Case No: 1805209/2021 and 1801640/2022

EMPLOYMENT TRIBUNALS

Claimant: **Ms Louise Lewis**

Respondents: **(1) The North Huddersfield Trust**

(2) Mr Andrew Fell

Heard at: **Leeds**

On: **30 January - 3 February, 6-10 February, 10-12 and 14 July and (deliberations only) 17-18 July 2023**

Before: **Employment Judge Maidment**
Members: **Ms JL Hiser**
Mr K Smith

Representation
Claimant: **Mr S Brittenden, Counsel**
Respondents: **Mr A Johnston, Counsel**

RESERVED JUDGMENT

1. The claimant's complaints of victimisation against the first respondent in respect of the act of suspension and her dismissal (but not in respect of suspension being open ended and unreasonably lengthy) are well founded and succeed.

2. The claimant was unfairly dismissed by the first respondent. Any basic and compensatory award shall be reduced by a factor of 50% to reflect the claimant's conduct prior to dismissal.

3. The claimant's complaints of direct race discrimination and harassment against the first and the second respondent fail and are dismissed.

4. The claimant's complaints in respect of the following alleged detriments are dismissed upon her withdrawal of them: refusing to meet the claimant when she requested on or about 3 or 4 December 2019, advising Mrs Goodwin that they should not have the claimant representing her, contacting the NEU and asking whether it was appropriate for the claimant to be a union representative, attempting to persuade colleagues not to have the claimant represent them in any grievance or disciplinary meetings in February 2020, replying to the claimant in an email on 23 June 2023 in a derogatory manner, publicising the claimant's dismissal and failing to consider her appeal against dismissal.

5. A remedy hearing shall be listed with a time estimate of 1 day. The parties are referred to the tribunal's findings as to the suspension and dismissal of the claimant had there been no acts of victimisation.

REASONS

Issues

1. The claimant was employed by the respondent as a teacher. The second respondent, Mr Andrew Fell, is its head teacher. The tribunal uses the term "respondent" to refer to the first respondent save where the contrary is indicated.

2. The events which form the basis of the claims in these proceedings commenced with the claimant, in her distinct role as a union representative, sending to all staff an email which gave inaccurate information about terms and conditions in respect of part-time directed hours for teachers. This led to a meeting between the claimant and Mr Fell. The claimant considered that Mr Fell's treatment of her might be categorised as bullying and harassment. Mr Fell disagreed.

3. The claimant's narrative is that, thereafter, Mr Fell avoided meeting her, including in her capacity as union representative. She was monitored in order for the respondent to find matters relating to her conduct which could be raised against her, leading in turn to a lengthy disciplinary process. An important background to many of the events is the coronavirus pandemic and how it affected the operation of schools. The claimant, over a period, raised a number of issues regarding the health and safety considerations involved and risk assessments.

4. Further allegations of misconduct were made against the claimant. Whilst it had been determined that such issues would be dealt with through a formal management meeting (rather than through a process which could lead to a disciplinary sanction) due to the pandemic, they were then to be pursued through a formal disciplinary process. The claimant was suspended from work.

5. The claimant raised a grievance. Both the grievance and disciplinary complaints were determined after relevant hearings up to and finally at appeal level.

6. There was then a consideration by the respondent that there had been a breakdown in relationships between the claimant and the senior leadership team. The claimant was ultimately dismissed.

7. The claimant, whilst unaware at the time, became aware subsequently through a subject access request, that Mr Fell had characterised her behaviour at the early meeting, when she referred to bullying and harassment, as rather accusatory and aggressive. This caused the claimant to believe that she was being stereotyped as an "angry black woman". That caused/contributed to the claimant forming a belief that many aspects of adverse treatment of her was because of or related to her race. The claimant describes herself as being of black heritage.

8. Pursuant to the claimant's first tribunal application lodged on 6 October 2021 (case no. 1805209/2021), she brings claims of, in the alternative, harassment and direct race discrimination against both respondents. These are set out, as annexed to these reasons, in the list of detriments prepared on behalf the claimant as part of these proceedings and agreed by the respondent as those issues which are for the tribunal's determination. The annex to these reasons refers to the relevant paragraph numbers of the claimant's grounds of complaint where they were originally pleaded. A number of originally alleged detriments have not been pursued and were withdrawn during the course of proceedings. These included: refusing to meet the claimant when she requested on or about 3 or 4 December 2019, advising Mrs Goodwin that they should not have the claimant representing her, contacting the NEU and asking whether it was appropriate for the claimant to be a union representative, attempting to persuade colleagues not to have the claimant represent them in any grievance or disciplinary meetings in February 2020, replying to the claimant in an email on 23 June 2023 in a derogatory manner, publicising the claimant's dismissal and failing to consider her appeal against dismissal. The rather convoluted claim of aiding and instructing discrimination added nothing and has not been separately argued on the claimant's behalf.

9. In addition, the claimant brings, in her second claim lodged on 30 March 2022 under case no. 1801640/2022, a complaint of victimisation against the first respondent in respect of the decision to suspend her, the suggested open ended and unreasonably lengthy suspension and the decision to terminate her employment. The protected acts originally relied on were the claimant raising a grievance on 9 October 2020 and her commencing of these tribunal proceedings on 6 October 2021 (case number 1805209/2021).

10. A further basis for the complaint of victimisation was allowed to proceed by way of amendment. In granting such amendment the tribunal has allowed the claimant also to argue that, as from 16 September 2020, the respondent believed that the claimant may do a protected act. It is then alleged that the decision to suspend the claimant was because of that belief. The amendment allowed relates to that detriment alone. The tribunal now records its reasons for allowing such amendment which have engaged the principles set out in the case of **Selkent Bus Company Ltd v Moore 1996 ICR 836**. The claimant's application to amend had been opposed by the respondent.

11. The grounds of complaint in the second claim included as a form of protected act a suspicion that the claimant would complain of unlawful discrimination. The detriments pleaded do not refer explicitly to the act of suspension but to the claimant suffering an open ended and unreasonably lengthy suspension. However, the claimant does refer to suffering this from October 2020. She was suspended on 1 October 2020. That would therefore seem to be a complaint about suspension from October 2020 in circumstances where that suspension could not at that point have become open ended and unreasonably lengthy. Therefore, a claim can be discerned which relates more generally to the act of suspension, not just to its open-ended and lengthy nature.

12. The claimant could and should have made the claim explicit. The respondent reasonably did not understand the claim in the way it is now put. The claimant herself undermines her own argument as to the meaning of the detriment when she says that she was not aware of the complaint until the tribunal disclosure process. If this was, contrary to the tribunal's conclusion, a new claim, it is brought outside requisite time limits, but, even then, that is only a factor for the tribunal to consider.

13. The amendment is raised at a very late stage, another factor against allowing the amendment.

14. The crucial issue, however, is the balance of prejudice. The claimant complains already about the suspension as an act of discrimination, but would be unable to say it was a reaction to a belief that she was going to complain of discrimination. The respondent would be facing an additional claim if the amendment was allowed. There is an inevitable prejudice therefore to it. However, the respondent has come prepared and able to deal with the reason for suspension. Mr Fell has had to explain it in various internal processes. Mr Johnston very fairly accepts that, if this is a new allegation, the respondent can deal with it evidentially. The tribunal is of the view that the balance of prejudice is in favour of allowing the claimant to rely on her assertion that the respondent believed she would do a protected act and the act of suspension as an act of detriment. Mr Fell or any other of the respondent's witnesses may legitimately be asked supplementary questions on the point if necessary or may otherwise provide supplemental witness statement evidence.

15. The tribunal notes that at no stage in these claims does the claimant relate any of the alleged detriments to her activities as a union representative or the fact that, in raising a number of the safety concerns, she might have made qualified protected disclosures. That is surprising, not least in circumstances where, as will be described, a campaign was pursued in support of the claimant which variously referred to her as ill-treated for being a union representative and/or raising safety concerns. The claimant has told the tribunal that she came to a realisation that the treatment she experienced was not by reason of her being straightforwardly a union representative, but because of her being a black union representative.

16. The claimant finally brings a complaint of ordinary unfair dismissal where the respondent relies on some other substantial reason justifying dismissal i.e. the aforementioned breakdown in relationships.

Evidence

17. The tribunal had before it an agreed bundle of documents numbering some 2971 pages. Having identified the issues with the parties and determined that the aforementioned application to amend could be dealt with the following day, the tribunal spent the remainder of the first day of the hearing reading into witness statement evidence and relevant documentation.

18. At the commencement of the second day, Mr Brittenden confirmed on taking instructions which of the detriments were withdrawn as freestanding complaints. The tribunal then heard and determined the application to amend.

19. It was in a position then to commence hearing the claimant's own evidence from 11:30am on the second day. Ms Lewis continued her evidence until the end of day 5. On day 6 the tribunal heard, on the claimant's behalf, from Mr Steven McManus, head of PE, interposed in the middle of the claimant's cross-examination, which concluded at 12.45pm on day 7. The tribunal then heard, on behalf of the respondent, from Mr Fell, head teacher, through to 1 pm on day 8. At 2.15pm, after an extended break, the tribunal was told that Mr Fell was prepared to carry on, but in an emotional and distressed state against a background of a serious incident enquiry which was ongoing in respect of a fatality at the respondent school. Mr Fell's distress had been evident already at times to the tribunal and the decision was taken that it could not continue to take evidence from him in the interests of justice in his current state of mind.

20. On day 9, the tribunal then heard, on behalf of the respondent, from Mr Matthew Schofield, deputy head teacher and from 2.11pm on that day from Mr Philip Weston, chair of governors. His evidence continued and concluded on day 10.

21. The tribunal was forced to adjourn part heard and resumed hearing evidence from the respondent from Monday 10 July, day 11. On that day Mr Fell's cross-examination was completed. On day 12, the tribunal heard from Hamira Shah, assistant head teacher from September 2019 before a promotion to a deputy head teacher position in May 2022. She was followed by Melanie Hudson, one of the respondent's governors from May 2019 until February 2022. On day 13. the respondent's evidence was concluded by the tribunal hearing from Mr Carl Sykes, a volunteer trust director of the respondent and Ellen Walker, director of a third-party consultancy, Advanced HR Solutions Ltd and until 31 August 2022 a trustee of the Rose Learning Trust in Doncaster.

22. The claimant had intended to call Sophie Simpson, a governor and trust partner, of the respondent but determined not to do so and did not place any reliance on the typed witness statement which had been submitted on her behalf. The respondent had intended to call Lindsay Taylor, Mr Fell's PA. She had attended the tribunal briefly during the first part of the hearing, but the tribunal had since been told that she was unwell. Whilst fit and attending work during the second part of the hearing, the tribunal was told that she was of a nervous disposition, there were concerns about how she would be affected by giving evidence before the tribunal and the decision had been taken not to call her despite her being, during this period, sufficiently fit to be attending her workplace. Her signed statement was accepted as evidence, albeit significantly less weight could be given to it in circumstances where she was not present to be challenged on it. The tribunal did not sit on 13 July, but heard submissions from counsel on 14 July which were taken in conjunction with written submissions provided to the tribunal earlier that morning. Both Mr Brittenden

and Mr Johnston are to be commended for their professionalism and the manner in which they have conducted themselves with due appreciation of the sensitivity of others in what would otherwise have been a much more difficult case to hear. They have both greatly assisted the tribunal.

23. Having considered all relevant evidence, the tribunal makes the factual findings set out below. Whilst there were some significant factual disputes between the parties, the tribunal has found it necessary to refer extensively to evidence given by various witnesses, the analysis of which has been necessary to determine in many instances what was in the mind of relevant decision makers.

Facts

24. The claimant was employed at the respondent secondary school as a physical education teacher. She reported to the head of PE, Mr McManus – the claimant had previously (for 5 years) shared that role with him. Mr McManus was a curriculum/middle leader, whose management role would be in conjunction with a member of the SLT. Whilst he could deal with staff performance issues, they would be more led by the SLT. There were 2 other permanent teachers in PE, Mark Allison and Laura Bunn. Mr McManus reported to Ms Shah, an assistant head teacher, who was then replaced as the person responsible for the PE department by Mr Schofield in Summer 2020. The claimant was also a local elected representative of the National Education Union ("NEU"). The claimant worked part-time from Monday – Thursday each week. Mr Andrew Fell commenced as the respondent's head teacher at the start of the 2019 summer term, shortly after the claimant returned after a period of maternity leave.

25. The SLT comprised of 6 people including Mr Fell and the deputy and assistant head teachers. Ms Shah, amongst others, accepted that the team was "close knit".

26. The respondent is an extremely racially diverse school, particularly in terms of its pupils and the community it serves. It operates a detailed equality policy, with definitions of different forms of discrimination, finalised after consultation between its governors and the SLT. It provides that it is the role of the head teacher to ensure that the policy was complied with.

27. The claimant's union role involved her in supporting individual members employed by the respondent and also in promoting an appropriate working environment and policies. Issues such as terms and conditions of employment were dealt with by the union at district level given their access to legal advice. For instance, a restructure in support and then teaching staff shortly after Mr

Fell arrived involved him interacting with the union at district, not local, level. The tribunal has seen correspondence between union officials dated 3 December 2019 referring to Mr Fell as an inexperienced head in his first headship but being "okay". He was described as being closer to the union on the use of data than many head teachers.

28. Mr Fell's uncontested evidence was that the previous head teacher had held half-termly meetings with local union representatives. This differed from his previous experience at other schools, where such meetings had been more ad hoc and he did not necessarily see the need for such regular meetings. He saw local school representatives as relevant in discussions about the school calendar and where individual employees might be seeking support. However, he considered that other matters, such as policy reviews, were more appropriately conducted at district level. In particular, during the coronavirus pandemic, he considered that the unions at district level could help the school's understanding of the wider picture and ensure a consistency of approach. There was an opportunity to share good practice at that level. Unless a matter involved purely an individual employee's concern, he tended to communicate directly to all staff. His evidence is accepted and borne out by written communications

29. Leaving to one side the claimant's union duties, Mr Fell agreed in cross-examination that it would be rare for him to need, in any term to meet with the claimant, as a teacher, on a one-to-one basis. He said, however, that there was always the need for there to be an opportunity for him to speak to people on a one to one basis, as applied also to other members of the SLT.

30. The claimant agreed that she had had no issue with Mr Fell prior to 2 December 2019. Prior to that date she agreed that there had been nothing negative in his interactions with her and no difference in treatment due to the claimant's race. The claimant agreed that they had worked very well together in 2 or 3 meetings on the issue of directed hours for part-time staff.

31. On 27 November 2019, the claimant, in her capacity as local NEU representative, sent an email to all staff, copying in Mr Fell and Jackie Bates, a local teachers' representative of another union. In this she referred to those meetings part-time staff could be required to attend. She referred to her and Mr Fell having spent time creating a spreadsheet to calculate additional hours a part-time employee might be required to work to avoid less favourable treatment than full-time equivalent employees. She provided example calculations of hours in which a part-time worker might or might not be legitimately directed to attend work.

32. The respondent has always accepted that the email was sent to all staff, rather than just union members, as a genuine error on the claimant's part. Mr Fell accepted that there was nothing objectionable in its tone but said to the tribunal that the tone was not in the spirit of discussions which had been taking place. The communication was not, he considered, accurate. The claimant dos not disagree that it was inaccurate.

33. Within a couple of hours of sending this email, Lindsay Taylor, Mr Fell's PA, sent him a message saying that the claimant had "misrepresented the training days". The evidence is that Mr Fell only properly considered the claimant's communication on the afternoon of Thursday 28 November, a day, still, on which the claimant was working. Mr Fell's evidence was that he had issues with the communication, but thought that the quickest way to clarify his position would be at the Friday morning staff briefing. – if the matter had been viewed more seriously, he said that he would have spoken to the claimant first. When asked in cross-examination why he had not contacted the claimant he said that he could have and "hindsight is wonderful".

34. A staff meeting took place early on the morning of Friday 29 November, a non-working day for the claimant. It was attended by around 80 staff members. At the time, such briefings took place each Monday, Wednesday and Friday, although since they have become twice weekly. At this briefing, a number of issues were communicated to staff. They included the statement that teaching staff should disregard the email sent out by the claimant earlier that week. Mr McManus told the tribunal that there was some visible incredulity amongst staff at how the claimant's message was represented. When interviewed as part of a grievance raised by the claimant, he told Ms Crane of Kirklees HR that Mr Fell's tone was not appropriate, was clearly threatening and that staff were visibly shocked. He telephoned the claimant that day to inform her of what had been said – the claimant told him that others had already contacted her. Mr Fell accepted in cross-examination that he had told the staff meeting that he was going to speak to the claimant about her communication. He said that there was no discernible reaction in the room when he gave his message. The claimant's position was that she could understand why, if he thought her communication to be inaccurate, Mr Fell felt he ought to tell people, but she did not agree with the way it was done. Mr McManus' evidence as to the reaction of some staff is accepted and indeed highly likely. If the communication had been viewed as entirely innocuous, the claimant would not have been contacted about it.

35. The meeting was immediately followed up by an email to all staff from Lorna Wright, business manager, summarising the meeting. This referenced the

requested disregard of the claimant's email saying: "Whilst it was sent with good intentions, it should not have been sent to all staff and is factually incorrect and may cause confusion. Andrew will confirm the correct details but if teaching staff have any queries, please ask Andrew." The claimant was upset that her mistake had been noted such around 100 employees would know about her error and without any prior discussion with her. She had made a genuine mistake (she did not deny that the content of her email had been factually incorrect). She accepted in that the communication should have been sent to (only) union members who had enquired about the issue. Mr Fell told that tribunal that he knew subsequently that the claimant felt undermined, but that had not been his intention. He said he had not seen Ms Wright's email in advance of it being sent out. It reflected what he had said in any event.

36. The claimant maintains that the issuing of this message by Mr Fell was less favourable treatment because of race saying that this treatment only happened in her case. Other staff had at times made inaccurate statements, but it had never been raised in a staff meeting and documented to employees in this manner. It had been sent to around 100 members of staff. This was how it made her feel. The claimant relied on a white teacher, James Turner, as a comparator. The claimant accepted that he was not a union representative. He, as head of year, had emailed staff inaccurately about a parent's evening. The claimant's position was that he was more experienced and knowledgeable than her and should have known better. Not all the members of staff would see that she had made a mistake. She said that no other union representative had ever been treated in this way. The claimant conceded that she was not aware of any other union rep having sent an email to all staff which was inaccurate. She suggested in cross-examination that her own email had been drafted together with Jackie Bates and said that it was from her, but sent on behalf of 2 unions.

37. The claimant returned to work on Monday 2 December having contacted officials of her union over the weekend. She went to see Mr Fell on her arrival at school at around 7:40am. She had written up some notes of points she wished to make to him, which included a definition of harassment in the workplace. Subsequently in cross-examination, the claimant said that she had not written anything down, but took some of her trade union books with her where she had noted/highlighted particular passages defining bullying and harassment. She accepted that, when she went to see Mr Fell, she was already upset.

38. A main area of dispute regarding their conversation is the timing of the claimant informing Mr Fell that she considered that he was bullying her and reading out the aforementioned definition of harassment in the workplace. The claimant told the tribunal that they first had a conversation about how she felt about the email

pointing out her error and that Mr Fell's response was that he was the head teacher and could do as he wanted. Mr Fell denies saying that. The claimant thus considered that her concerns were being dismissed. The claimant said it was then that she gave examples of harassment and went on to explain how he had made her feel. She disagreed with Mr Fell's account that he told her that he was the head teacher and, if information had been given to staff which was inaccurate, he could tell them. Otherwise, the claimant's recollection of the meeting was limited. She referred to it being a "blur in her mind" and described herself as becoming "teary". The conversation she said went on for a few more minutes before she went to the toilet to cry.

39. Mr Fell, in evidence, said that there might have been a preamble to their discussions, but early on in the meeting, the claimant said that she thought that Mr Fell was bullying her and also raised "harassment". He was shocked, he said, seeing her reaction as disproportionate and extreme. He saw there to be some difference between being upset about the announcement and claiming that he was bullying and harassing her.

40. At 11:06am on 2 December, Mr Fell emailed Ms Taylor and Ms Wright with an account of what had happened "to have it on record". The claimant's evidence was that this was not reflective of their meeting. His note referred to the claimant coming to his office and telling him that she felt like he was bullying her. He said that at one point she read a definition of harassment at work as regards her being singled out in such a way. He continued: "Her attitude was rather aggressive and accusatory." He noted that he had explained to her that the email she sent to staff was unsolicited and factually inaccurate and that once he had read it, on the Thursday, he needed to clarify details quickly to reduce any confusion caused. He noted that she said that she had realised that the email should not have gone to all staff. When asked why she hadn't informed Mr Fell about the email, she responded that he could have done the same prior to the staff meeting. He understood that she felt this way but did not agree that this was bullying or harassment. He noted that he had told her that her actions could be seen as misconduct and a matter for a formal disciplinary, but his view was that the email was sent with good intentions as reflected in the announcement he had made. When put to Mr Fell that a reference to disciplinary action was not empathetic and constituted an escalation, he said that given that he had been accused of bullying and harassment, it was a proportionate reaction. He said that he was not proud of the disciplinary action comment, but, at the time, he was totally shocked by the claimant's disproportionate reaction. The claimant, in cross-examination, agreed that this had been said, but not in that context. Mr Fell noted that the claimant proceeded to challenge his assertion that the content of her email was wrong. The claimant told the tribunal that the issue of directed time was not straightforward for part-time workers and said that, as a trade union rep, it was

her job to challenge head teachers. She agreed that her approach had been confrontational, saying that she was very upset and emotional and she wanted to try to clear the air with Mr Fell. She said that she did not accuse Mr Fell of bullying, but rather explained that this was how his actions could be perceived.

41. The claimant told the tribunal that she would never check the content of a message sent to union members with the head teacher in advance. The claimant maintained then that she had not been confrontational and there were racial connotations in his characterisation of her as aggressive - it was “his perception of how black people and particularly black women are… They are accused of being aggressive when they try to be assertive.” His reference to black women as aggressive was stereotyping on his part. She agreed in cross-examination that, if this had been a genuine reflection of the meeting, there would have been nothing wrong in him recording, for example, that she was confrontational, but that was not, she said, “a genuine perception” of the meeting.

42. Mr Fell’s evidence was that, whist there was “no shouting match”, the claimant was really upset and “visibly annoyed”. He said: “Her tone suggested that she was very unhappy with me.” He said that going into a meeting after a matter of fact announcement armed with an ACAS definition was an aggressive act – “I was being accused of something which goes to the core of my character.” Mr Fell said that he was unaware of any racial stereotype when he referred to the claimant’s demeanour. He was unaware until, he accepted in cross-examination, that the allegation of racial stereotyping was upheld in the decision on the claimant’s grievance or at least how that comment might be construed. That had not been his intention. The exact grievance findings are referred to below.

43. The claimant said that Mr Fell had accused another black person, Steve Smith of similar behaviour – someone who had visited the respondent on 2 November 2022 to discuss the use by the community of school facilities.

44. Importantly, the claimant did not see (and was therefore unaware of) Mr Fell’s note which referred to her as having been “rather aggressive” until some months later when she received it as part of a subject access request made in July 2020.

45. On 3 December 2019, Mr Fell wrote to the claimant about her 27 November communication saying it was only acceptable, by agreement with him, for her to communicate union matters with staff who were not in the specific union

represented. He accepted that ideally "as a matter of courtesy" he would have had the chance to speak to the claimant about the issue first, but said there had been no opportunity. He felt that the potential levels of confusion would be exacerbated by any delay. Also, believing her email to have been well-intentioned and only sent to staff in error, there was no reason, he said, not to communicate his view to staff at the Friday meeting. He said that her decision to speak to him on the morning of 2 December "during which you accused me of bullying and harassment" left him with no choice but to respond in writing. He continued: "It is regrettable that you feel this way and, as I informed you during our conversation, I vehemently disagree with your interpretation of what has happened." He referred the claimant to the respondent's grievance procedure, a copy of which was enclosed, if she wished for the matter to be formally investigated.

46. The claimant did not consider that Mr Fell addressed her concerns in this letter. Other colleagues had not been treated in this manner and she was the only permanent teacher who was black. When put to Mr Fell that he had not in his letter taken the opportunity to deescalate matters, he said that him being accused of bullying and harassment was an escalation. He had taken his own union's advice on the content of this letter.

47. Considering the foregoing evidence, the tribunal concludes that Mr Fell's account of his meeting with the claimant on 2 December was accurate and is to be preferred. The claimant accepts a more limited recollection of the meeting and being emotional/upset within it. She was upset indeed from the outset given her view of Mr Fell's actions. The best evidence of the meeting is Mr Fell's near contemporaneous note which the tribunal does not consider as self-serving at a time when Mr Fell could not anticipate how matters were to ultimately develop. The claimant and Mr Fell's accounts are not so different. Mr Fell did refer to his power as head teacher and the claimant might easily and genuinely have taken that as him saying that he could do what he wanted. The tribunal does not accept, however, that Mr Fell is likely to have used those words at his first problematical meeting with the claimant and particularly as a near opening remark without any significant pre-history of tensions between them. The main divergence in accounts is the timing of the claimant raising the suggestion of bullying. Given that the claimant went to the meeting pre-armed with definitions of bullying and harassment, it is more likely than not that she deployed them at an early stage. Her belief that Mr Fell had exhibited bullying behaviour did not arise out of anything he said at the meeting – she did not raise the definitions as a reaction to what he had said. She believed before the meeting that this was how his behaviour could already be characterised and with the intention of saying so. On the evidence, the claimant had spent the weekend mulling over events. She was upset and initiated the meeting as soon as she arrived at the school. Her raising these concerns early in the meeting did take Mr Fell aback and her suggestion was poorly received by him in

circumstances where he considered her as making inappropriate, personal and ill-founded accusations.

48. The claimant prepared a draft of a letter to send to Mr Fell which she discussed with her union. Within this she included definitions and examples of bullying and harassment and referred to Mr Fell having shown a disregard for his legal duty under the Health and Safety at Work Act. She described her going to see Mr Fell as being the first informal stage in the respondent's grievance procedure, but that she came away feeling as though the issue had not been resolved. She expressed an understanding that Mr Fell's preference was to now go through the formal stages of the grievance procedure. The letter was, however, never sent to Mr Fell.

49. Instead, the claimant emailed Mr Fell on 4 December on receipt of his letter and asked for a meeting to discuss it. He responded on 5 July asking if she could confirm the purpose of the meeting. She responded that the purpose was to continue their discussion informally as she didn't feel that the formal route was helpful at that time. Mr Fell replied saying that Ms Taylor would arrange a time to meet the following week, continuing that, due to the nature of what was being discussed, she would be present at the meeting to take notes. Mr Fell subsequently, however, had a conversation with Jill Goodswen, a union officer, following which he confirmed to the claimant by email that no notes would be taken, but that he thought it was in both their interests to keep the door adjoining his and Ms Taylor's offices open. Mr Fell told the tribunal that he felt that he needed to protect himself. He said that he felt quite vulnerable. He had never been accused of bullying and harassment before. The claimant said to the tribunal that this proposal made her feel humiliated. If the purpose had been to have a witness to corroborate any aspect of either of their behaviour, each of them could have had their own witness, rather than a person listening in on a private conversation. The informal stage of the grievance policy advocated an informal discussion between those concerned.

50. The claimant in fact emailed Mr Fell saying that she had no problem with the arrangement and saying that she hoped a presentation he was making that evening went well. The claimant said that she wanted to resolve the matter and did not want to appear unwilling or to create a hostile environment.

51. The claimant raises firstly, as a comparator, Richard Woffenden, a district trade union officer. She agreed that he was not an employee of the respondent and she was not aware that he had ever had a meeting with Mr Fell after he had accused Mr Fell of bullying behaviour. Another comparator raised was the

claimant's teacher colleague, Mr McManus. The claimant believed that they would have both have been allowed a meeting on neutral ground.

52. The meeting took place on 9 December. Mr Fell's evidence was that they had a calm conversation and that he accepted that the sending of the email to all staff had been a genuine error on the claimant's part. He explained why he had reacted as he had. He left the meeting feeling that they had agreed to move on. Given subsequent event. The tribunal considers that Mr Fell continued to feel aggrieved with the claimant. The claimant agreed that she raised nothing about Mr Fell's behaviour then until a grievance she lodged in October 2020, some 9 months later.

53. The claimant wrote to Mr Fell and Ms Wright on 5 February thanking them for a meeting on 29 January 2020 about an attendance issue relating to another member of staff, Ms Frew. The claimant referred to time off to care for a disabled dependent and the possibility of discrimination by association under the Equality Act 2010. Mr Fell in cross-examination said that he did not feel threatened by the meeting or subsequent correspondence. On 28 February Mr Fell emailed Ms Taylor asking her to arrange a meeting with the claimant about this member of staff and saying he would like it to be at a time when she was in the office so she could keep the door open. Mr Fell explained that he wanted to speak to the claimant about her over formalising the issue involving this member of staff and that he still felt vulnerable. During the investigation into the claimant's grievance Ms Frew referred to Ms Wright being unhappy with involving the claimant as a union representative. Ms Goodswen of the NEU referred to conversations she had with Ms Parsons of Kirklees HR, who told her that Mr Fell was finding the claimant difficult to work with and had wondered whether the NEU could have a different representative. In a second telephone call Ms Parsons was said to have told her that Mr Fell expressed concerns about the claimant's ability as a part-time teacher to keep her work as a union rep separate from her duties as a teacher. Mr Fell denied saying anything of the sort. However, in an email to Mr Fell of 17 April, Ms Parsons referred to conversations with Ms Goodswen and it being down to NEU members to decide who represents them. When put to Mr Fell that he appeared to have concerns about how she performed her duties as a union representative, he said that it was to do with the level of formality she adopted. Overformalising matters was something he was seeking to include in a formal management meeting he subsequently sought to arrange, as will be described.

54. The claimant does complain that Mr Fell then regularly began to cancel scheduled meetings which she was due to attend as a trade union representative. Those meetings were supposed to be held every half term or if otherwise necessary because of a particular union concern. The claimant

agreed that at this time all such meetings would also be attended by 2 white union representatives. She agreed that the cancellation of any meetings affected them all equally. However, she told the tribunal that it was her who had requested the meetings, not the other representatives.

55. A union meeting scheduled before Christmas was cancelled and rescheduled for 15 January 2020. The reason given at the time was due to interviews taking place on the December date. In January, the claimant sent to Mr Fell a list of points for discussion at the meeting. This took place. The claimant said at the start of the meeting that she hoped he had had "a lovely break". Mr Fell included in some minutes some of the action points arising from it.

56. On 21 January, Ms Taylor emailed the union representatives to cancel the meeting arranged for 29 January in light of a meeting having taken place just the previous week. The claimant responded saying she had a lot to discuss and asking if they could book a meeting in for that half term since the last one had been delayed due to the interviews taking place.

57. The claimant agreed that this meeting was rescheduled for 12 February, although it was also her case that this had been in the diary in any event from the previous September. She sent a list of agenda items on 6 February saying that she hoped Mr Fell had had a good week. This meeting was, however, cancelled with Ms Taylor giving the reason as being due to the assistant head teacher shortlisting process. The claimant accepted that a vacancy existed for an assistant head teacher on the promotion of Mr Schofield, with a deadline for applications to be made by 9am on 12 February and that shortlisting for interviews could be time consuming. Mr Fell explained that this appointment was a priority for him and the half-term was imminent. Candidates were interviewed on 26 February. The claimant was concerned that the union meeting was not rearranged and that arranging a meeting for the next half term did mean that that half term's meeting was simply going to be missed.

58. The next meeting of union representatives was due to take place on 18 March 2020. The claimant understood why, in circumstances where the country was on the point of a national lockdown due to the coronavirus pandemic, that did not take place, but said that the meeting was never rescheduled. She accepted that the whole of the SLT had a lot on its plate at this time, but said that that was equally true of union representatives who were at the heart of matters relating to health and safety - it was more important than ever that they all worked together.

59. Again, the claimant maintained that she was the union representative requesting the meetings. The other 2 were less active and she believed that, if a white NEU representative had asked for meetings, they would have happened. Subsequently, she believed that Mr Fell chose to speak to Mr Wolfenden rather than herself.

60. The respondent's policies included a good attendance strategy for staff which required the completion of a planned absence form with authorisation required from the head teacher. The claimant told the tribunal that she had only seen this document during the tribunal process. Absence requests were indeed at the discretion of the head teacher and all requests needed to be approved as confirmed. At Ms Shah's request, the claimant lodged electronically on 6 February a request to be absent on 13 February 2020 from the year 9 options/parent's evening. She explained that this had been changed from its original date at short notice, which had left her unable to attend due to childcare issues. The claimant had not been aware, she said, of the need to complete this form, given that this was relating to non-attendance on an evening out of normal school hours and the parent's evening, she believed, was not compulsory for all teachers, given that it was specifically arranged as an evening to discuss GCSE options. She said that Mr Turner, as head of year, had said that it was not compulsory and this had not been corrected by Mr Fell. Mr Turner had sent a message to all heads of department on 10 January notifying them of the change of the date for the year 9 options/parent's evening. In this, he said that English, maths and science teachers would be expected to attend and a representative from all foundation subjects. Ms Shah accepted that according to this email, the claimant's attendance would not have been compulsory, as PE was a foundation rather than a core subject. Only a single representative from PE would have been required to attend. She agreed that a subsequent email from Mr Turner of 16 January gave the same message. Ms Shah said that she was a recipient of the same emails.

