EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100048/2022

Final Hearing Held at Glasgow on 7, 8, 9 and 10 June and 20, 21, 22 and 28 and 29 September 2022 and members' meeting on 22 November 2022

Employment Judge M Robison
Tribunal Member S Singh
Tribunal Member P O'Hagan

Mrs L Gibb	**Claimant** **Represented by:** **Mr R Eadie -** **Solicitor**
Dumfries and Galloway Council	**Respondent** **Represented by:** **Ms K Sutherland -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

1. The claimant's belief that "Scotland can only ensure social justice by remaining part of the UK as opposed to being independent" does not amount to a philosophical belief within the meaning of Section 10(2) of the Equality Act 2010.
2. The claimant's claims of direct discrimination under section 13 and harassment under section 26 of the Equality Act 2010 are not well-founded and therefore are dismissed.

REASONS

1. The claimant, who is a teacher at Stranraer Academy, lodged a claim in the Employment Tribunal claiming discrimination because of her philosophical belief, specifically that "Scotland can only ensure social justice by remaining part of the UK as opposed to being independent".

2. The claimant claims that as a result of holding that belief she was less favourably treated and suffered harassment through the actions of the headteacher, Alicia Reid. The respondent resists the claims.

3. This final hearing took place to determine the following issues:

1) Is the claimant's belief in social justice and the importance of it in society and her view that Scotland can only ensure social justice by remaining part of the UK (as opposed to being independent) a philosophical belief within the meaning of section 10 of the Equality Act 2010?

2) Has the claimant's claim been lodged within three months less one day of the acts of discrimination complained about; or where the acts or omissions complained about form a course of conduct extending over a period, within three months less on day of the last act or omission in the course of conduct. If not, would it be just and equitable to extend time for the claim to be lodged?

3) Was the claimant treated less favourably than a comparator who does not hold her belief but who is in the same or not materially different circumstances than the claimant in respect of the treatment narrated in the ET1, and if so was the claimant's belief an effective cause of this treatment?

4) Did the respondent engage in unwanted conduct related to the claimant's belief?

5) If it did so engage, did the conduct have the purpose or effect of i) violating the claimant's dignity or ii) creating an intimidating, hostile, degrading humiliating or offensive environment for the claimant?

4. At a case management preliminary hearing which took place on 30 March 2022 it was decided that it was appropriate to determine whether the claimant's belief was protected or not following evidence at a final hearing; and that the final hearing would deal only with liability and any jurisdictional time points (i.e. not remedy).

5. At the final hearing, the claimant gave evidence first. We agreed with the respondent's representative, Ms Sutherland, that it would be appropriate to then hear from the respondent's key witness, the headteacher Ms Reid, in respect of whom most if not all the claimant's concerns were addressed.

6. Unfortunately, it was only possible to conclude the evidence of the claimant and Ms Reid in the first tranche of dates for the hearing. Due to the impending school summer holidays and various other commitments, it was not possible to list additional days to conclude the hearing until September.

7. The following witnesses then gave evidence for the claimant: Angela Aston, Stephanie Gosling, and Harry Keere, all colleagues of the claimant in the English department; and Pamela Livingstone, sometime principal teacher of pupil support. For the respondent, we heard evidence from Rodger Hill and John Thin, both officials in the respondent's education department; Nancy Strachan, sometime depute headteacher at Stranraer Academy; from Elizabeth Lyon and Charles Russell, members of the parent council; from Robert Lockwood, current acting depute headteacher and Jamie Farquhar, current acting headteacher at Stranraer Academy.

8. Parties lodged two files of productions, to which witnesses were referred, and which are referenced in this judgment by page or document number in the main bundle and by SB and page number in the supplementary bundle.

Findings in fact

9. Given the evidence heard and the documents referenced, the following relevant and material facts are found to be admitted or proved.

The claimant's beliefs

10. Throughout her employment as a secondary teacher based at Stranraer Academy, the claimant has been a staunch opponent of nationalism in any form and is also a vociferous opponent of Scottish separatism. She believes very strongly in social justice and the importance of it in society and feels very strongly that Scotland can only ensure social justice by remaining part of the UK (as opposed to being independent).

11. The claimant describes herself as a “unionist”. She sees herself as British, and describes herself as “a proud Scot and a proud Brit”. She is currently a member of the Conservative party. This is particularly because of its allegiance to unionism. The claimant has in the past voted Labour. It is not important to her if the next government is Labour or Conservative. Because she is opposed to an independent Scotland, she would not vote for political parties which support it, in particular the SNP.

12. She belies that if Scotland were independent it would not be capable of taking fiscal responsibility; that an independent Scotland could not fund social justice; and that it would be “catastrophic” if Scotland were separate from the UK. She believes that the SNP fosters “division” through “their faux-socialism and uncosted promises of a land of milk and honey post-Scexit”. This is what “forced her to become a tactical voter for the party most likely to keep Scotland away from the terrifying cliff-edge of separation”.

13. The claimant describes herself as a “remainer” who was “devastated” by Brexit, because she believes that it is “better that people have as many connections with humanity as they can”. She strongly believes that Scotland should remain part of Europe; and that Scotland would not be “allowed in” if it were independent.

14. The claimant believes that “education and healthcare are fundamental rights and should be free for all” and that “there should be a welfare safety net in place to ensure those in genuine need do not suffer”. She is concerned about “the divisions created between those who want certain things because it is not just about rights but about personal responsibility as well”. It is because of her concerns about those divisions and her view that Scotland could not ensure social justice unless it remains part of the UK, that she would not vote for any political party which supports independence.

15. The claimant is a political activist and around elections and referendums in particular has campaigned to support the union of the United Kingdom and the vote no campaign. Outwith these times, she makes her views known through social media.

The claimant's employment history

16. The claimant commenced employment at Stranraer Academy in August 2000, taking a career break in 2005 at which time she resigned. She resumed employment with the respondent on 19 March 2007. By letter dated 29 March 2007 the claimant accepted the role of teacher of additional support for learning (ASL), as stated in the contract of employment dated 19 March 2007 [53].

17. From March 2007 to January 2013, the claimant taught additional support for learning in line with her contract of employment.

18. On 9 January 2013, the claimant made a request for an internal transfer from her position as teacher of ASL to teacher of English [325]. On 28 January 2013, the then headteacher issued a weekly bulletin which included, "We bid farewell to Tom Groat who has moved to Kirkwall Grammar School and wish him all the best. Lyndsay Gibb will be transferring into the English department to replace Tom" [326]. Thus, in around January 2013 the claimant began teaching English only.

19. The claimant understood at that time that her contract of employment was amended [110]. It subsequently transpired that she was mistaken about that. The headteacher had discretion to agree to the claimant teaching English but that did not necessitate any change to her contract of employment. In any event, headteachers have discretion as to where any teacher is deployed within a school based on the needs of the school. A teacher can be asked to teach any subject, notwithstanding the role that is specified in their contract.

The appointment of Alicia Reid as headteacher

20. Ms Reid took up the position of headteacher at Stranraer Academy in August 2019 following two interviews, the second of which was conducted by an interview panel consisting of 18 people including pupils and members of the parent council, at which there was a unanimous vote to appoint her. One of her priorities was to address the negative HMIE inspection report dated 2014. Although some improvement was reported in 2016, still a number of issues

required to be addressed. In particular, she was tasked with bringing about changes in relation to the principle of "inclusion".

21. Around two weeks after being appointed, she was advised by two acting depute headteachers that the claimant was a "Tory" and that "she's got a lot to say for herself and will tell you what she thinks". Ms Reid was not aware then, nor until these proceedings commenced, of the claimant's views regarding social justice or how she voted in the independence referendum.

Parent council meetings

22. As a parent, the claimant was a member of the parent council and attended meetings. Ms Reid would also usually attend.

23. Both Ms Reid and the claimant attended the parent council meeting on 10 September 2019 [SB 2] and on 8 October 2019 [SB16].

24. At the meeting of 10 September 2019, the subject of maths was raised. The claimant was vocal in her view of the importance of a basic maths qualification rather than a higher in another subject, which was contrary to the view expressed by Ms Reid. The claimant and Ms Reid also had a difference of opinion in regard to the use of technology.

25. Ms Reid did not address the claimant inappropriately during that meeting, nor at the meeting which took place on 8 October 2019.

Promoting positive behaviour group meetings

26. In order to address concerns about pupil behaviour and implement the "inclusion" agenda, Ms Reid set up a "promoting positive behaviour" group. Ms Reid attended most of the meetings. The group was however initially chaired by the depute headteacher, Rob Lockwood. It was also attended by Elizabeth Lyon who was the chair of the parent council. The claimant also attended most of the meetings.

27. The aim of this group was to have a new promoting positive behaviour policy in place for the beginning of the next school year, to address concerns that the school had one of the highest exclusion rates in the region [70].

28. Members of the group, including the claimant, had strongly held differing views on the correct way forward, particularly in relation to the issue of detention.

