EMPLOYMENT TRIBUNALS

Claimant: Mrs K Muzondo
Respondent: Birmingham City Council

Heard at: Birmingham **On:** 4 to 7 and 10 & 11 May, 2 June (in chambers) and 3 June 2021 (reasons)

Before: Employment Judge Hughes **Members:** Mr KW Hutchinson
Mr NJ Howard

Representation
Claimant: In person
Respondent: Mr P Starcevic, Counsel

REASONS

Background and issues

1 The Employment Tribunal dismissed the claimant's claims because they were not well-founded. The claimant has since requested written reasons. Numbers in square brackets in this judgment are to pages in the trial bundle, unless otherwise stated.

2 The claimant presented a Claim Form on 20 December 2019 [1-15]. The claims were for unfair dismissal and harassment or direct discrimination because of race. She made a number of allegations (paragraphs 2.1 to 2.12 of the grounds of complaint). In summary, she alleged: being targeted unfairly: being 'blatantly bullied and humiliated' under the guise of observations; 'false accounting'; being set up for failure; being humiliated in front of students; being ignored by managers; and that the respondent failed to comply with Occupational Health ("OH") Report recommendations. The claimant identified four direct race discrimination complaints (paragraphs 3.1 – 3.4). These were less favourable treatment by comparison to one identified white comparator – Mr Branko Marinkovic; being denied appraisals and opportunities for career progression and better pay; raising the issue of discrimination at a hearing, which was not investigated; and failure to provide minutes from two formal meetings. It should be noted that at that point the scope of the allegations was quite limited. The claimant did not claim that she was discriminated against on the grounds of pregnancy or maternity, but sought to do so before us. The claimant was employed as a teacher by the respondent and worked in a school from 3 September 2012 to 18 September 2019.

3 The respondent submitted a Response Form [17-30]. The respondent

asked for further and better particulars of the claims. The respondent denied that the claimant was harassed. directly discriminated against, or constructively unfairly dismissed. The respondent raised time limitation arguments in respect of some of the allegations

4 There was a Case Management discussion before Judge Jones and an Order was made on the 27 September 2020 in which the issues were recorded. They did not include a claim for pregnancy or maternity discrimination. Judge Jones recorded that any acts that predated the 8 July 2019 were potentially out of time, subject to whether there was a continuing course of discriminatory conduct. The claimant was ordered to further and full particulars of the allegations in a table set out chronologically.

5 That resulted in a schedule of allegations which we had to determine. It transpired that some of the allegations were wrongly dated, so the table was not entirely chronological. By this point there were 28 allegations of direct race discrimination and a number of allegations of harassment. This was a considerable expansion of the allegations in the Claim Form. Mr Starcevic sensibly did not make a point about this because the matters complained of were also relevant to the constructive unfair dismissal claim. The schedule also set out particulars of that claim, but they did not add to the harassment/discrimination allegations. Allegation 3 was stated to be an allegation of pregnancy/maternity discrimination as well as direct race discrimination. We did not allow the claimant to argue pregnancy/maternity discrimination because it was not identified in the Claim Form, and no request to amend had been made.

6 We had the following documents: bundle - R1; a copy of the respondent's Pay Policy- R2 (pages that we refer to in document are identified by the page numbers in it); a chronology - R3; a list of issues provided by the claimant – C1, which the respondent objected to arguing that the issues should be confined to the further and better particulars (it is fair to say that it did not really go beyond the 28 allegations in the schedule of allegations, which was the document we decided to work off); and written submissions from the claimant – C2. We were provided with witness statements for the claimant and for the respondent's three witnesses. Having heard evidence, we heard oral submissions from the respondent and the claimant was given the opportunity to expand on her written submissions orally.

Witness Evaluation

7 The respondent called Miss Kay Reid to give evidence. Miss Reid worked at the school at the time the claimant commenced employment but was not Head Teacher. She then became Head Teacher, and later became Executive Head Teacher. She was in one or other of those roles throughout the events in question. When she became Executive Head Teacher, Miss Reid was responsible for two schools. A number of people named in the allegations have now left the respondent's employment which meant that Miss Reid was asked questions about their alleged actions, and was not always in a position to answer them. Those people were: Ms Kate Beale, the Head Teacher when Miss Reid was Executive Head Teacher; Ms Vanessa Wilson, a Human Resources Advisor; and Ms Lauren Taylor, the Deputy Head Teacher. Our evaluation of Miss Reid's evidence was that she was straightforward and honest when she answered questions and would say if she was unable to provide an answer or did not know something. There were two occasions when she acknowledged that things she

had stated at the time were incorrect, which was to her credit. One concerned a statement she made in a pay appeal meeting about the number of successful appraisals the claimant had had [464]. The other was a statement made in an email replying to the claimant's resignation [677]. Miss Reid wrongly stated that the claimant had failed to make the school aware of any matters concerning bullying and harassment in the work place, which was not the case. Miss Reid told us she was advised to say this by Birmingham City Council's Employee Relations Department.

8 We heard evidence from Miss Koreen Wilson who was the claimant's Line Manager during the relevant period in time. Because there are two Miss Wilsons, we shall refer to Koreen Wilson as Miss Wilson, and Vanessa Wilson as Miss Vanessa Wilson. We found Miss Koreen Wilson's evidence to be compelling and cogent. She was clearly shocked and very upset when she learnt that the allegations against her were of race discrimination and harassment and not as she had understood them to be i.e. unfair or unreasonable treatment. It was quite clear she had not seen the schedule of allegations before the hearing and had to be informed of them by the Employment Judge because, when cross-examining the respondent's witnesses, avoided using terms like 'racial harassment' or 'race discrimination', instead using terms like 'bias' or 'unfairness'. It is, of course, important that people who are the subject of serious allegations have a proper chance to refute the. Miss Wilson explained that she was brought in as a new tier of management (Director of Learning) as a result of an Ofsted inspection (see details below) and that the claimant, who had not previously had hands-on line management, appeared to resent her from the outset. We accepted that, and thought it was the reason why the claimant chose to portray proper management decisions by Miss Wilson as harassment or discrimination. Miss Wilson has African Caribbean heritage, was born in Jamaica, and has experienced racism herself. Of course that does not mean that she is incapable of discrimination, but we did not accept that she treated the claimant less favourably because she is of black African heritage (which is how the allegations about Miss Wilson were put).

9 We also heard evidence from Mrs Julie Walker who is the Chair of Governors, her knowledge in this matter was limited to dealing with the claimant's Pay Review appeal and grievance appeal. She was a straightforward witness giving direct answers to questions put to her. We found her to be a credible witness.

10 We also heard evidence from the claimant. In our view the claimant clearly believed her narrative but was unwilling to accept that the way she sees things may not be correct. For instance, the claimant's complaint about how the Appraisal Policy and Pay Review Policy was applied to her was (in essence) that it should have been disapplied i.e. that the respondent should have treated her more favourably than other people. Despite the fact that the claimant was asked to confirm that this was so, she was not willing to concede what she was asking for was to be treated differently and more favourably. We also thought it telling that some of the allegations were couched in extreme language which, had they been found to have been proven, was wholly inapposite.

11 We found it unprofessional and rather shocking that the respondent had failed to properly take witness statements from its witnesses. There were 28 allegations but the witness statements were each approximately two sides of A4 long (absent the statement of truth). The allegations were dealt with in the most

general and perfunctory way. As already stated, Miss Wilson was shocked to learn that she was an alleged discriminator – she would not have been if she had been shown the schedule. As such, the respondent's solicitors have put her to unnecessary distress. It is to the credit of the respondent's witnesses, that they were able to answer questions about most of the allegations, when the claimant asked about them. We make no criticism of Mr Starcevic, who did his best to put the respondent's case to the claimant by painstakingly identifying relevant emails and supporting documents, which assisted us in determining what the facts actually were. However, his instructing solicitors should take note that this is not a helpful way to conduct litigation and should not be repeated in future.

12 The reasons why we referred the evidence of the respondent's witnesses to the claimant's evidence are explained in more detail in our findings of fact.

Primary findings of fact

13 We made the following findings of fact relevant to the issues we had to determine.

14 A really key issue in this case was the make-up of the school. This should, of course, have been covered in the respondent's witness statements, but was not. It was necessary for us to ask Miss Reid about it. The school has a Governing Body, but the respondent is the employer of its staff. It is not a mainstream school. We asked for an ethnic overview of the pupils and we were told that there are white and ethnic minority students, including black African Caribbean students and Asian students. There is a mixture across the all of year groups and the school keeps records of the pupil composition. We were told a similar picture applied to staff who come from different races, ethnicities and cultures. We were told that the two site staff (i.e. caretakers) and most of the domestic staff are white. Records are kept of grievances and disciplinary action involving staff, but these are not broken down in relation to racial or ethnic background because there would be an insufficient data sample. Miss Reid is the Executive Head. There is a federation of two schools, each with a Head Teacher reporting to Miss Reid, a Senior Management Team ("SLT") and below that Subject Heads, such as Miss Wilson.

15 Both schools are not mainstream and deal with with children with Special Educational Needs ("SEN"). Miss Reid explained that as Executive Head, she has oversight and overall responsibility for both schools, and splits her time about 50/50 between the two sites, although when she first became Executive Head in 2017 she was spending three days at the other school, because she had not taught there previously.

16 There are about 100 – 125 pupils. This number has decreased during the time that Miss Reid been working there. There are the following year groups: Stage 2 years 5 & 6 each have one teaching group of 8 pupils i.e. one class. For year groups 7 to 11 there is a maximum of 24 pupils in each year group, split into three classes of up to 8 pupils. Most pupils have social, emotional and mental health issues. Many have a history of absenteeism and may have been absent from their previous school due to permanent or fixed term exclusion and missed classes before joining the school. Some come from Pupil Referral Units. All pupils have behaviours that can be challenging - they all have SENs, and diagnoses of ADHD or ASD. Some pupils have attachment difficulties and a few have moderate learning disabilities. Some pupils are known to the Criminal

Justice System. Many come from a background where there have been issues in childhood and social services involvement; 20% are looked after children. In summary, these children come from complex backgrounds, are vulnerable, and have complex needs. Unsurprisingly many present behavioural challenges to staff on a scale that differs from mainstream school. Miss Reid told us that on average there are five or six instances of serious behaviour every week – this is the kind of behaviour that can result in fixed term exclusion or a discussion with the Police Liaison Officer. Less serious behavioural issues are dealt with via lesson scores – one or two poor scores result in a catch up at lunch time and more than three in a Head Teacher's detention. Generally there are five or six pupils in lunchtime catchup each day. There is also a system for recording serious behavioural issues, which is monitored by the SLT.

