EMPLOYMENT TRIBUNALS

Claimant: Mrs D Lingard

Respondents: Leading Learners Multi Academy Trust

HELD AT: Manchester **ON:** 23 September 2019 to
4 October 2019
20 January 2020
28 May 2020
(In chambers)

BEFORE: Employment Judge Feeney
Mrs J Williamson
Mrs H Vahramian

REPRESENTATION:

Claimant: Mr N Siddall, Counsel
Respondent: Mr S Gorton, Counsel

JUDGMENT

The unanimous judgement of the tribunal is that:

1. The claimant's claim of constructive dismissal succeeds.

2. The claimant's claim of disability discrimination fails and is dismissed.

REASONS

1. The claimant brings a claim of constructive unfair dismissal and disability discrimination based on Section 15, Section 20 and Section 13 of the Equality Act 2010.

Claimant's Submissions

2. Briefly the claimant submits that the respondent's treatment of her comprised a fundamental breach of contract either collectively or in some cases based on individual breaches entitling her to resign and claim constructive unfair dismissal. The claimant relies on how she was treated after being appointed as Head Teacher when a number of "experts" were brought into the school who criticised the school and, in the claimant's opinion, herself and who gave conflicting messages. The CEO did not support her in the face of these criticisms. This was followed by the school's poor management of her absence including a welfare meeting and subsequently the treatment of her grievance. Many of the same matters are relied on as disability discrimination and they are set out in more detail below.

Respondent's Submissions

3. The respondent submitted that they did not treat the claimant in breach of contract in respect of managing her performance and absence, that they did not have knowledge of her disability and that in any event their conduct was justified.

The Issues

B. <u>Constructive Dismissal</u>

4. Has the respondent acted in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between it and the claimant as follows:-

(1) (i) Cancelling the meeting on 26/09/16.

(ii) Failing to rearrange the meeting.

(iii) Failing to make reasonable adjustments.

(2) Yvonne Brown's unfounded criticism of the claimant;

(3) Yvonne's Brown's failure to speak up on behalf of the claimant or accept her own role in the relevant failings;

(4) Yvonne Brown's refusal to disclose the J Brown report to the claimant;

(5) Yvonne Brown's imposing ever shifting requirements as to the school's priorities on the claimant;

(6) Yvonne Brown's unfair criticism of the claimant as regards to the school's treatment of high achievers;

(7) Yvonne Brown's refusal fully to fund the claimant's use of the EAP programme;

(9) Yvonne Brown's conduct in the meeting of 30 November 2016.

(10) The unjustified threat of disciplinary proceedings;

(11) (i) The failure reasonably and timeously to progress the claimant's grievance;

(ii) The conduct of Ben Spence in the meeting on 21/03/17.

(Number 8 is not referred to as these allegations are set out in the claimant's ET form and 8 is not a matter relied on for the constructive unfair dismissal).

5. Did the respondent have reasonable and proper cause for acting in that manner.

6. Has the respondent's conduct at paragraph 1 above breached the additional implied terms pleaded at paragraph 10 of the ET1 namely:

(i) To take reasonable care not to subject the claimant to psychiatric harm by reason of its treatment of the claimant at work?

(ii) To reasonably and promptly afford a reasonable opportunity for the claimant to obtain redress for any grievance that she might have?

7. Was any such breach of the terms listed in paragraph 6 fundamental.

8. Did the actions of the respondent on March 21st and its letter dated March 22nd 2017, amount to a final straw?

9. Did the claimant resign in response to any such fundamental breach of the implied terms of her contract?

10. Did the claimant resign sufficiently timeously to avoid a finding of affirmation?

11. What is the proper measure of loss flowing from the claimant's constructive dismissal?

11 (a) Did the claimant forge the signatures of (i) Janet Shorrocks, (ii) Helen Quine, (iii) Diane Atkin as alleged by the respondent?

C <u>Time</u>

12. Are any of the claimant's complaints of discrimination prima facie out of time?

13. If so, do they form part of an act extending over a period and the last such claim has been issued within time?

14. Is it just and equitable that time be extended to allow consideration of any out of time claims?

D Reasonable Adjustments (allegations 1 – 2, 4 – 7, and 11)

15. Are the following PCP's and if so did the respondent apply to the claimant the PCPs identified in the ET1 namely:

(1) (a) The cancellation of the meeting on 26/09/16; or

(b) The requirement that the claimant attend the review meeting without a preparatory meeting.

(2) The unfounded criticism of the claimant on 18/10/16;

(4) The refusal to disclose the report of J Brown to the claimant.

(5) Setting unclear and inconsistent objectives for the claimant.

(6) Criticising the claimant as regards the school's approach to challenging high achievers;

(7) Deciding not to fund the claimant's use of the EAP programme;

(11) Not timeously progressing the claimant's grievance;

(12) Repeatedly refusing to make reasonable adjustments.

16. Did those PCP's place the claimant at substantial disadvantage by reason of her disability?

17. Was it reasonable for the respondent to take the following steps so as to avoid the disadvantage to the claimant as caused by the application of the PCP's? Did the respondent fail to make such adjustments as are reasonable to limit the effect of the said PCPs on the claimant? The claimant's proposed adjustments are:-

(1) (i) attending the meeting on 26/09/16

(iii) Rearranging the meeting in advance of the review meeting.

(2) Not to criticise the claimant in that regard.

(4) Allowing the claimant to see the J Brown report.

(5) Setting clear and consistent objectives for the school;

(6) Not to unfairly to criticise the claimant;

(7) Agreeing fully to fund the claimant's use of the EAP scheme

(11) (i) To address the claimant's grievance in writing

(ii) To determine the claimant's grievance

(iii) To commence the investigative process of the claimant's grievance

(iv) To expedite the determination of the claimant's grievance.

18. What is the proper measure of loss flowing from any failure to make reasonable adjustments?

Direct discrimination section 13

19. Was the comparator treated less unfavourably than a hypothetical non-disabled comparator in that a stereotypical assumption was made that as a sufferer from stress the claimant was unable to cope with her substantive role in:

(i) Yvonne Brown's conduct in the meeting on 30/11/16?

(ii) In the threat of disciplinary proceedings on 15/12/16?

(iii) In dismissing her on 23/3/17?

20. Was the reason for that less favourable treatment the claimant's disability?

21. Was that less favourable treatment to the claimant's reasonable detriment?

22. What is the proper measure of loss flowing from the said acts of discrimination?

F – S15 Discrimination (allegations 9 – 10 and 13)

23. Was the claimant treated unfavourably in the manners alleged:

(i) Yvonne Brown's conduct in the meeting on 30/11/16?

(ii) In the threat of disciplinary proceedings on 15/12/16?

(iii) In dismissing her on 23/3/17?

24. Was the reason for the alleged treatment one or more of the following somethings:-

(i) The view that the claimant was unable to perform her substantive role as a result of her disability and condition?

(ii) The view that owing to her disability and condition the claimant was likely to be absent from work for some time?

25. Do the somethings arise from the claimant's disability?

(a) If so, can the respondent prove that the said treatment was a proportionate means of achieving a legitimate aim.

26. What is the proper measure of loss flowing from the said acts of discrimination.

G ACAS Uplift

27. Is there a relevant ACAS code which applies to the facts of this matter, and if so, has the respondent unreasonably failed to comply with the same provision?

28. Is it just and equitable that an uplift be applied to the claimant's compensation and if so, in what amount?

H Polkey

29. But for any unlawful action on the part of the respondent for how long would the claimant's employment have continued in any event or is there a chance that her employment may not have continued?

I Personal Injury

30. Has the claimant sustained personal injury as a result of the acts of discrimination of the respondent, and if so, what is the proper measure of loss regarding this claim.

J Aggravated Damages

31. Has the respondent been guilty of high handed and oppressive conduct, and if so, is it appropriate to make an additional award to the claimant in the light of such conduct.

Witnesses

32. For the claimant Deborah Lingard Head, Teacher, Rebecca Kenyon, Former Assistant Head Teacher and Early Years Lead, Diane Atkin, Member of Senior Leadership Team and Year 6 Teacher at TPS.

33. For the respondent Yvonne Brown, Executive Head Teacher, Brian Wilson, Chair of the Trustees of the respondent, Jonathan Brown, External Education Consultant, Gillian Burrow, External Education Consultant, Leszek Iwaskow, External Education Consultant, Janet Shorrock, Deputy Head Teacher TPS, Mick McKenna Teacher at TPS, Caroline Gore, formerly Year 4 Teacher at

TPS, Ben Spence, HR Business Partner at Cook Lawyers, James Williams, Solicitor with Cook Lawyers, Helen Quine, Teaching Assistant Tyldesley Primary School**.**

Credibility

Claimant and witnesses

34. We found the claimant a credible witness there was no cross examination which undermined this although she clearly had her own perspective on events. There was evidence in respect of the OFSTED appointment that the claimant had wrongly remembered the date. However, we do not extrapolate from that a general inaccuracy.

Respondent and witnesses

35. We were not satisfied completely with the reliability of Mrs Brown whilst she is obviously a highly efficient headteacher/CEO we found that the documentation itself was at times inconsistent with her evidence. The notes from the HR advisor showed that she had made up her mind she did not want the claimant back by 30 November, her statement to the investigators in respect of the events at the beginning of term show that she did not intend to help the claimant with preparation but did not advise the claimant of this and denied initially in these proceedings.

36. In respect of Jonathan Brown and Gillian Burrows we found them helpful and convincing witnesses.

37. We were not entirely satisfied with Mr Iwaskow evidence, he wholly agreed with Mrs Brown on every point, he raised matters in a disproportionate way. We felt he went out of his way to discredit the claimant when he only met her for a few hours on one occasion.

Findings of Fact

38. The Tribunal's findings of fact are as follows.

39. The claimant worked for the respondent at Tyldesley Primary School from January 2002 and in 2009 she applied for the post of Assistant Head Teacher and was appointed following an interview process. It was recognised that the claimant was a talented trainer and mentor and made an extremely valuable contribution to the school in its role as a teaching institution for trainee and newly qualified teachers

40. In 2011 she obtained the qualification of National Professional Qualification of Head Teachers (PQH), but did not apply for a Headship of her own, choosing to remain at Tyldesley Primary School (TPS). The claimant would later point out that in fact she was not qualified to be a headteacher at TPS as it had this learning and mentoring role any headteacher had to have three years prior

experience at an 'ordinary' school before they could apply to a school with this role.

41. In November 2010 the school underwent an OFSTED inspection and was classed as outstanding. At the time this meant that there would be no further OFSTED inspections unless there was a cause for concern.

42. In January 2012 TPS became a stand-alone academy. During 2010 the Head Teacher of TPS Yvonne Brown was asked by the Local Authority to support failing schools in Wigan which resulted in her spending two to three days a week there and two days at TPS.

43. The claimant and FQ the Deputy Head Teacher were asked to oversee the day to day running of the school in YB's absence, at that time they had to report daily to YB. From the evidence we heard we agreed that this was the case at the time (see paragraph 80).

44. In 2012 YB was appointed Executive Head Teacher of St John's Primary School, a local failing school which resulted in her spending three days a week there and two days at TPS as recorded in the Governors Minutes of 2 July 2012.

45. YB was described as Executive Head Teacher of both schools from September 2012. In a letter from the governors of 13 May 2013 the claimant was described as Associate Head Teacher and a note stated, "Mrs Lingard will be responsible for the day to day running of school under my directions", a reference to YB.

46. By a letter dated 19 August 2013 it was recorded that the claimant was appointed Associate Head Teacher on 1 September 2012, initially for one year but now extended to the end of August 2015. There was no interview process and no job description.

47. There was considerable dispute about the extent to which the claimant had autonomy as Head Teacher of TPS. The claimant said the majority of her decisions required ratification by YB. She gave an example claiming that YB wanted to know when she had met with parents, YB said this was only certain parents who were known to be difficult and this was because if those parents complained the complaint would come to YB. The claimant also recalled an incident when YB also insisted that a teacher called Amy Cook be appointed to a vacancy, even though YB had not interviewed any of the candidates and the interviewers wanted another candidate. YB said she had never heard of the name of Amy Cook and was unaware of this situation.

48. The claimant also said that YB allocated teachers to the different years of pupils, that she would meet with SLT, that she was involved in monitoring the teachers in the classroom. Further that although the claimant would carry out lesson observations YB dictated their frequency, that until 2015 she wrote the monitoring in the evaluation calendar which set the frequency of teaching staff monitoring such as learning observations, learning walks and book

scrutiny. Whilst the claimant did this from 2015 YB had to approve it. YB also took the decision that TPS should focus more on the teaching of English and Maths rather than other foundation subjects, even overriding the views of SLT and the claimant on this.

49. The claimant also claimed that she would discover that YB had contacted her teaching staff directly instructing them for example to attend conferences at one of the other schools which would later become part of the multi trust academy based in Bradford. She did not inform the claimant of this beforehand and the claimant's role was simply to arrange cover. The claimant also cited that YB changed the homework system, adopted by the school without any consultation and she was just ordered to carry it out. YB also led the meeting that would be held every Friday morning with staff.

50. Rebecca Kenyon gave evidence in support of the claimant's contention that YB still controlled many aspects of the running of the school for example budget requests had to go through YB and YB would telephone her at home directly about matters.