29. Ms Reid had intended that the previous practices in relation to detention should have been halted, specifically in regard to lunch-time detention. This was because of her understanding of national policy that lunch-time was not part of the school day so that any detention would require parent support. She was also of the view that after-school detention was inappropriate and unfair and in any event unworkable because of the number of pupils at the school who required school transport at the end of the day. She was of the view that there required to be a standardised procedure for consistency and a need to upskill staff on appropriate behaviour [74].

30. At the sixth meeting of the group before the Christmas break the claimant advised that she had rebranded her own detention sessions as "support sessions" for students [80]. Ms Reid realised that her request to desist from arranging lunch-time detentions had not been actioned.

31. The claimant did not agree with Ms Reid's approach to detention or sanctions and considered her approach had resulted in "chaos" at the school. Ms Reid's views were not supported by a good number of other teachers and she saw that no consensus could be reached. Given the chair of the parent council, Ms Lyon, attended, she was aware that parents also had strong views on the matter.

32. Ms Reid therefore conceded that there was support for detention and she agreed that it could be re-introduced but that a consistent policy would require to be put in place. While it was intended that a new policy would be introduced for the following August, that policy was never launched because of the intervention of the pandemic.

33. Ms Reid made her views clear to all members of the group generally. She did not agree with the approach proposed by many of the members, including the claimant. The claimant was not singled out for any negative treatment by her.

Retiral event December 2019

34. Towards the end of December 2019, a large number of teachers, including the claimant and Ms Reid, attended a retiral event for Ms Helen-Marie Bradley. A speech was delivered by Ms Pamela Livingstone, who had worked closely with her. Ms Livingstone, who was known to be an SNP supporter, joked that Ms Bradley would, in retirement, have time to focus on steering her son away from voting the way that the claimant voted, which was understood by all to refer to the fact that the claimant voted Conservative. The joke was well-received by the company.

Staff in service day 6 January 2020

35. During the Christmas holidays 2019/20 an article appeared in the local press with the subheading “shake-up of school discipline at largest school divides opinion among parents, pupils and teachers”.

36. On 6 January 2020, a staff in service day took place led by Ms Reid at which she explained the national priorities for education set by the Scottish Government, including inclusion, equity and “getting it right for every child” (GIRFEC); and how these priorities could be implemented. The presentation was entitled “developing a positive whole school ethos and culture – through relationships, learning and behaviour”.

37. Shortly after Ms Reid had commenced the presentation to express her hope that all staff had enjoyed the Christmas break, she was interrupted by the claimant. The claimant expressed concern about her Christmas break because of the negative attention which the school had received subsequent to (or which was the catalyst for) the newspaper article and which she claimed were the consequences of Ms Reid’s decisions. She expressed her view that because Ms Reid did not live locally she did not have to concern herself with local community reaction to the discipline issue.

38. Ms Reid was taken aback to be interrupted during her initial presentation and by the fact that these comments were personal. She considered them to be

offensive, especially to the extent that they implied that she lacked commitment to the school.

39. As a result of the claimant's interruption, this opened up contributions on the topic from other members of staff, including Ms Livingstone and Mr Keere, who also raised concerns about Ms Reid's approach to pupil behaviour.

40. Ms Reid sought on a number of occasions to halt interruptions from the claimant in particular, which she considered inappropriate and disparaging, in order to continue her presentation.

41. In the afternoon session, staff attending were given group tasks including a task to consider the culture of the school. Staff were tasked with completing "a PESTLE Analysis to help you consider these external factors: political, economic, social, technological, legal, environmental" [93].

42. Introducing this group task, Ms Reid said that political factors could influence a school's culture, in particular the local community's views on equity and inclusion, noting that the area is predominantly Conservative voting. She suggested that how people voted may be a contributing factor to the criticisms made about the "inclusion journey".

Disciplinary action against the claimant

43. The publication of the article relating to school discipline led to an "Ad hoc meeting of the Parent Council regarding the Free Press Article and Behaviour" on 7 January 2020 which the claimant attended [145].

44. Following the meeting of the parent council on 7 January 2020, an e-mail dated 21 January 2020 was sent to the director of education Dr Gillian Brydson to express concerns about the actions, attitude and behaviours of the claimant. That e-mail was drafted by Charles Russell and approved by all of the office bearers [143]. Ms Reid was not aware of the contents of this e-mail or even that it was to be sent.

45. That e-mail included the following:

"Mrs Lyndsay Gibb, an English teacher within the Academy, is undoubtedly spearheading and actively trying to recruit vocal teachers, support staff, parents and even young people attending the school to form a disruptive voice as part of a witch hunt to remove our new headteacher and disrupt the fantastic progress that has been made since her appointment. We have been appalled at Mrs Gibb's increasing disruptive behaviour, language and communications within and out with the school. Mrs Gibb's canvassing of young people in which she tells the pupils that 'Ms Reid is simply at the Academy to tick boxes, to qualify her for a better job in Glasgow' is leaving our children feeling confused and compromised as well as undermining the chain of command. Unfortunately we have recently been made aware that this activity has spread to a small minority of her colleges [sic]. Mrs Gibb's Facebook page, messenger messages and texts display the lengths to which she will go to bring our school community into meltdown. Thankfully these examples and [sic] interspersed with her strong political views which dilute her outpourings…"

46. In response, the claimant was advised by John Thin, schools manager based at the council's headquarters in Dumfries, that a disciplinary investigation into her potential gross misconduct would commence, undertaken by Lesley Watson, education officer.

47. As part of the investigation interviews took place with Ms Reid, a number of teaching staff and five parents on the parent council.

48. Following the investigation, Mr Thin wrote to the claimant on 26 August 2020 to advise that based on the evidence presented there was a case to answer and therefore that the matter would proceed to a disciplinary hearing [255].

49. On 18 September 2020, following a disciplinary hearing chaired by Mr Thin, which took place on 15 September 2020, the claimant was advised of the outcome in a letter headed "Disciplinary Warning – Final Written Warning (12 Months)" [257]. He advised that:

"at the Hearing it was established that you had made inappropriate comments at a Parent Council meeting on the 7 January 2020 which had the potential to

negatively impact on parents' views of the school… It was also agreed that you had used social media to share your views regarding incidents pertaining to the school which had the potential to be interpreted by parents in a negative way. This showed a lack of insight into your actions and resulted in parents again viewing the school in a negative way. It was shown that you demonstrated a lack of insight in the wording you used in correspondence with colleagues which was shared with parent representatives. This again had the potential to bring the school into disrepute. From the evidence shared at the hearing it was clear that you showed a lack of awareness of the GTCS Code of Professionalism and Conduct…. in conclusion whilst it is clear there have been breaches to the Council's Disciplinary Policy, it was difficult to ascertain all of the facts in all of the allegations however on the evidence provided it led to my decision on the sanction awarded. This letter serves as confirmation of the decision that you were given a Final Written warning in accordance with Dumfries and Galloway's Council's Disciplinary Policy (Teachers and Associated Professionals). This conduct is not acceptable and must not be repeated/and must improve to an acceptable level. To assist you I have set out below the areas where improvement is required".

The contract of employment issue

50. Around January/February 2020, Ms Reid gave consideration to the staff complement for the next school year and noted that there would be a surplus teacher of English.

51. Around April 2020, Ms Reid had a meeting with the English department teachers at which she explained that the normal practice where there was a surplus would be to ask for a volunteer for redundancy/redeployment, failing which length of service would determine who would require to be redeployed in another school in the region. Given no volunteers, that would mean that Angela Aston would require to be redeployed. However, the principal teacher of English made a request of Ms Reid that Ms Aston should be retained. She said this was because she was a developing member of staff and good team player, who would be particularly impacted because she did not drive so would have difficulty being redeployed in the region.

52. Ms Reid was also aware that an ASL teacher was retiring, so that a recruitment exercise would require to take place to fill the vacancy. On reviewing the contracts of the members of staff Ms Reid noted that the claimant and Stephanie Gosling, who both taught in the English department, both had additional support for learning contracts.

53. A decision was therefore made by Ms Reid, in conjunction with the senior leadership team (SLT) and the principal teacher of English, to avoid declaring any teacher surplus by deploying both the claimant and Ms Gosling for 50% of their time to teach young people with complex needs in the Aird Unit and those with more moderate additional support needs (ASN) in the learning centre. The remaining 50% of their time they would continue to teach in the English department.

54. The claimant raised concerns with Ms Reid because she was unhappy about such a move but also she believed that her contract had been changed from teacher of ASL to teacher of English, and therefore that she could not be required to undertake the ASL role.

55. Ms Reid spoke to Rodger Hill, school's manager in the education directorate, about this in the context of assessing staff complement for the next school year. He confirmed that the claimant could be held to her contract as an ASL teacher because there was no record of the claimant being employed as an English teacher through any open recruitment process, as council policies would have required. This was notwithstanding the claimant's communication with the previous headteacher and the arrangement that had been made regarding her teaching responsibilities in 2013. He checked this proposal with HR who confirmed that the claimant and Ms Gosling could both be asked to teach ASL.

