Case Number: 3327164/2019

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Miss A-M Johnson	v	(1) The Bridge AP Academy (known as the TBAP Trust) (2) The London Borough of Haringey

Heard at: Watford, in person and via CVP **On**: 21, 24 and 25 February, 29 and (in private) 30 September 2022

Before: Employment Judge Hyams **Members:** Ms G Binks, MBE
Mr T Chapman

Appearances:

For the claimant: In person
For the first respondent: Mr Joel Wallace, of counsel
For the second respondent: Mr David Mold, of counsel

UNANIMOUS RESERVED JUDGMENT

The claimant's claims of victimisation within the meaning of section 27 of the Equality Act 2010 do not succeed and are dismissed.

REASONS

Introduction; the claims made by the claimant in this case

1 By a claim form presented on 6 December 2019, the claimant claimed (by ticking the box on page 6 for "pregnancy or maternity" discrimination) that she had been discriminated against because of pregnancy or maternity. No details of that claim were stated in the claim form, but it was accompanied by a separate document headed "Claim details" which made it clear that the claim was of victimisation within the meaning of section 27 of the Equality Act 2010 ("EqA 2010").

A procedural history and the issues which we determined

The preliminary hearing of 7 July 2020

2 There was a preliminary hearing on 7 July 2020. It was conducted by Employment Judge ("EJ Hyams"). The hearing was listed for two purposes: (1)

to decide whether any aspect of the claim was out of time and (2) to carry out case management. During the hearing, the first respondent's solicitor accepted that it was neither necessary nor desirable that EJ Hyams decided whether or not any particular aspect of the claim was in time and, if it was not, whether it was just and equitable to extend time for the making of the claim in that regard. Rather, it was agreed, that question should be left to be determined after hearing evidence and submissions from the parties on all aspects of the claim.

3 During the hearing of 7 July 2020, EJ Hyams had a long and careful discussion with the claimant about the claim and the issues arising in it. In his record of the hearing of 7 July 2020, EJ Hyams recorded that discussion and the issues as he saw them at that time. During that hearing, the claimant confirmed that the claim was indeed of victimisation within the meaning of section 27 of the EqA 2010.

4 EJ Hyams recorded the factual issues in the following paragraphs of his record of the hearing of 7 July 2020 (which we have reproduced with the agreed corrections by way of (1) the substitution of the name "Oughton" for "Elton" in paragraphs 10.6 and 10.7, and (2) the substitution of the word "suspended" for the word "dismissed" as originally used in paragraph 10.8; we have also corrected the word "Connery" in paragraph 10.4 to "Wiltshire").

> '5 After much discussion with the claimant, she accepted that the main focus of her claim was the fact that she had been suspended from her position with the respondent on 26 June 2019. Further things had been done to her after that date about which she complained, but she thought that if she approached ACAS on 26 September 2019 then her claim would be in time in respect of the suspension itself if she made it within a month of the end of the early conciliation period. That period was from 26 September 2019 to 9 November 2019. The claim was presented to the tribunal on 6 December 2019. Thus, the claim was made a day out of time in respect of the suspension itself unless time was extended on the basis that it was just and equitable to do so.
>
> 6 In that regard, the claimant had much factual material on which she would have relied if she had been required to do so at the hearing before me on 7 July 2020. That material related to the post-traumatic stress disorder ("PTSD") that she suffers from after the still-birth of her baby at 35 weeks in 2018. As indicated above, the question of time limits will be determined at the trial of the claim. The claim is about the following factual matters.
>
> **The claim as particularised during the hearing of 7 July 2020**
>
> 7 The respondent among other things is responsible for the conduct of an educational institution known as "alternative provision", which provides education to disaffected young people of compulsory school age who (or at least most of them) have been excluded from mainstream schools. The institution used to be of a sort known as a pupil referral unit. The

respondent is an Academy within the meaning of the Academies Act 2010 as amended. The claimant is (and at all material times has been) employed as Student Services Manager. Her responsibilities are and were for (1) safeguarding of pupils (as the DSL, i.e. the Designated Safeguarding Lead), (2) behaviour management, (3) the induction of new learners, (4) liaison with parents of pupils at the unit, and (5) the transition of pupils to post-16 provision. The claimant was a member of the senior leadership team ("SLT") of the institution.

8 On 10 July 2018, the claimant submitted a grievance about things that she claimed were discriminatory towards her as a pregnant employee. Those things are stated in the paragraph of the claimant's document entitled "Claim details" that accompanied her ET1 claim form. It is not necessary to restate those here, as the respondent accepts (correctly, in my view) that the claimant was there stating a grievance which was a protected act within the meaning of section 27 of the EqA 2010. As I say above, it is what happened after that grievance was stated that is material.

9 It is likely to be helpful to record here, however, that the grievance relating to discrimination itself was rejected in the sense that it was decided by the respondent (both initially and then on appeal) not to be well-founded, although I note that at least as far as the appeal panel was concerned that was purely on the basis that "The Panel could not consider or uphold the allegations of discrimination as the key complainant was not present at the appeal hearing and was therefore unable to respond to the issues." In fact, other elements of the claimant's grievance were upheld by the appeal panel and several recommendations were made by that panel. The panel heard the appeal in November 2018 and sent the claimant the outcome on 5 December 2018.

10 It is the claimant's case that the following claimed treatment of her was victimisation within the meaning of section 27 of the EqA 2010:

10.1 The respondent failed to implement the appeal panel's recommendation that the respondent's grievance procedure should be amended so that it made it clear how a grievance against a member of the respondent's staff above the head teacher of the institution at which the claimant worked (which she called, and I therefore below call, a school) could be pursued and how, if necessary, the outcome of such a grievance could be appealed.

10.2 The claimant returned to work on a phased basis after her bereavement on 23 May 2018, and was on such a phased return from then onwards until her suspension, on 26 June 2019. During that period she started working 2 days per week,

or 14.5 hours, but built up her hours so that she was working 4 days per week, from 8am until 1pm on each day. During the whole of that period, Mr Connery Wiltshire, the head teacher of the school, expected her to be responsible for all aspects of her role, and did not temporarily give any of her responsibilities to one or more other members of staff.

10.3 Even worse than that, as far as the claimant was concerned, was the fact that she was (she claims) given additional responsibilities such as finding alternative educational placements for pupils at the school. That was, the claimant said, the responsibility of Ms Patricia Wright, the school's Director of Access and Inclusion. In addition, it is the claimant's case, (1) she was required to do work that fell within the area of responsibility of Ms Vicky Browning, the school's Director of Learning, and (2) Mr Wiltshire required her to do work on data that it was his role to carry out. One example that the claimant gave was that she was required to prepare complete reports (of a sort that I recorded as "lab reports", but that may be wrong) instead of being required only to contribute to them.

10.4 In March 2019, there was a mediation meeting held with a view to assisting the claimant and Ms Browning to work together after the latter had complained about the manner in which the claimant had spoken about her (Ms Browning). That mediation was conducted by Mr Wiltshire and Ms Beverley Dash, a member of the respondent's Human Resources ("HR") team. It is the claimant's case that at that meeting Ms Browning was permitted by Mr Wiltshire and Ms Dash to accuse the claimant of wrongdoing and the claimant was forced to respond to that accusation, rather than the meeting being conducted as a genuine attempt to enable both the claimant and Ms Browning to work harmoniously together.

10.5 The claimant was denied the opportunity to receive training organised by the respondent for other members of the SLT towards the NPQSL, i.e. the National Professional Qualification for Senior Leadership. Instead, the claimant was during a meeting of the SLT told that she should find her own training. I did not record the date of that meeting, but I understand that it was during the first half of 2019.

10.6 In March or April 2019, Ms Dash failed to take action against a fellow employee by the name of David Oughton who had spoken to the claimant in front of learners (i.e. pupils at the school) in a manner which was (the claimant found) disrespectful in that he wanted to know whether her phased return to work was continuing and whether she was getting preferential treatment.

10.7 The suspension of the claimant on 26 June 2019 was for reasons which did not justify it.

10.8 That suspension was initiated in a way which was detrimental to the claimant because her trade union representative was not warned about it in advance and permitted to be present when the claimant was suspended. Instead, Mr Oughton, who was a representative of another trade union, was asked (I presume by Mr Wiltshire) to be present as a witness only. In contrast, a representative of the claimant's trade union would have had a protective role as far as the claimant was concerned.

10.9 On 27 June 2019, Mr Wiltshire told Ms Jackie Nicholls, one of the local authority's Attendance Officers, that the claimant had been suspended from her post as Student Services Manager and was not going to return to it.

10.10 On 3 July 2019, a further unjustified allegation was made about the claimant's conduct and stated to justify her suspension: that she had failed to complete safeguarding forms and hidden them from the respondent. The forms were in a drawer in the claimant's office at work, partly completed and locked away. They were locked away because they were confidential and they were partly completed because the claimant had not had time to complete them. If the respondent had had a "handover" meeting with her when she was suspended, then she would have told the respondent that she had not yet completed the forms. The allegation was added by Ms Sarah Anderson-Rawlins, but it was added, I assume it is the claimant's case, at the request of Mr Wiltshire.

10.11 Subsequently, Mr Wiltshire referred the claimant's case to the local authority designated officer ("LADO") on the basis that the claimant had harmed children by not completing the safeguarding forms and then locking them in a drawer in her office.

10.12 On 7 July 2019, Ms Kate Gibbons, of the respondent's HR team (probably at the request of Mr Wiltshire) made a referral of the claimant's case to the occupational health ("OH") service provider used by the respondent without telling the claimant about that referral so that the claimant was surprised and embarrassed to be contacted by the OH service provider pursuant to that referral.

10.13 On 1 September 2019, the respondent re-published its grievance policy, without material changes to the version which it had previously agreed to revise.

10.14 On 10 September 2019, the claimant's subscription to a professional subscription service called "The Key" was de-activated (presumably at the request of Mr Wiltshire; the claimant knows only that she received an automatic email from The Key telling her that her subscription was no longer active).

10.15 At about the same time, the claimant's name was removed from the school's timetables and the posters around the school stating who was the DSL.

Subsequent and future events

11 The claimant was, on 16 April 2020, reinstated without any admission by the respondent that it had been at fault in suspending her. At that time it was said that the investigation which was commenced on her suspension would continue. On 26 June 2020, Ms Dash wrote to the claimant that:

> "in view of the time that has elapsed and the forthcoming transfer, the decision has been made by the Central Executive Team to dispense with the investigation and staff grievance that was brought against you. This letter is without prejudice as we cannot confirm that you are either innocent or guilty of the allegations that resulted in your suspension."

12 Accordingly, at the time of the hearing before me, the claimant had been reinstated and the threat of disciplinary action against her had been lifted.

13 I was told by Ms Dhillon, however, that the respondent will be subjecting the claimant's contract of employment to a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246, in September of this year when responsibility for the school will transfer to the local authority, the London Borough of Haringey.'

5 In paragraph 15 of his case management summary, EJ Hyams recorded the following issues as arising in addition to the question whether or not any aspect of the claim was out of time and, if it was, whether it was just and equitable to extend time for that aspect.

5.1 Are the facts as claimed by the claimant as recorded in paragraph 10 above? If not, what precisely happened as regards the subject matter of each sub-paragraph of that paragraph?

5.2 Was what the tribunal finds occurred in the circumstances referred to in each such sub-paragraph detrimental to the claimant within the meaning of section 27 of the EqA 2010?

5.3 If so, was that detrimental treatment the result to any extent of the fact that the claimant had done the protected act referred to in paragraph 8 above? In that regard, the following questions will arise:

5.3.1 Applying section 136(2) of the EqA 2010, has the claimant proved facts from which the tribunal could decide, in the absence of any other explanation, that the detrimental treatment in question of her was to any extent because she had done that protected act?

5.3.2 If so, has the respondent satisfied the tribunal on the balance of probabilities that the treatment was in no way because the claimant had done that act?

5.3.3 Alternatively, applying the decision of the House of Lords in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, what was the reason why the claimant was treated in the material way(s)?

5.4 If the claim succeeds to any extent, what compensation should the claimant receive?

The hearing of 3 August 2021

6 The substantive hearing of this case was then listed to start on 2 August 2021. It actually started before us on 3 August 2021, but it was then adjourned for the reasons stated in the case management summary which was sent to the parties on 29 August 2021. The substantive hearing was adjourned to 21-25 February 2022 inclusive, for the determination at the resumed hearing of liability issues only.

7 The reason for the adjournment was that the claimant had not, in the circumstances described in the record of the hearing of 3 August 2021, by the start of that hearing formally applied for The London Borough of Haringey ("Haringey") to be joined as a respondent to the claim. During the adjournment for lunch on that day, the claimant formally applied for the joinder of Haringey. For the reasons recorded in the record of the hearing of that day, we concluded that it was in the interests of justice for Haringey to be joined as a party, and we ordered that joinder accordingly.