51. The respondent's perspective was that the claimant was in charge and had autonomy, our finding is that both perspectives had some truth in them. The claimant had autonomy on a day to day basis but to a certain extent but YB was always in charge and leading. On the balance of probabilities, we find that the likelihood that the result of that was that the claimant was not used to proactively leading the school and initiatives and that a confusion of roles crept in during the time the claimant was Associate Head which caused problems when YBs support was to some extent removed following the claimant formally being made Head of school.

52. Beginning in 2014 the claimant began to suffer from fatigue, headaches and palpitations. She managed to continue to attend work but stated that she spent most weekends in bed until midday. YB agreed she had discussions with the claimant around this time within the context of the claimant going through the Menopause. She said she was unaware of the claimant having problem with her blood pressure. She accepted this may well have been the case and accepted that there may have been an occasion when the claimant wore a blood pressure monitor for 24 hours, but as she herself was not in that day she did not know about it at the time. Her secretary/PA, Louise Dunkerley, told her about it.

53. The claimant was diagnosed as suffering from Hypertension in November 2014.

54. The claimant's supervision from 2014 was undertaken by a Karen Ardley, an Outside Consultant who would undertake the claimant's appraisal and set performance management objectives which would be followed by a meeting with the Chair and Vice Chair of the Governors.

55. The claimant stated that she had a conversation with YB in September 2015 regarding whether the claimant would apply for the Headship of the school as

at the time YB was going to leave to be an HM Inspector however the documentation establishes that this occurred in September 2014. The claimant says that YB said that "the role would be stressful and you have a problem with your blood pressure". The claimant relied on this to show that YB was aware that stress would exacerbate her blood pressure.

56. The claimant said that YB also said that instead of applying for the Head Teachership, she, YB, might be able to create a role for the claimant relating to mentoring newly qualified teachers, and the claimant expressed an interest in the job and person specification for both roles. However, she did not hear any more and YB decided she was not going to become a HM Inspector (OFSTED). This was because she would be focussing on developing a multi academy trust bringing more schools into this including St Johns and TPS. YB said the claimant had got the dates of this mixed up but she agreed there had been a conversation where she had suggested an alternative role. In view of the dates we find that the conversation took place in 2015 but not in the context of the HM role. Therefore, YB knew of the claimant's blood pressure problem by September 2015.

57. The claimant said YB said that she would restructure the school and there would be two Deputy Head Teachers who could support the claimant in the role of Head. The claimant said there was a difference between Head of School and Headteacher role as to be a Headteacher of a Teaching school such as TPS which had training responsibilities a candidate would have to have three years substantive Headteacher experience already, which the claimant did not have. Accordingly, the claimant throughout the hearing described herself as head of school.

58. The claimant was responsible since 2015 for undertaking appraisals of senior staff and it is alleged that in November 2015 she signed the appraisals of Janet Shorrocks, Helen Quine, Diane Atkins and Rebecca Kenyon's not only in her own name as required but also in the appraisees name**.** The respondent would rely on this later as a potential misconduct issue describing it as potential forgery and we address it in more detail below.

59. In April 2016 the claimant had been advised by YB that a Jonathon Brown would be undertaking her appraisal. He would also be undertaking a review of the school as a successor to Suzie Clipson-Boyle (SCB) who had undertaken it for a number of years. The review would be of the same nature although YB had said he was very rigorous. She denied she had mentioned this a number of times to the claimant. The claimant felt she was over emphasizing it to put pressure on her. We find that was the claimant's perception. It would be natural to have some anxiety in a changing situation such as proposed but it was not directed at the claimant it was part of the academy process to make the management of the schools in the academy consistent.

60. YB stated in evidence all the schools in the trust were going to follow the same process it was not just TPS. There would be an assessment then appraisals., All the Head Teacher appraisals would be undertaken by JB in the week starting 5 December. YB reported that the claimant on a number of

occasions said if the review is bad 'I won't be sacked will I'. The claimant agreed with this but said it was simply a joke. YB suggested it was because the claimant already knew her performance wouldn't come up to the mark**.** We find on the balance of probabilities that this was simply a joke as it is highly unlikely that the claimant would have seriously thought her role was under threat after the many years she had been Associate Head and within weeks of her permanent promotion.

61. The Multi Academy Trust status commenced on 1 September 2016. It comprised TPS, St Johns and three schools previously under Bradford MBC's control.

62. The claimant was appointed "Head" from 1 September 2016. YB informed the claimant that she needed to accompany her on the same day to the Multi Academy Trust Meeting in Bradford which the claimant was a bit reluctant to do, given that it would be the first day of her being Head of TPS. The claimant said that nevertheless she started her new role. There was no job description, no person specification and no interview. Neither had she received anything to confirm any details of her salary. YB had a discussion with the head of the school trustees Brian Wilson regarding the increase to the claimant's salary and one was agreed but it was not implemented at the time.

63. On 26 September 2016 the claimant had a further planning meeting with the outside consultant Karen Ardley. The claimant never saw the notes from this meeting but she believes that they were produced later, particularly as they refer to the governors being present at the meeting which was not the case, and in addition they seemed to 'mop up' several meetings in one go.

64. These notes begin

> "at the request of Yvonne Brown CEO Leading Learners MAT Deborah Lingard, Associate Head, Tyldesley Primary School and I met several times between Summer of 2014 and September 2016. The purpose of these meetings was to support Deborah in her role as Associate Head Teacher and subsequent Head Teacher and Leader of a learning project being implemented throughout TPS and to prepare for performance management meetings with Brian Wilson, Chair and Sam Quigley, Vice Chair of the LGB? At our first meeting on 15 July Deborah and I discussed her career at Tyldesley …. She had successfully completed the MPQH programme before taking up her role as Associate Headteacher. She commented on her lack of clarity about the relationship between the roles of Executive Head and Associate Head and explained that she worked closely with the other members of the senior team.."
>
> … One of the specific tasks YB had requested that Deborah Lingard should complete was the development of "the pod", the school vision for the pod was explored during our discussions. It was to provide a creative and innovative space to support learners of all abilities … This

leading learners project was also the development of the curriculum overall and specific focus to enhance and enrich the humanities across the school through raising the level of challenge for all pupils.

We discussed the expectation of teaching and learning and Deborah agreed that there were key aspects which she would focus on, especially the quality and deployment of Teaching Assistants and raising the level of challenge. The school had agreed to implement the curriculum published by focus and Deborah would monitor its implementations through regular progress meetings with all Teachers. She would also work closely with the three Teachers identified as lead learners. I invited her to join the professional development sessions being provided for the lead learners, Deborah only attended part one of these sessions.

In order to support her professional knowledge and understanding and seeing strategic leadership I provided Deborah with online access to the following resources and requested that she should keep a log on how she was spending her time at school and home in terms of her role as Associate Head Teacher. We discussed how she could log her time in three categories, leadership, management and administration. There was then a list of resources provided and then the note ended up by saying "it was agreed that Deborah would focus on three main areas:

(i) The curriculum overall;

(ii) Raising quality and challenging the humanities;

(iii) Leadership and development of the lead learners project across the school."

65. Earlier performance minutes had been rather bland and certainly did not raise any concerns about the claimant's performance. It was accepted that on previous occasions there had been meetings with the governors.

66. On 22 September 2015 there were further minutes again rather anodyne and uncontroversial. The targets set were:

1. To ensure EYFS is an outstanding area of the school.

2. To continue to support and lead the Lead Learners Project across school;

3. To further develop and effectively implement management systems to ensure the effective running of TPS.

These were the targets being reviewed in 2016.

67. Returning to the 26 September 2016 minutes Karen Ardley indicated that there was a meeting afterwards with Brian Wilson and Sam Quigley. The claimant said this did not occur. We had no evidence from Karen Ardley but Mr Wilson ‘s evidence was that the meeting did take place however in cross examination he said that he could not recall if the claimant was there.

68. These minutes were very different Firstly they were more detailed and lengthier. Secondly it was recorded that the claimant had not met her targets Further targets were set but then it was recorded that ‘these targets were not formally approved by the Governors or CEO and further work was planned with the Trusts PM consultant” Again in view of this it seems unlikely a meeting with the governors did take place at this point.

69. The claimant said she had never seen these minutes and in the actual discussion there was nothing about the claimant not having met her targets, and she noted that the handwritten comments on an aide memoire from Karen Ardley did not reflect the more negative points made in the typed minutes. The typed minutes suggested that the claimant had not achieved one target and only partially achieved two targets. She had identified areas for further development and that Karen Ardley was to send her further objectives for the academic year 2016 to 2017 which she did by email on 12 October. However, the minutes showed them being recorded at the time. The email of 12 October 2016 had attached quite lengthy tables setting out objectives and how they were broken down.

70. The claimant received the email but not the minutes. She believes the minutes were drawn up after the event as they include matters occurring before and after their meeting in September. She is sceptical that they are genuine in view of the fact that she never had any indication she had not met her targets. We agree, the minutes do not appear contemporaneous and we would expect there to have been more email ‘traffic’ about the claimant failing to meet her targets. Indeed, we would have expected the claimant to protest and the governors to have considered taking some action. Mr Wilson in addition pointed out that this was in effect an interim review as JB was to undertake the official review on 5 December. However, it had rung alarm bells but his expectation was that it would be followed up on 5 December with JB**.** We accept the claimant’s version of events, namely that she did not see these minutes, that there was no meeting with the governors and there was no discussion that she had failed, whether partially or in full, her targets. At the same time, we accept that there were concerns but these had not been discussed with the claimant.

71. Consequently, the claimant said she had no idea that there were any concerns regarding her performance or that the respondent took the view she had not met her targets. Whether Karen Ardley had only subtly mentioned these issues and had not been direct thus the claimant failing to pick up any criticism we cannot say without evidence from her.

72. As far as the claimant was concerned this was simply a continuation of the process that had taken place for three years now with Karen Ardley, whereby

her performance would be assessed against targets previously set and the Governors would also review them and new targets would be set.

73. We should also mention here that Mr Wilson and YB did make criticism of the claimant in respect of her writing skills and stated that they had viewed her reports as poorly expressed and had had to rewrite items from time to time. He had not raised it with her as it was a time of transition and he wished to support her.

Medical Evidence

74. The claimant was diagnosed as suffering with Hypertension, she says on 1 November 2014 and received medication for this in January 2015 and has been taking Lisinopril since that time. Initially 10mg then reduced to 5 mg in July 2015 but then increased to 20 mg in November 2015.

75. The claimant's evidence was that she still had some symptoms after starting the medication Symptoms continued in June and July 2016 but her disability impact statement had said that lot of her symptoms had disappeared but not entirely. This however is inconsistent with the later experts' reports which concluded that the symptoms she relies on for this case where the result of anxiety not blood pressure and accordingly should not have been alleviated by the blood pressure medication.

76. The claimant's GP's note for the relevant period show no indications of any matters relevant to this case in terms of the symptoms the claimant relies on. In November 2014 there was evidence of headaches which the doctor thought could be migraines, although the claimant says she was diagnosed with blood pressure problems although menopausal symptoms were also referred to in November 2014. On 23 December 2014 it was stated that the 24 hour tape (presumably the blood pressure monitor) showed some daytime hypertension and this was confirmed in January. In July 2015 there was reference to having headaches for a few weeks, her blood pressure was high in the morning sometime, she had been very busy at work but at the same time the blood pressure medication was reduced to 5 milligrams, and her readings did improve but then deteriorated a bit in October and therefore her medication was increased to 20mg.

77. There was no recording of any other symptoms other than she had a suspected gallbladder stones until 7 November when it was recorded that she was crying often and feeling anxious and she would like to try time off work. On 21 November it was recorded starting to feel a little bit better, time off helping, has meeting on Wednesday with employer, doesn't feel that things will change but has exit strategy if needed in the future, hopes to be able to stay at work for another twelve months if possible. Checking BP at home has been up and down but was normal this morning, starts counselling this week. On 10 January the GP recorded "long chat with Deborah and husband, classic stress related reaction, BP is generally well controlled, she will monitor with home readings weekly. Long chat as to what decision she has to make re: work". On 5 December 2016 the problem was recorded as

stress related problem. On 19 December she stated "ongoing stress, not sleeping well, reduced appetite, is coping BP stable". She saw the doctor again on 9 January, long chat, doing well, keeping strong, continuing with counselling. On 25 January it was stated "feels anxious about this but doing very well, staying strong". On 6 February "long chat, doing very well, staying strong despite pressure, awaiting decision re final settlement, may have to go to Tribunal if not acceptable figure. BP at home has been fine except when stressed and thinking about work and then it becomes raised, doing lots of walking". On 13 March "doing well, lots of walking and Zumba classes, keeping mind active, things progressing slowly with case, hopes to have a resolution in a few weeks, hoping will go her way". However, of course the respondent would be unaware of these entries until this litigation.

78. The claimant stated that YB was aware of the fact that stressful situations could impact on her health and she pointed to a number of comments including the ones referred to above where it was said that her stress impacted on her blood pressure (form the internal proceedings statement). YB agreed she had made a comment when she cancelled the meeting in September 2016 saying the claimant should not get stressed about this meeting being cancelled but this was a comment she might make in any situation. We do not wholly accept this we find YB was aware the claimant could get stressed and that it might increase her blood pressure but not at all that she had any other symptoms or other condition.

79. The claimant asserts that she advised YB about her blood pressure problems in September 2015, and that YB asked the claimant about it in October 2015.

