



EMPLOYMENT TRIBUNALS

Claimant

Ms S Akram

v

Respondent

The Shared Learning Trust

Heard at: Bury St Edmunds

On: 27 February – 10 March 2023
13 – 16 March 2023 in Chambers

Before: Employment Judge Laidler

Members: Mr B McSweeney
Mr C Grant

Appearances

For the Claimant: In person, assisted by her daughter Ms S Akbar

For the Respondent: Mr S Proffitt, Counsel

RESERVED JUDGMENT

1. The claimant did not make protected disclosures within the meaning of section 43B Employment Rights Act 1996 and all claims of detriment for having done so fail and are dismissed.
2. The claimant was not subjected to race related harassment. That claim fails and is dismissed.
3. The claimant was not subjected to disability related harassment. That claim fails and is dismissed.
4. The claimant was not treated unfavourably for something arising in consequence of her disability. That claim fails and is dismissed.
5. The claimant received what she was entitled to in respect of sick pay and the claim of unauthorised deduction fails and is dismissed.
6. The claimant was unfairly dismissed when the respondent invited her to what was a consultation meeting for redundancy without advising her as to the purpose of that meeting.

7. Applying the principles in Polkey but for that failure by the respondent the dismissal of the claimant on the grounds of redundancy would have fairly occurred and the claimant is therefore not entitled to any compensatory award.
8. The allegations against Louise Lee from 2016 to December 2017 were presented out of time. It was reasonably practicable to have presented them in time and/or no grounds have been advanced as to why it would be just and equitable to extend time. The tribunal did not therefore have jurisdiction in relation to those allegations.

REASONS

1. The claim in this matter was received on the 24 November 2020 following a period of ACAS Early Conciliation between the 23 April and 23 May 2020.
2. There was a Case Management hearing on the 8 September 2021 when the claimant was represented by counsel. A list of issues was attached to the Summary sent to the parties but that is not the list of issues that had been finalised by the time of this Hearing. That appeared in the bundle at page 62 – 78 and is set out below as amended at this Hearing. It is extremely detailed and as emphasised throughout this Hearing are the only issues that the Tribunal must determine. At the time the list was agreed between the parties the claimant had legal representation.
3. **The Issues**

UNFAIR DISMISSAL

1. What was the reason for the Claimant's dismissal?

The Respondent relies on redundancy.

The Claimant denies that that was the genuine reason.
2. If the Claimant's dismissal was for a potentially fair reason, was it unfair having regard to the provisions of s98 Employment Rights Act 1996 ('ERA')?
3. The Claimant says the dismissal was unfair due to any or all the following:
 - 3.1 A lack of meaningful consultation.
 - 3.2 A lack of timely consultation.
 - 3.3 The Respondent's choice of a pool of one.
 - 3.4 The Respondent's demotion, deskilling, undermining, isolation and/or ostracising of the Claimant from September 2016 until her dismissal, as

particularised in paragraph 11.1 below.

- 3.5 The Respondent's failure to consider, properly or at all, any alternative role for the Claimant.
 - 3.6 The Respondent's failure to consider, properly or at all, the alternative role of Head of School for the Chalk Hills Academy for the Claimant.
 - 3.7 The Respondent's failure to put in place reasonable adjustments for the Claimant at any time prior to her dismissal; and/or
 - 3.8 The Respondent selecting the Claimant for redundancy by reason of
 - (a) Her disability; and/or
 - (b) Her need for reasonable adjustments; and/or
 - (c) Her race; and/or
 - (d) The fact that she had done a protected act and/or made protected disclosures.
4. What compensation (if any) should the Tribunal award to the Claimant, having regard to the factors set out in s123 ERA (including any reduction to be applied by reason of the contributory fault of the Claimant)?

UNLAWFUL DEDUCTION FROM WAGES

5. Did the Respondent unlawfully deduct sums from the Claimant's wages contrary to section 13 ERA, by paying the Claimant sick pay of 6 months' full pay, and then 6 months' half pay, rather than 12 months' full pay?

The Respondent says that this allegation arises under the Burgundy Book (that is, the "Conditions of Service for School Teachers in England and Wales")

The Respondent concedes that the Burgundy Book is incorporated into the Claimant's terms and conditions of employment, but denies that the Claimant was eligible for 12 months' full pay under its provisions.

6. The amount of the deduction alleged by the Claimant is a gross figure of £23,156 (that is, 6 months' half-pay from 28 February 2020 to 27 August 2020).
7. The deductions are alleged to be a series of deductions, taking place each month in the last 6 months of the Claimant's employment, and remaining outstanding at the date of her dismissal.

WHISTLEBLOWING

8. Did the Claimant make disclosure/s of information to the Respondent that, in the reasonable belief of the Claimant, were in the public interest, and tended to show one or more of the matters in s43B ERA had taken place or was likely to take place?
9. The Claimant says that each of the following was a protected disclosure:

- 9.1 On 14 September 2016, in an email to Catherine Barr, the Claimant alleged that Louise Lee's actions in changing and reducing the Claimant's duties were having an impact on the Claimant's health (relying on s43B(1)(a) and/or s43B(1)(b) and/or s43B(1)(d) ERA);
- 9.2 On 21 November 2016, in a meeting with Catherine Barr: the Claimant (
- (1) repeated the concerns she had raised in her email of 14 September 2016,
 - (2) raised concerns about other staff of the Respondent being treated illegally, by the Respondent pushing them to resign, and
 - (3) raised concerns that friends of senior employees of the Respondent were being paid by the Respondent to act as consultants, which might be unlawful (relying on s43B(1)(a) and/or s43B(1)(b) and/or s43B(1)(d) ERA);
- The claimant withdrew the allegation that the use of consultants had been unlawful.*
- 9.3 On 24 March 2017, in a meeting with Catherine Barr, the Claimant repeated each of the concerns raised in the meeting of 21 November 2016 (relying on s43B(1)(a) and/or s43B(1)(b) and/or s43B(1)(d) ERA);
- 9.4 On 15 January 2020, the Claimant raised a grievance (addressed to Catherine Barr) alleging that the Respondent's treatment of the Claimant had caused her mental and physical injury, and also alleging breach of duty to make reasonable adjustments, direct sex and race discrimination, and harassment related to disability, sex and race (relying on s43B(1)(a) and/or s43B(1)(b) and/or s43B(1)(d) ERA).

Detriment

10. Was the Claimant subjected to any detriment (by any act or deliberate failure to act) by the Respondent, on the ground that she had made a protected disclosure?
11. The Claimant says the following amounted to such detriments:
- 11.1 Demoting and/or deskilling and/or undermining and/or isolating and/or ostracising the Claimant, each of which was done as follows:
 - 11.1.1 In September and October 2016, Louise Lee repeatedly, and on a weekly basis, changed and reduced the Claimant's duties.
 - 11.1.2 On 15 November 2016, Catherine Barr and Louise Lee advertised the Claimant's role in the Times Educational Supplement, with a closing date of 25 November, with interviews on 1 and 2 December 2016, and a start date of Easter 2017.
 - 11.1.3 On 4 April 2017, Louise Lee sent a new organisational structure chart to all staff, from which the Claimant's role had been removed.
 - 11.1.4 During May 2017, Louise Lee removed various parts of the Claimant's role from her, such as her responsibility for Key Stage 4, and her responsibility for leading Year 8 options

interviews).

11.1.5 During May 2017, Louise Lee repeatedly asked the Claimant during their meetings when she would be leaving the Respondent's employment.

~~11.1.6 On 22 May 2017, Kevin Martin told the Claimant's trade union representative, in an email, that the Claimant was required to accept a role of Sixth Form Deputy Principal (with limited responsibilities, and which did not justify the Claimant's remuneration package), or she would be put through a capability procedure.~~

Withdrawn during cross examination.

11.1.7 In May and June 2017, Louise Lee conducted meetings with members of staff who were line managed by the Claimant, whose purpose was proactively to gather criticism of the Claimant.

11.1.8 From May 2017 to the end of her time in the Sixth Form Deputy Principal role, the Claimant was given no line management responsibility, no budgetary responsibility, and no authority to make any administrative or financial decisions.

11.1.9 From May 2017 to the end of her time in the Sixth Form Deputy Principal role, the Claimant was excluded from Senior Leadership Team meetings.

11.1.10 From May 2017 to the end of her time in the Sixth Form Deputy Principal role, the Claimant was excluded by Louise Lee from decisions about changes to the curriculum.

11.1.11 From May 2017 to the end of her time in the Sixth Form Deputy Principal role, the Claimant was not permitted to meet with administrative or teaching staff, conduct meetings to check on pupil outcomes, monitor any teaching or learning, or have any input into teaching strategies or observations.

11.1.12 From May 2017 to the end of her time in the Sixth Form Deputy Principal role, Louise Lee refused to meet with the Claimant.

11.1.13 From May 2017 to the end of her time in the Sixth Form Deputy Principal role, and despite her purported seniority and level of responsibility, the Claimant's travel time between her two schools was monitored, and she was required to justify any travel delays.

11.1.14 From May 2017 to the end of her time in the Sixth Form Deputy Principal role, the Claimant was given incomplete school data, limiting her ability to contribute to the leadership of the school (for example, the Claimant took part in an external review meeting – date unknown – but it transpired that she was the only person in that meeting to have incorrect data, so she

was unable to contribute).

- 11.1.15 At some time from May 2017 to the end of her time in the Sixth Form Deputy Principal role, Louise Lee withdrew from the Claimant the support of a Data Manager, with whom the Claimant had been working in order to begin to understand and manage the poor data system at one of the schools; Louise Lee later raised that poor data system as a concern in respect of the Claimant's performance.
- 11.1.16 At some time from May 2017 to the end of her time in the Sixth Form Deputy Principal role, the Claimant negotiated and agreed a plan with staff to structure a data and reporting system across the two schools for which she was responsible, but Louise Lee then withdrew one of the schools from that agreed system, resulting in serious delays for the other school's data system; Louise Lee later raised that poor data system as a concern in respect of the Claimant's performance;
- 11.1.17 At the start of the school year in September 2017, contrary to the Respondent's custom, the Claimant was not introduced to any members of staff as the new the Sixth Form Deputy Principal, nor was her role explained to any member of staff.
- 11.1.18 From start of the school year in September 2017, contrary to the Respondent's custom, the Claimant was not invited to go out socially with any team within the Respondent.
- 11.1.19 At the end of 2017, the Claimant was not invited to any Christmas social events.
- 11.1.20 In December 2017, Louise Lee raised alleged concerns about the Claimant's ability to carry out the Sixth Form Deputy Principal role.
- 11.1.21 In January 2018, Catherine Barr removed the Claimant from the Sixth Form Deputy Principal role.
- 11.1.22 In January 2018, Catherine Barr moved the Claimant entirely out of any school's role, and put her into a generic role in the Respondent Trust, not assigned to any school.
- 11.1.23 In that generic role the Claimant had no office, no desk space assigned to her, no job title, no job description, and almost no work to do.
- 11.1.24 In that generic role, demeaning and patronising work was given to the Claimant, in the form of dealing with complaints from parents of ethnic minority backgrounds, on the basis that the Claimant was also from an ethnic minority background.
- 11.1.25 In that generic role, the Claimant was never invited to take part in any Trust planning days.

- 11.1.26 On 8 September 2018, the Claimant was excluded from a staff away day of the Chalk Hills Academy, where she had been Sixth Form Deputy Principal.
- 11.1.27 At some time, also in 2018, the Claimant was excluded from a staff away day of the Stockwood Park Academy, where she had been Sixth Form Deputy Principal.
- 11.1.28 At the end of 2018, the Claimant was not invited to any Christmas social events.
- 11.1.29 In December 2018, the Claimant was offered the role of Head of School for the Linden Academy by Rebekah Howe and Kevin Martin, which she accepted, and thereafter she met with the Chair of Governors; but the Claimant later discovered in March 2019, when she asked Ms Howe what was happening with her new role, that the Respondent had – without telling her – changed its mind and appointed a significantly less experienced employee to that role;
- 11.1.30 On 21 March 2019, the Claimant asked Catherine Barr why the role had been withdrawn from her, and was told, vaguely, by Ms Barr that she “was needed elsewhere”.
- 11.1.31 Despite that, no other roles were ever notified to the Claimant, and on the contrary, the Claimant later discovered that the role of Head of School for Chalk Hills Academy had been available at some time between March 2019 and May 2019, but that that opportunity was not notified to the Claimant.
- ~~11.1.32 In July 2019, Catherine Barr told the Claimant that she would be taking responsibility for Year 6 leadership at the Linden Academy, and she therefore prepared for that work and met with Year 6 staff to introduce herself on 4 September 2019, but the next day Rebekah Howe sent an email to those same staff, informing them that David Barker would be leading the Year 6 team, and the Claimant’s contact with the team on the previous day was entirely ignored – thereby removing that responsibility from the Claimant in a very public and embarrassing way, and without any notice to her;~~

Withdrawn by claimant during cross examination.

- ~~11.1.33 The Claimant was seriously affected by the above and was absent from work through ill health from September 2019; in September 2020 the Claimant was told by staff of the Linden Academy that an announcement had been made to them that the Claimant would not be returning to work from her sickness absence, due to financial cuts and reduced pupil numbers, despite no contact whatsoever having been made with the Claimant discuss any such decision;~~

Withdrawn by the claimant during cross examination.

- 11.1.34 In a meeting on 24 September 2020, Kevin Martin told the

Claimant that the generic role she had been given in January 2018 was no longer needed, that the tasks she had been carrying out were insufficient to justify her remuneration, and that her role was therefore to be deleted.

