 stated that the Claimant "did not have other documentation including a birth certificate" and she also concluded that the Claimant did not meet the selection criteria for the role. The Claimant stated that Dr Eko did not pass on accurate information about her or copies of her documentation to HR. The Claimant stated that she had official documentation to prove who she was. The Claimant stated that this email proved that the Respondent allowed HR to form a derogatory and harmful perception of her before the dismissal meeting took place.

73. The First Respondent is a large local authority which has the means, ability and legal obligation to advise their employees to use the correct framework and information however it was confirmed that the Respondent was using

the 2008 framework not the 2015 framework that was in force at the time. The suspension letter and dismissal letter both referred to the UKBA which was not in existence after 2013. The Claimant informed the Respondents of this in the dismissal meeting but was told she was wrong as "UKBA told them to carry out an investigation into my right to live and work in this country". The Claimant went on to state that the Respondents provided no paper trail to show that a fair process was followed.

74. At the dismissal meeting Ms Hollidge had already formed the view that the Claimant was 'illegal' and it was assumed that her mother was too. This was based on the inaccurate information provided by Dr Eko to HR and they formed the view that she had no ID documentation and could not have obtained a passport without them. The conclusion formed by HR was that she had forged her American Passport.

75. The Claimant stated that no minutes were taken at the dismissal meeting and the notes that were taken were half finished and small portions of statements were written down. The notes were written to show what the Respondent wanted to believe but did not include the evidence that the Claimant relied upon in her defence.

76. The witnesses for the Respondent have been inconsistent in their evidence during the hearing. Dr Eko stated that she does not know any information as it was not her department and did not remember what was said at the time; she also stated that she followed the advice of HR and used their pre drafted letters. Dr Eko spoke verbally to those in HR and held out Ms Hollidge as an expert.

77. Both witnesses for the Respondent have kept their statements deliberately vague so the Claimant was unable to extract any real information from them. The Claimant told the Tribunal that she asked to call Ms Hollidge as a witness but was told by the Respondent that she no longer worked for the Respondent and was told that "Dr Eko and Ms Donegal Grant would be adequate witnesses". However the Claimant went on to state that Ms Hollidge was a vital witness and as statements have been uncontested by Ms Hollidge and Dr Eko and Ms Donegal Grant cannot recall what was said in the meeting, she was the more reliable witness and her evidence should be preferred.

78. The Claimant went on to state that none of the information or evidence she provided was handed on to the relevant people, instead there were inaccurate derogatory and hostile emails about the Claimant containing information that was unfounded and untrue.

79. The Claimant stated that the Respondent did not have regard to section 149 of the Equality Act as they did not have due regard to good relations, tackling prejudice and promoting good understanding. The email on page 38 stating falsehoods were their own erroneous beliefs and not based on fact.

80. [The Claimant then quoted a passage from the MacPherson report which will not be replicated in this decision but was read by the Tribunal]. The Claimant went on to state that the discrimination could be shown through lack of progress. None of the relevant information was considered. No

accurate notes were taken and the attitude of staff from the First and Second Respondent towards her "show not just hostility but also thoughtlessness and ignorance" (the Claimant referred the Tribunal to page 36).

81. The Claimant went on to state that at the time of her dismissal, she did not have access to her HR file, and she was totally unprepared for the unpleasant things that were said to her. When she was told by Ms Hollidge that she was lying and her and her mother were illegal immigrants she could not understand how they came to that conclusion. When Ms Hollidge said that she had forged her passport and had been evading the authorities she said she was so overwhelmed that she cried in the meeting. The Claimant said that when Ms Hollidge told her that she was going to pass on all the relevant information to the authorities she believed her. The Claimant then stated "*I was forced to stay in my house for 13 weeks before I could get my passport verified by an actual immigration specialist again. Each day I though (sic) the immigration force was going to storm my house and arrest me for being illegal in the country. The Equalities Act is supposed to ensure that local authorities take action against discrimination and promote equality and yet as my employment file shows the Respondent was actively trying to turn me in to a criminal that has been skulking around the country trying to evade detection*".