56. The claimant sought clarification of the position from the directorate of education [103] but was advised in a letter dated 7 May 2020 from Mr Hill that there was no record on her file of her contract of employment having changed from ASL to English. Further, she was advised that

"given the needs of the service, and in particular the needs of the school, we believe it is a reasonable proposition that you now return to your original and contracted position of Teacher of Additional Support for Learning at Stranraer Academy therefore your request for an amendment of your contract is not accepted at this time. It is also a reasonable proposition that Ms Reid, the headteacher, meets with you through virtual means to discuss your teaching commitment in the ASL department for session 2020-21" [110].

57. The claimant's reply in an e-mail of 7 May 2020 was that

"having worked in Stranraer Academy's learning centre and Aird Unit on a supply basis in September 2006 I know this type of work is not in my skill set. In terms of needs of the school, to deploy me in such a role would not be appropriate, nor would it be using my skills to the school's best advantage. While I worked with some success to support pupils with SEBN [social and emotional behavioural needs], I have no formal training in this area" [114].

58. The claimant consulted solicitors who wrote to Ms Reid by letter dated 12 May 2020 advising that they were

"of the view that our client has a properly constituted contract of employment to work as an English teacher at Stranraer Academy and that your request that she move to the ASL Department at Stranraer Academy is an attempt to unilaterally amend the terms of her contract" [117].

59. Ms Reid passed this letter to Mr Hill because she was of the view that it was HR who should deal with issues relating to contracts of employment. Ms Reid advised the claimant that, given the receipt of the letter from her solicitors, she had been advised by Mr Hill to cancel a meeting planned for 12 May 2020 to discuss her role.

60. By e-mail dated 3 June 2020, Ms Reid advised the claimant that

"I have received confirmation from Rodger Hill, education officer, that your timetable, moving forwards, can include Additional Support for Learning…I would like to give you the opportunity of discussing what this may mean for you, specifically in terms of your contributions in the Aird Unit and Learning

Centre. If you feel this would be helpful, please let me know and I will set up a Teams meeting sometime next week. However, there is no requirement to do so" [119].

61. The claimant responded by e-mail dated 4 June 2020 to advise that she had not heard directly from Mr Hill, that she was

"more than happy to assist covering staff shortages across the school. My concern remains that my contract was never amended to Teacher of English yet I have worked successfully as an English teacher for more than 7 years, and wish to remain primarily in that role ….please provide confirmation in writing that I will return to teaching English on a full time basis as soon as capacity allows, and I want my contract amended to reflect this…I have no qualifications in ASL and would like clarification on the requirements for teachers working with pupils with complex additional support needs; I have real concerns about working in Aird especially if I am expected to take a supervisory role" [123-125].

62. By e-mail dated 5 June 2020, Ms Reid replied inter alia that:

"I am prepared of course to review the situation next session; any decisions taken at the time, however would be based on the exigencies of the service. I can therefore offer no guarantees but I acknowledge your request to teach in your specialist subject area and this will certainly be taken into account before any definitive decisions are taken at the time" [129].

63. In response to the issue about qualifications for teaching ASL, she advised that:

"I have checked with Hew Smith, quality improvement manager for inclusion, regarding specialist qualifications required to teach young people with complex needs and physical impairments and I am pleased to tell you that full GTCS registration will suffice; while any additional qualifications may be helpful they are not essential" [129].

64. During session 2020/21, the claimant agreed to fulfil the role of ASL teacher 50% of her time, teaching in both Aird and the learning centre, with the other 50% teaching English [316 and SB36].

Teaching allocation 2021/2022

65. For the session 2021/22, the claimant was asked to teach only in the Aird Unit (as well as 50% English). This decision was based on her performance the previous year teaching in that unit, taking account of the whole ASL team and their skills.

66. The claimant met with Ms Reid and Nancy Strachan on Friday 11 June 2021 to discuss the claimant's timetable for the next session and in particular the request to teach in the Aird Unit.

67. By e-mail dated 14 June 2021, the claimant advised that she had "spent a stressful and sleepless weekend thinking about the issues raised" at the meeting on 11 June.

68. Ms Reid e-mailed the claimant on 14 June 2021 stating that:

"I am sorry to hear that your timetable for next session has caused you stress; this certainly was not the intention. I am sure that Nancy would have given a very clear rationale for the proposed changes; most relating to the Career Long Professional Learning and upskilling of ASL staff. I was therefore a little disappointed, not to say somewhat concerned, to hear [from another member of staff] that you regard being asked to teach the young people in the Aird Unit as a 'slap in the face'. At our meeting, I would like to explore what you meant by that".

69. The claimant met with Ms Reid and Ms Strachan on 17 June 2021. At that meeting, the claimant passed over notes regarding her concerns [285].

70. A further meeting between the claimant and Ms Reid and Ms Strachan took place on 24 June 2021, when the claimant asked not to be required to teach in the Aird Unit. Following a review, and extensive discussion with Ms

Strachan regarding revisions to the timetable, the claimant's commitment at Aird Unit was reduced from 13 to 8 periods, with one period of training.

71. As a result of the claimant raising concerns about workplace stress, Ms Reid appointed Kelvin Butler, the depute headteacher responsible for staff welfare, to support the claimant. He suggested (in an e-mail dated 25 June 2021) that she complete a workplace stress form [288].

72. The claimant responded to Mr Butler that same day (copying in Ms Reid) as follows:

"As I have already intimated twice I have competed this form at home and will submit it directly to HR should the source of my workplace stress not be rectified prior to the commencement of the new timetable in August. The current school SLT is not responsible for the contractual error, therefore I will submit the form to the Council as it is only HR that can rectify the situation. I have made several suggestions as to how the source of my stress could be eliminated at least short-term, and had thought Alicia was understanding of the position; it would appear from yesterday's meeting that is not the case".

73. By e-mail dated 25 June 2021, the claimant submitted a workplace stress form to Mr Thin, then head of education, with a covering letter stating that she had initially completed the form on 11 June, hoping she would not have to send it; then had a positive meeting with Ms Reid and Ms Strachan on 17 June. She referenced the next meeting which took place on 24 June, and stated,

"the outcome of this meeting was not positive and I was not prepared for this, given how positively the previous meeting had ended, and I had no union representative with me. Given this and another situation that happened in school today to which I was a shocked witness, I will insist on having a union rep or impartial witness during any further conversations I have with Alicia. I have stated on several occasions that I do not blame the current SLT for the issue that has arisen regarding my contract, but their insistence that I be deployed to teach in Aird is causing me extreme stress, therefore I feel I have no alternative but to submit this form" [322].

74. While Mr Thin advised that the matter should be managed at a school level and the form submitted to the headteacher, the claimant's EIS rep stated that the matter should be dealt with by a higher officer, because the source of the stress was the headteacher [321].

75. The claimant responded by e-mail on 19 July 2021 advising that the source of stress was the fact that the headteacher was refusing to accept that her contract had previously been changed and to force her into a position she should not be in. She continued, "the issue regarding my contract lies at Authority level but the situation could be mitigated by my HT" [319].

76. The claimant advised Mr Thin on 3 August 2021 that she would "not be averse to redeployment elsewhere in the Authority" [319]. Mr Thin advised in response on 12 August 2021 that the documents produced did not change her employment status from teacher of additional support for learning, but rather that the then headteacher had moved her responsibilities into another role.

77. The claimant advised on 15 August 2021 was that she had only agreed to help with ASN in session 2020/21 to assist with the covid crisis and that her position was that her contractual status had changed as confirmed in the solicitor's letter. She added, "As we all know, Alicia is not willing to support me in this, and I believe this to be part of a personal vendetta" [316].

78. On 16 August 2021, Ms Reid wrote to Mr Hill, by e-mail, asking to discuss the issue of the claimant's contract and her unwillingness to teach in the Aird Unit, adding:

"Prior to the summer, she intimated that, if her hand was forced, as it were, then she would go off sick with work related stress. It would be my view that this stance ought to be considered within the context of the Final Written Warning that she received last session. It may be that, after a summer of reflection, Mrs Gibb comes back with a different attitude, ready to teach eight periods to which she has been assigned, but if not, we basically have a teacher saying what they will and will not do" [337].

Absence due to stress

79. On 16 August 2021, the claimant was signed off by her doctor because of the condition of "stress at work" [336].

80. On 17 August 2021, Ms Reid met with Mr Thin to discuss the claimant. Mr Thin advised that this issue was unrelated to the issue of the final written warning but rather it related to the claimant's apparent refusal to do work which she was required to do. He recommended that the claimant's contract should be changed to teacher of English if that would help to address the claimant's stress. However this was on the basis that made no difference, and the claimant could still be deployed to teach ASL or whatever the school required. Further, he was of the view that the arrangement for her to teach 50% ASL and 50% English struck a good balance between the needs of the school and the claimant's needs.

81. Ms Reid initially agreed to the change to the claimant's contract but on reflection confirmed in an e-mail dated 18 August 2021 that

"I have come to the conclusion that while the decision reached might be best for the Authority, it is neither best for the school nor me. In short, Mrs Gibb will perceive this outcome as a victory, further reinforcing her view that bully boy tactics achieve the desired result, thereby encouraging further bullying behaviours. I wonder if you could give further thought to the decision before communicating anything to her or her unions rep. Apologies for the change of heart but what was agreed made me increasingly uncomfortable as the day progressed" [340].