17 Also, because of the type of pupils, a great many are brought to and from school by minibus with an escort. This means that it is difficult to organise day trips off-site, because of demand on the pupil transport service. Any such visits have to been approved by SLT. This is relevant to one specific allegation in this case.

18 One issue in this case was whether Class 10N, which was taught by the claimant in the academic year 2017 – 2018, was a particularly challenging group. We were told that they could be difficult by Miss Reid, and she went on to explain that some class groups gel better together and some get on better with different teachers, or behave better depending on the subject matter of the lesson. She said that subjects involving making things, such as art or food, tend to cause less problems.

19 The claimant commenced employment on the 3 September 2012 teaching Maths and ICT. She describes herself as black African.

20 Miss Wilson, who became the claimant's line manager, did not start work at the school until January 2015. In response to questions from us (because this was not covered by her witness statement), she explained the reason why she was brought in to the school was because the school had been placed into Special Measures by OFSTED. Amongst other things, OFSTED required a tier of management called Director of Learning (i.e. head of subject), and therefore the school appointed Miss Wilson and others to line manage subject teachers. This meant there was no predecessor to handover to her (or them). She explained that OFSTED funded her role and wanted to turn the school around. Her brief was to be an operational manager; to introduce new systems; to make improvements; to support subject teachers; and to conduct their supervisions and appraisals. Strategic decisions were taken by the SLT. Miss Wilson She explained that as a result of the measures put in place by the school, in one academic year the school moved from Special Measures to a Good OFSTED rating. That is to the credit of Miss Wilson, and the other Directors of Learning and the SLT.

21 Miss Wilson's evidence was that very shortly after joining the school she introduced herself to the claimant and explained she was the new Director of Learning for the subjects the claimant taught and explained what her role involved. She said that to her total shock and surprise, the claimant complained about her to the then Executive Head Teacher, Ms Janet Collins. Miss Wilson's evidence was that this resulted in a meeting during which Ms Collins kept reiterating to the claimant that Miss Wilson was her line manager, and should be

treated as such. Shortly after, the claimant made a further complaint and there was a second meeting at which Ms Collins made the same points. Miss Wilson said that she realised that the claimant had not been directly line managed before, was unhappy at the idea of being, and that she (Miss Wilson) felt that the claimant had never given her a chance from the outset. Miss Wilson told us she had tried to build up a positive working relationship with the claimant, because she was conscious they had got off on the wrong foot, but that because the claimant went on maternity leave three or four months later, that did not prove possible. The claimant's case was that Ms Collins (the Executive Head) had facilitated a mediation between her and Miss Wilson. We did not accept that. We thought it was apparent that the claimant was unhappy with Miss Wilson being brought in as Director of Learning and that this caused difficulties in their working relationship which were never resolved. We also accepted Miss Wilson's evidence that she did not have any problems with the other staff she managed, and has never been accused of racism in her career, apart from on this occasion.

22 The first allegation was that in or around October 2014, Miss Wilson shouted at the claimant in her (Miss Wilson's) classroom and talked down to her "in a manner that was pervasive" (sic). Clearly, the date must be wrong because Miss Wilson started in January 2015. Assuming that this allegation concerns the subject matter set out in paragraph 21, we did not accept that Miss Wilson shouted at the claimant because our evaluation of her was that she is not a person given to shouting, and because she could not recall the allegations the claimant made to Ms Collins, but was clearly supported by Ms Collins at the relevant time as doing nothing more than her job i.e. managing the claimant.

23 The next allegation related to March 2015. Paramedics were called to the school because the claimant was feeling unwell due to pregnancy. They came during breaktime and attended to her in the staff room. They did not take her to hospital, but she was driven there by a colleague later. The claimant alleged that Miss Wilson had entered the staff room and displayed a lack of empathy by requesting information about the next lesson she was supposed to be teaching . Miss Wilson's evidence differed from this. She said that she always knows the timetables of the staff members who report to her so that it is not necessary to contact them over cover arrangements if they phone in sick. Miss Wilson recalled entering the staff room because it was breaktime, but said that she left immediately when she saw the Paramedics without saying anything. We thought it unlikely that Miss Wilson questioned about her lessons at that point and left to allow her some privacy. That said, if Miss Wilson had needed to ask the claimant what her next lesson was in order to arrange cover, we did not think that would necessarily be inappropriate, still less discriminatory.

24 The next matter we are going to turn to relates to appraisals and pay progression. The Appraisals Policy which the respondent (Birmingham City Council) provides to schools [151] onwards contains the following relevant parts. Paragraph 2.4 states that the assessment of standards and objectives should be fair, thorough, and non-discriminatory, and that a variety of methods should be discussed. That there should be consistency (paragraph 2.5). Appraisers should have relevant experience (paragraph 2.7). If any professional development issues are identified these should be addressed (paragraph 2.9). If becomes apparent during or at the end of an appraisal period that the teacher's overall performance is below accepted standards the situation must be addressed without delay ,and any necessary support should be implemented. There should be a clear explanation as to what would happen if the necessary improvements

did not take place. The policy also talks about setting objectives. It envisages a meeting between the staff member and their manager to discuss and agree three objectives for the academic year, meetings to discuss progress, and an appraisal meeting early in the following academic year to finalise the appraisal for the past academic year [160)]. In addition, there are to be at least three observations of learning (i.e. observing a lesson): the first is by the appraiser (the line manager); the next is by a member of the SLT e.g. the Deputy Head; and the third is jointly by the appraiser and a member of the SLT. Usually there are three formal observations of learning lasting about 20 minutes. These are written up and discussed with the teacher shortly afterwards. Miss Wilson explained that apart from the first observation, she would only be present to provide subject area information to the SLT member, and would not do the write up or actively participate in the debriefing. We accepted that.

25 Should it be necessary, the policy contains a support plan mechanism to be used prior to taking any formal capability process [161]. This can only be implemented with the agreement of the teacher. A support plan meeting is supposed to take place within five days of receiving written feedback, and would normally be held between the teacher and the appraiser. It is to last for no more than an hour and (amongst other things) result in an agreed action plan with a review lesson observation within two to four weeks of the support plan meeting.

26 The claimant returned to work from maternity leave in February 2016 i.e. about half-way through the 2015 to 2016 academic year. She met Miss Wilson to agree objectives on the 18 March 2016 [404-406]. The document set out agreed objectives and also how success would be measured by reference to whether and when parts of the objective were met successfully, and what would be required by way of evidence. By way of example, an objective can relate to Pupil Progress; there is a then a column describing how success would be evidenced; and the final column identifies support needed to meet the specific objectives. The document was signed off by the claimant and Miss Wilson and in response to a question asking what additional support might be needed to enable end of year objectives to be achieved, the claimant stated “No support needed”.

27 We were told that the objectives “Whole school objectives” set by SLT by reference to the development plan for the school; or could be specific to subject area; or could be specific to the teacher concerned. There was been much debate in front of us about the difference (if there is any) between a target and an objective. We concluded this was a distinction without meaning. There is a distinction between an objective and the means by which it can be achieved. Put simply, if an objective cannot be achieved by the means originally envisaged, the means of achieving it can be changed by agreement between the teacher and the appraiser. That point is relevant to one of the allegations in this case.

28 In the hearing before us, the claimant’s position was that it was unfair and discriminatory to set objectives because she had less time than others to complete them. However, she accepted that she had signed off and agreed the objectives. Miss Wilson told us that she had raised the issue with the claimant when they discussed the objective, but was told that the claimant told her that she aspired to reach her objectives in the shorter time span and would not need any support to do so. It is also right to say that there were weekly one-to-one meetings during which support could be sought.

29 On 30 September 2016 the claimant met Miss Wilson for her annual

appraisal for the previous academic year based on the objectives agreed in March [420]. It was recorded that the claimant had met some objectives mainly, some partly and that for some she had not met the objectives and/or not provided evidence that she had. At the end of the form, there is a box to recommend pay progression, if applicable. As assessor, Miss Wilson did not recommend pay progression because the objectives had not been fully met. The claimant did not sign off that document and she told us that was because she did not agree it. In any event, pay progression was not recommended in the 2015/2016 annual appraisal.

30 The respondent has a Pay Policy for its schools - R2. Paragraph 33 confirms the Appraisal Report will contain pay recommendations and the final decisions about whether or not to accept a Pay Recommendation are made by the Governing Body. Paragraph 37 says that there will be pay progression in the academic year after the school year on which the appraisal following a successful Review. Paragraph 38 deals with circumstances in which a review may deemed to be successful. Paragraph 33 deals with a move to the Upper Pay Range ("UPR") and states that any qualifying teacher may apply as long as the application is made by the teacher in line with the Policy. The teacher is responsible for deciding to apply or not. The teacher must apply in writing 13 September. There is a form to use. The criteria for a successful application include maintenance of achievements and contributions over at least two years - paragraph 48. In deciding whether to recommend progression to the UPR, the Governing Body will have regard to the two most recent Appraisal Reports. Therefore it is very clear that to progress to the UPR, a teacher must apply by 13 September, and must have two successful appraisals recommending pay progression. That being so, and given that in 2015/2016, there was no recommendation for pay progression, the claimant did not have one successful appraisal report in the bank. That is material to an allegation relating to the following academic year which is dealt with later.

31 We will now move to the next allegation in the chronology (allegation 17) which concerns October 2017. The claimant alleged she was racially abused by a student and called "racially bigoted names like Kunta Kinte". We accepted that this may well have occurred; however, when the claimant was asked whether she had complained to anyone about this incident or asked for any action to be taken; she did not say that she had. We were told there is an incident report system, and there was a sample of incident reports in the bundle. None referred to that incident.

