EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Ms S Bashir	**v**	Star Academies

Heard at:	Reading	**On:** 2 – 18 November 2020 19 January & 20 April 2021 and 19 April & 15, 16 & 18 June 2021 (in chambers)
Before:	Employment Judge Anstis Mrs A E Brown Ms B Osborne	

Appearances
For the Claimant: In person
For the Respondent: Ms K Barry (counsel)

JUDGMENT

1. The respondent acted in breach of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 by including in the claimant's contract of employment a term concerning notice that was less favourable than that of a comparable permanent employee.

2. The claimant's other claims are dismissed.

REASONS

A. INTRODUCTION

Introduction

1. The claimant was employed by the respondent from 1 September 2017 to 9 July 2018 as a deputy principal at the Olive School in Hackney, which is a primary school run by the respondent.

2. The claimant brings a number of claims against the respondent arising out of her employment, its termination and events subsequent to the termination of her employment.

3. The claimant claims that a term of her contract was less favourable to her on account of being a fixed-term employee and claims that she was subject to detriments (and ultimately dismissal) on the basis of having made protected disclosures. She also raises various complaints of disability discrimination, with her claimed disability being depression or depression/anxiety.

The hearing

4. The claimant had been represented by counsel up to shortly before the hearing, but by the time of the hearing she was representing herself. The respondent was represented by Kirsten Barry of counsel, instructed by Hill Dickinson LLP.

5. The hearing of this case had originally been listed for 15 days from 2 - 20 November 2020. However, on Monday 2 November 2020 the start time was put back to 12:00 as the tribunal had to accommodate another hearing.

6. It was apparent at the start of the hearing that the tribunal would have to spend substantial time in reading into the case. This was particularly so because of the lengthy witness statements. The claimant's witness statement ran to more than 200 pages, and the combined length of the respondent's witness statements was similar. The tribunal was unable to sit due to previous commitments on Thursday and Friday 19 & 20 November. A commitment on Wednesday 18 November was removed so that the tribunal could sit that day, allowing a continuous period of 12½ days for hearing the case as against the 15 originally intended.

7. This hearing was listed to determine matters of liability only.

8. In initial discussions we urged the parties to focus their attention on the list of issues that we had been provided with. This had originally been produced by the claimant's representative following the case management hearing before Employment Judge Bloch QC on 7 January 2020, and was supplemented by further particulars that had subsequently been provided. While the claimant's claim form (as drafted by her representative) had identified particular causes of action and the paragraphs in which her various complaints were outlined, we were concerned that this did not give sufficient clarity as to what exactly in those paragraphs the claimant was complaining about, so we would need to rely on the list of issues in identifying the individual complaints. In addition to this, the claimant suggested during these initial discussions that the list of issues did not fully reflect the claims she wanted the tribunal to determine. We invited the claimant to carefully review the list of issues during the time the tribunal would take to read into the case, and then prepare any amendments and discuss them with the respondent so that we could consider any changes she wished to make when the hearing resumed.

9. The tribunal took the remainder of Monday 2 November, together with the whole of Tuesday 3 November and Wednesday 4 November to read into the case, resuming the hearing on the morning of Thursday 5 November.

10. The morning of Thursday 5 November was taken up addressing the changes that the claimant wanted to make to the list of issues which were (largely)

opposed by the respondent. This was not just a question of additions to the list of issues, as the claimant had also taken the opportunity to review and withdraw elements of her claim. The outcome of this consideration is set out below. In the course of discussion the claimant accepted that she had received full pay throughout her employment with the respondent. Given that, we did not see that any claim in relation to unlawful deductions from wages could properly proceed, but the claimant's claim to pay for the remainder of her fixed term contract could be considered as a matter of remedy if she succeeded in any of the claims relating to her dismissal. During her evidence the claimant withdrew a further three elements of her claim, with further elements being withdrawn during her submissions.

11. The list of issues below sets out the issues between the parties at the conclusion of the hearing. Where changes were made to the list of issues following our decision on the amendments identified on the morning of Thursday 5 November, those are shown as struck through (if removed) or underlined (if added). In her written submissions, the claimant indicated that a number of the issues were no longer relied upon by her, and these are shown marked with a double strike-through. During the course of her oral submissions she withdrew paras 5.2(e) and 9.4(b) from the list of issues, and those are marked with double-strikethrough too. In its written submissions the respondent accepted that a number of the alleged protected disclosures were protected disclosures (albeit with arguments about whether the respondent knew of those disclosures at the relevant times). These are noted on the list of issues.

12. Also at the start of the day on Thursday 5 November we identified that (without prejudice to the respondent's arguments in relation to disability) the claimant ought to be considered to be a vulnerable party and witness under the terms of the Presidential Guidance on Vulnerable Parties and Witnesses. We provided a copy of this guidance to the parties so that they could consider it while we adjourned to consider questions in relation to the list of issues. On our return, the claimant made an application to exclude the public during her evidence. We refused that application. With the agreement of Ms Barry we did, however, allow the claimant more breaks than normal, breaking every hour during her evidence for ten minutes. We also asked the claimant to let us know if she required any further breaks.

13. The claimant was taken ill at the start of the afternoon session on Monday 9 November 2020, and after discussion with the parties we adjourned for the rest of the day in order that the claimant could have time to recover. We adjourned the hearing on Wednesday 11 November 2020 for an extended lunch break between 11:50 and 13:30 in order that the claimant could attend a therapeutic workshop online. When conducting cross-examination the claimant preferred to refer to herself in the third person and we encouraged the respondent's witnesses to do the same.

14. On the claimant starting her cross-examination of the respondent's witnesses it was immediately clear that she was likely to exceed her estimate of a day cross-examining Ms Park, and could even exceed her revised estimate of two days. The claimant is not a professional advocate and we do not criticise her for not being able to accurately estimate the time that her cross-examination would

take, but we were concerned that without us setting a framework for her cross-examination there was a risk that it may continue at length without a clear end in sight. In discussion with the parties and pursuant to our powers under rule 45 we made various orders in respect of the time for the claimant's cross-examination of the respondent's witnesses, which are set out in separate orders. These took account of the limited availability of Mr Larkin (who was no longer employed by the respondent and was headteacher of a school that had been badly affected by Covid-19).

15. The hearing proceeded during the Covid-19 pandemic, resulting in a number of witnesses having their evidence heard by video (CVP). A timeline of how the hearing proceeded is set out below, with indications given where a witness's evidence was heard by CVP:

- Monday 2 November: introductory matters and reading by the tribunal
- Tuesday 3 November: reading by the tribunal
- Wednesday 4 November: reading by the tribunal
- Thursday 5 November: case management matters (am)
the claimant's evidence (pm)
- Friday 6 November: the claimant's evidence
- Monday 9 November: the claimant's evidence (am)
adjourned due to the claimant's health (pm)
- Tuesday 10 November: the claimant's evidence (am)
Asha Ahmed (via CVP and with a Somali interpreter) (pm)
- Wednesday 11 November: Mina Nelson (via CVP) (am)
Caterina Park (pm)
- Thursday 12 November: Caterina Park
- Friday 13 November: Kieran Larkin
- Monday 16 November: Caterina Park
- Tuesday 17 November: Musarrat Mukadam (am)
Dot Thompson (am)
Fatima Mulla (pm)
Ifnaz (Zaina) Akhtar (pm)
- Wednesday 18 November: Simon Thompson (am)
Lisa Crausby (am)

- Tuesday 19 January 2021: Faizal Musa (by CVP)

- Tuesday 20 April 2021: Oral closing submissions (by CVP)

16. We had originally intended to hear the evidence of Faizal Musa on 15 December 2020, with written closing submissions to follow after that and oral submissions being made at a hearing on 19 January 2021. The claimant applied to postpone the hearing on 15 December 2020, and this application was granted, albeit with observations about possible costs consequences. As a result, Mr Musa's evidence was heard on 19 January 2021. That concluded the evidence. At the end of the hearing on 19 January 2021 an order was made by agreement with the parties for the provision of written submissions by 31

March 2021 with an hearing for any further oral submissions or replies on 20 April 2021.

17. These dates were much later than we would have liked, but appeared to be the best that could be done based on the claimant saying that she wished to consult her lawyer about her written submissions, and the lawyer had said that he would require at least six weeks to work through these with her. That would have taken us to around the end of February for exchange of written submissions, but there were then further difficulties with the availability of the tribunal and the respondent's counsel which lead to the timetable extending into March and April.

18. Given the length of time that there had been since the evidence in the hearing, and that need to consider the parties' written submissions prior to their oral submissions or replies, the tribunal met in chambers on 19 April 2021 to read back into the case and to read the parties' written submissions ahead of the oral submissions to be heard the following day.

19. The intention had been that the hearing for oral submissions would last only the morning of 20 April 2021, but for a number of reasons, including difficulty with the claimant's connection to the CVP system, it went on into the afternoon. At the end of that hearing a provisional remedy hearing was listed for 24 September 2021.

20. Further chambers meetings followed on 15, 16 and 18 June 2021, during the course of which this judgment and written reasons were prepared by the tribunal.

Decisions made during the hearing

21. Formal case management orders made during the hearing are recorded in a separate case management order dated 18 November 2020, which also dealt with arrangements for continuation of the hearing on 15 December 2020 and 19 January 2021. A further case management order was made on 14 December 2020 in respect of the claimant's application to postpone the hearing on 15 December 2020 (and matters arising from that) and at the conclusion of the hearing on 19 January 2021.

B. THE ISSUES

22. These are the issues for determination by the tribunal. Remedy matters are omitted as this hearing is only to address matters of liability. The relevant PCPs in respect of which the claim of failure to make reasonable adjustments arises are set out separately.

1. Disability

1.1 Does the Claimant have a disability pursuant to s6 of the Equality Act 2019 ("EqA")?

2. Jurisdiction

2.1 Were the Claimant's claims regarding Protected Disclosures made within the three month timeframe in order for the Tribunal to have jurisdiction to hear them?

2.2 If not, would it be just and equitable for the Tribunal to extend the time for the Claimant to have submitted her claim(s)?

*3. **Breach of Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002***

3.1 How much notice is the Claimant entitled to?

3.2 Did the Respondent treat the Claimant less favourably than it treats or would treat a comparable permanent employee contrary to section 3 of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002?

3.3 The Claimant relies on the following acts or omissions as less favourable treatment and detriments:

a. The inclusion of a four week termination clause in the Claimant's contract, which entitled the Respondent to terminate her employment contrary to the terms contained in the Burgundy Book;

b. ~~On 21 November 2017, Ms Park told the Claimant to agree to the termination of her employment or face an investigation into the undisclosed allegations. The Claimant was told to go home and was given two days to consider this;~~

c. ~~On 23 November 2017, Ms Park threatening to stop the Claimant's pay for her not having been at work, despite the fact she had been told to go home by Ms Park;~~

d. ~~Her suspension on 27 November 2017;~~

e. ~~The Claimant raising a grievance against Ms Park on 27 November 2017;~~

f. ~~The Claimant's position was advertised in The Guardian and the TES newspapers on 9 and 15 March 2018;~~

g. ~~The Respondent did not hold a Panel Hearing with regard the conduct of the investigation process after the Claimant had agreed to this course of action;~~

h. ~~No investigations had taken place to ascertain the true facts of the allegations against the Claimant; and~~

i. ~~The Respondent admitting that no investigation had taken place to ascertain the true facts in relation to the claimant's appeal information.~~

3.4 In relation to each of the allegations set out above:

a. Is the alleged fact found?

b. If so, does it amount to less favourable treatment?

c. If so, what was the reason for the less favourable treatment?

d. Was the less favourable treatment because of the Claimant's fixed-term status?

3.5 Is the Respondent able to objectively justify the less favourable treatment, i.e. is the Respondent able to show that the treatment in question was to achieve a legitimate aim, is necessary to achieve that aim and is an appropriate way to achieve that aim?

3.6 With regard to the length of the Claimant's notice period under her fixed-term contract, the Respondent relies on the fact that the very nature of a fixed-term contract is to cover shorter periods of work and that a lengthy notice period would not be proportionate.

4. ***Protected Disclosure (s47B and s103A Employment Rights Act 1996 ("ERA"))***

4.1 Did the Claimant make a protected disclosure?

4.2 The Claimant relies on the following (alleged) protected disclosures:

a. On 20 November 2017 she complained to Ms. Park about being publicly humiliated by Ms. Akhtar and that she would report Ms. Park's behaviour to the trust and was going to report the 'Prevent' issues that were happening at the Respondent to the Department for Education ("DfE");

b. On 21 November 2017 she contacted DfE to express concerns of extremism against staff, the leadership and management of the school and some parents;

c. On 16 December 2017 she made a series of disclosures to Ofsted regarding breaches of fairer recruitment procedures, nepotism, cronyism, censorship of texts by parents where pigs or ham and male/female relationships are mentioned, music being banned, inadequate teaching curriculum being delivered, failure of the trust to combat bullying/harassment, failure of the School to deal with anti-Semitic comments made by staff, inflation of school data and safeguarding breaches; - accepted by the respondent to be a protected disclosure

d. On 21 February 2018 she complained to the DfE about a comment made by a child about wanting to be a soldier in order that he could go to heaven as this had not been investigated by

Ms. Park; - accepted by the respondent to be a protected disclosure

e. *On 21 May 2018 she wrote to a Trustee regarding wrongdoing in relation to safeguarding allegations and the manner in which they were investigated and that vital information was withheld;*

f. *On 14 June 2018 she wrote to the LADO regarding Ms. Park and certain parents colluding to raise false child protection allegations against her;* - accepted by the respondent to be a protected disclosure

g. *On 18 June 2018 she wrote to Ofsted regarding Ms. Park and certain parents colluding to raise false child protection allegations against her* - accepted by the respondent to be a protected disclosure

4.3 In relation to each of the (alleged) protected disclosures set out above:

a. *Was the (alleged) protected disclosure made, in the reasonable belief of the Claimant, in the public interest?*

b. *If so, does it tend to show one or more of the criteria set out in s43B ERA?*

c. *Did the Respondent have actual knowledge of the (alleged) protected disclosure having been made?*

4.4 Did the Claimant suffer a detriment because of the (alleged) disclosure(s)?

4.5 The Claimant relies on the following (alleged) detriments:

a. ~~*Being informed by Ms Park on 21 November 2017 that there were allegations against the Claimant but not informed of what they were;*~~

b. ~~*On 21 November 2017 during the same conversation (above), Ms Park stated the Claimant lied on her job application and that her previous employer had confirmed this, and that this would lead to the Claimant's termination in any event;*~~

c. ~~*On 21 November 2017 during the same conversation (above), Ms Park told the Claimant to agree to the termination of her employment or face an investigation into the undisclosed allegations. The Claimant was told to go home and was given two days to consider this;*~~

d. *On 23 November 2017, Ms Park threatening to stop the Claimant's pay for her not having been at work, despite the fact she had been told to go home by Ms Park;*

e. Her suspension on 27 November 2017;

f. The Claimant's position being advertised in The Guardian newspaper on 9 March 2018;

j. The Claimant's position being advertised in The TES newspaper on 15 March 2018;

k. Being invited to a meeting on 20 March 2018 with no notice, no knowledge of the purpose of the meeting and no right to be accompanied. At this meeting the Claimant was informed that there were additional allegations against her, but was not given detail of these, she was 'forced' to engage in a Protected Conversation and told to leave work to consider the options;

l. Suffering a mental breakdown and subsequently attempting suicide on 21 March 2018;

m. ~~The Respondent not holding a Panel Hearing with regard the conduct of the investigation process after the Claimant had agreed to this course of action;~~

n. The termination of her employment by way of letter dated 9 July 2018;

o. No investigations had taken place to ascertain the true facts of the allegations against the Claimant;

p. Being informed that the witnesses all wished to remain anonymous;

q. The Respondent ignoring the Claimant's Occupational Therapist's suggestion, dated 19 September 2018, to postpone the appeal hearing;

r. The appeal hearing being held in the Claimant's absence on 12 October 2018; and

s. The Claimant's appeal being unsuccessful.