82. Mr Thin replied on 19 August 2021 stating that:

"Whilst Ms Gibb's actions may leave a lot to be desired, I believe that the approach which we identified when we met on Tuesday represents a fair and reasonable way forward. This, of course, is based on the correct contractual situation with Ms Gibb. You outlined to Rodger and I the process the school had undertaken which was underpinned by a clear rationale. Whilst I understand there are tensions, I don't believe it to be the correct course of

action to move Ms Gibb to another school as this, in my opinion, undermines the whole approach the school is undertaking in terms of developing an inclusive ethos" [338].

83. By e-mail dated 25 August 2021, Mr Thin agreed to meet the claimant to discuss the work related stress management response action plan. A meeting took place on 10 September 2021, when a transfer to Castle Douglas High School was discussed [343], to which the claimant initially agreed [345] but she retracted her agreement having reflected on the move and the impact on her family [354].

84. Ms Reid was suspended from her role on 26 October 2021 for matters unrelated to the claimant.

85. In response to follow up discussions regarding her return to work, by e-mail dated 5 November 2021 the claimant advised that "unless you are able to confirm that Alicia will not be returning to Stranraer Academy, the original workplace stress form remains current… I very much look forward to returning to teach English at Stranraer Academy with James as the new headteacher" [389].

86. The claimant returned to work following a stress at work action plan meeting which took place on 9 November 2021 (page 392) when it was agreed that the claimant's contract would be amended to teacher of English at the earliest opportunity.

87. The claimant was initially signed off with "stress at work" until 19 November 2021 [368] but this was revised to 10 November 2021 [399].

88. The claimant contacted ACAS in regard to early conciliation on 25 October 2021 and an EC certificate was issued on 5 December 2021. The claimant lodged the claim form with the Employment Tribunal on 5 January 2022.

Tribunal's observations on the witnesses and the evidence

89. These findings in fact are conclusions which the Tribunal reached having heard the evidence, and by reference to the documents lodged, and were

based on the Tribunal's observations of the credibility and reliability of the witnesses.

90. Despite the differing views of the witnesses, in fact there was little dispute about the key facts in this case, beyond a disagreement about the specific wording and timing of what was said at various points, as well as differing impressions of how things were said and to whom they were directed. These differences were in any event of questionable relevance to the conclusions reached in this case.

91. We concluded that the claimant's evidence was not reliable, which we took from the claimant's almost universal failure to answer any question directly. Instead, she answered by giving examples to support her position. Her answers were often given tentatively, giving the impression that she was trying to understand the rationale for the question before answering.

92. We came to the view that the claimant tended to interpret matters from her own perspective, without understanding the full picture. This tendency was best illustrated by the claimant's belief that she was being singled out in regard to the request that she be relieved from teaching ASL. However Ms Gosling was also being asked to teach ASL, given they both had such contracts, and Ms Reid's gave a perfectly plausible explanation relating to the desire to retain Ms Aston in particular and not to have to redeploy any member of staff.

93. The claimant had a tendency to make assumptions about the rationale for actions for which there was no justification. This is highlighted for example in the terms of an e-mail of 3 June in which Ms Reid stated, when inviting the claimant to meet, to "note however there is no requirement to do so" [119]. Ms Reid said this was intended to be supportive and indicate that a meeting was not mandatory; whereas the claimant interpreted this as Ms Reid suggesting that she had no need to consult her before she made the decision and therefore saw it as "a threat" that she was getting those classes regardless. Another example is her assumption that Ms Reid must have

something to do with the letter from the parent council. Such assumptions without foundation appear to have driven her actions in pursuing this claim.

94. We found Ms Reid to be an extremely articulate witness who was unhesitatingly clear about the rationale for her actions. Ms Reid accurately in our view explained the claimant's position as having one piece of the jigsaw whereas she, as headteacher, had a view of the whole jigsaw or bigger picture.

95. This was a factor which also perhaps explains the evidence of the claimant's witnesses. We found their evidence to be speculative, and opinions formed without all the facts about why decisions were made. This they essentially conceded in cross examination. Further, their views were apparently influenced by their opinions of Ms Reid and their support for the claimant. We did not consider their evidence to be necessarily reliable in regard to the interactions between the claimant and Ms Reid.

96. With regard to the respondent's witnesses, we noted that the witnesses from the education directorate gave evidence in a straightforward and matter of fact way, without any agenda. Mr Thin in particular was careful to explain his answers by reference to the evidence which supported them and questioned the claimant's actions only when they were not evidence-based. He gave the impression of seeking to balance the needs of the claimant and those of Ms Reid. While Ms Lyon and Mr Russell were supportive of Ms Reid, they gave no suggestion of being partisan, and made no criticism of the claimant. Their evidence was entirely consistent with the documentary evidence referenced.

97. For these reasons, where there was a conflict about the specifics of what was said, the timing or the impression of how things were said and to whom, we preferred the evidence of Ms Reid and of the respondent's witnesses generally.

Tribunal deliberations and decision

98. It is helpful to confirm at the outset of our deliberations what this case is not about. This case is not making any assessment of, or taking any view on, the

capability of Ms Reid of the running of Stranraer Academy in general. Clearly, there were differing strongly held views about that, with which we were not concerned. Further, we have no doubt that the claimant is a respected and able teacher.

99. This case relates solely to the question whether the claimant was discriminated against, or harassed, by Ms Reid in particular, as she alleges in her written case, because of, or for reasons related to, her philosophical belief in terms of the Equality Act 2010.

100. Before we can come to answer that question, we must first determine whether the claimant's belief is a belief that is protected by the Equality Act 2010, given that this is disputed by the respondent.

Is the claimant's belief protected?

101. The claimant's belief was articulated at a previous case management preliminary hearing, which took place on 30 March 2022, as a belief "that Scotland can only ensure social justice by remaining part of the UK as opposed to being independent" [43]. Mr Eadie confirmed that this was what parties had agreed following discussion at the case management hearing and that was the belief relied upon at this hearing.

102. The Equality Act 2010 protects people who are discriminated against because of their religion or belief. Section 10(2) states that "belief means any religious or philosophical belief and reference to belief includes a reference to lack of belief".

103. Both parties were agreed that, when considering whether the claimant's belief that "Scotland can only ensure social justice by remaining part of the UK as opposed to being independent", is a protected belief, the correct legal test to apply is that set out by the EAT in *Grainger plc and others v Nicholson* 2010 ICR 360.

104. In *Grainger*, Mr Justice Burton identified the following as the essential criteria for a belief to qualify for protection as a philosophical belief:

1) it must be genuinely held;

2) it must be a belief and not an opinion or viewpoint based on the present state of information available;

3) it must be a belief as to a weighty and substantial aspect of human life and behaviour;

4) it must attain a certain level of cogency, seriousness, cohesion and importance; and

5) it must be worthy of respect in a democratic society, not incompatible with human dignity and the fundamental rights of others.

105. The respondent conceded that the claimant's belief was genuinely held; and it was accepted that it concerns a weighty and substantial aspect of human life and behaviour; and that it is worthy of respect in a democratic society. Thus, it is conceded that the claimant's belief fulfils conditions 1, 3 and 5 above.

106. In submissions, Mr Eadie argued that it was clear that the claimant's belief was a protected philosophical belief relying on the claimant's oral evidence and pages from social media lodged. He submitted that:

- The claimant's oral evidence was that she was vocal, public and passionate about her belief.
- Her actions show that this is a belief which she has followed through to aspects of her day to day life for many years.
- It is not a political belief because although the claimant is a Conservative she had in the past voted Labour and her belief is not tied to one political party.
- Her belief is closely related to being opposed to one party, namely the SNP and their wish to have a declaration of Scottish independence.
- She rejects independence and supports unionism to ensure social justice.
- Her belief is that it is only through the union of the United Kingdom that the benefits of social justice can be ensured and she therefore rejects independence for Scotland.

107. Ms Sutherland argued that the claimant's belief did not meet the *Grainger* test of being similar in status or cogency to a religious belief. She argued in particular that the claimant's belief was a viewpoint or opinion, based on the present state of information available, and that it had not attained the necessary level of cogency or cohesion to qualify for protection.

108. In her submissions, Ms Sutherland made reference to the decision of another employment tribunal in the case of *McEleny v Ministry of Defence* 4105347/2017. In that case, the Employment Tribunal held that the claimant's belief in Scottish independence amounted to a philosophical belief and could be relied on as a protected characteristic for the purposes of claiming direct discrimination under the Equality Act 2010. She recognised that as a decision of another employment tribunal this was not binding on us, but she submitted that it was informative and persuasive.

109. Ms Sutherland contrasted the claimant's belief in this case with that of Mr McElney, whom she argued did not believe that independence would necessarily lead to improved conditions, but he held a fundamental belief in the right of Scotland to national sovereignty. The Employment Tribunal found that the claimant's belief was not susceptible to change if challenged by empirical evidence that shows independence would, for example, be detrimental to the economy of Scotland.