32 We heard evidence from Miss Reid and Mrs Walker that there was a staff training day at the start of the September 2017. Miss Reid informed staff members that they must apply for Pay Progression by the 30 September if they wished to be considered. The claimant accepted that she would have been present at that meeting but said she could not recall whether she was told that.

33 The time frame to apply has no bearing on when the end of the year appraisal takes place. It does not need to have taken place before the deadline. In fact the evidence was that generally end of year appraisals take place some times in October, and that targets are set for the current academic year at around the same time. Put another way, there is no bar to applying for pay progression even if the final end of year appraisal has not yet taken place.

34 Miss Wilson conducted the claimant's end of year appraisal for the

academic year 2016/2017 on the October 2017 [438]. The appraisal report stated that the claimant had met all her objectives and Miss Wilson recommended pay progression, if applicable. This demonstrated that contrary to the claimant's belief, Miss Wilson had no "agenda to set her up to fail", and was in fact supportive of the claimant. Clearly, Miss Wilson had put the unfortunate start to their working relationship behind her, even if the claimant had not.

35 On the 9 October 2017, the claimant wrote to Miss Reid expressing an interest in progressing to the Upper Pay Scale and saying she had met all of her objectives for 2016/2017 [141]. Miss Reid replied on 17 October saying unfortunately the deadline for submission of a letter asking to be considered for the threshold of 30 September (as in stated in the Policy) had passed and so she was unable to accept the application. This was clearly, and evidently, correct. The claimant made a complaint in the hearing before us that it was difficult to find the Policy on the internet because it was in a folder belonging to Ms Vanessa Wilson, the Human Resources Manager. Some of the respondent's witnesses said you could find it by using the search function. Be that as it may, the point is that if it was difficult to find, then it was difficult for everyone to find; additionally, staff had been notified of the deadline during the training day. Finally, of course, if the claimant had applied in time, she was not eligible to progress to the UPS because she did not have two years' successful appraisal reports recommending progression – just one [444-445].

36 On December 2017, the claimant appealed that decision to the Governors [447]. She said she was dissatisfied with the outcome because she had been denied pay progression, that she was seeking advice on the decision and her available options, and that she intended to appeal and would later provide full grounds of appeal.

37 On 19 March 2018 the claimant's appeal was heard by three Governors, chaired by Mrs Walker [463 to 465}. The claimant had a representative. Miss Reid, as Executive Head Teacher, explained her decision by reference to the policy. As regards the deadline, Miss Reid said that it was clearly set out in the policy and had been highlighted at the training day. The claimant argued that the policy was hard to locate on the school's intranet. In the hearing before us the respondent's case was that it could be found using the search function and that if it was hard to find then it was equally hard for everyone. The claimant accepted she was present at the training day. She argued that it was "discriminatory" for her application to be rejected because her end of year appraisal took place after the deadline. The term "discrimination" made no sense in this context because the deadline applied to everyone. It was understandable that the respondent's witnesses did not understand this to be a complaint of race discrimination.

38 During the appeal meeting, Miss Reid stated that the claimant had not met targets in 2015/2016 (which was correct); and had not met them in 2016/2017 (which was not the case). However, that error made no difference to the outcome because (1) the claimant had failed to apply in time and (2) she had not had two successful years' appraisals. The claimant argued that the outcome in 2015/2016 was unfair because she had only had four months to meet the targets for that year. As stated above, she had agreed to the targets on her return from maternity leave. During the hearing before us, the claimant sought to claim maternity discrimination as well as race discrimination in respect of this allegation. We did not allow her to amend to argue that because it was not in the Claim Form.

39 On 23 March 2018, Mrs Walker wrote to the claimant confirming that the Governors had rejected her pay progression appeal [466]. She explained that the main reason was the claimant's failure to apply by 30 September 2017. The letter went onto say there had been a discussion about whether the claimant would have been progressed the Upper Pay Range ("UPR") if she had met the deadline, and that the unanimous conclusion was that she would not have been eligible because she could not show substantial and sustained contributions for at least two academic years. Mrs Walker concluded by saying; "You may decide to make a further application to progress to the UPR in the future and if that is the case I would urge you to ensure that you apply before the 30 September deadline".

40 The next allegations concerned lesson observations and eventually to a proposed Support Plan for the claimant. Allegation 7 (which appeared to be wrongly dates) related to 2 May 2018 and was: "Unfair Treatment and failing to support me during a safeguarding incident. One student had tied a computer network cable around his neck we tried to support him and get it off him with the help of agency staff in my classroom. Koreen Wilson and Lauren Taylor (the Assistant Head Teacher) did not intervene or provide any support during this incident. Koreen Wilson and Lauren Taylor seemed determined to watch me fail".

41 The facts are as follows. A lesson observation had been scheduled for 2 May 2018. This was to be carried out by Ms Taylor with Miss Wilson there to provide subject knowledge. It was common ground that the incident took place and that it was de-escalated by the claimant and two agency Teaching Assistants (also referred to as "PALS"). It resulted in the pupil leaving the classroom. Miss Wilson said the incident lasted for about five minutes and that the claimant handled it well. Her evidence was that it was not necessary for her and Ms Taylor to intervene, and that to do so would have been counter-productive. We fully accepted that. Three adults was sufficient to deal with the incident and the involvement of two more was likely to make the situation worse. Miss Wilson explained that because of the incident she and Ms Taylor agreed that the lesson observation should be rescheduled because no lesson had taken place. It was rearranged for 16 May involving the same class (10N) and the same lesson plan [478A].

42 A series of emails were sent between the 9 and 11 May 2018 [472, 473 and 474]. These led to allegations 5 and 6. Miss Wilson sent an email on 9 May to a number of members of staff including the claimant setting out measures to assist some pupils because they were behind with their Maths work which was due for an assessment. She said: "These pupils are mainly from 10N and we are relying on today to complete this as I need to moderate the marks and I am hoping to do that during enrichment tomorrow". 10N was the claimant's Maths group. She sent a further email shortly afterwards to claimant and Mr Marinkovic regarding Entry Level lessons due to start on 12 March, saying she wanted to meet them to be clear on delivery for the lessons and that she would be monitoring the progress weekly. The claimant replied to Miss Wilson on 11 May saying that some pupils were refusing to do any more work and that one was simply coming to disrupt classes. Miss Wilson wrote to the claimant (not copied to other staff) asking why the Maths assessment for 10N was not ready to be moderated on the 4 May; and why she had to support the claimant so the work could be completed. She also questioned why it was necessary to extend the deadline to the 9 May to mop up the pupils in 10N.

43 The claimant's case was that she was being singled out for blame. Miss Wilson's evidence was that she was not singling the claimant out. She said that the claimant's comparator, Mr Marinkovic's pupils always met their deadlines, and that because the deadline had to be extended to assist pupils in the claimant's teaching group, she wanted to know why.

44 There were two emails relating to a proposed trip to Sheffield University [475 & 476]. This related to the means the claimant had identified to meet an appraisal target. We shall return to the target later (see paragraph 49).

45 On 15 May Miss Vanessa Wilson (HR) sent an email to the then Assistant Head Teacher Ms Taylor concerning Assistant Head Teacher interviews scheduled for 23 May 2018. Part of the selection process was for candidates to observe a lesson and produce a report. She proposed that one of the lesson observations should be of a class taught by the claimant [477]. The claimant objected to this because she was due to have a lesson observation on 16 May (the rescheduled observation) but the candidate observation did go ahead as planned. It is important to record that the lesson observation for candidates was not part of the claimant's appraisal process – it was a situational test for the candidates

46 On 16 May 2018 the rescheduled lesson observation took place [479]. It did not go well. There were two pupils present at the start, both of whom left. Ms Taylor who produced the report described it as "tricky". Miss Wilson had no input to the report, she was there to provide subject knowledge.

47 Miss Taylor arranged to meet the claimant the following day to provide feedback [478]. There was a evidential dispute between the claimant and Miss Wilson about the feedback meeting. The claimant's case was that feedback took place over two days and took about two hours whereas Miss Wilson said an observation takes about 45 minutes and feedback takes 15 to 30 minutes. We preferred Miss Wilson's evidence because the claimant tended to exaggerate. There was also a dispute about whether Ms Taylor expressed the view that a Support Plan should be put in place for the claimant. The claimant said it was not discussed; Ms Taylor did not give evidence; and Miss Wilson could not recall whether it was discussed. Nevertheless it was clear from the documentation following the meeting that Ms Taylor envisaged a Support Plan being put in place and the claimant opposed it. There was no written Support Plan signed up to by the claimant, as was accepted by the respondent's witnesses.

48 On 23 May 2018, an external candidate for the position of Assistant Head Teacher observed a lesson taught by the claimant and gave a positive report [481]. In the hearing before us, the claimant argued that this should have been used as part of her appraisal, rather than the negative report produced by Ms Taylor. She said that Mr Marinkovic told her that he had been allowed to rely on a candidate report for his end of year appraisal. We did not accept that to be the case. The respondent later looked into that allegation and could find no evidence that the claimant was right. Furthermore, we did not accept that the respondent would permit an external person's report to be part of a strictly defined appraisal process. In reality, the claimant's case amounted to requiring the respondent to disapply its policies for her benefit (as had been the case in respect of the pay progression issue). When we put this point to the claimant, she refused to accept it.

49 Allegation 9 was that the respondent removed an appraisal target and did not give the claimant an opportunity to discuss or replace it. This related to the proposed trip to Sheffield trip. The target concerned engaging pupils with a Robotics Project and the means the claimant identified as part of meeting it, was to take her pupils on the trip and get feedback from them. Miss Wilson's evidence, which we fully accepted, was that the trip was not the only way the target could have been met. The school's SLT (which did not include Miss Wilson) decided that the trip could not go ahead because of logistical problems involving the school's transport fleet. Clearly that decision did not amount to removing a target.