4.6 Was the Claimant dismissed for the reason (or, if more than one, the principal reason) that she made the alleged public disclosure?

5. ***Direct discrimination (s13 EqA)***

5.1 Did the Respondent treat the Claimant less favourably than it treats or would treat others contrary to section 13(1) of the EqA?

5.2 The Claimant relies on the following acts or omissions as less favourable treatment:

a. *Being informed by Ms Mukadam that she could not leave until she met with her and or had signed a number of documents without having chance to read them, before witnessing Ms Mukadam backdate the documents;*

b. *Being compelled to return to work without adequate health assessments being carried out;*

c. ~~*No risk assessment or return to work was carried out on the Claimant's return to work;*~~

d. ~~*The Claimant was given no support in relation to having to work with Ms Mainwaring and suggestions made, during the said 5 March 2018 exchange were not adhered to;*~~

e. ~~*The termination of her employment by way of letter dated 9 July 2018;*~~

f. ~~*The Respondent ignoring the Claimant's Occupational Therapist's suggestion, dated 19 September 2018, to postpone the appeal hearing;*~~

g. ~~*The appeal hearing being held in the Claimant's absence on 12 October 2018;*~~

h. ~~*The Claimant's appeal being unsuccessful; and*~~

i. ~~*No investigation had taken place to ascertain the true facts in relation to the claimant's appeal information.*~~

5.3 In relation to each of the allegations set out above:

a. *Is the alleged fact found?*

b. *If so, does it amount to less favourable treatment?*

c. *If so, what was the reason for the less favourable treatment?*

d. *Was the less favourable treatment because of the Claimant's (alleged) disability?*

5.4 For the purposes of the above, the Claimant's (alleged) disability is depression/anxiety.

6. ***Discrimination arising from a disability (s15 EqA)***

6.1 Did the Respondent treat the Claimant unfavourably because of something arising in consequence of the Claimant's (alleged) disability contrary to section 15(1) of the EqA?

6.2 The Claimant relies on the following acts or omissions as unfavourable treatment:

a. *On 20 March 2018, she was invited to a meeting with no notice, no knowledge of the purpose of the meeting and no right to be accompanied. At this meeting the Claimant was informed that there were additional allegations against her, but was not given detail of these, she was 'forced' to engage in a Protected Conversation and told to leave work to consider the options.*

b. *The termination of her employment.*

6.3 *In relation to each of the allegations set out above:*

a. *Is the allegation found?*

b. *If so, does it amount to unfavourable treatment?*

c. *If so, what is the reason for the unfavourable treatment?*

d. *Was the unfavourable treatment because of something arising in consequence of the Claimant's (alleged) disability?*

e. *If so, can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim?*

6.4 *For the purposes of the above, the Claimant's (alleged) disability is depression/anxiety.*

7. ***Failure to make reasonable adjustments (s21 EqA)***

7.1 *Did the Respondent impose a PCP/physical feature upon the Claimant that put her at a substantial disadvantage in comparison with persons who are not disabled?*

7.2 *The Claimant relies on the following:*

a. *Failure to provide the Claimant with an appropriate mentor following receipt of the first Occupational Health report;*

b. *Failure to give the Claimant reasonable notification of attendance to informal meetings;*

c. *Failure to redeploy the Claimant to another site when the Respondent knew that her health was at risk;*

d. *Failure to allow the Claimant to attend meetings with someone to support her;*

e. *Failure to amend their policies and procedures during the Claimant's sickness absence period;*

f. ~~*Failure to investigate whether the Claimant's perceived behaviour was in any way linked to her disability;*~~

g. Failure to delay/postpone the appeal as suggested by the Claimant and her Occupational Therapist.

7.3 In relation to each of the allegations above:

a. Is the allegation upheld?

b. If so, did the Respondent know, or could they reasonably be expected to know, that the Claimant was likely to be placed at a substantial disadvantage compared to a person who is not disabled?

c. If so, did the Respondent take such steps as it is reasonable to have to take to avoid the disadvantage?

d. If so, was it reasonable for the Respondent to have made such adjustments?

*8. **Harassment***

8.1 Did the Respondent engage in unwanted conduct towards the Claimant?

8.2 The Claimant relies on the following conduct:

a. Being invited to a meeting on 20 March 2018 with no notice, no knowledge of the purpose of the meeting and no right to be accompanied. At this meeting the Claimant was informed that there were additional allegations against her, but was not given detail of these, she was 'forced' to engage in a Protected Conversation and told to leave work to consider the options.

8.3 In relation to each of the allegations set out above:

a. Is the allegation upheld?

b. If so, was this conduct related to the Claimant's (alleged) disability?

c. If so, did the conduct have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, taking into account the Claimant's perspective, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?

*9. **Victimisation***

9.1 Did the Respondent subject the Claimant to a detriment?

9.2 The Claimant relies on the following detriments:

a. Having false allegations raised against her;

b. Being denied the right to fair procedures to deal with her complaints; and

c. The termination of her employment.

9.3 In relation to each of the allegations set out above:

a. Is the allegation upheld?

b. If so, was this as a result of the Claimant's (alleged) protected act(s)?

9.4 For the purposes of the above, the Claimant relies on the following (alleged) protected acts:

a. Raising a grievance on 27 November 2017;

b. ~~The Claimant's letter dated 9 March 2018 in which she confirmed she would not be appealing her grievance outcome but provided comments on each of the outcomes; and~~

c. The Claimant's union representative's email to Mr Musa on 6 April 2018 in which she referred to the Claimant having a disability and that her health was triggered by the Respondent's treatment of her.

10. Automatic Unfair Dismissal

10.1 Was the Claimant automatically unfairly dismissed because the reason (or, if more than one, the principal reason) for her dismissal was that she made the protected disclosures to which paragraph 4.2 refers?

23. The "something arising" from the claimant's disability for the purposes of s15 is (taken from the answer to a request for further particulars):

1. Her sick leave record and regular sickness at the material time.

2. An inability to work directly with the people who had bullied her since her return to work on 19.2.18.

3. Her ability to work productively.

4. Having to close the office door when she saw one of the parents who had maliciously targeted her.

5. She was constantly tired and found it difficult to get up early for work.

6. Her sleep deprivation made her feel angry and vulnerable, which impacted on her concentration, mental health, interactions with others and ability to work at the pace she worked at before.

7. *She felt fatigued due to sleep deprivation, which probably had an adverse effect on her performance.*

8. *She showed signs of anxiety at work and undue raised levels of stress.*

24. PCPs for the purpose of the claim of failure to make reasonable adjustments are (taken from the same document):

1. *The claimant must return to the school's junior site despite its being advised that she felt securer at the infant site.*

2. *The claimant must return to the school's junior site to work.*

3. *A complainant/the claimant must return to the school's junior site to work alongside colleagues irrespective of any allegations of bullying made against them by a complainant/the claimant.*

4. *A complainant/the claimant had to interact with all parents and pupils, which included those who had raised false allegations against her.*

5. *An employee/the claimant had to return to work after their disciplinary investigation without the respondent's having first conducted a medical assessment of the employee's/the claimant's mental health to determine employee's/the claimant's wellbeing to participate fully at work and ascertain whether the claimant was medically fit to return at that date …*

6. *The appeal against dismissal could be heard in the subject's absence irrespective of the employee's medical condition at the material time.*

7. *The appeal against dismissal must be heard within a timeframe without allowing for a reasonable delay in the process that would enable the employee reasonable time, in accordance with her disability, to present her appeal properly and competently in person.*

8. *Failing to take note of and or acting on medical advice in its entirely, alternatively taking note of and or acting on only part of the medical advice …*

9. *It did not make adequate provision for an employee/the claimant to have a representative at the meetings held on 5.3.18 and 20.3.18, this included not giving the claimant adequate time to consult with her representative and arrange to have support.*

10. *Whilst having seen medical advice that an employee/the claimant was "at risk of relapse", no safeguard provisions were put into place to forewarn the claimant of the agenda for the meeting on 20.3.18 or protect her mental health.*

11. After being advised that the claimant had attempted suicide, it relentlessly and aggressively pursued the claimant's representative for an outcome to the discussions that took place on 20.3.18 …

12. Not providing employees with an appropriate mentor following receipt of occupational health reports.

25. The claimant's concerns and complaints about the respondent's management of the school go far beyond simply its treatment of her, and encompass matters that she has referred to the relevant regulators. As we made clear to the parties at the start of the hearing, we will only be considering and determining the claimant's employment claims (as set out in the list of issues) against the respondent, and it is not part of that task to look at broader issues concerning the school.

26. In her closing submissions, the claimant raised a number of new matters, including:

- That the email correspondence between Ms Park and Mr Musa on 17 November 2017 was a forgery and, if it took place at all, did not take place on that day (2.2.1.1 of her written submissions).
- That her grievance of 18 November 2017 against Ms Akhtar was a protected disclosure (2.2.1.32).
- "Further detriments" (2.4.25)
- That the email of 17 November 2017 had been forged (2.5.15)
- "Further direct discrimination" (4.1.28 onwards)
- That an inability to decide between two options was "something arising" from her disability and contributed to her dismissal (5.2.1)
- The introduction of new or different PCPs in respect of her claim of a failure to make reasonable adjustments (7.1 onward)

27. She did not make any application to amend her claim in order to include those additional allegations. If she had done so we doubt very much we would have accepted the amendments at such a late stage of proceedings. Accordingly, we are confining ourselves to the allegations identified in the list of issues (as amended)

28. A key feature of this case was the poor relationship between the claimant and others at the Olive School, including the headteacher, Caterina Park. Much time was taken by the parties as to who was at fault for the poor relationship, but the question for us is not whose fault that is, but whether it, and its consequences, arose from or was contributed to by protected disclosures made by the claimant, protected acts carried out by her, or her disability (or the consequences of that disability).

29. The claimant has at various points attributed different causes to the respondent and Ms Park's treatment of her. By the time of her closing submissions, she put her case this way (at para 2.1.4 of her written submissions):

> *"It was only after the claimant had informed Ms Park on 9 August 2017 that she knew* [the previous deputy headteacher] *and her complaints of*

bullying, that Ms Park changed in her conduct towards the claimant. This was the main reason why the claimant was subjected to continual false allegations and ill treatment from September 2017."

30. Putting her claim in that way plainly gives the claimant some difficulties in showing that any detriments she was put to by Ms Park were related to protected disclosures, any protected act, her disability or its consequences since the first alleged protected disclosure only occurred on 20 November 2017 and did not involve any allegations that the previous deputy headteacher had been mistreated. Nothing in what she says about the "*main reason*" for her ill-treatment relates to a protected disclosure, her disability or any protected act. We are conscious that there is no requirement for any protected disclosure, protected act, disability or consequence of disability to be the "*main reason*" for a detriment, but where the claimant sets out that the main reason for her ill-treatment is something other than what her claim is founded on, it can give rise to some practical and evidential difficulties for her. Similar issues arise in respect of the claimant's case that there was "*a group of extremist parents who had been targeting* [her]" (para 2.3.2 of her submissions). If so, there is nothing to suggest (and it is not alleged by her) that that targeting was anything to do with protected disclosures, protected acts or her disability or its consequences.

31. We have not found it necessary to address every point made by the parties in these lengthy proceedings. We do not wish to delay production of this decision and further lengthen this process for the parties by addressing matters which we do not consider it necessary for us to address in order to reach our conclusions, or which are not relevant to the agreed list of issues (as amended).

C. FACTS

Introduction

32. The Olive School is a primary school in Hackney operated by the respondent. At the time we are concerned with, the school was still developing and operated on two sites. One was at Cazenove Road and the other on the UTC site in Shoreditch. These sites were a few miles apart. Early Years (reception) and Key Stage 1 (years 1-2) (sometimes called infants) were taught at the UTC site, with Key Stage 2 (years 3-5) (sometimes called juniors) at Cazenove Road. At the relevant times for the purposes of the claim the school had no year 6.

33. At the relevant time the school had a senior leadership team comprising the Principal (Ms Park), two Deputy Principals (Nicola Mainwaring and, on her appointment, the claimant), one Assistant Headteacher (Manzurul Mannan), the SENCo and the Head of Finance and Business Services (Fatima Mulla). This was the standard structure for a school such as the Olive School run by the respondent, except that it was unusual to have two Deputy Principals. The Olive School had two Deputy Principals because of the split site. One Deputy Principal was based at each site, ensuring there was always someone senior available at each site. It was intended that as part of the school's development it would eventually consolidate on a single site, at which point it would only need one deputy principal.

34. The school's most recent Ofsted inspection (May 2015) described it as:

> "*A Muslim faith free school … sponsored by the Tauheedul Education Trust* [the previous name of the respondent]"

35. The respondent is a large multi-academy trust, operating 29 schools across the north-west of England, the West Midlands and London. Its headquarters are in Blackburn.

36. The claimant qualified as a teacher in 2001, rising to positions as a Deputy Headteacher in 2011-13 and Assistant Headteacher and Science Lead from 2014-16. At some point during this time she suffered a period of bullying and harassment which we will refer to as necessary later. For now it is sufficient to say that by 2017 she considered herself ready to resume a position as Deputy Headteacher and was working towards the National Professional Qualification for Headteachers.

The claimant's alleged disability prior to her appointment at the school

37. Beyond general references to the previous bullying and harassment she suffered, and reference to prior instances of depression, the claimant gave little evidence on her medical condition or its effect on her day-to-day activities in the period prior to her appointment at the school.

38. The claimant's GP notes have a one line entry against "*Significant past*": "*Dec 2006 H/O: depression – attempted OD priority=1*". The claimant did not mention this in her impact statement or what its effect on her normal day-to-day activities was.

39. The GP notes also show "*acute reaction to stress*" from 2 February 2012, followed with a diagnosis of depression on 2 April 2012. The respondent accepts in its submissions that the claimant "*suffered a period of depression from approximately February 2012 to February 2014 and was unable to work during this time*". However, as the respondent goes on to say, "*there are no entries in C's GP records in relation to depression until 21 March 2018*".

