



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Nimblet-Robinson **Respondent:** Share Multi Academy Trust

Heard by CVP **On:** 4, 5, 6, 8 (deliberations) July 2022

Before **Employment Judge Davies**
Mr P Kent
Mr K Lannaman

Appearances

For the Claimant: **Mr J Yamba (legal consultant)**
For the Respondent: **Mr S Shepherd (solicitor)**

RESERVED JUDGMENT

1. The Claimant's complaints of direct race discrimination were not presented within the Tribunal time limit. It is not just and equitable to extend time for bringing them and they are dismissed.
2. If the complaints had been presented within the time limit, the Tribunal would have found that they were not well-founded in any event.

REASONS

Introduction

1. These were complaints of direct race discrimination brought by the Claimant, Mrs A Nimblet-Robinson, against her former employer, the Share Multi Academy Trust.
2. The Claimant was represented by Mr J Yamba (legal consultant) and the Respondent was represented by Mr S Shepherd (solicitor). At a case management hearing in January 2022 EJ Parkin listed the hearing as an attended hearing at Leeds Employment Tribunal. On Thursday 30 June 2022 the parties were warned that no panel was available to hear the case in Leeds, but that it could be heard by CVP. That prompted an application for a postponement on the Claimant's behalf, partly because she preferred an attended hearing and partly because Mr Yamba had injured himself. EJ Shepherd refused the application but indicated that it could be renewed on Monday 4 July 2022 at the start of the hearing, with medical evidence. The

hearing was converted to a CVP hearing. At the start of the hearing on Monday, Mr Yamba explained that the Claimant was suffering symptoms of anxiety and that he had injured his leg and was in pain and struggling with mobility. The Claimant also wanted to be in the same place as Mr Yamba. The hearing was eventually adjourned to 3.30pm, so that a decision could be taken at that stage whether to postpone it altogether, or whether the Claimant was fit to attend on Tuesday 5 July 2022 and whether Mr Yamba was fit to represent her. A hearing room could be made available at Leeds for the Claimant and her representative to connect to the CVP together. At 3.30pm, Mr Yamba indicated that the Claimant was fit and did wish to go ahead on Tuesday 5 July 2022. She had arranged for a family member to support her. They and he would use the hearing room in Leeds.

3. The hearing therefore proceeded by CVP on Tuesday 5 July 2022, with the Claimant, her family member and Mr Yamba all present together in Leeds. The Claimant gave her evidence. Her witness, Mrs Goodswen, then connected to the CVP and it became apparent that she was overseas. The Judge referred the parties to the Employment Tribunal Presidential Guidance on Taking Oral Evidence by Video or Telephone From Persons Located Abroad, issued on 22 April 2022. The Tribunal had not been notified that the witness was overseas and permission had not been obtained for her to give evidence. The Judge explained that the Tribunal could not hear evidence from her in those circumstances. The Tribunal considered representations from the parties. The Claimant asked for Mrs Goodswen to give oral evidence at a later date. The Respondent asked the Tribunal to proceed on the basis of her written evidence. The Tribunal decided to proceed using Mrs Goodswen's written witness statement, with allowance made for the fact that she had not been cross-examined. We took into account the factors in the Presidential Guidance and the overriding objective. Of particular weight, we noted that until the last working day before the hearing started, the Claimant expected the hearing to be an attended hearing and had not made any application for Mrs Goodswen to give her evidence by CVP. She must have been proposing to ask the Tribunal to rely on Mrs Goodswen's written statement. That affected the weight of Mr Yamba's submission that it was now essential as a matter of fairness to hear Mrs Goodswen's evidence orally. Secondly, the Tribunal considered the relevance of Mrs Goodswen's evidence. She dealt with a single matter, which was whether the Claimant had said at a meeting on 8 June 2021 (after she had handed in her notice) that she had been subjected to race discrimination. She had clearly raised concerns at that meeting, and the Tribunal had to decide whether there was a subsequent failure to hold a meeting under the Grievance Policy and, if so, whether that was race discrimination. But that did not depend on whether the concerns raised were themselves complaints of race discrimination. It was not necessary for the Claimant to have made a complaint of discrimination at the meeting on 8 June 2021 in order for any of her complaints to succeed. If she was treated less favourably because of race in the ways she says, it does not matter whether or not she complained about that at the time. The earliest on which Mrs Goodswen's evidence could have been heard was likely to have been September/October 2022. Such a delay would be inconsistent with the overriding objective. Weighing all these factors, the Tribunal decided that it was proportionate and in the interests of justice not to

adjourn for Mrs Goodswen to give oral evidence and to attach such weight as appropriate to her written witness statement.

4. During the afternoon on 5 July 2022, Mr Yamba indicated that his injury was becoming more painful. He had forgotten to bring painkillers with him. The Tribunal took a break so that he could obtain some. He continued for a while after that, but subsequently indicated that he was in too much pain and asked for the hearing to be adjourned to the next day. The Tribunal agreed to do so. We discussed the arrangements for the next day. Mr Yamba preferred to connect to the CVP from his home and the Claimant indicated that she would do the same, with a family member present for support.
5. The evidence and submissions concluded on 6 July 2022 without further difficulty.
6. There was an agreed file of documents, and the Tribunal considered those to which the parties drew our attention.
7. The Tribunal heard evidence from the Claimant and considered Mrs Goodswen's written statement. For the Respondent, we heard evidence from Mrs T Woodhead (Head of Vocational and PE teacher) and Mrs J Carr (Headteacher).

Issues

8. The Claimant describes herself as black British. She compares her treatment with named individuals, or a hypothetical white British comparator. The issues for the Tribunal to decide were as follows.

Direct race discrimination

- 5.1 Did the Respondent do the following things:
 - 5.1.1 Mrs Woodhead failed to provide the Claimant with a suitable, clean desk and computer when she started work in September 2019. The Claimant says that Ms Wilkinson was given one.
 - 5.1.2 Mrs Woodhead failed to deal with the Claimant's complaint that Ms Wilkinson spoke to her in an aggressive or confrontational way in December 2019, whereas Ms Wilkinson's complaint about the Claimant was promptly dealt with.
 - 5.1.3 Nothing was done when the Claimant complained about the way Ms Wilkinson spoke to her in December 2019 but when Mr Shires complained about the way the Claimant spoke to him in November 2019 action was taken.
 - 5.1.4 The Respondent took 9 months to take formal action when the Claimant complained about being abused by a parent in March 2020, but when a parent abused Ms Clegg and Ms Hussain the Respondent immediately wrote a warning letter to the parent.
 - 5.1.5 The Respondent did not send the Claimant flowers when she was off sick in June 2020. Flowers were sent to Mrs Woodhead when she was off sick in October 2020.

- 5.1.6 The Claimant's team ignored her when she greeted them on 7 September 2020. They greeted Heidi Middleton.
 - 5.1.7 The Claimant was refused an opportunity to meet the headteacher to discuss directed hours in October 2020. The headteacher met Ms Burton-Smith.
 - 5.1.8 The Claimant was not permitted to join the Teaching and Learning team and the criteria for doing so were changed.
 - 5.1.9 The Claimant was not given additional PPA for her role as a teacher of Health and Social Care in April or May 2021. Ms Everett was given additional PPA.
 - 5.1.10 The Claimant was encouraged to resign by Mrs Woodhead in June 2021. Mrs Carr took Mrs Woodhead's side over that.
 - 5.1.11 The Respondent did not hold a meeting with the Claimant when she raised a grievance verbally on 8 June 2021 and in writing on 21 July 2021. A meeting was held with Lee Warner.
- 5.2 If so, was it less favourable treatment?
The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's. The Tribunal will decide whether she was treated worse than a white teacher would have been treated.
- 5.3 If so, was it because of race?