61. The claimant accepted that Mr Turner had made a mistake in that the SLT's view was that all teachers had to be present. She noted, however, that he had not been disciplined for his error. There were other staff she said who had not attended. She subsequently asserted, however, that there was no genuine view amongst the SLT and of Mr Fell that all teaching staff had to be at the parent's evening. She said that her absence was approved by Mr McManus and she had been disciplined despite all of the staff being told that it was not compulsory by Mr Turner. Mr McManus himself had represented the PE department at the parents evening, albeit even he was unable to attend for the full duration. He had not been disciplined the claimant said. The claimant said that it was her case that this allegation had been invented by the SLT to get at her. She had not been told that her absence request had been rejected, when it was indeed rejected, by Mr Fell, on 10 February. Although she had been asked by Ms Shah

to put in an absence request form, she said that she thought that was just "for their paperwork". She said that she was confused why she been asked to complete the form when attendance wasn't compulsory. She did not ask Ms Shah for clarification, but said that she been asked to complete the form in a 5 second conversation in passing.

62. The claimant disputed that the parent's evening had ever been designated as part of her directed time. The respondent operated more than one type of calendar. One document she had been involved in completing did refer to the year 9 parents evening as directed time, but she said that this was created as a working document when discussions were underway regarding the amount of directed time part-time staff were required to fulfil. It was not final. However, she had spoken to Mrs Shah, who had told her to fill out an absence request form.

63. The claimant was not sure when she had become aware of the change of date for the parent's evening. She assumed that Mr McManus had filtered down the message from Mr Turner, but was not sure when. The claimant was also taken to an email of 16 January to all teachers referring to the new date. However, as a PE teacher, the claimant said she did not have ready access to a computer to check her emails between lessons, although she accepted that she normally checked them within a couple of days. The absence form was approved by Mr McManus, as head of PE and the claimant's immediate line manager. It was, however, marked then as not approved by Mr Fell. He recorded the reason for non-approval as being that 4 weeks' notice had been given of the change of date. When put to the claimant that she did not attempt prior to 13 February to check whether her absence request had been approved, she said that she did not have ready access to a computer and she did not see Ms Shah regularly to check with her. She was not looking out for any email, because her own department said that they had the evening covered without her and she could not go anyway because of a lack of childcare. It was put to the claimant that, from Mr Fell's perspective, he had expressly declined a request for absence and she had simply absented herself anyway. The claimant said that she did not have childcare, so the situation could not be so straightforward. The respondent could have looked at the provision of compassionate or parental leave. It had been agreed in the subsequent disciplinary process that any allegation against her was unfounded and there had been a miscommunication.

64. Mr Fell said that he did not approve the claimant's absence request. He said that he had received the form with a note inserted already that the claimant had had 4 weeks' notice of the change in the date of the options evening. He agreed that it did not seem that he had tagged the claimant into his non-approval of her absence which he accepted was required to generate an email to her. He

accepted that she wouldn't know that her absence request had been refused. He told the tribunal that he and the SLT had viewed attendance as compulsory for the claimant. He accepted now that it was a valid interpretation that the head of year, Mr Turner had twice made it clear that there needed to be only a representative from the PE department. He had not felt it necessary to speak to Mr McManus at the time before raising any allegation against the claimant. He could now see that this might have been appropriate given the information which had emerged. Mr Fell said that he was not aware of anyone else teaching a non-core subject who was not present or anyone else who had requested leave of absence.

65. The claimant's case is that Mr Fell was seeking to engineer a way of disciplining her. She agreed that no action was taken immediately after the parent's evening. She believed, however, that members of the SLT were observing her and collating information to build a case against her. They were waiting until they had more to throw at her.

66. The tribunal notes, at this stage, that the respondent's SLT had had issues of concern with the PE department. In December 2019, Ms Shah spoke to Mr McManus regarding a practice of doubling up lessons. Mr McManus had attended a formal meeting with Ms Shah on 6 December. Ms Shah emailed him after the meeting thanking him for his honesty. She summarised the matters discussed, including that all PE staff were to be in PE lessons when timetabled to teach and staff were to sign in and out using the inventory system. Before the tribunal, Mr McManus was of the view that staff were all present when timetabled and there hadn't been a doubling up of lessons. He said that there were frequent changes to the timetable and teachers might swap lessons in line with their own specialisms. He agreed, however, that Ms Shah made it clear to him that doubling up was not acceptable and, on him asking for clarification, she said that was the case in any circumstances. Matters were left that he would relay these instructions to the other PE staff. He said that he had done so. Mr McManus told the tribunal that he did not think that Ms Shah liked the PE department. As soon as Ms Shah became their line manager, it was clear to him that she would look for issues where there weren't any. There was more scrutiny under her management than anyone else's and he felt he was under the same sort of scrutiny as the claimant.

67. On 27 February, Ms Shah emailed Mr Fell. She said that she had seen the claimant in the canteen on Wednesday 26 February when she was timetabled to be teaching in the swimming pool. She said that she went to the PE department with Dominic Murphy, assistant head teacher, but the pool was shut. There was a class on in the sports hall, which Mr McManus was teaching and a class in the gym being taught by a supply teacher. When they left the PE

department, they saw the claimant coming back into the PE building. Mr Fell accepted that no specific safeguarding concern was raised by Ms Shah. He agreed that he would have expected them to speak to Mr McManus at some point, but that there was then the further incident of 27 February reported, described below. Ms Shah said that when she checked the pupils on 26 February, they were indeed safe.

68. Ms Shah said that she made the report as she had a concern that the claimant was not in her timetabled lesson. When asked why she had not simply spoken to the claimant, she said that she was unsure how to proceed being relatively new in post and that she had already raised the issue of PE staff leaving timetabled classes unattended with Mr McManus. She had not wanted to speak to the claimant in the presence of others. She had wanted to check that pupils were safe. The tribunal accepts her account – Ms Shah was inexperienced in dealing with such situations.

69. The tribunal has been referred to an email Mr Murphy sent to Mr Fell on 5 March 2020 providing a statement regarding the claimant's conduct. He said that he was in Ms Shah's office on 26 February when she remarked that the claimant was sat next door even though the timetable stated she should be teaching. They decided to go to the sports hall to see what was happening with her class which was timetabled to be taught in the swimming pool. He described seeing the cover teacher with a group of students in the sports hall and, as he and Ms Shah were about to leave, the claimant appeared looking slightly flustered saying hello and quickly moving towards the changing rooms. Mr Fell said that he had not read this email as indicating a suspicion that the claimant was manipulating the timetable.

70. Mr Fell said that there had not been any similar concerns raised about another teacher, including any white teacher. There is no evidence of that.

71. In her email to Mr Fell, Ms Shah said that, on Thursday 27 February, she had observed the claimant in the canteen with Mr Dawes and a student when she was timetabled to teach year 9 PE. Another teacher had a year 9 class on at the same time and she assumed that the classes had been doubled up. The claimant questioned why Ms Shah would not just have spoken to her at the time, if she had had a genuine concern. That was particularly the case if there was a safeguarding concern, as had subsequently been alleged. It was not unusual to see teachers during the school day who were not teaching a lesson. Mr Dawes is of black heritage. He was the respondent's senior behavioural pastor as well as an advanced educational teaching assistant.

72. Ms Shah considered to be implicit in her email to Mr Fell that she had a safeguarding concern. She accepted that in this case, pupils were supervised although the teacher responsible for the class, the claimant, was not there. She did not feel it fair to have questioned Mr Dawes as a peer of the claimant in circumstances where he just happened to be there "by default".

73. Mr McManus said that he had no awareness of the claimant ever being sat in the canteen when she was expected to teach. He said that, if so, he would have had a conversation about that. It would be legitimate, he said, to enquire as to why she was in the canteen. When asked in cross-examination if he was aware that the SLT were spying on or scrutinising the claimant, he said that there was a general feeling that they as a department were being watched and monitored.

74. Mr McManus was never interviewed about the claimant's conduct in these instances prior to the commencement of a process leading to a management and then a disciplinary meeting. There was no discussion with Mr Dawes.

75. The claimant's position before the tribunal was that she had only been out of lessons on those 2 days for around 5 minutes. She would only be away from the department in emergency situations, for example where she had to take a pupil out because of behavioural issues. She could not recall whether Mr McManus had fed back his discussions with Ms Shah in December 2019. She said that she was not aware of a further instruction which had been given to him that all PE staff had to sign in and out using the inventory system. The claimant agreed with the general proposition that, from a safeguarding perspective, the respondent needed to know which teachers were taking a class and that they were present when timetabled. The situation in PE, however, she described was not straightforward in that they taught their own specialisms and sometimes a class was swapped over between teachers. The respondent's timetable never matched exactly what was happening at any given time in PE. She did not agree that one teacher taking more than a single class presented a safeguarding risk. That depended upon the experience of the teacher involved. She agreed, however, with the general proposition that Ms Shah might be legitimately concerned if someone was timetabled to teach, yet was not teaching.

76. Ms Shah and Mr Schofield gave evidence that they had never received an instruction by Mr Fell to spy on the claimant. There is no evidence that they had. The claimant's case was that other teachers had not been treated in the same way as her. She said that S Rahman, a cover supervisor providing cover for Mr McManus had, it transpired in her disciplinary case, left a classroom unattended but that had not been picked up as a separate disciplinary issue.

77. Ms Shah sought to investigate what lessons had been timetabled. She agreed that Mr McManus would have been perfectly placed to answer those questions, but she hadn't spoken to him. She said she had already spoken to him about this type of issue in December. She spoke to the other teachers in PE at the time of the relevant lessons to understand if cover was in place.

78. Ms Shah's email prompted Mr Fell on 28 February to view CCTV footage of those two February dates. The claimant maintains that doing so, to establish where she had been, was against the CCTV policy in that she should have been asked to consent in advance. Mr Fell told the tribunal that he did not consider this to be invasive in the context of keeping children safe being the most important thing. He had not considered the policy. He confirmed that no one had at this stage reported that any children have been left unsupervised on 27 February. Mr Fell maintained nevertheless that his suspicions were around safeguarding concerns. He believed that he was aware from Ms Shah that she had concerns about the supervision of pupils. He said he had never had cause to make such checks in the case of any other employee.

79. The claimant was scheduled to meet with Mr Fell at 8:20am on 3 March. Arrangements had been made for the claimant's first lesson to be covered, in case her meeting with Mr Fell overran. The claimant was late in arriving at school that day, it transpired for justifiable family-related reasons. Mr Fell said that the issue was raised with him of the claimant not having attended to teach her class during the first period despite her being in school. Mr Fell subsequently viewed CCTV footage of that morning on 4 March.

80. By email of 3 March Mr Fell asked Ms Shah to arrange a meeting with the claimant to ask her about her non-attendance at the options evening, whether she checked the status of her absence request for that evening and why she was not teaching her class on 26 and 27 February. He also asked her to find out why she did not attend the meeting which had been arranged that morning. He told Mrs Shah that the purpose of the meeting was to establish the facts saying: "You don't need to become involved in a discussion and you have every right to ask these questions. There is no right of appeal over this and there is no need to provide a particular length of notice." Mrs Shah arranged a meeting on 4 March, telling the claimant that there was no need to prepare anything and that Mr Fell had asked her to raise some points with her.

81. That meeting took place and Ms Shah forwarded her note of it to Mr Fell. The claimant explained her childcare issues when the options evening had been rescheduled. She said that she had not checked the status of her absence

request because she had a conversation with Ms Shah about why she couldn't make the evening and Mr McManus was happy with her request. As regards 26 February, the claimant said that there was no swimming timetabled during period 4. When asked why she was not teaching on 27 February, when she had been seen the member of staff and student during the second period, the claimant said that she didn't know, but that she had taught all her classes. Any time out of classes would be due to an emergency. The claimant asked Ms Shah for more information as to the time, the member of staff and student. Ms Shah did not know who the student was but did not consider it appropriate to provide any more information at this point. She just asked the questions she had been told to ask. Ms Shah's conclusion regarding 27 February, was that the claimant was lying. She considered within her report that it was self-evident that if the claimant was not in the lesson and was saying she was not in the canteen, then she was lying. She based her conclusion on the claimant saying that she taught all classes. The claimant's reference to an emergency had been generic rather than an explanation for her absence from the class on any particular day. As regards not teaching early on 3 March, she explained that she had arrived late due to her son's illness. She had gone to the office during period 1, but was upset and concerned about her young son and went to the lesson around 10 minutes after her arrival.

82. The claimant contended that Ms Shah's notes of the meeting were not a full account of what they had discussed. When the claimant had been asked about 27 February, the claimant had said that she needed more information to be able to give a factual account of what she had been doing.

83. Mr Fell responded to Ms Shah's email, asking her to speak to a couple of students from the class on 27 February to find out where they were taught and by whom. He said that Ms Shah could explain that she was investigating an incident between students, so that there was no indication that the claimant, as their teacher, was under any form of investigation. Mr Fell told Ms Shah that it would be worth asking about supervision to and from the changing rooms. Ms Shah was also asked to take a statement from Laura McKeen about cover on the morning of 3 March and find out from students who took the class.

84. Ms Shah could not explain why she had never spoken to Mr Dawes. Still, there was no discussion with Mr McManus. During the subsequent disciplinary investigation Mr McManus was interviewed and explained why the exact lesson taught by a teacher did not always match what the teacher had originally been timetabled for. He also endorsed the practice of keeping children in the changing room if there were behavioural issues. Ms Shah was unable to comment on whether Mr McManus had ever been disciplined arising out of this practice.

85. Two students were spoken to by Ms Shah about 27 February, who reported that they had sat in the changing room for the entire lesson and were not allowed to do PE as a class, because they were too noisy. Ms Shah said they were not supervised whilst in the changing room and that the "new teacher" who they said was taking the lesson popped in and out. They said that the same thing had happened earlier that week. The claimant told the tribunal that those students were not talking about her class and that classes were taken by alternative teachers depending upon their speciality.

86. On 10 March, Ms Shah reported to Mr Fell that she had spoken to Sian Craven, teaching assistant. As regards 27 February, she reported that the claimant had said that if the pupils did not stop messing around then they couldn't do PE. The claimant had put the students in the changing rooms for the remainder of the lesson. Adrianna Beck was said to have supervised the changing rooms. Ms Beck reported to Ms Shah that she couldn't really remember what had happened, but the students had been messing around and a decision had been taken (not by her) for the students not to do PE that lesson and stay in the changing room. She said that she was surprised by the decision.

87. The claimant said that a single teacher would not stay in the changing room, but all 3 of them would pop in and out, yet she was the only one treated less favourably. The claimant was cross-examined as to why she had not provided this information about the class on 27 February not doing PE when questioned by Ms Shah and only around a week after the events. She said that there had been behavioural issues the whole day.

88. Mr McManus attended a formal management meeting with Mr Fell on 12 March 2020. This was to discuss an unauthorised absence on Friday 14 February and concerns over a lack of signing in and out of the building, requests for leave of absence and attendance at line management meetings. It was recorded, in a letter of 27 March confirming the discussion, that Mr McManus accepted Mr Fell's position regarding unauthorised leave of absence and that it was unacceptable. Mr McManus told the tribunal that he thought that he had been unfairly judged and not given the benefit of the doubt in circumstances where he did not absent himself on a whim. When put to him that the situation was the same as the claimant not attending the parent's evening, he replied "possibly".

89. On 24 March 2020, Mr Fell emailed Ms Parsons of Kirklees Council HR Department asking if there was a date by which investigation into the claimant would need to be completed. He referred to not being able at that point in time, due to the school being closed, to convene any meetings in person and asked

if they were okay to wait until they were back to normal working. He said that he did not think he could pursue matters any further at that time, but still wanted to commission an investigation. Mr Fell subsequently provided Ms Parsons with draft terms of reference for an investigation. She responded to him on 9 April. She said that she thought it would be unfair to spring this on the claimant and not discuss it at all with her until potentially later in the year. She referred to this not being a gross misconduct case. She suggested considering a formal management meeting held remotely which would remain on the claimant's file and be taken into account if there were further occasions of misconduct in the future. This would mean that at this point the respondent could move straight to investigation/disciplinary. She suggested a conversation with the unions about how they managed this going forward to get their view.

90. Such an option was not expressly envisaged as part of the respondent's disciplinary procedure, although there was within it reference to giving a minimum of 5 days' notice of a formal management meeting. The claimant appreciated that the process being suggested was distinct from the formal disciplinary route. She agreed that it could not lead to a disciplinary sanction. The tribunal has been referred to Mr McManus on 4 March 2020 being invited to the aforementioned formal management meeting regarding a day of unauthorised absence. The claimant's position is that this less formal route was not, however, what had been wanted by Mr Fell.

91. Mr Fell responded to Ms Parsons on 9 April saying that her proposal sounded sensible given the current situation. He said that he would have preferred a formal investigation "as it is serious misconduct, in my opinion…" He said that he would also like to consider the competency route possibly emerging from this over time. In cross-examination, Mr Fell said that he did not think there to be a reason to dismiss the claimant. In terms of conduct, there were breaches of teacher standards in not being where the claimant was timetabled to be, evasiveness and safeguarding issues. He referred to competency because, if the issue was not one of conduct, it could be that upskilling was required to remedy, for example, outdated practice. When put, that he was not seeking to address the competency of anyone else, Mr Fell said that the email was not about competency over the department but was specific to decisions the claimant had taken.

92. As will be addressed, the issues raised against the claimant led to Mr Ryan of Kirklees HR compiling an investigation report, after Mr Schofield had relinquished that role due to the claimant raising grievances about him. There was a decision that the only allegations which would proceed were to be the claimant's conduct on 27 February and on 3 March. The claimant believes that her ultimately being found to be guilty of misconduct was influenced by Mr Fell

and that neither Mr Ryan, nor those determining the disciplinary or appeal, were truly independent.

93. The claimant has alleged that Mr Fell ignored her deliberately when passing her in the corridor, confirming in cross-examination that this was in February/March 2020 and continued in September on her return to work. She agreed that while she would not walk past Mr Fell regularly, their paths were likely to have crossed at some point in each week. There were times she said that he was very obvious in turning away and would act awkwardly in avoiding eye contact with her. Once, she said, he acknowledged Shona Roberts, but not the claimant. Mr Fell denied ever deliberately ignoring the claimant. No specifics could be put to him and whilst the claimant may have had a perception of being ignored the tribunal can make no finding that this occurred at any particular time.

94. Mr Fell wrote to the claimant on 20 April informing her that she would be required to attend a formal management meeting to discuss concerns about her professional conduct. He listed the issues which had arisen relating to 26 and 27 February and 3 March. He said that, due to Covid 19 restrictions, they could not confirm a date and time of the meeting, but wished to make her aware that it would be scheduled at the earliest opportunity, once it was safe to do so. He said that whilst it was not a disciplinary hearing, it was formal and she was entitled to be represented by a union representative or work colleague.

95. The claimant was by this stage working from home in common with the majority of teaching staff. She agreed that the Covid guidance was changing frequently and could accept that the SLT had a lot of work to do in understanding the situation. When put to her that Mr Fell sought to update employees by sending daily emails to advise of any developments, the claimant said that some staff found that level of correspondence overwhelming.

96. A rota was put together for relatively limited attendance at the school by teachers. The claimant requested to be left off this because of her suffering from asthma, with which request Mr Fell complied. Mr Schofield agreed that the claimant had been placed on this rota before any risk assessment, though he said that he hadn't had any role himself in the rota arrangements at that time. He said that the respondent didn't talk to anyone in advance of publishing the rota – he expected that any teacher put on the rota would contact the respondent if they felt that they required a risk assessment. In his witness statement he referred to it not seeming fair to allow staff to choose whether to attend the school. When cross-examined that this seemed to trivialise the claimant's concerns over her vulnerabilities due to her race, he denied this

comment to be anything to do with race – the Department for Education was telling the respondent that staff had to return. That indeed was why staff were not consulted, he said. There was no need to consider alternative working arrangements as it was not possible at that time for the teachers' role to be done from home and the claimant was not in the clinically extremely vulnerable category.

97. Mr Schofield was referred to a statement given by Nadia Akhtar saying that, as a clinically vulnerable person, she had been removed from the teaching rota and had not been asked to provide evidence of her status. She had explained her situation in an email to Mr Fell of 22 May and had offered a medical note to explain tests she was currently undergoing. Mr Schofield was unaware whether a doctor's note had then been provided.

98. Mr Fell focused on liaising with Kirklees Council and the trade unions at district level regarding precautionary steps to take in any reopening of the school and return to work. The claimant did not, however, agree that all relevant issues were common in each school and maintained that consultation could not be done at that level, referring to differences due to the age of pupils and type of school involved. It was put to the claimant that Mr Fell had formed a view that the claimant's approach was less collaborative than it ought to have been and that she showed a tendency to create issues rather than to work together to solve them. The claimant did not agree.

99. On 12 and 13 May 2020 the government made announcements regarding planning for a phased reopening of schools in June 2020, with year 10 back at school before the end of the summer term. The claimant emailed Mr Fell a message on 14 May from herself but in a standard form effectively signed off by 12 other NEU members and the Joint General Secretaries of the union. This communication had in fact been drafted by or on behalf of the General Secretaries at national level to be issued to all schools in England. It said that the government statement left many questions unanswered and did not properly address health and safety concerns. It continued: "On the advice of our union, we are writing to let you know that we do not believe it is currently in the best interests of staff, students and the wider community, to engage in a discussion about how our school will implement government plans for wider opening from June and, consequently, we will not attend meetings which are planning this." Mr Fell saw this as a completely unhelpful piece of correspondence, particularly given his lack of option if the government had mandated the opening of schools. Mr Fell was, however, aware that the text came from the union's joint general secretaries and that the claimant was sending the letter in her capacity as a NEU representative. The claimant said

that the union did acknowledge that the letter had not been written "in the best way".

100. Mr Fell replied to the claimant on 18 May 2020. He said that he was not in a position to be able to pause the process of planning a reopening in June and, even if he were, he would not be willing to do so. He said that, whilst he understood the claimant's concerns, the best course was to proactively engage in discussions to protect the safety and well-being of students and staff whilst continuing to provide quality education. He said that he would communicate further plans and expectations to staff after an SLT planning meeting on 20 May.

101. Kirklees Council produced periodic and updated guidance to schools. The claimant's view was still that consultation should have been with the representatives in the school, rather than the union at district level.

102. Mr Fell emailed staff on 2 June saying that they would plan a timetable for the returning year 10 pupils and put an appropriate risk assessment in place. Staff had been asked to complete a survey and Mr Fell sought to address some of the common questions raised in the responses. He said that, where there were underlying health conditions and increased vulnerability, decisions would be made based on medical advice and that this would need to be evidenced.

103. The claimant emailed Mr Fell again on 2 June in her capacity as NEU representative. She provided a checklist which had been prepared by the union to assist in determining whether it was safe to extend school opening. The respondent's safety obligations were set out as was the need to act in accordance with the Equality Act. The letter referred to evidence of disproportionate mortality and morbidity amongst BAME people who had contracted Covid 19. Separate guides and risk assessment information for BAME employees was also provided. Mr Fell responded the following morning reciprocating the claimant's good wishes in her earlier communication. He thanked her for the documentation, but said it had been unnecessary as he already had it in its possession as a member of the ASCL union. He said that there would be ongoing discussion with colleagues who were at risk and further information had been sought regarding ensuring safety in the light of heightened vulnerability of particular groups, including BAME staff. Mr Fell considered that responsibility was being taken for such issues at district level, rather than through local union representatives, but understood the points the claimant was making.

104. The claimant said that throughout June Mr Fell was avoiding meeting with her, but was willing to meet with Mr Wolfenden, who is not black. There was only a need to speak to people at district level, she said, if there were no local representatives. Mr Fell told the tribunal that he did not see the necessity for a meeting with the claimant. He described it as being a very busy time planning to reopen the school to year 10 and did not see a meeting as a priority when he felt they had everything covered. It had nothing, he said, to do with not wanting to meet one to one with the claimant. He did however forward the claimant's email to the SLT saying that he was taking further advice from HR on the "nature" of the claimant's communication. Mr Fell did not accept that this would be advice in the context of disciplining the claimant although it might link in to discussions to be had at a formal management meeting. He told the tribunal that he regretted now using the phrase "nature". When referred to a further request of the SLT not to engage with the claimant and refer her to Mr Fell if she tried to make contact with any of them, he said that, whilst it sounded blunt, he wanted to create consistency and was tireless in his communication with all staff. Mr Fell said that he had a mandate from the Department for Education to reopen and did not consider the view of the NEU to be always helpful.

105. The claimant responded to Mr Fell quickly on 3 June saying that several members had contacted her with their concerns over having to share personal health information to comply with his request for evidence. She said that the union's advice was that employees did not need to disclose the nature of their condition. She queried whether the school only needed to know which of the at risk categories staff fell within. Mr Fell responded that he was not asking for personal details, but confirmation of which at risk category staff fell into. It was important for this to be confirmed though through relevant medical evidence.

106. Mr Fell wrote to all staff on 8 June with further information on plans to reopen from 15 June. He asked for any observations by 9am on 10 June. The claimant responded on 9 June asking if a meeting could be arranged with her as a union representative. He responded that, as the documents were shared with all staff with an opportunity for them to provide feedback, there was no need for a meeting. Again, Mr Fell did not see a meeting with the claimant as necessary. He recognised an obligation to share risk assessments with unions at local level and said this would be done. The tribunal has seen that discussions were continuing between Mr Fell and Mr Woffenden on and around 11 June. Mr Fell was adamant that his willingness to talk to Mr Woffenden had nothing to do with Mr Woffenden being white British in terms of ethnicity. He wanted the claimant to work in her capacity as a teacher. Mr Woffenden's paid role was as a union district officer.

107. The claimant emailed Mr Fell again on 7 July asking for a joint union meeting before the end of the term. Mr Fell did not respond. On the evening of 7 July, he emailed all staff with an update. He said that, whilst they would be open to all students in September, it would not be business as usual from 9 September. He was planning 2 inset days before the beginning of the academic year.

108. The claimant accepted that the reopening of schools inevitably involved some risk. She agreed that the aim of a risk assessment was to reduce the risk to the lowest level you could, then decide whether that was an acceptable level of risk. Mr Schofield was tasked with implementing risk assessments and had identified the need for separate BAME risk assessments, recognising that their BAME staff and students were at a higher risk of catching the virus and having more severe symptoms. He said that any assistance would be gratefully received.

109. By this point, Mr Schofield had not previously undertaken any one to one meetings with the claimant.

110. Mr Schofield received a guide for safe working of BAME staff from Kirklees Council. This provided that, if working completely from home was not possible, a balance between working from home and school may be a way of reducing Covid 19 risk exposure. A risk assessment tool was provided and was indeed the format used when, as described below, the claimant had her own individual risk assessment on 1 July 2020.

111. Government Guidance in force until the end of July referred to the clinically extremely vulnerable as not being expected to attend school. Clinically vulnerable people were described as those considered to be at a higher risk of severe illness from the coronavirus. Staff in this category were to work from home where possible.

112. On 8 June Mr Fell emailed staff with details regarding rota arrangements from 15 June. He asked for any response by 9am on Wednesday 10 June. Mr Fell emailed the claimant on 9 June noting that in the recent survey return she had commented that she did not want to be on the staff rota due to being in the clinically vulnerable group. He asked for any particular advice she had from her GP or medical practitioner that precluded her from being included on the rota. If that was not provided, the claimant would be included on the rotas covering the last 5 weeks of the academic year. The claimant was reminded of the deadline for a response.

113. The claimant considered that it would be difficult to get any further evidence given the pressure GPs were under at the time. Mr Fell knew that she suffered from asthma and had accepted her position previously. The claimant replied to Mr Fell on 9 June. She said people in her category had been advised to take extra care and should work from home where possible. She believed her role could be undertaken remotely and asked if he would like to discuss this or if he was still intending to include her on the rota.

114. The claimant told the tribunal that there were 4 members of PE teaching staff and she was the only one who was vulnerable. She could be in contact with around 20 students, she said, if she was teaching a GCSE PE class.

115. On 11 June Mr Murphy circulated a rota which included the claimant being scheduled to work with Mr McManus on Friday 26 June, which was not a normal working day for her. She accepted that that was an innocent mistake on his part.

116. The claimant did not immediately raise the mistake which had been made. On Monday 22 June she emailed Mr Fell saying that she had noticed that she had been included on the rota despite requesting to continue to work from home. She also said that she had been included on her non-working day. She said that, while she was not categorised as clinically extremely vulnerable, that did not mean that her condition was mild. She said that she had been hospitalised twice in recent years and prescribed a course of steroids to bring it under control on more than one occasion, most recently in March. She also had to use an inhaler twice a day. She had been told by her doctor that they would not be providing letters to workplaces and employers needed to follow the guidance provided by government. She believed it was unsafe, she said, to return to work due to the increased risks as a result of being asthmatic and being of black heritage. She said that when it was deemed safe for all groups to return to work, she would like an individual risk assessment to be carried out prior to her returning to work. The claimant told the tribunal that she had not deliberately delayed in sending this email. The tribunal considers that the claimant would have looked at the rota shortly after it was sent to her and have scanned for her initials as the most obvious way of finding out if she had been included on it. She would not just have looked against her normal working days – the form was not easy to read in that way, It is more likely than not that she delayed in responding.

117. Mr Fell told the tribunal that he could understand the claimant's rationale for wanting a risk assessment before she returned to work. On the other hand,

the school was reopening to a small number of pupils, following social distancing guidelines. He accepted that there was nothing impolite in her tone.

118. Mr Fell responded on 23 June noting that the rota had been published on 11 June and saying that he found it disappointing that it taken her until the previous day to respond. Mr Fell told the tribunal that he would have expected any employee to look across their rota for their initials on it as soon as it was published. He said that she been taken off the rota for that week, referring to the claimant as being unwilling to be flexible. He said that it was recommended that vulnerable people worked from home where possible, but it was not possible to contribute to the respondent's rotas from home. She would, therefore, be included on the key worker/vulnerable student rota for one of her working days in the last 2 weeks of term to ensure a level of parity with demands across all teaching staff. He said that her risk assessment would be conducted by 2 July by Mr Schofield and asked her to contact him to arrange this as soon as possible. He agreed in cross-examination that his response could be interpreted as criticising the claimant for the respondent's mistake, but said that he was expressing his disappointment.

119. Mr Murphy sent to all staff an updated rota on 29 June. The claimant was allocated to work on 10 and 15 July.

120. The claimant's case was that the respondent had managed quickly to take two white employees off the rota and put her, as a black employee, on it. They were said to be both healthy individuals. They could do so again.

121. The claimant's individual risk assessment was completed virtually on Wednesday 1 July by Mr Schofield. He had provided the claimant with a blank risk assessment form to consider, but said that prior to their meeting he would add some basic details to save time. If he jotted anything further down, that could be discussed during the meeting. He said that he would have the document live on screen so that she could see what he was adding.

122. When the risk assessment was being conducted, Lorna Wright was present. The claimant did not object to this at the time. Mr Schofield's evidence was that this was for training purposes, because she was going to take over responsibility for Covid risk assessments in September – she had not done a Covid risk assessment previously Such evidence is accepted. The claimant did not accept that that was the reason, as Ms Wright had done risk assessments previously for the claimant in respect of her being pregnant. Also, it transpired that the respondent's new medical officer conducted the assessments in

September and not Ms Wright. The claimant told the tribunal that she would have had no issue with Ms Wright attending if "in isolation". However, she saw her attendance as part of a pattern of her being targeted. The tribunal notes, however, that Ms Wright completed a further risk assessment of the claimant on 8 September with Ms Shah in attendance. Mr Schofield said that there had "absolutely not" been a suggestion from Mr Fell that he should not meet with the claimant on his own.

123. The claimant provided general information from asthma.org.uk and extracts from her medical records, including a reference to her inhaler not helping much. The claimant accepted that during the assessment, Mr Schofield explained to her the actions the school was taking to minimise risk. She, however, described the written assessment as practically complete already, where she could only change sections regarding her own vulnerability and how Covid impacted upon her. Mr Schofield explained that risk assessments were generally pre-populated with some information to save time, but that he went through all that he had written with the claimant and amended anything she requested. He did. He agreed that that approach did "not completely" conform to guidelines on conducting risk assessments, but said that the form was not a fait accompli and that he accepted everything the claimant said. She accepted that Mr Schofield had recorded her as suffering from a chronic lung disease at her request during the assessment. She said that otherwise she could just explain what her health condition was, that she took inhalers, that she was awaiting vitamin D tests and that Covid affected BAME individuals disproportionately. She said that she was also allowed to choose the relevant categorisation of her at the end of the form signifying indeed that outstanding concerns remained.