40. For the period from January 2014 to October 2017 the claimant says "*I was managing my medical condition in that I was in no need to rely on my medication and was able to rebuild my career*". We take it that the claimant was not subject to any mental or physical impairment during this period and there was no adverse effect on her normal day-to-day activities in this period. She was, effectively, symptom-free, and was not taking any medication.

The claimant's recruitment and appointment on a fixed-term contract

Recruitment

41. The claimant responded to an advertisement placed by the respondent for a Deputy Principal on what was described as a "*2 Years Fixed Term / Full Time*" contract.

42. The claimant says that when considering applying for the role she got in contact with a friend who she understood to have suffered a period of bullying while at as Islamic school in Hackney. However, it was not until after the claimant had been offered and accepted the role that her friend replied to her attempts to contact her.

43. The claimant was interviewed on 30 June 2017 by a panel including Ms Park.

44. An incident that is in dispute during that interview is whether, in an exchange at the end of the interview, the claimant broke down when describing how she had been mistreated at her previous school, explaining that she still suffered from depression and PTSD as a result. Ms Park agrees that the claimant was tearful during the interview, but said that this had arisen during a discussion of the Grenfell Tower fire, and says that she considered it a point in the claimant's favour that she was so moved by such a tragic event and the way it would have affected parents and children at the school. She says there was no mention of depression or PTSD.

45. We prefer Ms Park's account of events. For a candidate to have been so openly moved during an interview would have been noteworthy, and Ms Park gave a clear account of how this had come about and how it had gone to the claimant's credit. While there are other disputes about the extent to which the respondent was aware of the claimant's previous medical history, we do not think that the claimant breaking down while discussing experiences at her previous school, and ongoing medical conditions, would have occurred without the respondent then going on to make further detailed enquiries as to the claimant's state of health and fitness for what would be a demanding role. While there were some subsequent basic medical checks (as we will refer to separately) there is no indication that the health advisors were given any specific instructions about prior (or current) medical conditions (or disabilities), which we would have expected to happen if the exchange the claimant describes had taken place during or immediately after the interview.

46. The claimant was offered and accepted the role.

47. On 10 July 2017 the claimant was sent what was called a "conditional offer of employment letter" by Musarrat Mukadam, the school's office manager. This dealt with the pre-employment checks the respondent was to make, and described the offer of appointment as being "*to the post of Deputy Principal with a proposed start date of 1 September 2017 for a 2 year fixed term contract ending in July 2019, subject to a one year probation period.*"

48. The claimant objected to this, on the basis it did not set out a two year contract, and would mean that she was not paid during August 2019. She was also concerned to see a probationary period, which was unusual in her experience.

The medical report

49. At the end of July 2017 the claimant completed an online medical assessment for the purposes of a pre-employment occupational health report. We note the following entries:

"Q. Have you ever suffered from any mental health conditions e.g. anxiety/depression/stress?

A. Yes

Q. When did you last suffer from a mental health condition?

A. >3 years

Q. Please provide further details.

A. I went through a difficult work situation which caused me stress. That is now resolved.

Q. Have you ever been off work for more than 2 weeks due to a health or medical reason?

A. Yes

Q. When were you last off work for more than two weeks?

A Over 3 years ago.

50. These answers were provided directly to the occupational health company and were not seen by any of the respondent's employees. All the respondent saw was the resulting "*employment suitability report*", dated 27 July 2017, which included the following:

> *"This candidate is unlikely to be covered under the relevant Equality Legislation.*
>
> *There is no addition specific advice provided in relation to this candidate, should any issues arise whilst the candidate is working please refer to an occupational health advisor.*
>
> *At this time no adjustments to the working environment are required for this candidate.*
>
> *This individual has declared a long term health issue which appears to be well controlled and is unlikely to impact on the ability to provide regular and effective service.*
>
> *Based on the information provided by the candidate and the risk profile associated with this position we advise that this candidate is suitable."*

51. During the hearing the claimant criticised the respondent for not following up on this report or taking it as an identification that she was a disabled person. The claimant was not shown or asked about this report at the time. If she had been, we find that she would not have disputed its conclusions, which chimed with her view at the time. Although she had had a mental health condition and difficulties in the past, those were now behind her and as far as she was

concerned, at the time she took on her role with the respondent there were no ongoing effects nor any need for adjustments.

The fixed-term contract

52. There is a dispute about how and when the claimant came to be issued with her eventual contract, but it is convenient to deal with it at this point of our judgment, and it is not in dispute that the claimant was, by some means, employed on the fixed-term contract we will go on to describe.

53. The contract in question contains the following clauses:

> *"3.1 Your appointment shall be for a fixed term and shall terminate on July 2019 without the need for notice unless previously terminated by either party providing 4 weeks notice in writing.*
>
> *3.2 The reason the post is for a fixed term is due to the needs of the school.*
>
> *…*
>
> *13.1 In accordance with the fixed term status of the contract your employment will terminate automatically without the need for notice on the date specified in clause 3.1 unless previously terminated earlier by either you or the Trust providing 4 weeks notice in writing."*

54. It is not in dispute that permanent teachers would typically be employed on "Burgundy Book" terms, which in respect of notice provide:

> *"4.1 All teachers shall be under a minimum of two months' notice, and in the Summer term three months', terminating at the end of a school term …"* [the relevant term end dates are 30 April, 31 August and 31 December]

55. As an academy the respondent was not bound to offer Burgundy Book terms to its permanent staff, but it is not in dispute that it did, at least so far as notice periods were concerned.

56. The Burgundy Book contains exceptions in respect of teachers who are (1.1(b)):

> *"employed on a temporary basis either for a period of one term or less or as substitutes for permanently appointed teachers absent for reasons such as secondment, prolonged illness or maternity."*

57. The claimant was, arguably, employed on a temporary basis, but her period of employment was to be for far more than a year. She could not be described as being a "*substitute for a permanently appointed teacher*" so this exception would not apply to her.

From appointment to taking up her role

58. In July and August 2017 the claimant undertook a number of visits to the school in anticipation of starting work on 1 September 20217.

59. At the end of July 2017 she visited the school where, for the first time, she saw a picture of her friend in a wall display, with her friend being identified as a member of staff.

60. On 27 July 2017 Ms Park sent the claimant an email setting the different duties she saw the two Deputy Principals taking on. The main point we note from this is that Nicola Mainwaring was to be responsible for the school's pastoral work and standards in KS1 whereas the claimant was to be responsible for teaching and learning (across the whole school) and standards in KS2.

61. In early August 2017 the claimant received a series of voicemail messages from her friend, which she took as confirmation that, as she now suspected, her friend had been a Deputy Principal at the Olive School and had (according to that friend) been badly treated by Ms Park. It is not necessary for us to go into the detail of that or decide whether in fact her friend had been mistreated, a point that was disputed by both Ms Park and the respondent.

62. During a visit on 9 August 2017 the claimant says that she mentioned to Ms Park that she was a friend of the previous Deputy Principal (and another Deputy Principal at the school) and knew of difficulties that her friend had had at the school. As set out above, it was this discussion that the claimant submitted was the main reason for her subsequent mistreatment. Since it is not said to be a protected disclosure, protected act nor anything to do with her disability we do not need to determine whether this occurred or what Ms Park's view was of it. We note that it was Ms Park's position during the hearing that despite whatever difficulties the claimant's friend had had at the school she (the friend) remained on good personal terms with Ms Park.

63. Despite what she says she knew about this previous difficult relationship, the claimant said she was willing to put that behind her and give Ms Park the benefit of the doubt when starting her new job.

From 1 September 2017 to the first alleged protected disclosure

64. The claimant's difficulties at the school were evident from the start of her work. Her employment formally commenced on 1 September 2017, although she was in work for most of that week preparing for the new term. The new term began on 4 September 2017 with two INSET days. She lead a session on the first day, but was then off sick for three days, returning on Friday 8 September 2017. She was concerned about a conversation she had that day with a site manager, and reported it to Ms Park.

65. On 11 September 2017, Zaina Akhtar, a teacher and also a parent at the school, wrote an email to Ms Park complaining that the claimant's actions had resulted in her needing to work over the weekend at the same time as coming to terms with a bereavement. The following day, 12 September 2017, another teacher, Junaid Ibrahim, wrote to Ms Park complaining about his workload. On investigation by Ms Park he said to her that the claimant was taking up too

much of his time in the mornings. On 13 September 2017 Nazneen Mayet complained to Ms Park that the claimant had given her only two days to prepare work for which two weeks would usually be allowed.

66. We do not need to determine the rights and wrongs of these complaints. The claimant disputed them at the time and later said that the these complaints were solicited by Ms Park and exaggerated by her. We do not accept this. It would be very strange behaviour towards a Deputy Principal who had by then been in post for barely two weeks, and is also inconsistent with Ms Park's later efforts to get the claimant to reconsider her plans to resign.

67. A reference that Ms Park has received in respect of the claimant did not quite match with how the claimant had described a previous role. On 27 September 2017 Ms Park asked Fatima Mulla to follow this up with the previous employer, and this was chased on 5 October 2017.

68. At the end of September the claimant participated in a CPD meeting at which the claimant was offended that Manzurul Mannan's presentation had been applauded but not hers. The claimant later described this lack of applause as amounting to her being belittled by Zaina Akhtar, who she said had led the applause for Manzurul Mannan's presentation.

69. On 2 November 2017 the claimant wrote to Ms Park complaining that Nicola Mainwaring had taken her to task "*in a highly offensive manner*". She continues:

> *"When I spoke to you today it was clear that you agreed that my role is to check everyone's books … but I've previously been told not do anything in those classes as they are Nicola's NQTs.*
>
> *This is where I believe the main problem lies, it's the inconsistent instructions that I'm given.*
>
> *I began the year trying to do everything. You then told me to only focus on year 5. You clearly said that my focus should be year 5 and that I shouldn't worry about the other year groups. When I did that, you told me that I should focus on all year groups. I then explained that I had been given inconsistent messages … Frankly, I'm not sure what to do.*
>
> *…*
>
> *I feel pretty useless … I have a two year contract and am on probation and clearly failing at all levels. I do at least want to do my job well till the end of the year to get a decent reference. I'm sorry to have let you down. I will increase my hours to ensure that at least by the end of this year, year 5 do well. I would want to leave on a good note.*
>
> *I feel pretty demoralised."*

70. Later that evening the claimant followed up that email to say that she did not want Ms Park to speak to Ms Mainwaring about this. Following this, Ms Park met with the claimant and persuaded her not to resign.

71. On 7 November 2017 Farzana Ferdousi complained to Ms Park that the claimant had shouted at her in front of her class. The complaint was overheard by the claimant. Later that evening the claimant wrote a number of text messages to Ms Park, starting: "*I'm sorry but I think you should know that I can't do this anymore. My workload is unreasonable. I've had enough of the constant complaints …*".

72. The following day the claimant sent a text message to Ms Park saying:

> "*I'm sorry. I have let you down. I don't think this school or this role is right for me. I'm at fault but I've never had any warnings and at the moment I don't think I could continue working there. Also too many things have happened. I do want to complete my probation to prove that I'm reflective. I will work to the best of my abilities till my last day.*"

73. Ms Park gave no substantial response to these messages. She says the following in her witness statement:

> *"I had begun to recognise a pattern in the claimant's behaviour: everything would be fine, then she would experience something that caused her to have a volatile reaction (often resulting in her having an issue with staff), she would then apologise to me for her behaviour and admit that she was in the wrong, and often after that she would tell me she would resign (which I would talk her round from)."*

74. On 14 and 16 November 2018 Ms Park received two complaints from parents (one of whom was Zaina Akhtar, who had copied Ms Park into a complaint she made directly to the claimant) complaining of the way the claimant had treated their sons.

75. On 15 November 2018 a complaint was forwarded to Ms Park from a parent, complaining of the claimant's "*negative attitude towards children abilities*" and her criticism of the students.

76. On 17 November 2018 David Bryant (a learning coach) complained to Ms Park about, amongst other things, the claimant shouting at the children. He later put his complaint in writing. There were also complaints that same day to Ms Park from Junaid Ibrahim and Zaina Akhtar about the claimant telling the students not to tell things to their parents.

77. During the course of 17 November 2017 Ms Park consulted Faizal Musa, the respondent's head of HR, about these complaints which were building up against the claimant and the doubts she had about what the claimant had included in her application form.

78. At the end of the school day on 17 November 2017, the claimant met with Musarrat Mukadam, the office manager at the school. The claimant describes this meeting in this way:

> *"I went into the office to ask Ms Mukadam if whatever she needed to speak to me about could be postponed till Monday as I had a severe*

stomach upset (due to IBS which is symptomatic of my underlying mental health condition) and needed to arrange an emergency doctor's appointment. Ms. Mukadam stated that Ms. Park had called her that day and insisted that I couldn't leave until I had signed a number of documents. She then produced a bundle of documents. She told me to sit down, skimmed each document till she arrived at the signature pages and then told me to sign the documents. She also read out dates from a piece of paper that she wanted me to add to my signature on various documents.

I questioned why I was being made to sign the documents, which documents they were and why were they being backdated. She said that Ms Park had asked her to do that. I told Ms Mukadam that I couldn't possibly sign documents that I hadn't read and that she should let me take the copies home to read as I was not well. She refused to let me do this and said it was due to Ms. Park's instructions that a range of documents had to be signed prior to my being allowed to leave that day ...

Thus, only due to my low mental health was compelled to sign a number of documents in order that I could leave. My stomach pains were so excruciating that I had no choice, so I did as I was asked as I just wanted to get out of there. I believe that this is an example of direct discrimination on the part of Ms Park. Ms Park took advantage of my mental state and related stomach pains to place me in a situation where I would be forced to sign documents, details of which were undisclosed as a condition of allowing me to leave. Any other person, with a stronger mental capacity would have clearly stated that they couldn't sign blank pages and add back dated dates. They would have recognised that something was not right. I couldn't do that due to my poor mental health. I didn't have the mental capacity to argue and stop what they were doing to me. I just wanted to leave and signing those documents under duress was the only way that I knew that I would have been allowed to leave."

79. Ms Mukadam says:

"On 17 November 2017 I was able to sit with the Claimant and we went through the induction checklist and documents. The meeting was very short as the Claimant seemed in a rush to leave but I did not tell her that she couldn't leave until we had gone through the documents. I put no pressure on her to sign the documents; she did so willingly after we had gone through them. I certainly did not 'force' her to sign anything. I do not recall who dated the documents, but I would assume the Claimant would have done so at the same time as signing. I don't remember dating them myself.

My meeting with the Claimant for her to review and sign the documents was necessary because these had to be included on her personnel file; it was not an act of less favourable treatment because of any disability."

80. Setting aside at this point the question of whether this amounted to an act of disability discrimination, the parties agree on the substance of what occurred between Ms Mukadam and the claimant that afternoon: the claimant was presented with a range of documents which she signed in a hurry. The obvious reason why this may have been required of her is that Mr Musa in his conversations with Ms Park had asked for a copy of the claimant's contract, and Ms Park or her office staff had then realised that the claimant had not yet signed a contract and wanted to rush this through ahead of further discussion with Mr Musa.