8 Unfortunately, as a result of an overbooking of training course places, EJ Hyams was subsequently booked to receive training on 22 and 23 February 2022, and that was realised only the week before the resumed hearing was due to occur. Efforts were made to procure a replacement judge, who would in fact be new to

the case, but they were fruitless and the case was directed by Regional Employment Judge Foxwell to be resumed by us.

The hearing of 21 and 24 February 2022

9 We then resumed the hearing on 21 February 2022 (with Mr Mold representing Haringey), and having started the hearing and discussed a number of procedural issues, we adjourned until 2pm in order to read the witness statements. There were only two such statements, but the claimant's was long and detailed and it referred to a number of relevant documents. The only witness being called by either respondent was Ms Beverley Dash, to whose evidence we return below.

10 However, by 2pm Mr Chapman had become so unwell that he could not even answer the telephone or respond to emails. EJ Hyams and Ms Binks then at 2.38pm resumed the hearing without him, in order to inform the parties of the position and to discuss the way forward.

11 EJ Hyams then had a discussion with the claimant and the respondents' counsel (in particular Mr Wallace) about the issues and the extent to which cross-examination would be required and to what extent it would be fruitful if not required. During that discussion, the claimant said that her case was about what had happened during 2020 and not just, as identified in EJ Hyams' case management summary written after the preliminary hearing of 7 July 2020, 2018 and 2019. As clarified in that case management summary, the latest event in respect of which the claim was made occurred in September 2019.

12 EJ Hyams then pointed out that

12.1 the claimant had not applied to amend her claim by the addition of a claim about what had happened after September 2019,

12.2 we were now at the long-arranged resumed hearing, and

12.3 since the claimant's employment had ended on 30 September 2020, if she now applied to amend her claim to add claims in respect of conduct occurring before 30 September 2020 then the application would be made at least 14 months out of time in the circumstance that if the application were granted then the hearing would have to be adjourned again.

13 The claimant then did not make an application to amend her claim and accepted that it was as stated principally in paragraph 10 of EJ Hyams' case management summary relating to the hearing of 7 July 2020.

14 EJ Hyams and Ms Binks then adjourned the hearing to 10:00 on Thursday 24 February 2022, hoping that Mr Chapman would be able to resume the hearing then. Fortunately, he was, and the hearing was resumed by the full tribunal at that time.

15 The claimant and the respondent's one witness, Ms Dash, then gave oral evidence. The claimant's oral evidence was heard for a day and a half. On 24 February 2022, the claimant sent the respondents a recording which she had (without the knowledge of those present) made of the meeting of 4 March 2019 referred to in paragraph 10.4 of EJ Hyams' record of the hearing of 7 July 2020, which we have set out in paragraph 4 above. Ms Dash's evidence was heard in the afternoon of Friday 25 February 2022 until shortly before 4pm. The adjournment of the hearing to 10 May 2022 in person at Watford with the following day, 11 May 2022, set aside for the tribunal to conclude its deliberations and agree the terms of a reserved judgment, was then agreed by all parties and the tribunal's members.

16 EJ Hyams then discussed with the claimant and the respondents' counsel the relevant law and the issues as stated by him in paragraphs 10 and 15 of his case management summary relating to the hearing of 7 July 2020 (which we have set out above). During that discussion the corrections to which we refer in paragraph 4 above were agreed.

17 EJ Hyams then explained the case law relating to the question of whether any particular treatment (i.e. as found by the tribunal to have occurred) was detrimental within the meaning of section 27 of the EqA 2010. He also emphasised to the claimant the importance of saying in her closing submissions what things she asserted the tribunal should find, as a fact, occurred, and which would justify, in the absence of an explanation from the respondent, the drawing of the inference that the detrimental treatment in question was done to any extent because she had made a complaint on 10 July 2018 about the manner in which she had been treated during her pregnancy and then pressed that complaint. In our record of that hearing (which was sent to the parties on 12 March 2022), we set out a passage from the judgment of the Supreme Court in *Efobi v Royal Mail Group Ltd* [2021] UKSC 33, [2021] ICR 1263 and referred in some detail to the other legal tests which we would be applying. Having done that, we refer to those tests below only in the course of stating our conclusions.

The final day of the liability hearing – 29 September 2022

18 The hearing did not in fact resume on 10 May 2022. That was because of a bereavement in EJ Hyams' close family shortly before then. The hearing was then listed to resume on 29 and 30 September 2022. When we resumed the hearing on the first of those days, we were given copies of a very long set of written submissions by the claimant and two shorter, succinct, sets of submissions on behalf of each respondent. We were also given a link to the recording which the claimant had made of the meeting of 4 March 2019 which was the subject of the fourth of the factual issues (which might better be called particular claims) which were set out in paragraph 10 of the record of the hearing of 7 July 2020. For the sake of simplicity, in what follows, we refer to the factual issues in that list by reference to their numbering within that list, namely as claims 1-15. We spent all of Friday 30 September 2022 deliberating.

Our findings of fact

Introduction

19 As indicated in paragraph 9 above, we heard oral evidence only from the claimant and Ms Dash. We did not hear from the person who might well have been expected to be the main witness for the respondents, namely Mr Wiltshire. Nevertheless, we did hear his voice in the recording of the meeting of 4 March 2019 which was the subject of claim 4.

20 The only explanation we were given for the absence of Mr Wiltshire and any other witness was that the first respondent was by the time of the intended hearing of August 2021 shortly going to be dissolved and that not all of its staff had transferred under the Transfer of Undertakings (Protection of Employment) 2006 ("TUPE") to the employment of Haringey. However, it was possible to infer from the documentary evidence before us that Mr Wiltshire's goodwill towards the organisation in which he had been employed from (the claimant agreed when it was put to her in cross-examination) August 2018 onwards had, at least by July 2020, diminished considerably. That was a possible explanation for him not giving evidence to us. We return to that documentary evidence below.

21 In any event, in the circumstances, we concluded that our findings of fact were best going to be made (1) by reference to the claims set out in paragraph 10 of the record of the hearing of 7 July 2020, with references to "the respondent" changed to references to "the first respondent", and (2) by asking ourselves in each case whether the claimant had put before us facts from which we could conclude that the way in which we found the claimant had in fact been treated was to any extent detrimental treatment within the meaning of section 27 of the EqA 2010 and, if so, whether or not it was such treatment (applying wherever it was in our view appropriate to do so the *Shamoon* test set out in paragraph 5.3.3 above). In doing that, we were acutely conscious of the need not to make final findings of fact until we had considered each individual complaint carefully and then stood back and asked ourselves whether there was, overall, something in the factual situation taken overall from which we could draw the inference that the claimant had in fact been treated detrimentally within the meaning of section 27 in the particular way claimed.

22 Our findings of fact, made in that way, were as follows, taking the claims in paragraph 10 of the record of the hearing of 7 July 2020 in turn, but grouping together those which were best taken together. Each finding on each factual element of the claim was made in the manner stated in the preceding paragraph above, i.e. only after we had considered the factual situation as a whole and asked ourselves whether there was in it any justification for drawing the inference that the claimant had been treated detrimentally within the meaning of section 27 of the EqA 2010 in the manner claimed in that particular complaint.

Claim 1: The first respondent failed to implement its own appeal panel's recommendation that the first respondent's grievance procedure should be amended so that it made it clear how a grievance against a member of the first respondent's staff above the head teacher of the institution at which the claimant worked could be pursued and how, if necessary, the outcome of such a grievance could be appealed

Claim 13: On 1 September 2019, the first respondent re-published its grievance policy, without material changes to the version which it had previously agreed to revise

23 The factual situation concerning the claimant's grievance needs to be mentioned briefly. It was not in dispute and was shown by the documents in the bundle. The claimant's grievance was sent on 10 July 2018 and was at pages 162-165. The grievance was about the conduct of Ms Angela Tempany, who was at the material time the line manager of the head teacher of the school at which the claimant worked (to which we simply refer below as "the school"). That time was the period of the claimant's pregnancy of 2017-2018 which was followed by the still birth of the claimant's baby in the first part of 2018.

24 The amendment of the first respondent's grievance procedure was the subject of the email exchange between the claimant and Ms Alexia Featherstonehaugh, who was a member of the respondent's board, at pages 190-191. That exchange took place on 25 and 26 June 2019. In the claimant's email to Ms Featherstonehaugh, the claimant said this:

> "Dear Alexia,
>
> Further to the email trail below and attached letter received.
>
> With the exception of meeting Seamus Oates [the first respondent's Chief Executive Officer], I have not had a resolution to any of the agreed actions from the appeals hearing.
>
> I had started to address this with HR but due to various changes and lack of understanding of the issues and the appeals hearing which took place, I have decided to address the matters with yourself.
>
> Please can I arrange a time to discuss these matters either by telephone conference call or in person with my union representative."

25 Ms Featherstonehaugh replied:

> "Many thanks for your email. I am sorry to hear that things have not yet been resolved but I am aware that the HR situation has been rather disrupted overt the last couple of months and this is no doubt part of the reason for this unfortunate situation.

I have had a brief word with Seamus Oates who tells me that the outstanding issues are being dealt with e.g. involving you in an update to the grievance policy, and I believe the EO and Diversity training for staff is scheduled for September. We also now have HR support through EPM HR Consultants - specifically via Ruth Leyshon-Wilson who is copied in here.

I think the best way forward, in the first instance, is for Ruth Leyshon-Wilson to follow up any of the unresolved actions as a matter of urgency. She can liaise with Seamus and also Ruth Browne, both of whom are familiar with your case and are copied in here so will know that I am escalating the matter in this way.

I can appreciate the delay has been frustrating and I can only apologise on behalf of TBAP for that – unfortunately it has been a challenging few months for the Trust with significant issues around HR support and on other fronts. I do believe that with EPM on board, the matter can now be resolved forthwith and can only ask for your patience in allowing a little more time for this to happen. If there is still no resolution by mid-July we will think again, but I hope you agree that this suggested approach will be the most effective and efficient way to bring an end to this grievance matter."

26 There was then an exchange of emails on 10 July 2019 between the claimant and Ms Leyshon-Wilson. The full exchange was at pages 489-490. Ms Leyshon-Wilson wrote this at the bottom of page 490:

"Hi Anne-Marie

I have been asked to look into the outstanding actions as part of your grievance/appeal.

I understand the following were agreed.

1. Meeting with Seamus Oates – I understand this has happened.
2. Equality & Diversity Training – this is scheduled for TBAP schools at the start of Autumn term.
3. Reviewing the grievance policy – my understanding is that this has been shared with you but we are yet to receive any comments.

Please feel free to let me know if there is anything that I have missed."

27 The claimant responded in the email straddling pages 489-490:

"Dear Ruth,

With the exception of meeting with Seamus as per my email to Alexia the remaining actions remain unresolved.

> I have never been involved in the reviewing of the grievances policy with any HR representative. Neither have I seen the new policy for the next academic year. In the allocation of reviewing TBAP policy for the next academic year, I was allocated the TBAP's Reintegration policy to review. I was not approached by HR for input in to the grievances policy.
>
> I email[ed] Ruth Browne week commencing 10.06.19, who stated she would provide an update which was not forthcoming. I understand it was pass[ed] to Beverley Dash to deal with. I spoke with Beverley Dash 21.06.19. Where I had to share detailed examples of historical event as she was unawares of the grievances content or what was required to move things forward. This as you must understand was destressing [*sic*] for me given the sensitivity and nature of my grievances. Hence why I chose to readdress my concerns with Alexia.
>
> At present as you know TBAP Trust have suspended me.
>
> Please could you liaise with my union representative (Andrea Holden who is copied into these emails) regarding resolution as I am finding dealing with this matter as well as my suspension extremely destressing."

28 The next email in the chain between those two persons was the one in the middle of page 489, relating to the referral of the claimant to an occupational health advisor without informing the claimant in advance of the referral. That email was also at page 101. The email was from the claimant to Ms Leyshon-Wilson. We return to it in paragraph 119 below. We mention it here to show that the email exchange about the failure to implement the change to the respondent's grievance procedure ended on 10 July 2019 and that Ms Leyshon-Wilson's attention was diverted to the claimant's stance in regard to the occupational health referral.

29 Against the factual background revealed by the email exchanges in paragraphs 24-27 above, we looked at the claimant's submissions in support of claims 1 and 13. Those in support of claim 1 referred not only to the email exchanges at pages 190-191 and 489-490 but also to what happened when she had returned to work in 2020. Given what we say in paragraphs 11-13 above, what occurred after the claimant returned to work in 2020 was not the subject of a specific complaint. It was capable of being relied on by the claimant as evidence, however, if it had any probative value.