110. She argued that this case is quite different, where the claimant's evidence was that it was her belief that Scotland could not fund social justice without being in the UK, that if Scotland was independent it would not have sufficient resources. Thus, she argued, the claimant's belief is really an opinion based on information available and as set out in the Facebook posts.

111. Ms Sutherland also relied on the evidence of the claimant in response to a question about how her belief manifested itself in day to day life to which she responded that she was an activist. Ms Sutherland pointed to the fact that any political activity referenced by the claimant was linked to political events and otherwise she gave no concrete way in which her belief forms part of her normal life. This, she argued, should be contrasted with the facts in the case

of *McElney*, where the claimant spent a significant amount of time and money travelling extensively to promote his beliefs.

112. Given the concessions of the respondent, it is not in dispute, and we accepted, that the claimant's belief is genuinely held, is a substantial aspect of human life and worthy of respect in a democratic society. We were therefore concerned in particular about whether the claimant's belief was an opinion or viewpoint based on the information available rather than a qualifying belief. We also considered whether it could be said to attain the necessary level of cogency, seriousness, cohesion and importance to qualify as a belief akin to a religious belief.

113. In the *Grainger* case, Mr Justice Burton confirmed that it is necessary, in order for the belief to be protected, for it to have a similar status or cogency to a religious belief. He held that although the support of a political party might not meet the description of a philosophical belief, a belief in a political philosophy, such as socialism, marxism, communism, or free-market capitalism, might qualify. He stated that where a claimant alleges that he has been discriminated against on the ground of his philosophical belief, he must adduce evidence to establish the genuineness of his belief and to establish that what was done was done on the ground of his belief.

114. In the *Grainger* case, the claimant believed that there was a moral duty to live in a manner which mitigated or avoided the catastrophe of climate change for the benefit of future generations and to persuade others to do the same. There the claimant's position was that his belief affected how he lived his life including his choice of home, how he travelled, what he bought, what he ate and drank, what he did with his waste and his hopes and fears. He said that he no longer travelled by airplane; he had eco-renovated his home; he tried to buy local produce; he had reduced his consumption of meat; and he composted his food waste.

115. The decision in *Grainger* is to be contrasted with the decision in the case of *McClintock v Department of Constitutional Affairs* 2008 IRLR 29. In that case, the claimant was a JP and member of the family panel. He was a practicing

Christian who could not in conscience and compatibility with that belief agree to place children with same sex couples. He thought that the evidence to support that being in the child's best interests was unconvincing. The EAT in that case upheld the Tribunal's decision that the claimant had not been discriminated against contrary to the relevant regulations, where the claimant's objection depended on the lack of evidence to justify the approach taken towards single-sex parents, not a belief falling in scope of the regulations. The EAT held that to constitute a belief there must be a religious or philosophical viewpoint in which one actually believes, it is not enough to have an opinion based on some real or perceived logic or based on information or lack of information available.

116. In *Grainger*, Mr Justice Burton concluded, "I distinguished the claimant's case from that of Mr McClintock because the claimant has settled views about climate change, and acts upon those views in the way in which he leads his life. In my judgment, his belief goes beyond mere opinion, such as might be held on some aspects of climate change, such as whether it is environmentally desirable to travel by air".

117. While the *McElney* decision is one of another employment tribunal, we considered it and noted that in that case the claimant identified his philosophical belief as a belief in Scottish independence as well as the social democratic values of the SNP. The Tribunal in that case was not persuaded that the claimant's belief in the social democratic values of the SNP met the requirements to qualify as a philosophical belief but rather described it as a manifestation of his belief in Scottish independence. The Tribunal did however go on to find that the claimant's belief in Scottish independence was a protected belief.

118. Taking account of the *Grainger* factors, and reflecting on the facts of the *Grainger* case, and how it was distinguished from the *McClintock* case, and reflecting on the distinction between a belief and the manifestation of a belief, we considered carefully the evidence which we had to support the claimant's argument. Taking account of the claimant's oral evidence and of the

documentary evidence, we were of the view that the evidence we had to support her belief as a qualifying philosophical belief was extremely limited.

119. It is clear that the claimant is not suggesting that the essence of her belief is political because she currently votes for the Conservative party but has previously voted Labour. While the evidence may point to her having settled views about Scotland remaining part of the United Kingdom, this was not the belief we were considering.

120. We were of the view that it was important, when considering this question, to remind ourselves of the agreed philosophical belief upon which the claimant relies, which is "that Scotland can only ensure social justice by remaining part of the UK as opposed to being independent". It is important to underline that the belief upon which the claimant relies is not "unionism" per se, which we accept in principle may have all the attributes of a philosophical belief in a particular case. Further, it is not in dispute that social justice in itself is a substantial aspect of human life, and that a belief in social justice might qualify in certain specific circumstances. Here however the claimant's belief relates to the means by which social justice can be ensured, that is if Scotland remains part of the UK.

121. We were of the view that the oral evidence to support a qualifying belief was particularly limited. When asked to describe her belief during evidence in chief, the claimant's evidence was that she was a "unionist" and "hated the fact that Scotland had reached a place where she had to define herself" and "wished the political debate regarding independence was not happening". Ms Sutherland submitted that this was indicative of an opinion, rather than a belief, because an adherent of a philosophical belief would not say they wished they did not have to have the debate.

122. The claimant's evidence was that "for everyone to have the best opportunities they needed to be part of the big picture". She described herself as a "remainer" who was "devastated" about Brexit because she believed that it was "better that people have as much connection with humanity as possible". She said that she believed that if Scotland cannot be part of Europe then it is

imperative that Scotland remains part of the UK. She stated that she believed that Scotland was not capable of taking fiscal responsibility if independent; and that it would be catastrophic is that were to happen.

123. She explained that until 2015 that she had no particular political affiliation, but she had voted Labour and worked closely on the no campaign with a local Labour MP prior to and during the independence referendum. She was concerned about the divisions which the referendum vote had caused and in particular "the divisions between those who want certain things" and expressed concern about the importance of responsibilities as well as rights. She subsequently did a lot of door step campaigning but when the Labour vote collapsed in the area, she "had to pin her colours to the mast" and decided to join the Conservative and Unionist party. She emphasised that this was "because of the unionist part". She gave evidence that she was not concerned about whether Labour or the Conservatives were in power, so long as the SNP was not. She gave evidence that she had family living throughout the UK and she had always supported the UK and sees herself as British. She describes herself as "a proud Scot and a proud Brit". She said this belief was "innate". She became concerned about the divisions which she believed started to occur in 1997 but that these became stronger in the run up to the 2014 referendum. She wishes there will never be another independence referendum.

124. When asked how this belief manifests in day to day life, she responded that she had taken on political activism. She continued by stating that she could not express her opinion at work, although she was concerned that the social subjects taught were very narrow, including her own subject of English and as a "proud Scot and a proud Brit" she wishes to ensure the teaching of broader curriculum.

125. During cross examination, Ms Sutherland suggested that the Facebook postings were all linked to particular political events, elections and referendum. The claimant said that was when she was particularly politically active, but that she made comments all the time since she was a prolific user of social media.

126. She stated in evidence that she did not believe that Scotland could fund social justice if Scotland was independent. When asked in cross examination if this meant that her view was that the country could not fund social justice without being in the UK, and that if Scotland was independent that it would not have sufficient resources, she responded "that's what constitutes a belief…if Scexit happens, it would be hugely detrimental".

127. That was the extent of her oral evidence. She also relied on documentary evidence in the form of social media posts, which were referred during the hearing. However having considered these carefully, we came to the view that these related only tangentially to her purported belief and that the direct references to support that belief were very limited.

128. We looked carefully at the documentary evidence which consisted of Facebook posts which focus on or reference ensuring social justice. We noted a number of posts, which related to support for Scotland being part of the UK as opposed to being independent, or a plea to vote no, and posts asserting the importance of being both Scottish and British. For example, the claimant posted a message on 8 May 2021, "well done to the labour voters lending their votes to help save the Union! D&G setting the gold standard for tactical voting. And see just while I'm here, it's my page, and if I want to clabber it in flags and fist pumps to show we're stronger together, I will. They're both my flags and I'm proud of them – I'm Scottish and British, and I will continue to campaign to keep the Union both virtually and in real life" [263].

129. However, we considered that the claimant's evidence and the claimant's Facebook pages which supported her belief that remaining part of the UK *as the only way to ensure social justice* were limited. There were in fact only two of the Facebook posts lodged which we considered related directly or indeed even indirectly to the claimant's professed belief.

130. The claimant stated in one social media post (dated 13 April 2021) that:

"the division fostered by the SNP, with their faux-socialism and uncosted promises of a land of milk and honey post-Scexit, have forced me to become

a tactical voter for the party most likely to keep Scotland away from the terrifying cliff-edge of separation" [262].