50 Miss Wilson was charged with responsibility for notifying the claimant of the decision. After she did, the claimant sent an email as follows: "Yesterday you came to my class at break time and told me the trip will not go ahead… You also said you want me to concentrate on my teaching. I am not clear what that actually means or what you implying?" [475]. The fact that the trip was not approved was the subject of one allegation; the comment about concentrating on teaching was another. Miss Wilson was unable to say whether she said it or not, but did say that she thought it unlikely because it would have been inappropriate. She said that she simply relayed the message.

51 A further lesson observation was planned for the week commencing 4 June. From the documents is was clear that this was intended to be part of Ms Taylor's proposed Support Plan, but that the claimant did not agree to it [483]. On 24 May 2018, Miss Wilson asked to see three Maths books from year 10 pupils that day, and six 6 books from Key Stage 3 the following day. The claimant sent an email the following day alleging that Miss Wilson had come into her classroom and asked pupils why they were misbehaving in the claimant's lessons, but not for other teachers; and had grabbed the books for the year ten pupils. She asked why she was being subjected to a book scrutiny. Miss Wilson's evidence was that Ms Taylor told her to carry out a book scrutiny as part of the Support Plan. She also said that two pupils from the claimant's class had left the lesson and were working in her room, so she needed their exercise books, but the claimant only gave her one of them [484].

52 As a result of what occurred on 24 May 2018, the claimant went to the office to complain to Miss Reid and Ms Vanessa Wilson. She followed this up by an email on 25 May saying she was upset by the exchange with Miss Wilson and that Miss Wilson's account of what had taken place was false [484]. She alleged that Miss Wilson had: "Literally grabbed the books from my desk and accused me of lying in front of BG who was in the room doing his work". She queried the purpose of the book scrutiny and alluded to other things happening which she would explain soon. On 19 June, Ms Taylor wrote to the claimant saying that when they met it had been agreed that she would support her with mid-term planning and that Miss Wilson would support her weekly with marking. She asked the claimant for a date to meet [485]. The claimant replied saying that she did not recall having a meeting where she had agreed to have support, and asking whether email was actually meant for her. There was a further exchange about whether a Support Plan had been agreed [485 to 488]. In summary, there was certainly a discussion of a Support Plan being put in place but the claimant had not agreed to one, so there was an impasse. The claimant then went off sick with work-related stress and returned to work on 12 July 2018, by which point the school was preparing for the next academic year.

53 The claimant made two allegations about the day she returned to work. The first was that her classroom had been moved to one next to Miss Wilson's, and the second was that the furniture from her old room had been moved to the new classroom. Miss Reid explained that moving rooms often occurs in preparation for the next academic year for timetable reasons or to keep a subject area together, and that the caretakers usually move the furniture. Neither she nor Miss Wilson could recall who was responsible for that particular move, or the reasons for it. Both were bemused about why it resulted in two allegations of race discrimination. In fairness, so were we. There was a return to work meeting that day (12 July) between Miss Vanessa Wilson and the claimant [489 onwards]. It was recorded that the claimant felt fit to return to work but had stress-related symptoms, and that she would like; "A response to issues raised and events have happened". Miss Vanessa Wilson said she would speak to Miss Reid about any ongoing concerns. There was no record of the claimant complaining about the classroom move.

54 Following the summer holidays, the claimant submitted a letter of complaint to Miss Reid which was titled "Bullying and Harassment Concerns" [492-493]. The claimant alleged she was given feedback for lesson scheduled for the 16 May which did not take place. That was not accurate – the lesson on 2 May did not take place but the lesson on 16 May did (see above). She complained that the feedback had taken place over two days. The claimant also said that her class had been highlighted as the reason to move the deadline for exam entry but that pupils in other classes had also caused the problem. The claimant alleged that Miss Wilson and Ms Taylor would pop into her lessons or look through the classroom windows. She complained about the cancellation of the Sheffield trip and being told to told to focus on her teaching. The claimant also complained about Miss Wilson demanding books from her and accusing her of lying in front of pupils on 24 May. Finally, the claimant made reference to a further observation on 12 June 2018. She said she felt uncomfortable being observed by someone she believed had bullied and harassed her. Finally, she said that on 20 September, Miss Wilson Taylor questioned her about what she was teaching Year 11 and that it had not been a professional discussion. The claimant asked if Miss Reid to help clarify the issues with her saying: "It seems most of these things have just been done to me rather than done with me or for me".

55 On 27 September 2018, Miss Reid confirmed she sought HR advice from Birmingham City Council and asked the claimant whether she wanted her concerns to be addressed under the dignity work procedure or the grievance procedure.

56 Because Ms Taylor had left, a decision was taken that the then Acting Assistant Head Teacher, Mr Andy Jacques, would be involved in the claimant's Support Plan. At this point the school was under the impression that there was a Support Plan, but there was no documentary evidence to corroborate that. There were a number of emails between the claimant, Mr Jacques and the then Head Teacher, Ms Kate Beale about this. On 5 October 2018, Ms Beale confirmed that her understanding was that at that stage of the Appraisal Process, the Support Plan was informal, but that: "You have now progressed from Stage 1 to Stage 2 as you have not met the required teaching standards. At Stage 2 a structured support program is offered before you are re-observed I know Andy Jacques has emailed requesting to meet with you before your observation on the 25 October

2018. However, I need to advise you that at this stage should you not meet the required standards the next step of the process is to progress to the formal capability procedure".

57 In summary, because there was no documented Support Plan, and the claimant had not signed up to one, the process should not have been moved from Stage 1 to Stage 2.

58 The claimant went off sick with work-related stress on 15 October 2018 [691]. The respondent made a referral to Occupational Health on 12 December 2018 [528 onwards]. It stated that the claimant was currently on an informal Support Plan due to concerns about her quality of teaching and learning; that she was advised on 5 October 2018 that she was at Stage 2 of the informal Support Process, and that if she did not meet the required standards, the next step would be to progress to a formal capability procedure. The referral asked whether the claimant would be able to fulfil her job role to the required standards. The claimant cross-examined Miss Reid about why that question was asked; she replied that it was standard.

59 The claimant decided to use the grievance procedure and submitted a very lengthy grievance covering the points raised in her earlier letter and expanding upon them [533-538]. She made reference to what she believed to be a systematic campaign of bullying and harassment towards her by Ms Lauren Taylor, Miss Koreen Wilson and Ms Kate Beale. She said she had been subjected to more lesson observations than other staff; that other staff members [i.e. Branko Marinkowic] were allowed to use the candidate interview observation as part of their final appraisal; that she had been subjected to two hours' feedback on a lesson that did not take place; that by mentioning a Support Plan Ms Taylor had undermined her; that the plan had not been discussed or agreed with her; that Miss Wilson had blamed her for the exam entry deadline; that she had requested information about the Sheffield trip and that no information was forthcoming, but that when she did get a response the trip was cancelled and she was told to forget it and concentrate on her teaching; that on 24 May 2018 where Miss Wilson had questioned her pupils about why they misbehaved in her lessons, causing disruption for pupils, and had taken some exercise books and later requested more; that she was pressured to have another observation; and that on 20 September 2018 Miss Wilson had questioned her about what she was teaching Year 11. She also alleged that when Mr Jacques carried out a lesson observation on the 27 September, he had identified the support she needed, but had advised she was on the last stage before a formal capability procedure would be started. The claimant said this was not in accordance with the Appraisal Policy. Finally, the claimant alleged that Ms Beale met her on 5 October, and confirmed that the formal capability procedure would be invoked if the Support Plan was not successful. When outlining the resolution she sought, the claimant said that the whole process should be reset i.e. that there should be no Support Plan, just a lesson observation. This belief that the process should be "reset" and the respondent's belief that a Support Plan was required because of the observation on 16 May, was a theme in the hearing before us, and it was never resolved.

60 It is important to record that despite being a lengthy letter, it made no reference to race or to discrimination. We were quite satisfied that Miss Wilson did not know of the race discrimination and harassment allegations until giving evidence to us, and that Miss Reid only knew of them when the Claim Form was

submitted. Furthermore, the claimant when cross-examining was reticent in putting the allegations squarely to the respondent's witnesses, choosing to use terms such as "unfair" and "unreasonable. We thought that was very telling.

61 There is then an allegation relating to whether or not the claimant was sent the grievance procedure. There was an email exchange between the claimant and Ms Vanessa Wilson during which the claimant was provided with a grievance procedure for schools and a grievance tool kit produced by Birmingham City Council. We concluded that the claimant was provided with the necessary documents albeit in a somewhat piecemeal fashion.

63 The Occupational Health provider produced a report dated 18 January 2019 [556 onwards]. The report stated that the claimant was absent with work-related stress which had led to symptoms associated with anxiety and depression, and was under the care of her GP, had initially been prescribed medication and was also awaiting counselling support. The author of the report said that it appeared that the trigger was work-related; that there were significant unresolved issues that needed to be addressed; and that at that point it was not possible to predict a date when the claimant would be able to return to work. A number of recommendations were made including: ongoing management contact during sickness absence; a phased return; carrying out a stress risk assessment; meetings to feedback on the stress risk assessment every four to six weeks; regular management supervision in 1 to 1s; and a full and frank dialogue between the claimant and the respondent about issues at work. It then stated: "This may need to escalate to formal mediation and, in my opinion, such a meeting may well prove to be the best way of facilitating a return to work and I would strongly recommend it". The report also suggested the claimant might benefit from shadowing a colleague and being giving time to clear any backlog of work.

64 During the Hearing before us the claimant's case was that the report recommended formal mediation before a return to work. That was incorrect – the report did not say that. The claimant's allegation that the recommendation was not followed was therefore based on a misreading of what the recommendation was. The report did recommend a full and frank discussion of the issues prior to a return to work, and that took place during the grievance meeting.