30 In that regard, the claimant relied on the notes of an "informal meeting held on Thursday 16th April 2020" at pages 231-234, where, on 234, this was noted (the reference to "Abi" being to the first respondent's then Chief Operating Officer):

> "AMJ mentioned a former grievance – where the Board agreed to review and amend the TBAP grievance policy and the equality & diversity policy. to date this has not been changed

> Abi will be reviewing most of the TBAP policies, so she will take a look at these."

31 The claimant also referred in her submissions in support of complaint 1 to the notes at pages 303-304, but we found nothing material in those notes.

32 The obvious explanation for the failure to implement a change to the first respondent's grievance procedure so that it expressly stated how to state a grievance about a matter relating to a person above the head teacher of the school was that that failure was initially the result of the administrative disruption to which Ms Featherstonehaugh referred in her email of 26 June 2019 which we have set out in paragraph 25 above. After then, responsibility for implementing the change was put on the shoulders of Ms Leyshon-Wilson, as shown by the email set out in paragraph 26 above, after which the claimant's attention was focused on the occupational referral, as was that of Ms Leyshon-Wilson. The claimant's focus on the occupational health referral was demonstrated by the facts that (1) she failed to attend or participate in an occupational health review, despite having been invited to do so on four separate occasions, until after the return to work meeting of 16 April 2020 noted at pages 231-234, and (2) only at that meeting did the claimant raise again the issue of the amendment to the respondent's grievance procedure.

33 In all of the circumstances, we could see no evidence, or facts, from which we could draw the inference that the failure to implement any of the determined outcomes of the claimant's appeal against the dismissal of her grievance about the manner in which she was treated when she was pregnant was to any extent because of the claimant having stated that grievance. In addition, the real reasons for the failure to implement the agreed change were as stated in the preceding paragraph above. On that basis, claims 1 and 13 could not succeed. However, in addition, they did not succeed because in our view no reasonable person would have regarded the failure to implement the changes to the grievance procedure as being detrimental to them within the meaning of section 27 of the EqA 2010. That was because there was no need for the procedure itself to cater for a grievance being stated about conduct (or omissions) on the part of a person above the head teacher of the school in the first respondent's hierarchy: such a grievance was plainly still capable of being stated, which the claimant herself recognised in the very grievance in which she complained about the absence of such formal provision. That recognition was evident from the fact that in that grievance she stated (at page 164) this:

> "Although we met in December 2017 to discuss some of my concerns, Angela Tempany's behaviour and conduct remained the same. Having reflected on events that took place over term 1& 2 time, I spoke with HR-Eileen Harding in December 2017, to discuss the grievance process, as the policy did not seem to extend to the ELT. If I am honest, I had little confidence in the response I received, as it did not seem to follow the current TBAP Grievance Policy. As I was not entirely clear of the protocols and had no written reference as a guidance, I was reluctant to put it in writing. I am

> actually still not sure what the protocols or procedures are for making a complaint against a member of the ELT but as the CEO for the Trust and Angela Tempany's line manager, I have elected to address them with Paul Dix and yourself."

34 Thus, even though the first respondent's grievance procedure did not at that time (or, as the claimant complained, subsequently) expressly state how to state a grievance about the conduct of a person in the first respondent's hierarchy above the school's head teacher, the claimant herself well knew that she could state such a grievance, and she did in fact state such a grievance.

Claims 2 and 3: During the whole of the period from 23 May 2018 to 26 June 2019, Mr Wiltshire expected the claimant to be responsible for all aspects of her role, and did not temporarily give any of her responsibilities to one or more other members of staff. The claimant was also given additional responsibilities such as finding alternative educational placements for pupils at the school.

35 The claimant's job title was (we saw from for example the email of 21 June 2019 at page 528, the text of which we have set out in paragraph 50 below) "Student Services Manager & Designated Safeguarding Lead".

36 The claimant recognised that claims 2 and 3 were different aspects of the same factual complaint, and dealt with them together in her written closing submissions. We heard no evidence on behalf of the respondents about the claimant's workload from any witness who might have given direct evidence about that workload. In the circumstances, the claimant's submissions on the point were of central importance to these two claims. What she said in support of them was this (and we quote them in their entirety, including textual errors, which the claimant told us were the result of her being dyslexic, and bold font where it was used in the original):

> "The C testify to that whilst she was on a phased return to work, she was given tasks to complete that were not part of her role and responsibilities. Witness statement paragraph 38,43,45.
>
> She was asked to liaise with the Examination Lead for the R pg 512-514, which was Victoria Browning's role. She was not absent from work.
>
> On another occasion the claimant testified that she was requested to complete timetabling for a school event which on any other day would be Victoria Browning's responsibility and manage interventions which was the responsibility of Patricia Wright.
>
> **Detriment**
>
> The R expected her to take on task of other members of ELT even though they were at work an available to work and she was not working her full-time

hours. The R allowed this to take place even though they knew she was sick.

The C was being overloaded with work which she clearly would not be able to manage given the number of houses she was completing as part of the phase return.

The R put the C under pressure with task that were not her to do. Given that the C own role and responsibility would not be met due to the C phased return.

The R knew the C responsibilities were import and detrimental to the student and did not adequately support the C to undertake her role. They essential forced the C into a position where there would be gaps in her performance. They then attempted to make false allegation about her conduct to the LADO which were not substantiated or accepted as threshold by the LADO.

The R provide no evidence or witnesses to suggest that the C was not right in her to ascertain that their behaviours towards her was not because of the C being victimisation because she made a complaint of discrimination under a protective characteristic. The C argues any reasonable person would conclude the same. That a person who was on a phased return to work and struggling to complete their own role and responsibilities would not expect to have to undertake the task from another person role given the importance of her role and the detriment it could have on the learners if mistakes were made and especially it the staff are in attendance to work and available to complete their own jobs."

37 Thus, the claimant's own evidence on which she relied in support of claims 2 and 3 was in paragraphs 38, 43 and 45 of her witness statement. Paragraph 38 was in these terms (which, as with all other quotations in these reasons below, we have set out without corrections):

> "Given I was only in work part of the time, the Head of school allocated responsibility for me to organise the. whole school Safeguarding day for students on the 30th of March 2019. I informed him I would work in collaboration with Vicky to complete the staffing and timetabling for the day given it's her remit. I was informed that I must do it by myself. Again, this seemingly conveyed to me that Vicky was being protected and I was being put under pressure. I was at this point only working 8-1pm, 3 days week and I was be instructed to complete time-consuming task which were not within my remit."

38 In paragraph 43 of her witness statement, the claimant said this:

> "The last day of term before the Easter holidays in 2019, I was instructed to arrange a safeguarding day. This would involve a collapse of the timetable

for the day, safeguarding projects and workshops. The head of school instructed me to organise a complete the process by myself. When I mentioned to the Connery that I would engage Patricia and to support in terms of the areas of intervention and for Vicky Browning to complete the timetable. I was instructed that I was not to get any support from them, to manage the whole day and do the timetable and any other interventions without the assistance of them. I was put under immense pressure for a whole school event.

This was difficult day for me as student intentionally mocked the death of my child. The first time since my return to work. I was blindsided and found it difficult to cope. (pg 573) Connery Wiltshire did nothing about it. Even though he heard. It was support staff and students who followed up with the child. This contrasts with incidence which involved the Connery Wiltshire and Vicky Browning which would be followed up robustly."

39 Page 573 was an "Accident reporting form" completed by the claimant on 5 April 2019, stating in section 2, which was headed "Description of Dangerous Occurrence", that at 10:25 in the foyer area of the school:

"Student mocked me about deceased child intentionally."

40 Only the first part of paragraph 45 of the claimant's witness statement was relevant to claims 2 and 3. That part was in these terms:

"On May 1st, 2019, I was driving home in my car when Connery Wilshire called me on my phone, he informed me that Mandy Rodney had resigned as and that I needed to source assistance from TBAP Trust lead examination officer. The remit of exams is not my responsibility, this lies with Vicky Browning, given the amount of time I was in work it was difficult to understand why someone else work was put my way, particularly Vicky Browning given our relationship. I followed his instructions (page 512-515)."

41 Pages 512-514 (page 513 was in fact blank) were an email chain from 1 and 2 May 2019. Page 515 was an email from Patricia Wright to Leon Hollings, which was copied to Mr Wiltshire, in which Ms Wright reported on steps taken in regard to the reintegration of students at the school, i.e. their reintegration into mainstream education. At page 514 there was an email from the claimant to Mr Adedeji Balogun which the claimant had sent, presumably once she had arrived home (it was sent at 17:37), which was in these terms:

"Dear Adedeji

Connery has asked me to contact you on his behalf.

We have had a rather unfortunate situation at the Octagon [i.e. the school] regarding exams.

Our exam officer has resigned and we need to put contingency plan in place as a matter of urgency. As our first exam starts on Friday.

Please can you arrange an urgent visit to the Octagon so we can address this matter with minimal disruption. Tomorrow is impossible as Connery is attending an Extended Leadership day at the Bridge. If you are based at the Bridge you could catch up with him to discuss the matter. Alternatively please confirm that you can attend on Friday at anytime.

Connery has requested that this matter is to be address slowly with him or myself.

Please contact myself on the work mobile number below."

42 However, the situation was described by the claimant herself much closer to the time when it occurred as recorded in a document in the bundle. That document was the notes of the investigation meeting conducted with the claimant on 12 July 2019 by Ms Sarah Anderson-Rawlings, at which the claimant was accompanied by a representative of her trade union. We refer to the first part of the notes of that meeting below in relation to complaints 10 and 11. After raising the issue of the safeguarding referral documentation to which those complaints related, Ms Anderson-Rawlings read out and referred specifically to the detailed letter of complaint dated 25 June 2019 which Ms Browning had sent to Mr Wiltshire, of which there was a copy at pages 292-296. That letter started with the following passage, after which there were 16 numbered paragraphs:

'Thank you for meeting with myself and my union representative, Mo Sabur of ASCL on 24 June 2019 to discuss my concerns and the impact of certain actions on my health and wellbeing.

As you know, as pointed out by my union representative, we were meeting under stage 1 of the TBAP's Grievance Policy and we hope that the matter can be resolved satisfactorily without having to resort to the formal stages.

My principal concern is that, in your role as the Headteacher, you appear to have not dealt with, in my view, the continued and sustained unprofessional comments, behaviours and actions Anne-Marie has directed at me. The fact that you have not immediately and categorically challenged the unprofessional and untrue comments from her, in your presence, leads me to believe that she is therefore enabled to continue behaving in the manner that she does. Her inappropriate actions, in a variety of situations, not being challenged or corrected seems to give a signal to the staff, that her actions are being condoned by management.

From a personal point of view, I feel that my employers are failing to exercise their duty of care to me and this is having an impact on my emotional and physical wellbeing. Anne-Marie's actions are also having an

impact on my workload and therefore my ability to do my job to the best of my ability.

I outline below examples of her behaviours and actions, many of which you have witnessed first-hand, that I believe should have been dealt with immediately in your position as the Head of the school".

43 Numbered paragraphs 4 and 5 were on page 293 and were in these terms:

'4. I went in to discuss exams with CWI. We were discussing possible venues to be used for examinations for EWB. Anne-Marie jumped in the conversation and suggested using the tuition centre and stated "we always use that place". I stated I would look into it. She then made another suggestion and as I did not look at her when she made it she clicked her fingers at me and said "Hi, I am here". This was said in front of PC [i.e. Police Constable] Tina and you, the HoS.

5. Previously raised concerns regarding this member of staff to the HoS which was raised further to HR. A meeting was held with CWI and HR, actions to move forward were set and she still is not meeting the actions. The minutes of this meeting have still not been shared even though I have raised this several times with HR. –minutes of meeting shared 25/6/2019'

44 We understood the references to "CWI" to be to Mr Wiltshire. That meant (given that the letter was written to Mr Wiltshire and that he was elsewhere in it referred to as "you", and "you, the HoS") that the letter had not been edited as carefully as it might have been, and that the complaints in it needed to be read with a degree of circumspection. In addition, as the claimant pointed out, the final words at the end of paragraph 5 of the text of the letter (which we have just set out) suggested that the document at pages 290-296 had been amended after it was originally sent. In any event, what the claimant was noted to have said on 12 July 2019 in response to the allegations numbered 4 and 5 on page 293 was material to claims 2 and 3 (i.e. her complaints to this tribunal which we are calling claims 2 and 3) in that it showed the context to the opening words of paragraph 45 of the claimant's witness statement, which we have set out in paragraph 40 above. On page 270, the claimant was noted to have said this on 12 July 2019:

"I will give you an example of things that are difficult regarding Vicky for instance, she will say things about me. After an SLT meeting just before the start of exams our exams officer threw a bit of a hissy fit and said she was resigning. CW [i.e. Mr Wiltshire] was on Vickys car phone [*sic*; the claimant may have said that Mr Wiltshire was on his car phone when Ms Browning called him on it], he has a car phone a work phone and a private phone. He was talking to me on the way home. Vicky came through on the car phone she said have you seen that Mandy has resigned its AMJ [i.e. the claimant's] fault.