81. In an email sent at 17:26 on 17 November 2017 Mr Musa responded to Ms Park as follows:

> *"Salaams Caterina*
>
> *Please send me the employment contract before you act on this.*
>
> *I write further to our conversation to confirm my advice.*
>
> *I understand that you recruited a temporary deputy head in September.*
>
> 1. *There have been a number of issues with her since she has started which culminated in you giving her a verbal warning. Further to this she said she understood it was an area for her to improve however you have now had a number of other complaints after this. Some of the complaints are as follows:*
>
>   - *Shouted at a member of staff in front of children.*
>   - *A number of parental complaints about her behaviour and rudeness towards them.*
>   - *Her general manner towards people which has led to 2 resignations.*
>   - *You have taken written notes of discussion you have had with her.*
>   - *She did say she wanted to leave but you persuaded her to give it another go on the basis she had committed to try and improve.*
>   - *Further to this she you have now received complaints that she gets very angry with the children and is quite aggressive including an incident where she pulled a child by the collar.*
>
> 2. *In addition to this you believe she may have been dishonest on her application form by stating she was an educational consultant … when in fact she was employed as an assistant head.*
>
> *You have two options:*
>
> *Option 1 – Disciplinary*
>
> *…*
>
> *Option 2 – Without Prejudice Discussion*
>
> *…*

> *If she does not want to do a deal for an agreed exit you could actually seek to just dismiss on notice and legally this would be acceptable. However, we have recently negotiated the policies with all of the trade unions and we must be seen to have implemented them properly and not just discarded them. Therefore, you should really follow the disciplinary process rather than just dismissing on notice."*

82. On the evening of 17 November 2018 (a Friday) the claimant left a voicemail for Ms Park and sent her a text message saying:

> *"I'm sorry but I'm going to start looking for another job … I know I must leave for my own sanity."*

83. The message also criticises Zaina Akhtar for soliciting complaints against her and being "*highly malicious*".

84. On Saturday 18 November 2018 the claimant raised a grievance against Zaina Akhtar, alleging that she had conducted "*systemic*" "*unprofessional conduct*" against her. In her grievance she also talks of a "*Whatsapp group of vigilante parents who want to get rid of me*". The grievances also references the recent complaint that Zaina Akhtar had made about her.

85. Ms Park had further discussions with Mr Musa over that weekend, during which he repeated the advice set out above. On 18 November she notified him of the grievance the claimant had raised, and on 19 November she provided him with copies of the complaints that had been made against the claimant.

86. This is not a comprehensive account of what occurred up to the claimant's first alleged protected disclosure, but it is indicative of the difficulties the claimant was having at the school that in this period – her first 2½ months of work. She had been the subject of what she described as "*constant complaints*" from both colleagues and parents, had two or three times indicated her intention to resign, and had raised a grievance against a colleague and the behaviour of some parents more generally. Ms Park had taken advice from her head of HR about how to end the claimant's employment.

87. This all occurred before the claimant says she made her first protected disclosure, and by this time the only action by the respondent which is alleged to have amounted to disability discrimination is Ms Mukadam pressing the claimant to sign her employment documentation on the afternoon of 17 November 2017.

20 November 2017 – January 2018

20 November 2017 and the first alleged protected disclosure

88. The claimant's first alleged (and disputed) protected disclosure is said by her to have occurred on Monday 20 November 2017. This arose following a further confrontation between her and Ms Akhtar. The claimant confided in Nicola Mainwaring about the difficulties she was having with Ms Akhtar and Ms Park. The claimant puts her disclosure this way in her witness statement:

> *"I told Ms Park that what she was doing was wrong and that I was going to report the 'Prevent' issues that were happening to the Department for Education."*

89. In her witness statement Ms Park recalls telling both the claimant and Ms Akhtar off about the dispute that had arisen between them. She says that the claimant went on to make further complaints about Ms Akhtar's behaviour, but:

> *"At no point during this conversation did the claimant tell me that she was going to report my behaviour to the Trust and/or that she would report Prevent issues to the Department for Education. I am not aware of what Prevent issues the claimant is referring to."*

90. "Prevent" in this context refers to the so-called "prevent duty" intended to protect children against radicalisation.

91. Both Ms Park in her oral evidence and Ms Barry in the respondent's closing submissions pointed out that any allegation of "Prevent issues" would have been likely to provoke a response from Ms Park. We were told that the respondent had in the past been the subject of an "exposé" by Channel 4 and various newspapers, alleging extremism at one of its schools. Given its Islamic foundation and previous adverse coverage the respondent was likely to be highly sensitive to any allegation of extremism. Ms Park had previously shown a willingness to refer on difficult issues to advisors such as Mr Musa at the respondent's head office. If the claimant had suggested to her that there were Prevent issues, and still more if she had said she was going to go to the DfE, Ms Park would have wanted to know more about this and taken steps to alert the respondent to what may follow. No follow-up steps were taken by her. For this reason we do not accept that the claimant said at this point that she was going to report Prevent issues to the DfE.

21 November and the second alleged protected disclosure

92. Ms Park had decided to take action in accordance with the second option presented to her by Mr Musa – having a without prejudice conversation with the claimant. She adopted a format set out by Mr Musa in his email (but not quoted above) as a script for this. She decided to have this conversation with the claimant early on the morning of 21 November 2017, on the claimant's arrival at the school, with Ms Mulla as a witness. While this was said to be a "without prejudice" conversation, it was referred to in full by both sides during this hearing. Neither side suggested that the tribunal was barred by considerations of privilege from considering this conversation.

93. There were differences of view between the parties as to the manner in which this discussion was conducted by Ms Park. No issue in the case turns on how this discussion was conducted. We note that the discussion took the claimant by surprise, and one way or another she was presented with the alternatives of agreeing a termination of her contract or facing full investigation of the complaints against her. She was told that complaints had been received against her (but not what those complaints were) and also that Ms Park had doubts about the previous job title she had included in her application form. The

claimant was told to go home and think about the options, and left the school shortly after that. Ms Park wrote an email to Mr Musa saying:

> *"The meeting this morning didn't go well as Sami is very upset and says that this is a witch hunt. She is taking until Thursday to make a decision and will seek union advice but doesn't understand why the investigation is going to happen as she thinks she is being subject to a witch hunt. She feels that I have let her down and have not supported her.*
>
> *I was unclear what to do between now and Thursday … She has gone home but I didn't suspend her. I followed the script but she wanted clarification about what her days off would be classed as – I said, not to worry, it wouldn't be classed as absent.*
>
> *I did explain that an investigation was a neutral act and that it might even find in her favour – I reiterated this several times.*
>
> *I am worried that she will turn this onto me, that I haven't supported her when I have. She has a union friend as well."*

94. At 10:50 on 21 February 2017 Ms Park was notified of another complaint from one of the parents who had previously raised a complaint about the claimant. The nature of the complaint was somewhat indirect. The parent said that another parent had heard from their child that the claimant had "*shoved* [another child] *in the head to his seat*". This was said by the parent to be "*a very disturbing incident*", and the parent effectively threatened to remove her child from the school if the claimant continued to teach there. Ms Park immediately forwarded this email on to Mr Musa for advice. Mr Musa replied:

> *"This has now become a lot more complicated as this is a clear safeguarding allegation that has been made. Where safeguarding is an issue we cannot proceed with a settlement agreement until a full investigation has taken place and the matter is resolved.*
>
> *We need to follow our safeguarding policy and inform the LADO of this issue and then conduct a full investigation.*
>
> *We should also follow our parental complaints procedure so I will contact governance regarding this.*
>
> *Finally my strong recommendation is that we are going to have to suspend the member of staff whilst this takes place to safeguard the school."*

95. We should at this point note that following investigation, this allegation against the claimant was not upheld and no further action was taken against her. However, this conclusion was not reached until much later in the process.

96. Ms Park phoned the "Local Authority Designated Officer" (LADO), who advised her to complete the relevant form and "*in the interim … seek as many witness statements as you can, including the alleged victim*". Ms Park completed and returned the form the same day.

97. Later that day the claimant contacted her trade union, and then the DfE. She puts it this way:

> *"On 21 February 2017 I contacted DfE to make protected disclosures and to raise issues about extremism at the school because, by that point, I knew that Ms Park were attempting to cover this up which was why I was being targeted. I did this because, as a result of the allegations that had been levied against me after I had raised my 1st grievance. I did not believe that the respondent would deal with my disclosures fairly and without discriminating against me."*

98. On 21 November 2017 at 15:12 an officer from the DfE followed up on the claimant's telephone call by sending her an email saying:

> *"Hi Sameena*
>
> *As discussed please could you provide all supporting documents as per you call earlier today regarding Olive School Hackney.*
>
> *I will then be able to pass this information to the relevant teams within the Department. They may get in contact with you."*

99. The claimant does not appear to have replied directly to this email – although there were further email exchanges between her and the relevant officer.

100. The respondent is not in a position to say what the claimant did or did not say to the DfE in her telephone conversation, but in her closing submissions Ms Barry simply says that "*it is impossible to ascertain … what was reported. There is no evidence of a protected disclosure*".

101. We note for now that if any protected disclosure was made in that telephone conversation the respondent was not aware of such a disclosure at the time and did not become aware that the claimant has made any disclosures to the DfE until much later.

102. Much had happened on 21 November 2017. In the early morning Ms Park had made the without prejudice proposal to the claimant, which the claimant had not reacted well to. Later that morning a complaint had been received that raised safeguarding matters and which, in Mr Musa's view, ruled out concluding a settlement agreement with the claimant until it had been fully investigated. Ms Park had made a referral of this to the LADO, and the claimant had contacted the DfE

22 November 2017 onwards

103. On 22 November 2017 the claimant contacted her trade union representative complaining about Ms Park's approach to her the previous day. Her trade union representative sent an email to Ms Park taking this up with her.

104. On 22 November 2017 the LADO replied to Ms Park saying that this allegation did not meet the threshold for a LADO investigation, but should be dealt with under the school's performance management procedures.

105. On 23 November 2017 Ms Park replied to the claimant's trade union representative setting out that there had been five complaints made against the claimant, and saying:

> *"This got to the point where after seeking advice from HR, it became clear that we had no choice but to look at a formal disciplinary procedure, however, another option was to look at a without prejudice conversation.*
>
> *Sami has intimated that she would be looking for another job, so given the situation, after seeking advice from HR, this was the route we chose to go down."*

She continued:

> *"Also I need to inform you that following the without prejudice conversation with Sami, we received an additional parent complaint later on that day which included an allegation around pushing a pupil to make them sit down. I have tried to call Sami regarding this, however I have not heard back from her …*
>
> *If possible we would like to reach an agreement further to our discussion, however if not we will have to go through our formal disciplinary procedures. I would appreciate a response by 3:30pm today if possible as we cannot continue to pay Sami indefinitely whilst she is not coming into work."*

106. The "*threat to stop the claimant's pay*" on 23 November 2017 is the first whistleblowing detriment alleged by the claimant.

107. The claimant's trade union representative relayed this new allegation to the claimant, asking her if in the light of that she still wanted to stay at the school and be subject to investigation. The claimant replied almost immediately denying the allegation, saying that it was a "*gross fabrication*" and saying, "*I do intend to go through with the internal procedure as it is clear that I am being falsely accused and have a right to defend myself*". The same day she complained to the DfE officer she had contacted that she was being "*unfairly targeted by parents who are trying to remove me.*"

108. The claimant's trade union representative sent an email to Ms Park, saying, "*Sameena has confirmed that she denies 'pushing a child' and wishes to remain in school to exhaust the internal proceedings.*"

109. On 23 November 2017 Ms Park commenced her investigation into the allegation that had been made, speaking to three of the pupils said to have been involved. This continued with interviews with staff and parents on 24 and 25 November 2017, covering not just the safeguarding allegation but the wider concerns that had been raised about the claimant. The claimant made strong criticisms during the hearing of how and when those interviews were carried out.

110. In the evening of 23 November 2017 Mr Musa wrote to the claimant's trade union representative saying that the claimant would be suspended while a "disciplinary investigation" was carried out. He also put forward a possible date for an interview with the claimant as part of that investigation. The trade union representative replied questioning whether suspension was appropriate.

111. Thus on 23 November 2017 the claimant had learned for the first time of the safeguarding allegation against her and had made clear her intention to go through the school's processes and clear her name. She had also been told that she would be (but had not yet been) suspended, and the investigation continued for the remainder of the week.

27 November 2017

112. On Monday 27 November 2017: (i) Ms Park sent an email to the claimant notifying her that she was suspended pending investigation into her conduct and (ii) the claimant submitted a lengthy grievance against Ms Park to the chair of governors at the school.

113. It seems at some points to have been suggested by the respondent that the claimant's grievance was a reaction to receiving the notice of her suspension, but we accept that there were two independent actions by both parties. They effectively "crossed in the post" and one was not a reaction to the other.

114. The suspension letter said that the claimant was being suspended pending investigation into allegations of gross misconduct – essentially the complaints that had been made against her. It was said that this may amount to a breach of the duty of trust and confidence and that Ms Park would be carrying out the investigation, which would also including investigating the grievance that the claimant had raised against Ms Akhtar. The claimant was invited to an investigation meeting to be held on 4 December 2017 with Ms Park. It contained various other provisions that would typically be expected in such a letter. The claimant says that this suspension was the second act of whistleblowing detriment that she suffered.

115. The claimant described her letter (which was sent by post) as "a formal grievance against Caterina Park" and set out her complaints against Ms Park across the following headings:

- victimisation and unprofessional conduct,
- physical intimidation,
- setting me up to fail,
- unfair treatment,
- making false allegations,
- further breaches of my rights as an employee, and
- other unprofessional conduct that has impacted on me.

November 2017 – February 2018 – Dot Thompson's investigation

116. Ms Park continued with her interviews with those involved on 28 November 2017. However, once the respondent was notified of the claimant's grievance

against Ms Park responsibility for the investigation was taken from her. Dot Thompson, a consultant who sometimes carried out work for the respondent, was approached by Mr Musa to take on the investigation, and was commissioned to investigate each of (i) the disciplinary allegations against the claimant, (ii) the claimant's grievance against Ms Akhtar and (iii) the claimant's grievance against Ms Park. Ms Thompson took some time to become acquainted with the papers, and the investigation meeting with the claimant which had originally been intended to take place on 4 December 2017 was rearranged for 18 December 2017.

117. On 12 December 2017 the claimant was sent a revised letter removing two allegations against her but adding four new allegations.

118. On 16 December 2017 the claimant made a series of disclosures about the school to Ofsted, which are accepted by the respondent to be protected disclosures.

119. Dot Thompson met with the claimant on 18 December 2017 but despite the meeting lasting all day did not cover all the matters the claimant wished to raise and a follow-up meeting was eventually set for 17 January 2018. On 9 January 2018 Dot Thompson attended the school and interviewed a number of members of staff. She met Ms Park on 9 February 2018.

120. While not entirely satisfied with the approach taken by Ms Thompson, the claimant makes no allegation that Ms Thompson's conduct of her investigation was tainted by disability discrimination or amounted to a whistleblowing detriment.

