



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Louise Farrington

**Respondent:** The Governing Body of Bank View High School

**Heard at:** Liverpool (by video hearing) **On:** 20 September 2022

**Before:** Employment Judge Buzzard  
Mr AG Barker  
Ms V Worthington

## REPRESENTATION:

**Claimant:** Mr N Bidnell-Edwards (Counsel)

**Respondent:** Mr Tim Kenward (Counsel)

## JUDGMENT

The claimant's claims are all judged to be not well founded and are all dismissed.

## REASONS

### 1. What were the Claims that the Tribunal was asked to determine?

- 1.1. The parties had prepared an agreed list of issues in advance of the hearing. Parts of that list were, as matters transpired, not in dispute. In particular, by the point of submissions the respondent did not contend that any part of the claimant's claim had been brought out of time.
- 1.2. The claimant only brought claims under the provisions of the Equality Act 2010. All the claimant's claims under the Equality Act related to the protected characteristic of disability. The claimant has a number of health issues. It was agreed at the outset that the only disabilities relied on for the purposes of this claim are the claimant's physical disabilities. The respondent did not dispute that the claimant's physical disabilities were disabilities as defined by the Equality Act 2010. Accordingly, whether the claimant's relevant health issues amounted to a disability was not an issue this Tribunal had to determine.

1.3. The claims brought by the claimant were:

- 1.3.1. direct disability discrimination;
- 1.3.2. discrimination arising from disability;
- 1.3.3. discrimination by failing to make reasonable adjustments;
- 1.3.4. harassment related to the protected characteristic of disability; and
- 1.3.5. victimisation.

## **2. What were the Issues in these claims?**

- 2.1. All the Claimants claims arose from five specific events or incidents. Any other issues raised in the claimant's ET1 were confirmed as being matters of background only, and not themselves matters from which the claimant's claims before this Tribunal arose.
- 2.2. Three of these five specific discriminatory incidents occurred at a meeting on 13 February 2020. These were all alleged acts of the Head Teacher and are described in the agreed list of issues as the Head Teacher having:
  - 2.2.1. locked the claimant in the Head Teacher's office. This refers to the fact that the office door was locked, by the headteacher, using a keyless thumb-turn lock, whilst the meeting took place;
  - 2.2.2. informed the claimant in an angry and aggressive manner that a complaint had been made about her; and
  - 2.2.3. informed the claimant in an angry and aggressive manner that she would be investigated for potential gross misconduct and would have to go on "gardening leave" immediately.
- 2.3. At the outset of the hearing the claimant's representative confirmed that the relevant discriminatory element of the allegation at 2.2.2 above was limited to the manner in which the claimant was told a compliant had been made.
- 2.4. These three acts were pursued, in the alternative, as acts of direct discrimination, discrimination arising from disability and harassment. In addition, the claimant argued that if the locking of the door was found to have been a practice of the head-teacher for such meetings, then the failure to adjust this practice amounted to discrimination by failing to make a reasonable adjustment.
- 2.5. The final two acts referred to are argued to be either direct discrimination or victimisation. These acts occurred after the claimant's employment had ended, and were described in the list of issues as:

- 2.5.1. concluding in the outcome to the investigation that the claimant had breached safe working practices and/or the respondent's social media policy and that disciplinary action would have been recommended had the claimant still been in employment; and
- 2.5.2. referring the claimant to the Teaching Regulation Agency ("TRA") following the outcome of the disciplinary investigation.

### **3. What is the relevant law?**

#### *3.1. Direct Disability Discrimination*

- 3.1.1. This is defined by s13 of the Equality Act as when:

*"13(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

- 3.1.2. In this claim the claimant identified five things that she alleges occurred which she says amounted to less favourable treatment. Three of these were found not to have occurred. The remaining two acts alleged to have been less favourable treatment were accepted to have occurred.
- 3.1.3. Determination of the claim, insofar as it relates to these two acts, requires the claimant to identify an appropriate comparator. It is clear from the wording of the section, '*or would treat others*' that a hypothetical comparator can be used. The claimant in this case sought to rely on a hypothetical comparator. The hypothetical comparator constructed would be a person with a similar employment record to the claimant, who had a complaint made about her when in a non-teaching role.
- 3.1.4. Establishing less favourable treatment than a comparator is not, however, sufficient. For the claim of direct discrimination to succeed, the conduct complained of must be also be found to have been '*because of* the claimant's disability. It is the claimant's failure to establish this requirement was met that caused the claimant's remaining direct discrimination claims to be dismissed.

#### *3.2. Discrimination Arising from Disability.*

- 3.2.1. This is defined by s15 of the Equality Act as when:

*"15(1) A person (A) discriminates against another (B) if, A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim."*

3.2.2. Accordingly, for this claim to succeed the claimant must first identify the unfavourable treatment which is alleged to have been discriminatory. In this claim the claimant identified three things that she alleged occurred and that could be unfavourable treatment. All three were found not to have occurred. Identification of unfavourable treatment is the first and essential step in establishing that this form of discrimination has occurred. It was this finding that the three identified alleged acts of unfavourable treatment did not occur which was determinative of these claims.

3.3. *Discrimination by Failing to Make Reasonable Adjustments.*

3.3.1. The relevant provision relating to the duty to make reasonable adjustments is to be found in section 20 of the Equality Act, which sets out that where:

*“A provision, criterion or practice applied by or on behalf of an employee places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled it is the duty of the employer to take such steps as is reasonable in all the circumstances of the case, for him to have to take in order to prevent the provision, criteria or practice, or feature, having that effect.”*

3.3.2. The claimant claims that the Head Teacher had a practice of locking her office door to prevent interruption when conducting sensitive or difficult meetings. Whether this could amount to a provision, criterion or practice (“PCP”) is disputed.