Time limits

- 5.4 Was there discriminatory conduct over a period that ended on or after 25 June 2021?
- 5.5 If not, for any complaint about an act or omission that took place before 25 June 2021, is it just and equitable to extend time for bringing the complaint?

Findings of fact

- 9. The Respondent is a Multi-Academy Trust that manages eight academies in the Kirklees area, including the one at which the Claimant worked, ("the School"). The headteacher of the School is Mrs Carr.
- 10. The Claimant is a qualified secondary school teacher, with a specialism in Physical Education. She describes herself as Black British. She was employed by the Respondent from 1 September 2019 as a Teacher of Child Development and PE. The Claimant did not in fact start at the School on 1 September 2019 because she had a pre-booked holiday. She was given a week's unpaid leave, and started on 8 September 2019. Her line manager was Mrs Woodhead and the Head of PE was Mr Townend.
- 11. The Claimant had attended an induction day in July 2019. Mrs Woodhead showed her the desk she would be using. It was piled with paperwork, folders and a kettle and had tea and coffee stains on it. Mrs Woodhead told her it would be cleared before she started.

12. The Claimant says that when she started the desk had not been cleared and still had the documents, folders and stains on it. She did not say anything at the time. She put it down to Mrs Woodhead having other more important tasks at the start of term. She says that she raised it with Mrs Woodhead after about five weeks but nothing was done. Her colleague Ms Booth, who taught Dance and PE, was due to leave and be replaced by a new (white) colleague, Ms Wilkinson. The Claimant suggested that she take over Ms Booth's desk, and that was agreed. They swapped. Ms Booth cleared and cleaned the Claimant's original, smaller, desk on 11 October 2019. The Claimant says that this was done to make Ms Wilkinson feel welcome. In oral evidence, it was clear that the Claimant had raised a concern about her desk in an indirect way with Mrs Woodhead after two or three weeks, by saying that she was uncomfortable using colleagues' desks and equipment when they were not there. Mrs Woodhead told her not to worry, that was fine.
13. Mrs Woodhead says that the Claimant was replacing a part-time Child Development Teacher, who had a desk elsewhere in the school. However, the Claimant had been appointed full-time, to teach PE as well as Child Development. As she was going to be part of the PE team, she was to be given a desk in the PE office. That office is very small. The only available desk was a small desk previously used for making tea and coffee. It was cleaned before the Claimant's arrival, but given that she did not start until a week after term started, people may have put tea and coffee cups on it. The desk did not have a computer. In oral evidence she said that there was not an expectation that everybody would have their own computer. However, if somebody needed a piece of equipment they could ask IT. A laptop was provided for the Claimant when she asked for one. Mrs Carr pointed out that desk sharing was normal because staff would ordinarily be teaching 44 out of 50 hours per fortnight, so would not spend much time at their desks. Mrs Woodhead's evidence was that the small desk was not given to the Claimant because of her race and that the Claimant's race had no relevance whatsoever to how she treated her.
14. The Tribunal accepted that evidence. The Claimant was to be an extra member of staff working out of the PE office, whereas when Ms Wilkinson joined a few weeks later, she was replacing an existing person. That meant a new desk had to be arranged for the Claimant, whereas no new desk had to be arranged for Ms Wilkinson. There was a clear explanation for why the Claimant was given the small desk - it was the only desk available. There was a clear explanation for why it had no computer on it – there was no expectation that everyone would have their own computer. The desk may have been dirty and untidy when the Claimant started, but that was because staff in the office had used it for making tea and coffee during the first week of term when she was absent. Ms Wilkinson was not given a larger desk – she took over the smaller one. That desk was clean because Ms Booth, who was using it, cleaned it for her. The Claimant identified no basis whatsoever on which the Tribunal could infer that that had anything to do with race and the Tribunal found that it did not.
15. Ms Wilkinson was newly qualified (known as an Early Careers Teacher). The Claimant wanted to mentor her and that was agreed. There was evidently some friction early in the relationship. Mrs Woodhead described both the Claimant and Ms Wilkinson as strong characters. Mrs Woodhead said that they would

clash at times. She was asked about this in her oral evidence. She said that both were very determined, stubborn and similar in character; both came across as abrupt at times. Mrs Woodhead said that Ms Wilkinson spoke to everybody in the same way. She could be abrupt and direct, for example simply saying, "No" if asked to do something. The Tribunal accepted Mrs Woodhead's evidence. We return to the relationship between the Claimant and Ms Wilkinson below.

16. In October 2019, just a few weeks after she had started in the school, the Claimant applied for a vacant Teaching and Learning Responsibility ("TLR"). She was the successful applicant, appointed by Mrs Carr. The role came with an enhanced payment and additional non-teaching time. The Claimant also asked to take responsibility for a Sport England project in school in November 2019. She was very keen to increase participation in sport. Mrs Carr agreed to the request and additional non-teaching time was again allocated to the Claimant. These were examples, from the outset, of the Claimant being supported and given important roles and opportunities.
17. On 7 November 2019 Mr Shires, Assistant SENCO, sent an email to Mrs Woodhead and two other teachers about a student who was with him and whom he described as "beside herself" after being threatened with detention. He also said that the student had been "jumped on" and peers reported that their teacher (the Claimant) was on her phone and not paying attention to the class. Mrs Woodhead told the Claimant about the email and the Claimant went to see Mr Shires. He then emailed Ms Devane (Senior Deputy Headteacher) the same day, to complain about the Claimant's conduct when she came to see him. He said that the Claimant was "incensed". He described their discussion. He said that the Claimant had said that it was unprofessional not to copy her in on the email, and that Mr Shires should have spoken to her personally. Mr Shires described the Claimant as "fiery" and "intimidating."
18. The Claimant agreed that she went to speak to Mr Shires. She denied behaving in the way described. The next day Ms Devane came to have a word with her. She reminded her of the School's values and spoke to her about managing interactions with other staff members. No disciplinary or other action was taken.
19. As we have mentioned, the Claimant and Mrs Wilkinson did not have a smooth relationship. The Claimant says that she raised this with Mrs Woodhead and Mr Townsend but her concerns were dismissed and she did not get support. She says she raised it with Mrs Woodhead on 6 December 2019. That was not put to Mrs Woodhead in cross-examination. In answer to a question from the Tribunal, Mrs Woodhead said that the Claimant did speak to her about Ms Wilkinson on 6 December 2019, but it was not to raise concerns about her tone or the way she treated the Claimant. She raised two specific matters. First, that Ms Wilkinson was not willing to do extra-curricular clubs. Mrs Woodhead said that she told Mr Townend, Ms Wilkinson's line manager. Secondly, the Claimant had a query about the NQT reports and whether they should be in the first or third person. Mrs Woodhead told her to email her SLT link, Ms Spry. The Tribunal accepted that clear recollection. We noted (see below) that in her detailed email to Ms Spry on 11 December 2019, the Claimant said that she had spoken to Mrs Woodhead about "her concerns" on 6 December 2019, but

she did not specify which and she did not say that Mrs Woodhead had dismissed them. She did say more than once that Ms Wilkinson had been “sharp” or had an unpleasant “tone” on specific occasions, but she did not say that she had raised that with Mrs Woodhead. She also referred to recent issues about Ms Wilkinson delivering extra-curricular clubs and about whether the NQT reports were in the first or third person. That was consistent with the concerns Mrs Woodhead referred to.