121. By 14 February 2018 Ms Thompson felt able to notify the claimant that she had concluded that none of the allegations against her were upheld, although she was not yet in a position to produce her full report or come to a conclusion on the claimant's grievances. She noted that there was "*some evidence to suggest a change in behaviour is necessary*", but considered that "*these matters should be dealt with informally by the school*". The letter also notified the claimant that she was no longer suspended, was expected back at work on 19 February 2018 and would work from the UTC site with Mr Mannan (the Assistant Headteacher) providing support to her there. She was also notified that a referral to occupational health had been made.

122. On 15 February 2018 the claimant (through her trade union representative) challenged the idea that she was to return to work on 19 February 2018. Her representative wrote:

> *"Having discussed the matter with Sameena, there are concerns with the proposed return to work date of Monday 19 February. The allegations made against her have had a serious detrimental affect on Sameena's health and the prospect of re-entering school (even the Infant site) without the OH report or some sort of phased return has the potential to exacerbate these symptoms.*

At the moment, there is no detail provided regarding her return to work and I would suggest that it is best for all concerned for this to be done in conjunction with the OH report and a structured approach that is sympathetic to Sameena's health and wellbeing."

123. In response, the respondent's Senior HR Manager, Tahira Akhtar, suggested a phased return starting on 19 February 2018 on a 50% basis, and gave details of the expected occupational health consultation. The claimant replied directly to this on 16 February 2018, saying:

"I do not feel that my return to work is being managed effectively given the context of what I have had to endure, the timeframe that I have been absent and the fact that I have not had any formal support for the impact this has had on my mental health. Likewise, I am being asked to return to a place where I have not worked. Albeit I have no issues with this, I feel that my work at this place should be well managed with a clear criteria. I hope you will appreciate the anxiety this is placing on me which is not helpful given that a successful return to work is the main objective for all concerned.

To suggest that I return to work prior to seeing OH is putting the cart before the horse."

124. Tahira Akhtar spoke to the claimant on the telephone, and followed that call up with an email in the following terms:

"I would like to confirm our telephone discussion earlier and the agreed actions regarding your impending return to work from Monday 19th February.

- *Your ID badge will be updated to grant you entry/exit to the UTC as soon as possible.*
- *Your emails will be reinstated from 8.30am on Monday morning (this is when IT arrive on site).*
- *A desk space will be made available for you to work at, at the UTC.*
- *Manzurul Mannan will be based at the UTC on Monday/Wednesday and Friday week commencing 19th February in order to provide you with any support you require. MM will continue to provide support to you as required, during the time that you are based at the UTC.*
- *You stated that you would contact Manzurul Mannan directly to arrange a time for you to arrive in on Monday morning.*
- *I explained that a file of work would be given to you on Monday so that you may continue with your DHT duties/activities.*
- *You do not need to attend SLT meetings until the outstanding issues have been resolved*

In addition, we discussed the need for confidentiality and you agreed that questions regarding your absence/return to work, would be managed professionally.

> *You asked whether the Principal would attend the UTC building and I explained that as the Principal, Ms Park is responsible for the whole school, there may be times when she is required to attend the UTC site however this would be minimised during the interim period.*
>
> *I explained also that the interim arrangements i.e. placement at the UTC was intended as a supportive measure as was the agreed phased return to work of one week. Understandably, you mentioned that you had some anxiety regarding your return to work and I would encourage you again to seek support through the EAP. An occupational health consultation has been arranged for Thursday 22nd February to explore any further support/recommendations over and above those which have already been put in place for you. I have forwarded your preferred contact number (mobile) to occupational health.*
>
> *I trust the above provides you with some reassurance regarding your return to work."*

125. The claimant reluctantly returned to work on 19 February 2018, having arranged to meet Manzurul Mannan away from the site so they could both enter the UTC site together on that first morning. The intention was that in her first week she would work on Monday, Wednesday and Friday.

The claimant's return to work (19 February 2018 – 20 March 2018)

126. The claimant returned to work as planned on 19 February 2018. She was given a list of tasks to work on by Ms Park, although it appears this was not immediately available to her.

127. Although this was not known to the claimant at the time, it appears that Ms Park had consulted her (that is, Ms Park's) trade union representative about the implications for her (Ms Park) of the claimant's return. The representative wrote to the respondent's HR department describing the claimant's return as "*quite a challenging situation*" given the outstanding grievance, and said that "*relationships are extremely strained*".

128. Ms Thompson produced her disciplinary report on 21 February 2018. Also on 21 February 2018 the claimant reported to the DfE officer something she had heard an adult say that a child had said, along with some points surrounding that. This is accepted by the respondent to be a protected disclosure, albeit that the respondent would not have been aware of it at the time it was made. The officer replied the following day saying "*we have opened up a full enquiry and our investigation is still ongoing*". He asked for a meeting to speak to the claimant in person.

129. On 22 February 2018 the occupational health providers produced their report, following a telephone consultation with the claimant on that day. This included the following:

> *"Sameena returned to work this week following conclusion of a disciplinary investigation. She advised me that she is working in an*

alternative area where she has felt well supported so far. Sameena is due to return to full hours next week however she is concerned about being ready for this due to ongoing disruption to her sleep pattern and wellbeing levels.

Sameena presented in a distressed state today. My view is that this is partly her response to a situation that has placed her under strain, however she is also at risk of a relapse of her underlying medical condition, which can commonly occur with prolonged perceived stressful situations. I have advised her to discuss her present health and wellbeing with her GP to ensure that she is optimally supported during her return to work. She is also considering accessing personal support for her wellbeing. Nonetheless, I believe that a supported return to work is likely to be therapeutic for her at this stage, see below recommendations.

If operationally viable, Sameena is likely to benefit from a phased return over a period of four weeks. Ideally this would be a progressive increase from 50% contractual hours in week one, to full hours in week four. This will provide an opportunity for her to regain confidence in the workplace and should help to ensure a successful return. In discussion with Sameena, it appears that she is unaware of a nominated welfare contact to whom she can raise any work related concerns. It would be beneficial if somebody could be identified to her with whom she has a good rapport. You may also wish to consider allowing Sameena to visit her GP during working hours if she is unable to secure an appointment outwith this. A further referral to occupational health may be beneficial to review Sameena and update you about her progress."

130. On 23 February 2018 Tahira Akhtar contacted the claimant and her trade union representative with proposals for 50% working over the next two weeks.

131. Relationships in this period continued to be strained. While the claimant got on well with Mr Mannan, and Mr Mannan appears to have been sympathetic to the claimant's difficulties, she criticises both Ms Mainwaring's and Ms Park's attendance at the UTC site while she was working there, and various other actions by Ms Park during this period. It appears that Ms Park communicated with the claimant largely via Mr Mannan. While Mr Mannan appears to have been willing and able to take on the task of supporting the claimant on her return to work, it was pointed out by the claimant that he was junior to her. That is clearly not ideal but given that the only others who were on a level with or senior to the claimant were Ms Mainwaring and Ms Park it is difficult to see what else could have been done.

132. As part of the claimant's return to work it had always been intended by the respondent that there should be a mediation meeting in an attempt to rebuild the relationship between the claimant and Ms Park. On 1 March 2018 this was confirmed as to take place on Monday 5 March 2018 with the claimant, Ms Park, Kieran Larkin (the respondent's executive director of education) and Mr Musa. At the time Mr Larkin had overall managerial responsibility for the school – effectively he was Ms Park's line manager. He had had little or nothing to do with the claimant prior to this mediation. The meeting was not described to the

claimant as being a mediation meeting. She was told it was a "management meeting" and that "*the focus of this meeting will be to ensure a harmonious and professional relationship going forward*". She asked if she could be accompanied by Mr Mannan in that meeting, but was told she could not. The respondent did, however, agree to her request to relocate the meeting away from the Cazenove Road site. It was eventually held at another one of the respondent's schools in London.

133. On 3 March 2018 the claimant was provided with Dot Thompson's decision on her grievance against Ms Park. Broadly speaking, the matters raised in the grievance were not upheld, but advice was given for regular 1:1 meetings to be scheduled between the claimant and Ms Park, for there to be a meeting between the claimant and Ms Akhtar and for any verbal warning given to the claimant to be withdrawn. The claimant originally indicated her intention to appeal this decision but decided against that following what she considered to be a positive mediation meeting on 5 March 2018. Her witness statement for this hearing contained a detailed critique of Ms Thompson's conclusions on the grievance, although as we have said before she does not suggest that Ms Thompson's decision was influenced by the claimant's protected disclosures or tainted by disability discrimination.

134. Given all that we have said, the prospects for the mediation on Monday 5 March 2018 did not appear promising, but it appears that at the time everyone considered it to have been successful. Mr Musa sent an email summarising the results that same evening:

> *"As promised please see attached a list of the key actions that need to be completed:*
>
> *1. Normal line management communication and processes to re-commence from tomorrow.*
>
> *2. CPA to have meetings with parents of the children who raised the safeguarding allegations and to ensure that these matters are brought to a close. If any additional work is required CPA to contact FMU regarding formalising the conclusions to the investigations that have taken place.*
>
> *3. SBA to continue to seek medical support re: anxiety and panic attacks.*
>
> *4. CPA to undertake stress risk assessment with CBA* [should be SBA] *and see what adjustments can be made to support CBA in relation to proactively helping her recovery.*
>
> *5. FMU to provide details regarding services available via Simply Health and particularly counselling/CBT.*
>
> *6. CPA and SBA to work together to ensure that a plan is put in place to enable normal teaching service to be resumed in relation to Y5. Ensuring that whilst recognising that this is a key operational*

requirement this is phased in sensibly over with appropriate support being provided to help SBA to return to normal duties. This is particularly important in relation to the Y5 maths group.

7. KLA to call Nicola to advice that all parties must act professionally and look to put the issues that have occurred behind them. KLA to continue support via normal line management processes. CPA to continue to re-enforce as part of ongoing line management of the overall SLT.

8. FMU to check with DTH regarding progress of SBA grievance against ZAK and for update on timescales.

9. CPA agreed to support SBA with completion of her NPQ qualification.

10. FMU to call SBA on Thursday to check-in.

The next few days will be challenging but I hope that if some of the positivity from today's meeting can be taken away and drawn upon there is good chance of success."

135. Mr Larkin followed this up in an email in which he thanked both the claimant and Ms Park for "*the very constructive way you both engaged with the meeting today*".

136. In her witness statement the claimant was critical of this outcome, but we find that a better indication of her thinking at the time is given by her email to her trade union representative, described above, in which she said she would no longer being appealing the decision on her grievance against Ms Park and "*just want*[ed] *to move forward positively in my job.*" She followed up that email with a letter dated 9 March 2018 in which she said:

> *"I do not intend to appeal the outcome of this letter because I genuinely wish to be positive in working closely with the headteacher in order to further improve outcomes for all pupils in the school, I would further add that my decision not to appeal was greatly influenced by the professional and sensitive manner in which both Mr Larkin and Mr Musa conducted the mediation meeting on 5th March 2018. Their actions restored my faith in the Trust."*

137. We note, however, that this letter also included substantial criticism of the grievance findings and outcome. While the mediation may have mollified the claimant somewhat, and its outcome had been ostensibly accepted by her and others, she was no less sure that she was in the right and Ms Park (and others) were in the wrong. As she put it in that letter, "*the truth is paramount in all I do*".

138. On 6 March 2018 Ofsted wrote to Ms Park and the chair of the respondent notifying them that two complaints had been made against the school. This would have been the first the school heard of any complaints being raised with Ofsted. Ofsted apologised for the delay in taking action on the complaints,

which were said to have been raised on 18 December 2017 and 6 February 2018.

139. On 9 March 2018 the school placed an advertisement in the Guardian for an "Experienced Deputy Principal". The same advert was placed in the TES on 15 March 2018. The claimant was not aware of those advertisements at the time, but on later seeing the job descriptions has concluded that these advertisements were for the job she was doing. It is the respondent's case that these advertisements were for the Deputy Principal role held by Ms Mainwaring, since Ms Mainwaring had told Ms Park that she was intending to move away from London following her marriage that summer.

140. The roles of Deputy Principal held by Ms Mainwaring and the claimant were essentially identical, with individual duties being allocated across the two of them by Ms Park. The primary point of difference was that Ms Mainwaring focussed on Key Stage 1 and pastoral matters, with the claimant focussing on Key Stage 2 and academic matters. Ms Mainwaring held the substantive post, with the claimant carrying out an additional role on a fixed-term basis that was expected to conclude at the point where the school could consolidate on one site.

141. The job advertisement placed on 9 March 2018 followed very closely on from the mediation that had taken place on 8 March 2018. The mediation had involved a considerable investment of time by the respondent, with two senior managers (Mr Larkin and Mr Musa) travelling from Blackburn to London for an all-day meeting. The mediation had been ostensibly successful, with Mr Larkin congratulating everyone involved for their efforts. This was in circumstances where the respondent knew that the claimant had not qualified for unfair dismissal rights and, subject to Mr Musa's qualms about offending the trade unions, could be dismissed at any point. If the respondent wanted to dismiss the claimant they could have done so, but instead they put considerable effort at a senior level into trying to rebuild the relationships. In that context we do not consider it likely that the respondent was also advertising for a replacement for the claimant. This would have required Mr Larkin and Mr Musa's efforts at the mediation to have been a sham, which would have been a pointless waste of their time, or Ms Park to have gone ahead without Mr Larkin's approval and place an advertisement in the hope that she may later be able to replace the claimant. In doing so she would have been taking a considerable risk in placing a public advert where anyone (including the claimant and Mr Larkin) could have seen it.

142. We consider it far more likely that this advertisement was, as Ms Park said, for Ms Mainwaring's job. It does not seem to be in dispute that in fact Ms Mainwaring left the school in the summer of 2018. That is consistent with what Ms Park says about the need to recruit a replacement for Ms Mainwaring. We find that these advertisements were for a replacement for Ms Mainwaring, not the claimant.

143. On Monday 12 March 2018 the claimant returned to work at Cazenove Road, rather than the UTC where she had been temporarily assigned. This was not a successful week. In her statement the claimant sets out a catalogue of

complaints about what occurred that week, including that her desk and work area had become very messy while she was off work, being watched by Ms Park and Ms Mainwaring, Ms Park having meetings with parents who had raised allegations against her, and being required to teach the year 5 classes containing students who had previously criticised her. Meanwhile a parent had raised a formal complaint about their son having been "*aggressively dragged … by the collar*" by the claimant. This appears to have been a repeat of a complaint raised previously, but this time escalated to the respondent's head office.