124. The claimant said that Mr Schofield commented about having a friend who was BAME. She believed he said this to downplay her fears and he seemed to think he knew about the issue simply because he knew another BAME individual. Mr Schofield told the tribunal that he would not have said that, because he had a BAME friend, he understood everything the claimant was going through. He had no recollection of the alleged comment at all. He said that they had a polite and pleasant conversation about the emerging picture of Covid infections and referred to having shared concerns in speaking to friends and colleagues. He empathised with the claimant's situation, but was not derogatory or making reference to the claimant's race. Mr Schofield said that the meeting ended cordially and that he asked, if she was happy, for the claimant to sign and return her assessment. The tribunal accepts Mr Schofield's account. Mr Schofield would have been aware how crass a comment of the nature the claimant attributes to him would have been. He is unlikely to have said it. His approach showed a genuine understanding of the increased vulnerability of BAME persons. The claimant did not raise any

disquiet at any comment at the time – even privately to her union colleagues. It is more likely than not that she is re-interpreting what Mr Schofield said in hindsight through a prism of potential discrimination since learning of the possibility that she had been racially stereotyped by Mr Fell.

125. The next morning, 2 July 2020, the claimant emailed Mr Schofield thanking him for sending a copy of the risk assessment but asking for a copy of the equality impact assessment and for the guidance on what to do if there was a disagreement regarding the outcome of the assessment. Mr Schofield copied this to Ms Wright and Mr Fell, saying that it looked like the claimant would refuse to sign the assessment. He asked Ms Wright to send her the equality impact assessment from Kirklees Council. He mentioned to Mr Fell that the notes on the risk assessment form said that there should be guidance to follow should there be a disagreement regarding a risk assessment. He said that his view would be to say that the guidance was to raise this in writing with the head teacher but asked for Mr Fell's opinion. He continued: "Obviously, she is looking for any way to get out of coming into school.… It would appear that she thinks if she disagrees with the RA, she doesn't have to attend." Mr Fell, in cross-examination, said that Mr Schofield's comment was not something he would imagine Mr Schofield to be proud about, but said that they were all under a lot of stress at the time. He agreed that it could be interpreted that Mr Schofield was saying that Mr Fell could reject the claimant's concerns.

126. Ms Wright spoke to Ms Parsons of Kirklees Council who she reported was in agreement with what they had done and should be doing to protect all staff as much as possible and address the claimant's particular anxieties. Kirklees had not produced any equality impact assessments. However, Ms Wright and Ms Parsons were in agreement that the individual risk assessment incorporated anything an equality impact assessment would cover. She said that there was no appeals process for a risk assessment. Ms Wright referred to Ms Parsons saying that a full healthcare assessment "may give us backing for our case". Mr Fell' s viewpoint was that the guidance when schools were open more widely meant that all employees should be on the rota unless clinically extremely vulnerable or, for instance, pregnant. His rationale was that it was fair for all staff to share the burden and a number of employees were understandably nervous. He wanted staff to see that the working environment was fine and was keen to challenge people's concerns to create greater confidence given that they would return with around 900 pupils in September.

127. Mr Schofield rejected in cross-examination that he had no time for the claimant's concerns and said that his issue was that the claimant was not doing what other teachers were doing in working in accordance with the rota. This

was nothing to do with the claimant's race. He said that the only Covid risk assessments he had completed were for the claimant and Ms Shah.

128. Mr Fell made some changes to the email Mr Schofield provided to him in draft and ultimately sent to the claimant. This asked the claimant to put any outstanding concerns in writing to the headteacher. The message (with Mr Fell's addition) stated that Mr Fell was satisfied with the risk assessment. Mr Fell told the tribunal he was referring here to the general school risk assessment.

129. At this point (and as noted in the risk assessment) the claimant was still being required to fulfil 2 days on the rota, though no unnecessary face-to-face meetings with staff would be conducted and social distancing between the claimant and staff/students would be maintained.

130. On Friday 3 July at 4:24pm, the claimant sent Mr Fell a fit note dated that day covering the period to 17 July. This referred to the claimant's condition of asthma. It said: "During the Covid 19 pandemic would recommend to work from home due to asthma (with regular flareups)". Mr Fell responded on 7 July saying that the respondent would support her need to work at home for the remainder of the term which ended on Friday 17 July. He said that he understood her anxiety and was referring her to occupational health to give the opportunity to access the support she needed as they prepared to reopen to all students in September. The claimant said that she did question being referred to occupational because of anxiety whereas her condition/risk factors were asthma and being of black heritage.

131. The claimant said that she tried to contact Mr Schofield and Mr Fell early on the morning of Monday 6 July to advise them of her sickness absence, but alleged that they had deliberately turned their phones off to avoid her call. Mr Fell's evidence was that he did not see her email until the Monday morning and therefore, first thing, had not had it in his mind that she would be telephoning to report a lack of fitness for work. The claimant said that the call to Mr Fell went straight to voicemail indicating in her mind that the phone was switched off. Mr Schofield's evidence was that his phone had been switched off at 0728 when the claimant tried to call him as was his practice to facilitate a break from work matters. His number had been given for people to report absences, but not for emergency out of hours purposes – he wanted to maintain his own work life balance. Mr Fell said that his phone would not have been switched off. Certainly, he had not deliberately missed her call, in order to find something to discipline the claimant for, as was put to him.

132. On 7 July, the claimant emailed Mr Fell seeking a joint union meeting. He did not respond.

133. The claimant had emailed Ms Taylor on 13 July, on receipt of the occupational health referral, querying why it was being made on the grounds of anxiety. Ms Taylor forwarded this to Mr Fell and Mr Schofield saying that: "I'm not responding". She noted that the claimant had also reported that the results of tests had indicated that she was deficient in vitamin D. Mr Fell responded saying that he thought the reference to anxiety was perfectly reasonable and needed to be explored further. They had no evidence of the asthma flareups referred to on the fit note and the claimant, he said, had displayed significant anxiety during the risk assessment process. The fit note took the matter outside any government guidance, including what was available for those from BAME backgrounds. Ms Taylor added to the risk assessment that the claimant had reported a vitamin D deficiency. It was then noted, in terms of actions, that the claimant would self-manage this deficiency and that the claimant's "role in school allows for more time to be spent outdoors". The claimant rejected the proposition in cross-examination that Ms Taylor was trying to be helpful, saying that the comment showed that her vitamin D deficiency was not being taken seriously in circumstances where vitamin D could not be absorbed through sunlight as easily by black people. She said that she displayed a lack of respect on the grounds of her race. Mr Schofield said that he had been personally unaware that black people produce lower levels of vitamin D than white people. He accepted that the wording used about the claimant's role was "clunky", but it was just factual that the claimant's role involved her spending more time outdoors than other subject teachers. He thought that Ms Taylor probably thought that she was being helpful. This amendment to the risk assessment was not discussed in advance with the claimant.

134. On 14 July the respondent was contacted by the HSE regarding procedures and assessments not being followed. The claimant had contacted them. In internal correspondence, Mr Fell referred to the only member of staff who would raise any concerns having not been in school since the week beginning 16 March 2000. Mr Weston said that he would surmise himself that this was a reference to the claimant. Mr Fell had told Mr Weston that someone had spoken to the HSE, but at no point had suggested to Mr Weston who that might be.

135. The claimant had a video appointment with occupational health on 16 July. Their opinion was that the claimant was at increased risk from the coronavirus. In terms of recommendations, it was said that if an agreement could not be reached, then the procedure outlined in the Kirklees returning to schools document should be followed and working from home considered. The

claimant agreed that occupational health had not said that, for medical reasons, the claimant ought not to be expected to work in school. Mr Schofield agreed that it was clear that OH were recommending a discussion with the claimant. He had not, however, seen the OH report himself at the time.

136. The respondent was due to reopen to all students in September 2020. The claimant agreed that the situation in terms of Covid was very different to what it had been in July 2020. Mr Fell had sent an email to all staff on 7 July regarding plans for the next term. In this he said that he was open to consultation and conversation.

137. On 22 July the claimant made a subject access request, including for all communications and CCTV footage relating to her and involving a wide range of people, including the chair of governors and Kirklees HR.

138. The respondent's general risk assessment was updated on 25 August. The claimant agreed that the SLT would have a lot to think about in terms of reopening. At this point, she was still in a position where she had been told that the concerns about her behaviour/conduct would be dealt with by a formal management meeting.

139. Monday 7 and Tuesday 8 September were designated as inset days with only the staff attending the school. Attendance of staff was indeed staggered on 7 September. The school was to be open on 8 and 9 September for staff if they wanted an individual risk assessment to be carried out, including those who were clinically extremely vulnerable. The school would be prepared to be ready for pupils arriving on 10 September. The claimant told the tribunal that she was still concerned regarding those first few days back because she was being expected to be in an unventilated room with around 50 teaching staff for a significant period.

140. On 28 August, the claimant emailed Mr Fell saying that she hoped he was well and staying safe. She said she was enquiring as to when they could have a union meeting regarding the school's risk assessment ready for opening on 7 September. She said that she was concerned that they were running out of time to discuss this. The claimant's evidence was that she had not in fact seen the school's risk assessment until 4 September, but it appears more likely that she did see it prior to writing this email. The claimant raises a lack of response from Mr Fell as part of a pattern of ignoring her as a union representative, but being willing to discuss matters with others not of black heritage. She said that she had to ask Mr Wolfenden to become involved

because Mr Fell wouldn't speak to her. The claimant rejected the proposition that, given all the issues during the summer term and her submission of the subject access request, relationships between her and Mr Fell had become strained. She said that she was still willing to work with him and that she remained very friendly in correspondence. Mr Fell didn't respond to the request for a union meeting. As far as he was concerned, he had made it clear that they would use 7 September for a briefing of staff.

141. Also on 28 August, the claimant emailed Ms Wright and Mr Schofield saying she hoped they were both well and had had a lovely summer. She asked when she could meet to complete her individual risk assessment prior to the school opening. This was in circumstances where the claimant was aware that 8 and 9 September had been set aside for those risk assessments. The claimant believed it was in accordance with occupational health guidance to have a risk assessment before she returned to the respondent. Ms Wright responded on 2 September saying that the new medical officer, Audra Stockdale, was taking over the assessments and more information would be given to all staff on the Monday as part of the whole staff introductory session. The claimant accepted at this point in the chronology of her cross-examination that she was only told about the medical officer at this point, rather than earlier in July.

142. Mr Schofield agreed that Ms Wright could have undertaken the risk assessment herself when Mr Schofield was on leave, but said that only staff were coming in during the first week back. It made sense to do any assessment then and Ms Wright was planning that they would be undertaken on one of the inset days before the return of pupils.

143. The claimant responded on Friday 4 September saying that she had been in touch with her union and felt the risk assessment should be done prior to her returning to work. Ms Wright responded shortly afterwards saying that, given the timing of her email, availability to discuss this before school started on the Monday was limited. She said that obviously the claimant would make her own judgement, however she would encourage her to attend the staff update at 8:30am on the Monday morning as it was a key day for sharing information about the new arrangements and would hopefully alleviate any potential anxiety about returning to teaching on site. She said that there were no students at all in school until the Thursday and that the school did not fully reopen until 14 September. Mr Schofield 's view before the tribunal was that it was not unreasonable for the claimant to seek a risk assessment before a physical return to work. He thought that Ms Wright was encouraging her attendance, however, rather than instructing her to attend. Mr Fell could see the claimant's logic, but any assessment had to wait until the new school year

and was going to take place with only a number of the staff back in the school premises.

144. Gill Goodswen of the NEU had already emailed Ms Wright regarding the claimant not feeling able to attend the staff meeting due to her concerns. Ms Goodswen emailed Ms Wright further on 5 September saying that she had advised the claimant not to return to the workplace until the risk assessment meeting had taken place.

145. Ms Wright emailed the claimant late afternoon on 7 September saying that, following a conversation she had had with Ms Goodswen on the Friday afternoon, it was their understanding that the claimant would be in school that day. She hadn't seen Ms Goodswen's email sent over the weekend that the claimant was anxious about coming on site without an individual risk assessment. She said it was concerning that the claimant had not followed the school's procedures in advising of her absence that day, however they would do whatever they could to alleviate her anxiety and had booked a personalised risk assessment meeting for her at 2pm on 8 September. She said that the whole school risk assessment had been ratified by the governing body. It was not possible for teaching staff to work from home and the school was deemed to have appropriate protective measures in place. As such, the claimant was required to be in work as normal.

146. Mr Schofield viewed the claimant's absence on 7 September as unauthorised as he would have expected the claimant to make contact with the school. He accepted that Ms Wright knew that the claimant would not be attending, but this came from an NEU officer who had, he said, no authority in the school. Mr Fell was of the same view. Kirklees HR had no management authority over the claimant either. He was the only one who could authorise any non-attendance. He believed that the claimant could have attended the school. If she had then felt uncomfortable going into a staff briefing, she could have said so and she could have potentially been separately briefed.

147. The claimant's absence was investigated by Ms Dodd as one of the claimant's grievances. She concluded that treating 7 and 8 September as unauthorised absence resulted in unfair treatment. This was because it was made clear to Ms Wright by the email from Ms Goodswen that the claimant would not be attending school on 7 September. As the claimant was copied into this email, it would not be unreasonable, she found, to assume that the claimant presumed that this was adequate. Mr Fell repeated that he had not authorised the claimant to work from home and that the school was not involved in discussions between Ms Goodswen and HR. He did not agree with Ms Dodd's

conclusion. This was something he wanted to discuss with the claimant at a formal management meeting, i.e. in a non-disciplinary setting.

148. The claimant accepted Mr Fell's evidence that other employees also had concerns regarding a return to work. No other employee refused to return on the first day attended by staff in September, including employees who were classified as clinically extremely vulnerable. The claimant's view was that she could not be compared to others who were perhaps willing to take a chance with their health. A high proportion of people of black heritage, who caught Covid became seriously ill.

149. The claimant attended the risk assessment meeting on 8 September, which she says was done in a proper manner, socially distanced with outside windows open. She agreed that they had worked together to reduce risks as much as possible. The claimant returned to work on 9 September.

150. Mr Fell then wrote to the claimant on 14 September inviting her to the formal management meeting, now arranged for 22 September. He set out again the concerns previously raised with her. He however said that unfortunately her professional conduct had continued to cause significant concerns throughout the period of lockdown and over the summer holiday. He listed further concerns which would be dealt with at the management meeting. These included the nature of her communications over being included in the rota for year 10 students to be implemented in June, her submission of a fit note regarding her unavailability to work on the rota on 6 and 15 July, the claimant having been informed of being on the rota by email of 29 June, the claimant taking unauthorised leave on Monday 7 and Tuesday 8 September, the timing of the email sent in relation to her attendance at the beginning of the academic year, including the one sent on 4 September leaving no time for the information to be processed and responded to, the claimant's email of 14 May where she said she would take no part in discussions regarding a return to school, her subsequent emails of 7 July and 28 August requesting the involvement of union stewards, when Mr Fell had made it clear that consultation would be with the whole staff group and that the unions would be involved at district level, and her making accusations during her first individual risk assessment that the guidance on risk assessments was not being followed.

151. Mr Fell told the tribunal that he still felt it necessary to discuss the year 9 parents' evening, as he did not have full knowledge of the communications with the claimant. As regards 26 February, there was still a need to understand why the claimant was not where she was timetabled to be. He was not aware, at the time of the claimant's explanation and found her response to Ms Shah to

be evasive. He felt that, on 3 March, the claimant had not delivered a lesson, when she had simply been late for the start of it. There was a need to discuss this further. He told the tribunal, again, that this was not a disciplinary process. As regards challenges to the school rota, Mr Fell said that he already had information in terms of the guidance and the information from asthma UK. He wanted to make a point during their forthcoming discussions that she was overburdening him. When put to him in cross-examination that this was inappropriately referred to as an issue going to her professional conduct Mr Fell said that it was indeed a serious matter. As regards the 3 July fit note, he was not saying that she had deliberately delayed in sending it, but the timing of communications had added to pressure on the respondent - he wanted to discuss why it was sent then. He recognised that the claimant's email of 14 May 2020 was sent in her capacity as a union representative. Mr Fell, in cross-examination, said that he recognised the importance of unions, he was a member of one. However, he had been clear as to how they would deal with more global rather than individual staff member issues. When put that there was no professional misconduct in a union representative asking for joint union meeting, he said that it was to be discussed with the claimant and that some of her communications were unreasonable. As regards the final risk assessment issue raised, where he referred to a claim that the claimant had photographs to support her concerns regarding the use of bins, he agreed that he had not viewed any photographic evidence before raising this as a concern.

152. When put to Mr Fell, that there was no reference to a breakdown in relationships in the letter, Mr Fell said that he didn't believe that there was one. The management meeting would establish if there was one. He then said that he was concerned about there being a breakdown. He did not think the situation was irreparable. When put that there was no reference to any suspension, Mr Fell responded that: "There wouldn't be."

153. Mr Sykes, who heard the subsequent disciplinary appeal said that he would have felt "pretty sick" at receiving a letter in this form and of such length.

154. The claimant responded on 14 September asking for a copy of all evidence prior to the meeting taking place. Ms Taylor responded on 15 September saying that the purpose was to discuss the series of concerns raised and there was no obligation for evidence to be provided prior to this taking place.

155. The claimant then wrote to Mr Fell on 16 September saying that she was disappointed that he was refusing to provide her with evidence to enable her to prepare fully for the meeting. She said: "I believe that this is preventing a fair

process and is also a misuse of your position of power as Head Teacher." She said that she was entitled to ask for any information under data protection legislation. She concluded: "I am concerned that these accusations/allegations regarding my conduct are baseless and that this may be the reason that you are unwilling to substantiate each of them with any supporting evidence. As such, I vehemently disagree with the concerns raised and will be challenging them appropriately. I will also be seeking advice from an NEU Equality Officer."

156. It was put to the claimant in cross-examination that she was showing an utter lack of respect for Mr Fell as head teacher. She said that the letter showed that she was getting tired. She didn't think it was the best written letter. She had said as much, she said, at the subsequent disciplinary hearing. In hindsight, she said that she could have written the letter a lot better. Nevertheless, she still believed that she had been discriminated against on the evidence and based on her own lived experience as a black woman. She agreed that she should do not have used the words suggesting a misuse of position. She was not aware that the meeting she was being invited to could only lead to a letter of concern. Again, the claimant said that she was still happy to continue working with Mr Fell - she was just tired and want to resolve issues.

157. In cross-examination, when put that the claimant was entitled to say that the allegations were baseless, Mr Fell said that she could have at the meeting which had been arranged – "I'm accused of saying things which are baseless, so there is a problem with that." When asked if the reference to seeking advice from an NEU Equality Officer concerned him, he said: "yes… If I'm honest just like a threat… I did not understand what was meant… I was more concerned about the abuse of power and being accused of making things up… It sounded threatening." He said that he was not thinking about whether she might bring a claim for discrimination saying that was because he was confident that he had not discriminated. He refuted the suggestion that he was trying to downplay the reference to the Equality Officer in not referring to it in this witness statement. He said that his particular focus was on the comment about his misuse of power and baseless allegations.

158. Mr Fell forwarded the claimant's correspondence to Ms Parsons. He said that her response to the invitation was to request evidence which was not a requirement of the process. He then said: "This letter more than suggests I am bullying her and that I am in breach of the equalities act." He asked for Ms Parsons' thoughts.

159. In cross-examination, Mr Fell said that from the reference to a breach of the equalities act, he did not go straight to discrimination. To him, it was to do

with an abuse of power. He might seem naive, but he was telling the truth. He shared the communication with HR, because he was not sure what it meant. Again, he said that he did not think that the claimant might be complaining of discrimination. He accepted he had heard of the Equality Act, but said that he was under a lot of pressure. He accepted that he was aware "in general" that complaints of discrimination might be brought under the Act, but he did not think that was going to be the case here. He said that these references had nothing to do with his decision to suspend the claimant.

160. In subsequent correspondence with Kirklees HR on 17 September, Mr Fell said that: "I feel that it needs further escalation to a full disciplinary. I also believe there are grounds for a suspension…" Mr Fell then emailed saying that that week the claimant had left site at lunchtime without signing out describing this as a further breach of conduct. He said: "The accusatory tone of the letter sent to me yesterday confirms the complete breakdown in her relationship with the leadership of the school which is grounds for a suspension whilst further investigation takes place prior to a disciplinary procedure." Again, Mr Fell's position before the tribunal was that the reference to the Equality Officer had no influence on his suspension decision. He said that there was a complete breakdown if the claimant wouldn't engage with the head teacher at a formal management meeting. It was put that the claimant had not said that she would not attend. He said that he had allowed the meeting on 22 September to come and go and there was no attendance by the claimant.

161. At 07:15 on 18 September Mr Fell emailed Ms Parsons asking if she had managed to get hold of Mr Greenwood of the NEU. She replied at 08:05 saying that she had tried, but they kept missing each other. She emailed Mr Fell at 11:51 to say that she had just spoken to him and he was going to speak to the claimant. It highlighted that the claimant would want to put her points forward during the meeting. He was on leave however until week commencing 5 October and no other representatives were available. Mr Greenwood was going to get back in contact with HR, at which point, Ms Parsons said, they would know whether "we are going with the management meeting or disciplinary hearing."

162. Mr Fell emailed Ms Parsons of HR at 12:05 on 18 September questioning whether they were bound by the availability of union representatives and saying that there had been no response from the claimant in relation to the management meeting and if the date was not to be attended, "then it will be escalated to full disciplinary". He continued: "To be honest, it needs to be a full disciplinary as there is a clearly established pattern of misconduct in failing to follow established systems and protocols, a lack of honesty when questioned over breaches of contract obligation and ongoing

vexatious behaviour that is in direct contravention of the standards for teachers part two. I believe there are grounds for dismissal due to a loss of trust and confidence in the employee which falls under the 'some other substantial reason'."

163. Ms Crane of HR replied, at 12:23, saying that they usually allowed the union to rearrange once. She said that Ms Parsons could not go back and advise that there will be instead a disciplinary meeting given previous discussions with the claimant's union representative, Mr Greenwood, senior regional officer of the NEU, when it had been decided that they would proceed with the management meeting on the understanding that this meeting could be adjourned and progressed to a disciplinary if there were grounds for that at the meeting. Ms Parsons emailed at 12:45 to say that she had explained to Mr Greenwood that they would go with a full disciplinary if the claimant was still pushing for evidence from the school.

164. At 13:52, Mr Fell emailed Ms Parsons and Ms Crane stating that he would like to proceed with the full disciplinary and was no longer prepared to deal with this through a formal management meeting. He said: "Alongside all this, I have grounds for a grievance, given the accusations of misusing power and breaching the equalities act." Again, Mr Fell told the tribunal that the claimant's suspension was not linked to the Equality Act.

165. Mr Greenwood, had discussed matters with the claimant on 18 September and emailed Ms Parsons at 14:34 saying that he didn't believe that the fact that the claimant had requested evidence ought to change the purpose of the meeting, that being simply a management meeting. He gave dates of availaibilty to attend the management meeting on 7 or 8 October.

166. Ms Crane of Kirklees HR replied at 15:47 that the matter was due to go to a disciplinary before the lockdown, but because of that, it had been agreed to carry out a management meeting after lockdown. However, with recent events, Mr Fell had questioned that approach. She said that the decision regarding holding a management meeting or disciplinary investigation was not based on the claimant's request for evidence. Since the letter was sent arranging the management meeting, the claimant had emailed Mr Fell accusing him of a misuse of power and had challenged the allegations, calling them accusations and baseless. She said that Mr Fell was questioning both the tone and content of the email and its unprofessional nature. Whilst a management meeting was the preferred option, following recent events, Mr Fell now felt that the appropriate next stage was a disciplinary investigation. The claimant would not be suspended on full pay, but the respondent asked that during the period

of the investigation she did not carry out her trade union representative duties. The school, it was said, would issue a new letter to the claimant advising her of the investigation.

167. The claimant maintained that the reason for the change of approach and arrangement of the disciplinary hearing was because Mr Fell believed that he was accusing her of a breach of the Equality Act. She said that the respondent was trying to remove her from her trade union duties to silence her, who happened to be a black woman and who was being stereotyped. She said that Mr Greenwood had not told her around that time that there was any possibility of suspension.

168. On 22 September, Ms Parsons emailed Mr Fell attaching an invitation to an investigation to be sent to the claimant. It added the 2 additional allegations of leaving at lunchtime without signing out and the tone of her 16 September email suggesting "accusations which suggests the potential break down in trust between yourselves." Ms Parsons referred to this latter allegation as difficult to prove. Ms Crane provided a condensed draft invitation letter to Mr Fell on 23 September clearly, on the face of her message, to avoid it appearing as if he was picking at small issues and conducting a witch hunt and "steering clear" of her union communications.

169. On 22 September the claimant contacted the HSE regarding concerns she had about the respondent. The respondent was notified that the HSE would conduct a visit on 1 October 2020. The inspection duly took place on that day.

170. Mr Greenwood advised Ms Parsons on 29 September that he was now only available on 8 October.

171. Also on 29 September, the claimant emailed Mr McManus expressing concerns that a pupil with covid symptoms had returned to the classroom to collect his belongings rather than being sent home immediately after he had gone to the medical office. She said that she had requested that cleaners came into the classroom to clean the room as she thought there was a significant risk to others. However, the cleaners had told the claimant that they had been told only to clean door handles and light switches except in cases of a positive test for covid. She then also spoken to a caretaker who it said that she would not be able to send a team into clean the room until a significant period after the pupil had left the room. Mr McManus forwarded this to Ms Shah noting that it: "sounds a bit worrying!" Ms Shah forwarded this to the SLT.

172. Mr Fell forwarded the claimant's email to Ms Crane on 30 September in the context of this disclosing a further conduct issue. Ms Crane in reply said that she could see that instead of going to those responsible for risk assessments, the claimant had taken it upon herself to give instructions to cleaners/caretakers outside of the respondent's protocols. The incident was to be noted as evidence that the claimant might interfere with or prejudice an investigative process.

173. The tribunal notes that when this issue was investigated as an allegation against the claimant by Mr Ryan, there was no evidence found that the claimant had placed undue pressure on other members of staff or interfered with their operations. There was no finding of misconduct, but rather that the claimant took prompt action to isolate the child from her classroom, directed the child to the responsible officer and that her subsequent actions did not interfere with the operation of the respondent's protocols.

174. By 30 September, Mr Fell was seeking to be in a position to suspend the claimant the following day and chased HR for a final version of the necessary letter. He accepted that the protocol applying to disciplinary action had not been followed, including a need for a fact find. Mr Fell believed that he had enough facts already. Ms Crane raised HR concerns about the risk of not following procedures highlighting that the claimant was a union steward and "has a protected characteristic". She referred to the union not at this stage being aware of the intention to suspend the claimant. Mr Fell has referred to the incident as the final trigger causing him to suspend the claimant. His position before the tribunal remained that the claimant had acted outside her role and this was part of a pattern of concerns. It was misleading, he said, to take the incident in isolation.

175. Mr Fell responded saying that he would want to finalise the fact find without the potential prejudice of the claimant being in school and he was satisfied that there was enough evidence available to warrant the agreed actions. He asked if he could verbally inform the claimant of her suspension with the letter to follow. He also referred to cleaners having been spoken to, but not by him – a reference to the incident of the child with Covid symptoms. Mr Fell told the tribunal that the breakdown in relationships led him to believe that an investigation could be prejudiced, if the claimant remained at school. She had refused to engage in a management meeting which was a school process. That was enough to suggest that she wouldn't engage with an investigation and that her being in school would prejudice that.

176. On 30 September 2020, Ms Taylor emailed Ms Wright saying that she wanted to document that another teacher, Ms Frew, had been to see her that morning to say she felt uncomfortable with what she perceived to be a "witch hunt" against Mr Fell. Ms Taylor said that Ms Frew had reported receiving a personal text message from one of the respondent's union stewards concerned that she had not been asked to self-isolate after teaching a class of students where someone had tested positive. The claimant did not accept that Ms Frew was referring to her. Ms Frew, she said, was a member of Unison, not the NEU.

177. Ms Crane emailed Mr Fell early on 1 October explaining that she was concerned that the grounds of suspension "are a little weak". Mr Fell responded that he believed there to be grounds for suspension and the claimant's presence in school was untenable. He said that he hadn't considered an alternative, continuing that the suspension was due to the fact that her presence was likely to hinder and prejudice the ongoing and now extended investigation. He said: "The trust and confidence in this member of staff has been lost due to a continued pattern of misconduct which is now having a significant effect on my capacity and the capacity of other members of SLT to run the school effectively."

178. On 1 October, Mr Fell met the claimant and told the claimant of her suspension and that reasons would be confirmed in writing. The claimant said that he did mention that she had breached a risk assessment regarding a child potentially with Covid. Mr Fell then wrote to the claimant on 1 October referring to concerns about failure to deliver timetabled lessons, unprofessional behaviour, including the reference to his misuse of power and baseless and accusatory allegations, a failure to follow procedures relating to leave of absence and that "there is a loss of trust and confidence that the school places in you based on the above allegations". He referred, in addition, to having been made aware the previous day of her failing to follow the Covid risk assessment protocols for potentially symptomatic children. He said that, on the basis of this information, he was suspending her from duty on full pay effective from 1 October whilst the concerns were investigated. The suspension was said to be precautionary as outlined in the enclosed disciplinary procedures. Again, it was said that suspension was considered following her communication with him. It had been the hope that there would be an improvement in her behaviour as an investigation was conducted. However, following the incident the previous day (a reference to the child with Covid symptoms), her presence was considered likely to hinder and prejudice an investigation. It was said the trust and confidence in her had been lost due to a continued pattern of misconduct which was now having a significant effect on senior management and the capacity to run the school effectively. She was told that she could be accompanied by a union representative at any meetings. She was instructed not to make contact relating these issues with any work colleagues, pupils and their families,

governors, clients, the media "other than your representative" whilst on suspension unless prior approval was given. She was advised of Kirklees Council's 24-hour counselling service available for her or alternatively that one-to-one counselling could be provided through the Council's employee healthcare unit.

179. Mr Schofield was not present at the point of the claimant's suspension, but was in the near vicinity. He saw the claimant visibly upset in the reception/year 8 entrance area, in an "agitated state". Mr Fell asked him for assistance in moving the claimant out of the area as pupils were arriving. He said that the claimant then went back into the office.

180. Mr Fell had spoken to Mr Weston, as Chair of Governors, in advance of the claimant's suspension and Mr Weston recalled that Mr Fell had explained to him his strong feelings why Mr Fell considered there to be a need to suspend her. Mr Weston, on that day, also spoke to Ms Crane of Kirklees Council who had reassured him that suspension was an appropriate step. When put to Mr Weston that Mr Fell had been pressing for suspension and wouldn't accept any reservations from HR, he said that Mr Fell as head teacher was working in a school in difficult circumstances with a lot of pressure and Mr Weston could understand how he felt. Ms Crane did not know the actual situation pertaining in the school. Mr Fell was paid to make decisions he felt right. When asked if he recalled Mr Fell saying that he had been accused of discrimination, Mr Weston said that he didn't think that Mr Fell had mentioned that to him and he had not seen the relevant letters. He agreed, however, that, from Mr Fell's perspective, trust and confidence had broken down as at 1 October and that this was because of accusations made against him by a teacher. He thought, however, that it was quite a jump to make when suggested that there was an accusation of a breach of the Equality Act, saying that the claimant had just said that she would seek advice from the union's Equality Officer.

181. The disciplinary investigation was to be conducted by Mr Schofield with the assistance of Mr Daniel Ryan of Kirklees HR. The claimant was invited to attend an investigation meeting by letter of 7 October. Mr Schofield provided Mr Ryan with relevant evidence he had collated and it was then for Mr Ryan to conduct witness interviews and write up a report. By 9 October, Mr Schofield had almost completed an evidence file and chronology relating to the allegations against the claimant and forwarded a draft to Mr Ryan of Kirklees Council's HR department. He told the tribunal that he believed that he had straightforwardly followed his brief to collate facts but not come to any judgrments. He agreed that in summarising the CCTV footage when the claimant was in the canteen, he had not recorded which colleague she was with or that a pupil was also there. When referring to the claimant's email of 16

September and the reference to and Equality Officer he stated: “This would point to the fact that LLE feels that she has been mistreated for a protected characteristic and this is something that Andrew Fell takes very seriously.” Mr Ryan, in his own subsequent report, referred to the claimant’s reference to an Equality Officer as “an implied threat of complaint.”