20. On 11 December 2019 there was an altercation between the Claimant and Ms Wilkinson in the PE office. In her witness statement, the Claimant said that this arose because she had previously raised concerns about Ms Wilkinson’s behaviour with Mrs Woodhead, and they had not been addressed. Therefore, she herself addressed Ms Wilkinson’s attitude and tone towards her, with Mrs Woodhead present. Mrs Woodhead did nothing to support her and the conversation “heated up.” Mrs Woodhead did not intervene to address the issue, which was occurring in front of her. In her evidence to the Tribunal the Claimant said that this was not an argument; it was her speaking to Ms Wilkinson about how she was addressing the Claimant – speaking to her “like dirt” and so on. The Claimant said that she did so in a professional manner, without shouting or raising her voice at all. She said that they were both standing, about two feet away from each other. She said that Mrs Woodhead was in the room the whole time.
21. Mrs Woodhead said that she was outside the office when she heard both the Claimant and Ms Wilkinson “screaming” at each other. She went in. They were facing each other about two feet apart. She thought they were going to fight. She put her hand between them to separate them and shouted at them to stop. Then she told them that in 16 years she had never felt as uncomfortable in the PE office as she did now. Mr Townend was nearby and he came into the office too. Mrs Woodhead said that the discussion was about the Claimant observing Ms Wilkinson’s lesson. She explained that she now understood that the Claimant wanted to observe Ms Wilkinson the following day, and she agreed that this was not fair on Ms Wilkinson. She could understand why Ms Wilkinson was unhappy. Mrs Woodhead said that Ms Wilkinson told Mr Townend that she no longer wanted to be mentored by the Claimant. Mrs Woodhead advised Ms Wilkinson to go home, because she was upset.
22. The Tribunal preferred Mrs Woodhead’s account of what happened. The Claimant’s account in her witness statement was somewhat different from her account in cross-examination. For example, in her witness statement she accepted that the conversation became heated. But more importantly, both were different from what she said in her email to Ms Spry, Deputy Head, sent that evening. That is the same email we have already referred to above. The email dealt specifically with events on 11 December 2019. It gave an account of more than one discussion in the PE office between the Claimant and Ms Wilkinson about Ms Wilkinson’s reports. It also said that there had been issues about lesson observations that day. The Claimant wrote that she had spoken to Mr Townend about the observations and her general concerns with Ms Wilkinson’s attitude. Mr Townend was happy to support her with the observations. The email then went on to deal with the discussions between the Claimant and Ms Wilkinson at the end of the day. The Claimant said that she

had suggested observing Ms Wilkinson the following day and that this was “dismissed.” She described Ms Wilkinson being “on the defensive” about observations. She said that Mr Townend intervened because Ms Wilkinson seemed frustrated and annoyed. The conversation “became very awkward” after Mr Townend left and Mrs Woodhead “felt that she had to intervene.” The Claimant *then* told Ms Wilkinson that her tone was not acceptable. She did not take that well and she left PE. In her email, the Claimant asked to meet Ms Spry. She said that she felt it would be awkward in the PE department in the morning as Ms Wilkinson was told to go home by Mrs Woodhead because she seemed angry and upset.

23. The Tribunal noted that the Claimant’s account in the email was not that she had addressed her concerns about Ms Wilkinson’s behaviour in Mrs Woodhead’s presence, because Mrs Woodhead had not addressed them, and that Ms Wilkinson had reacted badly. It was that she had been discussing lesson observations with Ms Wilkinson when Mrs Woodhead intervened. That was consistent with Mrs Woodhead’s account. Further, she said that she was suggesting observing Ms Wilkinson’s lesson the next day. That too was consistent with Mrs Woodhead’s account.
24. Finally, the Tribunal noted that the Claimant and Mrs Woodhead exchanged text messages that evening. The Claimant sent Mrs Woodhead a message, apologising if she had made her feel uncomfortable. She said that she envied the fact Ms Wilkinson could express her annoyances so freely, when she knew that someone would have pulled her in if she had expressed herself that way. She concluded, “All sorted now. Lessons learned.” Mrs Woodhead replied to say that she had the Claimant’s back 100% and would do whatever she could to support her as she thought she was great. She wanted the Claimant and Ms Wilkinson to get on. She understood where the Claimant was coming from with Ms Wilkinson’s attitude and the tone of her voice, but she said that the Claimant was “better than that” and urged her not to “rise to it.” She said that listening to the two of them “shout at each other” today was uncomfortable and that Mr Townend wanted to get them together to resolve the situation. The Claimant did not reply to say that she had not been shouting at Ms Wilkinson.
25. The Tribunal noted that Mrs Woodhead needed to correct her witness statement before she confirmed its accuracy when giving evidence. She had got the date of the incident wrong by one day, and she said she was going to parents’ evening straight afterwards, when in fact she was going to netball practice. But those were details about periphery of the incident that might well have been misremembered 2 ½ years later when Mrs Woodhead was writing her witness statement. They were not about the fundamentals of what was being said and how. The inconsistencies in the Claimant’s evidence were about the fundamentals of what was being said and how.
26. The Tribunal therefore accepted Mrs Woodhead’s evidence that both the Claimant and Ms Wilkinson were acting unprofessionally on 11 December 2019. There was no dispute that Ms Spry spoke to Mr Townend, as did Mrs Woodhead. Mr Townend, as Head of Department, then spoke to both Ms Wilkinson and the Claimant, and conducted a restorative meeting. Ms Wilkinson agreed to continue to be mentored by the Claimant and the Claimant agreed to

continue mentoring her. The Claimant did not give evidence about any further issues in their relationship, indeed they appear to have developed a good relationship. No disciplinary or other action was taken against either of them.

27. Mrs Woodhead's evidence was that she acted in the same way towards the Claimant and Ms Wilkinson. Both behaved unprofessionally. Neither made a complaint to her. The altercation and relationship were addressed by the Head of Department. She did not treat the Claimant less favourably because of her race.
28. The Tribunal found that there was no less favourable treatment of the Claimant in respect of complaints made by her or about her. As explained above, we found that she did not complain to Mrs Woodhead about Ms Wilkinson's tone or behaviour towards her personally on 6 December 2019. She raised two issues relating to her mentoring of Ms Wilkinson. Mrs Woodhead referred one to Ms Wilkinson's line manager and told the Claimant to raise the other with the appropriate person, Ms Spry. Both the Claimant and Ms Wilkinson raised concerns in one way or another on 11 December 2019 and both behaved unprofessionally. Ms Spry discussed the Claimant's concerns with Mr Townend. Mr Townend addressed all the concerns by holding a restorative meeting with both individuals. That appears to have been successful. No disciplinary or other action was taken against either person. Mr Shires made a complaint about the Claimant's conduct. That was dealt with in a low key way by a simple conversation with Ms Devane. No disciplinary or other action was taken against the Claimant.
29. The Claimant arranged an Archery club after school on Fridays. On 13 March 2020, the parent of one of the students in the club gained access to the building and came into the gym. She shouted at the archery coach. The Claimant spoke to the parent, asking her how she had accessed the building, and trying to get her to the front reception. Eventually, Ms Wood (Director of Pastoral and Safeguarding Lead) became involved in removing the parent and student from the site. Ms Wood reported the incident to Mrs Carr on Monday morning (16 March 2020), and after school on Monday the Claimant emailed Mrs Carr and Ms Wood about what had happened. She described the parent as shouting and pointing at her aggressively and accusing her of "blackmailing" her son. She gave a detailed description of what had happened. The Claimant explained that the reference to "blackmailing" related to the fact that as the student's form tutor she had spoken to him about the fact that he had not been attending catch up sessions he should have attended, and told him that she could not have him at the next block of the archery club if he did not attend his catch up. Mrs Carr appointed Ms Devane to investigate. She asked her to investigate both the behaviour of the parent and what the parent had said about the Claimant "blackmailing" her son. Her evidence was that both matters were serious and needed investigating and that in order fairly to deal with the "blackmailing" complaint, Ms Devane needed to speak to the pupil and his mother.
30. On 19 March 2020 Ms Devane emailed Ms Wood (copying in Mrs Carr) asking her to tell the Claimant and the archery coach that the student was not in school and that they were dealing with the matter in accordance with school