3.3.3. The claimant further argues that as a disabled person she could not undo the lock. The claimant claims that this caused her anxiety and distress which amounted to a substantial disadvantage that a non-disabled person who could open the lock would not encounter.

3.3.4. Under paragraph 20 of Schedule 8 of the Equality Act a relevant limitation on the duty to make reasonable adjustments is set out. This states that an employer is not subject to make reasonable adjustments if they do not know and could not reasonably be expected to know

*“that an interested disabled person....is likely to be placed at the disadvantage referred to”*

3.4. In this case the respondent Head Teacher does not accept that she was reasonably aware of any potential disadvantage. In the event it was found that she had specifically asked the claimant if she was OK with the door being locked to avoid interruptions, and no concern had been raised. Accordingly, this claim was determined on this requirement of knowledge of disadvantage on the respondent's part.

3.5. *Harassment Related to the Protected Characteristic of Disability*

3.5.1. Harassment is defined by s26 of the Equality Act as:

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

3.5.2. Accordingly, for this claim to succeed the claimant must identify the acts which are alleged to have been harassment. The claimant identified three acts that were alleged to have occurred and to amount to harassment. These acts were all found not to have occurred. It was this finding that the three identified alleged acts of harassment did not occur which was determinative of these claims.

### 3.6. *Victimisation*

3.6.1. The definition of victimisation is found in s27 of the Equality Act. The relevant parts of this state:

#### 27 Victimisation

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
  - (a) B does a protected act,
- (2) Each of the following is a protected act—
  - (d) making an allegation (whether or not express) that A or another person has contravened this Act

3.7. In this case there was no dispute that the claimant did two protected acts, namely submitting a grievance alleging discrimination, and making this claim.

3.8. To succeed in a claim of victimisation, the claimant has to identify detriments that she was subjected to because she did a protected act. The claimant identified two detriments, namely the adverse outcome of an investigation into

her conduct and her referral to the TRA. There did not appear to be any credible argument that these were not potential detriments.

- 3.9. Identification of a protected acts and a later detriment is not, however, sufficient for a victimisation claim to succeed. The claimant must have been subjected to the identified detriment *because* she did one or more of the identified protected act or acts. It is this requirement that was determinative of the claimant's victimisation claims.

#### **4. The Burden of Proof**

- 4.1. When considering the claimant's claims for discrimination and victimisation the burden of proof which must be applied is determined by s136 of the Equality Act. The relevant parts of this section state:

- (2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
- (3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*

- 4.2. This in effect reverses the traditional burden of proof so that the claimant does not have to prove discrimination has occurred which can be very difficult. Section 136(1) expressly provides that this reversal of the burden applies to '*any proceedings relating to a contravention of this [Equality] Act*'. Accordingly, it applies to all the claimant's discrimination claims as well as her victimisation claims.

- 4.3. This is commonly referred to as the reversed burden of proof and has two parts.

- 4.3.1. Firstly, has the claimant proved facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent committed an unlawful act of discrimination? This is more than simply showing the respondent could have committed an act of discrimination.

- 4.3.2. If the claimant meets the burden of this first part then the respondent has to show that they have not discriminated against the claimant. This is often by proving a reason for the conduct which is alleged to be discriminatory, and further that the proven reason is in no sense whatsoever connected to the relevant protected characteristic. If the respondent fails to establish this then the Tribunal must find in favour of the claimant. With reference to the respondent's explanation, the Tribunal can take into account evidence of an unsatisfactory explanation by the respondent, to support the claimant's case.

- 4.4. It is not necessary for the Tribunal to approach these two elements of the burden of proof as distinct stages. The court of Appeal in **Madarassy v Nomura**

**International plc [2007] EWCA Civ 33** gave useful guidance that despite the two stages of the test, all evidence should be heard at once before a two-stage analysis of that is applied.

## 5. A Brief Chronology of events

- 5.1. This judgment does not include a full detailed narrative of events. Such a narrative would be lengthy and mostly unhelpful to the parties seeking to understand the reasons for the findings made. It is, however, appropriate to include a brief summary of key events to enable anyone examining these reasons to understand the context of events and the claimant's claims. This summary is written in neutral terms and covers events that were not in dispute.
- 5.2. The claimant had worked at the respondent school since 2011. The respondent school is a special school where all pupils have some form of additional need. During her employment with the school the claimant had performed various duties, including, in the past, teaching duties. In the 2014-2015 academic year the claimant was employed on a fixed term contract, working 2 days a week teaching and 3 days a week in a non-teaching role. From the 2015-16 academic year the claimant worked at the school in a permanent and full-time non-teacher role. At the date of her resignation the claimant was employed as a learning mentor and cover supervisor.
- 5.3. Between 2015 and the claimant's resignation she was relocated to a number of different working locations at the school. The claimant alleges that she raised concerns about these moves and the locations in the school she was asked to work in or from, which created friction between her and members of the school leadership team. The claimant says these concerns related to issues connected to her status as a wheelchair user.
- 5.4. During an unspecified period up to and including early 2020 the claimant engaged in social media correspondence with a pupil. That pupil left the respondent school in 2019, however the contact continued with the then former pupil. That contact included the pupil having the claimant's personal phone number.
- 5.5. The claimant commenced working on a business venture with a former colleague at some point prior to 2020. That colleague had worked at that school up to 2018.
- 5.6. By email dated 3 February 2020 the claimant informed the Head Teacher that she intended to resign. The claimant then formally resigned on 6 February 2020. The claimant's last working day was scheduled to be 14 February 2022, the last day before a half term break. The claimant's last day as an employee of the respondent school was 6 March 2020.
- 5.7. After the claimant's resignation, and with no connection to the fact of the resignation, a complaint was made about the claimant by the parents of the pupil

she had been in social media contact with. This complaint was made to the deputy head of the respondent school on the morning of 13 February 2022.