80. YB agreed in cross examination and in her witness statement for the later disciplinary proceedings against the claimant referred to above that stress would affect blood pressure. Her statement which was made on 27 February 2017 stated that "we had a school review in September 2015 and Deborah exhibited signs of stress, it had an impact on her blood pressure we talked about this. Deborah didn't have any time off work as she felt fit enough to continue. Some weeks later there was some slippage and we had a full informal conversation and I stated I would be able to find an alternative role in the organisation to suit her strengths. I asked her to think about this rather than the role of Head Teacher".

Assessment of the School

81. In relation to internal assessments of the school during this period an ex OFSTED Inspector HM Inspector Susie Clipson-Boyd (SCB) did an annual inspection for around three years, no copies of these were available, the last one was delivered orally as SCB was emigrating to New Zealand. This was purely for the school's benefit. This was normally followed up at an SLT Away Day where matters raised were discussed, however, there was nothing in detail and find that nothing particularly urgent or critical had been raised by SCB. YB did agree however that the claimant appeared stressed during this review but in her view, that was normal - reviews are stressful.

82. In her disciplinary proceedings statement she also comments "I could see there was an issue of capability and at the time I let my emotional side overrule the business decision, we spoke daily, I was there to support her and step in when needed and she kept me up to date with key issues but the Chair of Governors was having conversations with me about her competence in the role and I defended her at the time, we had to rewrite emails and reports because they weren't up to the required standard. When I realised things were really spiralling out of control was during the review in October 2016. She became the formal Head Teacher in September 2016, she said leading up to the review and said "if the review is rubbish you won't sack me will you"."

Performance management process

83. On 4 August in anticipation of the year's performance management target setting process for the next academic year the claimant sent an email to two of her colleagues on the senior management team. This was headed up 'documents' and had attached to it several documents – it is not entirely clear now what they were, however, it said "areas for further development 2016, key priority action plan, health and safety document, key priority action plan KS2 achievement, leadership of management, quality of teaching KS1 2016 achievement doc.

84. The email said, "have attached SIP (School improvement programme**)**, Yvonne ok with areas for development 2016/17, attached key priorities, percentage per year group need a tweak but can do that when get KS to grids etc and discuss attached things agreed so far At SLT we need to discuss planning format assessments, and assessment files to start the year off on a good footing, inset etc but think sent a few ideas, Yvonne reckoned not to do too much monitoring before the review, I think we need to know by drop in and book looks ?? Still twiddling with the monitoring calendar so will have ready for the first day back, can re-tweak – Rebecca going to add EYFS on SCF then we can review it together, also got notes I think on house points to explain to staff".

85. The documents were set out in grids stating what the objectives were and how they were going to be measured. We were told at Tribunal that the documents attached were the documents which sat below the SIP school Improvement plan) and SEF **(**School Evaluation Form**)** and that no one ever actually received a SIP or a SEF. Janet Shorrock part of SLT gave evidence she had asked the claimant about this at the beginning of term prior the Jonathan Brown review and the claimant stated it was not quite finished but these two overall strategic documents were never produced.

86. YB stated she had not seen the key priority action plans, nor had she seen the SIP or the SEF so we are puzzled as to what Jonathan Brown considered when he began his review and why if the documents existed they are no longer available. Janet Shorrock stated that this email was sent during the summer holidays and she would not have seen it until just before she went back to school. She stated that the whole of SLT should have ensured that the SIF and SEF were fully completed and discussed before the Jonathan

Brown review and that she believes the absence of that debate and the paper copies led to the difficulties then they had during the review. Clearly the claimant was anticipating that discussion would take place but she never arranged it.

87. JS advised in previous years SCB had undertaken the review and they would have a SIP and a SEF in front of them so SLT would be fully aware of what the school's key objectives were before any review, JS believed that in the past the SIP and the SEF had been drafted by the claimant and YB.

88. The claimant was anxious to meet with Yvonne Brown before the review with Johnathan Brown, and arranged a meeting with YB for 27 September. She claims she sent the SIP and SEF to Yvonne Brown to discuss it at the meeting which was originally arranged for 27 September. This meeting was cancelled by YB**.**

89. The claimant felt the absence of a preparatory meeting raised her anxiety and stress levels as she really needed the meeting to prepare. YB says the meeting could have been rearranged but the claimant never tried to do this. C says she tried to rearrange it however there was no evidence in writing that she sought to rearrange it although she said she tried to several times with YB's secretary, Louise Dunkerly**.** YB agreed that when she cancelled the meeting by leaving a message with her PA she stated, "tell Debs not to stress about it". The claimant relies on this comment to establish YB was aware she was susceptible suffering from stress but YB said it was simply a throw away remark using a colloquial expression that she would have used with anyone.

90. However, in her witness statement for the disciplinary YB clearly states she would not have discussed the SIP and SEF as she had decided she was going to treat all the schools within the Trust the same and as she was going to have no discussions with the other schools she was not going to with the claimant. YB noted in her statement during the investigation as follows "I deliberately did not review the paperwork she had ahead of the school review because I wanted the school to be the same as others in the trust, I didn't want Tyldesley to be treated any differently. I was shocked when the review performance hadn't been effectively completed, the school's evaluation was inaccurate, design technology was missing, staff were unclear, lack of strategic direction and it felt fragmented**".**

91. However, she never told the claimant that was her position. It would have been fair and transparent to have made that clear to the claimant. We are surprised that YB would claim this was her intention as it suggests some sort of duplicity around arranging the meeting and then cancelling it and also maintaining that the meeting was cancelled because she was busy and that the claimant hadn't sought to reinstate the meeting, implying she would have been perfectly happy to go ahead with the meeting if the claimant had pursued it as set out in her witness statement. It suggests that YB is not a witness of truth in relation to the totality of her evidence**.**

92. The whole school review was then undertaken on 18 and 19 October by Jonathan Brown, Yvonne Brown and Gill Burrows, although Gill Burrows could only attend on the second day. Jonathan Brown reported to us that he did have a SIP (School Improvement Plan) and a Self-Evaluation Form (SEF), he felt the SEF was anecdotal and not evidence based. We have not seen a copy of either documents.

93. On 18 October Jonathan Brown met with the SLT but without the claimant. He said he was concerned about this meeting as SLT were unable to answer basic questions about the SIP. They could not identify what the school's priorities were and they did not know what role they played in the SEF in order to review and observe teaching. They could not tell JB the top three priorities, they mainly sat in silence. It was agreed there had been no preparatory meeting of the SLT with the claimant before JB met with them. JS confirmed it was embarrassing and she considered resigning after this.

94. JB also reported Rebecca Kenyon spoke to him privately, there was a dispute whether she initiated this or he did, essentially, she was complaining or explaining why the situation in the early years section was so difficult. However, Mr Brown shortened the discussion as he needed to speak to YB.

95. JB then spent time with the claimant going through the SIP and explaining what processes needed to sit around it, he thought it was a supportive meeting and that the claimant was grateful for the meeting, he felt it was clear work was needed on the SIP processes including the other schools in the trust that he reviewed and tie them into accountability with the governors. TPS was intended to be the lead school of the trust to spread good practice across the trust but he felt he was not able to support that proposal at the end of day two. He said it was a supportive and friendly meeting and that the claimant was grateful for his help. He was a very credible witness and we find that was his purpose to identify problems and assist the school in resolving them. He was adamant that he did not single the claimant out for any sort of blame. The claimant says he said to her 'there could be vulnerabilities to requires improvement'. The claimant was very shocked by this and when speaking to him the next day alluded to this. He said that she had misunderstood his meaning.

96. The claimant said later in the day YB spoke to her about it being a bit disappointing. The claimant said there were areas for development but that was for SLT. She alleges YB said it was her (the claimant's) job, but that that comment was not discussed further. By itself however this is not necessarily the devastating criticism the claimant says it as it was the claimant's job to pull SLT together. At this time however, the claimant was feeling very much under pressure and we find she was viewing everything as a personal criticism.

97. In a second meeting there was a discussion about appraisals and the claimant agreed she had not carried them out as KA had advised to wait until after the review. YB said this was poor advice as they had to be completed by the end of October.

98. He sent his report to YB early on 1 November which was confirmed by an email received during the course of Tribunal hearings. The most important finding was that the school leaders did not have the capacity to support other schools because they currently lacked the clarity and focus around their own school improvement priorities to ensure sustained improvements. In addition, the School Improvement Plans were not clear about the priorities. He advised there were too many priorities leading to a lack of focus and sharpness, consequently priorities notably in Key Stage 1 and Early Years were not readily identifiable and dealt with in a timely manner.

99. The claimant said that Yvonne Brown told her that JB had said that if he had to describe the school it would be 'requires improvement'. This was a shocking description for a school that had fairly recently got an outstanding rating from OFSTED. JB advised in evidence he never actually finalised his draft report

100. However, the claimant also said YB had said not to worry about the report and she would be changing some of it. She also said she wanted to discuss the 'lack of capacity in SLT' but the claimant did not fully understand what she meant. However, we find the exchange shows that YB was supportive of the claimant and was attempting to head off criticism of the school.

101. The claimant asked to see the report but it was never provided. There was a dispute as to whether the claimant had been given a copy of JB's report. The claimant said she had never seen a copy and only saw it when it was in the bundle. YB said she gave her a copy on 2nd November having read it on 1st November at 10.25. The claimant was adamant that she had never received a copy and there was corroboratory evidence from other members of staff that this was the case. This is supported also by the fact that in the claimant's later grievance she stated that 'the written report and review is being kept from everyone other than Yvonne.' There was no evidence that it had been sent to the claimant by email for example. Accordingly, we find she did not receive a copy. Janet Shorrocks recounted that the claimant had said to her the report said 'SLT lacks capacity' (which it did) which she remembered as it was a strange turn of phrase. This however did not show that the claimant had actually seen the report as this had been quoted to her.

102. It was the claimant's contention that in fact a number of the matters identified she had also identified as priorities for the year. The claimant's view was that the SIP she had prepared which was a long list for discussion with YB and it was never refined because the meeting with YB on 27 September never took place. We accept this and feel that the claimant has been far too defensive in respect of the review process, and that its purpose was to assist her and was not set up to make her look inadequate. JB was at pains to point out he was not personally criticising the claimant.

103. A meeting took place on 1 November with Gill Burrows, Yvonne Brown, SLT and the claimant where it was intended they would discuss school priorities and the other findings raised by JB. Following this meeting the claimant emailed a list of six or seven priorities Gill Burrows. These were said: -

(i) Ensure that School Self Evaluation is robust and feed strategically into the 2016/17 SIP.

(ii) Ensure HA in all classes are challenged appropriately with particular emphasis on KS1 and that progress from EYFS to end of KS1 is at least good with some accelerated progress.

(iii) To ensure behaviour for learning is consistently outstanding across the school and teaching is matched to the needs of all learners. This is underpinned by a meaningful curriculum which is well planned and facilitated and which promotes engagement and independence.

(iv) Writing is a key priority in school, all pupils will make at least good progress with specified proportion pupils in each year group making accelerated progress in order to meet ARE.

(v) To further develop reasoning, problem solving and deep learning opportunities in maths curriculum in order to ensure children are at Mastery and some move to greater depth. There is an emphasis in all classes but especially in KS1.

(vi) To develop further phonics and spelling strategies to meet the needs of all groups and to challenge HA.

104. On 2 November the claimant said that YB told her that a further Inspector would be visiting the school at midday, Leszek Iwaskow and that she wanted the claimant to meet with him as he would be doing some work in the school on the curriculum at some point in the future. The claimant asked whether she could sit down with YB to discuss JB's report to which YB agreed but said not at the moment.

105. It was the claimant's evidence that YB had invited her to meet LI after he arrived. The initial purpose being to discuss the project he would be working on at the school. However, YB said no the claimant had in fact gate-crashed their discussion and that she then raised matters relating to the Gill Burrows review. LI supported YB's version of this and that she had only asked the claimant to pop in and say hello however the claimant came in with a note and then in effect highjacked the meeting by asking his advice on her six to seven priority action points which she had sent to Gill Burrows. LI responded to this and said he would address the issues in a different way and gave the claimant his views. YB was asked why she didn't stop the meeting if she was felt it was being highjacked, she said well the claimant seemed to find it useful and so she let it run on. On balance we find that this was not intended to be a formal review meeting but a friendly introduction and that it developed into something deeper which then caused confusion but that that was not the original intention.

106. The challenging high achievers issue was discussed in this meeting and Yvonne Brown went to get some books from the nearest classroom to assist the discussion. This included her son's books as he was a high achiever and Yvonne Brown noticed a marking error by the Year 5 teacher and began to criticise the teacher. YB said she had never referred to her son's books specifically it was about high achievers in general as this was one of the issues. The claimant said that YB went on to say that unless matters improved she would be taking her son out of the school and putting him in Bolton School, the local private Fee-Paying School. YB denied she said this on this occasion but that she had said that on a separate occasion in July 2016 in parents evening when she was attending as a parent, not at the meeting with Mr Iwaskow. She agreed that it would have been undermining if she had said that. We find she did say this on the balance of probabilities as she agrees she had her sons' books in the meeting and in the light of the fact the claimant's grievance letter refers to it.

107. There was then a discussion about the curriculum, the claimant said YB interrupted saying she wanted some subjects taught stand-alone while the claimant said that it was YB's decision to configurate the curriculum in the way it currently was arranged. There was some discussion about the book policy with YB saying the book policy was non-negotiable. Again, the claimant felt this was humiliating in front of LI as she was being instructed to do something when in fact she was the Head Teacher but as YB was CEO there would be matters she decided for the Trust as a whole.