processes. Ms Wood did so the same day. She explained that the student had not been in school since. The Claimant thanked her for the update.

31. The first national lockdown because of the COVID-19 pandemic began the next day. The school was shut to most pupils. The student's parent did not answer calls from the school on 19 March 2020 and the student did not attend school again until 10 September 2020. The student's mother contacted the school by phone on 16 September 2020 and spoke to the Attendance Officer. She then emailed Ms Wood, the Claimant and the Head of Year, explaining that the mother felt the incident had not been resolved, was very angry about it and was threatening to go to her solicitor. She also wanted an explanation of why the student was told he could not go to archery if he did not attend catch up. She said that this was blackmail. The Claimant replied to the Attendance Officer, to say that the incident had been passed on to Ms Devane, and that she was waiting for an outcome herself about the abuse she and the archery coach were subjected to, and the safeguarding risk posed by the mother's accessing the school. Ms Devane tried repeatedly to contact the student's parent. Eventually, they spoke on 29 September 2020. The parent was abusive and threatening to Ms Devane. Ms Devane told her that the Claimant had done what they would ask any form tutor to do by encouraging the student to attend catch up. Ms Devane also told the parent that she was now not permitted to attend school without visiting reception and making an appointment. Ms Devane produced a written report setting all of this out. She made some recommendations, including that the Claimant be told about what had been said to the student's mother about attending the site in future.
32. Before the report was finalised, the Claimant emailed Ms Devane on 2 October 2020 asking for an update. Ms Devane told her that she had spoken to the parent on Monday, and the parent had been incredibly rude to her. The Claimant replied, saying that she was extremely unhappy about how the situation had been handled. She said that she had raised this in March 2020 and still had no outcome. She said that this was a serious safeguarding concern. Ms Devane arranged to meet her on Monday 5 October 2020. She updated her at that stage about the investigation.
33. When Mrs Carr received the report, she noted that the Claimant was completely exonerated. She noted that Ms Devane had made every effort to speak to the pupil and parent but had not been able to do so. She wrote formally to the parent banning her from the school site.
34. The Claimant says that the delay in investigating the incident was less favourable treatment because of race. She compares the approach taken when a parent verbally abused two other members of teaching staff, Ms Clegg and Ms Hussain. On that occasion, Mrs Carr was present. She took immediate action against the parent. Mrs Carr's evidence was that this had nothing to do with the Claimant's race. The difference was that in the Claimant's case there was a complaint from the parent about the Claimant, whereas there was no complaint about a member of staff in the other incident. The Claimant was asked about this in cross-examination. She said that there was a complaint from the parent about Ms Clegg and Ms Hussain. She was asked what it was. She said, "I couldn't tell you." She was asked on what basis she was saying that

there was a complaint and she said that it was, “something to do with a student and a parent.” The Tribunal found this evidence wholly unconvincing. We found that there was no complaint about Ms Clegg and Ms Hussain from the parent in question. That was a material difference, because there was no need to carry out an investigation or speak to the pupil or parent in the situation involving Ms Clegg and Ms Hussain. Mrs Carr’s evidence about the difficulties caused by the COVID 19 pandemic and associated lockdowns was compelling and unsurprising. The Tribunal accepted that the reason for the delay in investigating the 13 March 2020 incident and taking formal action was the pandemic and the lockdown, in particular the fact that the pupil was not in school from March to September, and his mother was not responding to the school’s attempts to contact her. No doubt also the investigation took on a lower priority because of the lockdown, and because, as Mrs Carr explained, the pupil was not attending the school, there were no detentions, and the overall access arrangements were different, so the immediate safety concern was indirectly addressed. The Tribunal had no hesitation in finding that the delay in investigating the incident and taking formal action had nothing to do with the Claimant’s race.

35. Returning to the chronology, we noted that the Claimant made a flexible working request in May 2020, asking to reduce her hours with effect from September 2020 to 4 days per week with a Monday or Friday off. Mrs Carr agreed. The School conducted a COVID-19 risk assessment with the Claimant on 1 June 2020. She raised some concerns, including about returning to teach Year 10 in school. Mrs Carr met her on 12 June 2020. Her notes of the meeting indicate a supportive approach. Mrs Carr gave her reassurance, for example that the Claimant should not worry about communications about deadlines. A return to work plan was put in place for the Claimant, and adjustments were made to her duties because of the COVID risks she faced.
36. The Claimant had an asthma attack over the weekend of 26/27 June 2020. She was off work the following week. She was not sent flowers when she was off work. Mrs Carr did personally send her a warm and supportive email. Mrs Carr’s evidence, which the Tribunal accepted, was that they did not as a school send flowers to members of staff who were absent due to illness. The Claimant was treated the same all staff who were off sick. However, Mrs Woodhead was subsequently sent flowers when she was off sick in October 2020. This was arranged by Mr Townend, the Head of Department, personally. The circumstances were that Mrs Woodhead was clinically extremely vulnerable and had to shield for a long period during the first lockdown. Unfortunately, she then contracted COVID in October 2020 and was very unwell. Mr Townend, who had worked with Mrs Woodhead for many years, held a collection and arranged for flowers to be sent to her. There was absolutely no basis for suggesting that the Claimant was not sent flowers in June 2020 because of her race and the Tribunal found that this had nothing to do with it.
37. The Claimant complains that when she arrived at school on 7 September 2020 for the staff training day she acknowledged the PE department with a “good morning” but got no response. She said in her witness statement that she was asked by Ms Wilkinson what she had done, as her line manager was speaking fine just before her arrival. In her oral evidence, she confirmed that the

reference to her line manager was to Mrs Woodhead. She was then asked to explain who she was saying had ignored her and she said that it was three male members of the PE department, who were sitting at a table in the dining room when staff were assembling for the training. She said "hello" to them and they ignored her. She was asked where Mrs Woodhead was and she said that she did not know. She said she was greeted by Ms Wilkinson and she joined her. Ms Wilkinson then asked her if there was something the matter, because Mrs Woodhead had been speaking fine before the Claimant arrived and had then gone quiet. That account did not make sense. The Claimant's complaint to the Tribunal and in her witness statement were about Mrs Woodhead, but in her oral evidence she said that it was three named male members of staff and that she did not even know where Mrs Woodhead was. It seemed to the Tribunal that Ms Wilkinson had made some comment to the Claimant about Mrs Woodhead going quiet, which the Claimant had characterised as a complaint of race discrimination although she had not seen Mrs Woodhead at all. When questioned about that, she had then suggested for the first time in cross-examination that this was about the three male members of staff and not Mrs Woodhead at all. In those circumstances, the Tribunal found the Claimant's account implausible. We did not accept that the three named male members of the PE department, mentioned for the first time in cross-examination in July 2022, had ignored the Claimant. On the Claimant's own account she did not know where Mrs Woodhead was, so she cannot have ignored her. In any event, the Claimant identified no basis whatsoever for suggesting that any greeting or lack of greeting from any colleague had anything to do with race. She named Ms Middleton as a comparator in her particulars of claim, but she did not give any evidence about Ms Middleton.