182. The claimant submitted a grievance on a 9 October through Mr Greenwood requesting an investigation by an independent person from a BAME background. The grievance referred to issues involving Mr Schofield. As a result, Mr Schofield stepped down as investigating officer in the disciplinary case due to the potential perception of bias and Mr Ryan continued the investigation on his own. Ms Paula Dodds of HR investigated the grievance.

183. The claimant, as referred to above, had made a subject access request on 22 July 2020. Part of the material disclosed in response to this was Mr Fell’s email of 2 December 2019 effectively noting his view of their meeting on that date and making the comment about the claimant having been aggressive. The claimant agrees that this was the starting point to his alleged discriminatory behaviour towards her. The claimant was certainly in receipt of this when she then submitted her grievance on 9 October 2020 as she refers to the comment within it.

184. In terms of the type of discrimination involved/reasons attributed to the treatment she received, the claimant firstly set out detrimental treatment because of her trade union activities. She addressed the criticism of her 27 November email about part-time directed hours. She then referred to an attempt to persuade others not to use the claimant as a union representative. When put to the claimant that she might have attributed that treatment to her race, as well as trade union role, she said that the subject access request had not been fully complied with and she later saw that the difference in treatment she had received certainly wasn’t because of her union role as it was now was apparent that the respondent would meet with white union representatives, but not one of black heritage.

185. Continuing under the heading of adverse treatment because of trade union activities, the claimant referred to unwarranted monitoring by Mr Fell and the SLT, attempts by Mr Fell to influence her role within the union, her treatment in terms of being placed on the rota, unfair allegations against her and the cancellation of union meetings.

186. The claimant then included a section dealing with race discrimination, firstly relating to her appraisal targets, then lack of consideration given to the recommendations of the BAME individual risk assessment. The appraisal target was one given by Mr McManus (although the claimant thought that it would have initially come from Mr Fell) involving increasing attainment amongst white students. The claimant had thought, at the time, that the target was set in respect of white British boys, but its wider nature caused her concerns as it was not limited to a recognised disadvantage group. She referred to a lack of diversity in teaching appointments. She also referenced a black colleague, Mr Dawes, who had been subject to racist abuse by a pupil. She mentioned her meeting with Mr Fell on 2 December and Mr Fell's reaction to it. She referred to it being a racial stereotype to suggest that black women are aggressive. She finally, under this heading, referred to the issue relating to BAME risk assessments.

187. She then raised complaints of sex discrimination relating to the parent's evening and timetabling, referring both to her childcare responsibilities and part-time worker status. Next, she raised complaints of disability discrimination with reference to working during Covid and the risk assessments, discrimination as a part-time worker and then to her having been treated detrimentally because of her having made protected disclosures. There was then a section regarding lack of compliance with data protection legislation and victimisation as a result of her having made a subject access request.

188. The claimant maintained that she had no experience of raising grievances and had not seen any other written grievances previously, such that she could not respond to the suggestion in cross-examination that this was a very sophisticated grievance. She said that she had received some help from her husband, who worked in a law firm, but not from any solicitor. The tribunal must conclude that, given the content of the grievance under the various headings and legal concepts involved and described, that this grievance was prepared with legal assistance/advice. Furthermore, the claimant's grievance was submitted on her behalf by Andrew Greenwood, senior regional officer. Whilst the claimant accepted that union had cast an eye over the grievance, her suggestion, that that was a mere glance over it, is not credible in all the circumstances. The tribunal notes, again, that Mr Greenwood asked that the grievance be investigated by an independent person from a BAME background.

189. When put to her that a significant number of matters she was now claiming as race discrimination had been ascribed to other characteristics, she said that she had been trying to make sense of all that had happened to her. Also, further documentation had been disclosed later, which indicated to her that the adverse treatment she had received was because of her race.

190. It was put to the claimant that she was asserting an escalation in detrimental treatment in September 2020 because of her whistleblowing regarding health and safety. She did report her Covid related safety concerns to the HSE and they inspected the respondent on 1 October. Her position was that the respondent would have been able to work out that it was her who had made the disclosure. In her grievance she said that she had been subject to disciplinary proceedings referring to her suspension on 1 October, which she did not believe would have occurred, had it not been for her protected disclosures.

191. Mr Weston thought that he had received the claimant's grievance sometime between 9 – 14 October. On reading it, he formed the view that the grievance was against Mr Fell, but over time it became clearer that other senior leaders were allegedly involved in the claimant's mistreatment. Mr Weston had not, he said, shared the grievance with Mr Fell. He shared it only with Kirklees Council and then Paula Dodd of HR. Mr Fell could have been aware that a grievance had been raised, but not from himself and he did not think that Mr Fell was aware of the allegations. Mr Fell, he understood, had said he was first aware when he was questioned about the matters raised by Paula Dodd.

192. Mr Schofield told the tribunal that he was made aware of the grievance and that it included allegations of discrimination against Mr Fell and the SLT, including himself. When put to him that the SLT must have been displeased to be accused of discrimination, he said that he thought that anyone would be. He said that the grievance was not discussed widely – he did not hear Mr Fell commenting on it and considered that Mr Fell had remained professional.

193. Shortly after 13 October (likely to be during the weekend commencing Friday 16 October), Mr Greenwood wrote to NEU members following a zoom meeting saying that members had raised concerns regarding health and safety and the treatment of their representative, the claimant. He referred to the claimant being suspended on the day of an HSE inspection, saying that Mr Fell had refused to engage with the claimant and had attempted to have her removed as the local representative. He recorded that members had said that Mr Fell had discouraged people from speaking to the union representative, preferring that they contacted him directly. He asked people to confirm by email whether they were prepared to support the claimant by signing a petition referring to there being a joint union meeting with Mr Fell arranged for 19 October. The claimant agreed that it appeared that Mr Greenwood had had no compunction in speaking to anyone else at the union or union members at the school regarding her suspension, despite the instruction to her to limit discussion to her representative. She agreed that it was her own representative

who was behind the initiation of a petition. She said that Mr Greenwood's narrative was not necessarily her own. However, he was doing what trade unions do and issuing a supportive message.

194. The claimant agreed that they were aware that her disciplinary case would be heard by a panel of governors. She was taken then to a letter dated 26 November 2020 addressed to the governors from Mr Greenwood objecting to the claimant's suspension. Again, it was said that Mr Fell had refused to engage with the claimant regarding risk assessments and to postpone scheduled meetings. He had sought her removal as a union spokesperson and discouraged union members from going to their union. He stated that the NEU believed that this was a deliberate attempt to marginalise the union's voice. He referred to Hazel Danson, a district secretary of the NEU having met with Mr Fell on 16 November but that he had refused to reinstate the claimant. He continued that the governing body needed to be aware that the NEU took this as "provocation" and were actively considering their next steps including a ballot for strike action. The letter ended with a plea to governors to intervene.

195. Also, on 26 November, the Sheffield division of the NEU put out a message that the claimant was suspended for daring to stand up to the school on safety. The claimant was described as a socialist and Vice-President of Kirklees NEU. Recipients were asked to sign and share the petition for her reinstatement. The claimant told the tribunal that she had not seen this message until it was disclosed during these proceedings. Again, she said that she was not party to any meetings or campaign in her support. She said that she had not been aware of Mr Greenwood's activities until other things came out in social media.

196. On 8 December 2020, the Huddersfield Examiner tweeted about the respondent's head teacher being accused of bullying a female PE teacher. The claimant thought that they had been spoken to by Hazel Danson or Mr Greenwood. The press article referred to claimant's suspension from 1 October "for carrying out her union duties". There was a reference to the claimant's involvement in securing individual risk assessments and her being suspended on the same day as an HSE inspection. When put to the claimant that she was aware of what was being put out in public and, if she had thought it was unfair/inaccurate she could have stopped it or issued her own version, she said that she was not fully active at district level and was not allowed to talk to her union under the terms of her suspension.

197. The Huddersfield Examiner, on 9 December referred to a Peter Hoyle starting a petition in favour of the claimant's reinstatement, which had attracted

more than 700 signatures. The claimant said that she had no idea who Mr Hoyle was and that this was not a campaign led by her.

198. A public demonstration took place outside the school on 10 December 2020. This was the day after the claimant's investigation interview. On 16 December, pictures of the protest were tweeted with reference to the claimant having been suspended for carrying out legitimate trade union duties. Hazel Danson tweeted a picture on 18 December describing the claimant as having been victimised for standing up for health and safety. A banner with the claimant's name was visible.

199. The claimant said that she had not been involved in the protest.

200. The protest had taken place at the start of the school day as pupils, parents and staff were arriving at the school. The protesters present had occupied the pavement area next to the school and handed out flyers, including to pupils. Mr Schofield's uncontested evidence was that no members of staff had been part of the protest. He described the pavements as being blocked and students having to walk in the road to get past, saying it was intimidating for them. He described someone from KLTV, a community TV station, doing some filming.

201. An organisation operating under the name of actionnetwork.org issued a tweet on 10 December asking for the reinstatement of the claimant and referencing the petition. This referred to her having been "disgracefully" suspended. Another tweet described her as having been dismissed for her role as a trade union representative. A tweet from Education Solidarity Network described the claimant as suspended for doing her job and trying to make the school safe. Another, from Unite, asked for support for the claimant suspended from doing her job as NEU representative on the same day the HSE carried out their inspection.

202. The tribunal has been taken to a message of 11 December to the author/poet Michael Rosen asking for his support for the claimant. A similar message was sent on the same day to a local MP, Jeremy Corbyn and a branch of Unite asking them to retweet their support and to sign the petition

203. On 12 December 2020 a branch secretary of the Unite union wrote to Mr Fell saying that they had been asked to show solidarity with the claimant. He noted that the branch had passed a motion noting, with complete dismay and

anger, the claimant's suspension, saying that the claimant had been following union advice on government guidelines and trying to secure a safe workplace. Reference was then made to the spot check visit by the HSE. He said that they believed that the claimant had been targeted because of legitimate trade union activity, including raising questions about safety during the pandemic. He agreed to send a message of protest to the respondent's governing body and to the local authority demanding the claimant's reinstatement and a letter of protest to Mr Fell demanding he immediately reinstate her.

204. The claimant attended a disciplinary investigation meeting with Mr Ryan on 15 December. The claimant accepted that, in part, the delay was due to difficulties in arranging a time for the meeting, including the need, at one point, for Mr Greenwood to self-isolate. The claimant, in cross-examination said that they were pushing for an in-person meeting and wanted to wait.

205. On 16 December 2020, KLTV posted a video to YouTube of protests in favour of the claimant. This referred to the "defend Louise Lewis campaign". In it, a Mike Foster expressed the view that the claimant had been victimised because she had continued to raise health and safety concerns and that she had been suspended "in order to remove the union voice of resistance and opposition within the school because of its failure to follow Covid guidelines". At one point in the video a Councillor Walker said: "From what I gather from talking to her it's really been about her persistence in making sure that there have been proper health, health and safety assessment…" The claimant said she had not met Mr Walker and this was probably a slip of his tongue.

206. Mr Fell's evidence was that he had received concerned calls from staff and was aware that the police had to be called to the site. One of the parent governors emailed on 17 December to say that her son was asking questions about the protests. She referred to more media blogs being posted and the respondent coming out "in such a negative light. Things are just starting to snowball!"

207. In January 2021, Unite Manchester wrote to a governor with a detailed account of the claimant's suspension.

208. On 4 January the deputy general secretary of the NEU wrote to Mr Weston, copied to Mr Fell, with notice of a ballot for industrial action "in opposition to the dismissal of NEU representative". Ballot papers were to be returned by 25 January - the union wrote to members saying that the dispute concerned the suspension of the claimant who had been strictly following trade

union advice to secure whole school and individual risk assessments. Again, detail was given regarding Mr Fell allegedly refusing to engage with her on such matters and her suspension on the same day as the HSE inspection.

209. On 11 January 2021, Mr Fell reviewed the claimant's suspension and determined that it should remain in place. On 14 January the claimant submitted a second grievance complaining of this decision. Mr Weston determined on 20 January that the claimant's suspension ought to continue.

210. On 9 February 2021, Ms Dodd finalised her report into the claimant's grievances. She had interviewed 16 members of staff. Mr Weston reviewed and continued the claimant's suspension on 22 February. He met with Ms Dodd on 25 February to discuss her report. He was content to accept her findings.

211. A meeting of the respondent's NEU members took place on 8 March. Ms Danson wrote to them in advance of the meeting. She reiterated the claimant's tireless efforts to ensure health and safety and described Mr Fell's attitude to risk as "cavalier".

212. The claimant attended a grievance feedback meeting conducted by Teams with Mr Weston on 9 March 2021 and received his outcome letter dated 12 March 2021. There had been a period of national lockdown from January to March 2021. The claimant considered that to be immaterial to any delay in arrangements, given that most meetings took place remotely in any event. Mr Weston looked firstly at allegations under the heading of detrimental treatment as a union representative. The allegation of unwanted monitoring was rejected. There was evidence that a staff member had been unduly influenced not to use the claimant as their union representative and therefore this allegation was partly upheld. However, this undue influence had not come from Mr Fell as had been alleged. There was a difference in treatment as to how staff had been asked to provide medical evidence if they required adjustments due to the coronavirus pandemic but not on the basis of the claimant being a union representative (and indeed not due to the claimant's race). As regards the year 9 parent's evening, Mr Weston partly upheld the complaint on the basis that it was not made clear whether the event was compulsory for the claimant. However, he concluded this had nothing to do with her sex or trade union activities. Nor, he told the tribunal had he reached a conclusion that it was related to race. He felt that the claimant was behaving inappropriately in suggesting that Mr Fell had a disdain for trade unions just because of a difference of opinion between them. The claimant told the tribunal that she now believed that the treatment she had received was down to her race. The allegation that Mr Fell refused to engage with the claimant as a union

representative was however partially upheld on the basis that there was clearly a breakdown in the working relationship between them which created the reluctance in Mr Weston's view in Mr Fell to meet with the claimant. He did not consider she had been suspended for any other reason other than concerns about her behaviour in respect of her role as an employee.

213. Mr Weston did not uphold any of the complaints made within the grievance of specifically race discrimination. As already referred to, he accepted that Mr Fell had described the claimant as "aggressive" following their December 2019 meeting which was, in his view, unprofessional. However, he did not consider the description to be racially motivated but rather that Mr Fell had used a word to describe behaviour as he saw it and without knowledge that the word could be associated with a racial stereotype. In his outcome letter, Mr Weston said that it was derogatory to call black women aggressive.

214. On a separate allegation, Mr Weston concluded that government guidance had been followed in respect of risk assessments for BAME staff.

215. Mrs Dodd had explained to Mr Weston that referring to a black woman as angry might be racially stereotyping. Mr Weston had himself been unaware of that connotation - it was quite a surprise to him, he said. He had, however, conducted his own research and found it to be absolutely true. He was therefore happy, he said, to uphold the allegation. Mr Weston had believed that the claimant's behaviour was inappropriate in this meeting, but also believed that Mr Fell could have found a different form of wording to use. He commented further that the language that Mr Fell used led her to believe that he was racially stereotyping her as a black woman such that this allegation was upheld.

216. He said that he spoke to Mr Fell after feedback on the grievance had been given to the claimant and that Mr Fell was as surprised and shocked as Mr Weston had been, that such a comment could be regarded as racial stereotyping. Mr Fell had been willing to accept that a derogatory term had been used, which should not have been, but he did not accept that he had used it as a stereotype. Mr Weston considered that the grievance appeal panel also agreed that to be the case. Nevertheless, Mr Weston felt that he should have known himself about the stereotypical nature of the comment, as should Mr Fell, which is why he suggested that Mr Fell had diversity training so that he was better informed.

217. As regards separate complaints of sex discrimination, he felt that the claimant's communication of absence through her union representative should

have been sufficient but that the respondent's stance was not related to sex or, as she now thought, race. He upheld the allegation regarding the timetabling of classes on the rota allocating the claimant to one of her non-working days - hee considered that this had been a simple mistake.

218. Mr Weston considered there to be no evidence to support an allegation of disability discrimination. The same applied to allegations regarding less favourable treatment than a full-time employee, whistleblowing and failure to comply with data protection legislation. He considered the correct procedures had been followed in suspending the claimant. He did not believe that staff were unduly influenced by Mr Fell speaking to staff at a briefing on 4 January 2021 about the claimant's suspension – he had wanted to explain that it was a neutral act as questions were being asked given the demonstrations and media coverage.

219. In his outcome letter, Mr Weston raised concerns about how the working relationship between Mr Fell and the claimant could be rebuilt. The tribunal accepts that this was a real concern for him. The claimant suggested in cross-examination that this finding was "scripted" to push an argument for there being a breakdown in relationships.

220. Mr Weston told the tribunal that following the grievance outcome, he did speak to Mr Fell regarding the possibility of a mediation with the claimant. Mr Fell was very hurt by the accusations against him and said he would find it difficult. Indeed, he had said that to Mr Weston before the grievance outcome. After it, Mr Weston felt that Mr Fell's views had become hardened, because of unwarranted abuse in the press and social media. He thought that Mr Fell would have struggled to be involved in a mediation at this point.

221. The claimant was invited to a disciplinary hearing on 11 March to take place on 25 March. She complained that that the delay was an act of victimisation, rather than simply caused by the time it took for Mr Ryan to complete his report. The tribunal does not conclude there to have been any deliberate delay.

222. The claimant through Mr Greenwood requested that the disciplinary case be paused. He said that, at this point, the claimant had 15 working days from the previous Friday to decide whether she wished to appeal the grievance outcome. The claimant was told that the investigations would proceed in tandem, but that, if a disciplinary hearing was necessary, it would not take place until after she had received her grievance outcome.

223. Melanie Hudson, who was to chair the governors disciplinary panel, wrote to Mr Greenwood on 16 March saying that she believed it was important for the disciplinary to go ahead as planned to avoid the impact of further delays.

224. A further notification of ballot was sent to members at the respondent on 17 March 2021.

225. On 18 March Mr Greenwood repeated his request to delay the disciplinary hearing and said that, in any event, he was not available to attend on 25 March.

226. An investigation report was completed dated 25 March 2021 by Mr Ryan. 11 individuals, including the claimant, were interviewed and a significant number of documents reviewed. Detailed factual findings were set out. Mr Ryan concluded that the allegations regarding failing to deliver timetabled lessons should proceed. This was, however, with the exception of the allegations around the non-attendance at the parent's evening, where there was believed to have been a lack of clear direction and contradictory expectations, and in respect of the claimant's conduct on 26 February, her submission of a fit note on 3 July and leaving site without signing out. Also proceeding were allegations of unprofessional behaviour in communications with senior leaders including the email of 16 September, failing to follow procedures for leave of absence requests and demonstrating a pattern of behaviour likely to hinder and prejudice the ongoing investigation, all of which were said to be substantiated. The only other allegation not found to be substantiated was that relating to the claimant failing to follow Covid 19 protocols in place for handling the situation of the symptomatic child.

227. Mr Weston was referred to Mr Ryan's disciplinary investigation report, but said that he had never seen this. It was put that Mr Ryan had read the claimant's reference to seeking advice from the NEU Equality Officer as an implied threat. Mr Weston said that he did not see it the same way.

228. Mr Weston's evidence was that Mr Fell said that he believed that some of the matters in Mr Ryan's report were examples of gross misconduct. Mr Fell told the tribunal that his view of Mr Ryan's report was that there were enough allegations he considered ought to be upheld, so as to amount to a pattern of behaviour on the claimant's part. He accepted that some individual aspects of conduct did not on their own amount to gross misconduct.

229. Mr Weston accepted that, at the disciplinary hearing, it was held that such a view did not hold any water. However, against the background of Mr Fell's view of the seriousness of the allegations, he had felt that suspension ought to be continued and certainly until after the grievance and investigation report had been produced. He said that he had followed HR and legal advice at all times. He had not been aware that the only allegations ultimately upheld related to the claimant's absence from teaching on 27 February and her email of 16 September and were therefore clearly, it was put, not gross misconduct. He said that he did not know about these findings at the time, but subsequently agreed that the actions of the claimant did not look like gross misconduct. However, Mr Fell and Mr Ryan did feel that there were a number of allegations to answer and took more than those 2 allegations forward to the disciplinary hearing. Mr Weston agreed that, with hindsight, that was unfortunate.

230. The claimant has been referred to the transcript of a video uploaded by the NEU on 18 March 2021 about the dismissal of a teacher. The claimant appears on that video with her name and the respondent's name on screen. The claimant states that she defended a disabled member of staff who was being subjected to an attendance plan, saying they successfully had that plan removed and then that she was suspended. She said: "It was nothing to do with me as an individual it was attacking our union…"

231. The claimant said that the footage was taken at what was supposed to be a confidential meeting. She agreed that she was not suspended for defending a member of staff saying that: "I admit it doesn't look good… I didn't want it shared publicly…" The claimant has suggested that the footage was edited/spliced in a way which misrepresented what she actually said. It was put to the claimant that the only glitch in the footage came before she said she was suspended and went on to say it was nothing to do with her as an individual. The claimant has not sought to contest that.

232. A tweet from actionnetwork.org of 19 March referred to the respondent contacting the NEU asking to have the claimant removed as union spokesperson.

233. On or around 24 March 2021 the date for the claimant's disciplinary hearing was arranged for 22 April.

234. The disciplinary and grievance investigations had, therefore, concluded by late March 2021. Mr Fell took no steps to review the continuance of the

claimant's suspension. He said he had not been asked to review it and he could see an argument that this should have been considered. However, his concern would have been about a pattern of behaviour and what that meant in terms of a breakdown of relationships.

235. On 15 April 2021, the claimant appealed Mr Weston's decision on her grievance.

236. On 18 and 19 April, NEU members took part in strike action and protested outside of the school entrance.

237. On 21 April a communication was sent to Mr Fell and the governors saying that there had been a vote in favour of a strike in defence of the claimant. There was a demand to stop all charges against the claimant. A further communication on that day referred to it being more of a challenge for people of colour to assert their rights without being negatively impacted or dismissed as aggressive. Reference was made to the school's catchment area containing a large BAME community and that the respondent's actions would have an impact on that community.

238. A tweet on 22 April by someone operating under the banner, "defend victimised reps", asked the respondent to stop victimisation of the claimant and "the dismissal".

239. The claimant's disciplinary hearing commenced on 22 April, but was adjourned that day. Ms Hudson told the tribunal that when she received Mr Ryan's investigation pack she was surprised at the contents. Given the media campaign surrounding the claimant's suspension, she was expecting the allegations to be much more significant and to relate to the type of issues which had been highlighted in that campaign. What she said she saw were a number of concerns which, if individually addressed by formal meetings, may not have needed to be escalated to a disciplinary hearing. The panel was unaware of any conclusions in the separate grievance process.

240. An email of 23 April from a former deputy head teacher and union rep said: "Think again, guys. You seem to have got this badly wrong."

241. A tweet of 27 April was posted by "Education Workers Speak Out" expressing solidarity with the claimant, with pictures of supporters from Ireland.

242. On 28 April, Mr Greenwood and others were filmed in an interview by KLTV outside the respondent. In cross-examination the claimant accepted that the interviewers knew about her situation, but said that she was not involved. Mr Greenwood referred to the claimant trying to achieve a safe working environment and being suspended on the day of the HSE inspection. He said that they were looking to engage with the respondent and get the claimant reinstated.

243. Mr Schofield gave evidence that on 28 April he received a call from Mr Fell telling him that a van had “broken down” in the gateway to the school which meant that the entrance was blocked and staff had to park elsewhere and walk through the lines of protesters. Mr Schofield described a number of disabled staff members being unable to enter the school and other staff members parking on the main road. He described around 40 people protesting holding banners and placards referring to the claimant. He described what he saw as “a tunnel of people”, the large majority of whom were not staff members. He said some staff members were in tears on entry and he had to escort some into the school premises. He said that he was subject to various insults such as “management twat”, which he found upsetting. Such evidence has not been challenged.

244. He said that the police were called and asked for the van to be moved. He said that he was informed by another member of staff that it was the claimant’s brother who was driving the broken down van, albeit he did not believe that it was truly broken down. He declined to name that member of staff in cross-examination, but said that they knew the claimant’s brother. He said that the disruption was “staged” because, as soon as the police threatened legal action, the vehicle started and it was moved without issue. He described taking the decision to close the school on the second day of the strike to avoid further issues of this kind. The claimant in cross-examination denied that her brother had been involved, saying that he did not own a van. She described herself as “not proud” that abuse had been directed at people, saying that she was a professional and polite person.

245. The tribunal has been taken to photographs of the claimant in her car near to the school talking out of the window to her husband who had pulled up in his car alongside it. Contrary to what was put in cross-examination, the tribunal cannot discern the claimant laughing or smiling, nor that they were preventing any cars from passing down the road at the time they were talking. Mr Schofield’s perception of what he witnessed was that the claimant and her husband appeared to regard it as funny that staff were having to park some

distance away from the school and then walk in. He said that they remained in this position in the road for around 30 seconds.

246. The claimant emailed Mr Greenwood on 28 April saying that she was unhappy that Ms Taylor had being taking pictures of her sat in her car with her young daughter. She said that it was really upsetting for her and her daughter.

247. "Workers' Liberty" tweeted solidarity on 28 April. A PCS MoJ branch in Staffordshire emailed the respondent on 28 April expressing dismay and anger at the claimant's suspension and demanding her immediate reinstatement. On 29 April a Unite official from Islington and Hackney suggested that the respondent should be ashamed for stopping the claimant speaking up and trying to protect people. The NEU, on 29 April, tweeted a picture from the picket line with a banner stating: "Defend Louise Lewis stop trade union victimisation". Those pictures included Mr Greenwood, Mr Foster and the NEU's National Vice President.

248. An article in the Huddersfield Daily Examiner on 29 April reported on the strike action, the previous day, saying that striking teachers succeeded in closing the school. Reference was made to the claimant's father and cousin being in attendance as well as there being a sizeable police presence. An NEU representative was described as saying in a fiery speech that Mr Fell "should hang his head in shame at what he has done…" The claimant's father was quoted as saying that Mr Fell perhaps misunderstood the community, saying that head teachers were meant to bring harmony, not disharmony. The article referred to another strike planned for that day and further days of action arranged for 5, 6, 11, 12 and 13 May.

249. On 4 May the Huddersfield Examiner ran an article, with a picture of Mr Fell, describing him as under mounting pressure to explain how a suspended teacher was treated prior to a crucial HSE inspection. Mr Foster was described as the claimant's representative and was quoted as saying that parents should demand an independent investigation to ensure the safety of students. The claimant, in cross-examination, said she did not condone any comments made as if they were representing her own views.

250. The claimant's disciplinary hearing recommenced and concluded on 4 May. Mr Fell accepted that he was still making representations that there was evidence of serious misconduct. Ms Hudson's recollection was that the allegations were referred to as amounting to gross misconduct.

251. A further 2 days of strike action took place on 4 and 5 May. The claimant said that she had not been involved in it. Nor had she been involved in a subsequent day of strike action. She said that on one day, she had been outside the home of a family member on a street near the school, which was only 5 minutes away from where she lived. When she was parked up, a member of the SLT had taken pictures of her which had caused her to try to hide her face and in circumstances where her young daughter, also in the car, was upset. She said that she couldn't see the picket line itself.

252. She said that she was in no position to change the narrative in that she had been suspended and she was seeking counselling in terms of her own mental health. She had not been leading on the campaign. She said that she was aware of KLTV because they had done some work with the school, but also because they knew her father and other family members.

253. On 5 May, a parent emailed Mr Fell urging him to sort the situation out and made a plea to avoid further strike action. The parent commented that either the union did not know the full story or was being deceptive or Mr Fell, as head, had been unreasonable.

254. The conclusion of the disciplinary panel was that a number of allegations were unsubstantiated including the claimant's failure to teach a class in period 1 on 3 March and a failure to attend school on 7 and 8 September (although the last-minute nature of the claimant's communications was still criticised). However, the allegations regarding her failure to teach a timetabled class on 27 February and unprofessional behaviour in the claimant's communication with Mr Fell of 16 September were upheld.

255. Mr Ryan, in his investigation report, had noted that Ms Shah's observation of the claimant on 26 February raised safeguarding concerns for her as she believed children were potentially participating in an unsupervised lesson in the swimming pool. Ms Shah and Mr Murphy had, however, found that the class was participating in activities in the sports hall with a cover teacher. They did not approach the claimant to make further enquiries. The claimant had explained that she was absent from class because she was accompanying a distressed student to the medical room. She had said that she had returned to the class within approximately 5 minutes. She said that 2 external gymnastics coaches were leading the class. This had been supported by Mr McManus, who commented that the claimant was not leading the lesson. Mr Ryan found that the claimant had therefore provided a plausible, albeit unverified, explanation for the reasons and duration of her absence. No evidence had been presented that her absence had any detrimental effect on

the class or was indicative of an abuse of her working time. There was no evidence to indicate she left the class unsupervised or at risk of harm for a significant period of time. This allegation was therefore not proven.

256. As regards the allegation in respect of 27 February 2020, Mr Ryan noted the claimant's statements to Ms Shah at the informal fact-finding meeting on 4 March 2020. The claimant had been timetabled to be in class supported by Ms Andriana Debek, an experienced supply teacher and Ms Sadia Rehman, cover supervisor. The claimant admitted that the lesson did not take place citing behavioural issues, such that it was not safe for them to take part in the lesson. The pupils were asked to go into the changing rooms. Ms Debek and Ms Rehman indicated that this was an infrequent but accepted practice referring to the PE department withdrawing practical lessons as a punitive measure. Mr McManus said that he had also advocated this practice as a "common sense approach and is how we have always operated" adding that it was an approach successfully used at other schools he had worked in. Mr Ryan concluded that the claimant's presence in the canteen, whilst her class was in progress, remained unexplained. The allegation was considered proven on the basis that the claimant may have taken a flawed approach to behavioural management, was absent for part of the class for an unexplained reason, was unable to present evidence of any teaching having taken place and that there was evidence of inadequate supervision.

257. The disciplinary panel struggled to understand how the claimant could not recall if she had had to remove a student to the canteen due to behavioural issues. If a student had been in that situation, Ms Hudson would have expected it to be recorded somewhere by the claimant. The panel had asked the claimant itself for more information, but felt that it got no answer other than her expecting the school to say who she had been with. On the evidence, the panel concluded that the claimant couldn't explain why she was not in class as timetabled and being the senior leader in the department at the time. In other respects, the panel considered that she had shown herself to have a good memory. The panel made no finding relating to a lack of safeguarding. Given the evidence of poor practice more generally the panel recommended a review. Ms Hudson explained that they judged the case they had in front of them and would have come to the same conclusion in any case on those facts. Fundamental questions remained regarding the claimant's responsibility and her absence from the class. The panel had not heard of any general practice within the department that endorsed a teacher leaving her class and/or leaving it unattended. The decision might have been different if there was evidence that other people did not teach their classes.

258. It was accepted that no action was taken against any other member of staff for what was said by some of those interviewed to be a common practice. Mr Fell said that he was not aware that it was a common practice and, if he had been aware, it would have been dealt with in exactly the same way.

259. In considering the allegation regarding the claimant failing to teach a scheduled class during the first period on 3 March, the circumstances were that the claimant was running late because of her child being unwell, but she was expecting to be in work in time for period 1. Cover was arranged for her class by Mrs McKean. Mr Ryan also found this allegation to be proven. Mr Fell could not recall in cross-examination who had flagged up to him the allegation of the claimant failing to teach. He reviewed CCTV footage regarding the claimant's presence in school (which led him to consider that she had been able to teach at least part of period 1), but, he said, only after the issue had been flagged to him by someone else.

260. The panel issued a written warning to remain on the claimant's file for a period of 12 months. Mr Fell told the tribunal that he felt that the claimant's conduct warranted a greater sanction. Ms Hudson confirmed that Mr Fell, at the hearing, was seeking a recommendation of the claimant's conduct amounting to gross misconduct with a sanction up to dismissal. She agreed that the panel's sanction reflected its conclusion that the claimant's conduct was nowhere near constituting gross misconduct.

261. The panel did not engage with the issue of whether the claimant had been treated detrimentally because of her race. Ms Hudson's understanding was that that this had been part of the grievance and was not in this panel's remit - they were there to decide the case before them and discrimination was not part of the claimant's case.

262. The written outcome confirmed that the claimant's suspension would be brought to an immediate end, but that the panel were recommending, to ensure effective management of her reintegration, that she remained on authorised paid leave until a reintegration plan had been put in place to support her successful return. Ms Hudson referred to arranging for an early discussion to take place with the claimant to move this forward. The panel recommended restorative action was to take place as soon as it could be arranged to support future successful professional relationships. The panel perceived that there was a breakdown between the claimant and some of the SLT including Mr Fell. The claimant was given the right of appeal.

263. The claimant's union requested that the period of paid leave be extended until the outcome of a disciplinary appeal. This was agreed.