65 The grievance meeting was held on 23 January 2019 and was minuted [560 to 566]. The claimant later submitted handwritten corrections to those minutes which did not change the substance of the original minutes greatly. It was recorded that the claimant had alleged bullying and harassment by Ms Kate Beale (the Head Teacher), Ms Lauren Taylor (Former Assistant Head Teacher), and Miss Koreen Wilson (Director of Learning). It was recorded that the claimant had tried to resolve these issues herself and would like answers about the processes followed. The meeting then went through the various points raised in the claimant's letter. Towards the end of the meeting the claimant said that what she wanted was for the Support Plan process to be reset. Miss Reid asked what that meant, and the claimant made it clear that she wanted there to be no Support Plan rather than a reset to stage 1 of a Support Plan. There was discussion about whether the Support Plan had reached Stage 1 or Stage 2. The claimant said that she felt that she was being set up to fail. and that when she questioned the Support Plan she got no response. Towards the end of the meeting Miss Reid asked her how Miss Wilson could carry out tasks as her line manager, if the claimant was going to feel bullied and harassed, and the claimant

replied that she wanted a different appraiser. Her Trade Union Representative suggested mediation, and said the claimant had previously had a mediation with Miss Wilson, which we have concluded was not correct (see above). It was agreed that Miss Reid would carry out an investigation, and there would then be a feedback meeting. On 12 February 2019, there was a meeting to carry out a stress risk assessment, which was described as a pastoral return to work meeting [570 to 571]. It was recorded that the claimant asked whether she would be on a Support Plan, and that Miss Reid said she would take advice from HR. The stress risk assessment was also documented [572 to 573]. The documents were signed off by both parties.

66 One of the allegations was that the respondent failed to implement some of the OH report recommendations. Apart from mediation, which is dealt with above, she alleged that although there was a stress risk assessment, feedback meetings every four to six weeks did not take place. That appeared to be correct, but we did not accept that this was connected to the claimant's race. The claimant also alleged that management supervision did not take place. Her case was that this should have been supervision by Miss Reid or another member of the SLT. Miss Reid explained that such supervision was carried out by the claimant's line manager, Miss Wilson. We accepted that. The report did not recommend supervision by SLT or a change of manager, so it was incorrect to suggest the recommendation was not met. The other recommendations were followed.

67 On or about 12 March 2019, the claimant returned to work. Her next allegation (allegation 21) was dated 4 April 2019. The claimant's case was that she was set unfair targets by being put onto a Support Plan. She argued that the targets were unfair because they were the result of pupils having to complete a two year GCSE in ICT in one year. This was not the only reason for the Support Plan. When giving evidence, the claimant told us that she was the only member of staff who was teaching a two year course over one year, but that was not factually correct. Miss Reid said that in any academic year, pupils would be offered the possibility of completing GCSEs in four different subjects in one year rather than two, and the school tried to rotate which subjects were offered. If a pupil opted to do a one year GCSE, there were at least twice the number of teaching periods per week.

68 The grievance feedback outcome letter was dated the 10 April 2019 [704 to 706]. Miss Reid who dealt with the grievance said she was unable to speak with Ms Lauren Taylor because she had left. She said that from copies of the emails that she had seen between the claimant and Ms Taylor, the Support Plan had been mentioned in the summer term and the emails asserted the claimant was told about it during feedback, but that this was in dispute. She said that she could find no written copy of the Support Plan, and she acknowledged that Mr Andy Jacques had taken over responsibility for progressing the Support Plan, but he had not been able to because of the claimant being off sick from October 2018 to February 2019. She said she could find no evidence of bullying or harassment, but suggested mediation might be helpful. She said that members of staff she had spoken to had agreed to take part, and that she was waiting for the claimant to confirm whether she wanted it. We understood that to be a reference to Miss Wilson and Ms Beale, because Ms Taylor had left by this point. Miss Reid said that the school could not agree to having no Support Plan, but that the claimant would be placed on Stage 1 as a supportive measure, and that Mr Jacques would meet her after the Easter holidays to discuss the Support Plan.

69 In summary, the claimant had partly succeeded with her grievance, because she was to be placed on Stage 1 not Stage 2, and mediation had been proposed if she wanted it. Although the respondent had retreated from Stage 2 to Stage 1, there was no agreement to reset and start with a clean slate, which was what the claimant wanted. This was to prove an insurmountable obstacle to the claimant returning to work. The claimant's case was that there should be a fresh start because so much time had elapsed since the lesson observation which had led to Support Plan. However, the delay was because of the claimant's ill-health and the grievance process. In our view, it was not unreasonable for Miss Reid to take the decision she did given the circumstances

70 The claimant appealed by a letter dated 24 April 2019 [594 to 595]. She stated she had been subjected to systematic bullying and harassment which had not been investigated or acknowledged; that the appraisal process had not been applied fairly; that she had not been part of discussions and decision-making about her professional development; and that no SMART targets had been shared with her. The latter appeared to be a reference to the Support Plan rather than annual appraisal targets. The claimant said she did not understand or agree with the respondent's position about the Support Plan. The claimant said the alleged bullying and harassment by some colleagues was being subjected to more lesson observations than colleagues; being placed under a burden to achieve her targets which was not consistent with the treatment of other colleagues, giving the example of the Sheffield trip; and being given lesson observation feedback for nearly two hours over two days for a lesson that did not take place. She concluded by saying that rather than trying mediation she strongly believed she would benefit more if the appraisal process restarted afresh with lesson observations.

71 The appeal was heard by three Governors on 17 June 2019, and was chaired by Mrs Walker. The hearing notes recorded that all of the above points were explored [631 to 639]. There was a discussion about mediation. The claimant made it clear that she did not agreed to being placed on Stage 1 because she had not agreed to the Support Plan in the first place. The claimant said it was not fair, did not make sense, and it was bullying. A representative from Birmingham City Council HR said that the bulling allegations were a separate issue to whether there was evidence that a Support Plan was required, and that Miss Reid had decided that there was. Miss Reid and the Governors accepted that there was no written agreed Support Plan in place. It was quite clear that the claimant's position was that there should be no plan, whereas Miss Reid believed a Support Plan was necessary.

72 During their deliberations, the Governors tasked Ms Vanessa Wilson with investigating whether any members of staff had been able to use the candidate lesson observation rather than an observation by managers. They did so by reference to a date provided by the claimant (8 May 2018). Ms Vanessa Wilson found no evidence that this had happened.

73 There is an allegation relating to the date of the appeal meeting. The first date proposed was 6 June, but this was then rearranged to 17 June, which the claimant agreed to. In the hearing before us, she alleged that it was deliberately rearranged to coincide with her birthday. When being cross-examined by this the claimant was asked to reflect on the fact that it was necessary to find a date when three Governors who are volunteers and have other jobs, a Birmingham

City Council HR advisor, Miss Reid (Executive Head of two schools), her Trade Union Representative and herself were available, but was not willing to accept that this was not a deliberate act. The best her evidence was came down to: "That was how it felt at the time". She would not concede that she might have been mistaken, although she did accept that she did not object to the date at the time and had planned to work that day in any event. We thought it telling that the claimant was unable to accept, with the benefit of hindsight, that the allegation was misconceived.

74 Mrs Walker sent the appeal outcome letter to the claimant on 19 June [643 to 645]. She said that the Governors concluded that the Support Plan issue had been properly addressed by the grievance outcome. She acknowledged that there had been no written plan, and said that the decision to revert to Stage 1 was correct. Mrs Walker said that the claimant should meet Mr Jacques to discuss the plan in more detail and that this was the correct platform to discuss professional development and set targets if required. She said: "The responsibility of the Governors to ensure the children's education is the highest standard and the support is intended to be of benefit to teaching staff", and that the panel recommended that the meeting took place at the earliest opportunity. Mrs Walker also said that the Governors had concluded the SLT would benefit from re-training on the appraisal and capability process, particularly in respect of documentation and communication. She said that communication with the claimant had not always been as it should, and may have been the main contributing factor to the breakdown of working relationships, but that there had been no malicious intent. She confirmed that in future the committee would encourage the SLT to communicate with staff in a timely and appropriate manner with staff at all times. Mrs Walker explained that the panel accepted that the Sheffield trip was not feasible for logistical reasons, and had not been the trigger for the Support Plan. As regards lesson observations, she said that the panel had not been able to decide whether there had been four, or one had been rescheduled, but had established that none of the candidate observations on 8 May 2018 were used in staff appraisals. The panel made no finding as to the length of feedback following the observation on 16 May, but did think the meeting had focused on the Support Plan. The panel also concluded Miss Reid had taken reasonable steps to investigate the claims of bullying and harassment, and had found no evidence of it.

75 The claimant said in her evidence to us that she understood the phrase: "setting targets if required" to mean that the appeal panel thought a Stage 1 Support Plan might not be necessary. We did not accept the letter could be interpreted that way. It was very clear that the Governors agreed a Phase 1 Support Plan was needed, and were simply saying there should be a meeting first and targets could be set then. If the meaning of the letter was unclear, which was not the case, Mrs Walker clarified the point in her evidence. She said the Governors were quite clear there needed to be a Stage 1 Support Plan and that it needed to be progressed. should be the way forward at this point. On 19 July 2019, the claimant's Trade Union representative wrote to the Board of Governors, acknowledging that the Governors had decided the appraisal process should revert back to Stage 1 [658-659]. The TU representative stated that the panel should have called Mrs Reid to account for not following the correct procedure because the SLT had decided the Support Plan was at Stage 2. The letter did not directly say there should be no Support Plan at all. The letter also referred to the investigation by Ms Vanessa Wilson into candidate observations on 8 May, suggesting she had ignored information from the claimant about that

issue. The points made did not appear to be valid: the claimant would not have been informed whether Miss Reid had been held to account for confidentiality reasons (in fact Mrs Walker's evidence was that had talked through the points in the appeal letter with Miss Reid, so that she and the SLT could make improvements); also, since the claimant had specified 8 May in connection with the candidate observation issue, there was no evidence that Ms Vanessa Wilson had not investigated that properly. Because the letter was sent at the end of the summer term, it was not dealt with until the governors met the following term. The Governor's received the letter on 16 September [675].

77 On or around 3 September 2019, there was an exchange of emails between the claimant and Miss Wilson relating to stationary and other equipment which she had requested for the new term [664-665]. Miss Wilson responded to say some items were already in stock and that the rest had been ordered. Miss Wilson's evidence was that after she signed off orders, they had to be counter-signed by an Assistant Head Teacher, and could be queried by Ms Emma Banks (Finance). In the email chain, the claimant queried whether some mock currency could be ordered, so that she could teach money skills to pupils. Miss Wilson suggested that she printed off banknotes and said there were some coins that had been used by another Maths Teacher the previous year. The exchange was wholly innocuous, yet it became an allegation we had to determine.