- 5.8. The Head Teacher was not on site that morning. The Head Teacher returned to the school, was informed of the complaint and proceeded to take advice as to how to proceed. This resulted in the claimant being called to a meeting at the end of that day. This was scheduled to be the claimant's penultimate working day. The outcome of that meeting was that the claimant did not attend work the following day. This meant that day, the 13 February 2020, was identified as being her last day of work at the respondent school.
- 5.9. The claimant subsequently submitted a detailed grievance, raising complaints about the Head Teacher and the Deputy Head Teacher. That grievance was not upheld. The claimant also submitted this claim.
- 5.10. An investigation into the complaint was conducted. This concluded that if the claimant had still been an employee then disciplinary action against her would have been recommended. The claimant was also referred to the TRA. Both these steps were after the claimant's grievance and this claim.

## **6. What are the specifics of the five alleged discriminatory incidents?**

### **6.1. The Head Teacher Locked the claimant in her office.**

6.1.1. There is no dispute that on the 13 February 2020 a meeting occurred in the Head Teacher's office. There is no dispute that the Head Teacher's office has two doors, one that opens to a corridor and one that connects to the admin office. There is no dispute that the claimant entered the office with the Head Teacher through the door from the corridor, and that door was subsequently shut and locked. There is also no dispute that the claimant did not at any time raise an objection to the locking of the door or ask for the door to be unlocked.

6.1.2. The following relevant factual disputes do arise in relation to the locking of the door:

- 6.1.2.1. whether the other door was locked;
- 6.1.2.2. whether the Head Teacher asked the claimant if she could lock the door before locking it;
- 6.1.2.3. whether there were any pupils still in the building at the time the meeting took place; and

### **6.2. informing the claimant in an angry and aggressive manner that a complaint had been made about her**

6.2.1. The only disagreement relevant to this incident, as identified at the outset of the hearing, was whether this was done in an angry and aggressive manner by the Head Teacher.

- 6.2.2. It is appropriate to note that during the hearing the claimant's representative questioned whether the complaint made about the claimant was, itself, sufficiently credible to justify raising it with the claimant at a meeting like that at all. This was not identified as an issue in dispute at the start of the hearing.
- 6.3. **informing the claimant in an angry and aggressive manner that she would be investigated for potential gross misconduct and would have to go on "gardening leave" immediately**

  - 6.3.1. Again, there is dispute over whether an angry and aggressive manner was adopted.
  - 6.3.2. In addition, there is dispute over the substance of what was said by the headteacher in the meeting.

- 6.4. **concluding in the outcome to the investigation that the claimant had breached safe working practices and/or the respondent's social media policy and that disciplinary action would have been recommended had the claimant still been in employment; and**  
**referring the claimant to the TRA following the outcome of the disciplinary investigation.**

- 6.4.1. The claimant relies on the presentation of her post resignation grievance and/or the submission of this claim as both being protected acts. There is no dispute that both these actions were protected acts.
- 6.4.2. In relation to the alleged two acts of discrimination/victimisation, there is no relevant factual dispute over what happened. The only issue appears to be why the acts occurred, were they either because of the protected acts or were they in any way related to the claimant's disabilities.

## 7. Did the Background of Issues that Claimant refers to exist?

- 7.1. The claimant's representative conceded that on the face of the allegations there was no obvious link between the alleged acts claimed to be in breach of the Equality Act 2010 in this claim and the claimant's disabilities.
- 7.2. There is no suggestion of a link between the actions of the claimant on social media which gave rise to the complaint and her disability.
- 7.3. The claimant argues that there was a background of tension between her and the senior school leadership over the years prior to the alleged discrimination which was relevant. The claimant argues that this background related to the fact she was disabled and / or difficulties that arose from her disability status. The claimant's position is that the alleged incidents complained about in this claim have to be viewed in the light of that background.

- 7.4. The only claim that does not appear to rely in any way on any alleged background of tension is the claimant's claim of discrimination by failure to make reasonable adjustments.
- 7.5. The claimant describes that background as '*friction*'. That friction is stated to have been created by issues that arose between the claimant and school management. There were two key issues the claimant refers to in that regard:
  - 7.5.1. That the claimant had her teaching duties taken off her in 2015; and
  - 7.5.2. That the claimant had been moved rooms or work location several times over recent years, at times to locations that were unsuitable for a wheelchair user causing her to complain.
- 7.6. The respondent's position is that there was no such '*friction*'. Instead the respondent's witnesses described the claimant as having been a valued and respected member of the team at the school. In response to the specific issues identified, the respondent's position was that:
  - 7.6.1. the claimant did not have her teaching duties '*taken off*' her in 2015; and
  - 7.6.2. that the claimant had never raised with either the Head Teacher or the Deputy Head Teacher a complaint or concern about where she was asked to work.

## **8. What evidence was before the Tribunal?**

- 8.1. The tribunal heard from the claimant on her own behalf. In addition, the claimant's mother gave oral evidence, as did a former colleague Mrs Coxhead. For the respondent evidence was presented by Mrs Gelling, the headmistress of the claimant's school, and Miss Pattinson the deputy head of the school.
- 8.2. All the witnesses presented evidence based on written statements that had been exchanged between the parties in advance of the hearing. Every witness confirmed under oath that they had read their statements recently and that their contents were true and accurate.
- 8.3. In addition to oral evidence the tribunal were presented with a bundle of documentary evidence and an agreed list of issues.
- 8.4. The parties both made submissions at the conclusion of evidence. The claimant's submissions were made orally only, the respondent prepared and circulated written submissions which were then added to in oral submissions.