38. In her particulars of claim, the Claimant complained that on 20 October 2020 she was denied the opportunity to meet Mrs Carr to discuss her directed hours. She said that Mrs Carr was prepared to meet Ms Burton-Smith to discuss directed hours. The Claimant did not give any evidence about this in her witness statement, written with the benefit of legal advice throughout. The Tribunal file included an email from Mrs Carr to the Claimant on 20 October 2020 evidently responding to an email from the Claimant about how her directed hours should work now that she was on a 0.8 contract. Mrs Carr sent the Claimant the directed time calculator and said that she always suggested that people work with their line manager about which CPD sessions they should attend. She asked her to meet her line manager half termly to do so. She asked the Claimant to let her know if she had any questions. The Claimant replied that evening to say that she still did not understand, but hopefully her line managers could provide some clarity. She asked some questions. There was no indication that she was requesting a meeting with Mrs Carr, nor any refusal of a meeting by Mrs Carr. The Claimant did not give any evidence in relation to Ms Burton-Smith. Mrs Carr's evidence was that the Claimant did not ask to meet her. If she had, she would have met her. Further, she had not met with Ms Burton-Smith to discuss directed time either. The Tribunal accepted Ms Carr's evidence. The Claimant was not denied the opportunity to meet Mrs Carr to discuss directed hours for a part-time member of staff.
39. As set out above, the investigation into the March 2020 incident was completed during September 2020 and the Claimant was updated by Ms Devane on 5

October 2020. She became unwell with stress and anxiety over half term and was signed off work with work-related stress and anxiety from 2 November 2020. Ms Woodhead referred her to OH on 12 November 2020. The OH referral mentioned a number of concerns in the Claimant's personal life, including her concerns about her asthma in the context of the pandemic and some recent bereavements. It also mentioned work-related stress caused by a number of incidents that had built up over time. The referral noted that the March incident and an incident of dealing with an intimidating pupil were causing the Claimant anxiety and that she felt strongly that neither incident was properly resolved or effectively dealt with by the School. The referral also mentioned some email communications from colleagues, the Claimant's relationship with Ms Wilkinson and not having a desk. The OH advisor reported on 24 November 2020. He confirmed that the relationship with Ms Wilkinson had been resolved. He said that it was the way that incidents had been handled that caused the Claimant distress and anxiety. He recommended that the Claimant's outstanding workplace concerns be discussed and resolved, and made other recommendations.

40. Ms Woodhead met the Claimant in December to discuss the report and a possible return to work. The Claimant's union representative accompanied her. The notes of the meeting suggest that it was entirely supportive. The Claimant continued to be concerned about the March 2020 incident, what had been done about it, and whether she would be safe at work.
41. The Claimant returned to work on a phased return in January 2021. She had a return to work meeting on 13 January 2021. Her trade union representative accompanied her. Mrs Woodhead and Mrs Carr attended. Mrs Carr talked through the March 2020 incident, the investigation and what would be done in future about site access. There was discussion about a phased return over three weeks and supportive measures. Again, the notes suggest an entirely supportive discussion. The Tribunal noted that the Claimant's trade union representative emailed Mrs Carr on 20 January 2021, thanking her for the meeting. She said that for the Claimant to put the matter behind her they thought it would be useful to outline what happened, for Mrs Carr to better understand the impact of the incident and the way it was handled. She then set out a detailed account of events. She concluded by saying that the Claimant had been reassured in the meeting that the problem with site security had been addressed and they hoped she could now put the incident behind her. The letter did not ask Mrs Carr to take any action. In her witness statement, the Claimant described her union representative's letter as a "written grievance" and complained that it had been "dismissed" just like all the other times she raised issues. In cross-examination, she insisted that the letter was a grievance, before eventually accepting that it was not. It clearly was not. This was a striking example of the Claimant's re-characterising events with hindsight. What had at the time been clearly intended as a letter drawing a line under events was portrayed with hindsight as a grievance that was not dealt with. This was a feature of her evidence overall.
42. In July 2020 the Claimant expressed an interest in joining the School's Teaching and Learning team. She did not hear back. She was absent from work

for the second half of the autumn term. After her phased return to work in January 2021, she saw that T&L meetings had started up. On 19 January 2021 (during her phased return to work) she asked Ms Donnelly (Acting Deputy Headteacher) why she was not allowed to be part of the T&L team. Ms Donnelly told her that it had been decided that the team would only be the Lead Practitioners within school and that she had not emailed the Claimant to tell her because she was off sick. The Claimant replied to say that she understood, and to ask how she became a Lead Practitioner. Ms Donnelly said that she was not sure, but thought the roles had been nationally advertised.

43. On 2 February 2021 the Claimant had an email exchange with Mrs Carr about opportunities to secure more whole school experience. She mentioned not being able to join the T&L team because of not being a Lead Practitioner. Mrs Carr sent a detailed and supportive response. In relation to the T&L point specifically, she said that her understanding was that anybody could join the team voluntarily, but Lead Practitioners were expected to be on the team. She asked the Claimant to let her know if it was something she wanted to do. The Claimant emailed Ms Donnelly quoting from Mrs Carr's email and asking Ms Donnelly to "provide some clarity due to the contradiction." The Tribunal did not see Ms Donnelly's reply and the Claimant did not give any evidence about it. On 8 February 2021 the Claimant emailed Ms Donnelly a detailed expression of interest to join the T&L team. Ms Donnelly told her that she and Mr Bateman would discuss it, hopefully before half term. On 5 March 2021, Ms Donnelly emailed the Claimant to say that she thought joining the team would be more suitable in September 2021, as that would give the Claimant the opportunity to shadow some of the Lead Practitioners in the summer term to experience how they approached the role. She suggested somebody for the Claimant to shadow. Mrs Carr explained in her oral evidence that after she received the Claimant's email on 2 February 2021, she double-checked with Ms Donnelly about whether her understanding that anybody could join the team was correct. Ms Donnelly told her that they had changed approach in September 2020, because of the pandemic. The meetings did not work online, and it was only possible to have six people present in person because of social distancing, so a decision was taken at that stage that the T&L team would only be the Lead Practitioners. The Claimant's only evidence about this matter in her witness statement was "The fact I was not able to join the teaching learning team and the additional hurdles I had to jump through to be considered." Mrs Carr gave evidence that the Claimant's race was not the reason she was denied the opportunity to be on the T&L team; the reasons were as set out above. The Tribunal accepted that evidence. There was an obvious reason why the membership of the team needed to reduce in September 2020, and why the Claimant was not told explicitly at the time. The Claimant identified no basis for suggesting that the reason she was not invited to join the T&L team in September 2020 had anything to do with her race. Indeed, the Tribunal found that the evidence before it demonstrated that the Respondent was very supportive of the Claimant and her evident ambition to progress to a management role. She was appointed to roles for which she applied or volunteered, such as mentoring Ms Wilkinson, the Sport England role and the TLR role. Mrs Carr took care and time to respond in detail to her question about

securing whole school opportunities and was clearly trying to support the Claimant in that.