264. A tweet on 8 May from the Anti-Academies Alliance reported on a victory achieved by strike action, saying that Mr Fell had victimised a dedicated teacher and calling for an independent enquiry into his actions. A Facebook post from a local community group of which the claimant said she was a member and which was administered by Sophie Simpson with whom the claimant had gone to school, stated: "questions must be asked about why Andrew Fell has spent so long pursuing a dedicated teacher and trade union rep. There must be an independent enquiry into his actions, with his resignation or removal on the cards." The claimant said that she was not aware of the post and wouldn't be comfortable with people making this situation personal. She said she was not active in social media and avoided reading posts on it to protect her mental health. On 9 May the Huddersfield Examiner ran an article with the headline being the claimant's reinstatement and saying that she could now walk back into school "with her head held high". The report was that the disciplinary hearing had ruled in the claimant's favour "leaving the head teacher with questions to answer." A tweet from Socialist Alternative of 12 May referred to the campaign to reinstate the claimant as having achieved a very important victory in securing her return to work.

265. Mr Weston emailed his fellow governors on 9 May referring to coverage in the local paper and seeking to give what he described as a more accurate version of the current situation. He said that the panel had supported the investigating officer's conclusion that disciplinary action was warranted. He had received an assurance from the panel that Mr Fell had not behaved inappropriately in bringing this disciplinary action.

266. On 7 May. Ms Humble from Kirklees HR emailed Mr Greenwood and Ms Danson confirming that their proposal, that the appeals needed to be concluded in the first instance to support any reintegration of the claimant back to school, was agreed. The claimant said that she was not involved in discussions between the union and HR in this regard. The claimant's view was that she should have been included in those discussions. The claimant agreed that if any reintegration was left until after the appeals had been concluded, she was unlikely to be reintegrated back into the school before the start of the next academic year. She agreed it was possible that she could have been reintegrated a substantial time before the end of the academic year, if the process had commenced as soon as the disciplinary outcome was published.

267. On 26 May, Mr Weston emailed Kirklees Council referring to a discussion he had had with Mr Fell regarding email access. He expressed his and Mr Fell's concern about granting more than read-only access to someone who had made serious allegations about the head teacher and had not accepted the outcomes of an independent investigation and the judgement of the chair of governors. Mr Fell agreed in cross-examination that his concerns related to the claimant's allegations against him, but also to the protests outside the school. He referred to this being part of the process to negotiate the claimant back into the workplace. The claimant was, however, ultimately given full email access whilst remaining on paid leave, albeit with the suspension lifted. It was the advice of Ms Humble of Kirklees Council that there was no justification for anything other than giving full access back to the claimant's email account as her suspension had been lifted.

268. Mr Weston notified Mr Fell, saying that "unfortunately I think we have to accept this advice." Mr Weston said that he did not see it is unfortunate himself was but was trying to "move the message" to Mr Fell. In Mr Weston's communication he also referred to concerns about a claim of discrimination if this advice was not followed. Mr Weston told the tribunal that the respondent was taking advice and one possibility they were alerted to was that withholding email access could lead to an employment tribunal claim. When asked if it was a concern that the claimant could pursue her issues at the tribunal, he said that of course it was a concern, albeit the hope was that they would get through the appeal process first. They wanted to do everything they could to avoid tribunal proceedings by doing things properly. Mr Weston said in cross-examination that he was not considering the issue of a potential breakdown in working relationships, rather than the claimant's reintegration at this stage. In his mind, he was rather frustrated as the claimant had been reinstated on 4 May and he thought that integration would start soon thereafter. He had hoped the claimant would be back at school by the end of May. Mr Weston understood through his conversations with Mr Fell at this time, that Mr Fell was concerned regarding a breakdown of trust and confidence, but Mr Weston said that he had no understanding of this being "irretrievable". He had no thoughts at this time of this being a completely broken relationship.

269. The claimant submitted her appeal against the disciplinary outcome on 27 May. On 10 June Mr Weston emailed Mr Greenwood and the claimant confirming that the appeal would not be a rehearing and that no higher sanction than a written warning would be imposed. He asked for any new evidence to be provided by 18 June.

270. The claimant's appeal against her grievance was originally scheduled for 29 June and the appeal against the disciplinary outcome for 6 July - both by

letters of 16 June. Mr Greenwood emailed Mr Weston on 18 June, saying that the date for the disciplinary appeal did not allow for the required 20 days' notice in the respondent's disciplinary procedure. He was available on either 20 or 22 July. Mr Weston replied, expressing disappointment "when we have both agreed previously that we wish to get Mrs Lewis back into work as soon as possible." The appeal was then rearranged for 22 July. Mr Greenwood emailed Ms Humble on 13 July stating that none of the appeal invite letters had provided 20 working days' notice of the appeal, which should be rescheduled for September to provide the claimant with the required notice period.

271. The claimant's grievance appeal was heard on 29 June 2021 by a panel chaired by Mr Mohamed Saleem, Trust Partner.

272. On 21 July 2021, Mr Schofield wrote to Ms Whyles, business manager, expressing concerns about the claimant's return to school (referred to below)

273. It is noted that the claimant commenced a period of ACAS early conciliation from 30 July 2021 until an early conciliation certificate was issued on 10 September 2021. The (first) tribunal complaint currently under consideration and limited, in terms of relevant protected characteristics, to a claim of race discrimination, was submitted to the tribunal 6 October 2021.

274. ACAS contacted Mr Fell on 4 August to advise that the claimant had submitted an early conciliation notification naming him as a respondent. Mr Weston agreed that at some point he did discuss this with Mr Fell, but the receipt of this notification had fallen in the school holidays. Mr Fell accepted that he knew from 4 August that he would be a named respondent in a tribunal claim.

275. It was put to the claimant in cross-examination that, notwithstanding a disconnect between the claimant's grievance and tribunal complaint and what she said was an emerging picture, she never, within the grievance process, withdrew any allegations against Mr Fell regarding trade union activities. She told the tribunal that she did not know why and left the grievance it as it was. She said that she tried to raise the issue of race more in the appeal, but was told that it was not a rehearing. Her focus was more on the disciplinary case. Again, she said that she did not know why she had never withdrawn any allegation of whistleblowing detriment through the grievance process. She did not retreat from a view that health and safety and whistleblowing issues were the real reason for her suspension and disciplinary process. The claimant said,

however, that in the grievance appeal she asked the respondent to look at the reasons behind her suspension.

276. The claimant's grievance appeal outcome was issued on 2 September 2021. It was noted that the allegation about Mr Fell's reference to the claimant as aggressive was upheld originally and the claimant was not asking the appeal panel to overturn this decision. However, the allegation was discussed, as the claimant had taken offence to some references in the grievance outcome around what she felt was suppressing her freedom of speech as a black woman. The appeal outcome stated that the claimant described, from a cultural perspective, that it wasn't right to suppress her right of free speech. It was confirmed that Mr Fell had used the word "aggressive" in relation to the way she had been in their discussion. The outcome letter used the words "aggressive" and "black women" to describe what was understood to be the allegation, i.e. that the use of the word aggressive was racial stereotyping. The panel acknowledged that the claimant was not happy with the comment. Mr Weston confirmed that he had spoken to Mr Fell who had only used the word "aggressive". It was not clear to the appeal panel that any racial stereotyping existed from using that word. There was no evidence either way, but it was recognised that Mr Fell had used this word, which was agreed to be inappropriate generally. As such, the panel would be recommending to Mr Fell and Mr Weston that all staff underwent further training in diversity awareness.

277. On or around 9 September 2021, Mr Fell wrote to Mr Weston with his concerns regarding the claimant returning to work.

278. The claimant's disciplinary appeal took place on 20 and 22 September 2021 before a panel chaired by Mr Carl Sykes, Trust Partner. An outcome was issued on 27 September 2021. The allegation regarding the claimant's behaviour on 27 February was upheld and the written warning remained in place. In cross-examination, Mr Sykes accepted that it was reasonable for the claimant to have asked Ms Shah for the identity of the member of staff and student concerned. He had no knowledge of why Ms Shah had not wished to disclose this information. Nevertheless, he thought that the incident was one which the claimant ought reasonably have been expected to have remembered. He said that the panel did not assess the claimant's honesty in terms of her recollection but rather straightforwardly what had happened. When put that a conclusion that the claimant was out of her class at the time merited consideration of the purpose for which she was in the canteen and whether that was legitimate and Mr Ryan did not appear to have engaged with those issues, Mr Sykes agreed that Mr Dawes could have been interviewed on such matters. He agreed that the panel had not followed up that line of enquiry. Mr Sykes told the tribunal that the panel believed that the claimant did not want to tell them

much about why she had left the class and gave the impression that she did not want to answer questions. He perceived this from her body language and her looking down during the hearing and appearing to duck questions. He said that this did frustrate the panel in terms of getting all relevant information to make a considered review. For the panel, the issue was not that she was with Mr Dawes in the canteen but rather that she had left her class. It would be more reasonable for someone else to have taken the pupil to see Mr Dawes if that was the purpose of the conversation. The fundamental issue for the panel was as to why the claimant had left her class. Whilst there was reference to others not having been teaching by the claimant, she was not saying that they had left the sports hall.

279. The panel found the allegation of unprofessional behaviour, including in the claimant's email of 16 September referring to a misuse of power, to be unsubstantiated, when considered in its specific context and after a letter of notification of an investigation had been issued to her. Mr Sykes said, however, that "without this context, to accuse a senior leader of misuse of power (where your mindset would have been less excused as defensive) would have been unacceptable and unprofessional – indicating lack of trust and questioning integrity." As already referred to, Mr Sykes said that he would have felt "pretty sick" to receive Mr Fell's letter which the claimant was reacting to.

280. Mr Sykes was unaware that the claimant thought the disciplinary allegations had been brought because of her race until the claimant raised this during the disciplinary appeal hearing. He was advised by HR that this issue was being dealt with as part of the grievance, the background of which he had some, but limited, awareness. He did not know the grievance content. He did not understand race discrimination to be a key ground of the claimant's appeal as was suggested to him. This came out in discussion when the claimant raised incidents involving other people. Whilst the claimant was saying that others had acted in a way she was being criticised for, she was not saying that management was aware of that. He told the tribunal that he was also aware of "some of the noise" in the press.

281. As referred to already, in anticipation of the commencement of the new term in September 2021, Mr Schofield wrote to Rebecca Whyles on 21 July 2021. He was taking over from Ms Shah responsibility for the PE department, as part of a reorganisation of functions. When asked if he had discussed this communication with the SLT before submitting it, he said that he didn't believe so and that he couldn't recall discussing the idea of the claimant returning to work with his SLT colleagues. He said that they were his thoughts and feelings. He was then referred to his statement where he referred to knowing that colleagues in the senior team shared his concerns about the claimant returning

to work from conversations with them. He had said that colleagues feared accusations. Mr Schofield answered that he had not started any conversations and could not control what was said to him. He had kept everything professional and very vague. He continued to maintain that Mr Fell had kept him clear of elements he did not need to be aware of and never discussed the claimant's return to work with him. He had only discussed what was in the press and his concerns about Mr Fell's wellbeing. He agreed that potentially people may have concluded that accusations of race discrimination could be made against them. Mr Fell's evidence was that they were as careful as they could be in their discussions about the claimant's return to work. The impact that events had had on him personally, he considered to be "pretty obvious" and Mr Schofield probably understood that. He could not categorically deny having conversations with Mr Schofield on the issue, but rather stated that he had a lack of recollection, saying that "people would have an element of knowledge." Mr Fell accepted that he possibly was the first to refer to the claimant over formalising matters.

282. Within the statement, Mr Schofield said that from a personal point of view he did not feel that he would be confident to be able to line manage the claimant. He said: "my dealings with her to this point have been difficult and quite confrontational and I do not feel that she operates with the best intentions to our school and the students. She unprofessionally and unjustifiably challenges decisions."

283. He gave an example of this as being the introduction of a system known as EVOLVE to use as a risk assessment tool for students involved in activities outside school. The claimant accepted that Mr Schofield had wanted to use it for sports fixtures outside the school. The tribunal was taken to an email from Mrs Lewis of 22 October 2019 to Ms Shah and copied to Mr Schofield. She said that she had not realised that EVOLVE would apply to fixtures they ran on a weekly basis and, if this was the case, then they would no longer run fixtures and would need to cancel all transport arranged and withdraw the teams from any competitions. The claimant said that there were more discussions after this response from the PE department and the requirements were slimmed down by management.

284. The claimant had met with Mr Schofield, saying that she didn't see why it was important. When he wouldn't change the plan, she left after a brief time saying that she had a dentist appointment and followed up the meeting with the aforementioned email saying that she was cancelling all sporting fixtures. The claimant, in cross-examination said she felt that they had good discussion and that the meeting was taking place in non-directed time and she did have to

leave. Whilst this had happened in October/November 2019 she said it was only raised in September 2021.

285. Mr Schofield in his letter gave another example, in September 2020, when all staff with under loaded timetables were approached and asked if they were able to support new supervision rotas. He said that the claimant responded saying that she would take no part in any additional supervision as it was not in her contract to do so. The claimant told the tribunal that she would help out, but not as part of a weekly rota, which was not part of her contract.

286. Mr Schofield stated that he understood she had a role as a trade union representative but “she goes beyond this… My perception is that she uses her platform as a union steward to her own ends and doesn’t represent the members of that union accurately and fairly.”

287. In this letter, Mr Schofield gave another example where staff were given the opportunity to have a free flu vaccination and the claimant spoke out stating, incorrectly, he said, that the vaccinations contained pork and that Muslim colleagues should not have it. The claimant, before the tribunal, said that this took place in an open staff meeting and she had just said that they might want to check the ingredients so that they could make an informed decision.

288. Mr Schofield then referred to the strike action earlier that year which he said resulted in the claimant behaving unprofessionally and with disrespect. He said: “She took on a personal agenda through this process and had others mocked whilst walking to school.” In cross-examination the claimant said that she was not sure what had happened and only a small number of people were saying that they had an unpleasant experience. She said that it was not “on me”, that she couldn’t control others and wouldn’t condone any upset caused.

289. Mr Schofield went on to say in his letter that a strong opinion was that the claimant was willing to over formalise processes (Mr Schofield said that this was a reference to the issue involving Caroline Frew, albeit he had not been involved in this himself and denied that he had gleaned this terminology from anything Mr Fell had said) and fabricate events to her own ends - Mr Schofield explained to the tribunal that he was referring to the uploaded video saying she had represented a disabled employee, what he regarded as a false narrative in the press and the claimant steering the strike action. He said it was also untrue to say that he had been present when the claimant had been suspended. He said: “I refuse to fall foul of this behaviour in future. I understand her right to raise grievances, but I know from my involvement in that grievance that this is

what happened." He referred to the claimant having said that he had attended the meeting when she was suspended whereas he hadn't. As regards the BAME risk assessment he completed for her, he would have expected her to discuss concerns rather than object in the way she did, which wasn't conducive to finding a resolution.

290. He referred to having been removed as investigating officer in the disciplinary case due to a "counter grievance" from the claimant. He said that the investigation he had undertaken showed to him that the concerns identified had been ongoing for some time and he concluded that they would not change and her unprofessional behaviours would continue. He felt that, as line manager for the PE department, he would need to have difficult conversations from time to time with her and said that "this requirement makes me feel vulnerable and causes me to question if I should challenge her on any aspect of her role." He didn't want to expose himself to unjustified complaints by her. He said that, from conversations with colleagues in the SLT, he knew that they shared his concerns. He said that colleagues had asked when the claimant was returning and appeared concerned. He said that they feared accusations would be made against the team in a similar way to him. He said that the claimant was willing to use any media to attain her goals, had brought disrepute on the school and had allowed false and inaccurate information to circulate that also contained slanderous language aimed at the head teacher. He continued: "Clearly those working with her feel exposed to repeated instances…" He said that he therefore felt vulnerable due to her behaviours and would find line management of her a professional and personal risk. He would not meet with the claimant in any capacity without his own union representative present as otherwise he would jeopardise his role and career. He asked that this letter be shared with the chair of the governors.

291. When asked in cross-examination how the claimant would be able to interact with Mr Schofield, she said that he would rarely need to speak to her and that Mr McManus was her manager. In any event she had had a very pleasant meeting with him regarding EVOLVE and during the completion of the risk assessments.

292. Mr Schofield told the tribunal that he was not willing to put himself in a position where things could be raised against him, saying that he couldn't cope with the level of stress Mr Fell had had to. He was trying to protect himself. When put that this included a fear of allegations of discrimination, Mr Schofield said that staff had the right to make allegations. He feared that any complaint might be made against him because he was wanting to do the best job he could and, when complaints were made, a complaint of discrimination might be "in there".

293. Mr Weston considered Mr Schofield's letter. Through regular meetings with him, he was already aware about Mr Fell's concerns about the reintegration of the claimant and, as Mr Fell saw, the implications for himself and other senior managers. Mr Weston was aware that the outcomes of the grievance and disciplinary hearings made recommendations that a process of reintegration would be necessary to resolve what they noted as a breakdown in professional relationships. This was supported when those decisions were appealed. On 2 August 2021 he asked Ms Whyles to conduct an investigation to determine if other members of the SLT had similar concerns or not.

294. Mr Fell wrote to Mr Weston around 9 September 2021 referring to recent discussions between them regarding the reintegration of the claimant. He referred to Mr Weston asking him about mediation and Mr Fell expressing his concerns about this as there had been, what he saw as, an irrevocable breakdown in trust and confidence between the claimant and, not just him, but the leadership team. He referred to a fear that the claimant's return would undermine the respondent with the claimant having an established pattern of behaviour that over formalised any discussion. He said he would feel vulnerable to further accusations and would not be prepared to meet with the claimant without having his own union representation. In cross-examination, it was put that he would not mediate with the claimant because of her grievance. He said that that was not the reason, but rather what he was being accused of and how he was being presented. He described this as unfair. That made him feel vulnerable. He recognised that everyone had a right to take out a grievance. In his letter, he referred to a character assassination of him through the local press and misinformation. He said that the claimant was highly unlikely to accept the outcome of the grievance appeal and was likely to continue to hold the view that Mr Fell had systematically bullied her. He said that she did need to accept that the process had concluded and put it behind her. He expressed concerns over other senior leaders having to deal with the claimant who had proven herself to be vexatious in her response to management. He said that he had considered very carefully whether mediation could work, but did not feel he could have any confidence in a mediation process and felt exposed even engaging in it. He said that whatever he said about a resolution and expectations would, he feared, be used against him. He believed that there had been no recognition from the claimant about her own conduct and expected standards. The relationship was, therefore, broken beyond repair.

295. When put in cross-examination that he was effectively putting a gun to Mr Weston's head, Mr Fell said that he put down what he felt. He said that, in the event that the claimant came back to work without a lot of assurances, he would have had to consider resigning.

296. Ms Shah was interviewed on 16 September 2021. She described the claimant as a "loose cannon". The claimant's default position was to refuse to do things. She believed that the claimant's actions were still of detriment "in the community". She said that she would have serious concerns about any interactions she would need to have with the claimant and wouldn't feel comfortable without a witness. She said that they had a harmonious school and the claimant had painted a picture "against staff". She continued: "These racism issues do not exist – that's not the real picture… I do not believe she has the best interest for the students in mind." Ms Shah accepted in cross-examination that the only one to one meeting she had ever attended with the claimant was on 4 March 2000. She denied that she had discussed the prospect of the claimant's return to work with Mr Fell. Mr Shah, on the evidence, had little personal experience of the claimant beyond the instances when she had seen her in the canteen on 26 and 27 February 2020. She could not substantiate a reference she made to the claimant working to rule.

297. Mr Fell was also interviewed on 17 September 2021. When asked to describe his working relationship with the claimant he said it was: "irretrievably broken. I'm not sure how it can be restored in all honesty or how we can be expected to work together", saying that he had already shared this concern with Mr Weston. He said that he recognised the right of colleagues to raise grievances, but the complaint against him went to the very core of his character. Whilst he needed to accept that and allow the internal processes to consider the complaints, he said that the claimant had chosen to publicly voice her dislike of him which he felt was defamatory. He said he had tried not to react but the personal impact on him "has been very strained. It's made a confidential issue into a public personal attack on my character and towards me as a leader, broadcasting bias that I am alleged to have, which I don't." Her behaviour suggested that she had a lack of trust in him as a senior leader. He provided examples of public posts which he described as character assassination and misinformation, which had caused "significant personal turmoil".

298. When asked about how he perceived the claimant's working relationships with other colleagues he said: "SLT – not good either. I know they're concerned like I am with how they can manage her without fear of repercussion or challenge or allegations made and, like me, those being publicly voiced both within and outside of school. Professionally it is unnerving." He described questions raised during the grievance process as the claimant "weaponising protected characteristics." This was a reference to the personal characteristics of another staff member in drawing a comparison with how she had been treated. Mr Fell said that other concerns related to "her wider trust in the school" saying that the claimant did not seem to have faith in internal processes. He referred to breaches of the terms of her suspension. He said: "I

just don't have any confidence that she will work with me other than to see the exit of me." He referred to not wanting to be on his own with the claimant. In cross-examination, he said that this was not about the claimant's right to bring a grievance - what he had been accused of was difficult to process.

299. In cross-examination, Mr Weston accepted that there was a link between the claimant's grievance and the breakdown of trust felt by the respondent's senior managers. When put to him that he had failed in his witness evidence to draw a link between the breakdown in trust and confidence and a fear that the claimant could bring a discrimination claim in the future, he agreed that that wasn't mentioned. He said that that was because it wasn't a fear. He considered the conclusion of the grievance to be an end to all matters. It was an end as far as the respondent was concerned. However, the claimant was at liberty to take the matter to a tribunal. As far as he was aware, the SLT was not fearful. He did not think it had crossed their minds. The fear was the claimant returning to work and a difficulty in relationships making the running of the school more difficult. Mr Weston was referred to Mr Fell's statement to him regarding reintegration where he described feeling vulnerable to further accusations and not being prepared to meet with the claimant without having his own union representative present. Mr Weston said that he did not read this as fear of an accusation of discrimination. He read it as a reference to accusations in their day-to-day working and with the claimant's role as a union representative. Mr Weston said that the claimant would raise issues with which Mr Fell might not agree, but she would then continue to come back and challenge him and make accusations as she had previously of bullying and harassment. When put that those accusations could include ones of discrimination, he rejected the proposition and the proposition that the respondent expected to be accused of discrimination. They weren't expecting that. He was trying to get to the point where the claimant could return to work and perform her duties.

300. He accepted that on his witness evidence, if Mr Fell was refusing mediation, this would be a block to the claimant's reintegration. He described Mr Fell's letter as very impassioned showing where Mr Fell was in his own mind. He understood that Mr Fell considered that his core principles had been challenged and very publicly. Mr Weston himself felt that mediation was a possible way forward as time could be a healer and mediation might be possible in the future. He was aware that as head of governors he could instruct Mr Fell to mediate, but he did not want to do so. He wanted to seek to persuade him. Mr Weston did not accept that a gun was being put to his head by Mr Fell, with the choice of losing a head teacher or a PE teacher who had been off work for a year. Mr Weston said that his consideration was about what was best for the students. When suggested that there would be more disruption if a head teacher was lost, he said that he was still hopeful that negotiations/conciliation could achieve an outcome which would see the claimant reinstated.

301. Dominic Murphy was also questioned by Ms Whyles on 5 October 2021. He said that he got the impression that the claimant created problems and over formalised anything. He said that he would have concerns about her relationship with himself and the SLT as he had felt he was used "almost as bait" in her counterargument in the disciplinary procedure. He said that he felt that Mr Fell had been unfairly characterised in the media which had caused a sense of doubt in the community and amongst staff about his position. He said that he believed that the allegations had been upsetting and did not coincide with his own experience of Mr Fell.

302. Ms Whyles also spoke to Martin Allinson, assistant head teacher, who had no issue with the claimant and Mr Collins, assistant head teacher, who had joined in Easter 2020 and was unable to comment.

303. On 7 October, Ms Whyles completed her fact finding investigation of the concerns of the SLT about the claimant's return to work.

304. Mr Weston said that when he had initially spoken to Ms Whyles he had asked her to speak to the SLT to get their views rather than for any conclusion or examples. Everything became more formal than anything he had envisaged. He had suggested that she speak to members of the SLT as the school's leadership team. Mr McManus was not interviewed, for example, because he was not part of the leadership team and not directly involved in the matters. He managed the claimant's day-to-day working, but not the bigger issues. He agreed that Ms Taylor was not part of the SLT, yet Ms Whyles had decided to interview her. This was not at his request. He rejected the proposition that the purpose of the report was to demonstrate why the claimant's employment should be terminated. He said it was to provide him, as chair of governors, with the view of the SLT. Whilst noting that Ms Whyles had come to a conclusion of an irretrievable breakdown, again that was not something he had asked for and not something he then took account of in his own decision-making. What he took from the report was the transcript of the interviews with the SLT members to inform him about any reintegration process.

305. In considering the statements of members of the SLT, he said that he did not agree with Mr Schofield's conclusions and did not believe that the information he had provided should lead to a conclusion of an irretrievable breakdown. He said that he felt this was an attempt to put pressure on him to go down a particular line. He did not take account of Mr Schofield examples which had not been subject to any investigation or conclusion. Mr Weston agreed that when Mr Schofield was referring to the claimant fabricating

allegations, this was a reference to the claimant's complaints of discrimination. He accepted that Mr Schofield, in his evidence, had suggested a link between his fear and a purported breakdown in relationships, but Mr Weston's own view was that he didn't read Mr Schofield statement at the time as demonstrating a fear of discrimination allegations being levelled against him. He did, on further questioning, accept that Mr Schofield, when showing concern about similar allegations being raised against him, was referring to allegations of discrimination but thought that his words were ambiguous.

306. Mr Weston accepted that he was influenced by the involvement of the claimant in the strike action.

307. He appreciated that he could have checked the basis of Mr Schofield's other examples and accepted that he hadn't. It was clear that these examples were not things that he had sought - if he had found all of the examples to be untrue, he was not sure that it would have made a difference to his ultimate decision.

308. Mr Weston was referred to Mr Murphy, as with Mr Schofield and Mr Fell, saying that the claimant was "over formalising" matters. He said it had never crossed his mind that the SLT had got together and swapped notes.

309. Mr Weston agreed that, from Ms Shah's statement, she did not want what she termed to be a similarly unfounded grievance made against her. He accepted that a number of the accusations levelled by Ms Shah against the claimant were without evidence.

310. When referred again to Mr Fell's statement, he said that an allegation that a head teacher had racially discriminated in a multicultural school was a very serious allegation against the head teacher and he understood, therefore, why Mr Fell had written in those terms. It was because of Mr Fell's "own values". When Mr Fell referred to needing to be able to communicate without a fear of such allegations being made, Mr Weston accepted that Mr Fell was indeed expressing a fear of further allegations. He accepted that Mr Fell had referred to the possibility of the claimant weaponising her protected characteristics but said that those were Mr Fell's words not his own conclusions. He said that there had been a breakdown in relationships and Mr Fell felt that a protected characteristic had been weaponised against him. When suggested again that there was linkage between the breakdown in relationships and the claimant's grievance of race discrimination, he said that that was indeed in the head teacher's mind. Mr Weston understood that Mr Fell had been very hurt by the

allegations, many of which had not been upheld. Whilst it was not completely down to that, it (the grievance) had contributed to a breakdown in relationships. He thought, nevertheless, that it was a leap to suggest that Mr Fell wanting his own representation at any meeting with the claimant was out of a fear that she would be weaponising a protected characteristic. He said he could understand Mr Fell's concern that he might be said to have said something which he did not accept and that could lead to an allegation. He recognised that Mr Fell was fearful of that.

311. By letter of 13 October, Mr Weston invited the claimant to a meeting to discuss her reintegration into the workplace. Confirming that the disciplinary panel shared concerns of a breakdown in trust and confidence between her and Mr Fell, he quoted from the outcome letter. He said that the panel had asked him to consider these concerns and that he had been asked to "take this forward by exploring what needs to happen to ensure that working relationships can be rebuilt for the wider benefit of all concerned, including the possibility of mediation."

312. He referred to the outcome of the disciplinary appeal where the panel shared concerns of a breakdown in trust between the claimant and Mr Fell as a factor in the background to some of the incidents addressed.

313. Mr Weston in his invitation letter said that, for mediation to be successful, he needed agreement from both her and Mr Fell and would like to meet to discuss her views. He also said that he needed to discuss concerns of a breakdown in trust and confidence. He said that he had asked Ms Whyles, business manager, to conduct an investigation of the SLT. In July 2021, Mr Schofield had raised concerns about the claimant's return to work and Mr Weston said he wanted to see if the concerns were felt more widely. He referred to Mr Fell having given further information about the depth of his concerns, saying he had not as yet agreed to mediation. He said that both Mr Schofield and Mr Fell did not feel comfortable holding meetings with the claimant without their own union representative present. Mr Weston said that this was of deep concern to him as it was not practicable that they had representation at all meetings with the claimant and for the claimant to have her own witness present either. He said that the outcome of Ms Whyles' investigation was that concerns of a breakdown in relationship extended beyond Mr Fell into more of the SLT, which led him to consider that, if mediation was a possibility, this would need to extend beyond just her and Mr Fell. He therefore questioned how realistic this was as a solution for reintegration.

314. He said that he had considered the tone of media support for the claimant and coverage of Mr Fell and, whilst in the context of ballot on strike action, these went beyond what was reasonable and had become very personal. He said that he was deeply concerned to read that Mr Fell had considered resigning from school. He was also concerned that the claimant's views of the situation had been used to attack Mr Fell in public when internal processes had not even been concluded.

315. Mr Weston stated in the letter of invitation that he was satisfied that nothing in what had been stated was because she had raised a grievance. In cross-examination he said that those were his words. He said that, because the grievance process had just finished, it was very easy for the claimant to say they were just doing this because she had raised a grievance. He was concerned how they would reintegrate her and did not want any association with her return to work and her grievance, because he didn't believe there was one. Mr Weston was questioned as to how we could say that in the light of comments in Mr Fell's statement to Ms Whyles. Mr Weston responded that one of the influences on Mr Fell was the grievance, but, in his own mind, what had gone on before had now concluded. He was concerned about moving forward and did not want allegations dredged up again. He felt it was important to put a mark in the sand, otherwise the whole issue could become clouded.

316. In this context, he was inviting the claimant to a meeting on 20 October. He said that he was satisfied that nothing which had been stated disrespected or undermined her role as a union representative. He described that role as valued and said that he was also satisfied that nothing in this was because she had raised a grievance. He then listed, firstly, there was a prospect of restoring working relationships and they agreed steps that needed to be put in place to achieve this within a reasonable period and for the claimant to return to work when fit to do so. Alternatively, there was the possible conclusion that there was no reasonable prospect of restoring working relationships and him concluding that there was a substantial and irreparable breakdown in trust and confidence. He said: "I have to advise you that if this is my finding, one of the potential consequences is that I decide the employment should end with notice."

317. The claimant confirmed in cross-examination that she was clear, before she went into the meeting, that an outcome could be her dismissal.

318. The original date set for the meeting was postponed to 22 October at Mr Greenwood's request. Neither the claimant nor Mr Greenwood, however,

attended. Mr Weston wrote saying that he was prepared to reconvene and give one further opportunity for the claimant to attend a meeting with him.

319. The reintegration meeting did then take place on 10 November at which the claimant was accompanied by Mr Greenwood. Mr Weston had a representative from HR present to take a note. When put to the claimant that she had not at any stage during the meeting disassociated herself from the media campaign, she said that it was not that kind of meeting, it was informal and said that Mr Greenwood was not expecting an outcome from that meeting.

320. The claimant said that she didn't believe, from her side, that there had been any breakdown in trust and confidence. She said that she was happy to come back and work with anyone and all members of the SLT. She said that she had some great relationships with most people in the respondent and the PE department. She said that she was a professional person and always wanted to work well with everyone. She said that she would be willing to accept management decisions including those of the head teacher.

321. When referred to Ms Whyles' report, the claimant said that she had no issues with anyone including members of the SLT and was really looking forward to returning to school. She said that she was surprised that there had been comments that SLT members would not want to meet with the claimant without their own union representative present. She said: "Nothing needs to happen from my opinion, nothing has happened from my side. I don't believe anything needs to happen, I have no issues with the staff or any colleagues. For my own health and well-being, I need to be back in school as soon as possible. I'm happy to do any mediation and make this work and I have always said I would." She said that some members of the SLT didn't have any issues working with her and, as a teacher, it was rare that she would have to meet with SLT members as they would deal with the heads of department and Mr McManus managed her. She said she had a very strong relationship with him and didn't see any issues with returning to work. She reiterated that she was more than happy to do mediation with anyone and with Mr Fell if they felt it was needed to clear the air.