## **9. Relevant Factual Findings Based on the Evidence Presented**

- 9.1. The first factual issue of relevance is whether there was a background of friction between the claimant and the school leadership. The points raised by the claimant were considered in turn.

9.2. *The alleged removal of teaching duties:*

- 9.2.1. The claimant asserts in her statement that her teaching duties were removed from her in 2015 by the school. In her claim form this is described as:

*"In June 2015 I had my contract reduced from teacher status (QTS) to that of cover supervisor and Learning Mentor."*

Her statement she repeats this exact phrase and adds:

*"No explanation was provided at the time ..."*

- 9.2.2. The claimant was cross examined about the circumstances of this change in 2015 in some detail. The following facts about that change were expressly conceded by the claimant:

- 9.2.2.1. In the 2014-15 academic year the claimant was employed partly in a teaching and partly in a non-teaching support role. This was on a fixed term contract to 2015.
- 9.2.2.2. The claimant was told that from the beginning of the 2015-2016 academic year the school needed a full-time teacher on a further fixed term contract and a full-time non-teaching role member of staff on a permanent basis, i.e. not on a fixed term contract.
- 9.2.2.3. The claimant considered these two potential roles. The claimant chose to pursue the permanent, non-teaching role and did not express an interest in the full-time teaching fixed term contract that was available. The claimant agreed that this was her choice, she could have applied for the teaching role.
- 9.2.2.4. Accordingly, the claimant ceased her teaching role and took up a permanent non-teaching role at the respondent school.
- 9.2.3. The Tribunal do not find that these facts, which the claimant herself agreed were correct, can be consistent with what she has asserted in her claim form and written statement. The claimant did not have her teaching "*taken off*" her.
- 9.2.4. The claimant's claim form and her written statement, which was expressly confirmed under oath at the outset of her evidence to be true and accurate, is found to be inaccurate and unreliable regarding this. They contain an emphatic and misleading misrepresentation of what occurred. No part of the accurate picture of her change in her role in 2015 would support an assertion that there was any friction between the claimant and the respondent school leadership.

9.3. *The Claimant's Room Moves:*

9.3.1. There is no dispute that the claimant was moved to work from different locations in the respondent school several times over the period from 2015 until her resignation. For ease these are simply called room moves.

9.3.2. The room moves identified by the claimant in her statement were as follows:

9.3.2.1. October 2015 - The claimant was moved from a downstairs classroom to a classroom upstairs in or near the Additional Resource Centre ("ARC"). The claimant had to rely on a lift to get to that class room.

9.3.2.2. September 2017 – The claimant was moved from the upstairs ARC to a location downstairs. The claimant described this as having been moved to work in a corridor. In her claim form, and paragraph 8 of her statement ,the claimant states:

*"I was again moved from the classroom upstairs to a downstairs space in the corridor"*

In her statement the claimant adds to this the following:

*"No other member of staff at the school were expected to work in a space in a corridor."*

9.3.2.3. The respondent states that this space was off a corridor and was constructed to as office space in the building design. Under cross examination the claimant agreed that it was not actually the corridor, agreeing it was off the corridor. The claimant clarified her evidence to say that the space off the corridor did not have a door, although she conceded it did have a empty doorway.

9.3.2.4. The description of the space as being "*in a corridor*" appears, based on the claimant's own evidence in cross examination (and a later reference to that space in her written statement), to be a misleading description, suggesting that the claimant was actually based in the corridor itself. This creates the misleading impression that she would have been partially obstructing that corridor as a minimum.

9.3.3. September 2018 – The claimant moved from what she now describes as a "cubbyhole" to a narrow room close to the school entrance. It is noted that in this reference the location she was moving from is no longer referred to as a being "*in a corridor*".

9.3.4. September 2019 –The claimant moved to a different and smaller space on the ground floor, that space being further from the school entrance. The claimant describes this move in paragraph 10 of statement as:

*"In September 2019 I was moved from the room near the main entrance to a tiny room near the furthest point in the school from Main entrance."*

- 9.4. The claimant's statement does not suggest that she complained or raised concerns about these office moves with the Head Teacher or the Deputy Head Teacher. There were no written records of any concerns being raised by the claimant about any of the moves in evidence before the Tribunal, at least not prior to the events of 13 February 2020.
- 9.5. Mrs Coxhead, in her evidence, stated that she had raised issues about the rooms the claimant was allocated to with the Head Teacher. In her statement she describes what she did in relation to the 2015 move upstairs:

*"When I questioned this, I was told it was safe as there was a lift and staff had been trained in evacuation procedures"*

In relation to the move in September 2017 she states:

*"I spoke to the head about the suitability of the room. She replied that if it was kept tidier it might be better the deputy head did defend [the claimant] on this occasion saying that some accessible storage would be needed to help her keep the space tidier."*

- 9.6. It is noted that Mrs Coxhead had left the school prior to the alleged discrimination claimed in this hearing. It is also noted that Mrs Coxhead was the former colleague of the claimant with whom the claimant set up a business at some point prior to the claimant resigning from the respondent school.
- 9.7. The respondent's position that the school at that time was expanding and as a result there had been a lot of room moves for many staff, including leadership staff, was not challenged. Accordingly, there is no credible basis to suggest that the claimant had been singled out to be moved around. The only issue was whether issues had been raised regarding the room moves that had created friction between the claimant and the Head Teacher and/or Deputy Head Teacher.
- 9.8. It is noted that it is not part of this claim that the room moves themselves were acts of discrimination by failing to make reasonable adjustments or otherwise. They are only relevant to this claim because the claimant refers to her complaints about the having contributed to the creation of a background of friction. This friction is identified by the claimant as being a contributing factor to the incidents and events relied on in this claim. The respondent's witnesses were both asked about this in cross examination. Both the Head Teacher and the Deputy Head Teacher were clear that the claimant had at no time raised any concern or complaint about the room moves. They further did not recall any discussion of them with Mrs Coxhead.