78 By this point a new Assistant Head Teacher called Ms Judy Coombs was in post, and became responsible for the Support Plan. She emailed the claimant on 10 September 2019, saying she hoped the first week back had gone well and explained that because she was now Assistant Head Teacher of Teaching and Learning, she had been made aware that they needed to meet to discuss targets for a two-week Support Plan. She said ideally this should take place before the end of the week and gave some options of dates and times. Ms Julie Coombs had not worked at the school previously and had not met the claimant.

79 Also on 10 September, Miss Vanessa Wilson contacted the claimant to say that schools HR had offered a mediation appointment between herself and Miss Wilson on the 25 September and a mediation had been arranged for that date [671].

80 On 16 September 2019, Mrs Walker replied to the claimant's Trade Union representative on behalf of the Governors [675]. She explained the delay in responding and stated: "As you correctly state in your letter the appeal process is now concluded however, I have noted your comments and any appropriate action will be taken." As explained above, in evidence to us Mrs Walker confirmed she had met Miss Reid to discuss what had taken place and what could have been done better. She said training for the SLT was arranged (as referred to in the appeal outcome letter). She also said (quite rightly, in our view), that any steps the Governors took about people the claimant complained about had been kept confidential.

81 On 18 September 2019, the claimant resigned. She wrote to Miss Reid saying: "I am resigning from my position as Teacher of ICT and Mathematics with immediate effect. I feel I that I have no alternative but to resign from my position due to bullying and harassment in the workplace, allegations of poor performance, being denied Equal Opportunities, and subjected to unreasonable plus unfair treatment". She made reference to the letter her TU representative sent in July, saying her grievance was not investigated, and there the appeal had

not been impartial. She said that the employment relationship, in particular the duty of trust and confidence, had irretrievably broken down.

82 Miss Reid replied on 1 October [677]. Amongst other things, her letter stated the claimant had not made the school aware of alleged bullying and harassment in the workplace, which was clearly incorrect. Miss Reid accepted that when she gave evidence to us, and said it was included because of advice from Birmingham City Council HR department.

The law

83 The relevant legislation in respect of the allegations of direct discrimination is contained in the EA10. The legislative intention behind the EA10 was to harmonise the previous legislation and modernise the language used. Therefore, and in general terms, the intention was not to change how the law operated unless the harmonisation involved codifying case law or providing additional protection in respect of a particular protected characteristic. Because of that, much of the case law applicable under the predecessor legislation is relevant, as has been confirmed by the higher courts on many occasions.

Section 39(2) provides that:

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

84 Section 39(4) provides the same protection in respect of victimisation and section 40 concerns unlawful harassment in the field of work. Section 120 EA10 confers jurisdiction on an Employment Tribunal to determine complaints relating to the field of work. Section 136 of the EA10 provides that: "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". This provision reverses the burden of proof if there is a prima facie case of direct discrimination or victimisation. The courts have provided detailed guidance on the circumstances in which the burden reverses[1] but in most cases the issue is not so finely balanced as to turn on whether the burden of proof has reversed. Also, the case law makes it clear that it is not always necessary to adopt a two-stage approach and it is permissible for Employment Tribunals to instead identify the reason why an act or omission occurred (see discussion below).

[1] Barton v Investec [2003] IRLR 332 EAT as approved and modified by the Court of Appeal in Igen v Wong [2005] IRLR 258 CA

85 Race is a protected characteristic as defined by section 4 of the EA10. Sections 39 and 40 of the EA10 prohibit unlawful discrimination against employees in the field of work. In summary, the EA10 provides that a person with a protected characteristic is protected at work from prohibited conduct as defined by Chapter 2 of it. In addition to the statutory provisions, Employment Tribunals are obliged to take into account the provisions of the statutory Code of Practice on the Equality Act 2010 produced by the Commission for Equality and Human Rights.

Harassment

86 Harassment is defined in Section 26 of the Equality Act 2010 as follows:

> "(1) A person (A) harasses another (B) if –
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) The conduct has the purpose or effect of –
>
> (i) violating B's dignity, or
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account-
>
> (a) the perception of B;
>
> (b) the other circumstance of the case;
>
> (c) whether it is reasonable for the conduct to have that effect.

87 It is also relevant to note that Section 212 EA10, which deals with general interpretation, provides at section 212(1) that " 'detriment' does not, subject to subsection 5, include conduct which amounts to harassment." Subsection 5 is not relevant because it applies where the act does not prohibit harassment in respect of a particular characteristic, such as pregnancy or maternity. The harassment provisions do apply to gender reassignment and sexual orientation (section 26(5) EA10). Consequently, where detrimental treatment amounting to harassment is alleged, that should be considered before considering whether the act complained of amounted to direct discrimination, because it cannot be both. That does not, of course, prevent a Claimant from pleading in the alternative, and it would usually be prudent to do so.

87 The wording of section 26 makes it clear that a distinction is to be drawn between conduct with "the purpose of… " which will amount to harassment as a matter of law, and conduct with "the effect of… " In the latter case the test is partly subjective ("the effect on B" and, arguably, "the other circumstances of the case") and partly objective ("whether it is reasonable for the conduct to have that effect").

Direct discrimination

88 Direct discrimination is defined in section 13(1) of the EA10 as "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".

89 In the predecessor legislation, the words "grounds of" were used instead of "because of". However, subsequent case law has confirmed that the change in wording was not intended to change the legal test. This means that the legal principles in respect of direct discrimination remain the same. The application of those principles was summarised by the Employment Appeal Tribunal in London Borough of Islington v Ladele (Liberty intervening) EAT/0453/08, which has since been upheld:

> (a) In every case the Employment Tribunal has to determine the reason why the claimant was treated as he was.[2] In most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.
>
> (b) If the Employment Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.[3]
>
> (c) Direct evidence of discrimination is rare and Employment Tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-stage test which reflects the requirements of the Burden of Proof Directive (97/80/EEC). The first stage places a burden on the claimant to establish a prima facie case of discrimination. That requires the claimant to prove facts from which inferences could be drawn that the employer has treated them less favourably on the prohibited ground. If the claimant proves such facts then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If they fail to establish that, the Tribunal must find that there is discrimination.[4] The wording in s136 of The EA10 has not changed the way the burden of proof operates – the claimant still has to show a prima facie case of discrimination.[5]
>
> (d) The explanation for the less favourable treatment does not have to be a reasonable one.[6] In the circumstances of a particular case unreasonable treatment may be evidence of discrimination such as to engage stage two and call for an explanation.[7] If the employer fails to provide a non-discriminatory explanation for the unreasonable treatment, then the inference of discrimination must be drawn. The inference is then drawn not from the unreasonable treatment itself - or at least not simply from that fact - but from the failure to provide a non-discriminatory explanation for it. But if the employer shows that the reason for the less favourable treatment has nothing to do with the prohibited ground, the

[2] By reference to Nagarajan v London Regional Transport [1999] IRLR 572 HL
[3] By reference to Nagarajan and also Igen v Wong [2005] IRLR 258 CA
[4] By reference to Igen
[5] By reference to Efobi v Royal Mail Group Ltd [2019] EWCA Civ 18
[6] By reference to Zafar v Glasgow City Council [1998] IRLR 36 HL
[7] By reference to Bahl v Law Society [2004] IRLR 799 CA

burden is discharged at the second stage, however unreasonable the treatment.

(e) It is not necessary in every case for an Employment Tribunal to go through the two-stage process. In some cases it may be appropriate simply to focus on the reason given by the employer ("the reason why") and, if the Tribunal is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the Igen test. The employee is not prejudiced by that approach, but the employer may be, because the Employment Tribunal is acting on the assumption that the first hurdle has been crossed by the employee.[8]

(f) It is incumbent on an Employment Tribunal which seeks to infer (or indeed to decline to infer) discrimination from the surrounding facts to set out in some detail what these relevant factors are.[9]

(g) It is implicit in the concept of discrimination that the claimant is treated differently than the statutory comparator is or would be treated. The determination of the comparator depends upon the reason for the difference in treatment. The question whether the claimant has received less favourable treatment is often inextricably linked with the question why the claimant was treated as he was.[10] However, as the EAT noted (in Ladele) although comparators may be of evidential value in determining the reason why the claimant was treated as he or she was, frequently they cast no useful light on that question at all. In some instances, comparators can be misleading because there will be unlawful discrimination where the prohibited ground contributes to an act or decision even though it is not the sole or principal reason for it. If the Employment Tribunal is able to conclude that the respondent would not have treated the comparator more favourably, then it is unnecessary to determine the characteristics of the statutory comparator.[11]

90 If the Employment Tribunal does identify a comparator for the purpose of determining whether there has been less favourable treatment, comparisons between the two people must be such that the relevant circumstances are the same or not materially different. The Tribunal must be astute in determining what factors are so relevant to the treatment of the claimant that they must also be present in the real or hypothetical comparator in order that the comparison which is to be made will be a fair and proper comparison. Often, but not always, these will be matters which will have been in the mind of the person doing the treatment when relevant decisions were made. The comparator will often be hypothetical, and that when dealing with a complaint of direct discrimination it can sometimes be more helpful to proceed to considering the reason for the treatment (the "reason why" question).[12]

Time limits

[8] By reference to Brown v London Borough of Croydon [2007] IRLR 259 CA
[9] By reference to Anya v University of Oxford [2001] IRLR 377 CA
[10] By reference to Shamoon
[11] By reference to Watt (formerly Carter) v Ahsan [2008] ICR 82 EAT
[12] See for example Shamoon and Nagarajan v London Regional Transport[199] IRLR 572 HL

91 Section 123(1) provides that a complaint must be brought within the period of three months from the date of the act complained of, or such other period as the employment tribunal considers just and equitable. If acts extend over a period i.e. form part of a continuing course of conduct, limitation is judged by reference to the last act. The test is broad but C must show a link (see Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96 EWCA). If an act is out of time, there is a wide discretion to extend time, but the Claimant must show time should be extended on a just and equitable basis (see Robertson v Bexley Community Centre [2003] IRLR 434 EWCA). However, that is essentially a question of fact for the Employment Tribunal (see Lowri Beck v Brophy [2019] EWCA Civ 2490).