- 11.2 The Respondent ignored, failed to consider and/or failed to put in place the recommendations made in two OH reports, dated ~~23 October 2019~~ and 2 July 2020 and provided to the Respondent on or very shortly after those dates.

Withdrawn in cross examination as that date is prior to the 2020 alleged disclosure.

- ~~11.3 On 10 February 2020, Sarah Mortimer dismissed the Claimant's grievance.~~

- ~~11.4 On 23 April 2020, the appeal panel chaired by David Sheridan dismissed the Claimant's grievance appeal.~~

- ~~11.5 From 11 June 2020, Catherine Barr pursued an absence management process against the Claimant.~~

Withdrawn in cross examination.

- 11.6 From a date unknown to the Claimant, but of which she became aware on 22 September 2020, Kevin Martin pursued a disingenuous and/or unfair redundancy process against the Claimant.

- 11.7 On 2 October 2020, Kevin Martin dismissed the Claimant.

Automatic Unfair Dismissal

12. Was the reason, or the principal reason, for the Claimant's dismissal the fact that she had made a protected disclosure?

DISCRIMINATION

Time Limits

13. Was the complaint presented to the Tribunal before the end of the period of three months beginning when the act complained of was done (as extended by the Early Conciliation provisions), as required by s123(1)(a) Equality Act 2010?
14. If not, was the act complained of part of a continuing course of conduct, or a continuing state of affairs, which ended with the Claimant's dismissal?
15. If not, should the Tribunal consider the complaint, on the ground that it is just and equitable in all the circumstances to do so?

RACE-RELATED HARASSMENT

16. Did the Respondent do each of the following:

- 16.1 Did the Respondent make the assumption that parents from ethnic backgrounds (who had raised concerns or complaints with the Respondent) would respond more positively to the Claimant, as she was from an ethnic minority background?
- 16.2 At some time between December 2018 and March 2019, did the Respondent give the role of Head of School of Linden Academy to a white woman who was significantly less experienced than the Claimant, having already offered that role to the Claimant, and the Claimant having already accepted it?
- 16.3 Did the Respondent fail to tell the Claimant that the role of Head of School of Linden Academy had been given to a less experienced white woman, when the role had already been offered to the Claimant?
- 16.4 Did the Respondent fail to explain to the Claimant why the role of Head of School of Linden Academy had been given to a less experienced white woman, when the role had already been offered to the Claimant?
- 16.5 At some time between March 2019 and May 2019, did the Respondent give the role of Head of School of Chalk Hills Academy to a white woman with no education or teaching qualifications, rather than to the Claimant?
- ~~16.6 On 4 September 2019, did Rebekah Howe remove responsibility for preparing a funding bid from the Claimant, and assign that responsibility to herself, a white woman?~~
- ~~16.7 At some time on or before 5 September 2019, did Rebekah Howe remove the leadership of the Linden Academy's Year 6 Team from the Claimant, and assign it to David Barker, a white man?~~

Withdrawn in cross examination.

17. Was each of those things related to the Claimant's race?
18. Did each of those things have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
19. If so, and having regard to all the circumstances, including the perception of the Claimant, was it reasonable for each of those things to have that effect?

DISABILITY DISCRIMINATION

Disability

20. The Claimant relies on the mental impairments of anxiety and depression.
21. Was the Claimant disabled (within the meaning of s6 Equality Act 2010) at the relevant time? In particular:
- 21.1 Did the Claimant suffer from depression and anxiety?
- 21.2 Did that impairment have an adverse effect on her ability to carry out normal

day-to-day activities?

21.3 Was that effect substantial?

21.4 Was that effect long-term (that is, had it lasted more than 12 months, or was it likely to last more than 12 months)?

22. The relevant time for the Claimant's disability discrimination claims is May 2017 to October 2020 (the Claimant was diagnosed with severe depression in February 2018; that is relevant, but not determinative).

At a Preliminary Hearing on the 9 & 10 May 2022 E J Postle found that the claimant was disabled by virtue of depression from 22 February 2018.

23. Did the Respondent know, or ought the Respondent reasonably to have known, that the Claimant was a disabled person during the relevant time?

Knowledge remained an issue for this tribunal.

Disability-Related Harassment

24. Did the Respondent do each of the following:

~~24.1 In May 2017, did the Respondent move the Claimant from her existing role of Deputy Principal of the Chalk Hills Academy School into a Sixth Form Deputy Principal role?~~

~~24.2 In May and June 2017, did Louise Lee conduct meetings with members of staff who were line managed by the Claimant, in which Ms Lee sought proactively to gather criticism of the Claimant?~~

Dismissed on withdrawal at E J Postle's Hearing

24.3 At some time between December 2018 and March 2019, did the Respondent give the role of Head of School of Linden Academy to another employee, who was significantly less experienced than the Claimant, having already offered that role to the Claimant, and the Claimant having already accepted it?

24.4 At some time between March 2019 and May 2019, did the Respondent give the role of Head of School of Chalk Hills Academy to another employee, who had no education or teaching qualifications, rather than to the Claimant?

~~24.5 On 4 September 2019, did Rebekah Howe remove responsibility for preparing a funding bid from the Claimant, without warning, and after the Claimant had done extensive work on it?~~

~~24.6 At some before 5 September 2019, did Rebekah Howe make a decision to remove the leadership of the Linden Academy's Year 6 Team from the Claimant, and assign it to David Barker?~~

Withdrawn during cross examination.

24.7 On 13 November 2019, did Kevin Martin require the Claimant to return to

work or submit to the Respondent's absence management process, by reason of her disability-related absence?

- 24.8 On 19 November 2019, did Kevin Martin send an email to the Claimant on behalf of Catherine Barr, requiring the Claimant to answer personal questions about her disability which had already been answered in an OH report dated 23 October 2019?
- 24.9 During December 2019 and January 2020, did Kevin Martin require the Claimant to return to work or submit to the Respondent's absence management process, by reason of her disability-related absence?
- ~~24.10 On 23 January 2020, did Sarah Mortimer refuse to look at or review the written materials provided by the Claimant to her during her grievance?~~
- ~~24.11 On 10 February 2020, did Sarah Mortimer dismiss the Claimant's grievance (whose subject matter was in part her disability)?~~
- ~~24.12 On 23 April 2020, did the Respondent's appeal panel chaired by David Sheridan dismiss the Claimant's grievance appeal (whose subject matter was in part her disability)?~~
- ~~24.13 From 11 June 2020 onwards, did Catherine Barr restart, and then proceed with, an absence management process in respect of the Claimant, including writing to the Claimant on 22 June 2020 requiring her to return to work by 1 September or face dismissal?~~
- ~~24.14 On or around 22 September 2020, did the Respondent announce to the staff of the Linden Academy that the Claimant would not be returning to work due to financial cuts and reduced pupil numbers, without having discussed that with the Claimant beforehand?~~

Withdrawn during cross examination.

- 24.15 In or around September 2020, did the Respondent recruit a new Head of School for the Chalk Hills academy without considering that role for the Claimant or discussing it with her?
- 24.16 On 29 September 2020, did the Respondent dismiss the Claimant?
25. Was each of those things related to the Claimant's disability?
26. Did each of those things have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?
27. If so, and having regard to all the circumstances, including the perception of the Claimant, was it reasonable for each of those things to have that effect?

Discrimination Arising from Disability

28. Has the Claimant been treated unfavourably, because of something arising in consequence of her disability?

29. The Claimant says the unfavourable treatment (and in each case the “something arising”) was:
- ~~29.1 (a) In May 2017, the Respondent moved the Claimant from her existing role of Deputy Principal of the Chalk Hills Academy School into a Sixth Form Deputy Principal role.~~
- ~~(b) The “something arising” was the perception of Kevin Martin and Louise Lee (and any other decision maker) that the Claimant lacked the ability to carry out her role, because of her disability related sickness absence.~~
- ~~29.2 (a) In May and June 2017, Louise Lee conducted meetings with members of staff who were line managed by the Claimant, in which Ms Lee sought proactively to gather criticism of the Claimant.~~
- ~~(b) The “something arising” was the perception of Louise Lee (and any other decision maker) that the Claimant lacked the ability to carry out her role, because of her disability related sickness absence.~~
- Dismissed on withdrawal at E J Postle’s Hearing.*
- 29.3 (a) At some time between December 2018 and March 2019, the Respondent gave the role of Head of School of Linden Academy to another employee, who was significantly less experienced than the Claimant, having already offered that role to the Claimant, and the Claimant having already accepted.
- (b) The “something arising” was the perception (of whoever made that decision) that the Claimant lacked the ability to carry out that role, either because of her disability-related sickness absence or because of the symptoms of her disability.
- 29.4 (a) From December 2018 to March 2019, the Respondent failed to tell the Claimant that the role of Head of School of Linden Academy had been given to a less experienced employee, when the role had already been offered to the Claimant.
- (b) The “something arising” was the perception (of whoever decided not to tell the Claimant) that she lacked the ability to carry out that role, either because of her disability-related sickness absence or because of the symptoms of her disability.
- (c) In addition, or alternatively, the “something arising” was an assumption that because of her disability the Claimant would react badly to receiving that information.
- 29.5 (a) On 21 March 2019, Catherine Barr withheld from the Claimant any explanation of why a less experienced employee had been given the Head of School role at Linden Academy, when the role had already been offered to the Claimant.
- (b) The “something arising” was Catherine Barr’s perception that the Claimant lacked the ability to carry out that role, either because of her disability-related sickness absence or because of the symptoms of her disability.

- (c) In addition or alternatively, the “something arising” was Catherine Barr’s assumption that because of her disability the Claimant would react badly to receiving that information.
- 29.6 (a) At some time between March 2019 and May 2019, the Respondent did not tell the Claimant that the role of Head of School of Chalk Hills Academy was available and that she could apply for it.
- (b) The “something arising” was the perception (of whoever made that decision) that the Claimant lacked the ability to carry out that role, either because of her disability-related sickness absence or because of the symptoms of her disability.
- 29.7 (a) At some time between March 2019 and May 2019, the Respondent gave the role of Head of School of Chalk Hills Academy to an employee with no education or teaching qualifications, rather than to the Claimant.
- (b) The “something arising” was the perception (of whoever made that decision) that the Claimant lacked the ability to carry out that role, either because of her disability-related sickness absence or because of the symptoms of her disability.
- 29.8 (a) On 4 September 2019, Rebekah Howe removed responsibility for preparing a funding bid from the Claimant, without warning to the Claimant and after the Claimant had done extensive work on it.
- (b) The “something arising” was Rebekah Howe’s perception that the Claimant lacked the ability to carry out the work of preparing the funding bid, either because of her disability-related sickness absence or because of the symptoms of her disability.
- 29.9 (a) At some time on or before 5 September 2018, Rebekah Howe removed the leadership of the Linden Academy’s Year 6 Team from the Claimant and assigned it to David Barker.
- (b) The “something arising” was Rebekah Howe’s perception that the Claimant lacked the ability to carry out that leadership work, either because of her disability-related sickness absence or because of the symptoms of her disability.
- 29.10 (a) From July 2019 to 5 September 2019, Catherine Barr and Rebekah Howe did not tell the Claimant that the leadership of the Linden Academy’s Year 6 Team was going to be removed from her and given to someone else.
- (b) The “something arising” was the perception of Catherine Barr and Rebekah Howe that the Claimant lacked the ability to carry out that leadership work, either because of her disability-related sickness absence or because of the symptoms of her disability.
- (c) In addition or alternatively, the “something arising” was the assumption of Catherine Barr and Rebekah Howe that because of her disability the Claimant would react badly to receiving that information.
- 29.11 (a) On 23 January 2020, Sarah Mortimer refused to look at or review the

written materials provided by the Claimant to her during her grievance.

(b) The “something arising” was the Claimant’s need because of the symptoms of her disability, including her anxiety, to have support during her grievance process in the form of written materials which she had prepared in advance.

29.12 (a) From 11 June 2020 onwards, Catherine Barr restarted, and then proceeded with, an absence management process in respect of the Claimant, including writing to the Claimant on 22 June 2020 requiring her to return to work by 1 September or face dismissal.

(b) The “something arising” was the Claimant’s disability-related absence.

29.13 (a) On or around 22 September 2020, the Respondent announced to the staff of the Linden Academy that the Claimant would not be returning to work due to financial cuts and reduced pupil numbers, without having discussed that with the Claimant beforehand.

(b) The “something arising” was the perception of whoever made that announcement (and whoever made the decision to make that announcement) that the Claimant lacked the ability to carry out her role, either because of her disability-related sickness absence or because of the symptoms of her disability.

(c) In addition or alternatively, the “something arising” was the assumption of the above person/s that because of her disability the Claimant would react badly to receiving that information.

29.14 (a) In or around September 2020, the Respondent recruited a new Head of School for the Chalk Hills academy without considering that role for the Claimant or discussing it with her.

(b) The “something arising” was the perception (of whoever recruited that new Head of School) that the Claimant lacked the ability to carry out that role, either because of her disability-related sickness absence or because of the symptoms of her disability.

29.15 (a) On 29 September 2020, Kevin Martin dismissed the Claimant.

(b) The “something arising” was Kevin Martin’s perception that the Claimant lacked the ability to work for the Respondent, either because of her disability-related sickness absence or because of the symptoms of her disability.