108. The claimant was also disturbed by the meeting as LI said she had too many priorities, yet she understood these had been agreed with Gill Burrows. Gill Burrow's evidence was that the exchange regarding targets was the beginning of a process which then did not develop because the claimant was then absent due to sickness.

109. The claimant then had a conversation with Janet Shorrock by telephone that evening and JS told her that YB had talked to her about becoming Deputy Headteacher. JS said she was receiving mixed messages about the performance of the school and wanted it to be clear. In fact, JS had spoken to YB about resigning in that telephone call she was so dispirited by the review which she felt reflected a collective failure.

110. The claimant then attended a two-day conference returning to the school at the end of the day, on 4 November, the claimant said there was a discussion between YB regarding web design and YB commented that she, the claimant, didn't look well. YB commented it was probably all the stress in the last few weeks; the claimant said she felt YB had caused the stress.

111. The claimant advised she was meeting with SLT the next day and raised the fact that it was unclear what direction to follow because she had been given conflicting advice by Jonathan Brown, Gill Burrows, LI and YB. YB stated that the matters agreed at the meeting with Gill Burrows was simply the starting point and the priorities needed considerable refinement of focus during the process which was to follow. The meeting with Gill Burrows was

not a once and for all agreement. The claimant said she started to feel very stressed by this stage.

112. The next day YB sent an email to the claimant and SLT saying the following (page 337).

> "Dear All
>
> Although we are relaxing and not reading emails since the review I have done a lot of reflecting and some soul searching … I decided that Gill would be going to focus her work in Bradford and that you will work with Les, he is really positive and excited about working with you, he is hanging up his inspector hat and looking forward to curriculum design. We will then have consistent messages as I think Gill has muddied the waters a bit with different wording… the review is just to give us a steer on the next phase, it was never meant to cause additional stress for you. I am still the overarching leader of the organisation so I want you to take your steer from me and not external people".

113. She ended up stating "I believe in our school and in your ability to lead it and support others in the Trust. You are my A Team".

114. It was the claimant's case that this showed YB was aware mixed messages had been given out and that the claimant and SLT were stressed as a result of this. Also, that it belied later criticisms of the claimant in that she was being called part of the "A Team". YB stated yes things maybe had got a little confused unintentionally but it was not unresolvable and morale was low after the meeting with Jonathan Brown so she wanted to encourage everyone. We find this was perfectly reasonable reaction to the claimant's and other reactions and was a recognition that the process had been confusing.

115. On Monday 7 November the claimant went for a pre-arranged visit with her GP. She broke down at this stage and the doctor advised she was too unwell to attend work and she was signed off from a stress related problem, and high blood pressure for a period of two weeks.

116. The same day, LD contacted the claimant's husband to let him know that the respondent would be referring the claimant for an occupational health assessment with a view to obtaining a medical report. This was surprisingly quick however the respondent's sickness policy does say that there should be an urgent referral to occupational health where one of the reasons for the absence is stress.

117. The claimant initially went through a telephone assessment and was advised by the occupational health nurse as regards the Employee Assistance Programme. Following this the claimant's husband then spoke to LD who reported that YB had said that the school was prepared to make a small contribution to the costs of any talking therapy. The claimant found this hurtful, she was aware that in the past employees including the school Meal Supervision Assistants had received the full benefit of the EAP assistance.

> Accordingly, the claimant felt that she was being treated significantly worse than other of the respondent's employees**.** This appears to have resulted from some misunderstanding on the part of the respondent at the time that they had not renewed their EAP subscription on becoming the new trust, however, it was later discovered that they had and that the claimant was informed that EAP assistance was available. We did not hear from Louise Dunkerley as to whether YB had advised her to say this to the claimant but we think it is plausible that the school offered a contribution because it would be coming out of their own funding in the belief that the EAP funding was not in place anymore**.**

118. The occupational health report of 15 November stated the following:

> "It described the claimant as a full time Associate Head Teacher, she was reported to be absent from work with a stress related problem and high blood pressure. "Mrs Lingard explained the reason for this acute and disabling episode of absence and reports that perceived workplace pressures have contributed to this. I am not aware of any personal stress at the time of the assessment today. Mrs Lingard also tells me that she has been treated for high blood pressure for some time and her medical condition is normally well controlled with prescribed treatment however her GP has reviewed her blood pressure and she tells me that this was above the recommended parameters and that her blood pressure is now being closely monitored by her GP. Mrs Lingard is self-monitoring her blood pressure at home at the present time and taking regular readings to feed back to her GP.
>
> She described to me today stress related symptoms such as poor restorative sleep, inability to focus, physical symptoms such as headaches and feeling generally unwell and reports a reduction in her emotional resilience. This has been appropriately addressed by the GP and some time away from the workplace is likely to be beneficial at this stage. However, given that the perceived work place stressers are directly related to the circumstances in work the most important course of action will be to address the problem and to find a solution to the situation. It is my opinion that it would be helpful for you to enter into dialogue with Mrs Lingard about her concerns at a suitable and mutually agreed time. I have also advised that she may benefit from support through the Employee Assistance Programme provided by the organisation as this could be of value as regards her emotional resilience and ideally it would be helpful if she could attend at least two to four sessions of therapeutic intervention prior to considering a return to work.
>
> **Opinions/Recommendations**
>
> In my opinion Mrs Lingard is likely to remain unfit for work for the next two to four weeks to ensure that her blood pressure control improves and to assist with aiding and improvement in any stress related symptoms to ensure a sustained return to work and improved health and wellbeing. In response to your specific questions:-

- I am unable to predict a specific return to work date at this stage as Mrs Lingard's blood pressure control needs to improve as if untreated Mrs Lingard is at greater risk of increased complications.

- The prime resource of any ill health is considered to be work related you may wish to consider in the next two to four weeks or in the preparation for a return to work the use of a stress risk assessment with a primary focus on change and demands in the workplace as this can help to clearly identify work related stress and will help to explore solutions. I have no temporary adjustment or restrictions at this stage as Mrs Lingard is considered medically unfit for work in any capacity at the present time.

In my view Mrs Lingard is likely to render reliable service and attendance into the future with a resolution of any perceived work place pressures and with improvements in her blood pressure control and sustained wellbeing. If the stressers are addressed the impact on performance and attendance is likely to be minimal. Her current stress related symptoms of poor restorative sleep and ability to focus are likely to temporarily impair her performance in work in the short term. In my clinical opinion Mrs Lingard is fit to continue in her current post once sufficient recovery has been made and with improved blood pressure control".

119. There was no suggestion that these symptoms had persisted for years or that they could not be resolved if the workplace issues were resolved. Neither was there any suggestion the claimant's symptoms would t last for 12 months or were likely to last for 12 months at this stage.

120. On the 16 November YB wrote to the claimant inviting her to a welfare meeting on 30th November to talk about the occupational health report and explore any help the school could provide. In addition, the respondent's then solicitors in house HR expert had contacted the claimant's union representative Max Atkins about the meeting and he then contacted the claimant. The claimant was shocked that they had done this without speaking to her, this had been done in order to secure his attendance at the welfare meeting but he advised her he needed to speak to her beforehand. She also sent Mr Atkins the occupational health report without the claimant's agreement.

121. On 16 November a note from the respondent's then solicitors HR advisor (which had been ordered to be disclosed at a previous hearing) stated the following:

"I'd like to move on in detail about Debs, she has gone off sick with high blood pressure and stress at work. She has not contacted Yvonne and her husband has spoken to the Head's PA, Debs has only stepped up to the position of Headteacher in September 2016 and Yvonne had concerns of whether she was up to it. Yvonne has worked

> alongside Debs for a long time and offered a lot of support but also stated job of headteacher is stressful. She feels Debs will not want to come back and they may need to consider a settlement. I have spoken to the NUT Union Rep Max Akins for Debs and we have agreed a date for a welfare meeting on 30 November at 2pm, the welfare invite has gone out to Debs, the union rep is open to having discussions about the best way forward and will come back to me once he has spoken to Debs".

122. A note of a call with Max Atkins between him and the HR Advisor on 25 November said:

> "Call with Max re TPS. Spoke to Debs and she has concerns with the Max School Improvement Officer, she feels he has piled on the stress, she wants to get better and come back to work, she just needed a break to get better, the welfare meeting is happening off site on 30 November, need to update Max where, called Yvonne to give her an update and left a message".

123. On 30 November prior to the meeting HR records "called Yvonne re Debs, she wants to ensure we are ok for today's meeting she does not want Debs back, today is a welfare meeting to discuss Deb's occupational health report, her absence and what her stressers are, she is not coping well with the job. Yvonne doesn't want her to come back as she feels she is not managing the job well. I advised the process of today's meeting would be to discuss her health and her work perceived related distress and after I will approach Max about Debs potential return to work and what Yvonne wants". Denied this was an accurate note of what was said however there was no reason not to accept it but it was clear YB reasoning was that the claimant was not coping with the stresses of the job now she was in the driving seat.

124. There were two notes of the welfare meeting, one the claimant's and another Mr Atkins. There was none from the respondent. As this is one of the issues the claimant complains about in relation to her constructive unfair dismissal we will provide the minute in full from the claimant, the union representative's minute is similar although there are some additions regarding the conversations he has had separately with the claimant, YB and the HR Officer etc regarding settlement.

125. The claimant's note selectively states as follows:-

> "Discussion re stressers
>
> DL stated she felt the review had been unfair and critical and then elaborated further on a number of issues and this triggered her present episode of stress. YB was at times unable to see DL's view, YB stated that the review was fair and accurate despite previously telling DL there was nothing to worry about, as CEO she felt she had an overview and a different perspective. YB stated the reason DL felt stress was that DL was now in the head's seat and that previously YB had led reviews,

DL acknowledged the change but stated despite the stressful job she didn't feel she should turn up for work and be subjected to that level of stress and the feelings associated with how the review had been conducted. DL again related she felt it was a negative experience. This was not acknowledged by YB. In fact, it was stated this was to remain the resumed despite DL stating it was a stresser.

YB stated that the trustees demanded the regime of termly meetings and reviews and stressers that came with them. There were to be accountability meetings and reviews termly and JB would be the reviewer. YB stated DL was the only Head who thought his approach was objectionable. DL stated she was asked why she hadn't done the Senior Leadership Team's PM's. (performance management) DL stated she had been told by a previous consultant (Karen Ardley) to do this later. This was dismissed by YB as not good advice. DL had stated during the review that she would rectify this and carry them out prior to the deadline as per the original plan and this had been done. Despite DL stating that in her opinion she had already had her performance review YB stated that YB and JB would be her reviewers – no debate YB asked DL to send her Karen Ardley's set objectives, DL had previously discussed this with YB and been told to disregard KA's information so DL had felt it was unnecessary to send it on".

126. Other matters were discussed such as the claimant having a mentor and having one to one meetings. There was a discussion about the EAP counselling where the claimant said she was told no EAP was available, but at this meeting YB stated there was but didn't provide any further information. The claimant had already arranged private counselling by this stage and did not follow up the issue. She was not eating or sleeping properly and her blood pressure had not stabilised. DL talked about the mixed messages issue and was accused of hijacking a meeting with a HM colleague with YB i.e. LI. It was stated by DL that she had found some information from the person beneficial and she did not agree to the hijack accusation.

127. YB asked the claimant did DL consider she wanted to be in the seat to be accountable as nothing was going to change, did she consider that is what she wanted as the stressers wouldn't change. DL stated she did not want to answer that question at this time as she didn't feel well or able to do so at this time. YB then stated there would be on the table discussions when she returned, when challenged by DL YB declined to elaborate stating it would happen when DL was well. YB stated it was regrettable things had come to this after twelve years. DL asked what was meant by that as the situation was regrettable but the health issue had dictated it. DL explained that a doctor's appointment was already booked and the situation presented itself that morning. The doctor stated it was best she went home and signed off to have time off thinking about work. It was not an intentional thing but one reacted to how DL's immediate health had presented to the doctor. DL asked if the roles and responsibilities meeting had taken place which it had. She stated it would be useful if there was clarity about that when she returned. YB stated DL now had a job description which could be sent via

post although it was generic it reflected the National Teaching School element of the job. YB reflected the pressures again regarding the needs of running a 400 plus pupil school and it was an NTS etc relating to commitment and hours and was that something she envisaged as a pressure for DL to be discussed, no comment given by DL. DL was to see her doctor again on 5th December and DL agreed to communicate on that day about the status of her sickness absence. YB stated DL needed to be well to return but not to rush as Janet Shorrock had been seconded to Acting Head.

128. The trade union official's notes recorded that the review and the build up to it felt quite destructive, that she felt the conversation re Jonathan Brown where he said the school was vulnerable and requires improvement but then the next day said he hadn't said that was confusing. That he had been positive in the meeting with her but negative with others and YB said that DL was breaking the law by not doing the SLT Performance Management Reviews by 31st October. YB did say that the pressures don't go away, they will still be there when she returns and YB had said she didn't know why the claimant had gone private for counselling as EAP is accessible to employees of the respondent trust.

129. In the meeting the claimant indicated that she planned to return on the first day of the new term 9 January depending on what the GP said about blood pressure and how she gets on with the counselling.