Constructive unfair dismissal

92 The relevant legislation as regards constructive unfair dismissal is section 95 of the Employment Rights Act 1996:

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

Section 95(2) is not relevant in this case.

93 The legal framework for constructive unfair dismissal claims is well established by case law. In order to claim constructive dismissal there must have been a breach of contract by the respondent, which was a fundamental or significant breach going to the root of the contract (Western Excavating (ECC) Ltd v Sharp [1979 IRLT 27 CA). It can be a breach of an express contractual term or an implied contractual term. In this case the claimant was alleging breaches of the implied term of mutual trust and confidence. In the case of Malik v BCCI [1997] IRLR 462, the House of Lords considered the implied term of mutual trust and confidence. It was held that the implied obligation extends to any conduct by the employer calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee. There must be an objective consideration of the conduct concerned. In addition, the conduct must be without reasonable or proper cause. The latter point is often neglected, but is of great importance. See, for example, Hilton v Shiner EAT/2405/00 – in which it was stated: "To take an example, any employer who proposes to suspend or discipline an employee for lack of capability or misconduct is doing an act which is capable of seriously damaging or destroying the relationship of trust and confidence between employer and employee, whatever the result of the disciplinary process. Yet it could never be argued that an employer was in breach of the term of trust and confidence if he had reasonable and proper cause for the suspension, or for taking the disciplinary action" – my/our emphasis added.

94 If the conduct concerned is, viewed objectively, likely to cause damage to the relationship between the employer and employee, a breach of the employer's obligation may occur. The motive of the employer is not relevant (see also Lewis

v Motorworld Garages Ltd [1985 [IRLR] 465 CA). It has also been established that the function of the tribunal is to look at the conduct as a whole and to ask whether, judged reasonably and sensibly, the employee cannot be expected to put up with it (Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347 EAT). Any breach of the implied term will amount to a fundamental breach of contract (Woods). In addition, it has been established that the fundamental or significant breach of contract could be an individual incident or could be a series of events that cumulatively amounts to a breach of the term. The final straw must be an act in a series of earlier acts which cumulatively amount to a breach of the implied term. It does not have to be of the same character as the earlier acts, but must contribute something to the breach, although what it adds may be relatively insignificant (London Borough of Waltham Forest v Omilaju [2005] IRLR 35 CA)

95 If there has been a fundamental breach of contract, the claimant must prove they resigned in response to it, and that they did not delay in doing so, thereby affirming the breach. If the claimant establishes the above, their resignation is to be treated as a dismissal - a constructive dismissal. If there has been a constructive dismissal rather than a resignation, the tribunal must technically move on to consider whether the dismissal is fair or unfair, in accordance with the provisions of section 98 of the 1996 Act. In practice, this point arises infrequently.

Discussion and conclusions

96 We received written submissions from the claimant and she had the opportunity to address us orally. We also heard oral submissions from the respondent's representative, Mr Starcevic. It is not necessary to summarise the submissions here, but we shall refer to them when necessary in the discussion below. Prior to setting out our findings on the allegations, we shall make some general points.

97 The claimant's submissions made reference to credibility of witnesses, and highlighted errors in some of the contemporaneous statements/documents, such as Miss Reid's statement that there had been two unsuccessful appraisals, and that the claimant had not complained of bullying and harassment. The claimant was right to say that those statements were not in fact correct as discussed above – see our assessment of credibility above. In summary: the respondent's witnesses were credible; acknowledged errors; and were open in acknowledging there were things they could not recall. Those particular errors were not in fact material to the allegations we had to determine. Furthermore, the fact someone gets something wrong does not mean they are untruthful. By contrast, it was remarkable that throughout the entire internal process, the claimant made no reference at all to race discrimination or racial harassment, and was reticent in doing so in the hearing. Instead, she referred to being treated differently to colleagues such as Mr Marinkovic. The word "discrimination" was used on only one occasion – the pay appeal letter [463]. The context was that she had allegedly been discriminated against because her appraisal took place after the deadline to apply for progression to the UPR. No reference to race discrimination was made in the claimant's resignation letter. We did not find the claimant a convincing witness. She would not concede the most obvious points and had a propensity to exaggerate, and to characterise the most innocuous acts as discrimination, using extreme terminology (see below).

98 As noted, in the original Claim Form there were four allegations of direct

race discrimination, none of which could in law have amounted to harassment. By the time the case was heard, the scope had increased greatly, such that there were 28 allegations of direct race discrimination and 13 of racial harassment. We think it probable that the claimant's perspective on events which upset her, and made her feel unfairly treated, are now viewed by her as discrimination, but were not at the time. We fully accepted that the respondent's witnesses were shocked to be characterised as racists. The claimant's narrative has grown over time and become more extreme. There is a difference between unfair treatment, if such occurred, and discrimination, but it is clear that the claimant cannot see or acknowledge that. The claimant also seemed unable to appreciate the impact that allegations of racism have on those said to be perpetrators.

99 By way of example, allegation 4 was about Mrs Walker wrote the appeal outcome letter on 23 March 2018; "Stating that I had two unsuccessful appraisal reviews and yet my appraiser recommended me for pay progression in 2016/2017". The allegation was that this was: "Racial subjugation by being denied the opportunity to be considered for pay progression because of mendacious reasoning" and amounted to direct race discrimination. Quite apart from the fact that the allegation failed on the facts – the claimant failed to apply before the deadline and was ineligible in any event – the terminology used by the claimant was wholly inappropriate in respect of the matter complained of. Also, as already noted, the claimant was unable or unwilling to accept that what she was really asking for was to be treated better than any other teacher, in breach of the pay policy.

100 There are other examples, such as using the term "racial bigotry" and other disproportionate descriptions. We did not doubt the fact that the claimant strongly believes she has been wronged, but sadly her perspective is at odds with objective reality, and appears to be tainted by confirmation bias. We shall now turn to the allegations in chronological order and shall consider whether there was harassment before considering direct discrimination, for the reasons outlined in our discussion of the law.

101 Allegation 1 was in that or around October 2014 Miss Wilson shouted at the claimant in her Classroom and talked down on her in a manner that is described in the allegation as "pervasive". The date cannot be right because Miss Wilson did not work for the respondent at that point. As will be clear from our findings of fact, we accepted Miss Wilson's account of how their employment relationship got off to a start. We concluded that the claimant was not happy with hand-on management (as required by OFSTED) and that the then Head Teacher made it clear that the claimant was expected to comply with reasonable management instructions. There was no prima facie case of harassment or direct race discrimination – this allegation failed on the facts.

102 Allegation 2 was dated March 2015 and concerned "lack of empathy by Miss Wilson, by being asked for information about the lessons I was supposed to be teaching while being attended to by emergency paramedics". We did not accept the claimant's account of this event. Further, and in any event, if such an enquiry had been made, we did not think that would amount to harassment of any description, still less racial harassment, or to direct race discrimination. If it had been necessary for Miss Wilson to ask the question (which it was not), it would have been reasonable for her to do so.

103 Allegation 3 was dated 18 March 2018, and concerned the appraisal

targets set when the claimant returned from maternity leave. The claimant alleged direct race discrimination by Miss Wilson, and also sought to rebrand the allegation as one of maternity discrimination. We did not allow her to dos so. The allegation was unfounded because the claimant agreed and signed up to the targets.

104 Allegation 16 was dated approximately October 2017, and was that the claimant was racially abused by a student. The claimant described this as direct race discrimination, but it might more properly be termed racial harassment. We had no reason to doubt that this occurred, but the claimant did not report it or ask the respondent to address it, so that it could not be said that the respondent knew of it but failed to take appropriate action. As such, the respondent had no legal responsibility for what occurred. The claimant in submissions sought to rely on the case of Majrowski v Guy's and St Thomas' NHS Trust[13] which is a case about the Protection of Harassment Act 1997 and therefore, as the respondent's representative rightly pointed out, is not applicable in the Employment Tribunal, where employers are not responsible for harassment by third parties unless they deliberately fail to take action, which could give rise to liability.

105 We have already dealt with allegation 4 – see paragraph 99. It is linked to allegation 17, dated 5 October 2017: "set up for failure to reinforce racial bias. My final appraisal took place on 5 October which was after 30 September deadline to submit an application for the UPR". There was no link between the deadline date and the appraisal date, for the reasons stated in our findings of fact. The claimant's failure to apply in time was entirely her own responsibility and was not racial harassment or direct race discrimination by Miss Reid or Miss Wilson. The claimant cited Mr Marinkovic as a comparator. Presumably if he applied for progression, he did so by the deadline in accordance with the policy, and the reminder given by Miss Reid at the staff training day.

106 Allegation 5 was dated 11 May 2018 and was: "Unfair treatment because of my race. Being blamed for causing an extension to the deadline of students' Maths entry level exam practical and yet it was a collective issue". The claimant alleged this was direct race discrimination. We found that Miss Wilson acted entirely appropriately in trying to rectify the problem, and in asking why it had occurred. This was not racial harassment or direct race discrimination – it was reasonable management action. This was an example of the claimant being unhappy with being managed effectively.

107 The next allegation chronologically was allegation 7, which was wrongly dated but related to the computer cable incident on 2 May 2018, and the fact that Ms Taylor and Miss Wilson did not intervene. As stated in our findings of fact, we accepted that it was unnecessary for them to do so and could have been counter-productive. The claimant alleges this was harassment or direct race discrimination. The allegation failed on the facts as found.