30. In respect of each allegation:

30.1 Did the alleged unfavourable treatment happen?

30.2 If so, what was the Respondent’s aim in treating the Claimant in that way?

30.3 Was that aim legitimate?

30.4 If it was, was the treatment a proportionate means of achieving that aim?

Failure to Make Reasonable Adjustments

31. Did the Respondent have the following PCPs:
- 31.1 Procedures for employees' return to work from long-term sickness not allowing for contact with the employee in the months prior to their estimated return to work (in order to review their OH report and discuss its recommendations, and to discuss their employment options).
 - 31.2 A practice of not providing employees returning to work from long-term sickness with an appropriate job description, matching their salary and job title.
 - 31.3 In relation to employees returning to work from long-term sickness, a practice of not including their Head Teacher in communications about the responsibilities of their role on their return to work.
 - 31.4 A practice of not referring employees on long-term sickness absence, who already have an OH report, back to OH in the run-up to the intended return to work, so that OH can assist in putting together a phased return to work plan.
 - 31.5 A policy or practice of not allowing employees to be accompanied to grievance hearings by a legal representative.
 - 31.6 A policy or practice of not allowing employees to express themselves using written materials (rather than verbally) during grievance hearings.
 - 31.7 The absence management procedure.
 - 31.8 A practice of not taking steps to resolve the workplace problems which have led to an employee's long-term sickness, prior to that employee returning to work.
 - ~~31.9 A policy of requiring employees carrying out roles such as the Claimant's role to work full time.~~

Withdrawn during cross examination.

32. Did each of those PCPs put the Claimant at a substantial disadvantage, in comparison with persons who did not share her disability? The Claimant relies on the following substantial disadvantage:
- 32.1 Lack of contact with the Claimant prior to her return to work (to review her OH report, discuss its recommendations and discuss her employment options) would cause worry and uncertainty to the Claimant, and therefore lead to exacerbation of her anxiety and depression symptoms.
 - 32.2 The lack of a job description for the Claimant upon her return to work would cause worry and uncertainty to the Claimant, and therefore lead to exacerbation of her anxiety and depression symptoms.
 - 32.3 The lack of communication with the Head Teacher about the Claimant's responsibilities in her role, upon her return to work, would cause worry and

- uncertainty to the Claimant, and therefore lead to exacerbation of her anxiety and depression symptoms.
- 32.4 Without a re-referral to OH, there would be either no phased return to work plan, or an inadequate or inappropriate phased return to work plan, which would risk overloading the Claimant and/or causing an exacerbation of her anxiety and depression symptoms.
- 32.5 Without the assistance of a legal representative, the Claimant's depression and anxiety conditions, and her resulting lack of sleep, would make her less able to articulate her complaints clearly.
- 32.6 The Claimant found it extremely difficult to discuss her mental illness verbally with a stranger (the grievance officer, Sarah Mortimer), and therefore her ability to articulate her grievance was significantly reduced.
- 32.7 The Claimant's disability-related absence meant that she was more likely to be made subject to the Respondent's absence management procedure, with its risk of dismissal. The Claimant was also more badly affected by the stress of going through the absence management procedure than a person without her disability would be.
- 32.8 The Claimant's depression and anxiety symptoms would not improve until the historic workplace problems, which had caused those symptoms, had been resolved, and therefore until that was done the Claimant would not be fit to work.
- 32.9 The Claimant had been absent from work for many months with symptoms of depression and anxiety, and she would find it very difficult to manage her symptoms if she were required to return immediately to full time hours.
33. In respect of each allegation, did the Respondent know, or should it have known, that the Claimant was likely to be placed at that disadvantage, in comparison with persons who were not disabled?
34. If so, did the Respondent take such steps as it was reasonable for it to take to avoid the disadvantage?
35. Although the Claimant bears no burden of proof in respect of the steps required to be taken by the Respondent, the Claimant positively asserts that the Respondent should at least have taken the following steps, in respect of each allegation: Contact should have been made with the Claimant prior to her return to work, in order to review her OH report, discuss its recommendations with her, and discuss her employment options with her.
- 35.2 An appropriate job description should have been provided to the Claimant prior to her return to work, matching her salary and her job title.
- 35.3 The Claimant's Head Teacher should have been kept copied into communications about the Claimant's responsibilities in her role upon her return to work.
- 35.4 The Claimant should have been re-referred to OH prior to any proposed

return to work, so that a phased return to work plan could be put together with OH assistance.

- 35.5 The Claimant should have been allowed to bring a legal representative to her grievance hearing.
- 35.6 The Claimant should have been allowed to use her written materials during the grievance hearing, and/or read those materials, and/or include those materials in the investigation and consideration of the grievance.
- 35.7 The absence management procedure should not have been applied to the Claimant at all, or it should have been amended so as to minimise the stress which it caused to the Claimant.
- 35.8 The Respondent should have taken steps to investigate and resolve the workplace issues which had caused the Claimant's ill health, before her proposed return to work.
- 35.9 The Respondent should have allowed the Claimant to return to work on phased hours.

VICTIMISATION

- 36. Was the Claimant's grievance of 15 January 2020 (being an allegation of sex, race and disability discrimination contrary to the Equality Act 2010) a protected act?

The respondent accepted this was a protected act.

- 37. Did the Respondent carry out the following detriments:

~~37.1 On 10 February 2020, Sarah Mortimer dismissed the Claimant's grievance.~~

~~37.2 On 23 April 2020, the appeal panel chaired by David Sheridan dismissed the Claimant's grievance appeal.~~

~~37.3 From 11 June 2020, Catherine Barr pursued an absence management process against the Claimant.~~

Withdrawn during cross examination.

37.4 From a date unknown to the Claimant, but of which she became aware on 22 September 2020, Kevin Martin pursued a disingenuous and/or unfair redundancy process against the Claimant.

37.5 On 2 October 2020, Kevin Martin dismissed the Claimant.

- 38. Was the Claimant subjected to each of those detriments because she had done the protected act?

- 4. The Full Merits Hearing had been listed to take place over 8 days commencing the 9 May 2022. The tribunal assigned the case had only 5 ½ days available to it and determined that it could not start the full hearing but would hear the evidence and give a decision on the issue of disability.

Having given its decision (as referred to above in the list of issues) this Hearing was listed to take place over 15 days commencing 27 February 2023.

5. At the outset of the Hearing the tribunal heard an application that the entire Hearing be heard on the Cloud Video Platform (CVP). It was argued that it had always been envisaged it would be a hybrid hearing. There was no indication of that in the Judgment that was sent out to the parties when this Hearing was listed. The tribunal heard the parties' submissions and expressed its view that for a Hearing of this nature covering a vast number of issues with extensive documentation it was preferable that it be in person. There was little resistance to that suggestion and regular breaks were factored in for the claimant during the Hearing. There were also some days when the tribunal did not sit thereby avoiding the necessity for the parties to travel. One of the respondent's witnesses gave evidence by CVP and the other witnesses observed the claimant's evidence that way although attending to give their evidence in person. Written submissions were exchanged and oral submissions delivered via CVP. The parties were then released and the decision reserved. In view of other sitting commitments, it was not possible to finalise this Reserved Judgment and Reasons before the judge suffered an injury about which the parties were advised by the Regional Employment Judge by email of 19 June 2023. The reasons have then been finalised once the judge was fit to resume work.
6. The tribunal had a bundle of documents of 933 pages with a few more documents added during the Hearing. It would have been assisted if when preparing documents, the respondent ensured that they were given an actual date and version number. Also some emails in the bundle were very confusing as, for some reason, the way they had been copied/scanned into the bundle did not always show the full details of all the recipients.
7. The claimant gave evidence as did Chloe McDougal on her behalf. A witness statement had been served on behalf of the claimant by Clare Chambers. She was however outside the jurisdiction and permission had not been sought for her evidence to be heard. The claimant withdrew that statement, and it has not been considered by the tribunal.
8. The claimant had served a witness statement of 72 paragraphs which the respondent understood she was relying upon. At this Hearing it was explained that solicitors were no longer acting (an email is on file confirming that of the 8 February 2023) and the statement had been amended by the claimant. Several versions were produced on the first morning and eventually the tribunal received one of 113 paragraphs which was the final statement relied upon. As the tribunal was going to be reading for the rest of the first day and the second it agreed to allow the amended statement in on the basis that the respondent would have time to take instructions from its witnesses on any additions and put to the claimant in cross examination questions about any significant changes. Louise Lee served a second statement dealing with matters raised by Chloe McDougal whose statement had only just been served and that was also allowed to be relied upon.

9. The following witnesses gave evidence for the respondent:

Bex Howe, formerly Director of Primary Education but no longer with the Trust

Catherine Barr, Chief Executive Officer

Louise Lee, Executive Principal of Secondary Education.

Kevin Martin, HR Director

Sarah Mortimer, Trustee

10. From the evidence heard the tribunal finds the following facts.

The Facts

11. The predecessor of the respondent was Barnfield Academies Trust which became the Shared Learning Trust in 2015. The Barnfield Academies Trust comprised two schools, Barnfield West Academy (now The Chalk Hill Academy) and Barnfield South Academy (now The Stockwood Park Academy). There are approximately 4500 pupils across the Academy aged from 3 – 18/19 years.
12. As part of the redundancy consultation in September 2020 the tribunal saw a proposal to restructure the role of Deputy Principal within the Trust and attached were two structure charts. The one showing the Current Structure had the CEO at the top assisted by an Executive Principal Secondary (Louise Lee), HR & Compliance Director (Kevin Martin), Deputy Principal (the claimant), Chief Operating Officer (Ian Joyce) and Executive Principal Primary (Rebecca Howe). The two Executive Principal's had Heads of School under them. Under the Heads of School are Deputies and/or Vice Principals. They are assisted by Heads. There are then 'middle leaders' who are heads of subjects and/or year groups. The total staff were about 550.
13. The claimant commenced employment with the respondent on 1 September 2007 as Deputy Director for New Technologies for Barnfield West Academy (now The Chalk Hills Academy). The claimant continued in that role until 31 August 2009
14. Catherine Barr joined the Barnfield Academies Trust in September 2009 becoming Principal of Barnfield South Academy in September 2011. She gave evidence that at that from when the claimant became Acting Principal their working relations was quite strong.
15. In 2013 the claimant became Acting Principal of Barnfield West and was in that post for an interim period as the Principal had become seriously ill. When the Principal returned in 2014 the claimant returned to her substantive post of Deputy Principal. The Principal left however in December 2015 and the claimant took over again on an interim basis. The claimant was not successful in her application for the substantive position. Louise Lee was appointed to that and took up her role in September 2016.

The tribunal accepts that from June 2016 she was working one day a week at the Academy. The claimant's salary had been increased when she had become Acting Principal and it remained at that level even when she returned to her substantive post of Deputy Principal which made her the third highest paid member of staff across the Trust.

16. The claimant was then to be line managed by Louise Lee. As she and Catherine Barr had a long-standing professional relationship and their offices were at the Chalk Hills Academy the claimant would often go direct to Catherine Barr to 'complain and/or let off steam' about Louise Lee and Ms Barr would recommend that she spoke to her line manager. Ms Barr acknowledged in her evidence there was a 'professional tension' between the claimant and Louise Lee.

First protected disclosure – 14 September 2016

17. In 2016 the claimant was applying for other positions and asked Catherine Barr if she could give her details on applications as a referee (page 82). Ms Barr replied that of course she may and asked if she had seen anything. To that the claimant replied that Future Leaders had been in touch with an opportunity she wished to explore and:

'Things really aren't great to the extent I find it hard to get up and go to work. Beginning to feel physically ill and I've never felt like that before'.

18. Cathy Barr replied that she was concerned to hear that and suggested they speak the next day. To that the claimant replied:

'Its not just me it a number of the senior leadership team too. I'm a very strong person but thinking about work just makes me want to cry. 'I don't do crying!'

19. Both in the claimant's witness statement and the list of issues the allegation is that the claimant was in this email informing Cathy Barr that Louise Lee's 'actions in changing and reducing my duties were affecting my health'. The claimant however in cross examination accepted that was not what her email of 14 September 2016 actually said. Further that although she mentioned 'others' she gave no information about them in the email.

20. Cathy Barr's recollection was that they spoke by phone after this email exchange but cannot now recall the specifics of that discussion. She does however recall that at this time Louise Lee was making changes, which would be expected of a new head and the claimant did not like those. With regard to others sharing the claimant's concerns no one came to Cathy Barr with these, and her response would have been that if members of the SMT had genuine concerns they needed to raise them themselves. There is no suggestion that the claimant was raising matters on other's behalf.

Second protected disclosure – meeting on 21 November 2016

- (1) – repeated the concerns she had raised in her email 14 September 2016**
 - (2) Raised concerns about other staff of the respondent being treated illegally.**
21. There was no email setting this meeting up and it was two months after the email of 14 September 2016. There are no notes of this meeting. The tribunal is satisfied that the claimant was at about this time complaining about how she felt she was being treated by Louise Lee and that she felt others were also being treated unacceptably or in her view possibly illegally. In cross examination for the first time the claimant suggested that HR protocols were not being followed but the only detail she gave was that if capability was being raised then the respondent had to go through proper processes. There is no evidence as to who these others were or that this was a formal concern that the claimant had been asked to raise on those 'others' behalf.
- (3) were being paid by the respondent as consultants, which might be unlawful Raised concerns that friends of senior employees of the respondent**
22. In cross examination the claimant clarified that she had been referring to other staff being treated possibly illegally and not the use of consultants and agreed that wording should be withdrawn from this alleged disclosure.
23. The tribunal heard that this allegation related to one consultant who was not a friend but had previously worked with Louise Lee. The claimant's evidence was that his use by the respondent was brought to her attention by another colleague and she shared that concern with Ms Barr but did not pursue it any further. She acknowledged in cross examination that the concern was not about a breach of a legal obligation or illegality at all.

Third protected disclosure – 24 March 2017 in a meeting with Catherine Barr, the claimant repeated each of the concerns raised in the meeting of 21 November 2016.