130. After the meeting in the conversation with the claimant MA agreed that YB did not seem to want the claimant back given her negative comments in the meeting. A settlement agreement was discussed as Mr Atkins knew this would be a point of discussion when he returned to the meeting. DL said she would want at least six months' pay. In the meeting with the HR and YB they were offered two months' pay if the claimant finished by 31 December in response MA put the point that the claimant would not leave for less than six months but YB said they couldn't afford that but would look at what four months' pay was equated to. With ongoing costs, it would be £25,000, MA asked what if the claimant refused the offer and came back to work on 9 January as planned. YB said she would be put on a capability procedure because of concerns raised by JB in his review. MA

131. On 1 November a without prejudice offer was made, the without prejudice offer went to Mr Atkins on 30 November. This stated that:

> "as discussed the main objective of the meeting was to support Mrs Lingard in a swift recovery and to return to work. Mrs Lingard has been absent from work due to perceived work stress following feedback she received from the MAT's School Improvement Leader. Mrs Lingard felt the feedback was incorrect but the MAT has highlighted that the School Improvement Report was factually correct and has highlighted performance concerns in regard to Mrs Lingard. These performance concerns will need to be addressed via the capability procedure upon Mrs Lingard's return to work".

132. It then went on to make the without prejudice offer and on December 1 Mr Atkins wrote to the claimant:

> "Yvonne has wasted no time letting you know what we thought yesterday – that she wants you out. She asked me if you would accept a settlement agreement see below and I said I would ask but it depends on what the terms were … Please note the last sentence in the opening paragraph re you will face capability proceedings if you go back, Yvonne told me the offer would also be withdrawn".
>
> Mr Atkins advised accepting the offer which included an agreed reference he also stated, "I know you were considering leaving anyway but probably not so soon, they want you out so it's best to leave with some money and a decent reference and go somewhere where you are wanted and your experience and expertise will be valued".

133. However, on 2 December the claimant replied: -

> "Max, I was shocked to receive your email and digest its contents. This has placed me under more stress and I have suffered significant physical symptoms as a result".

134. She was concerned that the settlement negotiations were not consistent with the aims of the welfare meeting. She stated she was not considering leaving given the context of her exemplary 24-year teaching career. She says, "given the gravity of your email I need to be very clear how this situation came about, could you therefore provide me with full details of any and all prior or subsequent discussions to Wednesday's meeting …"

135. There then must have been further conversations on 8 December, the claimant was complaining that the NUT rep was not engaging with SAS Daniels and Yvonne Brown to tell them how she felt and she withdrew her instructions from him. She asked for minutes of the welfare meeting and again, the settlement agreement's genesis.

136. The claimant then took legal advice on 16 December. Her solicitor then advised the respondent's solicitors that the claimant was going to bring a formal grievance. Discussion between the solicitors showed that the initial response was that the grievance would be dealt with as part of 'the capability - disciplinary process'.

137. LI provided a report around this time critical of the schools' approach on the curriculum LI elaborated on his complains in Tribunal mainly in relation to the untidiness of the science cupboard. We did not see how this could be perceived as a devastating criticism of the claimant given that it was surely completely professional to rely on the science department to be responsible for the cupboards maintenance.

138. On 24 January 2017 the claimant sent her grievance letter to the Chair of Governors Mr Wilson. At this point in time the claimant had not seen

occupational health again and no further contact had taken place with the school.

139. This is an extremely long letter but the claimant states that:-

> "Yvonne has placed me under such unfair and intensive questions and conflicting directions that my normal resilience has been overcome and I have been forced to take time off sick. She has then made matters worse and caused my condition to worsen by her persistent actions and threats while I have been on sick leave".
>
> To summarise her complaints:

Handover

140. The first heading was lack of handover of role, she said there was no handover of a role from Yvonne, no meetings were held and there was nothing formally stating Yvonne had relinquished control and authority to her, there was no job description, no contract, nor had the claimant received the promised pay rise, neither had her formal appointment been announced.

Jonathan Brown review

141. The next issue was the Jonathan Brown review on the 18 and 19 October. The claimant said she had arranged a pre-meeting meeting which was then cancelled, the claimant thought this was a very important meeting and she recorded that she tried to re-arrange it but this proved not possible. She also recorded that YB had said at the time "tell Debs not to stress about it I have had to go and do something else we will meet at another time". The claimant said she felt exposed during the review and that Yvonne was undertaking a review with Jonathan Brown and joining in on criticism of the school and of the claimant. The claimant believed Mr Brown and YB criticised the SIP and SEF format even though in the claimant's view it was a format that YB had previously used. There was no defence of the school when JB criticised it.

Divisive Feedback from Review Number One

142. She noted that the written report had been kept from everyone but Yvonne. Something in Yvonne's verbal comments at the time of the review suggested at JB was saying the school requires improvement and that senior leadership lack capacity. SLT requested to see the report to challenge the assertions but no one ever received a copy. The claimant also believed that YB was to amend the report before it went to the Governors.

Divisive Feedback from Review Number Two Gill Burrows Tuesday 21 November 2016

143. The claimant said that seven improvement points were agreed on which she had determined herself prior to the JB review.

Review Meeting Number Three LI 2 November

144. She stated on 2 November she was informed by YB that a third external consultant LI would be attending school and I was to make myself available for a chat. The claimant said "the meeting turned out to be a far more significant one with Yvonne stating that the review (Review number 2 the previous day with Gill Burrows) who had also been involved in Review number 2 and seven improvement points were now to be replaced by LI's points which comprised five improvement points instead. Yvonne stated Gill Burrows was more suited to the Bradford schools,' this made me feel confused and increasingly anxious as to the actual direction Yvonne required, especially as Gill whose points were now apparently to be ignored had taken part in review number one.'

AZ's **Books**

145. The claimant records that her feelings were further and significantly affected in the meeting with LI, YB was levelling criticism against her for things YB was responsible for, namely the ongoing issue of challenging higher achievers. YB left the room to get evidence to criticise the claimant with and brought the books for her own son **AZ** in to the meeting. She said that she had included high achievers in her SIP as she knew it was a weakness of the school. 'She said that YB went on to say to LI and herself that if it wasn't sorted she would remove **AZ** to Bolton School, this was very humiliating and undermining'

Ill health /EAP

146. She said she started becoming ill the following day, she attended a conference and returned to TPS on Friday at lunchtime. On the Monday she had a longstanding appointment with her GP where she broke down and her GP declared her unfit to work for two weeks. On 15 November after seeing occupational health she tried to use the Employee Assistance Programme, the company advised they were no longer acting for the school, the claimant's husband rang the school who said they were prepared to contribute a small amount to whatever it was Deborah needs as she has been here for a few years. She noted that YB now claimed there was an EAP in place but offered no details of contact numbers.

Senior Leadership Team Concerns

147. This was basically saying about how the SLT had received mixed messages, that the claimant felt YB was disrupting her team even though the email of 5 November to the team was designed to appease but also announced YB was to increase her involvement of the running of TPS which again undermined the claimant.

Welfare meeting of 30 November at Dam House, Astley

148. The claimant complained that her union officer had been invited without discussing it with her. The claimant said she didn't want him to be present and felt it would be better that they could discuss issues alone. The meeting she felt was unhelpful, that she said that the stress had been the disruptive and conflicting nature of the reviews and the comments made but that YB was aggressive and leant across a table and said did I want the job as the stressers were not going to change, was I prepared for the accountability that went with it. At the end she said, "don't rush back as Janet is Acting Head" which she felt was designed to hurt her pride. The claimant was surprised by the settlement offer, she felt that YB's actions were inappropriate and demonstrated her intentions. It was not to discuss the claimant's welfare but to discuss a possibility of the claimant's employment ending.

Incorrect assertions and capability threat

149. The claimant then referred to the overall situation mentioning that she felt Yvonne favoured someone younger with more years to give, someone who she believes may be less susceptible to suffering from stress. This was an allegation of age discrimination.

Yvonne's email of 5 November 2016

150. This was the 'raising the spirits' email. The claimant said it contained deep contradictions regarding the health status of the school but still apparently the need for Yvonne's continuous intervention. I also questioned her role in the review and review meetings which is deeply unsettled the Senior Leadership Team with her different stories. The claimant complained of the pressures and stresses of going through three ultimately contradictory review meetings within two school weeks and to pay for three expensive and differing reviewers when in the end she said, "I want you to take your SIF from me and not from external people". She complained about the level of expenditure.

Ad Hoc Meetings

Performance Allegations Additional Threats

151. She stated she was upset about the offers to settle the matter and leave and then for the solicitors on 15 December to state that there would be allegations regarding the claimant's performance if she did not accept the settlement. This was the first time she had been off work on long term sick and that she was being threatened with both the capability and the sickness management procedures**.** The claimant believed that the allegations had tried to cover up the facts that the motivation for the offer was the fact that the claimant was absent with stress, stress she believed had been caused by YB coupled with her wish to effectively replace me with someone younger without health issues and with more years of service to give. She stated it was not credible that in six weeks as Head of school she had become grossly incompetent

after fifteen years and that her email of 5 November did not suggest anybody would lose their livelihood as a result of reviews (**i.e. the claimant).**

152. There was then a list of grievances numbering 31.

Next steps

153. There were further settlement discussions which were disclosed in the bundle in the subsequent period and the school said this is why they did not respond to the claimant's grievance in full immediately. Mr Wilson wrote back to the claimant on 17 February a letter headed "without prejudice" although it didn't contain any settlement offers. He asked whether the claimant would be prepared to resolve the matter informally?.

154. Meanwhile the school had changed legal advisors and the new legal advisor had started to take statements regarding the claimant's lack of capability including one from YB on 27 February. Also interviewed by BS on that day were Julia Buck, Diane Atkin, Caroline Gore, Janet Shorrock, Rebecca Kenyon, Louise Dunkerely (PA to YB now operations manager of the Trust).

155. Mick McKenna a teacher who had left and now had his own headship was interviewed on 2 March. Further follow up interviews took place on 10 March

156. The claimant of course was unaware such interviewing was taking place.

157. One of the issue which the interviewees were asked about was the process for completing their appraisals at the end of 2016. As referred to above the claimant said she had been advised by KA to delay the appraisals, YB had stated that was bad advice and suggested that this could be a breach of legal obligations. Accordingly, the claimant had then undertaken to do them as quickly as possible. However, the issue the respondent has now raised refers to 2015.

Appraisal issue

158. YB had learnt that the appraisals had not in all cases been physically signed by the appraisee although there were signatures on them they were not in all cases the actual appraisee's signature. However, the examples we were referred to were from 2015 and appear unconnected to the 2016 issue.

159. At the hearing some of the appraisees agreed they had gone through the appraisal with the claimant, agreed it and C may have then signed it for them (Rebecca Kenyon, Diane Atkin), Helen Quine knew some reviews had taken place but the final one she could not remember although she did not go so far as to say it had never happened, although again the signature was not hers. However, JS's evidence was unequivocal - it was simply not her signature and it was suggested that the appraisals had been falsely completed.

160. Michael McKenna's evidence was that no appraisal process had been undertaken with him in 2015 at all, neither was there any evidence of one**.** He

had been on secondment 2013-2014. He had returned to the school and taken 6 weeks adoption leave in 2014/5. As a result of some issues he was, unfairly in his view, put on a support plan in 2015. A meeting was set up to begin the appraisal process but he was unable to attend due to timetable changes, he stated that DL blamed him for not attending. However no further appraisal or mid-year review meeting took place. We accept therefore the appraisal process was not undertaken for Mr McKenna nor, on the other hand, was there any allegedly forged documentation**.**

161. Accordingly, as there was some area of doubt we find on the balance of probabilities that appraisals were undertaken with the appraisee seeing the appraisal on line and agreeing however we accept that the paper copies were signed by the claimant on behalf of the appraisees. In respect of Janet Shorrock her recollection was clear and we do not doubt her credibility but given the evidence that the others did take place we find that her recollection on the balance of probabilities is at fault.

162. The respondent described these signatures as forgeries, we do not take that view in many cases it was all agreed therefore it was simply a time saving if incorrect procedure to adopt.

163. In the interviews there was some criticism that the claimant was disorganised and did not give staff enough guidance. On 3 March LI provided a critical statement. Clearly these were to provide the material for the disciplinary action the respondents legal adviser had referred to and to which BS would also soon refer. As this never developed in the light of the claimant's resignation we do not know why a disciplinary rather than a capability process was being considered.

Grievance process

164. The claimant replied on 2 March to Mr Wilson's letter. The claimant said that it was not appropriate for this to be dealt with informally and she pointed out that as it referred to allegations of discrimination (i.e. the age discrimination point) that it should be dealt with under dignity at work policy and she included a copy of the formal complaint form. She stated, "as I am not well enough to discuss this particular matter with anyone else at the moment I would request that you respond to my grievance/complaint in writing, in the meantime if you require any further information from me in order to investigate my concerns please do not hesitate to contact me in writing and I will respond as swiftly as I am able".

165. Mr Wilson replied on 10 March acknowledging receipt for the dignity at work claim and stating that Mr B Spence of the claimant's lawyers would be in touch if there was a need for clarification and in accordance with her wishes all communication would be in writing. He asked her to write to himself directly in future although he would not be directly involved.

166. Louise Dunkerley, now Operations Manager of the Trust then wrote to the claimant on 13 March stating that she had indicated she was not well enough

to speak to anybody about the ongoing employment issues and as at this point her absence appeared to be long term. Consequently, the respondent requested she attend a medical appointment with James Smith, a registered Psychologist and offered her dates to do so.