144. Ms Park was no more happy with how things were going than the claimant was. On 15 March 2018 she sent an email to Mr Larkin and the respondent's chief executive saying:

> *"I'm really sorry to have to email you about the situation at school, but I'm finding it extremely difficult to carry on.*
>
> *Today I have found out that Sami is still causing issues with the teachers, in effect, she is telling them that the situations only happened whilst she was here because of me and because I told her to do the things she did.*
>
> *She has also spoken to a member of my SLT team trying to spilt up our unity by saying not to trust anyone in the SLT team and that there was an investigation, but she took it 'to the top'.*
>
> *I find it wholly unacceptable for a senior member of my leadership team to undermine me and other members of the same team. I cannot understand how we are supposed to move forward if someone is intent on creating disharmony within the school's staff.*
>
> *Having worked extremely hard over the past 3 years to create very good relationships with my staff whom I really care about, this turn of events is frustrating and takes away from our primary purpose of teaching and learning.*
>
> *I'm not sure what the next step is but I am, with respect, considering my own options within the school as I'm finding the whole situation untenable and don't know where to go from here."*

145. This email appears to have prompted discussions at the respondent's head office, with Mr Musa writing to Mr Larkin on 16 March 2018 to say:

> *"I've seen the email from Caterina regarding her current situation so we will wait to hear from you whether … we look an SOSR (some other substantial reason) dismissal based on the working relationship becoming untenable and beyond repair."*

146. Mr Larkin replied the same day, saying:

> *"I've spoken directly with Caterina earlier this afternoon and despite all the processes that have taken place including mediation the situation in reality is no better. The situation has become untenable to the extent that*

we cannot ensure the stability in the leadership of the school. We need to resolve this with some urgency.

Despite best efforts from a range of people the only outcome we can conceivably pursue is that SB is no longer at the school. It would be good to get an agreed view on how we get to that position with some urgency (as in by end Monday)."

147. On 17 March 2018 at the invitation of Tahira Akhtar Ms Park provided a written account of the problems there had been since the claimant's return to work.

148. On 20 March 2018 Ms Thompson provided the claimant with the outcome of her grievance against Ms Akhtar, in respect of which Ms Thompson had upheld part of one of the five accusations made by the claimant against Ms Akhtar.

149. Also on 20 March 2018 Mr Larkin wrote to the claimant saying, "*I'm in Olive Hackney today to meet with Caterina for my half termly meeting. Please can we meet up at the end of day, say 3.30pm, at the Cazenove site*." Unbeknownst to the claimant, Mr Larkin intended this meeting to result in the end of the claimant's employment. It was, in effect, to be a repeat of the approach that Ms Park had unsuccessfully attempted on 21 November 2017. Mr Larkin introduced this as being a "without prejudice" discussion (or a protected conversation), although as before neither party suggested that privilege prevented us from hearing what occurred in that meeting. The offer was much the same as before – accept a settlement agreement from the school or face formal investigation. As before, the claimant did not take this approach well, breaking down in tears during the meeting. Mr Larkin said that she had until 27 March 2018 to consider the offer, and that she would not be expected to attend the school during this period.

21 March 2018 – 9 July 2018

150. The claimant describes herself following this meeting as being "*a completely broken person*". In the early hours of the morning she contemplated suicide. She called a helpline run by her trade union, and ultimately was rescued when the helpline sent the police and paramedics to her apartment, following which she was rushed to hospital. Eventually she was discharged to the care of her husband.

151. The claimant was off sick from this point and did not return to work. On 22 March 2018 her GP signed her off sick for a month with a diagnosis of depression.

152. The respondent was unaware of the claimant's difficulties, but on 27 March 2021 a new trade union representative wrote to Mr Musa notifying him that they were "*extremely concerned about* [her] *emotional, psychological and professional welfare*". They notified Mr Musa of the claimant's suicide attempt following the meeting with Mr Larkin and said that the claimant was "*not in a position at the moment to make major career changing decisions*".

153. Mr Musa replied saying that he was on leave, but that no further steps would be taken in respect of the claimant pending further information from the trade

union representative. The trade union representative replied to the effect that the claimant was so unwell that they were not presently able to take instructions from her.

154. In early April 2018 Mr Musa attempted further discussions with the claimant's trade union representative. They spoke on 4 April 2018, when Mr Musa outlined the respondent's understanding of the situation and the offer that had been made to the claimant. This was relayed by the representative to the claimant, who continued to be very unwell. Mr Musa pressed the representative for a response. On 6 April 2018 the trade union representative wrote to Mr Musa saying that the claimant was still very unwell and "*not able to fully engage*". The email identified the depression noted on the claimant's sick note as being "*a serious mental health condition*" and "*a disability recognised and protected within the Equalities Act of 2010*". This is the first point at which the claimant or anyone on her behalf had suggested that she was a disabled person. Further correspondence ensued in which Mr Musa defended the school's position and said that a referral to occupational health would be arranged for the claimant.

155. On 18 April 2018 a police officer visited the school, and returned later in May accompanied by a colleague. This appears to have been a result of the allegations the claimant had made to the DfE. The outcome of this was that the police officer appeared entirely satisfied by assurances given to him by Ms Park during their meetings. Ms Park accepted in her evidence that, while she was never told who had made the allegations that prompted the visit she had assumed that it was the claimant. This would have been the first time she was aware that the claimant had made any complaints to the DfE under the "Prevent" policy.

156. The occupational health consultation had been set for 23 April, but on 20 April 2018 the claimant's trade union representative notified Mr Musa that the claimant had been signed off sick for another four weeks and wanted to postpone the occupational health consultation. This was rearranged for 30 April 2018. The resulting occupational health report identified that the claimant "*has severe anxiety and depression which is due to her work situation*" and was not fit for work. With effect from 23 April 2018 the school appointed a temporary member of staff to cover the claimant's work.

157. Correspondence continued along much the same lines as before between Mr Musa and the claimant's trade union representative. On 19 May 2018 the claimant submitted a further sick note. Nothing that occurred between 22 March 2018 and 20 May 2018 inclusive is said by the claimant to be either a protected disclosure, detriment or act of disability discrimination.

158. On 21 May 2018 the claimant wrote to Jack Straw, the former MP, who was a trustee of the respondent. This letter is said by her to amount to a protected disclosure, but this is not accepted by the respondent, primarily on the basis that it is said that no disclosures in that letter are made in the public interest. We will consider that point in our discussion and conclusions. Mr Straw referred this complaint on to the CEO of the respondent. The claimant was provided with a reply on 31 May 2018. The reply was sent in the name of Simon Thompson, the respondent's Regulatory and Policy Compliance Manager, following an

investigation conducted by Mr Larkin. This letter offered the claimant the option of pursuing her complaint to a "Panel Hearing" constituted in accordance with the respondent's complaints procedure. The time offered for this referral was later extended by Mr Thompson to 29 June 2018 following representations from the claimant.

159. On 14 June the claimant wrote to the LADO and on 18 June to Ofsted raising various complaints. These are accepted by the respondent as being protected disclosures. There continued to be inconclusive correspondence between Mr Musa and the claimant's trade union representative, with the claimant saying that she remained too unwell to make decisions. A further sick note was issued for the claimant on 18 June 2018.

160. By 26 June 2018 the claimant's trade union representative wrote to Mr Thompson saying that "*Ms Bashir's condition has further deteriorated*" and "*I am unable at this current time to talk with or contact* [her] *directly to take any instruction*". The trade union representative said that the claimant's husband was currently acting on her behalf, and asked for further time for the claimant's recovery.

161. On 29 June 2018 Ms Park's trade union representative wrote to Mr Musa outlining Ms Park's position and saying:

> *"I am very concerned at the impact Ms Bashir's continued harassment is having on Caterina, her mental wellbeing and her general health and safety in the workplace. Clearly it is a very stressful situation to be in whereby she is under constant scrutiny from regulators, the inspectorate, prevent, the police and now media for no other reason than the apparent attempt by a member of staff to draw attention away from Ms Bashir's own shortcomings ...*
>
> *I write today to remind you of the duty of care that the Trust has to our member and to request that the Trust take immediate action to review the impact this situation is having on Caterina and also to challenge the continued and apparently malicious attempts by Ms Bashir to undermine Caterina, Olive School and the Trust itself …"*

The claimant's dismissal

162. On 9 July 2018 Mr Larkin wrote to the claimant to dismiss her, with immediate effect. This is what the dismissal letter said:

> *"I am writing to inform you that following ongoing correspondence via your union representative, we now feel we have no choice but to terminate your employment with Star Academies ...*
>
> *Our decision is based on a complete and irretrievable breakdown of relationships between yourself and the Principal of Olive Hackney.*
>
> *The following applies with immediate effect:*

- *Your dismissal takes effect from today's date and your final day of employment is therefore 9 July 2018.*

- *Your final payment of salary will be made on 31 July 2018 and will include four weeks contractual notice subject to normal deductions of tax and national insurance.*

We will forward your P45 to you in due course.

We had hoped that the mediation process on 5 March 2018 following the outcomes of the disciplinary investigation into your conduct and safeguarding allegations, and the outcome of the two grievances you raised, would be sufficient to repair the loss of trust between you, the Principal and other colleagues at Olive Hackney.

When we met, we jointly recognised this would be challenging. Unfortunately, after just two weeks following the mediation meeting, relationships deteriorated further and more concerns regarding your conduct were raised. It became clear that your working relationship with the school was beyond repair.

We met on the 20 March 2018 to discuss these concerns. It was clear that all avenues had been exhausted and, regrettably, the only option open to us was to terminate your contract of employment with us.

On the 27 March 2018 we received an email from your union representative informing us that you had attempted suicide. In light of this, we halted any confirmation regarding the termination of your employment.

Between the 27 March and now we have held back from any decision with a view to helping to support your recovery from illness.

Whilst recognising your own particular circumstances, we also need to consider the impact of your absence and the context of an irreparable professional working relationship between you and Olive Hackney which continues to impact the wellbeing of those involved.

It has been clear for several months that there is no realistic prospect of you returning to work at Olive Hackney or elsewhere in the Trust and it is therefore with regret we have come to the decision to terminate your employment.

Finally, whilst this dismissal does not fall under any of our normal processes and procedures because of the reason for termination we feel that it would be right and proper to give you the opportunity to appeal this decision."

Events after the claimant's dismissal

163. The claimant's response to this was set out on her behalf by her husband. On 12 July 2018 he wrote to the respondent saying that she intended to appeal

against her dismissal, but that "*she is not able to undergo any process until she has fully recovered.*" In response, the respondent permitted until 20 July 2018 for the appeal.

164. On 20 July the claimant's trade union representative replied on her behalf, including, as an "*observation on Ms Bashir's behalf*":

> *"In reality, the decision to dismiss appears to have been taken before Ms Bashir became ill as a result of the employers alleged bullying behaviour."*

The email concluded by saying:

> *"We are unable to inform you when Ms Bashir will be well enough to appeal but we do intend to pass on medical evidence once obtained to demonstrate the current state of Ms Bashir's health and the impact the employers decision may have had on our member's psychological, emotional and professional welfare."*

165. Following further correspondence Mr Musa wrote to the claimant's trade union representative on 27 July 2018 saying that he would now convene an appeals panel – although at this point the claimant had not submitted any formal grounds of appeal and had simply indicated her intention to appeal when she was well enough. He nominated Lisa Crausby, who was the equivalent of Mr Larkin but with responsibility for other schools within the respondent, to chair the appeal panel. On 2 August 2018 the claimant was notified that the appeal hearing was to take place on 30 August 2018. Following further correspondence with the claimant's trade union representative Mr Musa moved the appeal hearing to 28 September 2018, apparently on the basis that holding the hearing during term time would mean that more witnesses were available to the claimant. The hearing was to take place at a hotel in central London.

166. On 24 September 2018 the claimant's trade union representative wrote to Mr Musa saying that they were not instructed to attend the hearing on the claimant's behalf, and could not presently take instructions from her as she was too unwell. The representative said that if anything was received from the claimant in time for the hearing it would be forwarded to Mr Musa, and asked the panel to take into account other matters that were raised in the email. It concluded by saying "*neither Ms Bashir or myself will be in attendance for the panel hearing on Friday 28 September*". It attached a letter from the claimant's therapist which the trade union representative said showed that it was "*considered inadvisable for Ms Bashir to attend the hearing as it may cause her condition to further regress*".

167. In fact the attached letter went a little further than stated by the trade union representative, saying:

> *"Sameena describes ongoing symptoms of clinical depression, anxiety and stress. I am aware that she has an appeal hearing on September 28th, in my opinion it will be detrimental to her health to attend this, and I am requesting that the appointment is postponed."*

168. Despite the accompanying medical letter asking for a postponement of the hearing, this was not something that was sought by the trade union representative in their covering email.

169. On 25 September the claimant's trade union representative forwarded to the respondent a seven-page document prepared by the claimant which the trade union representative described as being her written submissions for the hearing.

170. The appeal hearing went ahead as intended on 28 September 2018, in the claimant's absence. Ms Crausby says this in her witness statement:

> *"Whilst … the claimant's occupational therapist had recommended the appeal hearing be postponed, this is not something that either the claimant or her trade union representative were requesting after receipt of the letter. Instead, they had agreed to the hearing taking place in the claimant's absence and had sent written representations for consideration."*

171. It seems to us to be going a little too far to say that either the claimant or her trade union representative had agreed to the hearing taking place in her absence. There is no explicit agreement to that effect in the documentation. However, we do accept the general proposition that the neither the claimant nor her trade union representative had requested a postponement, and the latest communications received from the claimant and the trade union representative were set out very much as if the hearing was to proceed in the claimant's absence. At the time this would have seemed to all concerned to be the only option available if the appeal was to be resolved. We note in Ms Crausby's statement the various options and adjustments that had been offered to the claimant in respect of the hearing. By the end of September 2018 the claimant had been off sick for almost six months. There was no sign of her medical condition improving, nor any indication of when she would be in a position to attend an appeal hearing.

172. The appeal panel dismissed the claimant's appeal, giving its reasons in a lengthy letter dated 12 October 2018.

D. THE LAW

Fixed-term employees

173. The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 provide as follows:

> *"2(1) For the purposes of these Regulations, an employee is a comparable permanent employee in relation to a fixed-term employee if, at the time when the treatment that is alleged to be less favourable to the fixed-term employee takes place,*
>
> *(a) both employees are:*
>
> *(i) employed by the same employer, and*

(ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification and skills; and

(b) the permanent employee works or is based at the same establishment as the fixed-term employee …

3(1) A fixed-term employee has the right not to be treated by his employer less favourably than the employer treats a comparable permanent employee:

(a) as regards the terms of his contract …

…

(3) The right conferred by paragraph (1) applies only if:

(a) the treatment is on the ground that the employee is a fixed-term employee, and

(b) the treatment is not justified on objective grounds."

Protected disclosures

174. A "qualifying disclosure" is (s43B(1) of the Employment Rights Act 1996):

"any disclosure of information which, in the reasonable relief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following …

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject …"

175. To count as a protected disclosure the qualifying disclosure must be made to one of a limited category of recipients. There is no issue in this case as to whether the disclosures (if made) were made to the correct recipients to count as protected disclosures

Detriments

176. Under s47B of the Employment Rights Act 1996:

"(1) A *worker has the right not to be subjected to any detriment … by his employer done on the ground that the worker has made any protected disclosure.*

…

(2) This section does not apply where:

(a) the worker is an employee, and

(b) the detriment in question amounts to dismissal …"

177. Section 48 provides that:

> *"(2) On* [a complaint of detriment due to protected disclosures] *it is for the employer to show the ground on which any act … was done …"*

178. In whistleblowing detriment claims, "*s47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower*" Fecitt v NHS Manchester [2011] EWCA Civ 1190 (para 45).