82. The Claimant confirmed that she did not present a claim to the Tribunal because she was dismissed as she understood that working in a school means that all staff have to be vetted and cleared to work. The Claimant confirmed that she was in the Tribunal because the Second Respondent's witnesses allowed Ms Hollidge to "*call my mother and I names, they allowed her to call me a criminal and take away my life for over a year*".

83. The Respondent followed no procedure or policy when they dismissed her and she has spent almost 2 years trying to resolve the situation. She ended her submission with the words "*I have not lied or forgotten or made up stories to get my way. The Respondents took away my right to live and work in this country and left me to figure it out*".

84. The Claimant told the Tribunal in answers to cross examination that not only had she been sacked; she had been subjected to "*lack of proving a right to live and work in England and it was not because of the DBS. The right to live and work in England was removed by a school. I cannot express what it is like to go to work, to not being registered to be a person. They said my stamp was expired. They said my stamp was only valid while the passport was valid. Your team said that there was a lack of evidence to be in England to my face. I was unable to access any form of healthcare. Your team looked at me and said I was illegal".*

The **Respondent's oral submissions** were as follows;

85. The issues were at page 26 of the bundle and they are whether the comments were made and if so, were they made because of the Claimant's nationality. Whether they would have treated someone the same of a different nationality.

86. This case was listed for one day by Employment Judge Balogan, it was the Respondent's view that the issues were narrow. In the ET1 at page 7 of the

bundle very little was said about the background to the allegations, this case was sufficiently narrow for it to be completed in one day. The Respondent says that the comments were not made.

87. The burden of proof is on the Claimant to show primary facts which have to be established on the balance of probabilities. The primary facts are what was said on the 30 April 2018. The Claimant confirmed that she found both the Respondent's witnesses to have honesty and integrity. The Tribunal heard that the school felt sorry for her and did not want her to go. Under lengthy cross examination they did not show anger or disrespect towards the Claimant.

88. There were discussions after dismissal with the Claimant for her to return to the school on a voluntary basis and she could come to work when her documents were regularised. When she had her biometric residents permit, she lodged her claim.

89. The Claimant's case was that the Respondent accepted the Claimant's explanation when the DBS could not be completed (page 35) it was accepted that she had a ILR in her old passport, this was accepted. At page 36 she accepted the circumstances of the Claimant's background, there was no doubt of the authenticity of the Claimant's explanation.

90. In terms of advice, the evidence was given on the 9 April at page 34 of the bundle and advice was sought from Ms Grimshaw and this was followed. In the email reference made to the guidelines for the DBS the Claimant accepted that the guidance was followed at page 35 and this was sent 10 to 15 minutes later. The Respondent's case is that Ms Hollidge had the expertise in ID checking.

91. The Claimant accepted in cross examination that the DBS checking was a new system. On page 35 there was no mention of the Claimant's need, no request for the Claimant to gather paperwork for a meeting with Dr Eko on the 16 April and no evidence in relation to paragraph 4.

92. The documents support the Respondent's witness evidence that there was no meeting between the Claimant and Ms Donegal Grant on the 30 March. There was no meeting before school broke up and the meeting on the 16 April was not prearranged.

93. The Respondent submits that the meeting on the 16 April 2018 when she was told she would be suspended; the Respondent asks the Tribunal to find there were no documents presented by the Claimant and that Ms Donegal Grant had not spoken at that meeting. Page 36 supports the Respondent and the witness evidence made no mention of documents.

94. The documents the Claimant was advised to bring was in the suspension letter at pages 42-3 as they needed to complete the DBS checks. It was the Claimant's responsibility to provide the documents, these were the right to work documents.

95. On the 30 April 2018 there was a meeting. The documents had to be provided at the meeting. The Respondent's evidence is at pages 49-50 and these are contemporaneous notes which give the key points that were

discussed accurately. The Respondent will say that this is a document that supports their evidence given under cross examination.

96. At pages 51-2 this supports the Respondent's evidence and explains the evidence that is required to meet the right to work requirement by the Home Office. The Respondent's witness evidence shows that the meeting on the 30 April was not hostile as explained. The Respondent's evidence given under cross examination supports the fact that the meeting was supportive and to assist the Claimant to provide the right to work documents to get her paperwork regularised.