- 9.9. Both the Head Teacher and the Deputy Head Teacher stated that contrary to the suggestion there was any friction or issue with the claimant, she was a valued member of staff they both believed they had a good working relationship with.
- 9.10. The Tribunal note that there were conflicting accounts of the relationship between the claimant and the headteacher and Deputy Head Teacher. In this context the Tribunal looked to the contemporaneous evidence of that relationship.
- 9.11. The claimant at no time made any written reference to any issue, or indeed to the room moves, prior to events on 13 February 2020. In fact, there was no direct reference to the relationship between the claimant and the school leadership team in any of the contemporaneous documents referred to in this hearing. There is, however, indirect evidence of the relationship. The Tribunal considered the apparent tone, manner and content of the written communications that were in evidence. Nothing in any of these gave any grounds to suspect that there was any friction, issue or difficulty in the relationships between the claimant and anyone at the respondent school.
- 9.12. Beyond that, the written communications in evidence positively suggest that there was a good, friendly relationship between the claimant and both the head and Deputy Head Teachers.
- 9.13. There was a submission made on the claimant's behalf to the effect that a reluctance on the claimant's part to refer to the issues or friction in written communication was considered. This could easily and logically explain the absence of a clear reference to friction or issues in the relationships. The view of the Tribunal is that it does not explain, and moreover appears to be inconsistent with, the apparently very positive and friendly tone, manner and content of the communications.
- 9.14. The available messages are all at or around the time of the claimant's resignation. This is shortly before the first incidents that the claimant claims were discriminatory, and as such reflect the relationship at the relevant time. The Head Teacher uses the email sign off "*have a lovely evening*". The deputy head uses a similar sign off, "*have a great evening*". These do not appear to be comments that someone who had issues with the claimant would be likely to choose to use.
- 9.15. The claimant was referred in detail to the email exchange around her resignation. The following points arising from this exchange were viewed as being significant.
  - 9.15.1. Unusually, the claimant did not simply inform the respondent that she was resigning, she gave them advance notice that she was going to resign when next in. That consideration does not itself suggest that there was real friction between her and the school leadership team, albeit of itself it is a less substantial point.

9.15.2. The claimant in her claim form states:

*"I emailed to send and inform the Head Teacher of my resignation as a culmination to the years of distress caused to me."*

Whether intentional or otherwise, this clearly implies that the years of distress had been referred to in the email. In the email the claimant stated:

*"Dear Juliette*

*I would like to give you advanced notice of my intention to tender my resignation from Bank View School on Thurs 6/2/20. It is my understanding that I am required to work 4 weeks' notice and this will be the basis of the dates in my letter of resignation.*

*I realise it irregular to give you this information via email but I wanted to extend you the courtesy of knowing my intentions before Thursday as due to circumstances this is the first day that I am in school week beginning 3/2/20.*

*I would also like to give you prior warning that I might be invited for interview on Friday 7th Feb and therefore will not be in school that day."*

This includes no reference at all to any distress, or indeed any past issue, that has in any way contributed to the decision to resign. There is also no part of the tone or substance of this email that suggests the claimant's relationship with the Head Teacher was anything other than a normal, amicable employer/employee relationship.

9.15.3. The response from the Head Teacher, sent less than half an hour after the claimant's email reads:

*"Hi Louise  
Thank you for your email, I've noted its content and will see you on Thursday.  
The advance notice is appreciated.  
Kind regards,  
Juliette"*

The claimant in her claim form states that this response caused her to be deeply upset. In cross examination the claimant confirmed this. The tribunal have considered this response carefully. The Tribunal can find nothing in any part of the content or tone of this response that could in any way cause deep upset. It is a friendly acknowledgment. The Tribunal find that in relation to this email the claimant has taken offence that was neither intended, nor on any reasonable reading of the email, present.

- 9.16. On balance the Tribunal find that the evidence does not support the claimant's contention that there was a history of friction or difficulty. The claimant's reaction to the response to her email giving advance notice of her intent to resign suggests that the claimant was perceiving negatives and issues where they simply did not exist.
- 9.17. The Tribunal find that, despite the claimant's description of her subjective perception, the available evidence is persuasive and shows that there was no negative impression or ill will towards the claimant from the Head Teacher or the Deputy Head Teacher.

## **10. What happened at the meeting on 13 February 2020?**

- 10.1. The claimant's claim is that there was anger and aggression on the part of the Head Teacher at this meeting. The Head Teacher disputes this. The claimant further claims that the headteacher locked the door without any advance notice or seeking the claimant's consent. The headteacher disputes this. The headteachers position is that she asked the claimant if it was OK for her to lock the door to ensure they were not interrupted, and the claimant did not raise any concern.
- 10.2. There were no witnesses to this meeting, other than the claimant and the headteacher themselves. As witnesses they gave very different accounts of this meeting. When determining whose account is accurate the Tribunal have considered the credibility of the witnesses concerned and the intrinsic credibility of the accounts given.