Automatically unfair dismissal

179. Under s103A of the Employment Rights Act 1996:

> *"An employee who is dismissed shall be regarded … as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."*

Disability discrimination

Disability

180. Under section 6(1) of the Equality Act 2010:

> *"(1) A person (P) has a disability if:*
>
> *(a) P has a physical or mental impairment, and*
>
> *(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."*

181. Para 2 of Schedule 1:

> *"(1) The effect of an impairment is long-term if:*
>
> *(a) it has lasted for at least 12 months,*
>
> *(b) it is likely to last for at least 12 months, or*
>
> *(c) it is likely to last for the rest of the life of the person affected.*
>
> *(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur."*

182. "Likely to recur" should be interpreted as "*it could well happen*" (SCA Packaging Ltd v Boyle [2009] UKHL 37 (see also para 13 of Appendix 1 to the Statutory Code of Practice)). The question of whether a condition amounts to a long-term condition is to be decided by reference to the state of affairs at the date of the

alleged discrimination, without reference to subsequent events (McDougall v Richmond Adult Community College 2008 ICR 431).

Direct disability discrimination

183. Under section 13(1) of the Equality Act 2010:

> *"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."*

Discrimination arising from disability

184. Section 15:

> *"(1) A person (A) discriminates against a disabled person (B) if:*
>
> *(a) A treats B unfavourably because of something arising in consequence of B's disability, and*
>
> *(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*
>
> *(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."*

Failure to make reasonable adjustments

185. Section 20(3):

> "*where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled,* [the employer is under a duty] *to take such steps as it is reasonable to have to take to avoid the disadvantage*"

Harassment

186. Section 26(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."*

Victimisation

187. Section 27:

> *"(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:*
>
> *…*
>
> *(c) doing any … 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."*

The burden of proof in discrimination cases

188. Section 136:

> *"(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."*

189. However, we note from Hewage v Grampian Health Board [2012] UKSC 37 (para 32) that: "*it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.*"

E. DISCUSSION AND CONCLUSIONS

Fixed-term employment

190. It is not in dispute that the claimant was a fixed-term employee and was engaged on worse (shorter) notice terms than a comparable permanent employee was. The question is whether the respondent has justified this less favourable treatment.

191. The respondent has at various points put forward different reasons for the shorter notice period, but by the time of the hearing its stated justification was that "*the very nature of a fixed-term contract is to cover shorter periods of work and that a lengthy notice period would not be proportionate*".

192. There was in this case a sound reason for the claimant being employed on a fixed-term rather than permanent contract. She was fulfilling a role which would no longer exist when the school achieved its ambition of consolidating on one site. However, the fact that a fixed-term contract was justified does not mean that less favourable terms in that fixed-term contract are justified.

193. From the evidence we heard it does not appear that anyone based at the school gave any thought to what the appropriate notice period would be. They were simply operating according to the standard-form fixed-term contract they had been provided with. It was left to Mr Musa to justify the particular notice period used.

194. Mr Musa addresses this in his witness statement first by saying that the respondent does not have to honour Burgundy Book terms for teaching staff, but in practice does do so. He went on to say that shorter notice periods for fixed-term contracts were negotiated by the respondent with its trade unions, and that shorter notice periods were permitted for fixed term contracts by the Burgundy Book. He said that the claimant had always been aware that this would be a contract terminable on short notice and had not protested at the time.

195. The difficulty with this is that none of it suggests that it was justified for the claimant to be on a shorter notice period. The respondent's arguments all seem to centre on the principle that fixed-term contracts of themselves justify shorter notice periods. The respondent refers to "*the very nature of fixed term contracts …*" as its justification. We do not accept this. It cannot be correct to say that a fixed-term contract of itself justifies a shorter notice period.

196. What the respondent's argument fails to recognise is that there may be some circumstances in which a fixed-term contract justifies shorter notice periods, and others where it does not. In the claimant's case the only practical justification could have been that school may find that the consolidation of its sites only occurred at short notice, but there is no suggestion that that was why they had included this shorter notice period, and in any event it seems unlikely that the school would be in a position to move sites on only four weeks' notice. The shorter notice period was because she was on a fixed-term contract and was not objectively justified.

197. The claimant had originally suggested that there were further detriments arising from her status as a fixed-term worker. We consider that those argument were unlikely to succeed, but it is not necessary for us to decide the points as they were withdrawn by the claimant during her submissions.

Protected disclosures

198. There are three alleged protected disclosures which are not accepted by the respondent to be protected disclosures. These are:

> *"4.2(a) On 20 November 2017 she complained to Ms. Park about being publicly humiliated by Ms. Akhtar and that she would report Ms. Park's behaviour to the trust and was going to report the 'Prevent'*

issues that were happening at the Respondent to the Department for Education ("DfE")

(b) On 21 November 2017 she contacted DfE to express concerns of extremism against staff, the leadership and management of the school and some parents;

(e) On 21 May 2018 she wrote to a Trustee regarding wrongdoing in relation to safeguarding allegations and the manner in which they were investigated and that vital information was withheld;"

199. There are three elements to the first alleged disclosures: complaining about being publicly humiliated by Ms Akhtar, saying that she would report Ms Park's behaviour to the trust and that she was going to report "Prevent" issues to the DfE.

200. In her witness statement the claimant says that she told Ms Park of what had passed between her and Ms Akhtar that morning, but we don't see that that amounts as such to a complaint that she had been publicly humiliated by Ms Akhtar, nor do we see how, if this was the case, it could amount to an allegation of a breach of a legal obligation or otherwise count as being a protected disclosure.

201. There is nothing in the evidence to suggest that the claimant said during this exchange that she would report Ms Park's behaviour to the trust, and if there was we do not see how that (without the claimant being more specific about the allegation or information) could amount to an allegation of a breach of a legal obligation or could otherwise count as a protected disclosure.

202. We have found for reasons set out above that the claimant did not mention at that meeting that she was going to report "Prevent" issues to the DfE.

203. Accordingly, we find that the first alleged protected disclosure was not a protected disclosure.

204. As for the second alleged protected disclosure, the claimant has given no evidence as to what was actually disclosed in her initial conversation with the DfE. We know that there was such a conversation, because of the email sent by the DfE official to follow up on that. However, there is nothing in the claimant's evidence about this call other than that "*I contacted DfE to make protected disclosures and to raise issues about extremism at the school*". That does not give us a sound basis on which to conclude what those disclosures were and that they were protected disclosures. To say that protected disclosures were made begs the question of what those disclosures actually were, and "*raising issues about extremism*" is not of itself something from which we could conclude that the claimant had made protected disclosures. On the basis of the evidence before us we are unable to conclude what the disclosures were, or that they were protected disclosures. We note in any event that if disclosures had been made then the respondent would not have been aware of them until much later.

205. The earliest protected disclosure that the claimant made was the third alleged protected disclosure, on 16 December 2017, which is accepted by the respondent as being a protected disclosure. As with the second alleged protected disclosure, the respondent was not aware of this disclosure at the time and only became aware that the claimant had contacted Ofsted much later on.

206. The fourth, sixth and seventh alleged protected disclosures are accepted by the respondents as having been protected disclosures. That leaves only the fifth alleged protected disclosure – the letter to Jack Straw - to be considered.

207. Ms Barry argues that this does not amount to a protected disclosure because it cannot be considered to be in the public interest. We do not accept that. The letter is full of detailed and damaging allegations raised against the respondent. Where these concern the operation of a publicly-funded primary school we do not think it can be said that they are not in the public interest. We accept the claimant's case that the fifth alleged protected disclosure was a protected disclosures.

208. We find the following to have been protected disclosures:

- the 16 December 2017 disclosures to Ofsted,
- the 21 February 2018 complaint to the DfE,
- the 21 May 2018 complaint to Jack Straw,
- the 14 June 2018 complaint to the LADO, and
- the 18 June 2018 complaint to Ofsted.

209. With the exception of the complaint to Jack Straw, each of these disclosures were made to agencies outside the respondent, and would not have been known to the respondent at the time they were made. The earliest the respondent would have been aware of any of these disclosures seems to be from the Ofsted letter of 6 March 2018.

Whistleblowing detriments

Generally

210. Where the claimant has shown that she has made protected disclosures and has suffered detriments, it is for the respondent to explain the reason for those detriments.

211. It is clear that the claimant had, right from the start, a very difficult time at the Olive School. Despite the hope that the mediation had offered, things got worse rather than better as time went on. As we have set out in our findings of fact, within 2½ months of starting work she had been the subject of multiple complaints and had indicated a number of times her intention to resign, while at the same time raising her own grievance against a colleague.

212. We do not find it surprising that in those circumstances Ms Park was taking advice about ending the claimant's employment. The decision to end the

claimant's employment had been taken long before Ms Park or anyone else at the respondent was aware of any protected disclosures made by the claimant.

213. There was a time on her return in March 2018 when the respondent was prepared to allow a further chance for relationships to improve, but that was unsuccessful. We do not find it surprising that the respondent concluded a second time that the claimant's employment should be ended. The outcome of that approach was that the claimant was then signed off sick and very unwell, with no indication as to when she may return to work. We do not find it surprising that in those circumstances Mr Larkin took the step of ending the claimant's employment. His dismissal letter sets out fully the reasons for this decision, and we find it offers a compelling and accurate account of the reason for the claimant's dismissal.

214. Mr Larkin says that "*your working relationship with the school was beyond repair*". Given the facts we have found we do not see how there can be any disagreement with that. The claimant disputes that this arose from any fault on her part, but we do not think she can dispute that statement.

215. Mr Larkin goes on to say that "*the only option open to us was to terminate your contract of employment with us*". Again, given the failed attempt at mediation it is difficult to see what other options there were. From the claimant's point of view she was in the right, but for the claimant to resume work at the school would in practice have required a wholesale clear-out of the school by the respondent, covering not just Ms Park but also most of the year 5 teachers and possibly with some action (it is not clear what) being taken against parents.

216. Mr Larkin goes on to say "*it has been clear for several months that there is no realistic prospect of you returning to work at Olive Hackney or elsewhere in the Trust*". That was also true. Without the wholesale clear-out of the school that we have mentioned she could not return to the Olive School. No other posts have been identified that she could have taken on, and she remained very ill up to and including our tribunal hearings.

217. The only way the claimant could succeed on the main parts of her claim (concerning her dismissal) was if she could show that this situation had come about (or was materially contributed to) as a result of her protected disclosures, protected acts or disability. That task was all the more difficult given that it was her case that the main reason for her mistreatment was something that was not either protected disclosures or her disability. We will deal with the question of disability later, but a particular problem with her case that this had come about as a result of protected disclosures was that it is clear that the decision to dismiss her had been taken before the first of her alleged protected disclosures.

Specific detriments, and dismissal

218. These are the detriments that the claimant says she suffered as a result of her protected disclosures:

"4.5(d) *On 23 November 2017, Ms Park threatening to stop the Claimant's pay for her not having been at work, despite the fact she had been told to go home by Ms Park*

(e) Her suspension on 27 November 2017;

(f) The Claimant's position being advertised in The Guardian newspaper on 9 March 2018;

(j) The Claimant's position being advertised in The TES newspaper on 15 March 2018;

(k) Being invited to a meeting on 20 March 2018 with no notice, no knowledge of the purpose of the meeting and no right to be accompanied. At this meeting the Claimant was informed that there were additional allegations against her, but was not given detail of these, she was 'forced' to engage in a Protected Conversation and told to leave work to consider the options;

(l) Suffering a mental breakdown and subsequently attempting suicide on 21 March 2018;

(n) The termination of her employment by way of letter dated 9 July 2018;

(o) No investigations had taken place to ascertain the true facts of the allegations against the Claimant;

(p) Being informed that the witnesses all wished to remain anonymous;

(q) The Respondent ignoring the Claimant's Occupational Therapist's suggestion, dated 19 September 2018, to postpone the appeal hearing;

(r) The appeal hearing being held in the Claimant's absence on 12 October 2018; and

(s) The Claimant's appeal being unsuccessful."

219. (d) and (e) cannot have been detriments because of protected disclosures, because at that time the claimant had not made any protected disclosures.

220. (f) and (j) are not detriments because of protected disclosures. It was Ms Mainwaring's role that was being advertised, not the claimant's.

221. (k) is not a detriment because of a protected disclosure. The reason for this meeting was essentially the same as that for the meeting on 21 November 2018. The respondent had determined that the claimant's employment with the respondent had to come to an end. We have set out the circumstances in which that decision was originally made, and the same circumstances still applied on

20 March 2018. The respondent wanted to end the claimant's employment, but this was not anything to do with her protected disclosures.

222. While the meeting on 20 March 2018 was undoubtedly very difficult for the claimant, and had tragic consequences for her, we do not see that (l) can be considered to be a separate detriment because of protected disclosures. If anything it is a consequence of the detriment outlined at (k), which we have found was not a detriment because of protected disclosures.

223. (n) is the central point of the claimant's case: her dismissal was a result of having made protected disclosures. Strictly speaking dismissal cannot be a detriment (when alleged against the employer) so we will treat this as being her claim of automatic unfair dismissal – that the reason or principal reason for her dismissal was her protected disclosures.

224. It will be clear from what we have said before that we do not accept that. The reason for the claimant's dismissal is accurately set out in Mr Larkin's letter of dismissal. Her difficult relationships at the Olive School made her continued employment untenable. This was a decision that Ms Park had come to long before being aware of any protected disclosures, and while the respondent had been willing to offer mediation in an attempt to see if the relationships could be recovered, this was unsuccessful. The claimant's protected disclosures were not the reason or principal reason for her dismissal.

225. Allegation (o) is that "*no investigations had taken place to ascertain the true facts of the allegations against the claimant*". It isn't entirely clear from the claimant's submissions what she had in mind by this allegation. In her submissions the claimant refers to Ms Thompson not conducting any investigation but instead having "rubber stamped" Ms Park's previous notes. However, we did not understand that there was any suggestion from the claimant that Ms Thompson's actions had been influenced by any protected disclosures made by the claimant. We do not see any link between this and the claimant's protected disclosures.

226. Allegation (p) is "*being informed that the witnesses all wished to remain anonymous*". This appears to relate to the statement "*It had been reported by more than one member of staff (who have asked to remain anonymous) that Ms Bashir had referred to the content of the investigations*" contained in the "outline of the management case" provided to the claimant prior to the hearing of her appeal against her dismissal. In her written submissions, the claimant says "*This was done to stop there being a fair hearing of the actual reasons for the claimant's dismissal, which were her protected disclosures.*" We do not accept this. First, we do not find that the actual reason for the claimant's dismissal was her protected disclosures. Second, we do not see any link between the protected disclosures and this statement, which was a very small part of the overall "management case" prepared for the appeal hearing.