24. There are no notes of this meeting and in cross examination the claimant was unable to confirm what she had said to Ms Barr at the meeting. All that was said in the claimant's witness statement was at paragraph 17 in which the claimant said that she 'repeated my concerns which I had previously raised'. She acknowledged that no further detail was given. The tribunal accepts that concerns continued to be raised by the claimant primarily about herself and her role, but no evidence has been produced of the concerns raised on behalf of others.

Fourth protected disclosure – 15 January 2020 the claimant raised a grievance (addressed to Catherine Barr) alleging that the Respondent’s treatment of her had caused her mental and physical injury and also alleging breach of duty to make reasonable adjustments, direct sex and race discrimination and harassment related to disability, sex and race.

25. The grievance was seen at page 293. The claimant divided it into six specific grievances dealing with:
1. That the Absence Management Policy had been invoked in relation to her absence from work despite her being too unwell to participate in the meeting and in her view having a disability by virtue of depression.
 2. Alleged failure obtain OH advice and to follow the policy.
 3. Breach of duty of care towards her causing her to suffer depression and anxiety.
 4. Less favourable treatment on the grounds of her race and/or ethnic origin.
 5. Less favourable treatment on the grounds of sex and childcare responsibilities.
 6. Harassment based on disability, sex and race/ethnic origin.
26. The claimant accepted in cross examination that this related to her own situation as she could not speak about others in her Grievance. It was she said ‘nothing to do with anyone else’.

Detriment

11.1 Demoting and/or deskilling

27. The main protagonist on the claimant’s evidence was Louise Lee. The tribunal accepts her evidence that she was not told about the alleged disclosures at the time and believed that she only became aware about it a year prior to this Hearing as part of the preparation for it. As the alleged detriments were set out in the list of issues the tribunal has still made its findings on each of those. For ease of reading, the tribunal has given its conclusions in connection with each alleged detriment in this section of the Reasons and will not repeat them in the Conclusions section. Some of the allegations of protected disclosure detriment were also relied upon as other forms of less favourable treatment and that has been noted in each section that follows.

11.1.1 – In September and October 2016, Louise Lee repeatedly and on a weekly basis changed and reduced the claimant’s duties.

28. The tribunal does not accept the submission made on behalf of the respondent that this is a ‘cart before the horse’ allegation. It can see how an employee could make a complaint which is found to be a protected disclosure and the person who has been subjecting the employee to the alleged inappropriate treatment, having been made aware of the complaint, continues to do the things complained of or fails to stop doing them because

of the disclosure. That however cannot be the case on the facts before this tribunal as it is accepted that Louise Lee did not know of the disclosure at the time. When this was put to the claimant a second time in cross examination she conceded that it did not work as an allegation.

11.1.2 – On 15 November 2016 Catherine Barr and Louise Lee advertised the claimant's role in the Time Educational Supplement.

29. The tribunal never saw the advert but did see the Information for Applicants which included a Job Description (although the tribunal heard no evidence from either party on that pack). The tribunal accepts Louise Lee's evidence that around this time they advertised for a Vice Principal to lead on Timetabling and Curriculum a role with a salary of approximately £60 – 65,000 whereas the claimant was on about £90,000 pa as a Deputy Principal. The claimant was on the final interview panel and the person recruited would report into her. The tribunal accepts this was not the claimant's role.
30. The claimant relied upon a document prepared for these proceedings at p919 – 920. The claimant's representative when cross examining the respondent's witnesses explained that this compared the advertised role with the claimant's job description. No witness was however taken to the detail of that job description. It is correct that some of the claimant's responsibilities were to be undertaken by the new Vice Principal but the claimant would still oversee those as the line manager. What that document does not show is the full extent of the claimant's role which is captured in an organisation chart the final version of which was at p776 which included leading on six form curriculum development.
31. The role that was advertised and in relation to which the claimant was on the interview panel was not her role. There was no detriment.

11.1.3 – On 4 April 2017 Louise Lee sent a new organisational chart to all staff, from which the claimant's role had been removed.

32. The claimant's case was that her role had been 'removed' from a chart at p111 of the bundle. The claimant's role was in fact still on the chart. The respondent stated that the correct chart showing the claimant's line management responsibilities was at p653 updated when Chloe McDougall started on the chart at p 776. These show the claimant's role albeit updated with new responsibilities once the Vice Principal had been recruited.
33. The tribunal accepts that the claimant's role had not been removed as claimed but that with the advertisement for a vice principal who she would line manage there were some changes made to her role which Louise Lee was entitled to make. She was not aware of any protected disclosures and any changes were made considering the needs of the respondent and not because of any protected disclosure.

11.1.4 – *During May 2017 Louise Lee removed various parts of the claimant's role from her.*

34. In an email of the 15 May 2017 Louise Lee wrote to the claimant and 'colleagues' concerning staffing and curriculum. As with other emails the way it has been copied into the bundle the tribunal cannot see the details of all it was addressed to. Louise Lee explained in evidence that a head of year 8 had raised concerns with her that a whole block of options had been missed from the options booklet regarding performing arts, engineering and dance. This resulted in 51 year 8 students (12 – 13-year-olds) not having the correct GCSE options. Ms Lee had to ask Chloe McDougall to step in and deal with this situation. In the email Ms Lee asked the claimant to make sure that Chloe was 'involved in all curriculum correspondence'.
35. The claimant replied to Louise Lee stating she did not understand Chloe's role in this and thought she was leading on it. Louise Lee replied making it clear to the claimant that as part of the leadership team, roles 'can be rotated and changed depending on the needs of the organisation'. She would utilise all resources within the academy to ensure that they had a timetable and curriculum 'fit for purpose'. The tribunal is satisfied that is why she was raising these issues and not because of any alleged protected disclosure which she did not know about.

11.1.5 – *During May 2017 Louise Lee repeatedly asked the claimant when she would be leaving the respondent's employment.*

36. The background to this allegation is that Louise Lee was aware that the claimant had applied for two Head Teacher roles at other schools and had made no secret of the fact that she wished to progress to a headship. The tribunal accepts her evidence that it was therefore understandable that she would from time to time ask the claimant about her future plans.
37. The claimant relies upon her email to Louise of the 27 November 2016 in which she said that 'I have no intentions on moving anywhere for the foreseeable future'. The tribunal accepts that even having confirmed that it was quite reasonable for Louise Lee to enquire as to her future plans. The tribunal does not accept that she was continually asked when she was leaving.

11.1.6

38. The claimant withdrew this allegation in cross examination.

11.1.7 – *In May and June 2017 Louise Lee conducted meetings with members of staff who were line managed by the claimant, whose purpose was proactively to gather criticism of the claimant.*

39. Louise Lee had concerns over the claimant's performance from when she started which was actually one day a week from June 2016 before taking up the role full time in the September. When asked whether she had made notes of her concerns at the time the tribunal was taken to a 'timeline and Concerns SAM' document (page 662). Ms Lee's evidence was that this was a contemporaneous note made at the time. Although accepting that these are the notes she made it is difficult for the tribunal to be satisfied that they were being made from June 2016 onwards in view of the way the document is put together. For example, there is a date at the top of 19.5.17 and it is not clear what that relates to. Also, the text refers to 'I was appointed in March 2016 and took up the position legally from 1st September 2016' which seems to suggest that was written after September 2016. It does however summarise her concerns. Some of these came from finding out herself that things had not been done or not done correctly. The tribunal accepts her evidence that as part of her role she had to discuss elements of the claimant's role and others did raise concerns with her. This was in the normal course of her role.
40. The claimant relies to a great extent on the evidence of Chloe McDougal in this regard. As became clear in evidence she had two grievances raised against her which lead to key actions being identified that she needed to follow. She acknowledged that she was not happy with the way she was treated and the tribunal takes that into account in assessing her evidence.
41. The tribunal does not accept that Ms Lee was, in the words of this allegation, conducting meetings with those the line managed with the purpose of proactively gathering criticism of the claimant.

Meeting Nicholas Binder & Kevin Martin 22 May 2017

42. When the new Vice Principal started the respondent was considering a better role for the claimant due to the relationship between her and Louise Lee having become more challenging. On or about 22 May 2017 a meeting was held with the claimant who attended with Nicholas Binder her trade union representative, Kevin Martin of HR and Cathy Barr. The tribunal accepts this was not a capability meeting. As a result a role as Deputy Principal with Head of Sixth Form duties was put forward. This would involve working across the two schools providing leadership and direction and quality assurance of the provision in the Sixth Form. The tribunal does not accept the suggestion put to Ms Barr in cross examination that she was 'bullied and pressured' into taking this role. She was advised and had present at the meeting her trade union representative.
43. By email of the 22 May 2017 Kevin Martin wrote 'without prejudice' to Nicholas Binder. This confirmed they had spoken earlier and he set out

the agreed actions following that discussion:

- Production of a job description for Sixth Form role
- Roles and responsibilities of Sixth Form role
 - Once received, if Samia would like to discuss this role, then I am happy for myself and Cathy Barr (CEO) to meet
- Clarification of Samia's current role and responsibilities
- Timelines for moving forward

He then stated that:

‘During the meeting it was explained by Samia and yourself neither are aware of any concerns around her capabilities. As explained on the phone previously, there are a number of capability issues around her performance and the curriculum which I am happy to share. I would hope however we could get to an amicable position without the need for Samia to go through a formal process and potentially adding to her worries. If you disagree please do let me know’.

44. Nicholas Binder replied the same day that there had been a misunderstanding in that they had asked Mr Martin to produce a job description appropriate for a Deputy Principal at the claimant's pay grade. He thought sixth form leadership 'might be part of that' but given the size he thought it unlikely that would be the 'sole role'. He considered it unhelpful to raise potential capability issues 'which have not been discussed with Samia'. He was happy to discuss further.
45. They clearly did speak as an email was sent on 24 May from Kevin Martin confirming that he had spoken to Cathy Barr and that they would provide the necessary job description for the 6th Form role for the claimant. He suggested they then meet with Cathy Barr and the claimant to discuss. The tribunal saw no notes of any of these discussions or meetings but an email from Kevin Martin of the 2 June 2017 (p107) confirmed that the claimant would like to accept the Sixth Form role and attached a revised job description with the structure chart to follow. Nicholas Binder acknowledged safe receipt on the 6 June 2017 confirming that 'I understand that Samia is determined to make the best of the situation and work closely with Cathy'.
46. From that point to January 2018 the claimant was line managed by Catherine Barr and not Louise Lee, who remained Principal of the Chalk Hills Academy.

Issue 11.1.8 – *From May 2017 to the end of her time in the Sixth Form Deputy Principal role, the claimant was given no line management responsibility, no budgetary responsibility, and no authority to make any administrative or financial decisions.*

47. Allegations 11.1.8 through to 11.1.16 are all stated to cover the period from May 2017 to the end of the claimant's time in the Sixth Form Deputy Principal Role which was January 2018. The claimant would not accept in cross examination that these allegations were in effect giving a list of the claimant's dissatisfaction with that role, but she did accept that there was no evidence that any of these things occurred because she had made protected disclosures. Counsel did not cross examination on issues 11.1.8 – 11.1.16. The tribunal has seen no contemporaneous evidence of these things happening which is particularly important when assertions are made by the claimant of for example, at paragraph 37, 'I was forbidden from contacting them [the Assistant Principal and Head of the Sixth Form]. No details are given of who forbade her and nor was the tribunal taken to any evidence in support of this allegation. Also, this was an approximately 8 month period and the claimant only gives one example under each allegation from 11.1.8 – 16.
48. Louise Lee gave evidence that the claimant was line managed by Cathy Barr at this point and did performance management of two people within the 6th form team. The chart at p776 shows her with 'line leadership and support' for 11 people. She had access to the 6th Form budget and authority to make administrative and financial decisions.
49. The Sixth Form role was of the Chalk Hills Academy and the Stockwood Park Academy at different sites in Luton.

Issue 11.1.9 – *excluded from Senior Leadership Team meetings.*

Issue 11.1.10 - *excluded by Louise Lee from decisions about changes to the curriculum.*

11.1.11 - *not permitted to meet with staff.*

11.1.12 – *From May 2017 to the end of her time in the Sixth Form Deputy Principal role, Louise Lee refused to meet with the claimant.*

50. Counsel for the respondent did not cross examine the claimant on these allegations.
51. At paragraph 40 of her witness statement the claimant asserts that Louise Lee was making it impossible for her to carry out her role properly by excluding her from meetings and refusing to meet with her. She also alleges that Louise forbade her from meeting with any of the staff at Chalk Hills Academy except for the Vice Principal who was Chloe McDougal who only agreed to one meeting and mostly ignored her, forbade her from checking on pupil outcomes or monitoring teaching and learning and did

not allow her to have input into teaching strategies or observations. There is no evidence that this was raised with Catherine Barr, the CEO who was line managing the claimant and with whom she had a good working relationship. Further Ms Barr gave evidence that it was never raised with her by the claimant that Ms Lee was putting obstacles in the way of the claimant performing her role. No emails or meeting notes have been produced showing that the claimant had not been invited. The claimant had also had the assistance of her trade union representative in negotiating this role and the tribunal would have expected to see such serious concerns raised with him if the claimant was really being excluded in the way she now outlines.

52. Louise Lee's involvement with the claimant's line management ended in May 2017.
53. The claimant accepted in cross examination that she had no evidence that any of these things, if they did occur, were because she had made a protected disclosure.

11.1.13 - *Claimant's travel time between her two schools was monitored.*

54. The claimant in her witness statement relies upon page 142 as an example of monitoring her travel time. There is an email exchange 13 – 14 November 2017 where Louise Lee stated 'I was not sure where you were today – as I did not see you on duty at lunchtime'. She then suggested that it would be good to 'have an overview of where you are for this week and then every Friday for the following week going forwards'. The claimant replied that she would 'make sure my whereabouts are clear'. The tribunal does not find this as monitoring of travel time but a legitimate request to know where the claimant was.