> Andrea [i.e. the claimant's trade union representative] just to put this in context AMJ is having a conversation with CW on one phone he received a call on another phone and put AMJ on hold knowing she can hear.
>
> AMJ he said Vicky is coming through listen, keep quiet. So I did, she said Mandy has resigned and its AMJ fault, she sent an email. The email I sent was about safeguarding. Mandy sent an email with outside exam centres provisions which I appreciated but my concern was that the risk assessment and it was safe. I pointed it out and followed it up with Mandy lets just be safe. I had to sit there and listen to Vicky say x y and z about how it is my fault and I am getting away with murder."

45 That conversation was the subject of the rest of paragraph 45 of the claimant's witness statement, and it was highly material to claims 7 and 9 (which we deal with together below). The passage at page 270 which we have set out at the end of the preceding paragraph above showed that the claimant had herself liaised with Ms Rodney in regard to examinations (although the claimant's responsibility in regard to examinations differed from that of Ms Browning). It also showed that it was being claimed by Ms Browning that it was the claimant's conduct which had caused Ms Rodney to "[throw] a hissy fit and [say] that she was resigning". In addition, Ms Browning was plainly very upset about the situation. In those circumstances, we concluded that no reasonable person in the position of the claimant would have considered being asked to "source assistance from [the first respondent's] lead examination officer" as a detriment within the meaning of section 27 of the EqA 2010.

46 As for the things referred to in paragraphs 38 and 43 of the claimant's witness statement, which we have set out in full in paragraphs 37 and 38 above, they related to the claimant's main role, which was to deal with safeguarding issues at the school. During the "mediation" meeting of 4 March 2019 of which we had a recording, Ms Browning complained that the claimant complained about Ms Browning getting involved in regard to safeguarding by dealing with matters relating to what the parties called the "smartlog". Mr Wiltshire stated in the meeting (as we heard) that the claimant's remit was "health and safety" whereas that of Ms Browning included "CPD", i.e. continuing professional development. The claimant was, in that meeting, concerned about Ms Browning doing what the claimant referred to as "undermining" her (the claimant's) "role".

47 At pages 508-510, there was a copy of a written grievance which the claimant wanted to read out from at the meeting of 4 March 2019, but which she could not, given the lack of time. At page 509, the claimant wrote this:

> "Smartlog- Is a health & Safety & safeguarding support system. It has nothing to do with teaching and learning. As one of the designated safeguard leads, I have been working with Aba to identify staff who need to complete modules. This has then been challenge. If on it since we have converted to academy. There has been a clear protocol on how we have

dealt with staff who have failed to complete modules. VBr has taken it upon herself to. Effectively she has taken over my role."

48 The friction between the claimant and Ms Browning is evident from the recording of the meeting of 4 March 2019. Ms Browning is recorded to have said (evidently somewhat upset) that she will not in the future get involved in chasing up smartlog issues. The claimant can then be heard making a lengthy statement about how smartlog issues are dealt with: by her and "Andy", who was "the site manager".

49 At page 511 there was a copy of an email dated 5 April 2019 from the claimant to Ms Browning and copied to Mr Wiltshire. It was in these terms:

"Dear Vicky

Over the last week or so, it has felt like there has been both a deliberate attempt to exclude me from discussions surrounding attendance and to undermine me in front staff, whom I managed. This doesn't demonstrate positive leadership or promote a good example to the wider SLT or staff team as a whole. Even though I have been present in school, when these discussions are taking place. A SLT was also held for the last 2 weeks and yet there has been no discussion about attendance staffing, even though staffing is a standing agenda item.

Yesterday, timetable changes where [*sic*] made and changes certainly implemented to the Attendance Officer role. Direct discussion have also taken place with the attendance officer without out any communication with myself. This undermines my role as a SLT member. This also affects my ability to run a department which is largely focus on safeguarding. I have tried to bring this to the open in SLT meetings and SLT daily briefing but there appears to be a reluctance to have an open discussion. However, discussions are still taking place. I not sure why strategic discussion aren't taking place openly, if they are for the benefit of the school.

Please could you raise any concerns directly with me regarding the attendance role or timetabling. Alternatively if you feel unable to discuss the attendance role with me directly, then please could you arrange a time suitable to meet both Connery and myself to discuss. I am the strategic lead for attendance and have responsibilities for delivering whole school attendance outcomes. Therefore I should be included in this discussion which will have an impact."

50 On 21 June 2019, at 08:29 the claimant wrote to Ms Browning, copying the email to Mr Wiltshire this (page 528):

"Morning,

> Please could I be copied into any correspondence sent regarding safeguarding.
>
> Regards,
>
> Anne-Marie Johnson".

51 These things showed that the claimant wanted to be "responsible for all aspects of her role" and resented anyone else (or at least Ms Browning) assisting with the main aspect of her (the claimant's) role (i.e. safeguarding matters and health and safety).

52 The claimant's evidence in regard to the claimed increase in her responsibilities was in paragraphs 48 and 49 of her witness statement. She referred there in addition to the emails at pages 515-518. While she complained in paragraph 48 of her witness statement that she had been given responsibility by Mr Wiltshire for the "reintegration" of pupils, in paragraph 49 she complained that Ms Browning had then, as shown by the email exchange at pages 96-97 and pages 516-518 (it was in fact only on pages 516 and 518 as page 517 was blank), complained about the claimant "placing people on Alternative provision" when it was not her (the claimant's) job to do that: in paragraph 49 of her witness statement, the claimant said this:

> "Her responses were unsupportive and unnecessary, as she chose to escalate the request, telling me it was my neither mine nor her remit, yet she had already set up the programme knowing it wasn't her remit."

53 The email trail at pages 96-97 and 518 and 516 (reading them in chronological order) was as follows. At 12:37 on 4 June 2019, the claimant wrote (possibly to Ms Browning only; it was not clear):

> "Good afternoon,
>
> Please can [name of a pupil whom we will call pupil A] be set up on the same home education package as [name of a pupil whom we will call pupil B] as a matter of urgency.

54 At 17:17 on 4 June 2019, Ms Browning wrote to the claimant (copying the email to Mr Wiltshire):

> "Hi Anne Marie,
> The home education pack [pupil B] has is funded by an outside agency (they are paying for him to do it). It costs £3,900. If you have the available funds for him to be enrolled on the course I am happy to fill in the paperwork."

55 At 20:05 that day, the claimant responded (also copying her reply to Mr Wiltshire):

> "Good evening,
>
> This has been discuss by Connery and myself and hence why I have made the request. Please can you action.
>
> We are seeking an alternative provision for [pupil A] which would need to be funded by Octagon, so I am not sure the relevance the funding being questioned.
>
> I hope this clarifies my request."

56 Shortly afterwards, at 20:54, the claimant wrote to Ms Browning (alone, not copying it to anyone else) this:

> "Good evening
>
> All of SLT are aware that [pupil A] and both [name of another pupil, possibly with a mistaken name and possibly pupil B] need placing in AP. It has now been tasked with me to place.
>
> This has been agreed and has been communicated to you in this email trail.
>
> Feel free to speak to Connery, evidently you do not trust my email. Despite the fact Connery is actually copied in to it."

57 Ms Browning replied the next morning (5 June 2019) at 06:07, copying the email to Mr Wiltshire:

> "Hi Anne-Marie,
> That was not the point I was making. The best person to speak to about AP placing is Patricia as it falls under her remit, not mine. Patricia oversees AP students."

58 Evidently, Ms Browning thought (i.e. she had not been told otherwise) that Ms Wright continued to be responsible for "oversee[ing] AP [i.e. alternative provision] students". Certainly, the claimant appeared in that email exchange to be happy to deal with the issues relating to those students. In any event, the claimant's own witness statement evidence to us complained about Ms Browning having (see the words quoted by us at the end of paragraph 50 above) "already set up the programme knowing it wasn't her remit".

59 Furthermore, as Mr Connery reminded the claimant (as we heard) during the meeting of 4 March 2019 that was the subject of claim 4, the members of the respondent's SLT were members of a team (that of course being evident in the fact that those letters stood for "Senior Leadership Team") and that in a fully functioning team members would help each other out as and when occasion required.

60 Thus the evidence before us showed that the claimant resented Ms Browning doing anything to help her in regard to her central responsibilities relating to safeguarding, but complained at the same time about being given additional responsibilities in regard to "reintegration". When Ms Browning did something to assist in regard to "reintegration", the claimant resented that too.

61 In addition, the recording of the meeting of 4 March 2019 which was the subject of claim number 4 showed Mr Wiltshire being (1) critical of Ms Browning more than the claimant, and (2) very even-handed and fair as between them. Moreover, the conversation which Ms Browning had with Mr Wiltshire when he was driving which the claimant was evidently not intended by Ms Browning to, but did, overhear, which the claimant described in paragraph 45 of her witness statement which we set out in paragraph 95 below, and the claimant's words used in the meeting of 12 July 2019 which we have set out at the end of paragraph 44 above, showed that Ms Browning thought that Mr Wiltshire had been letting the claimant "get away with murder".

62 It was also relevant that the claimant's grievance of 10 July 2018 (at pages 162-165) was about the conduct of Ms Tempany, not that of Mr Wiltshire, and that he had started to work for the first respondent only in August 2018.

63 The claimant's witness statement contained nothing about the claimed requirement imposed on her by Mr Wiltshire to do some of his work in relation to data.

64 In all of the circumstances before us, we could see no evidence from which, if we accepted it, we could draw the inference that the manner in which Mr Wiltshire treated the claimant in regard to matters of workload was to any extent caused by the fact that she had made a complaint of discriminatory treatment on the part of Ms Tempany as stated in her grievance at pages 162-165. In any event, we concluded that the matters about which the claimant complained in claims 2 and 3 were not ones which she could reasonably regard as being to her detriment in the circumstances to which we refer in paragraphs 37-59 above.

Claim 4: at the meeting of 4 March 2019 between the claimant, Ms Browning, Mr Wiltshire and Ms Dash, of which the claimant put before us a complete audio recording, Ms Browning was permitted by Mr Connery and Ms Dash to accuse the claimant of wrongdoing and the claimant was forced to respond to that accusation, rather than the meeting being conducted as a genuine attempt to enable both the claimant and Ms Browning to work harmoniously together

65 Having heard the recording of the meeting of 4 March 2019, we were unanimously and firmly of the view that claim 4 was not well-founded on the facts. Rather, we heard the claimant fighting her corner hard and assertively, responding in full to the matters which Ms Browning raised as concerns, and in some cases refusing to stop talking when doing so, going on until she had finished what she wanted to say despite being asked to stop doing so. In addition, we heard Mr Wiltshire in a mild-mannered way (1) being more critical of

Ms Browning during the meeting than of the claimant, and (2) seeking to promote agreement between the claimant and Ms Browning in order to assist them to work together in the future. We also heard Ms Dash suggesting that the claimant and Ms Browning shook hands with a view to moving forward together, and that the claimant, while not stating in terms that she did not want to do that, caused the conversation to move on at that point and that she and Ms Browning did not shake hands.

Claim 5: The claimant was denied the opportunity to receive training organised by the first respondent for other members of the SLT towards the NPQSL, i.e. the National Professional Qualification for Senior Leadership. Instead, the claimant was during a meeting of the SLT told that she should find her own training.

66 The first of the two limbs of claim 5 was an assertion of a positive decision but it was not said by whom the decision was allegedly made, or by when the claimant could reasonably have expected to be offered the training in question. That was problematic from the point of view of determining when time started to run for the making of the claim and for its particularity and the fairness of the claimant being permitted to run it if it was made out of time.