227. Allegation (q) is the respondent ignoring the claimant's occupational therapist's suggestion, dated 19 September 2018, to postpone the appeal hearing. While it is true that the therapist had put forward the idea that the hearing should be postponed, this was not sought by the claimant or her trade union

representative. Where it was not sought by the claimant or her trade union representative we do not see that the respondent can be criticised for proceeding in the claimant's absence, and not postponing the hearing. This was not done because of her protected disclosures.

228. We can take allegations (r) and (s) together as both relate to the appeal. We have set out above our findings of fact on the organisation of the appeal hearing, and do not see that, having offered the claimant various adjustments, there was any real alternative to the hearing going ahead in the claimant's absence. There is nothing in that which was anything to do with the claimant's protected disclosures. We have not set out in detail the appeal outcome or reasoning, but having considered the outcome we do not see anything in that which suggests that the outcome was affected by the claimant's protected disclosures.

229. The claimant was not subject to detriments on the ground of having made protected disclosures.

Disability discrimination

Disability

230. The evidence on the question of whether the claimant is a disabled person is not straightforward.

231. Her medical evidence shows that she had depression in 2006, between 2012 and 2014 and from March 2018 onwards. The claimant had produced an "impact statement", but this says little about the key questions of what effect her depression had on her normal day to day activities before March 2018, and what the likelihood of its recurrence was.

232. There is nothing in relation to the effect that the claimant's depression had on her in 2006, and the impact statement starts with events in 2012, where she describes the extent of her depression and what it derived from. She speaks of a suicide attempt during this time, and the treatment that she received. She then moves on to the events of February and March 2018.

233. Paragraph 7 of this statement is perhaps the fullest account of the effect of her depression on her normal day to day activities in 2012-2014. She says:

> *"… I had pervasively low moods and disturbed sleep punctuated by nightmares. I had frequent panic attacks (comprising of shortness of breath, feelings of tightness in the throat and impending collapse). I also had reduced energy levels, overeating and weight gain."*

234. We have concluded that this is sufficient for us to find that the claimant's depression had a substantial adverse effect on her normal day-to-day activities for the period February 2012 – February 2014.

235. We have said above that the claimant was then symptom-free for a number of years through to March 2018, when we know that she suffered a significant relapse. In her submissions Ms Barry argued that the claimant was not then

disabled until around July 2018, since that was when there is the first suggestion that the claimant's relapse will be long-term. The respondent's position on disability is:

> *"… the evidence points to* [the claimant] *having experienced a discrete period of depression in the past which had resolved by February 2014. She experienced another episode from March 2018 and by late July 2018 the medical evidence suggested her depression was long term."*

236. The key question in the intervening period is whether the effects of the claimant's depression were "*likely to recur*". The fact that they did recur does not assist us in considering whether the legal test is met at the relevant times. The only evidence we have been able to find on that point is in the occupational health report of 22 February 2018, which says:

> "[the claimant] *is … at risk of a relapse of her underlying medical condition, which can commonly occur with prolonged perceived stressful situations.*"

237. Although not named in that report, the "underlying medical condition" can only be her depression.

238. We consider that this shows that a recurrence of the effects of the claimant's depression "could well happen". Accordingly, we have concluded, not without some hesitation, that the claimant was disabled throughout the period of her employment with the respondent.

Direct disability discrimination

239. There are two matters alleged by the claimant to be direct disability discrimination. These are:

> *"5.2(a) Being informed by Ms Mukadam that she could not leave until she met with her and or had signed a number of documents without have chance to read them, before witnessing Ms Mukadam backdate the documents.*
>
> *(b) Being compelled to return to work without adequate health assessments being carried out"*

240. In relation to point (a) it is not at all clear how the claimant says that Ms Mukadam knew of the claimant's disability. This incident occurred in a period when the claimant herself did not consider that she was a disabled person. We understand that the claimant's point here is that she was unfairly pressurised by Ms Mukadam to sign unknown employment documentation without proper consideration. Her point seems to be that she was put under pressure to sign the documentation at a time when her IBS meant that she was unable to stay and wanted to leave the site. The claimant has not alleged that her IBS amounted to a disability, nor is it said in the list of issues to be something arising from her disability. We simply do not see how it can be said that Ms Mukadam's actions on that day amounted to direct disability discrimination.

241. (b) must be a reference to the claimant's return to work on 19 February 2018. It is correct that her return to work predated her occupational health referral, but there is nothing in the evidence that we have seen to suggest that this was done because she was a disabled person.

242. The claimant's claims of direct disability discrimination are dismissed.

Discrimination arising from a disability

243. There are two allegations of discrimination arising from a disability. These are being 'forced' to engage in the without prejudice discussion with Mr Larkin on 20 March 2018 (without any prior warning) and her dismissal.

244. The claimant puts forward a large number of matters said to arise from her disability, most of which seem to have no relation to the two allegations of discrimination arising from a disability. They fall into broad categories of the consequences of sleep deprivation, her sickness absence and ability to work productively, a need to close the office door in particular circumstances and "*an inability to work directly with the people who had bullied her since her return to work on 19.02.18*".

245. The meeting on 20 March 2018 was designed to bring about the end of the claimant's employment, and this was eventually achieved when the claimant was dismissed on 9 July 2018. We have previously said that we accept what Mr Larkin said in the letter of dismissal as being an accurate account of the reasons for dismissal. The essential point was that "*your working relationship with the school was beyond repair*". The only element of the "something arising" from the disability that this could relate to is "*an inability to work directly with the people who had bullied her since her return to work on 19.02.18*" – yet as we understand it this was nothing to do with the claimant's disability. Her inability to work with the people she considered had bullied her did not arise from any disability. It arose from her ongoing conviction that she was correct and they were wrong. We do not see that this was anything to do with her disability or something arising from it. The claimant's claims of discrimination arising from a disability are dismissed.

Reasonable adjustments

246. These are the provisions, criteria or practices relied upon by the claimant for the purposes of her claim of a failure to make reasonable adjustments:

> *"1. The claimant must return to the school's junior site despite its being advised that she felt securer at the infant site.*
>
> *2. The claimant must return to the school's junior site to work.*
>
> *3. A complainant/the claimant must return to the school's junior site to work alongside colleagues irrespective of any allegations of bullying made against them by a complainant/the claimant.*

4. *A complainant/the claimant had to interact with all parents and pupils, which included those who had raised false allegations against her.*

5. *An employee/the claimant had to return to work after their disciplinary investigation without the respondent's having first conducted a medical assessment of the employee's/the claimant's mental health to determine employee's/the claimant's wellbeing to participate fully at work and ascertain whether the claimant was medically fit to return at that date …*

6. *The appeal against dismissal could be heard in the subject's absence irrespective of the employee's medical condition at the material time.*

7. *The appeal against dismissal must be heard within a timeframe without allowing for a reasonable delay in the process that would enable the employee reasonable time, in accordance with her disability, to present her appeal properly and competently in person.*

8. *Failing to take note of and or acting on medical advice in its entirely, alternatively taking note of and or acting on only part of the medical advice …*

9. *It did not make adequate provision for an employee/the claimant to have a representative at the meetings held on 5.3.18 and 20.3.18, this included not giving the claimant adequate time to consult with her representative and arrange to have support.*

10. *Whilst having seen medical advice that an employee/the claimant was "at risk of relapse", no safeguard provisions were put into place to forewarn the claimant of the agenda for the meeting on 20.3.18 or protect her mental health.*

11. *After being advised that the claimant had attempted suicide, it relentlessly and aggressively pursued the claimant's representative for an outcome to the discussions that took place on 20.3.18 …*

12. *Not providing employees with an appropriate mentor following receipt of occupational health reports."*

247. These are the allegations of a failure to make reasonable adjustments:

"7.2(a) Failure to provide the Claimant with an appropriate mentor following receipt of the first Occupational Health report;

(b) Failure to give the Claimant reasonable notification of attendance to informal meetings;

(c) Failure to redeploy the Claimant to another site when the Respondent knew that her health was at risk;

(d) Failure to allow the Claimant to attend meetings with someone to support her;

(e) Failure to amend their policies and procedures during the Claimant's sickness absence period;

…

(g) Failure to delay/postpone the appeal as suggested by the Claimant and her Occupational Therapist."

248. It is clear that the alleged PCPs do not map neatly on to the alleged failure to make reasonable adjustments, but we will proceed first to identify whether the respondent had the PCPs alleged by the claimant.

249. Alleged PCPs (1)-(5) and (12) relate broadly to the circumstances on the claimant's return to work, particularly following the mediation.

250. Alleged PCPs (6)-(7) relate to the claimant's appeal against dismissal.

251. It is unclear what PCP (8) is said to relate to, or what medical advice the claimant had in mind in relation to the later allegations of a failure to make reasonable adjustments (other than the question of mentorship following her occupational health report, which is essentially the matter referred to a PCP (12)).

252. Alleged PCPs (9)-(11) relate to the arrangements for meetings, particularly the meeting on 20 March 2018.

253. The first point made by Ms Barry in her submissions is that these cannot be considered to be PCPs as they relate entirely to the claimant's individual circumstances. As she puts it, they are a series of individual complaints made by the claimant. In this context we note that the identification of the PCPs, as with almost everything done up to immediately before the hearing, was done at a time when the claimant had the benefit of professional legal representation.

254. It is inherent in the concept of a PCP that it either was or would be applied more widely than simply to an individual complainant. It is conceivable that there could be a PCP that is only applied on one occasion to one person (for instance, as in British Airways v Starmer [2005] IRLR 862) but if so it must still be the case that it "would be" applied to others if the same circumstances arose. The IDS Handbook (Discrimination at Work, para 16.17) suggests that an individual decision or action could amount to a PCP where a "one-off" decision is the start of a practice that would be repeated if the same circumstances arose again.

255. This plainly places the claimant in some difficulty in showing that these matters amounted to PCPs, since, although she made wider criticisms of the respondent and Ms Park's actions, her main point has been that what occurred to her occurred due to her individual circumstances – either her knowledge of

what happened to the previous Deputy Principal, her protected disclosures, protected acts or her disability or matters arising from that.

256. Having considered the alleged PCPs we do not consider that any of them can be considered to be PCPs. There is no evidence to suggest that these had previously been applied to anyone else, or would be applied to anyone else if the same circumstances arose. They are not provisions, criteria or practices as understood in discrimination law. In consequence the claimant's complaint of a failure to make reasonable adjustments is dismissed.

257. Although that is sufficient to determine the claim of a failure to make reasonable adjustments, we make the following further observations:

a. As set out above, it is difficult to see what more the respondent could have done by way of the provision of a mentor on the claimant's return. The claimant was in an ongoing dispute with the other Deputy Principal and the Principal. It is not ideal that the mentor was the Assistant Principal – junior to the claimant – but she seemed to get on well with him and it is difficult to see what more could have been done.

b. As for meetings, the claimant is particularly concerned about "informal" meetings, which we understand to relate to the mediation and second "without prejudice" meetings that were held. We would not normally expect an employer to suggest an individual is accompanied in such meetings, nor do we see that this was required as a reasonable adjustment in this case.

c. The point on redeployment relates to the claimant's return to work at the Cazenove site following the mediation. We do not see anything wrong with that, given that it appeared to be agreed by the claimant during the course of the mediation.

d. On the question of failure to amend policies and procedures, the claimant describes this in her submissions as relating to "*the way Mr Musa relentlessly harassed the Claimant, through her union representatives, for a response to the two options given on 20 March 2018.*" We have set out above what occurred. Mr Musa dealt throughout this period with the claimant's trade union representative or her husband, rather than directly with her. We do not see that further adjustments were required.

e. We have dealt with the possibility of a postponement of the claimant's appeal elsewhere.

Harassment

258. The allegation of harassment is in relation to the meeting of 20 March 2018. On the basis of the facts we have found we do not see that this can be regarded as an act of disability-related harassment, and the claimant's complaint of harassment is dismissed.

Victimisation – protected acts

259. The claimant alleges that she carried out two protected acts for the purposes of her victimisation claims. They are:

> *"9.4(a) Raising a grievance on 27 November 2017;*
>
> *(c) The Claimant's union representative's email to Mr Musa on 6 April 2018 in which she referred to the Claimant having a disability and that her health was triggered by the Respondent's treatment of her."*

260. The grievance of 27 November 2017 was the claimant's grievance against Ms Park. This contained extensive criticism of Ms Park, including that her actions had "*impacted on mental state and well being*" and allegations of bullying and harassment. However, this is not framed as allegations of harassment on account of the claimant's disability and we see nothing in that grievance that could amount to a protected act. The grievance of 27 November 2017 was not a protected act.

261. The union representative's email of 6 April 2018 is the first point at which the claimant or anyone on her behalf had identified that she had a disability. We have set out an extract from that email above, and it clearly sets out an assertion that the claimant has a disability for the purposes of the Equality Act 2010. It goes on to say that as a result there is a duty to make reasonable adjustments. We accept that this is "*doing any other thing for the purposes of or in connection with* [the Equality Act]" and therefore this email counts as being a protected act.

Victimisation

262. The alleged acts of victimisation are very broadly described, as follows:

> *"9.2(a) Having false allegations raised against her,*
>
> *(b) Being denied the right to fair procedures to deal with her complaints, and*
>
> *(c) the termination of her employment."*

263. The only protected act occurred on 6 April 2018, so there cannot have been any victimisation prior to then. By that time all the allegations that had ever been made against the claimant had already been made and she was off sick. We are not aware of any substantial allegations against her having arisen since 6 April 2018. The only formal complaint she made to the respondent after 6 April 2018 was in the letter to Jack Straw. This was replied to and the claimant was offered the opportunity of a panel hearing, despite this only being required if it was a complaint other than an employee complaint. It follows from what we have said earlier about the claimant's dismissal that we do not see that it had anything to do with her protected act. The claimant's claims of victimisation are dismissed.

Conclusions

264. The claimant's claim in respect of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 is the only claim that succeeds. The remedy to which the claimant is entitled will be considered at the remedy hearing listed for 24 September 2021. A separate order will be made in respect of preparation for that hearing.

265. The approach to remedy for a breach of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 is set out in regulation 7 of those regulations. We note that in accordance with regulation 7(8) any award of compensation is assessed on a "just and equitable basis", and that under regulation 7(10) an award of compensation for injury to feelings cannot be made. While we have not formed any concluded view, the tribunal's provisional view on this is that, subject to any question of mitigation (regulation 7(11)), the starting point for any award of just and equitable compensation would appear to be what the claimant would have received if her notice period had been as it was for a comparable permanent employee (i.e. under the Burgundy Book). We have no concluded view on this and will consider all submissions made by the parties at the remedy hearing, but set out our provisional view in case it assists the parties in preparing for the remedy hearing.

266. We recognise that the claimant had a difficult time while employed by the respondent. This has had profound consequences for her. However, for the reasons we have given her claims of disability discrimination, of detriments arising from protected disclosures and of automatic unfair dismissal are dismissed.

Employment Judge Anstis
Date: 30 June 2021

Judgment and Reasons

Sent to the parties on: ..09/08/2021.....

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For the Tribunal Office