131. In another (posted 27 April 2015) she stated,

"I'm not really that bothered if the next government is Labour or Tory-led. I believe that education and healthcare are fundamental rights and should be free for all. I also believe there should be a welfare safety net in place to ensure those in genuine need do not suffer… ultimately it's not about blue or red this time – it's about keeping out the yellow" [65].

132. We have no doubt that is a sincerely held view, but we came to the view that the claimant's purported qualifying belief – that social justice could only be ensured through remaining part of the UK – was in fact an opinion or viewpoint about the most appropriate mechanism for ensuring social justice. This, in her opinion, can only be ensured through Scotland remaining part of the UK, and conversely it cannot be ensured in an independent Scotland, and the former is the only means by which social justice can be ensured.

133. The claimant is opposed to the separation of Scotland from the rest of the UK and will vote for the political party most likely to defeat the SNP in any given election. Her actions by voting for such a party are not to achieve social justice as an end in itself but to avoid what she perceives to be a political threat to its existence in Scotland. This is a calculated decision on the part of the claimant to vote for the party most likely to prevent an independent Scotland.

134. The claimant has reached the conclusion, based on information available to her, about the means by which social justice can best be ensured, which is Scotland remaining part of the United Kingdom. This, we conclude, is an opinion or viewpoint based on the information available at the time of deciding which party she should support and for which party she should campaign. It is the means by which the claimant asserts that social justice can be ensured, that is voting for a political party which is opposed to independence.

135. Focussing on the belief that "Scotland can only ensure social justice by remaining part of the UK as opposed to being independent", there was in any

event insufficient evidence led by the claimant to support any conclusion that this is a philosophical belief held by the claimant which meets the requirements of the *Grainger* test. Rather we take the view that such evidence as we heard supports the conclusion that this is a viewpoint or opinion which has informed the claimant's decision to support a political party which argues against independence and the break up of the United Kingdom.

136. We conclude that her belief, that the only way to fund social justice was to remain part of the United Kingdom, and that it could not be achieved in an independent Scotland, is an opinion which she holds which is not indicative of a qualifying belief. We came to the view that the essence of her belief is in in "unionism" as she describes it, as the best means to achieve social justice.

137. In any event, we did not accept that this belief, for the claimant, had attained the necessary "level of cogency, seriousness, cohesion and importance" to amount to a qualifying belief. We came to the view that the claimant has failed to show that her belief has the level of cogency and coherence required to be philosophical in nature and to meet the requirements of the Grainger test.

138. This was not least because the claimant's evidence to support her belief in social justice only being achieved in a United Kingdom and not an independent Scotland and its important to her was limited. She gave little or no evidence to show how she manifested her belief that social justice in particular could only be achieved through Scotland as part of a United Kingdom. She gave no concrete examples of how such a belief manifested itself in how she lived her day-to-day life beyond campaigning against independence and for the continued existence of the United Kingdom around elections and referendums.

139. When asked about how her belief manifested itself the claimant referenced this political activism, but she hardly touched on the belief that she supported remaining part of the UK to ensure social justice. She went on say that she was a prolific user of social media, and that she communicated her belief through that medium. However, as discussed above, we have found that the claimant made scant reference to the importance of that belief to her in her

social media posts. In any event, we consider that references to her beliefs in social media is not sufficient to give her belief the necessary level of cogency, seriousness and cohesion required. It cannot be said that it is in any way has a status similar to a religious belief.

140. We do not therefore accept that the claimant's stated belief as articulated by her is a philosophical belief which meets the *Grainger* test.

141. Given that conclusion, the claimant's claim cannot succeed. However, we went on to consider, having heard evidence relating to the claim of discrimination, what conclusions we would have come to were we to have found that this was a qualifying belief. In particular we considered whether the claimant had been subjected to discrimination and harassment at the hands of the respondent because of or related to the belief which the claimant asserts she holds.

Claims under the Equality Act 2010: direct discrimination

142. The claimant claims that she has suffered direct discrimination. Section 13 of the Equality Act 2010 states that a person discriminates against another if they treat them less favourably than they treat or would treat others because of a protected characteristic.

143. As we understood it, the claimant relied exclusively on treatment meted out to her by Ms Reid. In particular, she argues that the following amount to less favourable treatment: the treatment of her by Ms Reid at the inset day; the treatment of her by Ms Reid at the parent council meetings; the treatment of her by Ms Reid at the promoting positive behaviour group meetings; and the treatment in regard to the contract of employment and the requirement for the claimant to teach ASL.

144. We took the view that this was a case where we should focus on a single primary question in line with the guidance of Lord Nicholls in *Shamoon v RUC* 2003 ICR 337, namely: did the complainant, because of a protected characteristic, receive less favourable treatment than others?

145. We have taken that view partly because the claimant did not focus on the treatment of a comparator, either actual or hypothetical, beyond arguing that she had been treated less favourably than other staff in similar circumstances who did not share her belief.

146. Rather than focus on how a comparator might have been treated, if the claimant were able to show that the protected characteristic had a causative effect on the way that she was treated then it would be inevitably adverse and amount to less favourable treatment than comparators would have received. Equally, if it was shown that the protected characteristic played no part in the treatment, then the claimant cannot succeed and there is no need to construct a comparator.

147. We were also of the view that focussing on the single "reason why" question is appropriate in cases where it is alleged that the treatment was for a reason that is subjectively discriminatory (rather than inherently discriminatory). This was the case here where the acts complained of are not in themselves discriminatory but may be rendered so by a discriminatory motivation. This means that we must consider the 'mental processes' (whether conscious or unconscious) which led the putative discriminator to do the act, that is we must consider whether the proscribed factor (the claimant's belief) operated (consciously or unconsciously) in Ms Reid's mind.

Knowledge

148. This meant that we focussed first on Ms Reid's motivations. We considered that the question of knowledge was a significant one in this case. The respondent argued that Ms Reid was unaware that the claimant held the belief that she claimed to hold. If we were to accept that then clearly the reason why Ms Reid treated the claimant as she did would support a conclusion that any treatment of her had nothing to do with her belief.

149. Ms Reid's evidence, which we accepted, was that she was aware that the claimant was a Conservative voter. She had been advised of that fact some two weeks into her tenure as headteacher by other members of the senior leadership team. While she had attended the retirement event, when jokes

were made which referenced the claimant's voting preference, this just confirmed what she already knew. Ms Reid's position is that she did not know how the claimant had voted in the independence referendum, and she did not know about the claimant's belief that "Scotland can only ensure social justice by remaining part of the UK as opposed to being independent". Ms Reid only had a vague awareness of the claimant's social media posts. The claimant's evidence was that she had never had a discussion with Ms Reid about her views.

150. The claimant suggests that the "specific turning point at which Ms Reid's approach and attitude changed was the inset meeting on 6 January", which was the first time they would have been in each other's company since the retirement event. We could not however accept that could have been a turning point at least not because of Ms Reid's alleged newly found knowledge that the claimant voted Conservative, because Ms Reid was already aware of that.

151. Rather, while Ms Reid contended that her attitude towards the claimant did not change after the inset meeting of 6 January 2020, she perceptively stated in evidence that "a sensible reason [for any change in approach] is that if you are rude and aggressive to someone then they might behave more cold or cautious than expected". Ms Reid's position was thus that if the claimant did perceive a change in her attitude towards her after that (which she denied), it would be because the claimant was rude and disruptive at the inset meeting.

152. Even if she did have an awareness of the claimant's social media posts, as discussed above, given the limited content about the claimant's belief as articulated, this would not in itself mean that Ms Reid would know about the claimant's belief.

153. We therefore accepted Ms Reid's evidence that she was not aware of the claimant's belief as articulated at the time of events. Indeed, we accepted her evidence that she was not aware, until she raised these proceedings, how the claimant had voted in the independence referendum.

154. We accept the premise that if Ms Reid was not aware of the claimant's belief, then she could not have treated her less favourably because of it.

Treatment of the claimant by Ms Reid

155. We have concluded that Ms Reid did not know that the claimant held the belief that she did. However, even if we were to have concluded that Ms Reid did know of the claimant's belief, we turned to consider the events which the claimant relied on to support her contention that she was less favourably treated than other staff because of her stated belief. We were conscious that the test is an objective one: the fact that the claimant believes she has been treated less favourably does not of itself establish that there has been less favourable treatment.

The inset day

156. The claimant claims that the discriminatory treatment started on 6 January 2020 at the inset day. There was a conflict of evidence regarding what happened that day, and in particular the context in which Ms Reid made a comment about voting in the area.

157. It is clear from the findings in fact that we did not accept the evidence of the claimant in regard to what she believed Ms Reid to have said. In particular we did not accept, as the claimant argued, that Ms Reid said words to the effect of "Of course, the reason the staff of Stranraer Academy may be reluctant to adopt the Scottish Government's policy of inclusion is because of the way you lot vote down here". We accepted Ms Reid's evidence that she had made reference to the voting preferences of the local community generally because she considered that political factors can influence the school culture and that political factors can influence views on inclusion and equity which is what staff were being asked to consider. We noted in a social media post that we were referred to that it was in fact the claimant who used language similar to that alleged of Ms Reid, specifically "Us lot down here vote differently from Glasgow and we are proud to do so" [264]. We accepted Ms Reid's evidence that she did not express a view on her own voting preferences either in that meeting or otherwise in connection with her role.

