



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs L Elliot

**Respondent:** Cornerways Children Services Ltd (1)  
Viv Spence (2)

## REASONS

(requested by the claimant on 26.5.22)

1. These are the written reasons for the Tribunal's Judgment dated 13 May 2022, sent to the parties on 21 May 2022, dismissing all claims.
2. The Claimant describes herself as a Black British female of Afro-Caribbean origin.
3. The claimant brings claims of race victimisation, unfair dismissal and breach of contract. All claims are resisted by the respondent.
4. We heard from the claimant. The claimant also presented 4 witnesses (A. Flynn, B. Taitt, K Nulty, S,Qureshi) Their evidence was not relevant to the issues in the case and therefore carried little or no weight. On behalf of the respondents we heard from Viv Spence, Director (R2); Emma Slaughter, Consultant Head Teacher; Sam Swinstead, HR Consultant; and Rachel Goodman, External HR Consultant. The parties presented a joint bundle of documents running to 419 pages. References in square brackets are to pages within the bundle.
5. The law in relation to these claims is set out in the respondent's Note of the Law. The issues were identified at a case management hearing on 20 April 2021 [5]

### Findings of Fact

6. The First Respondent (R1) runs Cornfield School, an independent school for girls aged 11-19 with special needs. The Second Respondent (R2) is the proprietor of the School.
7. The Claimant commenced employment at the School on the 7 September 2015. Initially, this was as a full-time Teaching Assistant (TA) [94-95] but in March 2017, the role changed to a dual role of Teaching Assistant and Deputy Designated Safeguarding Lead (DDSL) The role was split so that she worked 2 days in the TA role and 3 days as DDSL [150] The Designated Safeguard Lead (DSL) at the time was Ina King, the Deputy Head Teacher.

8. From September 2017, the claimant acted up in the role of DSL to cover the sickness absence of Ina King. For part of this time, R1 paid the claimant an honorarium of £250 per month. The claimant received 5 months' worth of honorarium payments, the last of these in January 2018. In February 2018, the claimant received a pay rise. R1 told us that this replaced the honorarium payment. In cross examination, the claimant said that she understood the pay increase in February 2018 was to compensate for the fact that she would not receive any further honorarium payments. We are therefore satisfied that the claimant knew that the honorarium payments would no longer be paid. Nevertheless, the claimant now claims an entitlement to honorarium payments for the period June 2019 to March 2020. I will come back to this later.
9. In December 2018, the claimant was offered the DSL role on a permanent 3 day basis, while continuing to do the TA role on a 2 day basis. [ 146 & 148] She was advised that all other terms and conditions remained unchanged. Hence there was no further pay rise associated with this.
10. On 1 May 2019. Ofsted carried out an unannounced inspection of the school. There then followed a report in which the overall outcome of the inspection was that the school did not meet all of the independent school standards. In particular, it found that there were weaknesses in the safeguarding arrangements which had the potential to put pupils at risk of harm. For our purposes, one of the key criticisms was the fact that the then current DSL was not a member of the senior leadership team and did not have sufficient seniority to carry out some of her responsibilities. That was a reference to the claimant [131]
11. Most of the pupils in the school are placed by local authorities and a number are in the care of the local authority. The school has capacity for 25 children and at the time of the inspection, had 21 children. Surrey County Council demanded swift action by the respondents to rectify the shortcomings identified and indicated that they were not prepared to place or refer any pupils at the school and would withdraw others unless there was a rapid turnaround of the situation.
12. On 20 June 2019, the respondent informed the claimant that from September 2019, they proposed to make the DSL role a full time post, working at school 5 days a week. This was offered to the claimant at an increased salary of £33,000 p.a. and she was placed on a newly created second-tier senior leadership team (SLT), presumably to address the criticisms in the Ofsted report. [129]
13. On 26 June 2019, the claimant wrote to the respondent saying that she was currently not happy to accept the offer under the stated conditions as there were some unresolved and ongoing issues [359]
14. In order to address, what was described in evidence by R2 as "an absolute crisis", in August 2019, Emma Slaughter was appointed as a Consultant Headteacher to manage the existing Head Teacher, Jayne Telfer, following the safeguarding concerns expressed by Ofsted and Surrey CC. Ms Slaughter was an expert in school turnarounds and part of

her remit was to review the structure and revise policies to ensure that they were fit for purpose.