44. One of the Claimant's complaints is that on 28 April 2021 she asked for extra PPA time for the following academic year, when she was due to take on a role teaching Health and Social Care. She said that Mrs Carr refused, but that she gave 4 hours' PPA time to Ms Everett, a white NQT. Again, the Claimant did not give any detailed evidence about this.
45. Mrs Carr's evidence was that on 28 April 2021 the Claimant gave her a letter stepping down from her TLR post. She did not recall meeting her. She did meet her on 4 May 2021. She offered her the opportunity to teach some Health and Social care classes. The Claimant was delighted. She asked if additional PPA would be available for taking on teaching a new subject. Mrs Carr told her that it would be looked at when the timetable was being created but she could not offer any assurances. Mrs Carr said that the Claimant was an experienced teacher and she did not consider it necessary to ensure that she had extra PPA time. This had nothing to do with her race. Mrs Carr agreed that Ms Everett was given more PPA. She said that was because she was an NQT and Mrs Carr was obliged to ensure that 10% of her timetable was free. The Tribunal accepted Mrs Carr's unchallenged and straightforward evidence. Again, the Claimant simply identified no basis for suggesting that any of Mrs Carr's actions had anything to do with the Claimant's race.
46. The Claimant was evidently not sure about the Health and Social Care role, nor about the School more generally. The Tribunal saw some text messages between her and Mrs Woodhead about that during May 2021. The Claimant was questioning whether she should remain at the school. Mrs Woodhead's replies were supportive, making repeated offers of help or to chat.
47. On 27 May 2021, the Claimant resigned. There is a dispute about what happened. The Claimant says that she tried to address the issue of the Health and Social care role with Mrs Woodhead and the impact on her wellbeing. Mrs Woodhead told her if she was not happy to hand in her notice, so she did so.
48. Mrs Woodhead said that on the morning of 27 May 2021, the Claimant told her that unless Mrs Carr agreed to give her time off timetable, or to change her role back to Child Development and PE, she would resign. The Claimant had already written her resignation letter and had it with her. Mrs Woodhead said that she sympathised with the Claimant and said something like, "If that's how you feel, that is what you should do." She was not pressuring her to resign, she was being supportive of her decision to do so, because she made it clear that she had considered her options for some time and felt that she needed to resign for her health and happiness. It was nothing to do with her race.
49. The Tribunal preferred Mrs Woodhead's evidence about this. In doing so, we took into account that the Claimant agreed, in cross-examination, that Mrs Woodhead had always previously encouraged her not to resign when she had mentioned it. It was then put to the Claimant that she had her resignation letter with her when she spoke to Mrs Woodhead and she said that she did not. Her attention was then drawn to what she had said at an investigation meeting in

June 2021. She told Ms Nash on that occasion that she voiced her unhappiness to Mrs Woodhead, who told her, "If you are that unhappy why don't you hand in your notice?" The Claimant told Ms Nash that she had her notice in her pocket. The Claimant's answer in cross-examination was that she spoke to Mrs Woodhead twice that day. The first time was in the morning when they spoke about handing her notice in, and she did not have it in her pocket then. Her attention was drawn again to what she told Ms Nash, which clearly referred to her having her notice in her pocket at the time of the conversation about resigning. She simply said that that was what was written at that time. The Tribunal noted that she had amended the notes on 15 July 2021. Her evidence about this lacked credibility. We found that she did have her resignation letter in her pocket when she spoke to Mrs Woodhead. This inconsistency and the implication that if the Claimant had her resignation letter with her already, she did not resign because Mrs Woodhead told her to, led the Tribunal to prefer Mrs Woodhead's evidence. We found that she did not tell the Claimant to resign. She responded supportively to the Claimant telling her that she was going to, by saying that if that was how she felt, that was what she should do. There was no less favourable or detrimental treatment. Nor was there any evidence whatsoever to suggest that Mrs Woodhead's actions had anything to do with the Claimant's race.

50. When the Claimant handed her notice in on 27 May 2021 Mrs Carr spoke to her. The Claimant told her that Mrs Woodhead had told her to resign. Mrs Carr checked with Mrs Woodhead, who gave an account of the conversation consistent with what we have set out above. Mrs Carr emailed the Claimant after half term, to tell her what Mrs Woodhead had said. She wrote, "Tracy has confirmed at this point in the conversation, that in sympathy with you she said, "if that's how you feel then that is what you should do." Mrs Carr added that she just wanted to be certain that the Claimant was making the decision to resign herself, and invited her to discuss it if she wanted to. That led to a meeting between Mrs Carr and the Claimant on 8 June 2021. That was the meeting attended by Mrs Goodswen too. So far as the Claimant's resignation was concerned, all present were of course well aware of the strict requirements in relation to teachers handing in their notice. Mrs Carr explained that an internal advert for the Claimant's role had already been prepared and that the staff bulletin had already gone. Mrs Goodswen confirmed that it was "fair enough" to advertise the role. The Claimant had an interview for another role in a few days' time. Mrs Carr agreed that she could take time to consider whether she wanted to withdraw her resignation or not. On 11 June 2021, the Claimant emailed Mrs Carr to thank her for the opportunity to reconsider. She said that she did want her resignation to stand. She had not been successful at the interview, but had been offered options for a post within the school and had another interview on Monday.
51. The Claimant's complaint about Mrs Carr is that she "took the side" of Mrs Woodhead over the notice allegation, and that she did so because of the Claimant's race. That appears to be based on the fact that Mrs Carr said in her email that Mrs Woodhead had "confirmed" what she said. The Tribunal did not find that Mrs Carr "took sides" or acted on the basis that Mrs Woodhead was correct. On the contrary, she gave the Claimant the benefit of the doubt, by

checking that she was resigning because she wanted to, inviting her to a meeting to discuss it and then giving her a number of days to consider whether or not to withdraw her resignation. It seemed likely to the Tribunal that Mrs Carr used the wording she did simply to try and reassure the Claimant that she was not being pressured to resign. The fact that the Claimant's role was advertised in the meantime was entirely understandable, given the deadlines for teachers to resign and as accepted by the Claimant's own representative. There was no plausible suggestion that if the Claimant had withdrawn her resignation, she would not have been permitted to do so. Again, Mrs Carr was being supportive of the Claimant. There was no basis for saying that her actions had anything to do with the Claimant's race and we accept her evidence that they did not.