167. On 20 March instead of replying to that letter the claimant replied saying that although it would be difficult to have a meeting if it helped shorten the grievance review process a meeting with HR, Mr Spence would be preferred if it could take place at her home with her husband available for support. Mr Spence replied the same day and said he would attend the next day at 1.30

168. There was a minute of this meeting which was taken by Mr Spence's assistant. The claimant was expecting this to be a meeting to resolve her grievance although experience would lead the tribunal to conclude that that was never going to be a realistic possibility as no investigation had yet begun into the claimant's accusations, BS might well have gone through her letter for further clarification, however, in any event that is not what occurred.

169. They understood that the claimant wanted to speed up the grievance procedure, however in Mr Spence's view this was never going to be a grievance hearing it was a chance for the lawyers to hear the views and solutions that Mr and Mrs Lingard may wish to put forward. Mr Spence began by saying that the employers wanted her to see a Psychologist to confirm she was fit to carry on with the process and to ascertain whether she was able to return to work.

170. In Mr Spence's view Mr Lingard became aggressive raised his voice and interrupted Mr Spence and stated that the lawyers were just trying to drag things out and make the process even longer for his wife. Mr Lingard was asked not to raise his voice and to let Mr Spence finish what he wanted to say. Mr Spence confirmed that the lawyers had recommended that a qualified Psychologist should assess Mrs Lingard and produce a report but as the Lingards were expecting a grievance hearing to take place Mr Lingard continued not to be happy with this. It was also advised to the Lingards that a disciplinary process had started and that he Ben Spence would be the impartial investigating officer. Mr Spence went back to the Psychologist appointment and put forward some alternative meeting places and times, he said it was possible for the Psychologist to come around to the house and that she would be able to see the report before it was finalised, he explained that she could not be forced to see but at the same time decisions needed proper information. Mr Lingard became aggressive and stated to his wife "just tell them Deborah that you are not going".

171. Mr Lingard then wanted to question BS on the grievance hearing but BS confirmed that any invitation to a meeting would take place by a letter the was because the claimant had so far said she did not feel well enough to attend any meetings but the policy recommended speaking to the person and therefore they wanted a Psychologist report for that purpose as well. She could have a trade union rep or a work colleague but not her husband due to his conduct in this meeting. Mr Lingard began to raise his voice but then

stood up and said "man to man please do the meeting now I will not be in the room I am going for a walk". We accept that Mr Lingard was aggressive in this meeting, the parties were at cross purposes as the claimant and her husband had expectations the matter was to be resolved and Mr Lingard got frustrated when it became apparent it was not. We also rely on the fact that Mr Lingard did not give evidence to refute the allegations.

172. Mr Spence then explained to the claimant that he wanted to wait until either she confirmed or refused to see the Psychologist before any formal grievance meeting to take place. Therefore, no formal grievance meeting could possibly take place today at their home address and he asked her to confirm whether or not she would see the Psychologist.

173. Mr Lingard asked when it was likely to get resolved, would it be before Easter, Mr Spence said as Easter was only a week off that this would not happen as it would be after Easter which appeared to anger Mr Lingard and he requested the time frame be stated in the minutes.

174. The next day Mr Spence wrote a letter to Mrs Lingard describing Mr Lingard's behaviour as totally unacceptable, he was rude, aggressive and disruptive,' I had to ask Ian on several occasions to let me finish talking and to refrain from raising his voice at me in an aggressive manner.' He said as such Ian Lingard would not be entitled to attend any future employee meetings and nor would these be held at your home address and he said that the minutes would be sent to her which would support this view. He re-iterated the Psychologist's available appointments and asked her to let him know if she would attend, even though Mr Lingard had stated she would not be doing. He said, "we both agreed we felt it was in everyone's best interests to revolve the grievance as soon as possible and that she would be invited to attend a grievance meeting as soon as possible to discuss her grievance in detail" but also, she would be invited to attend a disciplinary investigation on the same day and would be informed of the allegations in writing, he asked her to confirm by midday Thursday 23 March whether she would attend the Psychologist's appointment.

175. On 23 March the claimant wrote to Mr Wilson resigning. She stated that she did not have any confidence in the process after Mr Spence's visit, she felt Mr Spence's conduct and handling of the meeting along with the complaints raised in the grievance letter left her with no alternative to resign from her employment at TPS. She stated "the purpose of the meeting was to provide Mr Spence with the opportunity to discuss the basis of my grievance in more detail given that he had been appointed by the Trust to investigation my concerns, I was therefore disappointed to find that Mr Spence had no intention discussing my grievance when we met. Instead he stated he could not progress the grievance until he was either in receipt of a medical report from a Consultant Psychologist appointed by the Trust or, had confirmation from me I was not willing to engage in the process. He then went on to inform me that if I declined to attend an appointment this would be treated as a further instance of me refusing to cooperate. I was then told there were only two appointments available for me to attend, one of which was the following day in

the Wirral and the other being on Friday 24 March which gave me hardly any notice. ‘

176. The claimant went on to say she has not refused to attend an appointment and had stated she was willing to attend a face to face meeting with a person appointed to investigate her grievance. She did not see why obtaining her agreement to attend a consultation was necessary in order to hear the grievance. She said “Mr Spence had said it was necessary because the Trust was proposing to hold disciplinary investigating meeting with myself immediately after my grievance meeting. Bearing in mind the nature of my grievance however and the fact is that it is inextricably linked to a subject matter of disciplinary allegations I am concerned that the Trust remains determined to pursue these matters at this stage without giving any consideration to the possibility that my grievance may be upheld given that if this was the case will be no need to conduct a disciplinary investigation on the basis that I believe the allegations raised by Yvonne Brown to be spurious. During the meeting I became visibly upset, in response to which my husband Ian implored Mr Spence to progress with the grievance in order to safe me the distress of any further meetings, I explained that I was disappointed at the Trust’s delay in taking any steps to deal with my grievance bearing in mind that it had been submitted eight weeks earlier on 24 January yet there did not appear to be any evidence of the Trust making any genuine or reasonable efforts to deal with it. In response to this Mr Spence informed me that the Trust was unlikely to reach any conclusion until after Easter which would be three months after my grievance had been originally submitted. It was at this point that he then went on to inform me that in order to progress it any further he needed me to confirm whether I was prepared to attend a meeting with a Consultant Psychologist …. Mr Spence’s attitude throughout the meeting was extremely unhelpful and at times I found him to be difficult and uncooperative, it was abundantly clear that he arrived at the meeting with no intention of discussing the basis of my grievance as planned but instead to address the issue of my willingness to attend an appointment with a Consultant Psychologist instructed by the Trust for reasons which are irrelevant for the purpose of dealing with my grievance. To my amazement I received a letter the following day from Mr Spence, the contents of which are not factually accurate and do not provide an accurate reflection of how the meeting was conducted. ‘

177. She then went on to say that he appreciated she would be pursuing her complaints via the Employment Tribunal. She also raised the fact her pay had not been increased since she became Head of the school.

178. Mr Wilson replied stating how disappointed he was, he agreed that she hadn’t received the pay rise that she was promised and he would ensure that that was undertaken and that remuneration would be transferred, he also asked her whether she wanted to liaise with her colleagues or parents regarding her resignation and arrangements to collect her personal belongings.

179. The claimant subsequently issued these proceedings.

Updated Medical Information

180. The claimant's hypertension expert Mr Galasko advised that the claimant's symptoms of palpitations, headaches, poor sleeping were not due to what was her mild hypertension. He stated her hypertension was not such as to have an effect on her ability to undertake day to day activities. He suggested obtaining a psychiatric report to ascertain whether her symptoms could be the result of a psychiatric condition

181. A second report was then agreed and a Dr Britto was instructed. He diagnosed the claimant as suffering from Generalised Anxiety Disorder, the symptoms being headaches and fatigue in 2014 to an inability to concentrate, poor sleep and emotional vulnerability of which the claimant was not aware until 7 November 2016, he said this led to a major depressive disorder of moderate severity starting in September 2016 leading to her sickness absence on 7 November. She had continued to suffer from this onto 20 March and thereafter although on 5 May 2018 when he examined her she still had an anxiety disorder but an improved depressive illness and he did not believe at that point in time she fulfilled the criteria of disability.

182. In his report Dr Britto stated that the employer was unlikely to be aware of the claimant's condition and in a second report said there was no evidence of any effect on day to day activities before 7 November 2016.

183. The respondent had then requested their own medical report which was agreed and was undertaken by Dr Kaushal, he stated the claimant was presenting with symptoms meriting a diagnosis of moderate depression, isomatic syndrome ICD10F32.11. That it has fluctuated but its onset is credibly pegged to the first mention in the GP's notes in November 2016, he believed that the initial symptoms were associated with the Menopause and that the development into general anxiety disorder was probably contributed to by organisational stress but that that was not his area. He noted there was no mention of work related stress from mid-2014 until November 2016. He concurred with Dr Britto's opinion that she suffered from a mental impairment that has substantial effects which by this stage had lasted 12 months, he classed it as moderate depression with isomatic syndrome i.e. mood disorders with moderate depressive episodes and believed she had suffered from it from around the middle of 2014 as a result of the Menopausal syndrome, following this report the respondent's conceded the claimant was disabled but did not concede that they had any knowledge of the claimant's disability.

The Law

Disability Discrimination

Disability status

184. In view of the knowledge issue (see later) it is relevant to consider Section 9 of the Equality Act 2010 which says that:-

"(1) A person (P) has a disability if –

1. P has a physical or mental impairment; and

2. The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities…

(2) This Act (except part 12 and section 190) applies in relation to a person who has a disability as it applies in relation to a person who has a disability; accordingly excepting that part and that section) –

(a) A reference (however express) to a person who has a disability includes a reference to a person who has had the disability; and

(b) A reference (however express) to a person who does not have a disability includes a reference to a person who has not had the disability."

185. A long-term adverse effect" is defined in Schedule 1 as:

"(1) The effect of an impairment is long-term if –

3. It has lasted for at least 12 months;

4. It is likely to last for at least 12 months; or

It is likely to last for the rest of the life of the person affected."

186. There is a statutory code of practice to be taken into account in determining questions relating to the definition of disability issued in 2011, the relevant parts of this are as follows:

A1. A person has a disability for the purpose of the Act if he or she has a physical or mental impairment and the impairment has a substantial or long term adverse effect on his or her ability to carry out normal day to day activities.

A2. This means that in general:

(1) The person must have an impairment that is either physical or mental (see paragraphs A3 to A8).

(2) The impairment must have the adverse effects which are substantial (See Section B.

(3) The substantial adverse effects must be long term, See Section C; and

(4) The long term substantial effects must be effects on normal day to day activities, see Section D.

187. Whilst it is not necessary for the cause of the impairment to be established the effects that are experienced must arise from the physical or mental impairment. B1 concerns the substantial adverse effect requirement and defines it as follows "a substantial effect is one which is more than minor or trivial". The following matters should be taken into account, the time taken to carry out an activity, the way in which the activity is carried out and the cumulative effects of that impairment and how far a person can be reasonably expected to modify his or her behaviour with coping and avoidance strategies to prevent or reduce the effects of an impairment on normal day to day activities. The effects of the environment should be taken into account and in relation to the effects of treatment that should be discounted and includes therapies as well as drugs.

188. In respect of "long-term", the meaning of long-term is set out at section C1 as follows:

"The Act states that for the purposes of deciding whether a person is disabled a long-term effect of an impairment is:

(a) which has lasted for at least twelve months; or

(b) whether the total period for which is lasts from time from the first onset is likely to be at least twelve months; or

(c) which is likely to last for the rest of the life of the person affected."

189. Section D addresses normal day to day activities. This is no longer defined as is explained in Section D2 but general day to day activities are seen as shopping, reading, writing, having a conversation, using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport and taking part in social activities. It can include general work-related activities, study and education related activities, interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, keeping to a timetable or shift pattern. They did not include activities which are normal for a particular person or a small group of people however it is not necessarily which is carried out by the majority of people.

190. Section D17 states that some impairments may have an adverse impact on the ability of the person to carry out normal day to day communication activities, for example, they may adversely affect whether a person is able to

speak clearly at a normal pace and rhythm and to understand someone else speaking normally in the persons native language. Some impairments could have an adverse effect on a person's ability to understand human non-factual information and non-verbal communication such as body language and facial expressions. Account should be taken of how such factors can have an adverse effect on normal day to day activities. Examples given of a man with Asperger's Syndrome finds it hard to understand non-verbal communication such as facial expressions and non- factual communication such as jokes, he takes everything said very literally.

191. Section D19 says a person's impairment may adversely affect the ability to carry out normal day to day activities that involve aspects such as remembering to do things, organising their thoughts, planning a course of action and carrying it out, taking new knowledge and understanding spoken or written information. This includes considering whether the person has cognitive difficulties or learns to do things significantly more slowly than a person who does not have an impairment.