108 The next allegation chronologically was allegation 8, which was wrongly dated but related to rescheduled lesson observation on 16 May 2018. It was; "negative attribution bias because of my racial ethnicity by falsely creating unfavourable feedback for a lesson that did not take place. The determination to record the false feedback was so intense that it took nearly two hours to provide the feedback". The claimant alleged this amounted to direct race discrimination

[13] [2006] UKHL 34

and harassment. We found that the lesson did take place but did not go well, and that Ms Taylor wrote the report and provided the feedback. We did not accept the feedback was false. We noted that the allegation referred to "nearly two hours", but that in the hearing the claimant said it was "over two hours". We accepted that Miss Wilson's account that feedback would never take more than thirty minutes was correct. Furthermore, if the claimant's account was correct, then it beggared belief that the Support Plan was not discussed, because it was this lesson observation that led to it. The allegation was entirely without foundation.

109 Allegation 6 was wrongly dated 15 May 2018, when the correct date was 23 May 2018. It was about not being allowed to use the candidate lesson observation as part of the appraisal process. This was alleged to be direct race discrimination. We did not accept that it was. There was no evidence that Mr Marinkovic had been allowed to do so other than the claimant's account; when the respondent investigated, it found no evidence; and in any event it would have been a clear breach of the appraisal policy and it was inherently improbable that the respondent would have done that. This was another example of the claimant asking to be treated more favourably than other teachers, and expecting the respondent to breach a policy for her own benefit. There was a further allegation about this, dated 17 June 2019 (allegation 24). It was clarified to be an allegation of direct race discrimination, which was that Miss Vanessa Wilson failed to investigate whether a colleague (Mr Marinkovic) was allowed to rely on a candidate lesson observation, which she had been asked to do by the grievance appeal panel. We concluded that she did investigate but could find no evidence. The allegation failed on the facts.

110 Allegation 9 was dated 21 May 2018 and was: "Removing an appraisal target and not being given an opportunity to discuss it". It also referred to Miss Wilson telling the claimant to forget the Sheffield trip and concentrate on her teaching. There are a number of points to be derived from our findings of fact. Firstly, the appraisal target was not removed – the means of achieving it was. Other ways of achieving it could have been agreed – the claimant did not discuss that with Miss Wilson but had the opportunity to. Secondly, the reason was logistics – not race. Thirdly, we did not accept Miss Wilson had told the claimant to concentrate on her teaching, but if she had then it was because she was relaying a message, and was unconnected to the protected characteristic of race. This allegation was not well-founded.

111 Allegation 10 was dated 24 May 2018 as was: "I was subjected to racial insensitivities and its reinforcement by humiliation from Koreen in front of my Students she took Disciplinary Action against me in front of my students. She took disciplinary action against me in front of my students further inciting them to undermine my authority (sic)". The claimant said this was harassment or direct discrimination relating to/because of race. It appears to the relate to Miss Wilson asking for three exercise books, two of which belonged to pupils who were working in her office. We concluded that Miss Wilson's account was more reliable, because of the claimant's propensity to exaggerate. The way the allegation is phrased speaks for itself. This allegation was not well-founded, because there was no prima facie case that the incident was linked in any way to the protected characteristic of race. The same applied to Allegation 11 which concerned being required to carry out a book scrutiny.

112 Allegation 12 was dated 20 June 2018 and was: "Falsely accused of attending a meeting and discussing a Support Plan that I had no knowledge of, or

any written evidence to that effect". We shall deal with this briefly as it is covered in detail in our findings of fact. There was no written Support Plan. There was written evidence that Ms Taylor intended to put one in place and that the claimant disagreed. It was unclear whether the Support Plan was discussed in the feedback of the lesson observation, but it would be surprising if it was not. Support Plans are part of the appraisal process, and the respondent is expected to provide support before taking any action under the capability procedure. The respondent's findings during the grievance process and appeal were that it was necessary, and we accepted that. The claimant failed to establish that the Support Plan issue was in any way connected to her race. The allegation failed on the facts. However, as already noted, the Support Plan issue appears to have dominated the claimant's thinking going forward.

113 Allegations 13 and 14 related to the claimant's return to work on 12 July 2018 and were that the classroom move and furniture move were "reinforcement of bullying and harassment" and created a "hostile working environment". The claimant alleged harassment related to race or direct race discrimination. In reality these were wholly innocuous events that she did not complain about at the time, and the allegations were totally without foundation.

114 Allegation 18 was dated 21 December 2018, and was that Miss Vanessa Wilson deliberately withheld informant on the grievance procedure. The allegation was of direct race discrimination. It was factually incorrect – the information was provided.

115 Allegation 19 was dated 25 February 2019, and was that Miss Reid and Miss Vanessa Wilson directly racially discriminated against the claimant by failing to act on the OH recommendations. As will be clear from our findings of fact, the recommendations (with the possible exception of reviewing the health and safety risk assessment) were implemented.

116 Allegation 20 was dated 4 April 2019 and was that Miss Vanessa Wilson failed to provide amended minutes of the grievance hearing which took place on 23 January, and that this amounted to direct race discrimination. We did not understand this allegation – the claimant was provided with the minutes, she made amendments, and these were kept on file. Further, and in any event, there was no connection whatsoever to the claimant's race.

117 Allegation 21 was also dated 4 April 2019, and was that the respondent directly discriminated against the claimant because of her race by setting unfair targets. It concerned teaching a GCSE course over one year rather than two. In fact the respondent offered the one year option on four subjects in each academic year, and at least twice as many lessons. Therefore the claimant was not being treated differently to colleagues.

118 Allegation 23 relates to the grievance meeting and appeal meeting and was that there was direct race discrimination by Miss Reid because she "could not account for any support plan that I had apparently been out on without my knowledge". In fact, the claimant did know about the Support Plan – she just did not agree to sign up to it. Miss Reid did acknowledge there was no written Support Plan, and that was why the outcome of the grievance and appeal was that the respondent decided to start at Stage 1 of the Support Plan process – a decision which the claimant did not accept. The decision was perfectly reasonable and had nothing to do with the claimant's race.

119 Allegation 22 related to the grievance appeal meeting being arranged for 17 June 2019 (the claimant's birthday). The claimant alleged harassment and direct race discrimination by Vanessa Wilson and described this as a "Personal attack based on racial bigotry". Setting aside the florid terminology, the proposition that the meeting date was arranged by reference to anything other than the diary commitments of a number of busy people was ridiculous. It did seem to us that during the hearing, the claimant with the benefit of reflection, should have withdrawn this allegation because it was unsustainable. She did not do so.

120 Allegation 15 was that Miss Reid directly discriminated against the claimant by announcing in an equal opportunities briefing that all staff would have their final appraisal for the previous academic year, but the claimant was denied this opportunity. We did not accept that was factually correct. All staff would be appraised in or around October, and targets would be set for the current academic year. Given that the claimant resigned with immediate effect on 18 September 2019, it was evident that her appraisal for 2018/2019 could not take place in the usual way.

121 Allegation 25 which is an allegation of harassment and race discrimination by Miss Wilson. It was dated 3 September 2019 and concerned teaching supplies. The claimant described it as follows: "I was subjected to a hostile working environment due to racial ethnicity intolerance. My teaching resources I had ordered were removed arbitrarily assigned (sic)". In fact there were wholly innocuous exchanges about ordering resources, and Miss Wilson was not responsible for deciding whether orders could proceed – she simply approved and forwarded them for consideration and financial approval. The allegation was totally without foundation.

122 Allegation 26 was that on 10 September 2019 there was "Racial confirmation bias" by Miss Julie Coombs, Miss Kate Beale and Miss Kay Reid, because the claimant was invited to meet Miss Coombs about the Support Plan. As already stated, it was reasonable for the respondent to seek to put a Support Plan in place once the grievance process had concluded. Miss Coombs had never met the claimant. This allegation of direct race discrimination was without foundation.

123 Allegations 27 and 28 were dated 16 September 2019, and was of direct race discrimination. The allegation was that Miss Vanessa walker and a number of other people failed to respond to what was described as: "A request for minutes of meetings with information on race discrimination and issue which remain unresolved". There was no evidence that the claimant ever raced the issue of race discrimination at all. In addition, there were no unresolved issues – the grievance process had concluded and was not unresolved, it was simply not resolved to the claimant's satisfaction.

124 For the above reasons, the claimants allegations of harassment and direct race discrimination were not well-founded and we dismissed them. Because that was our decision, it was not necessary to consider the time limitation point made by the respondent. However, it was apparent that there was no continuing course of discriminatory conduct, and that many of the allegations were out of time.

125 Finally, the claimant's description of her constructive unfair dismissal claim

was that there was a lack of impartiality in the grievance process because: the grievance hearing was chaired by Miss Reid; Miss Vanessa Wilson deliberately withheld the full grievance procedure; the respondent failed to follow internal policies and to investigate fully and fairly; her amended minutes of the grievance hearing were not shared; and minutes of the grievance and appeal meetings were not shared. In addition, she relied on the alleged racial harassment and direct race discrimination. The claimant also alleged she was denied appraisals, unfairly removing the possibility of pay progression; set unfair targets; not allowed pay progression in 2016/2017 and told she had failed to meet the targets that year, even though she had; and not given the opportunity to complete appraisal targets in 2018/2019. The claimant said that she was placed under stress at work; OH recommendations were not followed; she was not provided with adequate support; and that she was not supported when students were racially abusive to her. Finally the claimant complained that she had been the subject of false and malicious allegations as follows: falsely accused of attending a Support Plan meeting; not being provided with proof of the Support Plan; and given feedback form a non-existent lesson observation.

126 We have already covered all of those points in our findings of fact, discuss and conclusions. The respondent did not fundamentally breach an actual contractual term, or the duty of mutual trust and confidence. It was apparent to us that the real reason the claimant resigned, was that the respondent did not reset the appraisal process anew, and instead concluded a support plan was necessary. The respondent clearly did have reasonable and proper cause to pursue the Support Plan, and therefore its actions were not without reasonable and proper cause. Consequently, there was no constructive dismissal - the claimant resigned and the claim failed.

127 At the end of our oral reasons, we expressed the hope that the claimant would be able to put this behind her and move on, because she has found a new teaching post. The fact that she requested written reasons, which will be posted on a public website, suggests otherwise. We also asked Mr Starcevic to make the respondent’s solicitors aware of our extreme displeasure at the poor quality of the witnesses statements, and their failure to inform their witnesses of the naure of the allegations against them.

Employment Judge Hughes
31 August 2021