97. The Respondent has considerable sympathy with the Windrush cases (hostile environment) including the Claimant's case. They were sorry to see her go; it was problematic.

98. Turning to losses, when the Claimant was cross examined she said that the Respondent removed her right to work in the UK, that she was unable to access help, they did not take immigration advice also about the comment that Dr Eko put a stop to her being in the country. The Respondent accepted that the Claimant needed money. However, the Claimant was expecting the school to speak to the Home Office but it is not in the power of the Local Authority to do that. Dr Eko's evidence was that they had to follow the right to work law and follow that system.

99. The Claimant's claim for injury to feelings is based on what she told the Tribunal, this was in relation to the comments made but the situation she was in was due to the hostile environment and victims of Windrush. The Claimant has said she has not applied for compensation under Windrush. Although the Home Office made an apology, we would say that it is not for the Local Authority or the school to pick up compensation.

100. The Claimant has not discharged the burden of proof and we refute that the comments were made. If the Tribunal found that they were made they do not relate to any particular nationality, they refer to the right to work checks. It is about providing documentation it is not connected to any particular nationality.

101. If the Tribunal find that the comments were made, we submit that it would be the lower to medium band. We say the Respondent was supportive and they were sorry to see her go.

Decision

The unanimous decision of the Tribunal is as follows:

102. We have identified above in our findings of fact that we found the evidence of the Claimant to be consistent and credible. Her ET1, statement and evidence in cross examination and closing submissions remained consistent and not subject to exaggeration or embellishment. This can be contrasted with the evidence of the Second Respondent's witnesses who were found to be inconsistent and unreliable. It was of considerable concern that the Second Respondent failed to minute or to take minutes in the suspension meeting. We have rejected the evidence of Dr Eko that this meeting was unplanned. We have concluded on the balance of probabilities

that Dr Eko took no advice before deciding to suspend the Claimant.

103. The minutes taken during the dismissal meeting were vague and lacked detail and Ms Donegal Grant admitted that she failed to record much of what was said (and we have recorded the admissions that she made in cross examination above at paragraphs 50-54). Also, the Respondent's witness statements contained no evidence in relation to the conduct of the dismissal meeting save to record that the offending comments were not made and that the notes were (fairly) accurate; that has now been admitted by Ms Donegal Grant to be incorrect. The Tribunal have therefore concluded that the Claimant's evidence will be preferred to that of the Respondent's witnesses where there is a conflict between the two.

104. The Tribunal also wish to state that we were considerably hampered by the First Respondent's failure to call Ms Hollidge to give evidence. The Claimant was unable to put the allegations to her. It was also of note that no one appeared from the First Respondent's HR department despite the fact that they had considerable input into the advice given at the early stages of this case and input into the decisions taken.

105. We have found as a fact that the three comments referred to above at paragraph 3 were made. We reached this conclusion taking into account the reliability and consistency of the Claimant's evidence as compared to that of the Respondent's witnesses. We have found as a fact that Ms Donegal Grant conceded that Ms Hollidge made a comment questioning how the Claimant had 'managed without documentation' and we concluded that this was similar in nature to questioning how the Claimant had been 'evading the authorities'. We also concluded that the comment about the Claimant and her mother being illegal immigrants was said despite this being denied by the Respondent's witnesses. The Tribunal took into account that this opinion was expressed by Dr Eko in her email on the 16 April, when she stated that the Claimant did not have a right to remain or work in the UK. There was no evidence to support this statement and Dr Eko was unable to tell the Tribunal why or how she had reached this conclusion. After this email, the First Respondent questioned the Claimant's qualifications and experience for the role.

106. This started to paint a picture of an environment that was becoming negative and hostile towards the Claimant, where both the First and Second Respondent presumed the Claimant to be dishonest where there appeared to be gaps in her documentation. The communication passing between the First and Second Respondent from the 16 April showed that they had formed the view that the Claimant was in the country illegally. This conclusion had been reached before an investigation had taken place. The Respondents have provided no evidence to support this conclusion and Dr Eko was unable to explain how this conclusion was reached. In the absence of any evidence to justify this presumption we conclude it was less favourable treatment because of the Claimant's nationality.