67 The evidential basis for the claim was in paragraph 44 of the claimant's witness statement, which was in these terms.

> "Continuous professional development is important. From January 2019 to June 2019, I was being denied training opportunities for SLT members which was even afforded to non-SLT members. Every member of the SLT including Connery Wiltshire, Patricia Wright, Vicky Browning were considered for TBAP leadership training. This was all cascaded down via Vicky Browning and was even offered to Lawrence Ferrigan, who was not an appointed member of senior leadership team. The training was also offered to the two middle leaders, Mandy Rodney and Ranjeni Moodley. I was the only member of the SLT who. was not offered the opportunity to do training. When I asked what the criteria was for the selection, I was told it was decided by Browning and the Head teacher. When asked why I was not given the opportunity to train I was told by Connery Wiltshire to source my own leadership training. When I enquired about budget, I was told that there was no budget, which effectively meant that I won't receive the leadership training. I felt isolated given that this was being played out in front of the entire SLT and non-SLT members. It was clear to me that I have been disadvantaged. This is because I dared to challenge the TBAP conduct towards me. Connery Wiltshire had by this time declared that he intended to restructure the staff team. It was clear to me that I was being isolate and disadvantaged in future staff restructures and professional development."

68 The documentary evidence underlying the claim was at pages 98-100, which was an email exchange of 19 and 20 June 2019. Accordingly, the claim was

made out of time unless we extended time on the basis that it was just and equitable to do so.

69 The email at page 98 was sent at 13:31 on 19 June 2019 and was, chronologically speaking, the first email of the series. It was sent to Mr Wiltshire only. Its text was this:

> "Dear Connery
>
> I would like to bring to your attention that this academic year I have not offered by the TSA [*sic*].
>
> My understanding is that training opportunities are shared with the DoL [i.e. Ms Browning] and should be shared with SLT.
>
> What I have observed is staff being hand picked to attend training by the DoL and yourself.
>
> With the exception of those members of staff who have a NPQHSL/ HT
> I was the only member of the SLT to not be offered the opportunity to complete this qualification. Even an unofficial SLT members that isn't recognised in TBAP's structure have been offered this training.
>
> I was also told officially, I could complete the DSL mental health training, instead I can see from the calendar that Mandy has been identified to complete this qualification on Friday which has since been postponed. Again training opportunities aren't open to all.
>
> When I raised these concerns with you verbally, I was informed I can source my own training
>
> I would like to know why I need to source my own training externally when TBAP are investing in quality training opportunities, which is nationally recognised for it staff.
>
> I would like an explanation as to why I have not been offered any internal training opportunities this academic year.
>
> Members of staff I line manage have even been offered training opportunities without my consultation through TBAP's training opportunities.
>
> I would like to also now the mechanism in place to ensure that all staff have equal opportunities to access training that appears to be cascaded to the DoL.
>
> I believe that this decision could be strategically planned to reduce my opportunities to seek opportunities, in the new school's structure moving forward."

70 Thus the claimant's complaint that she was not offered the opportunity to undertake NPQSL training was made on 19 June 2019 and was about the failure before then to offer it to her. She had (it appeared) not before then asked for it.

71 At pages 99-100 there were three emails between the claimant and Ms Sue McMahon of the respondent's staff, starting at 15:32 on 19 June and ending on 20 June. They were about what the claimant referred to as "safeguarding training", having started the conversation by asking for a "PO", i.e. a purchasing order, for "DSL" training, i.e. designated safety lead training. They ended with the claimant writing this:

> "Wow the training budget is spent.
>
> Yikes, I haven't even had so much as free training from TBAP, this year.
>
> Please could you chase I must have access to safeguarding training it's statutory responsibility for the school and my role."

72 The matter of training was raised by the claimant in her interview with Ms Anderson-Rawlins of 12 July 2019 and noted at pages 275-276. The claimant is noted to have said this:

> "AMJ I have been denied training opportunities. Patricia didn't want to CW doesn't need to. Lawrence used as SLT but not. Ranjenny and Mandy are middle leaders have all been offered opportunities. I asked how it was determin[e]d but I was told to source my own training. Why should I source my own when my employer is offering me the opportunity to do it in house. Why have I been denied the opportunity to take part in the senior leadership training. Why did the HoS say the same thing to each of us. Rise above it you are better than this. They send my attendance officer on training without me knowing so that put pressure on Sue to do the attendance."

73 Thus, there was no evidence of the claimant asking at any time before 19 June 2019 specifically for NPQSL training. By then the training budget was spent for that year. There was nothing whatsoever to link the fact that the training budget was spent for the year with the fact that the claimant had in the year before, 2018, stated a grievance about the manner in which Ms Tempany had treated her while she was pregnant. Thus, we saw no factual basis from which we could draw the inference that the spending of the budget occurred to any extent because the claimant had stated that grievance.

74 The same was true in regard to the failure to put the claimant forward for NPQSL training, especially in the absence of (1) any timescale for the offering of an opportunity to undertake training to obtain a national professional qualification of the sort that members of the senior leadership team could reasonably hope to obtain, and (2) any statement of when any one or more members of that team were in fact offered such an opportunity. That is to say, we saw no factual basis

from which we could draw the inference that the failure to put the claimant forward for NPQSL training occurred to any extent because the claimant had in 2018 stated a grievance about the manner in which Ms Tempany had treated her while she was pregnant.

Claim 6: In March or April 2019, Ms Dash failed to take action against a fellow employee by the name of David Oughton who had spoken to the claimant in front of learners (i.e. pupils at the school) in a manner which was (the claimant found) disrespectful in that he wanted to know whether her phased return to work was continuing and whether she was getting preferential treatment

75 This claim was evidenced by the email trail at pages 92-94. At page 92 there was an email from the claimant dated 29 March 2019 in which she responded to that of Ms Dash at page 93, which was sent on 12 March 2019. The latter email responded to the claimant's email of the same date at pages 93-94, in which the claimant forwarded an email which she had first sent on 24 February 2019, in which she set out her complaint. The body of the first part of the latter email was this:

> 'Further to our telephone conversation on Tuesday 19th February 2019. I believe I need to provide further context to the incident.
>
> I informed HR that on Thursday 13th February 201 that I was approached by a member of staff- who said in a public forum (OAPA's reception area) in front of learners and staff members "hello part timer, I need to speak to you. I need to know what you got." I informed the member of staff that what I had is a medical certificate. When I contacted HR I was hoping for some advice on how to manage this situation. We discussed what staff needs to know and that they have been informed of my working pattern. I was informed that HR had noted it.
>
> Additional context
>
> In regards the member of staff's statement. I believe the inference being made publicly is that I am receiving some type of special treatment ,which I believe is being encouraged by members of the school community.'

76 So far as material, Ms Dash's response of 12 March 2019 to that complaint, at the top of page 93, was this:

> 'Hi Ann-Marie,
>
> I hope you are well. I do remember having a conversation over the phone about this issue. and I did say that there was there was little that could be done about it, TBAP cannot be held accountable for things that individuals say to each other. The person is not in breach of any school policy.

> Given the context you have provided – I perceive that it could also have been a light-hearted comment, when they said "hello part timer, I need to speak to you. I need to know what you got.". If it was a meant to be malicious, It seems that you handled the situation well and in a professional manner. Given all the factors that you have mentioned. it is really up to your discretion as to how much information you choose to reveal to staff members.
>
> Should it happen again, do remember that you don't owe anyone an explanation as to your phased return, this is between you and the Head of School. I hope that the above explanation is of benefit to you longer term and in case this should happen again or something similar".

77 We were unimpressed by that response. It was incorrect to say that the respondent "cannot be held accountable for things that individuals say to each other" because the person in question was "not in breach of any school policy". Rather, what Mr Oughton said could (we do not say that it was, merely that it could) have been found by us to be harassment within the meaning of section 26 of the EqA 2010. We therefore thought back to Ms Dash's oral evidence and looked again at her witness statement to see what she said about this aspect of the case. It was at the end of paragraph 35 and was this:

> "I was not going to take action as it was not breaking any disciplinary clauses."

78 Ms Dash was not cross-examined by the claimant on this issue. We concluded that Ms Dash had simply not thought of the possibility of Mr Oughton having done something that might have been found by an employment tribunal to be a breach of section 26 of the EqA 2010. Ms Dash was, however, not a qualified lawyer.

79 We could see nothing in the factual material before us from which we could draw the inference that the decision of Ms Dash not to take any action in relation to Mr Oughton was made to any extent because the claimant had stated a grievance in 2018 about the manner in which Ms Tempany had treated her while she (the claimant) was pregnant and at work. In any event, we found as a fact that the real, or only, reason why Ms Dash took no action against Mr Oughton was because she thought that she could not take any action against him. That was because she had not seen that he might have done something which might have been wrong. She simply saw him as not having done something about which the first respondent could do anything.

Claim 7: The suspension of the claimant on 26 June 2019 was for reasons which did not justify it

80 The reasons for the claimant's suspension were clear from the detailed assessment concerning it at pages 245-250, read with the letter dated 26 June

2019 at pages 251-252. The latter was in the name of Mr Wiltshire and was headed "Disciplinary Suspension". The first part of its text was this:

> "Following our discussion today I am writing to confirm that, as of the date of this letter, you have been suspended from your duties as Student Services Manager and DSL at Octagon TBAP Academy until further notice pending investigation into allegations of gross misconduct as outlined below:
>
> - Behaved in a way that has caused colleague's harm
> - Alleged Verbal Harassment. Specifically that the colleague has colluded with others causing her [that should have been "you"] to lose her [that should have been "your"] child.
> - Alleged inappropriate behaviour at Senior Leadership Meetings. Specifically, public altercations and disrespectful challenges.
>
> - Leaving Site without permission
> - Allegation that you left site without permission.
>
> During the investigation, should further concerns come to light, the allegations may be changed or added to and these will be confirmed to you in writing.
>
> Your suspension does not constitute disciplinary action and does not imply any assumption that you are guilty of any misconduct. We will keep the matter under review and will aim to make the period of suspension no longer than is necessary. If the investigation shows the allegations to be unfounded, you will be notified and will return to work.
>
> During your suspension, we shall continue to pay your salary in the normal way. You are also entitled to any normal contractual benefits."

81 Ms Dash was (we inferred, although she did not say this specifically) involved in the decision to suspend the claimant on 26 June 2019. The claimant received the letter at pages 251-252, so the provenance of that letter was not in doubt. Ms Dash referred specifically to the document at pages 245-250, but did not say in what way she was involved in, or in relation to, its preparation. What she said about that document was said in paragraph 36 of her witness statement, and was this:

> "At page 245 is a suspension assessment form which confirms the reasons and justification for suspension."

82 The claimant did not challenge the authenticity or provenance of the document at pages 245-250. Indeed, she relied on it as showing that Mr Wiltshire had by the time he suspended her decided that she should be dismissed. That was because he had put in the box with the heading "Decision to Suspend", on page 249, which had in it a "yes" box, a "no" box, and the word "Date:" these things.

82.1 By the word “Date” he had put “ASAP”.

82.2 He had filled in the “yes” box and put underneath it: “Gardening Leave”.

83 In the box below that, with the heading “If the decision is to suspend, record your grounds for suspension”, Mr Wiltshire had written this:

> “Member of staff is clearly not well enough to engage and collaborate with others without flashbacks regarding the allegation that member(s) of staff SLT has colluded with other to cause her to lose her child two years ago.
>
> Stating in the presence of VBR [i.e. Ms Browning] (indirectly directed at VBR) she is not happy working with people who have caused her to lose her child.
>
> VBR has engaged her union who wants this addressed by Friday 28th of Jube [i.e. June]
>
> Persistently treating colleagues without dignity whilst refusing to build relationships rooted in mutual respect,
>
> Publicly addressing matters
>
> Open aggression towards others causing a toxic atmosphere where staff are fearful of speaking out or challenging anything she says or does.
>
> Unpredictable conduct which leads to significant negative net impact on the well-being of others in SLT and the school.”

84 The same wording (with the correction of the word “Jube” to “June”) was in the section on pages 248-249 under the heading “Particular views of those concerned”. That section contained this additional text:

> “The member of staff has now began to attack me as head of school on matters regarding her training and for me to provide her (she is Designated safeguarding Lead) with my DSL certificate.
>
> Openly challenging me in meeting regarding my impending meetings and feedback from those which she thinks she should have.
>
> Just for context, the member of staff is not a qualified teacher but is a member of SLT
>
> Pre Application talk with a teacher who worked at the School previously with myself seemed to be a massive issue for her which sparked an incident which involved
>
> 1. The member of staff [i.e. the claimant] walking off site that day

2. A serious incident accident form being filled in and sent to me regarding the pre application meeting- The member (AMJ) of staff cited that this prospective candidate colluded with others causing her to lose her child and that if I had told her I was meeting with her she could have shared her concerns regarding this.
3. This exchange has led me to believe there is far too much aggravation regarding AMJ and others, past and present.
4. We need an English teacher and I accepted an application from this candidate and if she is successful we will be appointing her.
5. The school's atmosphere at all levels is being affected by this member of staffs' 'axes to grind' and they are too many and varied and the school environment is being stifled.
6. The police officer has submitted grievance to HR regarding her
7. I have had to release a member of staff from her duties today to allow them time to 'reset' as they were visibly shaken due to a verbal attacked by AMJ 25.06.19 following our SLT morning briefing where she had the audacity to answer a question AMJ posed.
8. Essentially all members of SLT present in school felt her wrath on 25.06.19. 2 by email me included and 2 by pulling them aside and alone.
9. This just needs to come to an end and owing to the circumstances I think

   Garden leave, urgent Occupational Therapy referral and Redundancy ought to be considered. All this in the interest of her health and wellbeing.