158. That conclusion about what happened at the inset day was supported by the notes of the interviews which took place as part of the investigation into the

claimant's conduct. We noted these interviews took place in mid March 2020, that is relatively shortly after the staff inset day. While the claimant's witnesses recalled that the "voter comment" had been made in the morning during the first presentation, we did not accept that evidence. This was not least because it is quite clear from our notes of the evidence that the claimant herself suggested the comment was made in the afternoon. Given that this was disputed during submissions, we have checked our notes carefully, and we noted that during examination in chief, the claimant said that the comment was made "at the end of the meeting" when Ms Reid quoted John Swinney and there was a discussion about Scottish Government policy on inclusion. Further we noted that this matter was revisited in re-examination when the claimant stated, "I don't remember much of the second part apart from the striking comment on voting". This accords with there being a discussion about politics as part of the PESTLE analysis in the afternoon. We noted that the claimant's witnesses all suggested that it had been said in the morning during Ms Reid's initial presentation when she was interrupted by the claimant. However, we came to the view that the matter had been discussed among close colleagues so often that they had come to believe that it had been said at the outset of the day. It was also interesting to note that the claimant's witnesses could barely otherwise recall what had been discussed in the afternoon.

159. While much was made of this conflicting evidence, in any event, nothing actually turned on it. There was something of a conflict among the claimant's witnesses who attended the inset meeting about whether this was a comment which was directed only at the claimant or whether, as Ms Livingstone stated, it was "directed at the Conservative voters in the room"; Ms Aston and Ms Gosling also took offence. Having made the finding that the comment was not made in the way that was alleged, it could not then be said that the reference to voting preferences in the area was directed at the claimant in particular. In any event, this apparently related to the claimant's argument that the comment was directed at her because Ms Reid now knew of her voting preferences. The claimant suggested that Ms Reid became aware of her voting preference at the retiral event on the last day of term 2019, but we

accepted Ms Reid's evidence that she had already been advised by colleagues that the claimant voted Conservative. This was in any event nothing to the point when the claimant's belief was not related to the fact that she was a Conservative voter nor indeed even in "unionism" per se, but rather that social justice can only be ensured by Scotland remaining part of the UK.

160. Further, while we have found that there was a to-ing and fro-ing between the claimant and Ms Reid at the outset of the inset day relating to the claimant's assertion that she had not enjoyed the Christmas break, there was no evidence of any inappropriate conduct on the part of Ms Reid directed at the claimant, and therefore it could not be said that there was any less favourable treatment.

Parent council involvement

161. The claimant also relied on exchanges between her and Ms Reid at parent council meetings to support her contention that she had been less favourably treated by Ms Reid because of her beliefs.

162. There was clearly a disagreement between them evidenced in the minutes relating for example to their differing views on the value of a qualification in maths. However we accepted the evidence of Ms Lyon and Mr Russell that they did not observe Ms Reid being rude or commenting inappropriately to the claimant or ignoring her or being dismissive of her. While they described the meetings as "heated" and "fraught" on occasion, they did not observe Ms Reid treating the claimant any differently than any other member of the parent council. Indeed Mr Russell advised that he had never seen Ms Reid anything other than professional in all of his dealings with her, even when he accompanied others from the parent council in a "spot check" of the school.

163. We concluded that there was no evidence of any unreasonable, or less favourable, treatment of the claimant by Ms Reid at the meetings of the parent council.

164. Nor did the evidence support the claimant's assertion that that Ms Reid "had assisted the chair of the parent council with the wording of a malicious

complaint to the respondent that resulted in a kangaroo disciplinary process taking place to deal with the unjustified complaint".

165. We accepted Ms Reid's evidence that she had no input into the e-mail sent by the parent council to the director of education. It was clear to us that this was an assumption the claimant made without foundation. We noted her surprise while giving evidence when advised that it was in fact Mr Russell who had written the e-mail. Ms Lyon and Mr Russell confirmed in evidence that he had drafted the e-mail (and because he had been at neither meeting thought he could be more objective) which was approved only by the office holders. They confirmed that Ms Reid had no involvement in the drafting of the e-mail and that Ms Reid knew nothing about it.

166. We also noted that the claimant relied on the reference in the e-mail to the claimant's "strong political views", which she attributed to the influence of Ms Reid. However, Mr Russell explained that this was a reference only to the fact that the criticisms of the school on Facebook were interspersed (so diluted) by posts about her politics.

167. While Ms Reid was the focus of the claimant's concerns, we noted in particular that the disciplinary proceedings were instigated as a result of the complaint from the parent council; that members of the directorate of education (based in Dumfries) were sufficiently concerned about the possibility that her actions were a breach of the GTCS standards that a disciplinary investigation was undertaken; that they found there was a case to answer; that the charges were upheld; and a final written warning issued. That sanction was issued by staff of the education directorate entirely independent of Ms Reid. The referral to the director of education and the subsequent disciplinary process had nothing to do with Ms Reid so could not be treatment by her.

Promoting positive behaviour group meetings

168. The claimant also relied on events at the promoting positive behaviour group meetings. These meetings were chaired by Rob Lockwood. Again, there was considerable disagreement about the way forward and about how Ms Reid

was dealing with discipline and a number of attendees, perhaps the majority, did not support her approach. There was a disagreement between the claimant and Ms Reid in particular in regard to detentions and the disciplinary referral system.

169. Although Mr Lockwood agreed that there were "aspects of" Ms Reid's body language in particular by which she indicated her displeasure or disagreement with views expressed at the meetings, his evidence was that "others around the table expressing views [that Ms Reid disagreed with] got fairly similar responses".

170. With regard to the claimant's contrary suggestions, we did not, for example, accept the claimant's evidence that Ms Reid was furious with her for rebranding lunch-time detentions as "support sessions" because she thought it a good idea. Ms Reid's evidence was that she had not appreciated that the claimant had been continuing with detention despite her initial direction to desist; was concerned about what that "support" meant; and that the impact was not being measured.

171. We thus did not accept that the claimant was singled out for any particular treatment by Ms Reid. Indeed, there was no evidence, beyond Mr Lockwood's general concern, that the claimant was subject to any unreasonable and less favourable treatment at these meetings.

The contract of employment issue

172. The claimant came to believe that Ms Reid treated her less favourably by requiring her to work 50% of her time on ASL specifically in the Aird Unit and the learning centre. We noted in this regard that Ms Gosling, who had the same contract as the claimant, was also required to teach ASL for 50% of her time. There was a clear rationale for this, namely that both the claimant and Ms Gosling had ASL contracts, so it could not be said that the claimant was being singled out. Further, while the claimant had a particular issue about teaching in the Aird Unit, which is a unit for young people with particularly complex needs, and that Ms Gosling had not required to work in the Aird Unit, we heard that Ms Gosling had a particular specialism in dyslexia which meant

that it was more appropriate for her to be deployed in the learning centre. Further, the rationale for this decision was the efforts of Ms Reid to avoid having to redeploy Ms Aston. While Ms Reid may be criticised for not first having checked the contracts of those teaching in the English department, once Ms Reid became aware of this, she saw a way of retaining Ms Aston.

173. This situation came about because the claimant had an ASL contract. It does appear that there may have been a failure in 2013 to ensure that there was a formal amendment to the contract, but we accepted that was a mistake. We accepted that no purpose would have been served to interview the previous headteacher about that and we accepted the rationale of Mr Thin about why that was not appropriate. In any event, the claimant herself accepted that the mistake over the contract was not the fault of Ms Reid, and the position was confirmed by staff in the education directorate in Dumfries, independent of Ms Reid.

174. We did not accept that the evidence supported the claimant's assertion that Ms Reid's discovery about the claimant's ASL contract became "a stick to beat the claimant with". Rather we accepted Ms Reid's evidence that the reason for asking the claimant to teach at the Aird Unit and the learning centre was in an effort to avoid making one of the English teacher's surplus; and for 2021/22 because of the skill set of the whole ASL team based on discussions with Ms Strachan; and because Ms Reid and Ms Strachan were impressed by the way the claimant had performed there in the previous session. We noted that adjustments were made to the claimant's timetable at her request and further training arranged. We also accepted Ms Reid's rationale about why she had deployed Dr Ross Marshall to teach chemistry as well as ASL.

175. We noted too from the evidence we heard from Mr Thin and Mr Hill that they were entirely in agreement with Ms Reid regarding the deployment of the claimant to teach children with ASN; regarding the fact that the contract had not been amended; regarding the fact that a teacher's contract with a specified subject area did not mean that she could not be redeployed in another subject; that there was no requirement for those teaching ASL to have

a specialist qualification. Ms Reid checked all of these matters at the time, and her decisions were endorsed by the education directorate.