11.1.14 – *The claimant was given incomplete school data limiting her ability to contribute to the leadership of the school.*

55. The only example given by the claimant was the email seen at page 145 of the 21 November 2017 in which the claimant wrote to the data manager and Pastoral Head of Sixth Form stating she did not have the data she needed. The data manager responded the next day apologising stating that the Pastoral Head had received 'what I sent to Louise last week'. The tribunal accepts Ms Lee's evidence that as the Principal with a very busy workload she could not know what data had been passed nor get involved and would expect the claimant to speak to colleagues to obtain the relevant data she required. There is no evidence whatsoever that the data manager was aware of the claimant's alleged protected disclosures and neither does the claimant suggest she was.

11.1.15 – *Louise Lee withdrew from the claimant the support of a Data Manager*

56. The example given was an email dated 6 October 2017 (p912) from Louise Lee to the claimant and Chloe McDougall stating that Parul (the data manager) was only completing data for Chalk Hills Academy. Louise Lee's evidence which the tribunal accepts was that each site had its own data manager and Parul's responsibility was to Chalk Hill. All she was doing was making that clear.
57. In her witness statement Louise Lee made it clear at paragraph 35 that her concern was not about the data system but the organisation by the claimant of data collection points. Concerns had been raised with her by senior colleagues across both schools that they were unclear regarding the collection of Sixth Form data as the claimant had been unclear in her instructions.

11.1.16 - *Louise Lee withdrew one of the schools from a data and reporting system the claimant had negotiated.*

58. It was clarified in Louise Lee's evidence that this allegation related to a contract with PIXL6 which she described as an organisation that offered teaching and learning strategy and offered data solutions to Sixth forms. The Trust tended to use them as a membership organisation and log onto their website to find and use resources. Consultancy was provided by them at an additional cost. Emails seen at pages 383 – 4 of October 2017 show the claimant raising this with both Louise Lee and Catherine Barr and referring to using one of the employees of that organisation as an advisor. Louise Lee responded that she would need all the details and figures before committing. Catherine Barr suggested that the claimant see if they could be charged one fee which they would then split between the two schools internally. The tribunal did not see any evidence as to how the issue was finalised and nor that it had any causal link to the raising of any alleged protected disclosure.

11.1.17 - *At the start of school year in September 2017 contrary to the respondent's custom the claimant was not introduced to any members of staff as the new Sixth Form Deputy Principal*

11.1.18 - *From start of school year in September 2017 the claimant was not invited to go out socially with any team.*

59. The claimant clarified that her allegation is that Catherine Barr was the person responsible for ensuring she was introduced and that she failed to ensure this was done in retaliation for the claimant having raised protected disclosures a year previously. The tribunal had no evidence in support of this.

60. In relation to the social invites the claimant explained in cross examination that she was not suggesting a particular invite that did not include her but that the nature of her role was that she had become isolated and did not fit into any particular team. The 'knock on effect' was that she did not get to go to social events. However again the tribunal had no evidence as to who was said to be responsible for this and how it was said they were motivated by the claimant having raised protected disclosures.

11.1.19 – At the end of 2017 the claimant not invited to any Christmas social events.

11.1.28 – At the end of 2018 the claimant not invited to any Christmas social events.

61. The tribunal saw the itinerary for an event on the 21 December 2018 sent to the claimant and a photograph of her at that event. The claimant sought to distinguish this from a team invite in that she said that the person organising who invited her was a personal friend. However, she was invited and went. No evidence has been given by or on behalf of the claimant as to who failed to invite her and how they were motivated by her having raised a protected disclosure.

11.1.20 - In December 2017 Louise Lee raised alleged concerns about the claimant's ability to carry out the Sixth Form Deputy Principal role.

62. Louise Lee set out at paragraph 39 of her witness statement how she and the Principal of Stockwood Park Academy, Richard Found, raised concerns regarding the claimant's ability to perform her role. She had received several verbal concerns from staff. The claimant had not completed either objectives or mid year reviews of performance of those she line managed. Verbal concerns had been reported by senior leaders at both schools. This is the last act alleged against Louise Lee.

63. The claimant confirmed in cross examination that there was no reason for Richard Found to retaliate against her for raising a protected disclosure and neither did he do so. She also accepted that if concerns were reported to Catherine Barr she was duty bound to raise them.

64. In a 1-1 meeting with the claimant on 9 October 2017 Catherine Barr raised various concerns with her (p131.) The tribunal is satisfied that Catherine Barr was raising genuine concerns that had been raised with her. She also records concerns that the claimant had raised with her about her role and feeling 'disheartened' and needing guidance on aspects of it. The document shows the discussion points and actions to be taken forward. Some are for Catherine Barr but most for the claimant with clearly defined actions and dates for compliance, one of which was so urgent it was required by that evening. The tribunal is satisfied they came out of this discussion.

65. Catherine Barr met with the claimant again on 8 November 2017 and set her some further performance targets. The claimant disputed in evidence

that she was given the first version of the Support Targets (before they were RAG ('red, amber, green') reviewed at her meeting with Catherine Barr on the 8 November 2017. The respondent produced the next day the email to Kevin Martin the day of the review from Catherine Barr confirming that the claimant had taken a copy of the document at the meeting. The claimant seeing this email still disputed she had been given the document stating there would have been no reason for her to take it. The tribunal accepts that Catherine Barr was recording what had happened in her email to Kevin Martin. As the claimant maintained that she had not seen the RAG rated targets document at p147 the respondent produced a copy of their email to her of the 19 January 2018 when Catherine Barr sent it to her. The claimant still disputed receiving it. The email was sent to the claimant's internal email address and there is no evidence of any IT reason why it would not have been received by her and the tribunal is satisfied that it was.

66. Cathy Barr was raising legitimate concerns that had been raised with her and was not doing so due to any protected disclosure.

11.1.21 – In January 2018 Catherine Barr removed the claimant from the Sixth Form Deputy Principal role.

11.1.22 - In January 2018 Catherine Barr moved the claimant entirely out of any schools role and put her into a generic role in the trust, not assigned to any school.

11.1.23 - the claimant withdrew during cross examination the allegation that she had no office or desk space assigned to her but pursued the allegation that she had no job title, job description and almost no work to do.

11.1.25 – in that generic role the claimant was never invited to take part in any Trust planning days.

67. The claimant confirmed that all the above issues were referring to the same matter. It was the claimant's position in evidence that if Catherine Barr's reason for creating this new role was performance concerns as suggested by the respondent then she should have taken her down the capability route. She also however accepted the proposition put to her by counsel that had Catherine Barr done so she would have considered that to have been unfair and a detriment for raising her protected disclosures. Although the list of issues refers to this as 'a generic role' it was referred to in the Hearing as one within the Trust's Central Team. There is no dispute that the claimant's salary was maintained. The issue for this tribunal is whether the creation of a new role for the claimant was because the claimant had made a protected disclosure not whether the respondent should have started a capability process.
68. Catherine Barr was interested in setting up an Alternative Provision Free School as part of the Trust and in this new role asked the claimant to lead on this project. That can be seen in the Support Targets for the Spring Term several of which had to be completed by the 9 February 2018. The claimant stated in evidence that her concern was that there was not much

to do in this role to justify her salary. The tribunal's reading of the Support Targets at p150 is that there was a lot to do in a short timescale including as the claimant stated learning new skills on the job which the tribunal is satisfied would justify her salary.

69. The tribunal saw 1 – 1 meetings at this time between the claimant and Catherine Barr. The first was 8 January 2018 (p657) where they discussed the revised role. Nine key points in the role were set out, as were targets for the role, not all of which appear to be related to the free school bid.
70. There was another 1 – 1 on the 19 January 2018 which emphasised that the targets for the half – term ahead would focus solely on the completion of the free school bid.
71. There is nothing in these 1 – 1's to suggest that there was any disagreement expressed by the claimant about this role. When that was put to the claimant in cross examination her answer was 'I was told to do something and I was going to do it'. The claimant kept reminding the tribunal of her level and salary and the tribunal would expect someone in the senior leadership team to indeed challenge the CEO if she genuinely considered this not to be a clear role that justified her salary. It therefore appears to the tribunal that she was content with it at the time. The tribunal has also not seen anything to suggest that the claimant brought Nicholas Binder, her trade union representative, into the discussions at this time or expressed any discontent to him.
72. As the claimant was being line managed in this role by Catherine Barr Louise Lee was very much in the background from this point onwards. It is also from the beginning of 2018 that some of the alleged detriments for raising protected disclosures are also put as allegations of race and in some circumstance disability discrimination. The tribunal now proposes to make its findings in relation to such issues covering all the alleged forms of discrimination.

11.1.24 – Demeaning and patronising work given to the claimant in the form of dealing with complaints from parents from ethnic minority backgrounds, on the basis that the claimant was from an ethnic minority background.

16.1 – Did the respondent make the assumption that parents from ethnic backgrounds (who had raised concerns or complaints with the respondent) would respond more positively to the claimant, as she was from an ethnic minority background?

73. In her witness statement at paragraph 58 the claimant gave evidence that she was given the role of supporting the Linden Academy, a primary school and received a 'vague instructions' to 'build relationships' with the parents. There is no dispute that many of the parents had complained and due to the demographic of the intake where the school is located many parents came from a minority ethnic background of various locations and nationalities. The claimant states that it was 'painfully obvious to me that I had been given these responsibilities on the basis that the parents would

react better to meeting with someone from an ethnic minority background'. She found this 'patronising and offensive' to both herself and the parents.

74. The background was that the Linden Academy 'required improvement'. It had been an independent school before changing to an academy. It had high achieving pupils. As Catherine Barr explained within each of the Trust's five schools, there is a senior leader with responsibility for parental engagement. She did not accept the proposition put to her in cross examination that the claimant was tasked with dealing with complaints. From about April 2018 Catherine Barr asked the claimant to enhance leadership capacity at the Linden Academy and part of that role was one of engagement with parents and of being at the heart of the community. The tribunal accepts the evidence of Catherine Barr that the reason for giving the claimant this role was because the claimant had set up a parent focus group which was successful and engaging with parents was one of her strengths. The role was not just to deal with complaints. The tribunal does not accept that this was in anyway 'demeaning and patronising work' or that claimant was selected due to her race.
75. It was put to the claimant in cross examination that if she was selected for this role and was successful at it because of her race it could not be because she had raised protected disclosures. The claimant initially said she did not know. When pushed to answer she stated that Catherine Barr did not know she would be successful and that others had tried and failed at the task. She did not accept that she succeeded as she was empathetic and listened to the parents. The tribunal however is satisfied that is why she was tasked with this role.

11.1.26 – On 8 September 2018-2017 the claimant was excluded from a staff away day of the Chalk Hills Academy, where she had been Sixth Form Deputy Principal.

76. The claimant agreed that this should have read September 2017
77. The relevant email exchange was seen at page 122 on 8 September 2017. Louise Lee asked 'again' if the claimant was joining them on the away day 'next weekend'. The claimant replied on 8 September 2017 that she 'wasn't aware I was invited to any sessions' and could not now attend as she had to drop her daughter off at university on that day. In cross examination the claimant's concern was that she was not given sufficient notice and not invited when the others were invited although no evidence was produced and neither did the claimant know when the others were invited. What this email chain shows however is that the claimant was not excluded from the away day.

11.1.27 – At some time, also in 2018, the claimant was excluded from a staff away day of the Stockwood Park Academy, where she had been Sixth Form Deputy Principal

78. By 2018 the claimant was no longer the Sixth Form Deputy Principal of the

Stockwood Park Academy. When she was asked in cross examination who had excluded her from a staff away day she could not recall the name of the then Principal and counsel confirmed it was Richard Found. The claimant had already confirmed in evidence that she had no issues with him and does not make any allegations that he treated her detrimentally due to alleged protected disclosures. As she was asked more questions it emerged that her real case on this point was that in the Trust Central role she was not a member of a specific team and that it was therefore a 'knock on effect' that she was not invited to specific team activities. The tribunal is satisfied that was not due to the making of any protected disclosures.

11.1.29 – In December 2018 the claimant was offered the role of Head of School for the Linden Academy by Rebekah Howe and Kevin Martin, which she accepted.

16.2 Race discrimination – the said role was given to a white woman who was significantly less experienced than the claimant, having already offered that role to the claimant, and the claimant having already accepted it.

24.3 – the same allegation as disability related harassment.

79. The claimant in her final witness statement relied upon at this Hearing stated that in December 2018 Bex Howe and Kevin Martin came out of Catherine Barr's office after discussing the current Head of Linden Academy and the issues they had with her performance and told her they would like her to take up leadership of the Linden Academy. In her earlier witness statement at paragraph 35 the claimant had stated that they had offered her the role of Head of School for the Linden Academy. When asked about the difference between the two statements the claimant said that this was to make it clearer and would not accept that in the first statement she had said she was offered the post whereas in the final statement she did not use the word offered but said they would like her to take up the post.
80. The claimant states that she was asked to wait to see the Chair of Governors and there is no dispute that meeting did occur. All the others involved who the tribunal heard from deny any offer was made and Catherine Barr the CEO never signed one off. The tribunal is satisfied that the Trust was exploring with the claimant whether it was something she might be interested in doing if the Head stepped down hence the meeting with the Chair. No offer of the post was ever made and there is no documentation to show that one was. Even though it was an Interim role and the respondent was clear that would not be a formal recruitment process the tribunal would expect to see some documentation of the claimant taking over albeit on an interim basis.