107. We also concluded on the balance of probabilities that the Claimant was accused of forging her passport having found her evidence was consistent on this point. We concluded that this comment was of a similar nature to the views expressed in the emails by Dr Eko and by HR (especially the comment 'how has she managed to get a passport..' referred to above

at paragraph 30). It showed that before the dismissal meeting, there was doubt in the First Respondent's mind about the validity of the passports and of the documentation despite neither Respondent having considered the Claimant's evidence given in relation to her status on entry to the UK and the reason why she could not produce the originals of some documents. As there was evidence to suggest that this was an issue that was also in the mind of HR from the 17 April, it was concluded that this was a comment that was made by Ms Hollidge. The Tribunal have concluded that these three comments were made, and it amounted to unfavourable treatment of the Claimant.

108. The Respondent suggested in their closing submissions that the comments did not relate to nationality but to the right to work. If it had been shown that the Claimant did not have a right to work and remain in the UK this case would not have proceeded to a full hearing. This case was not about a legal right to remain but about the Respondent's treatment of the Claimant in the meeting on the 30 April and the comments made. We have heard no evidence from either Respondent about the evidence they relied upon in support of the opinions expressed in the emails referred to above. We saw no investigation of the Claimant's immigration status and saw no serious consideration of the documentation she provided in the dismissal meeting. The documents were rejected out of hand by concluding that they had been forged, but no evidence had been placed before the Tribunal to support this serious accusation. Had the First and Second Respondent investigated the Claimant's right to live and work in the UK, we expected to see evidence of this investigation in the bundle or in the statements. We saw none.

109. Turning to the burden of proof, the next question is whether these comments were made because of race. In the hearing it was agreed that this could be established by considering the 'reason why'. We conclude that the comments were hostile and were made because of the Claimant's American nationality. All the comments related to the Claimant's (and her mother's) immigration status and documentation. The Claimant's evidence was rejected out of hand by the Respondents because they presumed it to be fraudulent and evidence of her dishonesty, despite the fact that her honesty and integrity had never been questioned prior to the email of the 16 April. The Respondent had decided, before considering her evidence, that she was to be dismissed. The Claimant provided evidence to the dismissal meeting and explained why there were gaps in her documentation, but this was not investigated, and her explanation was rejected as being untruthful. We have to ask why the Claimant's evidence was not considered and why she had been identified as being dishonest prior to the meeting and we conclude that it was because of her nationality.

110. Even though we agreed that this was a 'reason why' case, we also considered how a hypothetical comparator would be treated in this case. We concluded that a hypothetical comparator would be an employee who held a UK Passport but who had been unable to complete the online DBS check for some reason (when all previous checks had come back clear). We concluded that although they may have been dismissed, they would not have been accused of dishonesty or of falsifying documents and they would not have had their employment history and qualifications called into question.

111. The Respondent referred in their closing submissions to what they described as the hostile environment being to blame. A hostile environment is not an excuse or a defence to an act of discrimination. The description of the hostile environment appeared to perfectly describe the conduct of the Respondents towards the Claimant in this case. They had decided to create a hostile environment for the Claimant because she was of American Nationality. She was falsely accused of misrepresenting her immigration status, of entering into the UK illegally and being in the country illegally and of forging her passport. We conclude that the reason the Claimant was treated in this way was because of her Nationality.

112. The burden of proof therefore shifts to the Respondent to show that there was no evidence whatsoever that the Respondent acted on that ground. The Respondent has not discharged that burden. We have no idea why Ms Hollidge made these comments as she was not called to give evidence and we heard no evidence from HR to explain the conduct of the meeting or why they had accepted the word of Dr Eko (unsupported by any evidence) that the Claimant had no right to live and work in the UK. We heard no evidence as to why HR had started to investigate the Claimant's employment background and had concluded that her application for the role should not have succeeded.