10. Disciplinary for walking off site and for bullying members of staff is an option but due to the nature of the individual we have to safeguard others and the school from reprisals.
11. As above she has cancelled meetings, sat at the table in SLT on her phone sending emails and making notes on everything said on her phone.
12. I am concerned for my safety and job security and that of other members of the team based on the manner in which this member of staff is functioning at present.
13. She ne[e]ds to be instructed not to come in during any notice period-gardening leave
14. Help!!!"

85 There was indeed in the bundle before us a copy of a grievance written by the police officer assigned to the school. It was at pages 298-300 and was detailed. It ended with this passage on page 300:

> "I have found it extremely difficult to interact with Miss JOHNSON who seems uninterested in partnership working, she comes across as very territorial regarding her role at the Octagon. I feel that Miss JOHNSON does not have a clear understanding of the SSO's [i.e. the police officer's] role and

> believes that I should only get involved where a crime is committed. However my role does involve identifying safeguarding issues both in the community and in school, child protection, truanting, and peer group issues and issues with home life to name a few as well as crime related issues.
>
> Lastly I'd like to express my disappointment with the manner in which I have been treated by Miss JOHNSON, as a police officer working within a disciplined service I have been very shocked by her attitude towards not only myself but particularly towards Head of School Mr WILTSHIRE and other staff members."

86 There was no doubt that the claimant had had differences of opinion with the police officer in question, as she (the claimant) had written the email to Mr Wiltshire at pages 521, 523 and 525 (pages 522 and 524 being blank) dated 20 June 2019. It too was detailed. Its penultimate paragraph (the final paragraph being irrelevant) was this:

> "I am happy to work with the SSO to fulfil, the needs of the Octagon, providing she understands, the school's expectations of the working relationship."

87 The claimant accepted that she had indicated in Ms Browning's presence that she thought that Ms Browning had contributed to the death of her child. That was recorded in the notes of the meeting of 12 July 2019 conducted by Ms Anderson-Rawlings to which we refer above. In cross-examination the claimant acknowledged that she had thought that Ms Browning had contributed to the death of her (the claimant's) child. At page 271, in the notes of the meeting of 12 July 2019, there was this passage (references to SAR being to Ms Anderson-Rawlings, references to CW being to Mr Wiltshire, references to "Andrea" being to the claimant's union representative, and references to AMJ being to the claimant):

> "SAR to clarify you said to CW as she was leaving the room.
>
> AMJ I didn't speak to her directly at all in that room she was saying she was leaving.
>
> SAR the actual wording was?
>
> AMJ You can't expect me to smile in the faces of members of staff who had contributed to the death of my child.
>
> Andrea on the basis that they were members of staff that contributed to the stress.
>
> AMJ when I was pregnant."

88 While the claimant alleged that the notes of that meeting were not accurate (despite their length and detail), she did accept that that passage was accurate. We record here that in numbered paragraphs 6 and 7 of Ms Browning's letter to Mr Wiltshire of 25 June 2019 at pages 290-296, this was said:

> "6. Latest incident resulted in AMJ accusing me of killing her baby due to the stress I placed on her by working in conjunction with the previous Executive Headteacher. This comment is not only slanderous, but has made me feel awful. This comment was not challenged, and she was then allowed to continue hurling further unsubstantiated accusations of speaking to other staff my way. As the comments were not stopped, I got very upset and felt I had to walk out of the area to stop her continuing to make false allegations. These comments are very hurtful, and I now feel I cannot be left in a room with AMJ as she may come out with other false accusations and comments. This is affecting my mental health as her negativity and aggressiveness is affecting the work environment and making it toxic. I feel I cannot speak up to her as she will then accuse me of giving her additional stress and will link it once again back to her baby dying. I should not be made to feel like this at work.
>
> 7. I felt that you as the HoS should have stepped in as soon as she said the first comment instead of condoning her behaviour and allowing her to make vent further abuse me. I came to speak to you at the end of the day about it and you said that you had spoken to her about the comment and told her it wasn't acceptable. I felt she should have at least come to speak to me about it and apologise, and that you should have come to find me to inquire after me. Neither of these things happened which makes me think my well-being is not important in the work place."

89 We record here too that the claimant said in paragraph 49 of her witness statement that she herself had "ended any personal relationship with" Ms Browning. We understood from the claimant's oral evidence that that ending had occurred (1) without the claimant telling Ms Browning about her intention to end it, and (2) at about the time when the claimant had returned to work after the still birth of her baby. We record here also that the claimant had herself been at death's door when she lost the baby. That was evident from the following passage in section 18 of the claimant's witness statement, which we accepted:

> "On February 14th 2018, during the school's half term, I was rushed to hospital with life-threatening pregnancy complications. I was fighting for my life. I spent a total of five days in intensive care, had a total seven blood transfusions and four plasma transfusions. When I regained consciousness, I was informed that I had loss my child. The hospital informed me they had to put aside the loss of my child. To me it was like I was hearing nothing new, after all my employers hadn't cared for me and my pregnancy. I shut down mentally and initially refused pain relief. I was punishing myself. Consumed by anger I hadn't realised that they hospital were concerned

about whether I would survive. Eventually specialist's haematologists designed a treatment plan for me.
I was recovering from major surgery, a life-threatening illness and processing the loss of my child. My blood pressure continued to rise because I was an emotional wreck and angry.
My Aunt notified TBAP trust – Alex Atherton what had transpired. She also notified HR and requested that they speak with Alex. They did not. I was forced to speak to both Alex and HR upon my release from hospital. I was angry, emotional and the last thing I wanted to do was engage with an organisation who had behaved in a manner to me during my pregnancy which cause stress and distress to me.

I informed Chanda Vitte and informed her I have every intention of taking out a grievance against Angela Tempany because of her treatment towards me during my pregnancy. During my maternity leave from work, I experienced flashbacks, anxiety, nightmares and sleepless nights reliving events that had taken place during my time at work. Additionally, I was processing of grief which was caught up with the experience I had at work. I could not stop thinking or talking about them. I was reliving every single experience as if I was going through them again. I was watching them play out like a TV programme. During follow up visits, my GP enquired what I had been doing at home. I realised when left alone, I would spend my entire week reliving the events of the previous last 9 months, eventually I broke down emotionally and explained to my GP what had been happening at work and how it was affecting me. I was ashamed as I'm usually a strong person.

I did not know that I was suffering from PTSD, I was aware of the depression and anxiety. Due to the emergency nature and sudden death of my daughter I had to injure the process of autopsies before April, I was unable to bury my daughter. To compound matters further my partner was also diagnosed with prostate cancer, which required immediate surgery. This effectively compounded my mood and my experiences of the last few months. I spent large proportions of my time wishing that I was dead or somebody else completely. I barely slept and when I did it was broken. All of this contributed to delays in taking out a grievance and pursuing matters with the TBAP Trust."

90 The "serious incident accident form" to which Mr Wiltshire referred in numbered paragraph 2 of those set out by us in paragraph 84 above was at pages 89-90. The first part of it was completed by the claimant using typed words and was dated 19 June 2019. Box 2 was in the first part and referred to a "Dangerous Occurrence" as having occurred "in SLT daily briefing" on that day, and described the occurrence in these words:

"Notification that an interview took place of an ex member of staff (my maternity cover) is to be reemployed by the TBAP Trust. This member of staff worked in conjunction with other member of the TBAP SLT to create a hostile working environment for me whilst I was pregnant In addition to

above as a member of SLT I was not even aware that appointment were being made, let alone that interviews were taking place. Which meant I could have shared these concern earlier with my line manager and prepared myself emotionally. TBAP TRUST are aware I have a diagnosis of PTSD and anxiety and this diagnosis is related to the loss of my child."

91 The "Outcome of Incident" box was also in the first part and had this text in it:

"This incident has caused flashback to the extent that I was unable to calm myself using techniques that I've previously used. Which meant I needed to leave work."

92 Part B of the form was completed by Mr Wiltshire by hand on the same day. In box 5, under the heading: "Identify the reasons for the incident. TBAP Trust promotes a No Blame culture", he had written this:

"I am not aware why this matter is taken to this extent, its disappointing."

93 In the next box, numbered 6, with the heading "What action do you intend to take to prevent a recurrence?, he had written this:

"HR matter – I don't know as this is bewildering."

94 On page 247, i.e. as part of the suspension assessment, under the heading "Health and Safety", Mr Wiltshire had written this:

"There has been a diagnosis of PTSD, there has been allegations made by the member of staff of other staff (pass and present) colluding resulting in her losing her child approximately 2 years ago.

I am concerned that her health will continue to deteriorate should she remain on site, due to recent events.

She appear to be significantly unwell.

Meeting with school's Police officer and the member of staff concerned. Regarding a disagreement they have. During the meeting member of staff walked out stating this is nonsense and she will seek advice rather than listen to the police officer talking and talking.

She has verbally bullied member of staff who needed to be released from her duties due to this incident

She constantly pursues VBR - because she thinks she was involved in the death of her baby

VBR is becoming unwell from this constant onslaught".

95 We return now to paragraph 45 of the claimant's witness statement, in which she referred to the conversation which Mr Wiltshire had with Ms Browning on the telephone on 1 May 2019 which the claimant overheard. In the final two indents of the paragraph (or section) numbered 45 of the claimant's witness statement, she said this:

> "Whilst the Head teacher was talking to me on the phone, his other phone rang. He asked me to be quiet while he answered it. I was silent the other person on the line; it was Vicky Browning who proceeded to say that the examinations officer had resigned because of me and that I was horrible, and I could get away with murder and do what I want. Context was important here. Vicky was referring to the fact I had raised concerns that she had sent a member of staff into the home of child without completing a risk assessment. The Art teacher had been sent to conduct a GCSE examination without a risk assessment of the family home. This home was known for aggression and domestic violence. There were certain issues that would need to be considered. I had expressed that this was not an appropriate setting and for safety and perhaps the Haringey Tuition Service or day 6 provision should be used. Both had been used previously and could be risk assessed more effectively. Vicky believed I was getting above my station and getting involved in something I should not be, she refused to recognise that as I'm the safeguarding lead for the school, I was sharing my knowledge and expertise to protect the school.
> I listened for around two minutes while Vicky Browning continued to say disparaging things about me all of which went unchallenged.
>
> Eventually the Head terminated the call and return to me as if nothing had happened. I was dismayed as to hear the venom used a as [*sic*] well much of it was untrue. I was devastated that I would have to come to work the next day and be expected to behave as if I had not heard what Vicky had said. I felt powerless and just started to just accept things that were being done to me, I was emotionally and physically drained. I was at a loss of what to do and who to turn to. The only thing I did was cry in my car before I entered the family home and pretended, I was ok for the sake of my daughter who had experienced enough trauma over the last year, when inside I was feeling sick to my stomach. Eating or sleeping became an issue. I worried a lot and relived events that were occurring. I could not relax."

96 In all of those circumstances we had no doubt whatsoever that the claimant's suspension was fully warranted and that if Mr Wiltshire had not effected it then he would almost certainly have been at fault. In our view, in the circumstances he had no choice but to suspend the claimant.

97 In all of the circumstances to which we refer in these reasons, we concluded that there was nothing by way of factual material from which we could have drawn the inference that the claimant's suspension was to any extent caused by or the result of, i.e. because of, her having stated the grievance at pages 162-165 and then pressed that grievance through to an appeal.

98 We add here that the claimant claimed in her closing submissions that the suspension was authorised by Mr Oates, the first respondent's Chief Executive Officer, because she had been complaining that the grievance appeal recommendation concerning the first respondent's grievance procedure had not been implemented. As Mr Wallace pointed out in reply, that was a submission to the effect that the claimant's suspension was the result of her pressing for the implementation of the outcome of her grievance, not the result of her having stated that grievance, which, if correct, would not have satisfied the requirements of section 27 of the EqA 2010. In fact, we did not need to address that issue because we concluded that the fact that the claimant was pressing for the implementation of the recommendation that the first respondent's grievance procedure was amended had nothing whatsoever to do with the claimant's suspension.