11.1.30 – *On 21 March 2019 the claimant asked Catherine Barr why the role had been withdrawn from her.*

16.3 – *Race discrimination – Did the respondent fail to tell the claimant that the role of Head of School of Linden Academy had been given to a less experienced white woman, when the role had already been offered to the claimant?*

16.4 – *Did the respondent fail to explain to the claimant why that role had been given to a less experienced white woman.*

81. The role was not withdrawn from the claimant as it had never been offered to her. The claimant's own evidence at paragraph 63 was that she was told by Bex Howe that the Interim Role of Head of School of the Linden Academy had been offered to Michelle Woodhams. The claimant then emailed Catherine Barr on the 21 March 2019 (p176). The claimant goes on to state that she then met with Catherine Barr who 'could not explain why the role had been withdrawn and given to Ms Woodhams' making a vague suggestion that the claimant was 'needed elsewhere'. The tribunal does not accept that but accepts the evidence of Catherine Barr that she personally went to see the claimant and Michelle Woodhams separately and then together that Michelle would be asked to step up to head of school with the support of the claimant. Ms Barr was still looking to open an alternative provision for preschool which project the claimant was leading on.
82. The head of school salary would have been in the region of £60,000 whereas the claimant salary at that time was £90,000.
83. By the time of the head's resignation Michelle Woodhams had been in the post of Deputy Head Teacher since September 2018. She had previously been acting head teacher of a primary school prior to starting at the Linden Academy. The Tribunal accepts Ms Barr's evidence that Ms Woodhams was not less experienced than the claimant.

11.1.31 *Head of School of Chalk Hills Academy had been available at some time between March 2019 and May 2019 but that that opportunity was not notified to the claimant*

16.5 - *race discrimination – did the respondent give the role of head of school of Chalk Hills Academy to a white woman with no education or teaching qualifications, rather than to the claimant?*

24.4 - *disability related harassment – as 16.5 above.*

29.6 - *discrimination arising from disability – sometime between March 2019 May 2019 the respondent did not tell the claimant that the role of head of School of Chalk Hills Academy was available and that she could apply for it.*

29.7 - *discrimination arising from disability – as 16.5 above.*

84. In March 2019 Louise Lee was asked to be Interim Executive Principal over both The Chalk Hills Academy and The Stockwood Park Academy which had been judged 'requires improvement' in May 2018. Louise Lee's Deputy was Clare Chambers and she was asked by Catherine Barr to take the post of Interim Head of School for the same one year period. The tribunal is satisfied that she was the best person to take on the role and that Cathy Barr considered that the claimant had not been successful in her interviews for the post of principal of either The Chalk Hills Academy or The Stockwood Park Academy and the CEO and trustees did not consider that the claimant was the correct leader for the school. Catherine Barr also had to consider that it would involve a close working relationship with Louise Lee and the claimant's professional relationship with her had not been good. When the claimant was challenged on this point in cross examination her answer was that 'I would have liked the option. I don't know if I would have taken it'.
85. The allegation is also put as one of race discrimination in that Clare Chambers is white and the claimant states that she has more relevant experience than her. She relied upon the fact that Clare Chambers was not a qualified teacher and had no higher education degree and it was suggested to Ms Barr that meant she could not in fact be a Head. The tribunal accepts Ms Barr's evidence that is not the case with academies.
86. The allegation as stated in the list of issues was also the failure to notify the claimant of this position but there was no evidence that others had been notified.
87. It was also put to the claimant that the current head of Chalk Hills is a Pakistani man. The claimant drew the distinction that he is male which is not the point in a race discrimination claim and he is the same race as herself. The claimant actually stated that she still maintained that the reason she did not get the role was because of her race.

11.1.32 - in July 2019 Catherine Barr told the claimant she would be taking responsibility for year 6 leadership at the Linden Academy but Rebekah Howe then sent an email to all staff informing them David Barker would be leading the year 6 team.

This allegation was withdrawn by the claimant in cross examination.

16.7 - the same allegation as race related harassment.

24.6 - the same allegation as disability related harassment

Withdrawn during cross examination.

29.9 - this allegation was still pursued as discrimination arising from disability.

88. The tribunal heard from Beck Howe who was Director of Primary Education with the trust a role she had held since 2017. She joined a predecessor trust on 1 September 2013 and left the respondent on 31 August 2022. She explained in evidence which the tribunal accepts that as Director of Primary Education it was her responsibility to decide all senior roles including who took year 6 leadership. At the time the claimant was in charge of key stage 2 which included Year 6. David Barker is a specialist leader in education (“SLE”) who came into support teaching at Year 6. He was Deputy Head at Vale School which was his full-time job. He was never given the Head of Year 6 role at the Linden Academy. He was brought in to head up the strategy with year 6 as set out in the email to which the claimant refers of 5 September 2019 (page 227). In this email it was made clear: –

“As most of you are aware, David is a senior teacher at Vale Academy and has worked with/led a significant number of year 6 teams over the past 9 years. During the past 4 years TVA year 6 results have been placed in the top 5% in the country three times.

David will work with the Linden year 6 team every fortnight on a Wednesday afternoon. The purpose of this meeting will be to discuss ideas, identify key calendar dates e.g. Mock exams, baseline tests, writing assessments etc and discuss resources...”

89. It is quite clear from that email that David Barker would not be taking over year 6 and the tribunal accepts Ms Howes evidence that it would have been physically impossible for him to run year 6 considering that he would only be attending site twice a month.

Claimant’s sickness absence

90. The claimant commenced sickness absence on 6 September 2019, shortly after the above email was sent. A fit note dated 20 September 2019 signed the claimant off for 4 weeks with depression.

91. The claimant accepted that the part of the respondent’s Absence Management Policy and Procedure that applied to her absence was that appearing at clause 20 “managing long-term sickness absence”. This provides: –

20.1 long term absence describes the situation where an employee is continually absent from work over a period of time, usually for 4 weeks or more. This type of absence does not normally go unnoticed and is covered by medical certificates. It demands quite a different managerial approach from persistent short term absence.

20.2 long-term sickness absence can put particular strains on resources and the individual employee. Speed of action is therefore of paramount importance. The manager will need to know when, and if, to expect the employee back at work, and such enquiries should be tempered with a degree of concern and interest for the individual. However, a manager must also determine the course of action required to manage the absence, by the fourth week of absence at the latest.”

92. The policy also provides at clause 21.5 that as soon as it is apparent that the employee will be absent from work for four weeks or more, an Ill Health Review should be arranged with the employee. That is to seek further information around the employee's condition and likelihood of a return to work. Where there has been a continuous absence exceeding eight weeks and it appears likely to continue for a lengthy time the manager should continue consider obtaining further details through a qualified medical practitioner or occupational health provider (clause 22.1).
93. By letter of 4 October 2019 Cathy Barr invited the claimant to an attendance review meeting on 11 October 2019. It was made clear this was to discuss her current state of health and whether there was a need for a referral to occupational health. In reply on 8 October 2019 Nicholas Binder advised that the claimant was not well enough to attend the meeting. He would like to accompany her to the adjourned meeting but questioned whether it would be best to have an occupational health ('OH') report first. The referral was made on 10 October 2019.
94. The first OH report was dated 23 October 2019 (p628). The claimant's fit note was due to expire on 18 October 2019. The OH advisor estimated the claimant's likely return to work to be 31 March 2020. The OH advisor considered it was likely that the claimant would be considered disabled by virtue of depression and by closing submissions the respondent accepted knowledge of that disability from the date it had received this report. The report notes that no medical information had been reviewed by the assessor and the information in it was from that given by the claimant. The conclusion was that if the claimant attempted to return to work in the short term and she again considered that her role and responsibilities had been altered it would be likely that she would soon be absent from work again. It would be unlikely that she would be able to commence a phased return to work for approximately six months. Specific recommendations on how an eventual return to work could be made were set out.
95. A further fit note dated the same date was provided signing the claimant off for 2 months until 17 December 2019.
96. On 28 October 2019 Kevin Martin contacted Nicholas Binder advising that the occupational health report had been received and asking if they could discuss the next steps. From the emails seen it appears they spoke later on that day. In an email of 4 November 2019 Mr Binder explained to Kevin Martin that the claimant was not in a good place and able to engage with any conversations about the future even with himself and asked that they work through him at the present time.
97. On 13 November 2019 Kevin Martin wrote to Nicholas Binder stressing the importance of the respondent following its absence management policy but asking his thoughts on three options. The claimant could attend a meeting

with Cathy Barr at which she could provide an overview on her current health or he asked whether one of the following would be better: –

- “1. You attend the informal absence meeting (on site) as Samia’s representative and provide an update to Cathy on her current health
2. We schedule a telephone call and you verbally provide an update on Samia’s current health or Samia is able to over the phone
- 3 We provide some questions which would be asked at the meeting and you or Samia provide a written (email) response on Samia’s current health”

98. Nicholas Binder replied that the claimant would prefer the third option. As a result Kevin Martin sent him on 19 November 2019 a list of questions that they required the claimant to answer with regard to her current state of health, advice and assistance being received from medical advisers, the impact her health conditions were having on her ability to carry out her role and what actions she would like the Academy to carry out to assist her further. She was asked to provide a likely return to work date, any reasonable adjustments to carry out her job on her return to work and as per the absence policy it had been determined that an appropriate target date for her to return to work would be 18 December 2019 as per her doctor’s certificate.

99. The answers to the respondent’s questions were provided in a document dated 24 November 2019 (page 253). From this the respondent became aware that the claimant was experiencing:

Constant racing mind either during sleep or whilst awake.
Shaking hands to the extent I struggle to eat without food falling from my fork.
Disruptive sleep pattern leading to fatigue – I wake up more exhausted than before I go to bed.

On medication to manage the symptoms
Seeing a therapist weekly or fortnightly.

Struggling to carry out basic everyday activities at home.

Kevin Martin acknowledged receipt of the information and advised that it would be passed to Cathy Barr.

100. By email of 9 December 2019 Nick Binder asked for an update as to the present position noting they were approaching the Christmas period. Mr Martin replied referring to the fact that the fit note expired on 17 December and stating that if the claimant was able to return on that date a phased return would be required and a meeting with Cathy to discuss her role and any adjustments. However, if the claimant was not well enough to return Cathy would need to meet (or email) with some further questions to ascertain how the claimant was and any further update on her health.

101. Mr Binder replied on 10 December that having spoken with the claimant it was very unlikely she would be well enough to return to work that term or

even be able to attend a meeting to discuss that in the next few weeks. She was returning to her GP and would provide another fit note as necessary. He confirmed that she was able to make written responses to health-related questions. They should be sent through him as before.

102. A further fit note was provided dated 20 December 2019 signing the claimant off sick with depression for a further 2 months until 17 February 2020.
103. On 18 December 2019 Kevin Martin sent Mr Binder a copy of a letter dated 18 December 2019 from Cathy Barr inviting the claimant to a formal absence review meeting on 8 January 2020. On 4 January 2020 Mr Binder advised Kevin Martin that the claimant was not well enough to attend the meeting but was happy to respond to any questions in writing and in a subsequent email that she was willing to attend another OH referral if necessary.

The claimant sick pay

104. On 20 December 2019 Nick Binder emailed Kevin Martin to enquire about the claimant sick pay entitlement being extended to 12 months full pay from 6 months full pay (page 270)
105. The Respondent's Sick Pay Scheme provided that for an employee like the Claimant during her fourth and subsequent years' service, was entitled to sick pay amounting to full pay for 100 working days and half pay for 100 working days. The Claimant seeks to rely upon Clause 9 dealing with absences arising from accidents, injury or assault at work. This provides as follows:

“In the case of absence due to accident, injury or assault attested by an approved medical practitioner to have arisen out of and in the course of the teacher's employment, including attendance for instruction at physical training or other classes organised or approved by the employer or participation in any extra curricular or voluntary activity connected with the school, full pay shall in all cases be allowed, such pay being treated as sick pay for the purposes of paragraphs 3 – 7.5 above, subject to the production of self-certificates and / or Doctor's statements from the day of the accident, injury or assault up to the date of recovery, but not exceeding six calendar months.

Sub-paragraph 9.2:

“Where a teacher is still absent due to accident, injury or assault after the initial six month period, the question of any extension of payment under paragraph 9.1 shall be considered. In the event of no extension of leave being granted under paragraph 9.1 the teacher shall be entitled to normal sick leave and pay under the terms of paragraph 2.1 according to his / her length of service as prescribed by that paragraph.”

106. The Claimant confirmed that her case was as set out by Nicholas Binder in his email of 20 December 2019. In that he expressed a view that under

the Burgundy Book terms and conditions (as set out above) the Claimant should be entitled to an additional six months sick pay at full pay "*because her illness is work related*". Mr Binder contested Mr Martin's view that the Claimant's entitlement was to 100 days at full pay and 100 days at half pay. He stated he had contacted the union's Legal Advisors who relied upon the case of Roberts v The Governing Body of Whitecross School UAEAT/0070/12 which he stated the Court had to interpret the Burgundy Book in a case of sickness absence through stress. The teacher argued that stress was covered under absences arising from accidents, injury or assault at work. It was submitted that the teacher won the case. Mr Binder relied upon the Claimant's Occupational Health Report dated 23 September 2019 which "*clearly describes the causal link between Samia's illness and her work*". It seemed to the union that the case described was very similar to the Claimant's circumstances and he therefore invited the Respondent to reconsider its position.