15. On 22 August 2019, Ms Slaughter wrote to the claimant withdrawing the offer of a full time DSL post. The reason given was the claimant's rejection of the role on the terms offered and the need to have someone in post by the start of the academic year who was a member of the SLT. [362].
16. By a letter dated 3 September 2019, the claimant was informed that she would revert to her previous role (i.e. the one she was appointed to in March 2017) of TA and DDSL although in error, they referred to the split as 2 days DDSL and 3 TA when in fact, it should have been the other way round. The error was subsequently acknowledged. There was no reduction in pay [ 141].
17. Although the claimant complains that this was a unilateral change and therefore potentially a breach of contract, she took the role and remained in it until her eventual redundancy. Therefore, to the extent that there was a breach, it had been affirmed by her performing the role rather than resigning.
18. The DSL role was absorbed as part of the Head Teacher's responsibilities.
19. In October 2019, David Wheatley replaced Ina King as the deputy head. His role was to cover the days when the Head Teacher was not in school. That would include covering any safeguarding issues.
20. On 24 October 2019, the claimant raised a formal grievance. The claimant relies on this as her first protected act. There were 7 separate heads of complaint, one of which is headed "Discrimination". The focus of this complaint is around the claimant being singled out in respect of the removal of the DSL role, the fact that the May offer did not include a place on the SLT and an allegation that she had been subjected to an unwarranted attack on her professionalism. The claimant does not refer to a specific protected characteristic [115-125]
21. A grievance meeting followed on 14 November 2019, conducted by R2. Also present was Ms Slaughter and someone from HR. We have viewed the notes of the meeting, and although they record a discussion about the allegation of discrimination, there is no specific reference to race being the protected characteristic. [ 156-171] Indeed, when asked in cross examination whether at the meeting she raised the issue of race discrimination, the claimant accepted that she had not defined her complaint in those terms. R2 in her oral evidence said that she recalled that the grievance included a complaint of race discrimination. However, we do not consider that evidence reliable. We say that because we did not consider R2 to be an accurate historian of events. She was unable to recall many events associated with this claim even though she has had ample opportunity to refresh her memory. Further, if race had been raised, we believe it would have featured in her grievance outcome letter, which it did not. In our view, it is likely that R2 has conflated the grievance with the grievance appeal, which did include a race complaint.

22. On 9 January 2020, R2 wrote to the claimant with the grievance outcome. The grievance was substantially rejected [ 102-104]
23. On 22 January 2020, the claimant appealed against the grievance outcome. This time, the claimant made specific reference to race discrimination [ 185 ]. The appeal was unsuccessful. The claimant relies on her appeal letter as her second protected act.
24. In January 2020, the Head Teacher left the school and the role was assumed by Ms Slaughter. By that time, the number of pupils in the school had significantly reduced and Ms Slaughter was spending about 1 hour a day on safeguarding. It was therefore considered that there was no longer a need for a DDSL as the full remit of the DSL could be adequately fulfilled by the Head and Deputy Head.
25. On 16 March 2020, the claimant was invited to a meeting with Ms Slaughter at which she was advised that her role was at risk of redundancy. The meeting was the start of the consultation process. At the meeting, the claimant was offered an extension of her TA role to 5 days a week as an alternative, whilst giving her the option of working reduced hours, if she preferred. [260-261]. The claimant rejected that offer. A second and final consultation meeting took place on the 25 March 2020. The claimant was advised that as there were no viable alternative roles, she was to be made redundant. This was confirmed by letter on 30 March 2020 [ 285-286]
26. The claimant appealed against her redundancy. The basis of her appeal was that there was no genuine redundancy and that her dismissal was unfair [ 287-288] The appeal was heard by Rachel Goodman, an external HR consultant and the outcome was that the decision to dismiss was upheld.