Claim 8: The claimant's suspension was initiated in a way which was detrimental to the claimant because her trade union representative was not warned about it in advance and permitted to be present when the claimant was suspended. Instead, Mr Oughton, who was a representative of another trade union, was asked to be present as a witness only. In contrast, a representative of the claimant's trade union would have had a protective role as far as the claimant was concerned

99 The most that the first respondent's disciplinary procedure provided for in regard to the manner in which an employee might be accompanied when being informed in person about his or her suspension was this bullet point at the bottom of page 124:

> "The employee will be permitted to be accompanied to the meeting by either a colleague or trade union representative."

100 The preceding bullet point was this:

> "The staff member will be informed of the suspension in a face-to-face meeting, followed by a notification in writing within 5 working days by the Human Resource Department as to the reason for suspension".

101 The claimant referred to no circumstances in which a member of the school's staff had been suspended and had been given time to arrange for the attendance of a representative of their own trade union to attend. We were therefore bound to apply a hypothetical comparator test. Having done that, we came to the view that it was not possible to infer from the factual circumstances as we found them to be that the fact that the claimant was not permitted to procure the attendance of her own trade union representative, who might have had to come from a distance to attend, was to any extent the result, or because of, the stating by the claimant of her grievance at pages 162-165 and her pressing of that grievance. In coming to that view, we accepted that the claimant's presence at the school was detrimental and that she needed to be

required to leave the premises as soon as possible. We did so in part by reference to documents which were in the bundle before us which post-dated the claimant's suspension, but which we found to be evidentially helpful.

102 The first, chronologically, of those documents, was a letter dated 15 July 2019 and was stated to be a "Grievance Letter" written by Ms Ranjeni Moodley. It was in these terms:

> "I returned to work this week quite apprehensively for fear of being in the same building with Anne Marie Jonson, who accused me of safeguarding breaches. I had sleepless nights wondering how I was going to interact with her after she attached such an awful stigma to my name but I was reassured that I would be fine and much to my relief; I noticed that she was not in the building when I arrived. This made my transition back to work a whole lot easier. I felt welcome in a calm non-threatening environment but still very anxious about how I would feel when she is around.
>
> The long wait caused me several severe migraine episodes, which led to me seeking both medical and alternative treatment. Due to this, I had become a recluse and had broken out with stress related eczema, which I never had before. My doctor referred me for counselling but I am still struggling to rebuild my confidence.
>
> I had serious reservations about returning to school because I feel that she used her position of authority to undermine and demoralise me. I have worked with Anne Marie Jonson for 5 years and I have been weary of her as I had first-hand experience of being shouted at by her. Further to this, I have witnessed several situations where her approach with various members of staff and students alike was rude, demeaning and confrontational. Many staff members have complained about the way she has spoken to them but none of them had the courage to address it for fear of intimidation and victimisation. Out of respect for her role as a member of the senior management team, I have never questioned her authority before. However, the embarrassment it has caused me coupled with the severe emotional trauma I have had to bear, has prompted me to lodge this complaint so that TBAP is fully aware of exactly how she operates and ensures that nobody ever becomes subject to her attacks again. The extreme pain that she has caused me, I would not wish on my worst enemy.
>
> As a DSL, I imagined that she would always have the welfare of both learners and staff at the forefront of her thinking, actions and decisions however her behaviour and attitude is authoritarian, confrontational, rude and demeaning and she uses her position of authority to bully staff and learners. Nobody with that modus operandi should be leading on safeguarding.
>
> I sincerely hope that my grievance is addressed with the best interests and wellbeing of all staff who have been victims to this kind of demoralisation."

103 On page 291 there was this undated text, sent as an email by (it appeared from the document at page 310 which we set out in the following paragraph below) Mr Wiltshire on 6 July 2019 to Ms Karen Thomson, who was his line manager.

> "Good morning Karen,
>
> I am emailing you to see if you have now contacted Anne-Marie.
>
> This is about her various emails and harassment of staff, inclusive of myself, for aspects of her job to be returned to her unconditionally.
>
> **Staff wellbeing**
>
> I was informed by a member of staff that another member of staff, who previously suffered because of Anne-Marie's actions was on the telephone to her crying whilst she was out walking her dog yesterday.
>
> It is reported that the sight of Anne-Marie in meetings and the sound of her voice triggers fear and trepidation resulting in heightened levels of stress regarding the incident. She feels let down.
>
> This member of staff took a grievance out against Anne-Marie and there has been no resolution, yet this member of staff has had to deal with Anne-Marie being reinstated without the above being addressed. This has further impacted her wellbeing.
>
> This is unacceptable on many levels and I suggest the Trust address these matters with urgency.
>
> The duty of care to the staff at the Octagon should still exist regardless of TUPE.
>
> I am concerned for the welfare of the staff and have seen several staff cowering, being submissive and scared even since her return. The tone of staff meetings has changed since Anne-Marie's reinstatement.
>
> The reinstatement has not been squared with the LADO to whom a referral was made.
>
> This is not appropriate and requires consideration. Her actions suggest that she may still not be well enough to return to work which begs the question whether she is capable of returning to work in the capacity of DSL and SSM (not been made aware of the outcome of her Occupational Health referral).
>
> The action I took to suspend her was with the authority and support of the Trust and a clear risk assessment.

In closing, Anne-Marie has had a year off on full wages and returns to the school during a serious pandemic with frontline staff who have rolled their sleeves up living the trusts standards and delivering safety and education to the children in the school with a strong sense of collective efficacy. The manner in which Ann-Marie has been reinstated into work can be likened to a cowboy riding into a peaceful town to shoot up the saloon.

Simply put, it was the wrong thing to do.

There has been no managed reinstatement plan prior to her return of which have been party to or agreed to.

Yet she has been returned to a setting where several members of staff had grievances against her, yet to be resolved. This causes anxiety for some staff as her, what could be perceived as vexatious spirit, is a concern for them going forward.

Finally, after a year I think that it is right to expect a resolution consistent with national professional standards and those upheld by the TBAP trust.

Thank you for your support in advance,

Kind Regards,

Connery"

104 Ms Thomson's reply was (it appeared) at page 310. It was undated. It was in these terms (with emphasis by way of underlining added by us):

"Dear Connery,

Thank you for your email (July 6th). I am naturally very concerned by the contents of it. To state the trust's position in writing, for clarity; We are happy following full consideration of the facts for Anne Marie to be fully returned to work including taking back on the responsibility of Designated senior leader for Child protection. This will be operated alongside yourself as Head of School as in all of our Academies. This should include a handover from the member of staff (MR) currently supporting this area of work as part of the schools audit which is going to take place this week .All staff required by the Trust's safeguarding lead (SL) should be made available to support this .I am extremely concerned that you state this is affecting your wellbeing and we want to continue to support you. As such, we would welcome an opportunity to discuss this with you further to identify any further support the Trust may be able to offer. Therefore, I have arranged a meeting for 13th July at 2.30pm. This will be held via MS Teams. The Trust's safeguarding lead will attend the latter half of the meeting in order to reassure you and feedback the key lines of enquiry and initial conclusions of the safeguarding audit.

I can confirm that the disciplinary investigation into Anne-Marie has concluded and no further action is being taken. In terms of the LADO referral, I am informed that the LADO advised that Child protection at the Octagon Academy was not a causal factor of the serious death in summer 2019. This response was followed up by Haringey who conducted an audit on 15.10.2020. [That was probably intended to be a reference to 15.10.2019.] This concluded that there were no significant issues regarding safeguarding at the school. In line with current processes, learning points for the wider Trust have been taken to the Safeguarding Board and discussed with actions to be implemented. Should there be any concerns from staff members around their working relationship with Anne-Marie currently, we would expect you to deal with this in the first instance. However, should you need support in doing so please, as always, discuss this with myself during our meetings during the coming weeks and until transfer.

Anne-Marie has returned to work fully and in line with all processes. She must now resume all of her substantive duties as Student Services Manager including the responsibility as DSL. This decision is final and to be clear, the expectation is that you support Anne-Marie to resume the responsibility of DSL. The trusts safeguarding lead will rearrange the safeguarding meeting and it is expected that Mandy attends. This is in order to ensure that Mandy provides a full, clear and detailed hand over to Anne-Marie. It is perfectly reasonable for you to attend also as Head of School.

I agree that professional standards need to be upheld and hope that you fully understand the position of the trust. I agree that it is important that this is now being put in writing to enable full clarity. Could you please act now swiftly to support Anne Marie back into all elements of her role, working with me as support for yourself.

It is the Trust's position that should you not feel able to follow the instructions outlined in this email this will be need to be escalated in line with the trusts policies for addressing such matters .

Kind regards,
Karen Thomson

Line Manager Executive Lead: Octagon Academy (On behalf of the TBAP Trust)"

105 We saw from Mr Oates' email to the claimant of 3 April 2020 at page 311 that the reference in that email from Ms Thomson to "the transfer" arose from the fact that "Octagon AP [i.e. the claimant's workplace] [was going to] close at the end of August and Haringey LA [had] been going through due diligence to TUPE current staff."

106 We pause to say that none of the documents to which we refer in paragraphs 102-104 above were formally proved to us, and that they were simply in the hearing bundle. However, there was much corroboratory material before us, relating to the claimant's conduct, some of which she accepted before us she had seen. One of the corroboratory documents which supported the proposition that the claimant had had difficulties in her relationship with Ms Browning was the email at page 88 which the claimant had been taken through (as we ourselves heard) in the meeting of 4 March 2019 which was the subject of claim 4. The claimant's own evidence was strongly to the effect that she had been at loggerheads with Ms Browning, and in part because she thought that Ms Browning was in part to blame for the loss of her (the claimant's) baby: see paragraph 87 above. We ourselves had heard Ms Browning speaking in the meeting of 4 March 2019. The claimant's own witness statement reported the conversation which she had overheard in which Ms Browning had said that she (the claimant) "got away with murder": see paragraph 95 above.

107 In those circumstances, and given that the claimant did not challenge the authenticity or provenance of the documents to which we refer in paragraphs 102-104 above, we accepted that those documents were what they purported to be. We also came to the conclusion on the basis of the documents to which we refer in paragraphs 103 and 104 above that Mr Wiltshire's failure to give evidence might well have been the result of disaffection on his part with at least the first respondent, to whom he had made a cri de coeur, which had been met by a stern and threatening rebuff. Certainly, any suspicion that we might otherwise have had about his motives for not attending and giving evidence were substantially diminished by those documents.

Claim 9: On 27 June 2019, Mr Wiltshire told Ms Jackie Nicholls, one of the local authority's Attendance Officers, that the claimant had been suspended from her post as Student Services Manager and was not going to return to it

108 This factual assertion was not well-founded. We came to that conclusion because the claimant had, as recorded on page 278, first said to Ms Anderson-Rawlins on 12 July 2019 this in regard to the situation which was now claimed to have occurred in the way stated in claim 9:

> "When suspended an external provider contacted me as we are friends and said CW had been in contact and told them I was suspended and what I had said and it was a judgment call and he had to make a decision that was on the best interest of SLT. Pretty much that I won't be coming back and will get a good settlement. That person is happy for you to contact them but didn't want to put anything in writing as they still work with the Octagon."

109 Thus, what the claimant said then was an inference drawn by her from what she had been told had been said by Mr Wiltshire. She had been told what the person telling her remembered Mr Wiltshire saying. That could have been a mistaken recounting. In addition, the claimant had reported not that Mr Wiltshire had said that she would not be coming back to work for the respondent but,

rather, something (it is not clear what) from which the claimant concluded that what Mr Wiltshire had said was merely "pretty much" that she would "not be coming back". In addition, him indicating in the same way that she would "get a good settlement" was indicative of goodwill towards her, rather than the opposite.

110 In any event, we concluded on the basis of the factors and documents to which we refer in paragraphs 80-96 and 102-107 above that Mr Wiltshire did not want the claimant to return to work at the school at least if she remained in the frame of mind which she had on 26 June 2019, when she was suspended, and that that had nothing whatsoever to do with the fact that she had stated a grievance in 2018 about the conduct of Ms Tempany towards her when she was pregnant, and then pressed that grievance.

Claim 10: On 3 July 2019, a further unjustified allegation was made about the claimant's conduct and stated to justify her suspension: that she had failed to complete safeguarding forms and hidden them from the respondent. The forms were in a drawer in the claimant's office at work, partly completed and locked away. They were locked away because they were confidential and they were partly completed because the claimant had not had time to complete them. If the respondent had had a "handover" meeting with her when she was suspended, then she would have told the respondent that she had not yet completed the forms

111 The factual situation which gave rise to this claim was in large part documented and in large part agreed: it was implicit in the allegation itself that the claimant had not completed the forms in question.

112 The letter in which the allegation which gave rise to this claim was made was dated 3 July 2019 and was at pages 253-254. It added to the allegations which had led to the claimant's suspension the allegation of an "Alleged breach of the safeguarding reporting process".