322. Mr Weston asked about the social media coverage and whether the claimant could understand the impact it had had on Mr Fell and the school community. She said that she could understand that, but she did not see why it was relevant to her as she had not posted anything and couldn't control what others had done. The claimant commented that she thought they should try and move on and see how she could get back into work. Mr Weston said he wanted the claimant to understand the impact of the social media coverage on the

school, saying that the information must have come from somewhere. The claimant queried whether or not this would be better dealt with in mediation. Mr Weston said it may be, but he needed to hear her views as part of any decision-making. Again, the claimant said that she had not made any comments and, for her own mental health, stayed away from it. Mr Weston asked her about the video posted online commenting on her suspension. The claimant said that she hadn't been aware of it until raised by HR with Mr Greenwood and it was not now live. Mr Weston confirmed it was in fact still live. The claimant said that she had watched the video and it might have been edited. Mr Greenwood commented that he accepted that the school was not happy, but it had now stopped and they wanted to get the claimant back into work. Mr Weston commented that some of the coverage was hurtful and not truthful. Mr Greenwood said that they want to draw a line under this and work professionally. The claimant couldn't comment on everything in Ms Whyles' report and some members of the SLT would have to work professionally with the claimant, as she would deal with them.

323. Mr Weston queried whether mediation could work when a tribunal application had been lodged. Mr Greenwood said that the claimant had a right to pursue a claim. He didn't see that this should affect the claimant getting back into work and working with the SLT. The claimant said that they had to work professionally and the tribunal claim could run alongside. Mr Greenwood said that several of the comments from SLT existed prior to the claimant raising the grievance or during the suspension. Yet these had been raised now about a breakdown in trust and confidence, when they should have been raised before.

324. Mr Weston said that he did not ask the claimant about her tribunal claim, but it was relevant to ask her regarding the impact of a claim on the SLT. In his view every employee was entitled to raise a grievance or tribunal claim. He wanted to allow the claimant to help him be sure that she understood that that had, nevertheless, an impact upon the people she had to go back to work with. She didn't acknowledge in any way that others might struggle to work with and rebuild relations with her. Mr Weston could not understand the claimant's approach, which was to think she could simply go back and do her job.

325. Mr Weston accepted that he had not investigated the frequency with which the claimant would have to meet members of the SLT. He said he did not need to as these were the school's senior leaders. That the claimant did not see this as an issue at all, truly concerned Mr Weston. He did not see it as practicable for the claimant to be able always to meet with members of the SLT together with another colleague such as Mr McManus.

326. Mr Weston had left his meeting with the claimant and proceeded to draw up two separate columns with arguments for reintegration on one side and for the claimant's dismissal on the other. Mr Weston described this as a crude document to help him focus.

327. Mr Weston met with Mr Fell and Ms Whyles on 12 November. He asked for Mr Fell's views on the impact of the claimant returning to the respondent. Mr Fell's view was that it could undermine the work of the SLT. He said that that week they had introduced a system of evaluating progress for staff and it had come to light that previously the claimant's approach had been to say to staff that they didn't have to do this. He said: "Across SLT there is significant fear about returning, this is credible as staff are concerned about their professional careers. If they were asked to challenge or hold Louise Lewis to account, how could they do this when 4 or 5 colleagues and the 2 most senior in the school would feel vulnerable speaking to her without representation?" He said that, whilst it was anecdotal, long serving staff were livid about the reputation of the school having been damaged. When asked about the industrial action, he referred to staff having to abandon their cars and being intimidated as they walked into work. When asked what effect the claimant's return would have on him personally, he said: "In my emotional state it is untenable as Louise returning undermines my role in the school. I'm not sure I could continue to work here after being accused of this.… Within the school you need trust across a team… My character has been defamed in the public domain and I don't see a way forward. I found this extremely difficult and have been put under immense pressure and have struggled to mentally cope." When asked if the relationship had irretrievably broken down, he said that it had. He believed there was no acceptance on the claimant's part for her to change. He said his mental health had suffered within the last year. His wife had commented that he was no longer the person he was. He said that he was finding it difficult to talk about this and it was noted in the meeting minutes that Mr Fell was distressed. Ms Whyles said that the fact that Mr Fell felt he would need to resign if the claimant was reintegrated was a concern. Mr Fell had told her that he felt he had no option other than to resign. This is when she had called Mr Weston and asked for support for Mr Fell.

328. Before the tribunal, Mr Fell referred to being accused of certain things going to the core of his character. He had been presented in the media as a racist and the school being institutionally racist in circumstances where the diversity of the school and community was incredibly important to him. As the head teacher of a diverse school, it was very damaging when those kinds of links were presented, he said.

329. Mr Weston wrote to the claimant on 19 November 2021. He referred to having spoken to Mr Fell again and his main priority to be the education of the young people at the respondent. The well-being of all staff was crucial to achieving that aim. He recognised that, wherever possible, they should encourage and support colleagues to build bridges and overcome disagreements. This could only be possible if both parties were mutually agreeable to trying to achieve that aim and it only had a prospect of succeeding when things were not "too far gone". He found that there had been a substantial breakdown in trust and confidence.

330. Having listened to the claimant he noted that she wanted to return and believed that a return "could" be successful. She had expressed a willingness to engage in mediation if necessary and believed that trust and confidence were intact. He expected that she would say this and welcomed it. However, he was concerned equally that she did not show any recognition of the findings of Ms Whyles' report or in what the governors had noted in the disciplinary and grievance outcomes about concerns of a breakdown in trust and confidence. She said she would accept management decisions, but at no stage did she acknowledge that she would need to behave in a different or more conciliatory way. He noted that she did not say anything which made him feel that she accepted that there could be any problems or change in behaviours required on her part. He said that was a concern. She did not appear to accept that anyone would not have trust and confidence in her. Consequently, he thought that she had unrealistic expectations as to the difficulties she, the respondent and the SLT would encounter on her return. She did not feel she did anything wrong despite a written warning. She had not accepted the outcomes of the grievance and disciplinary procedures. While she might not agree with the outcomes and had the right to challenge this in the Employment Tribunal, he was concerned that she presented as if reintegration difficulties were not her problem.

331. He then went through the concerns expressed by colleagues. From Mr Fell's perspective, there was no trust at all and no prospect of rebuilding a manageable relationship. That view was shared substantially by senior colleagues including how she could be line managed. He said he was certain that Mr Fell felt like this not because of her raising a grievance, noting that he had concerns of this kind before the grievance was made and prior to the suspension. The high-profile nature of her complaints had not supported reconciliation at all. Mr Fell had spoken of the impact the personal attacks on the media had had on him. This was said to have affected his mental health. The result was that Mr Fell and other leaders felt exposed to undue criticism by her for what Mr Weston believed to be reasonable management decisions. Mr Weston said that he had seen first hand the anxiety caused to Mr Schofield, Ms Taylor, Ms Whyles and Ms Shah. He did not accept that the claimant had not

posted anything on social media. He referred to the video regarding her suspension. He said that was not a factually correct statement or evidence of someone respecting the internal processes to hear the complaint she had made. He did not find it credible that she had no knowledge and didn't influence the content of social media posts. He considered there to have been unacceptable personal attacks on the respondent and Mr Fell. He had considered the difficulty of Mr Fell and Mr Schofield refusing to meet with her without their own union representation.

332. Mr Weston referred to the claimant having raised a complaint of discrimination and her lodging a tribunal claim in respect of race discrimination. He said that was not a relevant factor to him in the decision he needed to make and it was her right to make a claim. However, he had considered the extent to which it might be relevant to the wider issues insofar as Mr Fell and Mr Schofield held the view that they would not meet with her unless they had their own representative present. He said that the concerns raised by leadership were raised before the tribunal claim was submitted. If she had not raised the specific complaints, he believed the strength of feeling amongst the leadership would be the same.

333. He noted that Mr Fell had already said that he would be obliged to seek alternative employment if the claimant returned, saying that this would be very damaging for the respondent. He was also deeply concerned for Mr Fell's well-being.

334. As regards mediation, both parties needed to be in full agreement and were not. It was said that Mr Fell refused to meet her or engage in the process. Mr Weston said he believed that Mr Fell feared that any openness in terms of the reasons why their relationships were broken, would be turned against him as he did if he was to take any future steps to manage the claimant's conduct or performance. It showed the extent to which he did not feel able to manage the claimant or engage with her on any level. Mr Weston said that he could not change his mind on this even if (which wasn't the case) he thought there was a prospect of successful mediation. Nothing what the claimant had said had reassured him that she would be prepared for conciliation and to accept how she could change her approach or acknowledge how perhaps they could have dealt with things differently. This was despite the claimant saying that she would engage in mediation and could work with the SLT. He concluded that mediation was not realistically going to work and that the relationship was too fundamentally broken for the respondent to justify further time and cost exploring it. To do so he said "may be even more damaging".

335. On this basis he had concluded that it was impossible to continue with the claimant's employment. This was terminated with effect from 31 December 2021. The claimant was not to attend the respondent in the meantime. She was given a right of appeal.

336. In answer to questions from the tribunal, Mr Weston said that there had not been much emphasis in his conclusions on the cause of the breakdown. The breakdown had happened and the cause of it was not the most relevant thing. A group of senior leaders had expressed difficulties working with the claimant and the claimant, in his mind, would not accept any of that or suggest any steps or recognise any problem. At one point the claimant simply said that she would go to mediation if others felt that would help them. Whilst the claimant had said that she had full confidence in working with senior leaders and that was accepted at face value, he had to see an acceptance by the claimant that there would be a strained relationship and some steps were required from her in recognition of that. In the context of a number of the disciplinary allegations being dropped or not upheld, he could understand why the claimant might have a bad view of the senior leadership team. He said, however, that he was hoping to be able to go back to Mr Fell and say that there was some common ground between him and the claimant. When asked if he considered the claimant's reaction in the context of there being unfounded allegations against her, he said he did seek to put himself in the place of the claimant and the SLT. He thought that the organisers of the campaign against Mr Fell had done the claimant a disservice. When put that the claimant was a trade union representative and it was her job to be challenging, he said that there still needed to be a relationship of trust.

337. When suggested that a head teacher needed to be thick-skinned, he said that for a new head teacher he thought that Mr Fell was a pretty resilient character, but to be dubbed a racist (and in the media) was extremely damaging for a teacher at a multicultural school. He didn't know many heads who would have taken well to being accused of bullying and harassment. The accusation was very out of the ordinary and a step too far. He had discussed the possibility still of mediation at the final stage of the process, but after the integration meeting there was absolutely no common ground. To have a chance of a mediation being successful, there had to be some common ground. He had previously spoken about the possibility of ACAS mediating, but once an early conciliation certificate was received, that could not be taken any further. He said that the respondent could access local authority trained mediators and did consider using their services.

338. In early November 2021 the respondent responded to a reference request for the claimant. Ms Whyles emailed the claimant on 2 November

suggesting that she complete the reference and made a number of proposals as to how she responded to various questions. Mr Weston, in cross-examination, said that he had had no involvement in this but agreed that a failure to comment on a number of strengths and weaknesses or to answer the question as to whether or not the claimant would be considered for reemployment wouldn't inspire confidence in a prospective employer.

339. Ms Danson of the NEU wrote to union members on 23 November saying that Mr Weston appeared to have decided that the claimant should not return to the respondent as some members of SLT appeared to be refusing to work with her. She said that the claimant would be appealing the outcome. They were encouraged to attend a meeting arranged for 25 November.

340. On 24 November Mr Greenwood wrote to governors asking them to step in and take action against "this injustice". He noted that the claimant was expecting to begin a process of reintegration, but had received a letter from Mr Weston informing her that the outcome of her reintegration meeting could be her dismissal. He said that Mr Weston appear to have decided this on his own behalf.

341. On 2 December the claimant wrote to Ms Whyles appealing against the decision to terminate her employment. She complained that there was no process followed and that there was no determination by a panel of governors. The meeting was an informal reintegration meeting and not a dismissal hearing. The investigation was said not to be impartial with no statement having been taken from her as part of it. There was no opportunity to call witnesses or ask questions of the investigator. There were also said to be factual inaccuracies within the dismissal letter.

342. On 3 December, Robert Sutcliffe of the Huddersfield Examiner emailed Ms Taylor saying he would be interested to know why the claimant would not be returning to the respondent. An article was published on 4 December saying that the claimant, having been told that she could return with her head held high, had now been sacked.

343. Messages were sent to the school from external parties asking for the claimant to be reinstated. In one of 8 December the view was expressed that this was a witch hunt for carrying out duties as a union representative, recognising also a strong case for unfair dismissal and race discrimination given that the claimant was said to be the only black teacher in the school. The Huddersfield Examiner ran a story where the "furious union" accused the

respondent of a witch hunt. It was said that the NEU was not “taking it lying down”. There was a quote expressing a lack of confidence in Mr Weston and that he should resign.

344. The claimant agreed that by September 2021 she had been elected to the National Executive of the NEU.

345. On 9 December 2021, Socialist Alternative published an article asking people to defend the claimant and saying that trade unionism was not a sacking offence. That also referred to there having been an orchestrated witch hunt. An email purportedly from a retired teacher seeking the claimant’s reinstatement referred to her as a wonderful and talented teacher and to the need for an independent investigation into the school’s management led by elected union representatives, parents, students and the community.

346. A video was uploaded to YouTube on 1 January 2022 referring to a demonstration in the centre of Huddersfield attended by the President of the NEU.

347. When put to the claimant that, after her dismissal, a campaign had become further elevated, she said that it was not at her instigation or with her blessing.

348. The claimant’s appeal was heard, starting on 11 February 2022, by 2 governors and chaired by Ellen Walker, trustee of the Rose Learning Trust in Doncaster and an HR consultant co-opted as a governor for the purposes of this hearing. Due to lack of time, it was reconvened on 10 March 2022. The claimant was represented by Mr Greenwood. The appeal was conducted as a review of Mr Weston’s decision.

349. The claimant raised as part of her appeal that no process had been followed and the dismissal hearing should have been before a panel of governors. The meeting she attended on 10 November 2021 was an informal reintegration meeting. She said that there was insufficient consideration of the circumstances leading up to dismissal. The investigation was not impartial – it was conducted without her knowledge and without any statement being taken from her. There was no opportunity for her to call witnesses of her own or ask questions of Ms Whyles.

350. The claimant agreed that she was able to argue her case before the panel and that, whilst Mr Murphy and Ms Shah refused to attend, Mrs Whyles and Mr Weston appeared as a witness and could be asked questions.

351. Ms Walker agreed that the claimant said that she would accept instructions from the SLT, but noted that the claimant had asked about just how to deal with a couple of SLT members. She agreed that the claimant did not put any obstacles in the way of mediation, but the claimant simply could not see why anyone else might have a problem with the process. The panel thought it would be really difficult to facilitate a situation where meetings only took place if both sides were accompanied. Ms Walker agreed that the panel did not investigate how often the claimant would need to meet with SLT members on a one-to-one basis.

352. The panel considered that the claimant was obstructive and deflective during the hearing. Whilst she was calm, she spent a lot of time discussing why others had not followed process without persuading the panel, with any depth of conviction, why the relationship was not fundamentally broken and why she could return to work. Whilst the claimant said that her return to work would have had a positive impact on the school, the panel considered that she hadn't really explained how or why.

353. The panel considered the claimant's involvement in the social media campaign. A YouTube video where the claimant herself was shown as supporting the campaign was reviewed by Ms Walker. She considered that this demonstrated the claimant had not been entirely truthful, including in the appeal hearing.

354. The panel were mindful that, if they overturned Mr Weston's decision, there would need to be an agreed plan for rebuilding what was clearly a broken working relationship which would require full cooperation on both sides. The panel was concerned about how practicable this would be.

355. The panel did not believe that the process leading to the termination of employment was flawed. The claimant being interviewed by Ms Whyles at an early stage would have made no difference and the claimant was given an opportunity to put forward her side of events at the meeting with Mr Weston. There was no basis for concluding that the fact-finding carried out by Ms Whyles was not impartial. The panel was satisfied that the claimant was aware that the meeting with Mr Weston was a formal meeting with potentially serious outcomes clearly set out. She had had sufficient time to prepare for that

meeting. The panel believed that Mr Weston considered all the evidence and the claimant's responses before coming to a decision.

356. The panel accepted that Mr Weston had been disappointed that the claimant did not show sufficient recognition for the part she may have played in the breakdown of relationships or how those relationships were now broken. He clearly felt this was a barrier to successful mediation and the panel agreed. The panel felt that the claimant's attitude was dismissive towards the impact that damaged relationships had on others and considered that she could only see the situation from her own perspective. The panel had no doubt that, if the claimant had acted differently in the reintegration meeting, acknowledged the impact on others and demonstrated a more convincing commitment to work through the issues, Mr Weston would have wanted to find a way that avoided dismissal. Mediation required the agreement of all parties and a willingness to compromise. It was clear from the evidence of Mr Fell that he did not feel able to engage in such a process. It was clear to the panel that mediation was highly unlikely to work and could not be forced. If the parties had been forced to undertake mediation, the panel felt this would have been even more damaging to them.

357. The panel found no evidence to suggest that the claimant was being victimised due to having previously asserted rights under the disciplinary and grievance procedures. There was nothing to suggest that Mr Weston's decision was in any way related to the claimant's race or the fact that she had raised grievances or a tribunal complaint. The way in which she had allowed campaigns to publicise the issue and criticise the SLT was something that he had felt was unprofessional and damaging to trust and working relationships. The panel did not conclude that he had relied on the claimant's grievances causing a breakdown as part of his decision-making leading to a conclusion that he couldn't reintegrate the claimant. It was recognised that Mr Weston had raised how mediation could work with an ongoing tribunal complaint. Ms Walker considered that he was asking questions in terms of gaining the claimant's understanding and thoughts.

358. Ultimately, the decision was to uphold the claimant's dismissal on the basis of a breakdown of relationships with no realistic prospect of relationships being restored. Ms Walker wrote to the claimant by letter of 31 March 2022 giving detailed reasons for the rejection of her appeal.

Applicable law

359. In the Equality Act 2010 direct discrimination is defined in Section 13(1) which provides: *"(1) A person (A) discriminates against another (B) if, because*

of a protected characteristic, A treats B less favourably than A treats or would treat others." "Race" is a protected characteristics listed in Section 4. Section 23 provides that on a comparison of cases for the purpose of Section 13 *"there must be no material difference between the circumstances relating to each case".*

360. The Act deals with the burden of proof at Section 136(2) as follows:-

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

361. In **Igen v Wong [2005] ICR 935** guidance was given on the operation of the burden of proof provisions in the preceding discrimination legislation albeit with the caveat that this is not a substitute for the statutory language.

362. The tribunal also takes notice of the case of **Madarassy v Nomura International Plc [2007] ICR 867**. There it was recorded that Mr Allen of Counsel had put forward that the correct approach was that as Ms Madarassy had established two fundamental facts, namely, a difference in status (e.g. sex) and a difference in treatment, the Act required the tribunal to draw an inference of unlawful discrimination. The burden effectively shifted to the respondent to prove that it had not committed an act of discrimination which was unlawful. Mummery LJ stated:-

> *"I am unable to agree with Mr Allen's contention that the burden of proof shifts to Nomura simply on Ms Madarassy establishing the facts of a difference in status and a difference in treatment of her. …….. The Court in Igen Ltd v Wong [2005] ICR 139 expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent committed an unlawful act of discrimination. …*
>
> *"Could….conclude" …. must mean "a reasonable tribunal could properly conclude" from all evidence before it. This would include evidence*

adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only the statutory "absence of an adequate explanation" at this stage (which I shall discuss later), the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like …..; and available evidence of the reasons for the differential treatment

The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."

363. It is permissible for the tribunal to consider the explanations of the Respondent at the stage of deciding whether a prima facie case is made out (see also **Laing v Manchester CC IRLR 748**). Langstaff J in **Birmingham CC v Millwood 2012 EqLR 910** commented that unaccepted explanations may be sufficient to cause the shifting of the burden of proof. At this second stage the employer must show on the balance of probabilities that the treatment of the claimant was in no sense whatsoever because of the protected characteristic. At this stage the tribunal is simply concerned with the reason the employer acted as it did. The burden imposed on the employer will depend on the strength of the prima facie case – see **Network Rail Infrastructure Limited v Griffiths-Henry 2006 IRLR 865**.

364. The tribunal refers to the case of **Shamoon v The Chief Constable of the Royal Ulster Constabulary [2003] ICR 337** for guidance as to how the tribunal should apply what is effectively a two stage test. There it was recognised that in practice tribunals in their decisions normally consider firstly whether the claimant received less favourable treatment than the appropriate comparator and then secondly whether the less favourable treatment was on discriminatory grounds (termed as the "reason why" issue). Tribunals proceed to consider the reason why issue only if the less favourable treatment issue is

resolved in the favour of the claimant. The less favourable treatment issue therefore is treated as a threshold which the claimant must cross before the Tribunal is required to decide why the claimant was afforded the treatment of which he/she is complaining. Lord Nichols went on to say:-

"No doubt there are cases where it is convenient and helpful to adopt this two step approach to what is essentially a single question; did the claimant on the prescribed ground receive less favourable treatment than others? But, especially where the identify of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined."

Later, he said:-

"This analysis seems to me to point to the conclusion that employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former there will be usually no difficulty in deciding whether the treatment afforded to the claimant on the proscribed, ground, was less favourable than was or would have been afforded to others."

365. The Supreme Court in **Hewage v Grampian Health Board [2012] UKSC 37** made clear that it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.

366. The complaint of harassment is brought pursuant to Section 26 of the Equality Act 2010 which states:

"(1) A person (A) harasses another (B) if -
A engages in unwanted conduct related to a relevant protected characteristic, and
the conduct has the purpose or effect of—
violating B's dignity, or
creating an intimidating, hostile, degrading, humiliating or offensive environment for B….

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
the perception of B;
the other circumstances of the case;
whether it is reasonable for the conduct to have that effect."

367. Harassment will be unlawful if the conduct had either the purpose or the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. A claim based on "purpose" requires an analysis of the alleged harasser's motive or intention. This may, in turn, require the tribunal to draw inferences as to what the true motive or intent actually was. The person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift from accuser to accused.

368. Where the claimant simply relies on the "effect" of the conduct in question, the perpetrator's motive or intention – which could be entirely innocent – is irrelevant. The test in this regard has, however, both subjective and objective elements to it. The assessment requires the tribunal to consider the effect of the conduct from the complainant's point of view. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that requisite effect. The fact that the claimant is peculiarly sensitive to the treatment accorded him does not necessarily mean that harassment will be shown to exist.

369. Harassment and direct discrimination complaints are mutually exclusive. A claimant cannot claim that both definitions are satisfied simultaneously by the same course of conduct – 'detriment' does not include harassment (Section 212(1) of the 2010 Act).

370. Pursuant to section 27 of the Equality Act 2010:

"(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

B does a protected act;

A believes that B has done, or may do, a protected act.

Sub-paragraph (2) of this section provides:

(2) Each of the following is a protected act –

(a) bringing proceedings under this Act;….
(d) making an allegation (whether or not express) that A or another person has contravened this Act

371. In this case there is no dispute that the claimant indeed did a protected act in her grievance of 9 October 2021 and by bringing Employment Tribunal proceedings where amongst other things it was alleged that she had been unlawfully discriminated against for reasons relating to race.

372. As regards the meaning of "detriment" the tribunal refers to the case of **Chief Constable of West Yorkshire Police –v- Khan [2001] 1 WLR** where it was said that the term has been given a wide meaning by the Courts and quoting the case of **Ministry of Defence –v- Jeremiah [1980] QB 87** where is was said that *"a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment".*

373. To succeed in a complaint of victimisation, the detriment must be "because" of the protected act.

374. In the **Khan** case Lord Nicholls put forward that the "by reason that" element *"does not raise a question of causation as that expression is usually understood. Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the "operative" cause, or the "effective" cause. Sometimes it may apply a "but for" approach. For the reasons I sought to explain in **Nagarajan –v- London Regional Transport**, a causation exercise of this type is not required either by section 1(1)(a) or section 2. The phrases "on racial grounds" and "by reason that" denote a different exercise: Why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."*

375. It is clear from the authorities that a person claiming victimisation need not show that the detrimental treatment was meted out solely by reason of the protected act. If protected acts have a "significant influence" on the employer's decision making, discrimination would be made out. It is further clear from authorities, including that of **Igen**, that for an influence to be "significant" it does not have to be of great importance. A significant influence is rather *"an influence which is more than trivial. We find it hard to believe that the principle of equal treatment would be breached by the merely trivial."*

376. The tribunal itself raised the potential relevance of the decision of the

Court of Appeal in **Reynolds v CLFIS (UK) Ltd 2015 EWCA** and the importance of determining what was in the mind of the actual decision-maker. That case emphasises the importance of identifying the specific decision-maker and that supplying information or opinions which are used for the purposes of a decision by someone else, does not constitute participation in that decision. There are cases properly regarded not as one of joint decision-making, but rather as one of “tainted information” (in which an act which is detrimental to the claimant is done by an employee X who is innocent of any discriminatory motivation, but who has been influenced by information supplied or views expressed by another employee Y whose motivation is, or is said to be, discriminatory). It is unacceptable in principle for X’s act of dismissal to be combined with Y’s motivation for supplying the information or opinion relied upon by X. The proper approach is to regard Y’s supply of the information or opinion as a discrete discriminatory act (for which the employer could be liable) from the act of dismissal.

377. The **Reynolds** case has recently been considered by the EAT in **Alcedo Orange Ltd v Ferridge-Gunn [2023] IRLR 606**. There reference was made to the decision of the EAT in the case of **Commissioner of Police of the Metropolis v Denby 2017 UKEAT/0314/16** where it was said, explaining the decision in **Reynolds**, that: “where the case is not one of inherently discriminatory treatment or of joint decision-making acting with discriminatory motivation, only a participant in the decision acting with discriminatory motivation is liable; an innocent agent acting without discriminatory motivation is not.” In **Alcedo** it was found that the tribunal had failed to grapple with an analysis of whether, in that case, there was a decision by a sole decision-maker or a decision by a sole decision-maker influenced by others or whether it was a joint decision. The EAT noted a differentiation between a sole decision-maker unknowingly influenced by a person who had a discriminatory motivation in contrast with a joint decision or one where the sole decision-maker was knowingly influenced by the person with a discriminatory motivation so that the discrimination finding should be upheld.

378. Mr Brittenden submits that this is not a case where an innocent decision-maker was unwittingly duped into giving effect to the discriminatory motivation of another person, i.e. a classic “tainted information” case of the sort considered in **Reynolds**. He posits a situation where managers will not work with an employee because the employee is black. A conclusion is reached by a more senior manager that the employee be dismissed because of a breakdown in relationships, knowing the reason for the junior managers’ dislike of the employee. In such circumstances, could it be seriously argued that this was not an act of discrimination by the dismissing officer.

379. In a claim of unfair dismissal, it is for the employer to show the reason for dismissal and that it was a potentially fair reason, which includes some other

substantial reason of a kind such as to justify dismissal. A breakdown in relationships might amount to some other substantial reason.

380. If the respondent shows a potentially fair reason for dismissal, the tribunal shall determine whether dismissal was fair or unfair in accordance with Section 98(4) of the ERA, which provides:-

“ [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends upon whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case”.

381. Classically in cases of misconduct a tribunal will determine whether the employer genuinely believed in the employee’s guilt of misconduct and whether it had reasonable grounds after reasonable investigation for such belief. The burden of proof is neutral in this regard. Similar considerations may arise where other reasons for dismissal are relied upon

382. The tribunal must not substitute its own view as to what it would have done in particular circumstances. The tribunal has to determine whether the employer’s decision to dismiss the employee fell within a band of reasonable responses that a reasonable employer in these circumstances might have adopted. It is recognised that this test applies both to the decision to dismiss and to the procedure by which that decision is reached.

383. In **Ezsias v North Glamorgan NHS Trust [2011] IRLR 550**. Keith J cautioned that in a breakdown in working relations case the tribunal must be:

“… alive to the refined but important distinction between dismissing Mr Ezsias for his conduct in causing the breakdown of relationships, and dismissing him for the fact that those relationships had broken down. In these circumstances, the only fair reading of the tribunal's finding at paragraph 542 about the reason for Mr Ezsias' dismissal is that although as a matter of history it was Mr Ezsias' conduct which had in the main been responsible for the breakdown of the relationships, it was the fact of the breakdown which was the reason for his dismissal (his responsibility for that being incidental).

… We have no reason to think that employment tribunals will not be on the lookout, in cases of this kind, to see whether an employer is using the rubric of 'some other substantial reason' as a pretext to conceal the real reason for the employee's dismissal.”

384. Mr Brittenden says that the reason for dismissal was ostensibly a breakdown in working relationships. However, it is not quite clear-cut because conduct reasons permeate the decision and the evidence relied upon in support of the relationship breakdown.

385. Further, the tribunal takes guidance from the case of **Tubbenden v Primary School Governors v Sylvester UKEAT/0527/11/RN**. There, Langstaff (P) rejected the submission that it is not open to a tribunal to have regard to *“how the parties had reached the position in which the decision to dismiss or not fell to be made”* as being *“stark”*. He gave the following guidance:

“37… Where the substantial reason relied upon is a consequence of conduct (and in this case it can be no other), there is such a clear analogy to a dismissal for conduct itself that it seems to us entirely appropriate that a Tribunal should have regard to the immediate history leading up to the dismissal. The immediate history is that which might be relevant, for instance, in a conduct case: the suspension; the warnings, or lack of them; the opportunities to recant and the like; the question of the procedure by which the dismissal decision is reached. It cannot, in our view, always and inevitably be trumped simply by the conclusion that there has been a loss of confidence without examining all the circumstances of the case and the substantial merits of the case, as section 98 would require.

38. We are not at all unhappy, as a matter of principle, to reach the view that that is so, because as a matter of principle if it were to be open to an employer to conclude that he had no confidence in an employee, and if an Employment Tribunal were as a matter of law precluded from examining how that position came about, it would be open to that employer, at least if he could establish that the reason was genuine, to dismiss for any reason or none in much the same way as he could have done at common law before legislation in 1971 introduced the right not to be unfairly dismissed. Lord Reid in Ridge v Baldwin [1964] AC 60 observed that the law of master and servant was not in doubt; that an employer could dismiss an employee for any reason or none. It was to prevent the injustice of that that the right not to be unfairly dismissed was introduced. The right depends entirely upon the terms of the statute, but there is every good reason, we think, depending upon the particular facts of the case, for a Tribunal to be prepared to consider the whole of the story insofar as it

appears relevant and not artificially, as we would see it, be precluded from considering matters that are relevant, or may be relevant, to fairness."

386. The tribunal recognises that Langstaff (P) was careful to emphasise that the EAT was not saying in every case the tribunal *must* have regard to how that situation came about.

387. A dismissal may then still be unfair if there has been a breach of procedure which the tribunal considers as sufficient to render the decision to dismiss unreasonable.

388. If there is such a defect sufficient to render dismissal unfair, the tribunal must then, pursuant to the case of **Polkey v A E Dayton Services Ltd [1998] ICR 142**, determine whether_and, if so, to want degree of likelihood the employee would still have been dismissed in any event had a proper procedure been followed. If there was a 100% chance that the employee would have been dismissed fairly in any event had a fair procedure been followed then such reduction may be made to any compensatory award. The principle established in the case of **Polkey** applies widely and beyond purely procedural defects.

389. In addition, the Tribunal shall reduce any compensation to the extent it is just and equitable to do so with reference to any blameworthy conduct of the claimant and its contribution to her dismissal – ERA Section 123(6).

390. Under Section 122(2) of the ERA any basic award may also be reduced when it is just and equitable to do so on the ground of any kind conduct on the employee's part that occurred prior to the dismissal.

391. Having applied the relevant legal principles to its factual findings, the Tribunal reaches the following conclusions.

Conclusions

392. The claimant has the initial burden in her complaints of direct race discrimination and harassment to show facts from which the tribunal could reasonably conclude that any detrimental treatment was less favourable because of her race or related to race.

393. The claimant puts significant reliance on Mr Fell having stereotyped her as an "angry black woman". It is only when she discovered, through a subject access request made in July 2020, that he had referred to her as acting in an

accusatory and aggressive manner at their meeting on 2 December 2019 that she believed that treatment prior to and after that discovery was because of race. It was a lightbulb moment for her which enabled her to draw the necessary inference. Up to that point the claimant rather thought that she might be being unfavourably treated because of her activities as a trade union representative and her raising of health and safety concerns.

394. Even after discovering Mr Fell's reference to her demeanour on 2 December 2019, the claimant raised a grievance on 9 October 2020 which raises a range of potential impermissible reasons for her treatment of which race is mentioned, but not in a way which is suggestive of that being her primary concern, certainly in terms of her own individual treatment. Certainly, at that point, not all of the detriments since raised in these proceedings, were characterised as acts of unlawful discrimination/harassment related to race.

395. Otherwise, it has been a feature of the claimant's complaints that it has been put to the respondent's witnesses that there are no white teachers who have been treated in a similar manner to the claimant. However, this has been where the claimant's circumstances had a complex and at times unique factual hinterland, not least in terms of the amount of time taken up by and the unique risks produced by the coronavirus pandemic.