176. Mr Eadie stressed in submissions that in his view the claimant's contract had changed as a matter of law, relying as we understood it on custom and practice. Whether that is right however is nothing to the point. The evidence of Mr Thin was that the claimant could be required to teach any subject, including ASL, notwithstanding what her contract said. Ms Reid in any event was operating on the understanding that the claimant had an ASL contract.

177. Indeed, we noted that Mr Thin thought that Ms Reid should agree to the contract change, because he thought that might relieve some of the stress which the claimant said she was under. His evidence was that would make no difference in any event. He stressed in evidence that it did not matter what her contract said because the headteacher could still deploy teachers wherever deemed appropriate to suit the requirements of the school.

178. Ms Reid however did not agree to the contract change. This was the only evidence where it might be said that Ms Reid treated the claimant in a negative way. Her rationale for that was that she would be seen to give in to what she saw as the claimant's tactics to try to force her hand, for example by going off with work related stress. Rightly or wrongly, Ms Reid decided not to agree to the contract change for that reason. There is thus an explanation for this conduct which is not related to the claimant's beliefs.

179. We have said above that one of the reasons the claimant and other staff came to certain conclusions was because of their limited understanding of these background facts. Even Ms Aston came to believe that Ms Reid had threatened to declare her surplus to force the claimant to agree to work 50% on ASL, so that Ms Aston would get to keep her job. Along with the other teachers, she accepted that she had speculated about the rationale for the decisions and timing of decisions in regard to this matter, without having all the relevant background knowledge.

180. Clearly the claimant came to believe that Ms Reid's decision to deploy her as an ASL teacher 50% of her time was to treat her less favourably than others.

However, even if that could be said to be the case, we accepted that there was a logical rationale for that treatment, which was not solely the decision of Ms Reid, but which was influenced by other teachers such as Ms Strachan and others in the SLT as well as employees in the education directorate. The claimant herself recognised this (see paragraph 73).

181. We accepted that rationale and we were clear that any treatment of the claimant had nothing whatsoever to do with her beliefs. This is not least because we have concluded above that Ms Reid was not aware of the claimant's belief. We cannot therefore say that the "reason why" the claimant was treated as she was, or believed that she was less favourably treated, was because of her belief.

182. It appeared to us that the explanation for any exchanges between the claimant and Ms Reid can be put down to a clash of personalities and more particularly a clash of teaching and learning styles as well as the approach to discipline.

183. There was no evidence to suggest, either taken separately or as a whole, that any of these differing views or standpoints or attitudes were anything to do with the claimant's beliefs or how Ms Reid responded to them. It was clear from Ms Reid's evidence that these were her views about what strategies she should have in place, based on her previous experience in eight schools and more recently in senior leadership posts for which she had a very clear and evidenced rationale.

184. Although Ms Reid's headship style is not a relevant factor for this Tribunal to consider, we did note that the other teachers called by the claimant took issue with her management style. For example, Ms Livingstone in particular, criticising Ms Reid and indeed the senior management team at the time, said that "I felt I had a target on my head". We know that Ms Livingstone is an SNP supporter, and we understood that Ms Reid knew that she was an SNP supporter because of the joke during the retirement speech, which the claimant relied on to support her own case that Ms Reid was aware of her views.

185. This is relevant to this extent: it reinforces our conclusion that any treatment of the claimant at the hands of Ms Reid, perceived or actual, was nothing whatsoever to do with her beliefs.

186. Our views are further reinforced by the fact that the claimant made no allegation at any time during her interactions with Ms Reid (or with others in the education directorate) that Ms Reid was treating her the way that she was or perceived had anything to do with her belief that Scotland should remain part of the UK as opposed to being independent or how to achieve social justice.

187. As Ms Sutherland pointed out, no grievance was lodged by the claimant raising any concerns about being discriminated against by Ms Reid because of her beliefs. This suggests that the claimant had no suspicions at the time that any treatment perpetrated by Ms Reid or any of Ms Reid's responses to her contributions was to do with her belief. Indeed, by the time of the preliminary hearing on 30 March 2022, the claimant's position was that the only so-called "Madarassay factor" that she relied on was that the protected characteristic was "the only logical explanation" for the treatment.

188. As Ms Reid said, in seeking to understand the claimant's perspective, the claimant only saw one piece of the jigsaw whereas Ms Reid had the whole picture. When that "whole picture" is described, it is clear that there was no "personal vendetta" as the claimant suggested at the time. There was a clear rationale for Ms Reid's actions, that is that there is perfectly logical alternative explanation for her actions; and that had nothing whatsoever to do with the claimant's belief.

Harassment

189. The claimant claims that she suffered harassment at the hands of Ms Reid. Section 26 of the Equality Act 2010 states that a person harasses another if they engage in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating their dignity or creating an intimidating, hostile, humiliating or offensive environment.

190. While we have concluded above that Ms Reid did not know that about the claimant's belief, we were aware that the language of this provision, that the conduct was not "because of" but "related to" a relevant protected characteristic. Thus, while knowledge of a person's beliefs might be expected, lack of knowledge is not fatal to a claim of harassment.

191. Further, as discussed above, we have taken the view from an objective standpoint that none of the treatment meted out to the claimant could be viewed as less favourable, but we were aware that these provisions relating to harassment incorporate a subjective element.

192. Clearly, as described above, given that we have concluded that any treatment was not less favourable or even unreasonable, we conclude that there was no intention on the part of Ms Reid to violate the claimant's dignity or create an offensive environment, that is that was not Ms Reid's intended purpose.

193. However, even if that were not Ms Reid's intended purpose, when assessing whether or not the conduct described had that effect on the claimant, we are required to consider the claimant's perception of the behaviour, whether it was reasonable for the claimant to believe the conduct had that effect and all the circumstances of the case.

194. We were inclined, for the reasons set out above, to conclude that the claimant could not genuinely have believed that the treatment she received from Ms Reid violated her dignity or created an offensive environment. However, even if it did, we could not accept that it would have been reasonable for the claimant to assert that the conduct had that effect. We heard evidence from the parent council office bearers that they saw no evidence at all of inappropriate treatment of the claimant by Ms Reid. There was no suggestion of that at the inset day and any evidence about inappropriate behaviour on the part of Ms Reid at the behaviour policy meetings was that it was not directed only at the claimant. On the contract change, we accepted that the failure to change the contract at the time was simply an oversight or mistake and that the education directorate staff position was that there was no obligation on them to amend the contract when requested in 2020. To the

extent that it was argued that Ms Reid's insistence that the claimant teach 50% ASL and her refusal to guarantee a change in the next session violated her dignity or created an offensive environment, again there is no evidence to support such a conclusion. This is not least given the rationale for the decision, that this accorded with the views of Ms Strachan and SLT, and the efforts made through consultation to address the claimant's concerns.

195. There was in any event no inherent connection between any treatment of the claimant and her beliefs such that it could be said in any event that any conduct was "related to" her beliefs, even if we had found that her belief was a qualifying belief.

Was the claimant's claim lodged out of time?

196. The respondent argues in any event that the claim is lodged out of time.

197. This matter is only relevant if the claimant could have persuaded us both that her belief was protected and that she was discriminated against, or harassed, because of that belief.

198. The respondent argued that the last time the claimant spoke to Ms Reid was at the meeting on 24 June 2021. Ms Sutherland argued this is the last act of discrimination and that if the claimant argues that there was a course of conduct then it ended at that time. She submitted that there was no act alleged by Ms Reid after that date which could be said to be acts of harassment.

199. Given that the claim was not intimated to Acas until 25 October 2021, which was more than three months after the last act of discrimination, the claim was lodged out of time, she submitted.

200. Ms Sutherland argued that it was not just and equitable in this case to receive the claim late, relying on the Keeble factors. She argued that the cogency of the evidence had been affected and that the claimant had suffered prejudice in having to defend this claim given the passage of time. While the claimant went off work with stress, it was some time before that she says she became aware that she was being discriminated against.

201. We came to the view notwithstanding that the claim was not lodged out of time. We accepted Mr Eadie's submission that any alleged harassment would have to be viewed as a continuing act, given the impact of the claimant in suffering work related stress as a consequence of the treatment she perceived she had been subjected to at the hands of Ms Reid. We noted the reference to Ms Reid in the claimant's e-mail of 5 November 2021 and that discussions took place regarding the claimant's stress at work complaint on 9 November 2021. The claimant having lodged her claim on 5 January 2022, and the time limit being extended to take account of six weeks of Acas conciliation, we accept the claim was not time barred.

202. Had we otherwise found that this claim succeeded, we would not have concluded that it was out of time. In any event there was clearly no prejudice to the respondent in being required to defend the claim, given the extent of evidence led by the respondent's witnesses.

Conclusion

203. The claimant's belief, specifically that "Scotland can only ensure social justice by remaining part of the UK as opposed to being independent" does not amount to a protected philosophical belief. In any event, the claimant has not otherwise succeeded in establishing that she has been discriminated against or harassed because of her beliefs. This claim is therefore dismissed.

Employment Judge: M Robison
Date of Judgement: 23 November 2022
Entered in register: 09 December 2022
and copied to parties