113. The only evidence we heard from the Respondents witnesses as to what was said in the meeting was given in cross examination. That evidence was found to be inconsistent and unreliable. Although it has been put to the Tribunal in closing submissions by the Respondent that the meeting on the 30 April 2018 was supportive and designed to assist the Claimant to find the correct documents, the evidence did not support this submission. This meeting was not designed to assist the Claimant; we have found as a fact that the dismissal letter had been drafted before the meeting; there was no evidence that anyone in the meeting had planned to assist or support the Claimant in any way. The minutes did not reflect any offer of assistance, the sole focus of the meeting was on HR confronting the Claimant, accusing her of dishonesty and then dismissing her with the threat that she was to be referred to the authorities. This was not a supportive meeting; it was confrontational and threatening.

114. The Respondents have failed to discharge the burden of proof. They have failed to show a non-discriminatory reason for the comments made in that meeting. We conclude therefore that the Claimant's claim for direct discrimination is therefore well founded.

115. The Tribunal noted in the Respondent's submissions that they had "enormous sympathy" with the Windrush cases and went on again to refer to the hostile environment. The Respondents said they were sorry to see her go and the situation was 'problematic'. Although sympathy has been expressed there was no evidence that the Claimant was treated with sympathy or respect at the time. The submission that the Respondent was sorry to see the Claimant go was not supported by any evidence, as the olive branch held out in the draft dismissal letter was taken out of the letter sent to the Claimant.

116. The Respondent submits that there should be no award for injury to

feelings as the comments were not in relation to nationality but due to what was described as the 'hostile environment'. The Tribunal have found as a fact that the comments were made and that they were made because of the Claimant's nationality. Prejudicial and false preconceptions were made about the Claimant because of her nationality, assuming her to be dishonest and illegally in the country and where she could show evidence to prove her status accusing her then of forging those documents. This was a hostile environment that had been created by the First and Second Respondent because of the Claimant's nationality. Everything the Claimant said was rejected as being false and the relevant documents produced as evidence of her right to remain were wrongly rejected as being forgeries. The Tribunal could not imagine this approach being followed when dealing with a comparable case of a British citizen.

117. The only issues in this case were in relation to the comments made in this meeting. The Claimant stated quite clearly that she had no issue about her suspension and accepted that if there was a doubt about her right to work that she faced dismissal. That was not in issue before this Tribunal and the Claimant emphasised this in her submission where she stated that she understood that she had to be "vetted and cleared to work". The Claimant was very clear in her evidence and in her closing submission that what caused her distress was to be called a criminal, being accused of lying being called names and to have her life taken away.

118. The Tribunal have found as a fact that the comments made in the meeting were deeply offensive and threatening. The comments found to have been made were not only factually incorrect but insulting and disrespectful. The discrimination was overt and made negative assumptions because of the Claimant's nationality. The Claimant suffered distress and humiliation and broke down in the meeting. There appeared to be no excuse to conduct the meeting in this hostile and offensive manner. This makes the acts of discrimination serious and it therefore falls within the middle rather than the lower band of Vento. This was not a one off less serious incident, the dynamics of the meeting and the offensive nature of the comments made, and the lack of support provided by Dr Eko as the Claimant's line manager, made this incident all the more serious.

119. The effects of the acts of discrimination extended way beyond the date of the meeting. The Claimant was in fear for a number of weeks after the 30 April because she feared the authorities would come to her door. She stated in her closing submission that "I was forced to stay in my house for 13 weeks before I could get my passport verified by an actual immigration specialist again. Each day I though (sic) the immigration force was going to storm my house and arrest me for being illegal in the country". The Claimant was placed in fear of her liberty and feared deportation due to the threats made by Ms Hollidge in this meeting.

120. The Tribunal also noted that she lost the job she loved, and she was not given the opportunity to return when her status had been verified.

121. The consequences of the discrimination have been far reaching and damaging to the Claimant both personally and professionally. It is for these reasons that we conclude that she be awarded the sum of £18,000 as compensation for injury to feelings to represent the seriousness of the

discrimination and the impact that this had on her. We also conclude that interest should be added at the rate of 8% per annum to run from the date of discrimination on the 30 April 2018 to today (which comes to a total of 717 days) The annual rate is £18,000 x 8% = £1440, we divided this sum by 365 to obtain a daily rate which was £3.945 x 717 = £2828.71. The total sum to be awarded is therefore £20,828.71.

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Employment Judge **Sage**
Date: 4 May 2020