396. The tribunal agrees with Mr Brittenden that there is no evidence of Mr Fell accusing a member of staff of a different race of having been aggressive or of him insisting on having a witness present when meeting anyone else or intentionally ignoring correspondence. Mr Fell did show an eagerness to take the claimant to task for issues of alleged unprofessional behaviour/conduct. There is no evidence of another employee who had been observed in the manner Ms Shah observed the claimant on 26 and 27 February, in respect of whom only limited information was provided at a fact finding interview and where there were failures to interview certainly one obvious witness, Mr Dawes in the claimant's case. In the absence of anyone in comparable circumstances, however, that does not constitute evidence of a difference in race and difference in treatment, let alone provide any basis upon which the tribunal could reasonably conclude the claimant's race to be the reason for her treatment.

397. The tribunal has referred in its factual findings only very briefly to examples raised by the claimant of white teachers being treated, it is said, more favourably or other teachers or persons of colour being treated to their detriment. That is because there has, in this case, been a dearth of comparator evidence. Where there has been an attempt to raise the treatment of another

in comparable circumstances, it has quickly become clear that the circumstances were quite different to those of the claimant. Mr Turner's communication as a head of year to all teachers about those expected to attend a parent's evening, whilst conflicting with the view of the SLT as to which teachers ought to attend, was quite different in character to the claimant's communication as a union representative of inaccurate information to all staff members when any communication ought properly to have been with union members only. All of the claimant's allegations of direct discrimination and harassment have to be viewed in this light.

398. The tribunal considers firstly the allegation that, in Mr Fell's memorandum of his meeting with the claimant on 2 December 2019, he stereotyped her as an "angry black woman" (**detriment 1**). In his account, shortly after the meeting took place, he actually referred to her as having been "rather aggressive and accusatory". The claimant was at that meeting upset (and not without some justification). She did, in the early part of the meeting, raise that she considered that Mr Fell's behaviour amounted to bullying and harassment of her. That had been her intention prior to entering the meeting. She read out the relevant legal definitions. In context, it is unsurprising if Mr Fell considered this as challenging and accusatory. It was. There is not a great leap from behaviour which is labelled as challenging being labelled as "rather aggressive". There was no need for the claimant to have shouted or interrupted him or been physically demonstrative, for Mr Fell to make that assessment. Certainly, the tribunal concludes that this is how Mr Fell genuinely perceived the claimant's behaviour. Perhaps close to the root of the difficulties in the claimant and Mr Fell's relationship was the claimant's, at times naïve and unsubtle approach as a relatively newly appointed union representative when met with Mr Fell's inexperience and sensitivity of being challenged in his relatively new head teacher role. In truth, both had a tendency to escalate and over formalise matters. Certainly, there is ample evidence of Mr Fell reacting badly to criticism and the tribunal must, in all the circumstances, conclude that he described the claimant in the way he did because that is how he genuinely characterised her behaviour. The grievance panels' conclusions, whilst open to interpretation, were not that Mr Fell had referred to the claimant in the way he had because of her colour or as an act of stereotyping, but rather that there was a lack of appreciation of sensitivities around the use of what might be considered inappropriate language.

399. He was not consciously or unconsciously stereotyping the claimant. The tribunal is convinced that his reaction would have been identical had he been accused in this context of bullying and harassment by a white teacher or union representative.

400. The meeting between the claimant and Mr Fell on 2 December 2019 followed Mr Fell's instruction to staff at the staff meeting on 29 November to ignore the claimant's email regarding part-time directed hours for teachers and him sending a follow-up email to all staff with minutes attach confirming the same instruction (**detriment 2**). Prior to this, it is accurate that no significant problematical issues had arisen in the claimant and Mr Fell's relationship.

401. The context of this communication by Mr Fell, at the staff briefing and followed up in writing, was that the claimant had, in her capacity as a union representative, given inaccurate information and to all staff rather than just union members. The tribunal accepts that Mr Fell wished to correct this and that, in circumstances where the issue of directed hours had been the subject of recent disagreement and negotiation, to do so quickly. The tribunal accepts that there was a reaction among some teachers of some shock at the implicit (and public) criticism of the claimant. Nevertheless, Mr Fell did communicate that the claimant had sent out her initial email with good intentions. Mr Fell could, and indeed ought to, have ensured that the claimant was aware of his reaction to her email and how he was proposing to set the record straight. He had a window of opportunity to speak to the claimant. He is likely to have appreciated the significance of her email on a quick scan of it. However, Mr Fell acted with haste and without that level of appreciation of the claimant's likely feelings when she discovered how he had communicated her effective mistake. There is, nevertheless, no basis whatsoever from which the tribunal could reasonably conclude that Mr Fell would have acted differently had the communication been sent by a white union representative. The tribunal accepts Fell's explanation that his reaction was in no sense whatsoever because of or related to race.

402. The claimant complains that Mr Fell dismissed her concerns which she raised in their meeting on 2 December 2019 (**detriment 3**). The claimant might possibly characterise Mr Fell as unreasonable or insensitive in failing to fully appreciate why she might be upset at how staff had been told to disregard her advice and interpretation of directed hours for part-time employees. She might obviously have felt undermined and aggrieved, perhaps even humiliated, by having her error highlighted in the manner it was. Her case in respect of this detriment is made more difficult, however, by her reference, as found, quite early on in the meeting to Mr Fell's bullying and harassing behaviour which resulted in him immediately becoming defensive to what he saw as a serious and to him also a hurtful challenge. Again, there are no facts from which the tribunal could reasonably conclude that the claimant was treated less favourably or to her detriment related to the race. The tribunal is entirely satisfied by Mr Fell's explanation - he would have acted in the same manner to any employee/union representative in similar circumstances. He genuinely

thought that he had dealt with the issue appropriately, having taken the opportunity of a pre-arranged staff briefing to speedily correct an inaccurate statement relating to terms and conditions of employment. In no sense whatsoever was Mr Fell's dismissal of the claimant's concerns because of or related to race.

403. The claimant then complains that when Mr Fell met with her on 9 December 2019, he insisted that the door of his office remained open and someone else be present (**detriment 4**). Clearly, Mr Fell did not want to meet with the claimant without a witness to what was said. The tribunal recognises again Mr Fell's sensitivity to challenge and his feelings of indignation at a suggestion that he had behaved in a bullying and harassing manner. He considered this to be a complete misrepresentation by the claimant and he was concerned that she might seek to misrepresent anything further which he said to her. That was his genuine concern. The tribunal was not persuaded that he was actively thinking about the claimant's own interests, but he wanted to ensure that there was no scope for argument as to any exchange they had. Mr Fell also had wanted to meet Ms Frew, whom the claimant was representing, with Ms Taylor able to hear what was being said, but that was an entirely consistent approach to a meeting involving the claimant and not one corroborative of a motivation tainted by considerations of the claimant's race.

404. No comparable situation faced by Mr Fell has been advanced. Mr Fell was obviously comfortable in having one-to-one meetings with other members of staff including in difficult circumstances – for example, his formal management meeting with Mr McManus, who is white. However, Mr McManus had not suggested that Mr Fell was guilty of bullying and harassing treatment or otherwise presented a challenge to Mr Fell in the way he perceived the claimant to have done. There are no facts from which the tribunal could reasonably conclude there to have been a different treatment or detriment because of or related to race. The tribunal again is convinced by Mr Fell's explanation that his treatment of the claimant was in no sense whatsoever influenced by race.

405. The claimant then alleges that Mr Fell avoided meetings with her (**detriment 5**). The tribunal, in its factual findings, has gone through the half-termly joint union meetings in the calendar which did not take place up to the period of lockdown due to the coronavirus pandemic. These were meetings with the claimant and, usually, 2 other union representatives, both of whom are apparently white. There is, on the facts, no basis upon which the tribunal could reasonably conclude that Mr Fell's reason for not holding some of the meetings was because of the claimant's race. The claimant maintains that she ought to be considered differently to the white union representatives as she was the

representative pushing for the meetings to take place and seeking to put items on the agenda. There is still, even if that is accepted, no factual basis for possibly inferring a difference in treatment or treatment related to race. The tribunal accepts Mr Fell's reasons for why some of those meetings did not take place. There were good and clearly non-discriminatory reasons for some of the meeting being cancelled or postponed. The tribunal concludes indeed, accepting Mr Fell's evidence, that Mr Fell's predecessor had arranged for regular half-termly meetings in circumstances where Mr Fell did not consider this to be what he had experienced in other schools and where he straightforwardly did not consider that it was necessary to have union meetings so frequently. Mr Fell, clearly on the evidence, liked to communicate directly to all staff. From Mr Brittenden's submissions, the tribunal notes that no allegations in respect of these pre-lockdown meetings are still pursued.

406. Mr Fell's aforementioned preference was nevertheless evident in his approach to the claimant's requests for union meetings in relation to the school reopening during the coronavirus pandemic, the claimant making requests on 2 and 9 June, 7 July and 28 August 2020. In addition, Mr Fell, the tribunal accepts, considered it appropriate to discuss matters with the claimant's union at district rather than local level where he considered that a wider overview of best practice could be gained in conjunction with Kirklees Council. The tribunal recognises that Mr Fell felt under pressure in challenging circumstances and was extremely busy. He did not feel it was necessary to meet, particularly in circumstances where there had been extensive communication directly with staff including through online surveys. The claimant was the only union representative making requests for meetings at this time. The tribunal has no basis upon which it could reasonably conclude that if any of the other, white, union representative had requested similar meetings their requests would have been granted or Mr Fell would have found time for them in his busy schedule.

407. The tribunal notes that, after the request for the 2 June meeting, Mr Fell advised the SLT not to engage with the claimant on the issue of the school reopening and seemed perturbed, without any reasonable justification, at the nature of the claimant's communication. That is indicative further of the antipathy Mr Fell felt towards the claimant, but a feeling that arose out of the aforementioned events and his reaction to them, which was uninfluenced by considerations of race. Mr Fell certainly, at times, did not want to deal with the claimant in her union representative capacity, without seeming to realise his lack of choice in this regard. Again, this was because of how he perceived the claimant then, unrelated to race. Some emails from the claimant were ignored despite a generally polite tone. Again, Mr Fell expected challenge and pushback regardless and wished to avoid that in circumstances where he did not believe that the claimant would agree with his approach. Again, this was nothing to do with race.

408. The tribunal accepts this explanation and concludes that his decision not to meet with the claimant and other union representatives was in no sense whatsoever because of or related to race.

409. The claimant separately alleges that Mr Fell ignored the claimant whenever he saw her in the corridor (**detriment 6**). The claimant's evidence is that this first occurred in the period of a couple of months prior to the first lockdown due to the coronavirus and again upon her return to the respondent school in September up to 1 October 2020. She suggested that, while she accepted that she did not walk past Mr Fell regularly, they would encounter each other she estimated at least once every week. The claimant has been unable to provide specific examples apart from a reference to one occasion when she was with a colleague and Mr Fell acknowledge that colleague, but, she perceived, not her. Mr Fell did not recall any instance where he had come across the claimant in the corridor and ignored her. The evidence is not such as to allow the tribunal to make any positive finding that Mr Fell did indeed ignore the claimant on any particular occasion, let alone, as the claim is framed, whenever he saw her in the corridor. In any event, the tribunal concludes and repeats that Mr Fell was by this stage upset by the claimant's behaviour towards him and wary of her. If there was an occasion where he avoided contact with her, it is more likely than not to have arisen out of those feelings. There is no evidential basis upon which the tribunal could have been able to conclude that any difference in treatment or adverse treatment was because of or related to race.

410. The claimant maintains that Mr Fell asked members of the SLT to observe the claimant in order to build up a case for a disciplinary and/or complains of the SLT members in fact observing her (**detriment 7**). There is no evidence that Mr Fell ever instructed members of the SLT to monitor the claimant. Ms Shah did observe the claimant on 26 and 27 February 2020 in the canteen during the school day and reported this to Mr Fell. There is no evidence, however, that she did so on Mr Fell's instruction. Indeed, it appears that she saw the claimant in a place which did not coincide with where she expected her to be, i.e. teaching lessons, Ms Shah was able to see the claimant in the canteen area from her office. She did not go looking for the claimant. In any event, it is clear that Miss Shah was concerned about the performance of the PE department generally. She had met with Mr McManus the previous December to express her concerns. Mr McManus was of the view, in his evidence, that Ms Shah was ill disposed towards the department as a whole rather than any individual. Also, the fact that she had already raised the issue with Mr McManus and, she believed now that her admonishment of him had had no effect, caused her to consider that it would be futile to re-raise the issue with him. Whilst the tribunal can accept that Mr Fell might not have been

disappointed to find a potential issue of conduct he could raise with the claimant, the situation was not manufactured or setup by anyone, but arose from the chance observances of Ms Shah, as a result of which she reported genuine concerns.

411. There are no facts from which the tribunal could reasonably conclude that there was any observance of the claimant which would not similarly have occurred in the case of a white teacher seen in the canteen area at a time when he/she was timetabled to teach. Again, the tribunal accepts the respondent's explanation that, whilst the claimant may have been seen, she was not under a more general observance and the fact of and reaction to her sighting was in no sense whatsoever because of or related to race.

412. The claimant separately raises her being observed on CCTV (**detriment 8**). Mr Fell did on 28 February observe the claimant's movements on 26 and 27 February, the days Ms Shah had reported that she had seen the claimant in the canteen area. He did not understand any constraints imposed by the CCTV policy or turn his mind to issues of possible infringements of privacy. He viewed the CCTV because he was keen to ascertain what the claimant had been doing at times when she had been timetabled to teach. Again, whilst Mr Fell may not have been overly disappointed to have a conduct issue to raise against the claimant, it was genuinely an issue of concern if she was not teaching a class she was timetabled to do so. There are no facts from which the tribunal could reasonably conclude that he viewed the footage because of or related to race. The tribunal accepted his explanation that he had a genuine desire to investigate what had been reported to him and that in no sense whatsoever was the claimant's race a factor in him viewing the footage.

413. Mr Fell's justification for viewing the CCTV footage of the claimant's late arrival at school on 3 March 2020 was more tenuous in that there seems to be no dispute that the claimant was running late that day and for an understandable reason. Nevertheless, there was a potential question as to whether she ought to have relieved the cover teacher, having arrived late, but before the conclusion of period 1. Again, Mr Fell was, on the tribunal's findings, certainly by this stage more than suspicious that the claimant was avoiding her teaching duties. He was proactive (for such a busy person with wider responsibilities) in looking for evidence of misconduct – again, in so far as he was looking to build a case against the claimant, the reason relates back to his feeling that he was being improperly challenged by the claimant. Again, there is no basis upon which the tribunal could reasonably conclude that Mr Fell would have acted any differently in similar circumstances had the claimant been white or that his viewing of the CCTV footage was related to her race. The

tribunal is satisfied that there is the aforementioned explanation for him doing so which was in no sense whatsoever influenced by considerations of race.

414. The claimant raises that she was criticised for not attending the year 9 parent's evening even though she had permission and it was not compulsory (**detriment 9**). This might be viewed objectively as always a weak allegation in circumstances where Mr Turner had sent messages to staff indicating that attendance of all teachers in a non-core subject would not be required. On the other hand, Ms Shah had told the claimant to obtain authorisation for any absence from the evening and the claimant was absent without having received permission from Mr Fell, who was the ultimate decision maker in any such request. Against that, Mr Fell's rejection of her absence request was not notified to the claimant and Mr McManus, her immediate line manager, had given her permission to be absent. The tribunal accepts that the SLT view was that attendance of PE teachers was compulsory, hence Ms Shah's request for the claimant to obtain authorisation for absence. This is despite Ms Shah being in receipt of the communication from Mr Turner.

415. Perhaps this was a criticism which ought reasonably to have been at least dropped by the respondent at an early stage. Nevertheless, its pursuance was consistent with the respondent's desire to build a case of misconduct against the claimant in circumstances where Mr Fell was genuinely concerned about the claimant's conduct and behaviour, albeit in circumstances where another head teacher might have been more robust in the face of the claimant's perceived challenging behaviour. The tribunal notes Mr Ryan's finding of the allegation being without foundation. Mr Brittenden puts forward that this demonstrates Mr Fell's overwhelming desire to target the claimant. Perhaps it does, but not, the tribunal concludes, for any reason related to race.

416. The claimant raises that Ms Shah was instructed to speak to members of the claimant's class to determine whether there were other conduct issues that the claimant could be disciplined for (**detriment 10**). On the facts as found, Mr Fell was looking to establish whether the claimant and, if not her who, had taught the class during periods when she had been absent from that class which she was timetabled to teach. Whilst Ms Shah was not pointed towards other, perhaps more obvious, lines of enquiry, such as speaking, in particular, to Mr Dawes, speaking to the students was a relevant line of enquiry and one where Mr Fell was astute to proceed sensitively so as to avoid alerting the students that their own teacher was the subject of an enquiry. Again, there are no facts from which the tribunal could reasonably conclude that Mr Fell would not have made a similar request in circumstances where there was evidence that a white teacher had been absent from a class they had been timetabled to teach. The tribunal accepts that Mr Fell pointed Ms Shah in the direction of this

form of enquiry as he thought straightforwardly that he could gain further information about how the class had been taught. The tribunal is satisfied that no sense whatsoever was this decision because of or related to race.

417. The claimant raises that Mr Fell and/or Ms Shah did not allow the claimant to discuss the allegations being made against her about her movements on 26 and 27 February when Miss Shah interviewed her on 4 March 2020 (**detriment 11**). The purpose of this meeting was an initial fact find. Ms Shah was directed to ask specific questions which would allow for an explanation of the claimant movements and activities on 26 and 27 February. Mr Fell's own wariness of the claimant, however, caused him to advise Ms Shah not to become involved in a discussion with the claimant. Ms Shah was an inexperienced investigator. She had not conducted this sort of meeting before and she took Mr Fell's advice quite literally such that she thought she should avoid providing at that stage any further information to the claimant. Ms Shah's approach at the meeting was unreasonable and the claimant was justified in being aggrieved that, whilst the days in question were not too distant in time, further information could not be provided to her to aid her recollection of what were relatively brief visits to the canteen. Ms Shah did not approach the fact-finding as a neutral investigator and indeed her leap in concluding that the claimant was dishonest in her answers is problematical. Again, however, there was genuine suspicion about the claimant's conduct against a background where the claimant was perceived as challenging for the reasons already outlined. There is still no factual basis upon which the tribunal could reasonably conclude that the approach taken to the fact-finding meeting was because of or related to race and that a white teacher in similar circumstances to the claimant would not have been treated in exactly the same manner. The tribunal is satisfied that the approach taken is explained to be for reasons untainted by considerations of race.

418. The claimant then complains about her being subjected to the disciplinary process initiated by the letter of 20 April 2020 (**detriment 12**). As a matter of fact, the letter of 20 April did not initiate any disciplinary action, but was rather the request for the issues relating to the claimant's conduct to be addressed by way of a formal management meeting outside the disciplinary process. The matters raised against the claimant did subsequently become disciplinary allegations, but only later in 2020. The tribunal is prepared nevertheless not to construe the pleaded detriment so narrowly.

419. Nevertheless, the invitation to a formal management meeting to discuss aspects of the claimant's conduct/behaviour was because the concerns raised were genuinely held by Mr Fell and which he wished to discuss with the claimant. His preference would have been to do so from the outset through a

disciplinary process, but the situation resulting from the coronavirus pandemic caused him to accept that it was appropriate to adopt a less formal approach. The tribunal does consider that a number of the aspects of conduct raised against the claimant could have been addressed in fact on an extremely informal basis and that Mr Fell was keen to construct a case against the claimant of more significant aspects of misconduct than was objectively justified. That is rather borne out by the ultimate decisions of the disciplinary and disciplinary appeal panels. His motivation in doing so is problematical and might cry out for an explanation, but not in the context of there being any facts from which the tribunal could reasonably conclude that his attitude towards the claimant was because or related to race. He wanted to pursue allegations against the claimant because he believed that she was somewhat of a loose cannon (as Ms Shah has described the claimant) who challenged his authority and sought to do her own thing. When he had the opportunity to lobby Kirklees HR for the allegations to be again taken forward as a formal disciplinary, he did so for the aforementioned reasons and not least in the context of the claimant's communication to him of 16 September 2020 which is dealt with in the claimant's separate allegation of victimisation. In no sense whatsoever were disciplinary allegations pursued against the claimant because of or related to race.

420. The claimant raises as **detriment 13**, a refusal to meet with her on 2 June 2020 in her capacity as union representative about whether it was appropriate to reopen the school. This has been addressed already in the context of detriment 5. Mr Fell did not see the need to meet any local union representatives to discuss the joint union checklist as this was being discussed with the trade unions at district level. At a time when Mr Fell was under pressure and very busy, he did not see the need to discuss such matters, in addition, at local level. This decision affected more than the claimant. There are no facts from which the tribunal could reasonably conclude that his decision was in any sense whatsoever because of or related to the claimant's race. Indeed, the tribunal is convinced that the decision was taken for the aforementioned reasons, untainted by any consideration of race.

421. **Detriment 14** relates to the issue of covid risk assessments and consists of a number of the limbs. The claimant was placed on the rota before her risk assessment had been completed. The respondent's position is that any other clinically vulnerable member of staff who had not provided medical evidence supporting them not attending the workplace, were and would have been treated in exactly the same manner. The claimant has not provided any comparator evidence helpful to her case. The claimant had said that she was unable to obtain medical evidence from her GP, but the respondent was faced with a situation where it was likely that a number of staff members would be reticent about returning to work and it wished to apply some form of pressure

to get all staff back so as to be consistent and fair to all. The respondent could have given other members of the PE department the claimant's shifts and effectively released her from work, but wished to treat the claimant consistently with others. The claimant being placed upon the rota did not mean that she could not effectively persuade the respondent regarding the inappropriateness of that. Of course, the claimant was subsequently signed off as unfit to work and removed from the rota. The tribunal considers that there was a general scepticism amongst the SLT regarding the claimant's willingness to work, regardless of the health and safety position. The claimant's union had not at all times adopted a realistic approach which recognised the difficult position of schools when mandated by the Department for Education to reopen. Whether or not the respondent's scepticism was well-founded (and it was not without some objective evidential basis), it had nothing at all to do with the claimant's race.

422. Mr Schofield did require Ms Wright to sit in on the claimant's risk assessment meeting in July 2020, which the claimant raises as an aspect of detrimental treatment. The tribunal accepts, however, that at this time it was envisaged that Ms Wright would be taking over the conduct of risk assessments from September 2020 and was present to familiarise herself with the nature of these assessments. Ms Wright had experience of risk assessments but covid risk assessments were something new. The claimant did not raise any objection to her presence at the time. It is not difficult to imagine given the closeness of the SLT and Mr Schofield's letter raising his own issues with the claimant, that he did not welcome having a witness, but if so (and the tribunal can make no positive finding) this would have arisen out of his adoption of Mr Fell's fear, which again was unrelated to race. Ms Wright's presence was in no sense whatsoever because of the claimant's race or related to race.

423. The claimant complains that Mr Schofield ignored the additional covid risks for BAME staff when completing the risk assessment. In fact, Mr Schofield was well aware of the additional vulnerability of BAME individuals and had determined to use a risk assessment tailored for BAME staff. The form of assessment expressly recognised increased vulnerabilities amongst such groups and he was utilising a risk assessment tool designed to take account of this.

424. It is put that Ms Shah was given greater flexibility in her working arrangements than the claimant, which included more allowance for homeworking and ensuring that no one else use her office. She was of course in a very different role to the claimant with more scope for homeworking. Whilst it is put that the difference in approach was striking, there is no basis for the tribunal being able to conclude that Ms Shah was treated more favourably as

someone of Asian ethnicity in contrast to the claimant as an individual of black heritage. Reference was made to a Ms Akhtar, but it appears that she provided to the respondent medical notes about tests she was undertaking.

425. The claimant alleges that Mr Schofield downplayed the claimant's concerns by saying that he had a BAME friend. The tribunal's factual findings are not supportive of this act of detriment.

426. Mr Schofield had pre-populated some of the risk assessment form, but not so as to exclude any input the claimant wished to make. All of the additions she wanted to be included in the risk assessment were. Clearly, the respondent considered that the claimant was trying to avoid coming back to work. It is put that this was a pejorative and demeaning way to view legitimate concerns raised by a black member of teaching staff. It was not, however, without some reasonable cause that the respondent came to the view that the claimant was intent on finding obstacles rather than solutions to a return to work. It was at times convenient for the claimant to have communicated with the respondent at the last minute. She had put her name to a quite unconstructive piece of communication from her union at national level which she now accepts as a less than ideal communication. There were many members of staff with concerns about a return to work, including from a BAME background, but the claimant, even accounting for her genuine concern as an asthma sufferer, was somewhat of an outlier in her steadfast resistance. In terms of risk factors she was at least young and a physically active PE teacher. The respondent simply did not believe the claimant to be being entirely genuine and cooperative. Whilst Mr Brittenden submits that the claimant's concerns were inexorably connected with the claimant's race, the tribunal rejects any suggestion that the respondent's reaction to the claimant's reticence were tainted by considerations of her race. Perhaps it would have been more appropriate to frame a claim about the treatment of the claimant in terms of risk assessments as one of indirect discrimination. However, the tribunal can only deal with the claims before it.

427. The claimant then complains that Ms Taylor suggested that a vitamin D deficiency could be cured by going outside more ignoring the fact that this is a common genetic trait for black people. Again, as a matter of fact, this detriment is not made out. Ms Taylor did not suggest that such deficiency could be cured by going outside more. She set out additional factual information in the risk assessment, without consulting the claimant, but recognising that the claimant worked at times outdoors. In any event, upon what basis could the tribunal reasonably conclude that the addition made by Ms Taylor to the risk assessment was because of or related to race? The tribunal has only written witness statement evidence from Ms Taylor who has not been present to be

challenged on the evidence in circumstances where there are aspects of her treatment of and references to the claimant which could have exposed her to some difficult aspects of cross-examination. Nevertheless, the claimant has not satisfied the tribunal that it could reasonably infer a degree of knowledge and conscious or unconscious motivation on Ms Taylor's part in making the comment and in a document which was published. The pleaded detriment (of curing the deficiency) is not made out and what was included does not ignore or contradict considerations related to race. It is not an act of detriment to recognise that the claimant had a vitamin D deficiency which she self-managed. Exposure to sunlight would benefit anyone with such a deficiency to some degree. The comment about the claimant working outdoors more may be viewed as downplaying the problems of having a vitamin D deficiency (indeed for anyone) and the tribunal has no basis for concluding that it was related to race. If a comment had been for that reason, then working outdoors would not have been said to be a positive factor for someone having a vitamin D deficiency. The claimant's case is that Ms Taylor was saying something she knew to be wrong or irrelevant. There is no evidential basis for the tribunal to reach such conclusion.

428. Finally, under this detriment, the claimant says that Mr Fell and Ms Wright failed to action her request for a meeting in August 2020. This is a reference to the claimant seeking a meeting by email of 28 August to discuss her individual risk assessment. By this time the respondent had put in place arrangements for staff to return to work prior to the return of pupils and for individual risk assessments to take place in that environment, which the respondent considered to be safe and controlled. The claimant's request was not straightforwardly ignored, but was to be dealt with shortly after her return to the workplace in common indeed with the respondent's members of staff who were clinically extremely vulnerable (rather than just clinically vulnerable). Whilst the claimant's position was that any individual risk assessment should be carried out prior to her returning to work (and this was not necessarily an unreasonable position to take), the respondent's reaction to the claimant's request was because of the arrangements it had put in place to facilitate such assessments and in circumstances where it thought this to be safe and appropriate for the claimant also. There are no facts from which the tribunal could conclude that the treatment of the claimant was because of or related to race. Indeed, the tribunal accepts that any employee in the claimant's situation would have been treated in a similar manner. The claimant it is noted an attended the workplace for an individual risk assessment on 8 September 2020.

429. The claimant alleges that Mr Fell and Mr Schofield turned their phones off on the morning of 7 July 2020 so that the claimant could not call them to report her sickness absence in line with the sickness absence procedure (**detriment 15**). Effectively, her case is that the respondent was seeking to

engineer a further allegation of misconduct against her. The tribunal has not been able to make a finding that either Mr Fell for Mr Schofield turned their phone off, certainly not so as to avoid receiving an anticipated call from the claimant. Mr Schofield's phone would have been switched off until around 7:30am that morning, as was his practice. The claimant's case involves a level of foresight and conspiracy beyond what is objectively likely. The claimant had provided a fit note on the afternoon of Friday 3 July and there had been thereafter correspondence between union officials and Kirklees HR regarding the claimant's attendance. The tribunal cannot conclude that the respondent envisaged that the claimant would call in at a particular time to report her absence. The tribunal finds it extremely unlikely that this would have been on anyone's mind at all, let alone that they would have anticipated and then sought to avoid taking the call, in order to discipline the claimant. In any event, the claimant's case against Mr Fell is primarily that he was out to get her, effectively by adding any charge he could to the disciplinary charge sheet. To the extent such argument has a basis, the tribunal has already determined that this was in no sense whatsoever because of the claimant's race or related to race. In any event the claimant in this allegation does not establish facts from which the tribunal could reasonably conclude that Mr Fell or Mr Schofield acted in any way because of or related to race.

430. The claimant alleges that the respondent ignored a request on 7 July 2020 for a meeting to discuss her risk assessment (**detriment 16).** The claimant sent an email to Mr Fell on 7 July 2020 asking for a meeting of local union representatives as has already been dealt with as part of detriment 5 above. The claimant did not make a request on that date for a meeting to discuss her risk assessment. Mr Brittenden accepts that the date referred to appears to be incorrect. He refers to the claimant emailing Ms Wight and Mr Schofield on 28 August 2020 to discuss individual risk assessment. There was no response to this communication, but, as has already been referred to, in the context of there being an expectation that risk assessments would occur in the first week of September when staff, but not pupils, returned to school. The issue is dealt with as part of detriment 14.

431. The claimant complains of the respondent raising further allegations of misconduct on 14 September 2020 (**detriment 17**). The tribunal does not dismiss this detriment on the basis that the letter of 14 September set out instead concerns regarding the claimant's professional conduct with a view to discussing these at a formal management meeting. The tribunal considers that Mr Fell had been further frustrated and disquieted by the claimant's approach to, in particular, health and safety issues relating to the reopening of the school. He did believe that the claimant had been difficult and obstructive. To an extent, he failed to recognise her legitimate role as a union representative if she had genuine safety concerns, which indeed were concerns shared at national level.

432. The tribunal notes again Mr Sykes' evidence that he would have felt sick to receive this communication. It notes that some of the matters raised against the claimant were rather picky. It required quite a skewed interpretation to consider that the claimant had been on unauthorised leave on 7 and 8 September other than in the most technical sense. A number of the allegations related to the claimant's conduct in her capacity as a union representative.

433. Nevertheless, there are no facts as found which could allow the tribunal to reasonably conclude that the raising of additional matters of conduct were in any way because of or related to race. Again, the matters raised were rather part of a continuum originating from the claimant's suggestion to Mr Fell back in December 2019 that he was guilty of bullying and harassing behaviour.

434. The claimant raises that Mr Fell contacted HR to advocate for a severe sanction for the claimant and that she should be suspended (**detriment 18**). As will be discussed more fully when addressing the separate complaint of victimisation, Mr Fell's view of the situation changed on receipt of the claimant's email of 16 September 2020 in which she suggested that he was misusing his power as head teacher and pursuing allegations which were baseless, as well as referring to her now seeking advice from the union's Equality Officer. The tribunal concludes that Mr Fell was significantly disturbed by those suggestions and regarded them as a clear challenge to him which had been made in entirely inappropriate terms. He had reacted in a similar manner to the claimant in December 2019. He did see this communication from the claimant as an escalation of her perceived unprofessional behaviour and Mr Fell referred to a breakdown in relationships at this stage. Mr Fell did indeed lobby Kirklees HR to escalate matters and pursue a more serious disciplinary case where he further considered that the smooth running of the school was jeopardised by the claimant's presence now within it. Again, in overall context of Mr Fell's reactions and reasons for them, no facts have been shown from which the tribunal could reasonably conclude that Mr Fell's attempted escalation of matters was in any sense whatsoever because of or related to race. He would, the tribunal concludes, have reacted in exactly the same manner had this form of perceived challenging behaviour been exhibited by any employee regardless of their colour.

435. The claimant separately complains of the act of suspension itself (**detriment 19**). Again, this is considered more fully in the context of the separate complaint of victimisation. The motivation for the suspension has already been addressed in the context of the previous allegation of Mr Fell lobbying for it. There are no facts from which the tribunal could reasonably conclude that Mr Fell's suspension of the claimant was in any sense

whatsoever influenced by her race or related to race. The same applies to Mr Fell's consideration that the claimant ought to remain suspended (**detriment 20**) when he reviewed the suspension. Race played no part in his decision making at any such stage.