192. In the case of **Morgan v Staffordshire University [2002] EAT** useful guidance was given in respect of mental impairment such as relied on here, even though this was originally in relation to the Disability Discrimination Act 2005 including as follows:

> "Tribunals are unlikely to be satisfied of the existence of a mental impairment in the absence of suitable expert evidence, however this does not mean that a full Consultant Psychiatrist's report is needed in every case, there will be many case where the illness is sufficiently marked for the claimant's GP to prove it, whoever deposes it will be proven for the specific requirements of a legislation to be drawn to that person's attention. If it becomes clear that despite a GP's letter or other initially available indication an impairment is to be disputed on technical medical grounds then thought will need to be given to further medical evidence. The EHRC Employment Code makes it clear that the term mental impairment is intended to cover learning disabilities".

193. Regarding whether the impairment is likely to have lasted 12 months where it has not actually lasted 12 months at the time of the alleged discrimination paragraph C3 of the guidance states that the test for this is if "it could well happen". In **SCA Packing Limited v Wall [2009] HL** the test of "it could well happen" was endorsed rather than more probable than not and it was explained that likely meant something that was a real possibility rather than something that was probable or more likely than not. The issue of how long an impairment is likely to last has to be determined at the date of the discriminatory act and not at the date of the Tribunal hearing. Anything that happens after the date of the discriminatory act is not relevant. Account should be taken both of the typical length of such an effect on an individual and any other relevant factors specific to the individual such as general state of health and age.

194. Paragraph B6 of the guidance also states that account should be taken of multiple impairments. Where none in isolation has substantial adverse effects account should be taken of whether taken together they would do.

195. In respect of determining the question of disability the tribunal should disregard the effects of medication (Paragraph 5(1) Schedule 1. The tribunal should also take into account how far a person uses coping strategies to manage their condition and if without them there would be a substantial adverse effect bearing in mind what behavioural modifications it would be reasonable to expect the person to adopt in any event.

Section 15 – discrimination arising out of disability

196. The claimant makes a claim under section 15, something arising in consequence of disability. Section 15 states that:

> "A person (A) discriminates against a disabled person (B) if –
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability; and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim."

197. An employer also has a defence to a section 15 claim if they can establish they had no knowledge of the claimant's disability (section 15(2)) or that they could not be reasonably expected to know the claimant was disabled. The employer, in accordance with the EHRC Employment Code, must do all it reasonably can to find out if the person has the disability, and knowledge held by the employer's agent or employee, such as Occupational Health adviser etc., will usually be imputed to an employer.

198. In **Hardys and Hansons PLC v Lax [2005]** Court of Appeal it was said, in respect of justification (i.e. 15(1)(b)):

> "It is for the Employment Tribunal to weigh the real needs of the undertaking expressed without exaggeration against the discriminatory effect of the employer's proposal. The proposal must be objectively justified and proportionate…A critical evaluation is required and is required to be demonstrated in the reading of the Tribunal. In considering whether the Employment Tribunal has adequately performed its duty appellate courts must keep in mind the respect due to the conclusions of the fact-finding Tribunal and the importance of not overturning a sound decision because there are imperfections in the presentation. Equally the statutory test is such that just as the Employment Tribunal must conduct a critical evaluation of the scheme in question, so the appellate court must critically consider whether the Employment Tribunal has understood and applied the evidence and assessed fairly the employer's attempts at justification."

Direct Discrimination

199. Direct discrimination is set out at Section 13(1) of the 2010 Act which says that direct discrimination occurs where "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. It includes someone who is perceived to have a protected characteristic or who associates with someone who has a protected characteristic however these matters were not relied on in this case, rather stereotypical assumptions were in relation to the claimant as a "sufferer from stress". In respect of establishing direct discrimination the claimant has to point to a comparator, in this case as in many cases it was a hypothetical comparator and the 2010 Act says that:

> "on a comparison of cases for the purposes of Section 13, 14 or 19 there must be no material difference between the circumstances relating to each case. This is notoriously difficult to prove a direct discrimination claim and therefore the law and cases relating to the burden of proof and to the drawing of inferences tends to be highly relevant".

200. Section 136 of the 2010 Act addresses the burden of proof and states that:-

> "there are factions which the court could decide in the absence of any other explanation that a person A contravened the provision concerned the court must hold the contravention occurred.
>
> "but subsection (2) does not apply if A shows that A did not contravene the provision"

201. Whilst the Tribunal may adopt a two-stage process i.e. deciding whether there was less favourable treatment comparing the claimant to an appropriate or hypothetical comparator and then move on to whether that treatment was because of the protected characteristic it is possible for the Tribunal to consider the explanation put forward by the respondent and if satisfied that that is unconnected to the protected characteristic proceed to make a finding in accordance with that view.

202. The claimant's representative directed us to abidance on constructing a hypothetical comparator in the case of *High Quality Lifestyle -v- Watts 2006 EAT* and *Owen -v- AMEC Foster Wheeler 2019 Court of Appeal*

> "for example, the direct discrimination the comparator may be a person who does not have the claimant's disability and may not have a disability at all.

203. The comparator may have a condition which falls short of the kind of impairment required to satisfy Section 1 of the Act, this is because Section 3(A)(5) focusses upon a person who does not have "that particular disability", the circumstances of the claimant and the comparator must be the same "or not materially different". One of the circumstances is the comparators

"abilities but since this is prefaced by including it follows that more circumstances are relevant than simply the comparator's ability".

204. In that case, if the comparator was someone with the same ability skills and experience as the claimant who had a communicable disease which was not HIV positive (where the claimant was HIV positive) and that they would have been treated in the same way, i.e. suspended, then there would no less favourable treatment. The guidance also from case law suggests that the Tribunal should consider the reason why in order to answer the because of question Marks and Spencer Plc -v- Martins 1998. The claimant accepted that in the claim of direct discrimination the respondent must be aware of the fact of the claimant's disability in order to be found to have acted by reason thereof. In respect of deciding whether the claimant has been treated less favourably in the context of the burden of proof it is agreed that it is not sufficient for the employer to have acted unreasonably, however the Tribunal is entitled to look at a number of different factors to decide this question, this is often described as a drawing of inferences and one inference could be drawn where an employer acts in an extraordinarily unreasonable one, with no proper explanation for why it has acted in that way. This combined, with other matters, such as lack of credibility in the witnesses which suggest they have something to hide can lead to an inference.

205. As referred to above the Tribunal can consider the respondent's explanation at an earlier stage and does not have to follow a two-stage approach. This was established in *Laing -v- Manchester City Council 2006* as confirmed in *Madarassy -v- Nomura International Court of Appeal 2007*. In respect of establishing causation the only other relevant authority is *Sir Thomas Moore Upper School 1996* where EAT stated that the Tribunal must answer the question is what the effective and predominant or the real and efficient cause of the act complained of – it need not be the only cause.

Section 20 – Reasonable Adjustments

206. The claimant also makes a reasonable adjustment claim. Section 20 says:

"(1) Where this Act imposes a duty to make reasonable adjustments on a person this section, sections 21 and 22 and the applicable schedule apply, and for those purposes a person on whom the duty is imposed is referred to as A.

The duty comprises the following three requirements

(1) a provision, criterion or practice of A's puts a disabled person at

(2) a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled and

(3) the employer is required then to take such steps as it is reasonable to have to take to avoid the disadvantage.

207. In **The Royal Bank of Scotland v Ashton [2011] EAT** it was stated that the PCP must be a disadvantage which is substantial and which is not to be viewed generally but to be viewed in comparison with persons who are not disabled, and by comparing to non-disabled comparators it can be determined whether the employee has suffered a substantial disadvantage. The correct comparators are employees who could comply or satisfy the PCP and were not disadvantaged.

208. In **Environment Agency v Rowan EAT [2007]** the EAT said:

> "A Tribunal must go through the following steps:
>
> (2) Identifying the PCP applied by or on behalf of the employer;
>
> (3) The identity of non-disabled comparators where appropriate;
>
> (4) The nature and extent of the substantial disadvantage suffered by the claimant."

209. Serota J stated:

> "In our opinion an Employment Tribunal cannot properly make findings of a failure to make reasonable adjustments…without going through that process. Unless the Employment Tribunal has identified the four matters we have set out above it cannot go on to judge if any proposed amendment is reasonable. It is simply unable to say what adjustments were reasonable to prevent the provision, criterion or practice, or feature, placing the disabled person concerned at a substantial disadvantage.

210. Paragraph 21 of schedule 8 to the Equality Act provides that:

> "A person is not subject to the duty if he does not know and could not reasonable be expected to know that an interested disabled person has a disability and is likely to be placed at a disadvantage by the employer's PCP, the physical features of the workplace or a failure to provide an auxiliary aid."

211. This encapsulates the idea of constructive knowledge i.e. that either someone within the respondent's organisation who is responsible for these matters, such as Occupational Health, knows of the substantial disadvantage, or that the respondent should have known from all the factors available but closed their eyes to it. This is also referred to above in respect of section 15 claims.

212. Further, the adjustment has to be reasonable and effective. Section 18B(1) of the Disability Discrimination Act 1996 (these matters are no longer in the Equality Act but they are useful to have in mind in considering what would be a reasonable adjustment) set out some factors to take into consideration as follows:

> "(1) The extent to which the step would prevent the effect in relation to which a duty was imposed.
>
> (2) The extent to which it was practical for the employer to take the step.

(3) The financial or other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of its activities.

(4) The extent of the employer's financial and other resources.

(5) The availability to the employer of financial or other assistance with respect to taking the step.

(6) The nature of the employer's activities and size of its undertaking and matters relevant to a private household."

213. In respect of reasonable adjustments, the claimant is required to establish the PCP relied on and demonstrate substantial disadvantage. The burden would then shift to the respondent to show that no adjustment or further adjustment should be made (**Project Management Institute v Latif**).

Constructive Unfair Dismissal

214. An employee may lawfully resign employment with or without notice if the employer commits a repudiatory breach. Resignation can be interpreted as an election by the employee to treat himself as discharged from his contractual obligations by reason of the employer's breach. This is known as constructive dismissal and is a species of statutory unfair dismissal by virtue of section 95(1)(c) Employment Rights Act 1996.

215. It was described in **Western Excavating (ECC) Limited v Sharpe [1978]** by Lord Denning as follows: "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance. If he does so then he terminates the contract by reason of the employer's conduct. He is constructively dismissed".

216. An employee must act reasonably quickly in responding to a repudiatory breach of contract otherwise s/he may be taken to have accepted the continuation of the employment contract and affirmed the contract. However, mere acceptance of salary without the performance of any duties by the employee will not necessarily be regarded as an affirmation of the contract following an employer's repudiation. In **W E Cox Toner (International) Ltd v Crook 1981 EAT** it was said that delay by itself was not enough there either had to be an additional factor(s) or continued delay. An employee can work 'under protest' but must make it clear that he or she is reserving their right to accept the repudiation of the contract.

217. The EAT also considered this matter in **Chindove v William Morrison Supermarkets Limited [2004]** which said that:

> "He may affirm a continuation of the contract in other ways: by what he says, by what he does, by communications which show that he intends the contract to continue, that the issue is essentially one of conduct and

> not of time. The reference to time is because if, in the usual case the employee is at work then by continuing to work for a time longer than the time in which he might reasonably be expected to exercise his right he is demonstrating by his conduct that he does not wish to do so. But there is no automatic time, all depends upon the context. "

218. A claimant can rely on implied or express terms of the contact. Express terms can be written or oral. The claimant relied on the breach of the implied term of trust and confidence in this case as well as the duty to provide a safe working environment and to investigate a grievance.

219. In **Wood v WM Car Services (Peterborough) Limited [1982]** the Court of Appeal approved the development of the implied term of trust and confidence. It was finally given House of Lords' approval in **Malik v BCCI** in 1997 where Lord Stein stated that the question was whether the employer's conduct so impacted on the employee that viewed objectively the employee could properly conclude the employer was repudiating the contract. It is not necessary to show that the employer intended to damage or destroy the relationship of trust and confidence. The court said the Tribunal should "look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that an employee cannot be expected to put up with it".

220. In **Malik** the formulation is that the employer "must not conduct itself in a manner calculated and likely to destroy confidence and trust" and it is relevant to consider whether the employer's conduct in question was "without reasonable and proper cause". This is not the same as the range of reasonable responses test. However clearly if there was proper cause the claim will fail.

221. In proving breach an employee may pray in aid evidence of past repudiatory breaches even though he waived his right to object to them at the time. **Lewis v Motorworld Garages Limited [1985]**.

222. A failure to make adequate investigations into allegations of bullying or harassment can amount to a fundamental breach of contract – **Reed and another v Stedman EAT [1997]**.

223. Regarding breach of a suitable work environment/health and safety this was established in **Walton and Morse vs Mrs Jill Dorrington EAT (1997).**

224. The particular incident which causes the employee to leave may in itself be insufficient to justify resignation but may amount to constructive dismissal if it is the last straw in a deteriorating relationship. This means that the final episode itself need not be a repudiatory breach of contract although there remains the causative requirement that the alleged last straw must itself contribute to the previous continuing breaches by the employer, **Waltham Forest Borough Council v Omilaju [2004] CA),** and not be an unjustified sense of grievance.

225. In **Kaur vs Leeds Teaching Hospitals NHS Trust [2018] CA** an unjustified act contributing to a course of conduct or a breach of contract can revive early affirmed repudiatory breaches but the tribunal's decision was upheld that the application to the claimant of a properly followed and justified disciplinary procedure could not be a repudiatory breach or an unjustified act.

226. Therefore, the claimant has to show that the matters he relies on either individually or cumulatively amounted to a breach of the implied term of trust and confidence. He then has to establish that that breach played a part in his decision to resign (here a resignation letter maybe of evidential value but it is not determinative of what was the effective cause for the resignation) and he has to show that he has not unduly delayed or affirmed the contract.