### **10.3. Intrinsic Credibility of the accounts given:**

- 10.3.1. The headteacher explained in her evidence that she would turn the keyless (like a bathroom door) lock when she needed to ensure that a meeting was not interrupted. She further explained that the school is a special school for children with additional needs, that she has a close and open relationship with the pupils, and that many of them will tend to burst into her room to tell her things, often without knocking. This general position was not challenged by the claimant. The tribunal consider it to be a logical and credible reason to lock the door. Indeed, for part of the claimant's claims it was argued that locking the door for sensitive or difficult meetings was done by the Head Teacher generally, to the extent that it met the definition of a policy, criterion or practice ("PCP") for the purposes of a claim of discrimination by failure to make reasonable adjustments to that policy.
- 10.3.2. The headteacher stated in cross examination that the second door in her office, to the admin area, was not locked. This appears to be entirely logical. The reason to lock the door was to stop pupils interrupting the meeting. Accordingly, locking a door to the corridor, where pupils could be meets that objective. Locking the door to the admin office area, where pupils would not generally be, would not be logical.

- 10.3.3. The claimant's position was that both doors were locked. The claimant was not able to point to any evidence that the second door was locked. In cross examination she described this as being her belief, rather than something she knew to be the case. In her claim form the claimant refers to the locked in the singular. There is no suggestion from the claimant that she observed the Head Teacher lock the second door.
- 10.3.4. The claimant stated in her evidence that there were no pupils left in the school at this time of the meeting, so there was no chance of interruption. If correct, this would undermine the logic of the reason given for locking the door.
- 10.3.5. The Head Teacher, however, did not agree that there were no pupils in the building when the meeting started. She explained that the pupils at the respondent school, in connection with their status as having additional needs, often had provided transport. This was in the form of buses and taxis. This meant that there were nearly always pupils waiting for their transportation well beyond the end of the day, due to normal and regular delays. This description of the general pupil transportation system given by the headteacher in her evidence was not challenged by the claimant.
- 10.3.6. On this occasion the claimant had been running an afterschool drama session with pupils. The claimant's evidence was that all the pupils, including those who had been at drama club, had been collected by their transport before her meeting with the Head Teacher started. The Tribunal do not find this to be likely. The Tribunal find it unlikely that on this one occasion all pupils were collected promptly. It is more likely that the headteacher's recollection is accurate, and as was regularly the case, some pupils were still waiting for their transportation to arrive.
- 10.3.7. The claimant's claim is that the headteacher was '*angry and aggressive*' in the meeting. The claimant refers to the evidence of her mother in support of this element of her claim. The claimant's mother's evidence was that she "*sensed a real sense of hostility*" from the headteacher after the meeting ended. Under cross examination this was accepted to be an impression gained from a fleeting look.
- 10.3.8. It is unclear to the Tribunal what the reason for any hostility, anger or aggression would be. The claimant's employment was due to end, her last working day was scheduled to be the day after the meeting. By the time the meeting ended, which is when the claimant's mother says she sensed hostility, the claimant was about to leave the school for the last time, a day earlier than scheduled. If, as the claimant asks the tribunal to conclude, there was a history of friction that meant she was in some way disliked or seen as an irritation, it would not logically follow that her departure from the school would cause the headteacher to be angry or hostile. The contrary appears to be more logical and credible. If, as has already been found, there was no background of friction with the claimant, there is no logical or credible

explanation for the headteacher to be angry, aggressive or hostile towards the claimant.

- 10.3.9. The claimant claims that she was told that she was being put on '*gardening leave*'. The Head Teacher disputes this. Her evidence was that the claimant agreed to call the day of the meeting her last day at work, rather than, as scheduled, working one more day. The Head Teacher stated under cross examination that she has never used the phrase '*gardening leave*' in her role.
- 10.3.10. It appears to the Tribunal intrinsically unlikely that an employee whose last day of work was due to be the next day would ever be put on '*gardening leave*'. It appears likely and credible that it was agreed that the claimant would bring her end of work forward by one day, rather than do anything else. In any event, noting the complaint about the claimant alleged misconduct, it makes no sense that an employee would be put on '*gardening leave*' rather than be suspended during an investigation.

#### 10.4. **Witnesses' credibility:**

- 10.4.1. It is clear that at that meeting the claimant was given unwelcome news. A complaint had been made about her alleging misconduct which was potentially serious.
- 10.4.2. The claimant in her statement describes herself during that meeting as "*my head was buzzing and I couldn't move*". In her claim form the claimant describes herself in the meeting as "*I was so distressed that my Mother had to come and pick me up*".
- 10.4.3. It is clear that the claimant was distressed by the meeting. That being noted, the purpose of the meeting is such that any upset of itself does not suggest anything that the Tribunal finds could support the claimant's assertions as to why she was distressed. It would be entirely reasonable for an employee to be told that a complaint had been made about them to be distressed.
- 10.4.4. What is also clear from the evidence is that the claimants claim in her claim form, that her "*Mother had to come to pick me up*" is simply not accurate and very misleading. The claimant accepted under cross examination that her Mother was already scheduled to pick her up that day. This was to assist the claimant in taking personal possessions home, given it was her scheduled penultimate day working at the respondent school. The claimant's claim that her mother had to come to pick her up because she was distressed by the meeting is simply wrong.
- 10.4.5. The Tribunal also note that the claimant stated in her evidence on more than one occasion that the pupil the complaint related to had left the school over a year earlier than it transpired the pupil had actually left. The claimant in this period was messaging the pupil, apparently on a regular basis. She was also messaging the parents of the pupil. It is the messages the claimant sent

that caused the complaint about her to be made. The Tribunal find it difficult to understand how the claimant could have been so unaware of the chronology of events when giving evidence, in particular whether when messaging the pupil in question he was still with the school.