### Conclusions

### **Victimisation**

#### *Did the claimant do any protected acts?*

27. In relation to the first grievance, race is not specifically raised either in the written grievance or in the minutes of the hearing. Nor was it reasonable for the respondent to conclude that it was a race complaint. However, in relation the second grievance, race is specifically referred to and we are therefore satisfied that this was a protected act.

#### *Was dismissal because of the protected act?*

28. It is not sufficient for the claimant simply to show that she has done a protected act and that she has suffered a detriment at the hands of the respondent. She must also show that there is evidence from which a tribunal could infer a causal link. Where such evidence is found, it will then fall to the employer to prove that the protected act was not the reason for the treatment.
29. The claimant relies on the timing of the decision to dismiss her, which was shortly after the outcome of her grievance appeal. That on its own is not enough, there needs to be

more. She also contends that in September, when the issue of restructuring was raised at the start of term, redundancies had not been contemplated.

30. Ms Slaughter told us that she knew of the potential for redundancies back then but she did not know where they would occur and there were more pressing issues at that stage, the main one being implementation of the action plan in order to turn the school around. She was also unaware of the volume of work coming through on safeguarding. She told us that she needed to make sure she had a good understanding of the needs of the children before she could confidently say that she was making someone redundant. She went on to say that by February 2020, they were making headway with the action plan and she was by then in post as the Head Teacher, she had a better understanding of the school's requirements. We accept that evidence and are satisfied that it explains the timing of the decision.
31. The claimant has not proved a causal link between her dismissal and her grievance about race. The victimisation claim therefore fails

### **Unfair Dismissal**

#### **What was the reason for dismissal?**

32. We are satisfied that the claimant was dismissed by reason of redundancy. The claimant's contention that the redundancy was a sham was predicated on her victimisation allegation, which we have rejected. The absorption of the DSL role by the Head Teacher and Deputy Head meant that there was no longer a need for a DDSL. This meets the definition of redundancy under section 139 of the Employment Rights Act 1996 i.e. that the requirements for a person to carry out work of a particular kind has ceased or diminished.

#### **Was dismissal in all the circumstances fair?**

33. In considering fairness in the context of a redundancy dismissal, the three areas that are relevant are selection, consultation and, as part of that, steps taken to find suitable alternative employment.
34. Generally, a selection pool would be established where there are employees with the same skills doing similar roles and where there is a degree of inter changeability. However, in this case, the claimant was the only person undertaking the dual role of TA and DDSL. In her appeal letter, the claimant seems to suggest that as her role was a dual one, other TAs should also have been placed at risk. In our view, the respondent was entitled to treat her as a pool of one, given that other TAs did not have safeguarding as part of their role, which was the element of the role that was no longer needed to be undertaken by her.

#### **Was there adequate Consultation?**

35. The next matter that we looked at was consultation. We have heard evidence that there were two consultation meetings. We are satisfied that the respondent adequately consulted with the claimant on her position. The reason why her job was redundant was explained and she was given an opportunity to put forward alternative proposals. As

well as the 2 consultation meetings, there was communication between the claimant and the respondent by email in which the claimant's queries and proposals about the redundancy were responded to [276].

*Were reasonable steps taken to find Suitable Alternative Employment?*

36. There was an offer of alternative employment which the claimant decided not to accept. There were no other viable employment opportunities within the school. In the circumstances, the steps taken by the respondent were reasonable.
37. In all the circumstances, we consider that dismissal was fair.

**Breach of Contract**

38. The claimant contends that the honorarium payment of £250 a month was a contractual entitlement and this is the basis of her breach of contract claim. The respondent on the other hand contends that it was discretionary. The letter confirming payment of the honorarium, dated 12.12.17, refers to the payment as a "Goodwill Honorarium". This suggests to us that it was a discretionary payment rather than a contractual one and there are no contractual documents to the contrary [97].
39. Even if the payment had been contractual, it was linked to the claimant's role as acting DSL and would therefore have ceased once that role ended in December 2018. There is therefore no basis for the claim for payment for the 11 months between June 2019 to March 2020 as the claimant was not acting up during this period. This claim is not made out and fails.

**Judgment**

40. The unanimous judgment is that all claims fail and are dismissed.

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Employment Judge Balogun  
Date: 29 December 2022