227. A claimant can also rely on specific breaches without a continuing course of conduct however if they are in the past an argument maybe made that the claimant has either affirmed by not doing anything about it or it may find as a fact that the claimant has not resigned because of that breach given the passage of time.

228. The respondent can argue that there was a fair dismissal if constructive dismissal is found. Here the respondent relied on the cumulative performance/conduct issues evidenced in respect of the claimant.

Conclusions

Constructive Dismissal

229. We have reminded ourselves that in order to find an employee was constructively dismissed a breach must be fundamental and can either be an accumulation of lesser breaches or specific act which is a fundamental breach or a mixture of the two - where it is a number of things there must be a last straw. The last straw need not be a fundamental breach but it must not be an innocuous act either. Insofar as this was an accumulation of breaches the last straw was the letter from Mr Spence following the meeting on 21 March We have also reminded ourselves that for a matter relied on to be a fundamental breach the respondent must have had no reasonable and proper cause for the cited action.

230. We find the claimant was constructively dismissed on the following grounds:-

(i) We find that it was a breach but not a stand-alone fundamental breach for YB not to advise the claimant she was not going to advise on the SIP and SEF prior to the review as she wanted all the schools to be on a level playing field whilst this aim was proper and reasonable not advising the claimant of such was not.

(ii) We found that YB did produce her son's books in front of LI, criticised the way he was being taught and threatened to move him to a local private school. Clearly that seriously undermined and humiliated the claimant in front of a stranger but one who was going to play an important role in improving the school. There was no reasonable and proper cause for saying this in front of a third party.

(iii) The meeting on 30 November. This was described as a welfare meeting however it was not conducted in that way. The Headteacher was aggressive, hostile and unsupportive to the claimant. She put it to her in effect that she was not up to the job. This was undermining when C was off work sick due to stress and anxiety. Further, the Headteacher referred to matters being put on the table when the claimant returned to school, a reference to, at the very least, open criticism and challenge but in fact it turned out this meant disciplinary proceedings as time went on. Whilst there may be concerns about the claimant's performance the respondent did not have reasonable and proper cause to raise in this way at this meeting in view of the reasons for the claimant's absence, it was likely to make the claimant worse rather than assisting her to return to work. Further, of course, as the result of disclosure we know that the respondents HR advisor had noted on the x date that YB wanted the claimant out of the school and therefore there was on genuine desire to work with the claimant to get her fit enough to return to work, an obvious breach of trust and confidence.

(iv) The indication that there would be capability proceedings to consider the claimant's performance when she returned to work, this was indicated on 1 November during settlement negotiations, and was intended to put pressure on the claimant to accept a settlement offer and not return to work. Again, this was clearly a breach of the implied term of trust and confidence to raise this at this juncture when the claimant was off sick with anxiety and stress. It was inappropriate in particular because the claimant had never been off for any considerable period before and at this stage had not been off for much time in any event. Further at that point no investigation had been undertaken, it was designed to put pressure on the claimant to accept a settlement and leave.

(v) The meeting of 21 March was a fundamental breach of the contract of employment. This is because it was understood and perceived by the claimant that this would be a route to resolving her grievance whereas the respondent had no intention of treating the meeting in this way at all, whilst it was unrealistic of the claimant to believe that the matter could be resolved by one meeting in the sense that to a HR person it would be unrealistic but to the claimant there was no reason why she would consider that was not possible at the time, rather than setting out any parameters for the meeting Mr Spence launched into the meeting on his terms, shocking the claimant by saying that he was not going to discuss her grievance at all, one would have at least expected him to have had a discussion about the matters in her letter of grievance before proceeding to any other matters. In addition, the ultimatum that the grievance would not be dealt with unless she saw a Clinical Psychologist was totally unreasonable and a breach of trust and confidence. This was further compounded the next day by his letter when he advised the claimant that as soon as she was fit to attend a grievance meeting a disciplinary hearing would be held on the same day whilst at the same time not telling her what any of the disciplinary charges were. This was again clearly to put the claimant under pressure. By harnessing the disciplinary and the grievance together the claimant was being sent a message that she was in for a very

torrid time if she ever did find herself fit enough to attend a grievance hearing. There was no clarity regarding what this Clinical Psychologist was going to report on particularly as the decision had already been made that the grievance and disciplinary would be heard on the same day. Surely this would have been an issue to discuss with the Clinical Psychologist as to whether the claimant was mentally fit to undergo both processes in one day, the fact that this was not considered suggests to us a lack of trust and confidence on the part of the respondent.

231. We cannot see any reasonable or proper cause for requiring the claimant to attend a meeting with a Clinical Psychologist before progressing her grievance, the reason for this meeting was for the respondent's own purposes in respect of potentially an absence management procedure, or to verify attendance at a disciplinary hearing or even to consider reasonable adjustments for any meetings or a return to work.. Neither was there any need to hold a disciplinary hearing on the same day as a grievance hearing or to advise the claimant of this in the letter of 22 March. Neither was there any justification for referring to disciplinary proceedings when all the criticism related to capability. Particularly without an explanation of what the disciplinary proceedings were about.

232. We consider these individually and collectively to be fundamental breaches, in that there was no attempt to support the claimant in her illness, but rather to put unreasonable pressure on her.

233. We do not accept the other matters relied on by the claimant as we find there was reasonable and proper cause for the respondents' action in regards to these matters:-

1. Allegation 2 and 3 we find apart from the '**AZ**'s books' issue there was no unfounded criticism about the claimant during the review, YB was a reviewer and the CEO of the Trust she had a different role. But there was no personal criticism of the claimant, the claimant was oversensitive to this, in her role she would be responsible for some matters but there was nothing which went beyond what was justifiable. Further YB did speak up for the claimant in that she told her not to worry about the review and she sent out a supportive email to SLT

2. Allegation 4 this was not a fundamental breach; no one saw it although YB thought she had sent to the claimant. it was agreed YB had said she was going to revise it therefore she had proper cause for not disseminating it.

3. Allegation 5: this is a miscomprehension of the situation, YB was not imposing anything, it was an ongoing process in which the claimant would play her part.

6. Allegation 7 it appears this was a misunderstanding but when it was made clear EAP funding was available it was not taken up by the claimant. if it was thought the EAP contract had ended that it was

reasonable of the school to offer a contribution towards the cost of an alternative.

7. Allegation 11 there were reasonable and sensible reasons for not progressing the grievance and we find it is disingenuous to complain of this now when she did not do so at the time.

234. We find that the reviews were conducted in a reasonable and proper way, that the LI interview was not planned but off the cuff, the claimant has reacted badly to these three conversations/reviews but there was nothing extraordinary about them, yes they were critical but not specifically of the claimant and were intended to help mend the situation.

235. YB tried to retrieve the situation when she was aware the SLT were getting demoralised and the message confusing – the idea that she engineered these reviews to undermine, as far as that is advanced, the claimant is not credible particularly as it would involve sabotaging her own Trust in the process.

Disability Discrimination

236. We have not revisited the question of whether the claimant was disabled at this juncture as suggested by the respondent (who had conceded disability but not knowledge) because we have found the matter resolved without having to address that question**.**

Knowledge

237. Knowledge is required for a Direct discrimination claim, a Section 15 of the Equality Act 2010 claim and a Section 20 Reasonable Adjustments claim. The extent of the knowledge required in the claims is the same, save there is an additional requirement in respect of reasonable adjustments that the respondent also have knowledge of the substantial disadvantage the claimant is put under because of the provision, criterion or practice the respondent has applied. In the case of that second limb of knowledge the Tribunal would have to consider the substantial disadvantage in relation to each PCP, however, if we find the respondent does not have knowledge of the claimant's disability on the first limb in any event that would defeat the claimant's claims.

238. We remind ourselves there must be a substantial adverse effect on day to day activities, it must be long term (12 months) or likely to last 12 months There is the concept of constructive knowledge; if the respondent did not know should the respondent have known the claimant was disabled? Was for example the respondent aware of matters which should put them on the alert to make further enquiries and that it is to be expected that those further enquiries would have revealed that the claimant was disabled, i.e. the respondent cannot turn a blind eye

239. The claimant submitted that following the OH report of 15 November 2016 the respondents had actual knowledge that the claimant had a disability, however, we do not find this is the case as the OH report stated that the claimant was likely to render reliable service and attendance in the future with the resolution

of any perceived workplace pressures and with improvements in her blood pressure control and sustained wellbeing, suggested that the stress risk assessment would be undertaken to identify the stresses in the work place and explore solutions. The respondent was advised that she had poor restorative sleep and a limited ability to focus, but it was said these were likely to "temporarily impair her performance in work in the short term". OH thought the claimant was likely to remain unfit for two to four weeks. We do not find that the OH report would have or did fix the respondent with knowledge that the claimant had a disability – it was optimistic that the claimant would soon return to school. Therefore, the respondent would not have any basis for thinking the claimant's symptoms were long term

240. There was no evidence that the employer would have known the claimant had multiple symptoms before this, even if by 2018 it was recognised the symptoms had manifested themselves earlier. Dr Britto states this himself.

241. YB accepted that she was aware that the claimant appeared stressed in 2015 and they had a conversation about it but the upshot of the conversation was that the claimant assured her she was fit to work and the claimant did not have any time off work whatsoever, therefore, the severity of the claimant's condition was not apparent, indeed, if it was severe at that stage. We do not rely on comments made by the Headteacher such as "don't get stressed about it" as evidence the respondent knew the claimant had a disability. That is simply an off the cuff remark. If the respondent was sensitive to the claimant being stressed it was out of concern for her blood pressure. Further 'stress' by itself does not mean a person is disabled particularly without knowledge of the symptoms arising from it

242. There was no reason why the respondent should have had knowledge that the claimant condition was a disability in a situation where there was no substantial adverse effect on her work activities until 7 November and the respondent had no or very limited knowledge whatsoever of any effect in her personal day to day activities. The claimant did not argue that she had told YB she could not sleep, was exhausted etc.

243. Further, the claimant did not raise the issue in her grievance, rather, she was concerned she was being discriminated against because of age, if the claimant was not aware herself she was disabled at this stage, it is unreasonable to expect the respondent to know.

244. Further, the claimant in November stated that she hoped to be back to work in January and therefore there was no awareness at this stage that the claimant was likely to be ill for a year or possibly up to a year. The respondent would not think this was a matter which would lead to the claimant meeting the test of disability. Again, the claimant had not been absent for any significant period until she went off work in November.

245. The claimant's fit notes also did not necessary indicate a long-term problem referring to work related stress and not to an underlying condition and neither did the occupational health reports which believed the claimant would be fit after a number of weeks to return to work. (The GPs notes that she was

'staying strong' and was undertaking activities such as attending Zumba classes although her symptoms had not disappeared – however this was not known to the respondent at the time)

Further OH referral

246. We have considered whether the respondent should have referred the claimant to occupational health again we would have expected them to do by end of January/February when the claimant did not return as she had suggested she would do. Would such a report have alerted the respondents to the fact that the claimant had a disability at that stage? We find it would not because there was very limited indication the claimant's absence was likely to be long-term to the extent of 12 months at that stage. She would have been absent for some time by that stage i.e. 3 months but still not such a long period as to suggest it could well happen' that the symptoms would last or were likely to last 12 months. particularly in the light of the fact her grievance or the settlement negotiations may have resolved the workplace issues leading to an alleviation of what the professionals stated were work related symptoms. It is understandable action about the claimant's absence was delayed whilst negotiations were ongoing and her grievance was under consideration. Indeed, the claimant did not reply to Mr Wilsons letter of 17 February till 2 March. Until that point there was a prospect of resolving the matter informally which may have alleviated the claimant's symptoms as suggested by OH.

247. The respondent was beginning to explore obtaining further medical evidence however the claimant resigned before this could be arranged. We have considered whether the respondent did turn a blind eye in failing to arrange a further occupational health report but we have borne in mind that they had taken the view that a Clinical Psychologist's report would be more appropriate. This was a reasonable view to take although the circumstances in which the claimant was required to attend it were not appropriate as we found above.

248. We have considered whether the reference in the 13 March letter inviting the claimant to the psychologist's appointment which stated 'your absence appears to be long term' is evidence the respondent did know the claimants absence was likely to be for 12 months .However we have rejected this as it is evidence the claimant was now not going to return quickly (the reference was to absence) but not that she had symptoms indicative of substantial adverse effect on day to day activities which were likely to last for 12 months. The requirement to attend the Psychologist was to ascertain whether she was fit to return to work or attend any hearings. That report may have indicated her symptoms were by then likely to last a year but the claimant resigned before that appointment could take place.

249. Therefore, in conclusion, we find the respondent did not have knowledge of the claimant's disability at the relevant time and therefore her claims of disability discrimination fail.

250. We would in normal times have gone on to consider whether, if we were wrong on the knowledge point the claimant's claims would succeed. However due to the fact we had not discussed these matters prior to 'lockdown' we felt unable to effectively consider them in the absence of being able to meet in person.

251. The matter should now be listed for remedy. Any issues such as Polkey, contributory conduct can be considered at that hearing. Directions for a remedy hearing will be given in due course.

_____
Employment Judge Feeney

12 August 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

13 August 2020

FOR THE TRIBUNAL OFFICE

[JE]