10.4.6. The claimant's representative invited the Tribunal to find that the claimant was the reliable witness. The respondent's witnesses were argued to be unreliable. This submission was based on several points:

10.4.6.1. there was no explanation or description of the relationship between the claimant the respondent's witnesses.

10.4.6.2. there was no explanation or description of the reaction of the respondent's witnesses to the claimant's complaints, the protected acts; and

10.4.6.3. the respondent's witnesses' descriptions of their reaction to the claimant's protected acts, under cross examination, was not credible.

10.4.7. The Tribunal find the fact of the absence of an explanation of the relationships the respondent witnesses had with the claimant, or an explanation or description of their reaction to the claimant's complaints is itself of no assistance. The respondent's witnesses appear to have chosen to set out in their written statements their reasons for the actions that are argued to be in breach of the Equality Act 2010.

10.4.8. It is noted that the claimant has given more than one potential unlawful motive for these various acts of the Head Teacher and Deputy Head Teacher, namely because she was in a wheelchair, because of past friction or because she did one or more protected acts. In the circumstances, the respondent's witnesses giving no more than an explanation for the actions in their written statements is found to be entirely reasonable. The absence of engagement in written statements with each of the different alleged potential motives for the actions is not taken to be indicative of anything. The witnesses were asked about these matters in cross examination and answered the questions asked.

10.4.9. Both the headteacher and the deputy headteacher were asked in cross examination about their reactions to the claimant's grievance and this claim. Both the grievance and the claim are critical of the Head Teacher and the Deputy Head Teacher.

10.4.10. The headteacher's response was that being the subject of such complaints was not pleasant, but that it was the claimant's right make them. Her position was very matter of fact. She was pushed in cross examination to agree that it was "*negative*", but simply repeated that it was "*not pleasant*". This failure to agree it was negative, rather than not pleasant, was submitted to undermine the credibility of the headteachers evidence. Similarly the Deputy

Head Teacher in cross examination described the complaints as “*not a nice thing to happen*”.

- 10.4.11. The Tribunal do not find these responses casting any doubt on the reliability of the evidence of either respondent witness. They both described the complaints as being things that were not positive, i.e. ‘*not pleasant*’ and ‘*not a nice thing to happen*’. The fact that they declined, when pushed under cross examination, to use a particular word to describe their view of being the subject of complaints is not considered to be significant by the Tribunal. The descriptions they provided were of a realistic and credible reaction to complaints that believed to be wrong.
- 10.4.12. The claimant’s evidence is not found to be reliable. As explained above, she was misleading in her account of her teaching being “*taken off*” her, she was misleading in her evidence when she said that *I was so distressed that my Mother had to come and pick me up*. She was also inaccurate in her evidence about when the pupil she had been communicating with had left the school, and significantly whether he was still at the school at the dates of the messages. Her evidence that she was “*deeply upset*” by an email response to her advance notice of resignation, which at worst appears entirely benign, is difficult to rationalise. In addition, the claimant clearly implied in her claim that she left employment for reasons that contradict the reasons she gave at the time, and completely ignore her ongoing efforts to set up a business, which she concedes she was actively pursuing at the time.
- 10.5. For these reasons the Tribunal prefer the evidence of the Head Teacher about what relevant things occurred at the meeting on 13 February 2020. There was no anger. There was no aggression. The claimant was not told she was being put on garden leave. The door the claimant used was locked after her, but only after asking the claimant if it was OK to do so and explaining the reason.

## 11. Post Termination Discrimination/Victimisation

- 11.1. The claimant complains of two specific acts for these claims:
  - 11.1.1. that the investigation of the complaint against her concluded that if she was still employed disciplinary action would have been recommended; and
  - 11.1.2. that the claimant was referred to the TRA.
- 11.2. *The Investigation Outcome*
  - 11.2.1. The Tribunal have had the benefit of being taken to some of the messages that were investigated. They were put to the claimant in cross examination.
  - 11.2.2. The claimant accepted that the messages displayed a lack of judgment on her part, that she had been naive, and that they could be misinterpreted as being inappropriate.

- 11.2.3. The claimant in the messages appears to have appreciated at the time she wrote them that they were not appropriate. She stated in one message:

*"You could get me into serious trouble! You are not meant to have my number. Might be better if you message me through twitter or email me."*

And in another message:

*"... you shouldn't have my number and if anyone found out I'd get the sack. If your mum is OK with it maybe we could met up again. Maybe just delete it and message me on Twitter"*

- 11.2.4. The claimant's representative submitted that the complaint which was made was clearly not well founded, and therefore it did not warrant any formal action. This was argued to be a basis upon which the Tribunal could draw an adverse inference about the outcome of the investigation, that inference being that there must be some other motive for treating the complaint as serious.

- 11.2.5. The messages themselves are simply not consistent with this submission. The claimant herself clearly knew when writing the messages that she could "get the sack" if they came to light. She went as far as trying to get the recipient to delete the messages. The Tribunal do not think this can be consistent with any argument that the complaints should not have been taken seriously. It follows, that this does not provide a basis from which any adverse inference could be drawn.

- 11.2.6. Accordingly, there is no basis to reverse the initial burden of proof. It is not the case that when being investigated for misconduct, if you make a complaint and then the investigation finds against you, that is enough to reverse the burden of proof in a victimisation or discrimination claim, it needs more.

- 11.2.7. Regardless of this, the Tribunal went on to consider the reason put forward by the respondent for the outcome of the investigation.