436. The final alleged act of detriment is finding that the claimant was guilty of the misconduct alleged in respect of the imposition of the written warning and the rejection of her appeal against that (**detriment 21**).

437. It has to be recognised that only two of the disciplinary allegations were upheld initially and then only one after an appeal. The only allegation ultimately upheld against the claimant was that she had been in the canteen on 27 February 2020 without justification at a time she was timetabled to teach. The claimant did not provide a clear explanation for what she had been doing in circumstances where the tribunal considers that she was questioned relatively soon after that date and her meeting with Mr Dawes in the canteen was reasonably considered to be something which would have been likely to be remembered by her. There was a reasonable basis for the disciplinary and disciplinary appeal panels to be dissatisfied with the claimant's lack of cogent explanation. There had been a concern, which Ms Shah had addressed with Mr McManus in December 2019, that there had been a doubling up of classes and teachers were not necessarily teaching the class they were initially timetabled to teach. There was no evidence that the SLT or anyone else within management was aware thereafter of anyone other than the claimant potentially failing to deliver lessons they were timetabled to teach.

438. There was evidence of other aspects of poor practice within the PE department, but again no evidence that management was aware of that or had therefore treated the claimant inconsistently. On 27 February other teachers were involved in timetabled classes not taking place. The disciplinary investigation rejected the suggestion that the safety of students had been compromised. Mr McManus. when interviewed, confirmed that he had sanctioned the practice of leaving students in changing rooms for a while as a way of dealing with poor behaviour and gave evidence that this had been done in previous schools he had worked at. Other teachers confirmed this to be an accepted practice. Mr Ryan referred to this being a flawed custom and practice within the PE Department. It was said then that the claimant was singled out. This was explained to both the disciplinary and disciplinary appeal panels. They both recommended a review of the PE department. At the appeal stage the claimant did raise at the hearing that she had been subject to race discrimination in being the only teacher disciplined for what was a wider custom and practice. This was not, however, considered as part of the claimant's appeal. The reason was that this was on the advice of HR that allegations of

discrimination were being separately considered in the claimant's grievance process. The tribunal accepts that being the reason, despite the relevance of discrimination to the validity of the disciplinary charges.

439. Again, the panels did not have it suggested to them that there were examples of another teacher not being present to teach their class. The panels were not themselves in a position to investigate the behaviour of other members of the PE Department or teaching staff more generally. They made the decision to impose a written warning on the claimant in circumstances where there is no basis for the tribunal reasonably concluding that the decision was in any sense whatsoever because of or related to race.

440. It might be wondered whether the panels were influenced to find some blameworthiness on the claimant's part in circumstances where the substance of the array of disciplinary allegations ultimately pursued against the claimant was somewhat embarrassing, against then the background of a vociferous campaign in support of the claimant. To come to such a conclusion would be an act of pure speculation on the tribunal's part, but in any event would not be suggestive of a decision tainted by considerations of race. Ms Hudson was very open in expressing her surprise at the nature of the allegations the disciplinary panel had to determine. In fact, the evidence is suggestive of both panels taking their task very seriously and attempting to act in a thorough, fair and proportionate manner.

441. On the basis of the foregoing conclusions, all of the claimant's complaints of direct race discrimination and race-related harassment must fail and are dismissed.

442. The tribunal turns out to the claimant's complaints of victimisation. The claimant was suspended on 1 October 2020 which predates the raising of her grievance and her first tribunal claim being lodged. Suspension, as an act of victimisation, is therefore reliant upon the respondent, from 16 September 2020, believing that the claimant might do a protected act. On that date, the claimant wrote to Mr Fell and within the communication said: "I will also be seeking advice from an NEU Equality Officer."

443. Mr Johnston in submissions accepted that it could not be sensibly argued that Mr Fell did not believe, after receiving such communication, that the claimant had done or might do a protected act. Indeed, he considered the evidence actually supported the view that Mr Fell's belief was that the claimant

had done a protected act by impliedly making an allegation that he had contravened the Equality Act. He noted that whether or not Mr Fell fully understood the different types of complaint that could be brought under the Equality Act was ultimately immaterial to the question of whether or not he had the necessary belief.

444. Nevertheless, it is of value to review Mr Fell's evidence which has led to the aforementioned concession. His evidence was that he did not understand the reference to the Equality Officer as suggesting that the claimant might make a complaint of discrimination. That evidence was ultimately, when viewed against the correspondence flowing from his receipt of the claimant's 16 September 2020 email, untenable. The tribunal can only conclude that Mr Fell was seeking to downplay the significance to him of the reference.

445. In cross-examination, he referred to being accused of some things which were baseless and that being problematical to him. He said that he was concerned about the reference to the seeking of advice from an equality officer, saying that he considered it to be a threat, but did not understand what was meant by it and then that he was more concerned with the claimant also saying within the communication that he was abusing his power and making things up. He said he did not think about whether the claimant might be bringing a claim for discrimination, because he was confident that he had not discriminated. His focus was on the other comments.

446. However, on 17 September 2020, in an email to HR, Mr Fell recognised that the letter suggested that he was in breach of the Equality Act. When raised with him in cross- examination, he said that he did not make a leap from a reference to a breach of the "equalities act" to a possible claim of discrimination – a leap which was hardly difficult to make. He referred to him perhaps being naïve, but said that he had shared the communication with HR because he was not sure what it meant. Again, he did not think that the claimant might be complaining of discrimination. He had heard of the Equality Act, but was aware only in general terms that a complaint of discrimination might be brought under the Act.

447. That level of purported ignorance is not credible viewed not least against Mr Fell's acute awareness and indeed, the tribunal concludes, an element of genuine pride, that he was the head teacher of one of the most diverse schools in the north of England. The issue of equality and diversity must have been at the forefront of the minds of anyone in a leadership role in the respondent school. Unsurprisingly, the respondent operated an equality policy upon which it was expressly stated that the governors and senior leaders had been

consulted. Ms Shah confirmed that this would have included Mr Fell and the SLT before it was approved. That policy includes definitions of different types of discrimination and imposed on Mr Fell the ultimate responsibility for ensuring that it was applied fairly and consistently. A reference in correspondence by Mr Fell to a dismissal being potentially justified “for some other substantial reason” suggests a knowledge of employment law.

448. On 18 September 2020, Mr Fell emailed HR saying that he had grounds for a grievance given the accusations of misusing power and breaching “the equalities act”. The tribunal can only conclude that he fully understood the implication of the claimant’s reference to seeking advice from an Equality Officer. When Mr Schofield provided an evidence pack for Mr Ryan for him to consider in commencing the investigation into the disciplinary allegations against the claimant, he made reference to the claimant statement that she would be seeking advice from the Equality Officer. He said: “This would point to the fact that LLE [the claimant] feels that she has been mistreated for a protected characteristic and this is something that Andrew Fell takes very seriously.”

449. The aforementioned evidence is indeed conclusive of Mr Fell believing that the claimant might bring a claim of discrimination and indeed is a factor, together with the coincidence of timing described below, allowing the tribunal to draw an adverse inference as to his reasons for suspending the claimant. Mr Fell was seeking to defend his position before the tribunal on the basis of a lack of appreciation which was unlikely and inconsistent with documentary evidence.

450. The timeline of events is indicative of the decision to suspend the claimant having been influenced by the claimant’s communication of 16 September. When the claimant was sent an invitation on 14 September to a formal management meeting, there was no reference to a breakdown in relationships because Mr Fell didn’t believe there was one or certainly that the situation was irretrievable. When put that there was no reference to any suspension, he said that “there wouldn’t be”. Only on 17 September, after the 16 September email from the claimant referring to the Equality Officer, does Mr Fell email HR saying that he believed there were grounds for suspension. He referred to the accusatory tone of the claimant’s email confirming a complete breakdown in relationships. When questioned as to how he came to that conclusion, he put it down to the claimant’s refusal to engage with him as head teacher at a formal management meeting. There was not, however, at that point any indication of a refusal to engage. Rather, the claimant was (reasonably) seeking disclosure of evidence in advance of any such engagement. The reference to the accusatory tone must, the tribunal concludes, relate, at least in

part, to what Mr Fell recognised in his correspondence with HR on 18 September was an accusation of breaching the “equalities act”.

451. The evidence is then of Mr Fell working very hard to persuade HR that there were serious allegations of misconduct, including in the context of them being sufficient to justify a suspension. Whilst Mr Fell has referred to the alleged breach by the claimant of covid protocols as being the final trigger for suspension, the tribunal concludes that Mr Fell had determined on suspension in advance of receiving that information and that, rather, he was using this new information as a means of arguing that there was evidence that the claimant did not follow protocols and therefore might interfere with an investigation if not suspended. HR noted that the grounds for suspension were “a little weak”. It is hard to understand how this particular allegation could have been pursued as potential serious misconduct in circumstances where the claimant appeared to be taking a genuine covid risk seriously and making appropriate enquiries regarding cleaning, which did not interfere with the operation of any protocols or amount to any form of undue pressure. That was Mr Ryan’s (unsurprising) conclusion.

452. In conclusion, Mr Fell fully understood from 16 September that the claimant might be complaining of discriminatory treatment by him and this was a material influence on his decision to push for and achieve her suspension. Mr Fell has on a number of occasions referred to the claimant’s accusations against him of discrimination as going to the core of his character and the person he is. This is not suggestive that Mr Fell would regard an allegation of discrimination lightly. Indeed, he was extremely exercised by it, as evidenced again by his efforts to build a case which would persuade HR that suspension was truly justified. The protected act was an effective cause of suspension.

453. The tribunal, however, concludes that, whilst Mr Fell was materially influenced in suspending the claimant by his belief that she was going to complain of discriminatory treatment, he would have suspended her regardless of any act of victimisation by reason of her having accused him of misusing his position of power as head teacher and making baseless allegations. This indeed formed a significant part of what he believed to be an accusatory tone and in correspondence he referred to accusations of misusing power as well as breaching the equalities act as forming grounds for a grievance of his own. It is a theme of this case that Mr Fell had not developed, as Mr Johnston put it, a rhinoceros skin and, as a relatively new head teacher, was not so experienced at dealing with challenging behaviours from members of staff. He indeed saw the claimant, not without some justification, as a particularly challenging member of staff and he did not react well to her sometimes direct approach. He was massively affronted when she referred to the possibility of his behaviour in

December 2019 amounting to bullying and harassment. Mr Fell did not want to let matters lie and, whilst he saw the claimant's comments as an overreaction and escalation, his own approach was far from one seeking to diffuse the situation. From this point in time, Mr Fell, on the tribunal's findings, was astute to note and address any aspect of unprofessional behaviour he saw in the claimant. Being told that the accusations he had spent time putting together were baseless, was regarded by Mr Fell as an allegation that he was pursuing a false case against the claimant and an accusation of misuse of power went, the tribunal concludes, to the core of his character just as would an accusation of discriminatory treatment. Had the claimant not included the reference to taking advice from an equality officer in her communication, the tribunal is sure that Mr Fell would have moved to escalate the case against the claimant and advocated for her to be suspended in any event.

454. There is then a separate complaint of detrimental treatment in the claimant being subjected to an open-ended and unreasonably lengthy period of suspension. The complaint is not about a failure to lift suspension on specified dates. A claim in this regard must fail on the facts. The claimant's suspension was not open-ended. It commenced on 1 October 2020 and formally ended upon the outcome of the disciplinary hearing on 6 May 2021. That was a logical and entirely proper point at which the suspension ended, given the determination by that date of the disciplinary allegations against the claimant. Thereafter, the claimant was not straightforwardly suspended, but allowed at her own request a period of authorised paid leave until her appeal could be concluded and prior to any reintegration. Her extended absence from the workplace cannot be viewed as a detriment in circumstances where it was sought by the claimant herself.

455. The period of suspension was not brief - it lasted a little over 7 months. However, the length of suspension is unsurprising in the context of this type of employment and the issues involved. Whilst delays can be pointed to, responsibility for that was not at all times that of the respondent. The disciplinary hearing, originally due to take place on 25 March 2021, was postponed due to the unavailability of Mr Greenwood. There were good reasons why the process took the time it did. The suspension was not, in all of the circumstances, unreasonably lengthy.

456. The tribunal notes that the suspension was firstly reviewed by Mr Fell on 11 January 2021. Whilst the root of the decision to suspend was, at least in part, a belief that the claimant would raise complaints of discrimination and by 9 October 2020 the claimant had done a protected act in raising her grievance, Mr Fell did believe that the claimant's continued presence at the school would hinder the ongoing investigation and by this stage, in his mind, the claimant was

facing allegations of serious misconduct which made suspension, for him, inevitably necessary. Nevertheless, it must be the case that the belief that the claimant might/was making allegations of discrimination was a material influence in this decision – Mr Fell's feelings of indignation in response to the claimant's suggestion that she might seek the advice of the union's equality officer had not abated. Mr Fell's decision to continue suspension had effect for a brief period only in that Mr Weston reviewed the suspension himself on 20 January 2021. The tribunal concludes that he determined that suspension should continue because he understood from Mr Fell that the allegations against the claimant might amount to gross misconduct. He accepted what Mr Fell said without any interrogation of the disciplinary allegations and their genesis. Mr Weston made a similar decision then to continue suspension on 22 February 2021. Those decisions were not materially influenced by any protected act.

457. Mr Weston was involved in commissioning an investigation into the claimant's grievances, which contained a number of complaints of unlawful discrimination and subsequently determined her grievance case. There are, however, no facts from which the tribunal could reasonably conclude that the fact that the claimant had submitted a grievance alleging discrimination influenced him to any extent whatsoever in his decision to continue suspension. The tribunal accepts Mr Weston's explanation for his continuance of the suspension.

458. Turning briefly to the issue of the tribunal's jurisdiction and, in particular, applicable time limits, the parties' respective counsel both accepted the situation that suspension was a continuing state of affairs in the sense that there was certainly no argument that any claim in respect of the act of suspension against the first respondent was out of time. Mr Fell's involvement as second respondent, however, in any alleged discriminatory decision-making, assuming Mr Weston was the sole decision-maker in the claimant's dismissal, ended on his one and only review of the suspension on 11 January 2021 and indeed the tribunal's findings are that in fact his latest individual act of discrimination/victimisation was when he implemented the suspension on 1 October 2020 The claim of victimisation was lodged by the claimant's second tribunal application on 30 March 2022, but this claim was against the first respondent only and not Mr Fell individually, in any event. Any successful claim therefore against Mr Fell individually would have been out of time unless the tribunal had considered it just and equitable to extend time. For completeness, the tribunal would note that the claimant has in evidence advanced no positive explanation for her delay in bringing a claim against Mr Fell. On the other hand, she clearly sought to obtain a remedy through the respondent's own internal processes and it is said, on her behalf, to be harsh to penalise her for not making pre-emptive further tribunal complaints. In all of the circumstances, the

balance of prejudice would have been in Mr Fell's favour where, in any successful complaint, the first respondent would have been vicariously liable for Mr Fell's actions in any event.

459. Turning to the question of the claimant's dismissal, the tribunal concludes that the sole decision-maker was Mr Weston. As chair of governors, Mr Weston understood and accepted that he had a responsibility to make such decision independently of Mr Fell and the SLT and the process he adopted is indicative of him genuinely seeking to understand if and to what extent relationships had broken down between the claimant and the SLT. He listened to and understood the position of the members of the SLT, but did not involve them in his decision whether or not to seek to reintegrate the claimant back into the workplace. The tribunal can understand Mr Brittenden referring to Mr Fell having effectively placed a gun to Mr Weston's head. Mr Weston was faced with a decision where he knew that the claimant's return would likely precipitate the resignation of the school's head teacher. That does not, however, equate to Mr Fell being an active and direct decision-maker.

460. Mr Weston was aware that Mr Fell's position was that he felt vulnerable to further accusations and that the grievance raised by the claimant against him "contains a series of extremely serious accusations relating to my professional behaviour, the decisions I have made and the very core of my character." Mr Fell had recognised, in explaining to Ms Whyles, why the relationship was irretrievably broken, that colleagues had the right to raise grievances but that, again, serious allegations had been made about him going to the core of his character. Mr Fell referred to members of the SLT being as concerned as he was as to how they could manage the claimant without fear of allegations being made. He referred to some of the questions raised as part of the grievance amounting to the claimant "weaponising protected characteristics".

461. On 12 November 2021 Mr Fell told Mr Weston again that there was a fear across the SLT if they were asked to hold the claimant to account, the clear reference being to a fear of the claimant making allegations against them as she had done in the earlier grievance and now as were being pursued in the tribunal complaint. The tribunal notes that, after the grievance outcome, there had been discussions between Mr Fell and Mr Weston regarding the claimant's email access and Mr Weston expressed to HR that they were concerned about granting access "to someone who has made serious allegations about the head teacher and has not accepted the outcomes of an independent investigation and the judgement of the chair of governors".

462. Mr Weston accepted in cross-examination that one of the reasons Mr Fell didn't want mediation was because of the grievance process. He understood that Mr Fell had included the grievance as an explanation for the breakdown in relationships. When suggested to Mr Weston in cross-examination that there was a linkage between the breakdown in relationships and the claimant's grievance of race discrimination, he said that that was indeed in Fell's mind and he understood that Mr Fell had been very hurt by the allegations. Whilst it was not completely down to that, the grievance contributed to the breakdown in relationships. He understood that there was, in Mr Fell's comments, a statement that he and others feared that the claimant would weaponise protected characteristics.

463. Mr Weston was aware of Mr Schofield fearing accusations being made against him and of his belief that the SLT felt similarly to himself. When he referred to feeling vulnerable due to the claimant's behaviours, the tribunal agrees that such behaviours included the claimant's challenges to how she was managed, including her grievance.

464. Mr Brittenden has referred to Mr Weston's invitation of the claimant to the reintegration meeting as including a statement that he was satisfied that this was not prompted by her having raised a grievance. The tribunal can see how this came to be included in the invitation, arising out of an awareness that there might appear to be a linkage or at least that the claimant would seek to draw one. Mr Weston was, however, in many respects a direct and straightforward witness before the tribunal and accepted that the grievance was a reason for the breakdown in relationships. A similar point can be made in respect of the dismissal letter where the draftsman has clearly carefully considered a necessity to emphasise that Mr Fell's feelings about the claimant were not because of her raising a grievance. The letter went out in Mr Weston's name and Mr Weston, when asked about it, conceded that there was a problem arising out of the impact of the grievance and certain allegations contained within it.

465. In evidence Mr Weston again acknowledged that Mr Fell was hurt by the claimant's grievance and that, whilst it was not completely down to that, the grievance contributed to the breakdown in relationships.

466. Mr Weston was knowingly influenced in determining that the claimant ought to be dismissed for a breakdown in relationships by Mr Fell and others considering that the claimant's grievance which alleged acts of discrimination (a protected act) had contributed to their consideration that the claimant could not be reintegrated back into the school and effectively managed by them. It

was a reason for the breakdown of relationships. In such circumstances, the conclusion cannot be escaped that this formed part of Mr Weston's own decision to terminate employment (due to the breakdown in relationships) which in turn must therefore be tainted by the victimising attitudes of others.

467. This is indeed without consideration of the employment tribunal proceedings themselves which clearly also weighed on Mr Weston's mind, him questioning the claimant as to whether she felt there could be an effective working relationship whilst an employment tribunal claim was proceeding and whether mediation could work against that background. The claimant's position, perhaps to some extent unrealistically, was that the tribunal proceedings ought not to affect the claimant's working relationships with others, but undoubtedly Mr Weston believed her bringing tribunal proceedings would have an impact on those relationships and was concerned regarding the claimant's lack of awareness of that impact. Certainly, that lack of awareness was a material factor in his determination that she could not be returned to the workplace.

468. Whilst then the claimant's protected acts were a material influence on the decision to terminate her employment, which must be found, as a consequence, to be an act of victimisation, the tribunal can only conclude that without such considerations, the claimant would still have had her employment terminated on the basis of a breakdown of relationships.

469. The campaign by the claimant's union and others for her reinstatement and personal vindication was regarded by Mr Weston as making a difficult situation almost impossible in circumstances where he concluded that there had been relationship breakdown arising out of personal attacks on Mr Fell (where he had been labelled as a racist) and the internal grievance and disciplinary processes of the respondent having been aired publicly in real time in the most pejorative terms and, at times, inaccurately in breach of the terms of the claimant's suspension. The tribunal refers back to its factual findings on the nature of the campaign. The (real) damage caused to Mr Fell's own mental health by the campaign (rather than the claimant's grievance) was palpable to Mr Weston and greatly concerned him. Against this background as a whole, he would not have returned the claimant to work in any event, including in circumstances where there was no acceptance of responsibility for the campaign by the claimant or what he considered to be any meaningful expression of regret.

470. Mr Brittenden suggests that an entitlement to compensation for financial loss should still flow from the dismissal as an act of victimisation in circumstances where, but for the claimant's suspension, an act of victimisation

in itself, there would have been no campaign in support of the claimant or at least not one pursued with the same passion. However, the tribunal's findings are that, regardless of the claimant's reference to seeking advice from an equality officer, she would have been suspended in any event in circumstances where there would have otherwise been no act of victimisation or discrimination. But for the earlier victimisation, the same circumstances would have pertained and the same campaign pursued, indeed a campaign which was very much focused on the claimant being suspended for her union activities and raising health and safety issues rather than any racial discrimination.

471. Furthermore, the tribunal cannot but conclude that a campaign of a similar nature would have arisen had the claimant been simply subjected to the numerous and, in the major part, unfounded disciplinary allegations she was (without any suspension).

472. Having dealt with all of the allegations of discrimination/harassment and victimisation, the tribunal would wish, for the sake of clarity, to explain that in none of its conclusions does it find that Mr Fell or the respondent school treated the claimant or anyone else unfavourably because of their race. There is no finding of individual or institutional racism or racial prejudice. Findings have been made that the claimant has been unlawfully victimised. A complaint she has made of discrimination has had a material influence on decisions to her detriment, including her dismissal. Mr Fell's reaction to the claimant's complaints did not arise because of the claimant's colour or because accusations were being made by a black teacher. Mr Fell's reaction was not permissible, but it arose out of him being indignant at being accused of discrimination in circumstances where he understood that to be a most serious allegation which caused him great personal hurt and in circumstances where he did not believe that there was any substance to the allegations.

473. Turning to the claimant's complaint of unfair dismissal, the claimant's dismissal being an act of victimisation would lead to a conclusion that dismissal fell outside of the band of reasonable responses. Regardless of that, the tribunal nevertheless considers the claimant's dismissal, it accepts because of the respondent's genuine belief in an irretrievable breakdown in relationships, to have been unfair.

474. The claimant was saying that she still had trust in the respondent and would work with members of the SLT. Whilst Mr Weston was not unreasonable in not taking this at face value and in the scepticism he showed, she was willing to mediate with Mr Fell and the SLT. It was Mr Fell and the SLT who were

refusing to mediate. Mr Weston could have required them to commence that process, but he decided not to. It was not an option which was seriously explored, including for example, through pre-mediation meetings with an independent mediator.

475. This was in circumstances where the claimant had been supported by a, at times, vociferous ill-judged and inaccurate media campaign which had (as was its aim in part) caused significant damage, certainly to Mr Fell's reputation. He was extremely hurt by it to the point where it had damaged his mental health.

476. On the other hand, it ought reasonably to have been evident to Mr Weston (the tribunal believes that it was), that Mr Fell had been overly precious about challenges to his decision making which had caused a lengthy suspension and disciplinary case to be pursued against the claimant which would have been distressing in both tone and content to the claimant. Recognition of that was forthcoming from Mr Sykes. Whilst the claimant had accused Mr Fell of pursuing baseless allegations, the respondent itself had dismissed all but one of the allegations as unfounded after following its own internal procedures. Allegations labelled as potential gross misconduct had come nowhere near clearing that bar on the respondent's own conclusions. The allegation about the communication in which Mr Fell was accused of a misuse of power was ultimately not upheld.

477. The claimant's grievance, which caused so much disquiet amongst the SLT, was in reaction to the disciplinary case pursued against her. Her grievance and the feelings of the SLT towards her ought reasonably to have been viewed in that light.

478. There was no recognition by the respondent of this background to the breakdown in relationships. There was no attempt by Mr Weston to get the SLT to reflect on why the claimant might have reacted in the way she had.

479. The tribunal concludes that there was significant collusion between Mr Fell. Mr Schofield and Ms Shah in the objections they raised against the claimant returning to work. The commonality of language and reliance on the same, sometimes obscure, events is noteworthy. Very little of Ms Shah's evidence arose from any personal experience of the claimant. Mr Weston was rightly concerned that Ms Whyles' enquiry had widened in a way he had not intended, so as to give to members of the SLT an open opportunity to raise issues about the claimant's conduct which caused them concern. Whilst the tribunal accepts that he discounted, for instance, much of what Mr Schofield

was saying, he did not consider how that approach of the SLT might cause him to question whether the feelings of the SLT were effectively orchestrated.

480. Ms Whyles' approach to the investigation made it inevitable that Mr Weston was presented with a largely one sided view of the claimant. There was no attempt to obtain a more balanced view, for instance, by involving Mr McManus. It is difficult to understand how Ms Taylor, Mr Fell's protector, on the evidence before the tribunal, was considered to be an appropriate witness when Ms Whyles had been asked to speak to those in leadership positions.

481. There was no consideration of the claimant not having significant day to day dealings with the SLT, certainly on a one to one basis and certainly in her role of teacher rather than as a union representative. There was no consideration of line management structures to create a buffer between the claimant and Mr Fell in particular. Not all of the SLT had had an adverse experience of the claimant and the respondent did at times reorganise responsibility for departments – Ms Shah had previously passed responsibility for PE to Mr Schofield. Another Assistant Head Teacher managing the claimant would have placed him or herself, as well as Mr McManus, between the claimant and Mr Fell. The tribunal accepts the need for Mr Fell to be able to manage the claimant, but it would have been reasonable to consider a reduction in their inevitable contact at least for the earlier part of any reintegration process.

482. In all of the above circumstance, the claimant was unfairly dismissed.

483. The tribunal's conclusions are not such as to allow any consideration pursuant to the principles derived from the **Polkey** case. Considering whether the claimant would have left employment in any event had a reintegration process been followed, would amount to an exercise of pure speculation.

484. However, the tribunal does consider the question of the claimant's conduct prior to dismissal and its contribution to the decision to terminate her employment. The tribunal concludes, on the balance of probabilities, that the claimant had a direct and active involvement in the campaign conducted on her behalf. Given the coincidence of timing of many communications with the stage reached in internal proceedings and the degree of knowledge disclosed in them, either the claimant or Mr Greenwood must have been coordinating or at least encouraging much of what went into the public domain. The claimant was aware of the confidential nature of the information and the terms of suspension requiring the information to be kept confidential between her and her

representative. If Mr Greenwood was responsible for this, the claimant must have and did know what he was doing. Mr Greenwood indeed played a prominent role. The claimant was herself prominent in her union at local level and more latterly beyond. There is no evidence of her taking any steps to stop Mr Greenwood or any others. The tribunal believes that she could have. The claimant was astute not to be caught directly in the fray of the protests organised on her behalf and avoided communicating directly with those outside the school. She did, however, appear in a video giving an inaccurate narrative of the reasons for her treatment. There is evidence of the involvement of family and friends in the campaign. The tribunal cannot accept that the claimant did not view social media posts about her situation. It does not accept that she retreated from the virtual world to protect her own mental health. Back in the physical world, the claimant was close to the action and the tribunal concludes interested to observe what she knew to be occurring in her support. Her presence in the vicinity of protests cannot be accepted as straightforwardly a result of where she and family members lived. This situation continued up to the decision on her appeal against dismissal. The campaign included inaccurate information and misrepresentation of internal decisions (including, for example, the disciplinary outcome) as well as the aforementioned personal attacks and ultimatums and pressure on staff and governors in circumstances where the claimant was in breach of the terms of her suspension. The claimant was making it very difficult for anyone to conclude that there was a repairable relationship between her and the SLT and that normal working could be restored. Fully recognising that the claimant should not have been straightforwardly prevented from conducting her trade union role, her actions in the campaign went beyond that. The disinformation and personal attacks had a massive impact on the SLT, not just on Mr Fell, which was a major cause of a breakdown in relationships and lack of trust in the claimant. Mr Weston recognised that when he made his decision.

485. The tribunal does not consider, in the context of a reduction in any compensatory award, that the claimant was only ‘partly’ or, then towards the other end of the spectrum, ‘largely’ to blame for the outcome of dismissal. She was ultimately as much to blame as the respondent and it is therefore appropriate to reduce any compensatory award by a factor of 50%. The same level of reduction is just and equitably to be made to the basic award to reflect the claimant’s conduct prior to dismissal.

Employment Judge Maidment

Date 28 July 2023

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Annexe

TABLE OF DETRIMENTS

Claim No: 1805209/2021

	Harassment: s. 26 EqA 2010 (as pleaded at paras. 100 -101)	Direct Race Discrimination: s. 13 EqA 2010 (as pleaded at para. 106)	Claims against R1 and/or R2
1.	(a) Stereotyping the Claimant as an "angry black woman".		R1/R2
2.	(b) Instructing the other staff in the meeting of 29th November 2019 to ignore the Claimant's email and sending an all staff email with minutes attached confirming the same instruction.	106(a)	R1/R2
3.	(c) Dismissing the concerns the Claimant raised in the meeting on 2nd December 2019.	106(b)	R1/R2
4.	Insisting that when R2 met with C on 9 December 2019 that: (i) the door remained open; and (ii) someone else be present.	106(d) and (e)	R1/R2
5.	(g) Avoiding meetings with the Claimant as set out in paragraphs 13 and 14 above.	106(f)	R1/R2
6.	(h) Ignoring the Claimant whenever he saw her in the corridor.	106(g)	R1/R2
7.	(i) R2 asking members of the SLT to observe the Claimant in order to build up a case for a disciplinary, and/or SLT	106(h)	R1/R2

	members observing the Claimant. **[100(i), 101(a), 102]**		
8.	(j) Observing her on CCTV	106(i)	R1/R2
9.	(k) Criticising the Claimant for not attending parent's evening, even though she had permission and it was not compulsory.	106(j)	R1/R2
10.	(l) Instructing Hamira Shah speak to members of the Claimant's class to determine whether there were other conduct issues that the Claimant could be disciplined for.	106(k)	R1/R2
11.	**[101(c)]** R2 and/or Hamira Shah not allowing the Claimant to discuss the allegations being made in the meeting in March 2020.		R1/R2
12.	(m) Subjecting the Claimant to the disciplinary initiated by the letter of the 20 April 2020.	106(l)	R1/R2
13.	(p) Refusing to meet with the Claimant on 2 June 2020 in her capacity as union rep about whether it was appropriate to re-open the school.	106(o)	R1/R2
14.	**Risk Assessment** (i) Placing the Claimant on the rota in July 2020 before her risk assessment had been completed **[101(r)]** (ii) Matthew Schofield requiring another member of staff to sit in the risk assessment meeting in July 2020 **[101(d)]**. (iii) Matthew Schofield ignoring the additional covid risks for BAME people when completing the risk assessment. **[101](e)].** (iv) Matthew Schofield down-playing the Claimant's concerns by saying "I have a BAME friend". **[101(f)]**	106(q)	R1/R2 in respect of (i) and (vi), R1 only in respect of (i) – (vi)

	(v) Lindsay Taylor suggesting that a vitamin D deficiency could be cured by going outside more and ignoring the fact that this is a common genetic treat for Black people. **[101(g)]** (vi) R2 and/or Lorna Wright failing to action the Claimant's request for a meeting in August 2020 **[101](h), 102]**		
15.	(s) Turning his phone off on the morning of the 7 July 2020 so that the Claimant could not call him in line with the sickness absence procedure.	106(r)	R1/R2
16.	(t) Ignoring the Claimant's request on the 7 July 2020 for a meeting to discuss her risk assessment.	106(s)	R1/R2
17.	(u) Raising further allegations of misconduct on the 14 September 2020.	106(t)	R1/R2
18.	(v) Contacting HR to advocate for a severe sanction for the Claimant and that she should be suspended.	106(u)	R1/R2
19.	Suspending the Claimant **[this combines 101 (w) and (x)]**	106(v)	R1/R2
20.	(y) Ignoring the Claimant's requests that the suspension be lifted.	106(w)	R1/R2
21.	(z) Finding that the Claimant was guilty of the misconduct alleged in respect of the imposition of the written warning and rejection of her appeal.	106(x)	R1/R2

TABLE OF DETRIMENTS:

Claim No: 1801640/2022

	Victimisation: s. 27 EqA 2010		
	Protected Acts: relied upon:		

	(i) Raising a grievance on 9 October 2020. (ii) Commencing ET proceedings on 6 October 2021. (iii) From 16 September 2020 R believed that the Claimant may do a protected act.		
22.	The decision to (i) suspend the Claimant and (ii) the fact that it was ~~suffered an~~ open-ended and unreasonably in length. ~~lengthy suspension~~		R1
23.	The decision to terminate her employment.		R1