107. Kevin Martin replied on 15 January 2020 having also taken legal advice on behalf of the Trust. He expressed the position that where a teacher is absent as a result of an accident arising out of or in the course of employment, including extra curricular and voluntary activities then the extended sick pay would apply. The Trust did not believe that that guidance related to the Claimant and therefore would not be able to extend the Claimant's sick pay.
108. It was put to the Claimant that there was no medical evidence showing that her depression had been caused by the Respondent. Her response was that that was because the Respondent did not ask for one and she was relying on the Occupational Health Report.
109. The Tribunal accepts, however, that it is quite clear in the way that the Occupational Health Report is written that it was reliant on information given by the Claimant. Throughout, the words used are that the Claimant "*was of the opinion*". It was not an objective assessment of what had occurred.
110. There was a further Occupational Health Report dated 2 July 2020. Again this was based on what the Claimant told the Advisor and in particular, "*she told me that the reason for this is symptoms of anxiety, depression and perceived work related stress*". The Report even states, "*obviously I am not in any position whatsoever to form any objective opinion regarding the comments that she has made to me today and I merely include this information to provide a context for this Report.*"
111. When the Claimant was taken back to the provisions of Clause 9.1 upon which she seeks to rely, her answer in cross examination was that she relied on Occupational Health and believed that is what the reports were for.
112. The Tribunal, however, accepts that there was no attestation by an approved medical practitioner that her depression had arisen as a result of

a situation at work.

113. By email of 20 January 2020, Nicholas Binder advised Kevin Martin that the Claimant had decided to take independent legal advice outside of the union and in those circumstances the union was withdrawing representative support for her. Any communication regarding her absence or other employment issues would need to be addressed to her new advisor.

The Claimant's first Grievance - 15 January 2020 (page 293).

114. The Respondent accepts that this Grievance amounted to a protected act, but not that it was a protected disclosure. The Claimant listed six specific grievances:

1. That the Absence Management Policy had been invoked despite the Claimant being too unwell to participate in the meeting and that she clearly had a disability as set out in the Equality Act 2010.
2. That under the Absence Management Policy at Clause 3, was provision for the obtaining of Occupational Health advice and the Claimant alleged that the Respondent had failed to have regard to the Occupational Health Report, to the fact she had a disability and to the recommendations in the report to facilitate a phased return.
3. That the Respondent's treatment of her had been in breach of their duty of care and had caused her to suffer from depression and anxiety.
4. She had been treated less favourably on the basis of her race / and / or ethnic origin in the light of all of the above.
5. That the Claimant had been treated less favourably on the basis of her sex and childcare responsibilities being a single mother.
6. In the light of all the above, the Claimant had been harassed based on her disability, sex and race / ethnic origin.

115. By email of 17 January 2020, the Claimant submitted Grievance number 7 to be added to her original Grievance and this alleged that the Respondent had failed to have regard to the Occupational Health Report and the Burgundy Book in relation to her entitlement to pay whilst off sick due to an illness arising out of her employment.

116. The Claimant relies upon this Grievance as her fourth protected disclosure. In cross examination she accepted that she could not speak for other people, so the Grievance was about the alleged treatment of her and was nothing to do with anyone else.

117. The Tribunal notes that in the grievance, the Claimant stated that she did

not consider the use of the Absence Management Policy:

“Is appropriate in light of the fact that I quite clearly have a disability as set out in the Equality Act 2010. You are aware of this, as you have considered the report from the Occupational Health assessor...”

118. The Claimant did not state in her grievance that the Trust knew that she had a disability before she went off sick and she accepted that proposition in cross examination.
119. By email of 21 January 2020, Kevin Martin advised the Claimant that in accordance with the Trust Policy, he was writing to confirm that a formal investigation into her grievance needed to be arranged with her. Sarah Mortimer, a Trustee, had been appointed to investigate the grievance and dates were put forward for when she could meet with the Claimant. The Claimant was advised of her right to be accompanied and reminded that Ms Mortimer may be required to interview potential witnesses and review documents. No further action was taken on the Absence Management process whilst the Claimant's grievance was investigated. The Claimant in evidence was not prepared to accept that that was a supportive step.
120. On 21 January 2020, the Claimant asked Kevin Martin whether if she was no longer represented by the union she could bring a solicitor to the Grievance Meeting. She was advised that would not be possible as the Policy provided for a trade union official or work place colleague.

Grievance Meeting 23 January 2020

121. The Grievance Meeting took place between the Claimant and Sarah Mortimer on the above date and Sarah Rogers, Executive Support Officer was also present.

Issue 24.10 - on 23 January 2020, Sarah Mortimer refused to look at or review the written materials provided by the Claimant to her during her Grievance – disability related harassment.

122. This allegation was withdrawn by the Claimant during cross examination.
123. It was clear in the notes of the meeting that Sarah Mortimer opened it by stating she had not gone through all the files that she had been provided with “*without speaking to you first and ask questions*”. Although she had received some documents, the best thing was for the Claimant to explain her grievance to her. The Tribunal is satisfied she was not saying that she would not look at the documentation. It accepts her evidence that in fact they went through large parts of the bundle and reviewed a lot of it, although Sarah Mortimer had to point out that a lot of it did not deal with the point in her grievance.
124. By letter of 10 February 2020, Sarah Mortimer provided her findings in connection with the Claimant's grievance which was not upheld. The Claimant appealed that decision on 26 February 2020 and the Appeal

Hearing was heard on 26 March 2020, by David Sheridan. The Appeal was not upheld and this was confirmed to the Claimant in a letter dated 23 April 2020.

125. The Claimant had raised the following issues in connection with the Grievance and the Appeal, all of which were withdrawn during cross examination.

Issue 11.3 – on 10 February 2020, the dismissal of the Claimant’s Grievance.
Issue 11.4 – dismissal of the Appeal.

Those allegations were had been put on the basis of protected disclosure detriment.

The same allegations were brought at 24.11 and 24.12 as disability related harassment and were also withdrawn.

126. *Issue 11.5 – From 11 June 2020 Catherine Barr pursued an Absence Management process against the claimant - protected disclosure detriment.*
Issue 24.13 -The same allegation as disability related harassment

These were withdrawn during cross examination, save for the allegation of discrimination arising from disability - Issue 29.12

127. The letter of 11 June 2020 (page 434) confirmed that it was now felt appropriate to continue with the Absence Management process as the grievance had been formally investigated and to discuss how the Trust could support the Claimant’s return to work. The Claimant had now been absent with depression since 6 September 2019. The letter indicated that questions would be sent to the Claimant, which she was asked to respond to by 18 June 2020. However if the claimant felt she could now attend a meeting a room had been arranged for that day at the Vale Academy. The Claimant was advised that one outcome of the meeting could be the issuing of a first formal absence warning as set out in the Absence Management Policy and Procedure. A decision on that would not be made until the Claimant had a full opportunity to put forward her response and any further information she believed relevant. She was reminded of her right to be accompanied at that meeting.
128. The Tribunal found the Claimant’s evidence with regard to the pausing and then restarting of the Absence Management process to be conflicting. On the one hand she raised a grievance stating at point number 1 that they had commenced the Absence Management Policy despite her being too unwell to participate. When it was paused, the Claimant was then critical and stated a number of times in cross examination that this was not for her benefit and it should not have been paused. There is no evidence,

however, that she said that at the time. As has been noted, by this point she was no longer represented by Mr Binder.

129. By email of 15 June 2020, the Claimant replied to the questions that had been put to her. She set out the medication that she was currently prescribed and how she continued to have problems focusing, sleeping, was physically exhausted and was only sleeping three to four hours a night. She stated she had filled out an Occupational Health form but not had any response to that. She believed that another was required. Her fit note continued until 14 August 2020.

Occupational Health Report – 2 July 2020 (page 446)

130. The Respondent has agreed in the course of these proceedings that as consent by the Claimant was required for this to be released to it, it would have received this a few days later than that date after the Claimant gave that consent and that from such time it had knowledge of disability from that time. However, having then considered the evidence, it acknowledged in closing submissions that it had enough information to constructively be aware of disability from receipt of the first OH report around about 23 October 2019.

131. On the first page of the report it provided that the estimated date for return to work was approximately three to four weeks. That, therefore, would have been by the end of July 2020. Further on in the report, however, (bottom of page 447) in the opinion of the Occupational Health Advisor the Claimant had symptoms of anxiety, depression and perceived work related stress. The treatment for her symptoms had been appropriate and the advisor would not anticipate there was any further additional treatment which would improve her symptoms significantly. It continued,

“her perceptions relating to her current workplace would appear to be the maintaining factor for her ongoing symptoms. If this could be successfully addressed, I would expect that over a period of several months, her symptoms would improve significantly and should ultimately resolve”.

132. The advisor, however, was of the view that if the Claimant returned to work at the present time there would be a significant risk in exacerbating her symptoms,

“...because she perceives that the original triggers have not been sufficiently addressed. Therefore, I would recommend that temporarily, she is unfit to return to the workplace in any capacity. However, she would be medically fit to meet with her managers, to discuss the issues as she perceives them, and to look at potential situations. It may take more than one meeting to achieve this.

Management might want to consider undertaking a psychological stress risk assessment.”

133. If the perceived issues at work were addressed then the advisor envisaged a careful phased return back into the workplace.

134. Reading the report as a whole it appeared that it would take significantly longer than the three to four weeks stated at the front of the report for the claimant to return. Indeed, a further fit note was provided dated 24 August 2020 signing the Claimant off for a further two months until mid-October. The Tribunal accepts that this was indicating to the Respondent that the Claimant was not fit to return to work and the fit notes were not suggesting that she could return with adjustments. It was the Claimant's position in cross examination that had they had the meetings to discuss the Occupational Health Report, set targets and she had been assured that she had a role to go back to, then she could have gone back to her GP and said that she wanted to go back to work. She firmly believed that they would have worked as necessary to resolve the issues. The tribunal finds though that the GP was still signing the Claimant off as unfit to return to work and the Respondent had to take note of that.
135. It is, however, noted that the Occupational Health advisor had stated that even if unfit to return, the Claimant would be medically fit to meet with her managers to discuss the issues as she perceived them and also recommended a psychological stress risk assessment. Those do not appear to have been carried out.

Issue 11.2 – that the Respondent ignored, failed to consider or put in place the recommendations made in two Occupational Health Reports dated 22 October 2019 and 2 July 2020.

136. The Claimant removed the allegation insofar as it related to the 29 October 2019 report but pursued it in relation to the July 2020 Report.
137. As a result of the school holidays and Mr Martin's own holiday, he did not meet with the Claimant until 2 September 2020. The Tribunal saw a letter from him dated 4 September 2020 confirming that meeting (page 460). This meeting took place via Skype and the Claimant confirmed that the italicised parts of the letter of 4 September 2020 were comments that the Claimant had provided following the meeting.
138. Mr Martin had recorded that the Claimant had not agreed with Dr Lennox's timescale for her return to work within three to four weeks. He noted she did not consider that to be achievable. In the Claimant's amendment she suggested that was the Trust's target, hence Dr Lennox suggesting it. She could not be ready to return to work until the steps suggested by Occupational Health had been put in place. He also confirmed that the Claimant believed Dr Lennox had said he would offer her "*personal support*" to help her return back to work. He took this up with Dr Lennox and replied to the Claimant on 22 September 2020 that there appeared to have been a misunderstanding. He quoted Dr Lennox as stating they do not however treat employees as their function is to provide an independent, impartial, professional opinion to the employer. At the end of his letter,

Kevin Martin stated he had arranged a follow up meeting on Thursday 24 September 2020 when he would provide further feedback on her role and responsibilities having taken her comments back to Cathy Barr.

11.1.34 – 24 September 2020 – Kevin Martin told the claimant that the generic role she had been given in January 2018 was no longer needed and that her role was therefore to be deleted.

11.6 - from a date unknown to the claimant, but of which she became aware on 22 September 2020 Kevin Martin pursued the disingenuous and/or unfair redundancy process against the claimant.

37.4 - as an act of victimisation – the same allegation is 11.6 above

139. By letter of 24 September 2020 (page 475), Kevin Martin wrote to the Claimant further to an initial consultation meeting that had taken place that day. This confirmed that at the meeting they had discussed the reason and rationale for the proposed restructure which would result in the role of Deputy Principal within the Trust no longer existing. The situation had arisen due to an evaluation of the role of Deputy Principal, the tasks being carried out by that role being no longer required or having been reduced to a lesser level.

140. Mr Martin explained that at the meeting he had told the Claimant she would be invited to an individual Consultation Meeting to discuss any thoughts she might have on the proposed restructure. At her request, that meeting would take place on 29 September 2020 via Microsoft Teams. Mr Martin would conduct it and take notes. The Claimant was advised of her right to be accompanied.

141. The Claimant had no advance notice that that was a Consultation Meeting. She believed that it was a follow up meeting to discuss her role.

142. By email on 24 September 2020 at 1427, the Claimant stated she did not wish to go through the Consultation process,

“I am fully aware of the process and due to my health this will be too much for me to handle.”

143. The first Consultation Meeting still took place on 29 September 2020 and lasted only 10 minutes (page 519). The Claimant is noted as confirming she had no views on the proposal and there was nothing further to consider. She had no questions to put forward. The Claimant asked if there were other roles in the Trust at her pay and level and Mr Martin confirmed at present he did not believe there were, but roles became available all the time and he would send her a vacancy list. The Claimant is noted as saying that if there were no roles at her level then there was no point in sending her such a list. The Claimant again confirmed at that meeting she no

longer wished to continue with the Consultation Process and just wanted to “*know next steps*”. It was confirmed if there were no suitable alternative positions it was likely the Claimant’s position would be made redundant. An outcome would be provided to the Claimant on 1 October 2020. The Claimant accepted that she did get sent a vacancy list.