- 11.2.8. The Deputy Head Teacher's evidence, that her conclusions were based on the evidence, is wholly credible and accepted. She had reviewed the same messages as were before the Tribunal, from which it appears logical, if not inevitable, that the outcome of the investigation would be that the claimant would be subject to a disciplinary process if still employed. The fact that was not possible because the claimant had already resigned does not change this. Significantly, the Tribunal find that the outcome of the investigation was an entirely proper response to the claimant's conduct. It was in no sense whatsoever connected to her disability, her grievance or this claim being presented.

11.3. *The Referral of the claimant to the TRA*

- 11.3.1. There is no dispute the claimant was referred to the TRA, and that the TRA decided they did not have jurisdiction to deal with the referral because the claimant was not working as a teacher at the time of the events that were referred.
- 11.3.2. The respondent appears to have been given advice from multiple sources that the claimant should be referred to the TRA. These sources include the Local Authority Designated Officer ("LADO"), Human resources advisers and the Safeguarding Unit. At one point the advice given was that there should also be a referral to the disclosure and barring service.
- 11.3.3. The Tribunal have noted that the claimant and her witnesses have suggested at several points in this hearing that the claimant was in fact required to perform teaching duties, even though these were outside her job description at the time. If correct, this could have created doubt about whether the claimant fell within the jurisdiction of the TRA at the relevant time and thus have supported the respondent's position. However, neither party have referred to this evidence in their submissions, and the Tribunal have no knowledge of the extent of any such additional duties. This evidence has therefore been disregarded.
- 11.3.4. The claimant argues that the fact that the TRA decided after referral to them that it did not have jurisdiction raises questions about why the referral was made in the first place. This is argued in the light of correspondence between the TRA and the respondent school. This correspondence was in evidence before the Tribunal.
- 11.3.5. It is clear from the correspondence that the TRA were asked if a referral should be made. There does not appear to be any submission on behalf of the claimant that this question should not have been asked. The TRA when asked replied by email that started with the following statement:

*"For an individual to come into scope of the TRA, the individual must have been employed or engaged to carry out 'teaching work'"*
- 11.3.6. The TRA went on to describe what 'teaching work' means. The claimant argues that the definition of teaching work set out by the TRA was something that the claimant's role at the time clearly did not match. For this reason, the claimant argues that the consideration of a referral to the TRA should have ended at that point.
- 11.3.7. Instead, a further clarification was sought from the TRA. An email was sent that described the claimant's position as:

*"when they handed their notice in, they were not doing any of the duties you have outlined. But previously in their role in [the school] they have (within the last 5 years)"*

- 11.3.8. The Tribunal have considered this exchange of emails carefully. The email from the TRA appears to be very loosely worded. It states that for a referral the person referred must “have been” teaching. It is not clear whether that meant that they must “have been” teaching at the time of the incident referred, or that they simply must “have been” at some point teaching.
- 11.3.9. The reply from the school seeking clarification is logical, balanced and appropriate. It accurately explains that although the claimant was not teaching when they resigned, they had been a teacher at the school within the last 5 years.
- 11.3.10. The Tribunal accept that a failure to make a referral to the TRA when such a referral is required would be a serious omission by any school leadership. In that light it is in no way unexpected that clarification would be sought before deciding not to refer if there was any doubt. In this instance the Tribunal find that clarification was properly sought, in a fair and balanced way.
- 11.3.11. The TRA responded and advised that a referral should be made, and they would then decide if they had jurisdiction. This is what occurred. It is the view of the Tribunal that if the position was as clear cut as the claimant invites the Tribunal to conclude it was, it would be difficult to understand why the TRA would advise a referral to be made to them so they could decide.
- 11.3.12. In the light of the above, the referral to the TRA, following the advice of all consulted external bodies, including the TRA, is not found to have been an act that was in any way related to the claimant’s disability or to her grievance or this claim being presented. The respondent has given a cogent and persuasive explanation why the claimant was referred that this Tribunal accepts as accurate. That explanation is in no sense whatsoever related to the claimant’s disabilities, the claimant’s grievance or this claim.

## 12. Conclusions

- 12.1. For the above reasons the claimant’s claim all fail.
- 12.2. The post termination actions that the claimant complains about are found to have been in no sense whatsoever related to the claimant’s disability or the fact she had submitted a grievance and/or this claim.
- 12.3. The events at the meeting on 13 February 2020 between the claimant and the Head Teacher are found to have occurred as described by the Head Teacher. It is found that there was no anger or aggression towards the claimant. It is found that the claimant was not locked in the room against her will or without being asked. It is found that the claimant was not told she had to go on garden leave, but that she agreed to call that day her last working day, one day earlier than previously planned.

- 12.4. No part of the meeting on 13 February 2020 is found to have been in any way related to the claimant's disability. It was a difficult meeting on her scheduled penultimate day in work, in which the claimant was informed that a serious complaint had that day been made about her conduct.
- 12.5. The claimant's claim of discrimination by a failure to make reasonable adjustments to the PCP of locking the door for sensitive meetings also fails. The claimant is found to have been asked about the locking of the door and to have raised no concern about this in response. Accordingly, even if there were a substantial disadvantage to the claimant from the locking of the door that a non-disabled person would not encounter, there was no reasonable way the respondent could have been aware of it. It is an essential part of a claim that there was a failure to make reasonable adjustments that there was a reasonable basis upon which it could have been understood there was a disadvantage. That part of the claim is not present in this case.

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Employment Judge Buzzard

30 September 2022

JUDGMENT SENT TO THE PARTIES ON

10 October 2022

FOR THE TRIBUNAL OFFICE

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