52. The final complaint of race discrimination is that the Claimant raised a verbal grievance about race discrimination on 8 June 2021 and "reaffirmed the same" in writing on 21 July 2021 and that the Respondent failed to follow the process in its Grievance Policy because it did not hold a meeting with the Claimant and a representative. She said that the Respondent did not follow the correct procedure because of her race. She relied on Lee Warner as a comparator. The Claimant did not give any evidence about Lee Warner.
53. The Claimant clearly raised concerns at the meeting on 8 June 2021. Among other things, the notes of the meeting record her saying, "Too many things have happened. [Ms Wilkinson] saved me. Struggles of a black teacher school not fully inclusive, does it not make sense. People being rude, if address it, I'm the aggressor; not going to have anyone speak to me. Not black woman with chip on shoulder." It seemed to the Tribunal that there was little real dispute about what was said in relation to discrimination. Mrs Goodswen's evidence was that she recollected clearly that the Claimant spoke about the issues of being a black teacher in the school and how it was not as inclusive as it might be. She "told the story of how she had been disrespected a number of times by a younger member of the PE team. When she eventually challenged this behaviour, she was accused of being the aggressor and she understood that the other member of staff had not been dealt with for her behaviour." Mrs Goodswen said that the Claimant related this incident to "demonstrate the feeling that she was responded to in this way because she was a black teacher." That seemed to the Tribunal to be broadly consistent with the notes of the meeting. So, too, did Mrs Carr's evidence. Mrs Carr said that the Claimant said that she struggled as a black teacher and said that the school was not fully inclusive but did not raise allegations of race discrimination. In cross-examination she said that the Claimant did not say that she was discriminated against "in this instance" but that as a result of what she said Mrs Carr asked for an investigation in any event.
54. Mrs Carr did instigate an investigation. The Claimant objected to Ms Devane handling it, so Ms Nash was then asked to do so. She met the Claimant on 17 June 2021 to ask her about the matters of concern. The Claimant confirmed at the end of the meeting that she was happy with the way Ms Nash had conducted it. The Claimant also attended an exit interview, at which she outlined a number of concerns. Ms Nash interviewed Mrs Woodhead on 24 June 2021. Ms Nash sent the Claimant an outcome report on 23 July 2021. Ms Nash identified some shortcomings and made some recommendations about

training on the code of conduct, dignity and respect; and improved induction processes.

55. Meanwhile, on 21 July 2021 the Claimant had sent a written grievance. She mentioned four matters of concern: the desk situation; Ms Wilkinson's conduct and how that was handled; the incident with the parent in March 2020; and what Mrs Woodhead said to her about resigning on 27 May 2021. She agreed in cross-examination that this covered the matters that she had already raised at the meeting on 8 June 2021 and during the investigation meeting on 17 June 2021. Mrs Carr dealt with the written grievance. She sent the Claimant an outcome letter on 17 September 2021. She did not meet her before doing so. She cross-referred in her conclusions to what the Claimant had said in her interview with Ms Nash on 17 June 2021. Mrs Carr identified areas for improvement but did not uphold any complaint of unfair treatment or discrimination.
56. In her evidence, Mrs Carr said that she did follow the School's Grievance Policy. Although the Policy outlines in general that formal grievances will be dealt with by holding a meeting with the employee at which they are permitted to be accompanied, there is a specific section for dealing with grievances submitted at the end of somebody's employment contract. Under paragraph 10.1 and 10.2, if an employee raises a grievance and subsequently gives notice, every effort should be made to investigate it before they leave. If it is not possible fully to do so, a written response should be sent. If a grievance is raised after the contract has ended, the headteacher will provide a written response. Mrs Carr said in her evidence that the Claimant's written grievance was received on 22 July 2021. The Claimant had gone home early that day as she was ill and she did not work on Fridays, so 22 July 2021 was her last working day. Mrs Carr took the view that the Claimant's grievance repeated the concerns she had raised on 8 June 2021. She did not feel it necessary to meet her because she did not raise any new concerns and the concerns she had raised were addressed in Ms Nash's investigation report. Further, it was not possible to meet her because she had left and it was then the summer holidays. Mrs Carr said that she would have acted in the same way with any grievance received on the last day of term from an employee who was leaving or had left and where the subject of the grievance had already been the subject of an extensive investigation. It was nothing to do with race. The Tribunal accepted that evidence. We found that there was no failure to follow the Grievance Policy. The Claimant's complaints made verbally on 8 June 2021 were treated as a grievance and investigated by Ms Nash in accordance with the Grievance Policy. Her written grievance was treated consistently with section 10 of the Grievance Policy and she received a written outcome from the headteacher. In any event, as the Claimant accepted, the written grievance raised the same concerns that were fully investigated by Ms Nash, and in respect of which she had already attended an investigatory meeting. None of Mrs Carr's actions had anything to do with the Claimant's race.
57. The Claimant did not give any evidence about why she did not present her Tribunal claims sooner or why it was just and equitable for the Tribunal to extend time for presenting them.

58. We conclude by saying that it seemed to the Tribunal that the Claimant was expecting to experience bias and discrimination, and that she was anticipating that actions would be discriminatory or assuming that they were. That seems to have influenced her own perceptions, actions and choices. However, the evidence before the Tribunal suggested that, far from subjecting the Claimant to bias and discrimination, Mrs Carr and Mrs Woodhead did all they could to support her in her career and her wish to progress to a leadership role. The Claimant did not see it that way. We noted that the School only had two black teachers at the time the Claimant was employed. Mrs Carr was appointed in 2018, when the School was rated inadequate by Ofsted. Her role had been to improve the teaching, learning and behaviour at the School. There had been significant improvements. She noted that the most recent Ofsted report noted that pupils said that discriminatory language was not heard in school and that respectful, tolerant attitudes towards diversity and difference were evident. However, Mrs Carr identified areas for improvement. Her view was that training on equalities and diversity was not as good as it could be and that was being addressed. She also acknowledged that they struggled to recruit teachers whose backgrounds reflected the wide ethnic backgrounds of their students, because they simply did not get many applicants. However, a general lack of diversity in the workforce did not, by itself, provide a basis for inferring that any of the matters about which the Claimant complained were because of her race. For the reasons we have explained, both in respect of the specific incidents, and in respect of their approach to the Claimant more generally, the Tribunal was entirely satisfied that Mrs Carr and Mrs Woodhead were entirely supportive and non-discriminatory in their approach.

Legal principles

59. Claims of race discrimination are governed by the Equality Act 2010. The Equality and Human Rights Commission's Code of Practice on Employment is relevant to discrimination claims and the Tribunal considered its provisions.
60. The burden of proof is dealt with by s 136 Equality Act 2010. The Tribunal had regard to the authoritative guidance about the burden of proof in *Igen Ltd v Wong* [2005] ICR 931. That guidance remains applicable: see *Royal Mail Group Ltd v Efofi* [2021] ICR 1263. In essence, the guidance outlines a two-stage process. First, the complainant must prove facts from which the Tribunal *could* conclude, in the absence of an adequate explanation, that the Respondent had committed an unlawful act of discrimination against the complainant. That means that a reasonable Tribunal could properly so conclude, from all the evidence before it. A mere difference in status and a difference of treatment is not sufficient by itself: see *Madarassy v Nomura International plc* [2007] ICR 867, CA. The second stage, which only applies when the first is satisfied, requires the Respondent to prove that he did not commit the unlawful act. However, as the Supreme Court again made clear in *Efofi*, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