113 The situation which gave rise to that allegation was the subject of discussion in the meeting of 12 July 2019 conducted by Ms Anderson-Rawlins, who introduced the topic shortly after the start of the meeting. The passage of the notes in which the situation was discussed was at pages 255-259. The passage at the top of page 256 showed that the claimant accepted the truth of the bare bones of the allegation. She did so in this passage:

> "AMJ If the safeguarding forms are complete they would be filed, every young person has a file for their safeguarding forms, I then keep separate case notes on the shared drive but only the HoS [i.e. Mr Wiltshire] and myself have access. When I have time to file they are all filed but safeguarding forms I have I will put in that file and lock away as I don't keep them on my desk.
>
> SAR Ok thank you, the keys to the cabinet were not on a bunch of keys.

AMJ – it's a single key it isn't on my bunch its not kept on my bunch.

SAR – where is it kept?

AMJ In a cup on my desk.

Andrea but your office is always locked.

AMJ my office is always locked, it is kept in there so it is never off site, I don't have it on my person, so if someone needs access to it they can phone me and it is there. I don't leave the premises with it I have no reason. If I leave it in the safe not everyone has access to that so I leave it in the cup amongst my pens, you cannot see it and it isn't visible and that's where it is at the moment."

114 As for the question whether or not the failure to complete the relevant forms (there were 8 about which the claimant was taken to task by Ms Anderson-Rawlins) had led to a "breach of the safeguarding reporting process", that had to be seen against the background of the report which was sent to the LADO, i.e. the local authority designated officer, which was the subject of claim 11, to which we now turn.

Claim 11: Subsequently, Mr Wiltshire referred the claimant's case to the LADO on the basis that the claimant had harmed children by not completing the safeguarding forms and then locking them in a drawer in her office

115 The report which Mr Wiltshire made to the LADO was at pages 280-288 (only pages 282-288 of which were material). We saw that the report stated at page 284:

"There are a total of eight incomplete safeguarding concerns forms found so far in AMJ's keyed and locked drawers. The keys to these cabinets were not on the bunch of keys handed over at the time of AMJ's suspension.
We had to have keys cut keys at the locksmith to gain access to these documents."

116 We were a little confused by the final sentence of that extract, as we found it hard to see how a key could be cut if there was not one in existence to copy, and if there was one in existence to copy then the respondent had access to the drawers. We were also unable reliably to assess the impact of the fact that there were incomplete safeguarding concerns forms in the claimant's locked drawers ourselves, without reference to some sort of standard. We were, however, able to assess the justification for the making of the assertion of wrongdoing on the part of the claimant by reference to the immediate response of the LADO to the referral. That response was at page 289, and was sent by email 43 minutes after Mr Wiltshire had sent the report at pages 280-288. In the response of the LADO at page 289, this was said:

> "Thank you for the referral regarding your staff member AMJ.
>
> I will log this referral but will note that it is being dealt with as a management issue by your setting. However I share your concerns that you would expect a person in a position of responsibility within the safeguarding structure, to have properly dealt with the highlighted concerns on the papers that you have included.
>
> My question would be, did she deal with them but just not complete the 'pinks'? were these copies in the cupboard because they were old copies or not needed for some reason?"

117 Thus, the LADO "log[ged] [the] referral" and "share[d] [Mr Wiltshire's] concerns that you would expect a person in a position of responsibility within the safeguarding structure, to have properly dealt with the highlighted concerns on the papers that [he had] included".

118 In those circumstances, we asked ourselves in the light of all of the evidence before us whether there were facts which justified the drawing of the inference that the referral to the LADO was to any extent done because the claimant had complained in 2018 of discriminatory treatment by Ms Tempany of her (the claimant) while she was pregnant. We concluded that there were no such facts. We also concluded that the main reasons for Mr Wiltshire's referral of the claimant's case to the LADO were that (1) there was material which required it and (2) if he had not referred the case to the LADO then he might well have been taken to task for not referring the case. The second of those two conclusions was to an extent supported evidentially by the content of numbered paragraph 12 of those which we have set in paragraph 84 above, which we quoted from the suspension assessment. For convenience, numbered paragraph 12 was as follows:

> "I am concerned for my safety and job security and that of other members of the team based on the manner in which this member of staff is functioning at present."

119 In addition, we concluded that Mr Wiltshire had made his report to the LADO happy in the knowledge that it would strengthen the case for the claimant's dismissal. Nevertheless we also concluded (1) that that was because at the time of the claimant's suspension Mr Wiltshire genuinely wanted the claimant to be dismissed and (2) the sending of the report was in no way caused by the fact that the claimant had in 2018 complained of pregnancy discrimination by Ms Tempany and then pressed that complaint.

Claim 12: On 7 July 2019, Ms Kate Gibbons, of the respondent's HR team (probably at the request of Mr Wiltshire) made a referral of the claimant's case to the occupational health ("OH") service provider used by the respondent without telling the claimant about that referral

120 In the email at pages 101 and 489, the claimant complained that her employer had made a referral to an occupational health provider "without any consultation with [her]", and that this meant that her "personal information had been share[d] with a third party without [her] consent." There was by the time of the trial before us no doubt that Ms Gibbons had made the referral to the OH provider (Heales Medical) at the request of Mr Wiltshire. That was clear from the email dated 18 July 2019 from Ms Gibbons to Ms Leyshon-Wilson at page 105, in which Ms Gibbons wrote this:

> "Hi Ruth,
>
> I was requested to make an urgent occupational health referral for both XXX and Anne-Marie Ferguson [plainly this was a reference to the claimant] by Connery Wiltshire on 4th July 2019 (see copy of email attached). I was aware these cases have HR support and I wrongly assumed permission has been given from both employees for this to take place. I have had several request recently to make referrals from HOS in relation to cases and I therefore submitted the referral. XXX, Connery's BSP provided me their contact details via Select HR as I don't have access to Octagon.
>
> I have attached a copy of the referral form made. There was very minimal information shared and I therefore recieved [*sic*] a request from Heales for additional information so they could triage the referral. I therefore spoke to Connery who provided me the details from her sick note and some supporting information around her current phased return to work. I then shared this information with Katie from Heales. Please see a copy of this email attached.
>
> On Monday 15th July 2019 I then recieved the notification from Heales that Anne-Marie has declined the appointment as she had not given permission, this was something I was not aware of."

121 The referral form itself was at pages 106-108. On page 108, there was a section which started:

> "In order to comply with legislation and ethical principles it is a requirement that the employee is informed when they are referred to Occupational Health and the reasons for that referral. Please confirm the following as appropriate:"

122 We were unaware of any legislative requirement to inform an employee of a referral to an occupational health service provider, but in any event, the three questions below those words had spaces in which a "yes" or a "no" answer could be given, and they all showed that while it was in the view of Heales Medical that an employee should be informed of a referral to them and the reasons for the referral, Heales Medical recognised that employers did not always inform employees of the referral.

123 We all thought that it was at least good, or best, practice to inform an employee of a referral to an occupational health service provider. However, in this situation, it was clear that Mr Wiltshire had made a positive decision not to inform the claimant of his referral to Heales Medical. That cannot have been because he wanted to conceal the referral, because the referral necessarily required Heales Medical to contact the claimant, who would then of course find out about the referral. Thus, there was nothing underhand about the referral.

124 Was it, we asked ourselves, likely that Mr Wiltshire made the referral without informing the claimant of it because she had made the complaint in 2018 evidence in pages 162-165 about the conduct of Ms Tempany and then pressed that complaint? In other words, were there facts from which we could draw the inference that his action in that regard was to any extent done because she had made that complaint and then pressed it?

125 For the avoidance of doubt, as we say in paragraph 107 above, we concluded that the failure of Mr Wiltshire to attend and give evidence about his motives for the actions about which the claimant complained in these proceedings, was readily explicable by the manner in which his cri de coeur which we have set out in paragraph 103 above was responded to by the response from Ms Thomson which we have set out in paragraph 104 above.

126 In addition, having heard Mr Wiltshire speak to the claimant without any rancour at all, and with great patience, in the “mediation” meeting of 4 March 2019 which was the subject of claim 4, we concluded that he had no animus of any sort against the claimant at least at that time. In addition, on 1 May 2019, and just before the claimant’s suspension, Ms Browning was (see paragraphs 42, 44 and 61 above) claiming that Mr Wiltshire was in effect favouring the claimant in comparison with Ms Browning, and was not doing things which he should have done on in relation to the claimant. Thus, Mr Wiltshire plainly had an excuse to take action against the claimant for a considerable period of time before he suspended her and then referred her case to Heales Medical, but did not take such action.

127 Having thought carefully about the matter, and bearing in mind that Mr Wiltshire was not present to explain his failure to inform the claimant of his referral of her case to Heales Medical, we were unable to see facts from which we could draw the inference that his action in that regard was to any extent done because the claimant had made that complaint and then pressed it. Rather, we concluded, the evidence before us showed that Mr Wiltshire by 4 July 2019 just did not want to engage with the claimant at all, whether by email or by telephone, in relation to the referral. He guessed, we concluded, that she would be offended by it, as she herself plainly did not see her health to be the cause of the conduct which he had said to her in his letter suspending her was the cause of her suspension. On the contrary: she did not see her own conduct to be at fault in any way. We concluded that he guessed therefore that she would respond angrily to the news of the referral and that his only reason for not informing her

of the referral was that he wanted to avoid being the recipient of that expressed anger.

Claim 14: On 10 September 2019, the claimant's subscription to a professional subscription service called "The Key" was de-activated by Mr Wiltshire

128 The email in which the deactivation of the claimant's subscription to "The Key" was communicated was at page 312. It was in these terms:

> "Dear AnneMarie,
> Your access to The Key has been removed by Connery Wiltshire.
> The reason given is that:
>
> Other reason
>
> If you have queries about why you have been removed, please speak with Connery in the first instance. If you have taken a post at a new school, please contact us to arrange membership.
> Best wishes,
> The team at The Key".

129 That was plainly an automated message. It was also plainly the result of Mr Wiltshire de-activating the claimant's subscription to The Key.

130 We therefore asked ourselves why that had happened, and whether there were facts from which we could draw the inference that it was to any material extent because the claimant had complained of discrimination by Ms Tempany towards her in 2017 and 2018. We concluded that there were not. Rather, we concluded, the withdrawal of the subscription occurred because and only because (1) Mr Wiltshire did not want to waste any part of the school's budget and (2) he genuinely did not want the claimant to return to working at the school and did not think that she would do so. Thus, we concluded, that withdrawal had nothing to do with the fact that the claimant had complained in 2018 about the conduct of Ms Tempany towards her in 2017 and 2018.

Claim 15: At about the same time, the claimant's name was removed from the school's timetables and the posters around the school stating who was the DSL

131 For similar, but more obviously overtly justifiable, reasons, we concluded that claim 15 failed. We concluded that Mr Wiltshire did not see the claimant returning to work at the school and in the circumstance that she was suspended without any end of the suspension in sight, he concluded (accurately in our view) that it would be misleading to state to the school's community that she was one of the school's designated safeguarding leads. For the avoidance of doubt, we saw in the circumstances no facts from which we could draw the inference that the removal of the claimant's name as a designated safeguarding lead from the school's timetables and posters around

the school was to any extent the result of, or caused by, the fact that she had made her complaint in 2018 of discrimination by Ms Tempany towards her when she was pregnant in 2017 and 2018.

The question of time limits and the possibility of there being conduct extending over a period which constituted detrimental treatment within the meaning of section 27 of the EqA 2010

132 Given our above conclusions, the question whether the claims about circumstances which preceded 27 June 2019 were in time did not arise. For the avoidance of doubt, however, as we say above in paragraph 21 above, we stood back and asked ourselves whether, taking all of the circumstances into account, any part of the conduct of the first respondent about which complaint was made which when taken in isolation appeared not to be detrimental treatment within the meaning of section 27 of the EqA 2010 when seen in the light of the rest of the conduct of the respondent was in fact such detrimental treatment. In doing so, we considered whether there was a pattern of behaviour on the part of the relevant employees or agents of the first respondent which, taken together, constituted such treatment and constituted conduct extending over a period within the meaning of section 123(3)(a) of the EqA 2010. We concluded that there was not such treatment and that there was no such conduct extending over a period.

In conclusion

133 For all of the above reasons, the claimant's claims of victimisation within the meaning of section 27 of the EqA 2010, contrary to section 39(2)(d) of that Act, fail and are dismissed.

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Employment Judge Hyams

Date: 17 October 2022

Sent to the parties on:20/10/2022

N Gotecha

For Secretary of the Tribunals