61. Direct discrimination is dealt with by s 13 Equality Act 2010. Under s 13, direct discrimination arises where (1) an employer treats a person less favourably than it treats or would treat others and (2) the difference in treatment is because of a protected characteristic. In answering the first question the Tribunal must consider whether the employee was treated less favourably than an actual or hypothetical comparator whose circumstances were not materially different. The second question entails asking why the employee received less favourable treatment. Was it because of a protected characteristic or was it for some other reason? It is necessary to explore the mental processes of the employer, to discover what facts operated on his or her mind: see *R (E) v Governing Body of the Jewish Free School* [2010] IRLR 136, SC (“JFS”). The protected characteristic need not be the only or even the main cause of the less favourable treatment; it must be an effective cause: see e.g. *London Borough of Islington v Ladele* [2009] IRLR 154, EAT. It is not always necessary to answer the first and second questions in that order. In many cases it is preferable to answer the “reason why” question, first.
62. The time limits for bringing claims of discrimination in the employment tribunal pursuant to s 120 of the Equality Act 2010 are governed by s 123, which provides, so far as material, as follows:
63. Under s 123(3)(a), conduct extending over a period is treated as being done at the end of the period. A distinction is drawn between a continuing act and an act that has continuing consequences. Where an employer operates a discriminatory regime, rule, practice or principle, such a practice will amount to an act extending over a period.: see *Barclays Bank plc v Kapur* [1991] ICR 208, HL. The concepts of policy, rule, practice, scheme and so on are examples of when an act extends over a period. However, the focus of the inquiry is not on whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but on whether there was an ongoing situation or continuing state of affairs in which the group discriminated against, including the Claimant, was treated less favourably: see *Hendricks v Metropolitan Police Commissioner* [2003] ICR 530, CA.
64. As regards extending time, the Tribunal has a wide discretion under s 123(1)(b) to do what it thinks is just and equitable in the circumstances, but bearing in mind that time limits are exercised strictly in employment cases, and that there is no presumption that a Tribunal should exercise its discretion to extend time. The onus is on the Claimant to persuade the Tribunal that it is just and equitable to extend time: see *Robertson v Bexley Community Centre* [2003] IRLR 434, CA. This is a question of fact and judgment, to be answered case by case by the Tribunal: see *Chief Constable of Lincolnshire Police v Caston* [2010] IRLR 327, CA.
65. The factors that are to be considered by the civil courts under s 33 of the Limitation Act 1980 in determining whether to extend time in personal injury actions may provide a helpful checklist: see *Southwark London Borough Council v Afolabi* [2003] IRLR 220, CA. Under that section the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in

particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

Application of the law to the facts

66. The Tribunal's detailed findings of fact are set out above. We can deal with the issues much more briefly, because many of them turn on the findings of fact.
67. We begin with the question of time limits. The claim form was presented on 10 November 2021. Early conciliation started on 26 September 2011 and ended on 11 October 2011. A complaint about anything that happened on or before 26 June 2021 was therefore not presented within the Tribunal time limit, unless there was discriminatory conduct over a period that ended after that date. The only matter about which the Claimant complained after 26 June 2021 was what she said was a failure to consider her written grievance in accordance with the Grievance Policy. As we have explained above, that did not happen. The written grievance was dealt with in accordance with the Grievance Policy. The Tribunal therefore concluded that there was not conduct over a period that ended on or after 27 June 2021. All of the claims were therefore presented outside the time limit in s 123. The Tribunal considered whether it was just and equitable to extend time for presenting them. The Claimant did not present any evidence or explanation for her failure to do so and there was nothing in the Tribunal file to explain it. The Tribunal noted that the Claimant was a member of a trade union and supported by them during the events in these proceedings. They could have advised her about time limits. Although she had some ill health during her employment, she was broadly speaking attending work from January 2021 onwards, and was well enough to put in her written grievance in July 2021. Allowing these claims to proceed out of time causes prejudice to the Respondent in having to defend the claims, and in recalling events that took place, in some cases, some time ago. Of course, there is prejudice to the Claimant in not extending the time limit, because her claims cannot proceed. Weighing the information that was before us, and bearing in mind that it is for the Claimant to satisfy the Tribunal that the time limit should be extended, the Tribunal concluded that it was not just and equitable to extend time. No reason for the delay was identified and the prejudice to the Respondent outweighed the prejudice to the Claimant. That was particularly so, given that the Tribunal has made findings about each complaint in any event, so the Claimant can see how her complaints would have been determined.
68. Given that the Tribunal heard evidence and was able to reach conclusions about the discrimination complaints, we have set out below what our conclusions were. If time had been extended, the complaints would not have succeeded, for the reasons explained in the findings of fact and summarised below.

- 68.1 The Claimant was provided with a desk when she started but no computer of her own. The desk was dirty and untidy. But this was nothing whatsoever to do with her race. It was because people had been using it to make tea and coffee during the Claimant's absence. Ms Wilkinson took over the same desk. It was cleaned for her by Ms Booth, who had been using it to work at.
- 68.2 The Claimant did not make a complaint to Mrs Woodhead about Ms Wilkinson speaking to her in an aggressive or confrontational way on 6 December 2019. Both the Claimant and Ms Wilkinson behaved unprofessionally on 11 December 2019, both complained and both were treated in the same way by being asked to attend a restorative meeting. No disciplinary action was taken against either. When Mr Spires complained about the Claimant in November 2019, no disciplinary action was taken. Ms Devane had a quiet word with her. There was no less favourable treatment of the Claimant. None of Mrs Woodhead's actions was because of the Claimant's race.
- 68.3 The delay in investigating the March 2020 incident was because of the pandemic, not because of the Claimant's race. Her case was different from Ms Clegg's and Ms Hussain's, because in their case there was no complaint about them.
- 68.4 The Claimant was not sent flowers in June 2020 after her asthma attack. Mrs Woodhead was sent flowers in October 2020 after her illness. That was nothing to do with race. It was because Mr Townend decided to organise some flowers for Mrs Woodhead, his colleague of many years, after her long period of shielding and then her serious illness with COVID.
- 68.5 The Claimant's team did not ignore her on 7 September 2020. The Claimant gave no evidence about Heidi Middleton.
- 68.6 The Claimant was not refused an opportunity to meet Mrs Carr to discuss directed hours in October 2020 or at all.
- 68.7 The Claimant was not invited to join the Teaching and Learning team in 2020. That was because it was limited to Lead Practitioners at that time so that they could meet in person and socially distance during the pandemic. It was nothing to do with the Claimant's race.
- 68.8 Mrs Carr did not refuse the Claimant additional PPA for her role teaching Health and Social Care in April or May 2021, she told her it could not be guaranteed and would be looked at when the timetable was finalised. Ms Everett was entitled to 10% PPA because she was an NQT so her situation was not comparable. Mrs Carr's decision had nothing to do with the Claimant's race. It was because she did not think the Claimant as an experienced and proficient teacher needed additional time.
- 68.9 The Claimant was not encouraged, pressured or told to resign by Mrs Woodhead on 27 May 2021 or at all. The Claimant told Mrs Woodhead that she thought she should resign for the sake of her health and Mrs Woodhead supportively told her that if that was how she felt she should do so. Mrs Carr did not take Mrs Woodhead's side. On the contrary, she proceeded as though Mrs Woodhead had encouraged or told the Claimant to resign, by giving her a generous opportunity to withdraw her

resignation. Neither of their actions had anything to do with the Claimant's race.

- 68.10 The Respondent did hold a meeting with the Claimant to address her verbal grievance from 8 June 2021. It was investigated and determined in accordance with the Grievance Policy. Mrs Carr did not hold a meeting with the Claimant about her written grievance from 21 July 2021 but she did not fail to comply with the Grievance Policy, she determined the complaint in accordance with the Policy, as it applied to teachers who hand in their notice. None of her actions was anything to do with the Claimant's race.

Employment Judge Davies

8 July 2022