144. By letter of 1 October 2020, the Claimant was advised that her employment would terminate by way of redundancy on 2 October 2020. Details of her entitlements were set out in that letter. She was advised of her Right to Appeal which should be in writing within five working days. With that letter the Claimant was given the current vacancy list. She accepted in evidence that none of the roles on it were of interest to her.
145. The Claimant did not appeal. The Tribunal accepts that she had legal advice at that time. In response to the suggestion in cross examination that if she felt that the Chalk Hills Academy role should have been given to her, then that would have been a reason to appeal and to raise that point, The Claimant merely responded that she should have been given it in June.

Issues 24.15 and 29.14 – that in or around September 2020 the Respondent recruited a new Head of School for the Chalk Hills Academy without considering the role for the Claimant or discussing it with her – disability related harassment and discrimination arising from disability.

146. The evidence was that this role was advertised nationally in June 2020 and the Claimant had not expressed any interest in it at that time. The Claimant’s evidence in cross examination which the Tribunal did not find to be credible, was that the Trust knew in June 2020 that they were going to make her redundant and should have offered her the post of Chalk Hill at that time and not recruited. When it was put to her that she had no evidence that anyone was considering redundancy in June 2020, the Claimant’s response was,

“I don’t have the evidence of that, no”.

147. It was further put to the Claimant that she was still signed off until October and the Chalk Hills role directly reported into Louise Lee. There was no way she would have applied for a role working directly for her again. The Claimant’s evidence which was again not credible, was that she would have done so. She actually said,

“I would have been fine with that”.

Relevant Law

148. Employment Rights Act 1996:

Section 43B – Disclosures qualifying for protection

- (1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following-
 - (a) that a criminal offence has been committed, is being committed or is likely to be committed,
 - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
 - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
 - (d) that the health or safety of any individual has been, is being or is likely to be endangered,
 - (e) that the environment has been, is being or is likely to be damaged, or
 - (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.
- (2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.
- (3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.
- (4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.
- (5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

Section 47B – Protected Disclosures

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
- (1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—
 - (a) by another worker of W's employer in the course of that other worker's employment, or
 - (b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.
- (1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.
- (1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.
- (1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—
 - (a) from doing that thing, or
 - (b) from doing anything of that description.
- (1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—
 - (a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and
 - (b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).

Section 103A – Protected Disclosures

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

149. **Equality Act 2010:**

Section 123 – Time Limits

- (1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.
- (2) Proceedings may not be brought in reliance on section 121(1) after the end of—
 - (a) the period of 6 months starting with the date of the act to which the proceedings relate, or
 - (b) such other period as the employment tribunal thinks just and equitable.
- (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Section 26 – Harassment

- (1) A person (A) harasses another (B) if—
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or

- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B...
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.
- (5) The relevant protected characteristics are—
- age;
 - disability;
 - gender reassignment;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation

Section 27 – Victimisation

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
- (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
- (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.

- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

Section 6 – Disability

- (1) A person (P) has a disability if—
 - (a) P has a physical or mental impairment, and
 - (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
- (2) A reference to a disabled person is a reference to a person who has a disability.
- (3) In relation to the protected characteristic of disability—
 - (a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
 - (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.
- (4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—
 - (a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and
 - (b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.

Section 15 – Discrimination arising from disability

- (1) A person (A) discriminates against a disabled person (B) if—
 - (a) A treats B unfavourably because of something arising in consequence of B's disability, and

- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Section 20 – Duty to make adjustments

- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
- (2) The duty comprises the following three requirements.
- (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage...

Protected Disclosure

- 150. The case of Cavendish Monroe Professional Risks Management Ltd. v Geduld [2010] ICR 325 EAT, made it clear that the section requires there to be a disclosure of information. A letter which simply expressed dissatisfaction with the Claimant's treatment in that case did not amount to a disclosure of information.
- 151. In considering whether the disclosure was made, "in the public interest", the Tribunal can have regard to the four fold classification set out in Chesterton Global Ltd. v Nurmohamed [2017] ICR 731, namely:
 - 1. The numbers in the group whose interest the disclosures served;
 - 2. The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed;
 - 3. The nature of the wrongdoing disclosed; and
 - 4. the identity of the alleged wrongdoer.

Disability

- 152. The Tribunal must be satisfied that the test as set out in s.6 of the Equality Act 2010 is satisfied. Having regard also to Schedule 1 and the Guidance on the Definition of Disability (2011) in relation to the issue of knowledge, the Code of Practice provides at 5.17:

“If an employer's agent or employee (such as an Occupational Health Advisor or an HR Officer) knows, in that capacity, of a worker's or an applicant's or potential applicant's disability, the employer will not usually be able to claim that they did

not know of the disability and that they cannot therefore have subjected a disabled person to discrimination arising from disability.”

153. The case of Cox v Essex County Fire and Rescue Service UKEAT/0162/13, held that the Tribunal was entitled to find that an employee self identifying as having Bipolar Disorder and providing his own self analysis of the symptoms (without clear medical evidence) was not sufficient to establish actual or constructive knowledge of disability.

Section 15 EqA 2010 – Discrimination arising from disability

154. As set out at paragraph 5.5 of the Code of Practice on Employment, this section only requires the disabled person to show they have experienced unfavourable treatment because of something connected with their disability. There must be a connection between whatever led to the unfavourable treatment and the disability. As stated at paragraph 5.9 of the Code:

“The consequences of a disability include anything which is the result, effect or outcome of a disabled person’s disability. The consequences will be varied, and will depend on the individual effect upon a disabled person and their disability. Some consequences may be obvious, such as an ability to walk unaided or inability to use certain work equipment. Others may not be obvious, for example having to follow a restricted diet.”

155. In Charles Worth v Dransfield Engineering Services Ltd. UKEAT/0197/16, it was made clear that to satisfy the causation test the disability must be the operative or effective cause; the disability being a background circumstance is not sufficient.
156. The section requires there to be ‘unfavourable’ treatment. Paragraph 5.7 of the Code reminds that the claimant must be ‘put at a disadvantage’.
157. As the employer is able to justify unfavourable treatment under this section, the proportionality involves balancing the needs of the business against a discriminatory effect of the unfavourable treatment. Could the outcome have been achieved through less discriminatory means?

Section 20 – failure to make reasonable adjustments

158. Before the duty arises there must be a provision, criterion or practice (PCP) which has been applied by the employer. As stated in Ishola v Transport for London [2020] EWCA Civ. 112, the PCP must have some actual or potential general applicability. The Code of Practice deals with PCP at section 6.10 and states that although not defined in the Act,

“...should be construed widely so as to include for example any formal or informal policies, rules, practices, arrangements or qualifications including one off decisions and actions.”

They give the example of a Policy that designated car parking spaces only

to Senior Managers.

159. The duty to make adjustments requires employers to take such steps as it is reasonable to have to take in all of the circumstances of the case. The aim of the adjustments is to remove the disadvantage.
160. In Tarback v Sainsbury's Supermarkets UKEAT/0136/06, it was made clear that a risk assessment, work place assessment, OH Referral or other inquiries are not steps which remove a disadvantage.
161. It was also made clear in Bray v London Borough of Camden UKEAT/1162/01, that the duty does not mean an employer must ignore disability related absences.

Harassment

162. The Code of Practice at Chapter 7 provides guidance on the interpretation of the statutory provisions. At section 7.7 it is made clear that

“unwanted conduct covers a wide range of behaviour including spoken or written words or abuse, imaginary, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person’s surroundings or other physical behaviour.”

163. That it should be unwanted, the Code states means essentially the same as unwelcome or uninvited. The Code also emphasises as is stated in the statute that the unwanted conduct must be “*related to*” a protected characteristic.
164. In Richmond Pharmacology v Dhaliwal [2009] ICR 724, with regard to the effect being reasonable within the meaning of the statute includes whether or not the offence taken was intended. That decision is authority for the proposition that it is important not to encourage a culture of hypersensitivity nor impose legal liability in respect of every unfortunate phrase.
165. In determining discrimination claims and applying the burden of proof provisions the tribunal must take note of the guidance given in Madarassy v Nomura International 2007 IRLR 246 CA by Mummery LJ that:

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 had committed an unlawful act of discrimination.

Unfair Dismissal on the Grounds of Redundancy

166. The Tribunal must apply the provisions of Section 139 of the Employment Rights Act 1996 which provides as follows:

139. Redundancy

- (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—
- (a) the fact that his employer has ceased or intends to cease—
 - (i) to carry on the business for the purposes of which the employee was employed by him, or
 - (ii) to carry on that business in the place where the employee was so employed, or
 - (b) the fact that the requirements of that business—
 - (i) for employees to carry out work of a particular kind, or
 - (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,have ceased or diminished or are expected to cease or diminish.

167. Under s.98, redundancy is a potentially fair reason for dismissal.

168. The Tribunal must apply the Guidance given in Safeway Stores Plc v Burrell [1997] ICR 523:-

1. Was the employee dismissed?
2. If so, had the requirements for the employer's business for employees to carry out work of a particular kind ceased or diminished or were they expected to cease or diminish?
3. If so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution?
4. In considering the fairness of the process guidance was given in Williams v Compare Maxim [1982] ICR 156:-
 - i. giving as much warning as possible to allow affected employees to consider the relevant facts, possible alternative solutions and if necessary find alternative employment;
 - ii. consultation should be with a view to achieving a desired management result fairly with as little hardship to the employees as possible;
 - iii. criteria should so far as possible not depend solely upon the opinion of the person making the selection, but should be capable

- iv. of being objectively checked;
- iv. selection should be made fairly and the employer should consider any representations made by the employee; and
- v. the employer should seek to see whether alternative employment could be offered instead of dismissal.

169. In the event that the dismissal is found to be unfair the Tribunal is entitled under the provision set out in Polkey to decide whether or not the Claimant would have been dismissed in any event, either at that time or later, or what were the percentage chances of that occurring?

Conclusions

Protected Disclosures

Protected disclosure 1 – email 14 September 2016

170. The Claimant accepted in cross examination that contrary to what is alleged in the List of Issues she did not in this email state that Louise Lee's actions "*in changing and reducing my duties were affecting my health*". The Claimant gave no further information about the "*others*" who she claimed were also being affected and there is no suggestion in the email that she was formerly raising concerns on behalf of others.
171. In written closing submissions on behalf of the Claimant, Ms Akbar sought to rely on a subsequent telephone conversation the next day between the Claimant and Ms Barr (paragraph 9.1). That was not how the allegation was framed in the List of Issues. The Tribunal needs to follow the List of Issues particularly when it is as detailed and lengthy as this one.
172. There was no disclosure of information tending to show a relevant failure within the meaning of s.43B ERA 1996 in this email and therefore no qualifying disclosure.

Protected Disclosure 2 – meeting 21 November 2016

173. There are no notes of this meeting. As with the first alleged disclosure, very little detail is given by the Claimant. She raised for the first time in cross examination that she had referred to it being necessary to follow relevant policies; for example the Capability Procedure. She referred to the treatment of "*others*" but again no details were provided and no evidence that she was raising this on any "*others*" behalf. Ms Akbar relied on the disclosure being for the benefit of others in her written submissions (paragraph 9.2.2) but that was not the evidence heard.
174. The other aspect of this alleged disclosure was said to have been the assertion that there was an illegal use of consultants. In cross examination, however, the Claimant withdrew that and accepted that although she felt it might be bad practice, she had never made an

allegation of illegality. This was confirmed in paragraph 9.2.3 of Ms Akbar's written closing statement. She went on, however, in that paragraph to allege that the disclosure was in the public interest "*as it was the use of public money*". That was not the evidence heard as to what was said at the time.

175. There was no disclosure of information tending to show a relevant failure within the meaning of s.43B ERA 1996 in this email and therefore no qualifying disclosure.

Protected Disclosure 3 – meeting 24 April 2017

176. There are no notes of this meeting and all that the Claimant stated in her witness statement was that she raised again the concerns she had raised previously. No detail is given. The Claimant did not convey facts that tended to show a relevant failure within s.43B ERA 1996 and there was no qualifying disclosure.

Protected Disclosure 4 – the Claimant's Grievance 15 January 2020

177. The Respondent accepted that the Grievance of 15 January 2020 was a disclosure of information tending to show a relevant failure. However, it was all clearly about the Claimant's own situation and does not amount to a protected disclosure as there was not at the time a reasonable belief that the making of the Grievance was in the public interest. It was about the Claimant's own situation and that only.

Detriment

178. There having been no disclosures, the Tribunal has concluded that even if some of the matters occurred (which it does not always accept) those set out at paragraph 11 of the List of Issues did not occur due to the raising of any protected disclosures. Indeed, as has been recorded, a number were withdrawn in cross examination.

Automatic Unfair Dismissal

179. As the Claimant had not made any protected disclosures, the reason for her dismissal was not that she had made such.

Race related Harassment

180. As has been made clear in the Tribunal's findings of fact, where any of these events did occur the Claimant has not established facts from which it could be concluded that the reason for the Respondent's actions were because of a difference in race. As has been stated in all the authorities, the difference of protected characteristic is not in itself sufficient to pass the burden of proof to the Respondent. Even if the burden of proof had been passed, the Respondent, has as set out in the findings of fact above,

shown why it acted in the way that it did. The claimant also accepted in cross examination that there was no evidence that these matters related to her race other than that those given the roles were white. That is not sufficient.

181. The five matters that remained as alleged race related harassment were all events which did occur but cannot be said to have amounted to 'unwanted conduct' within the statutory provisions.

Disability

182. The Respondent has conceded disability on the basis of the Claimant's depression from October 2019 when it received that Occupational Health Report. Before that Cathy Barr knew of anxiety, stomach issues and sleep difficulties but not depression. The first fit note was not sufficient to show to the employer that the Claimant was disabled. The Claimant relies upon her email at page 184, but that did not set out any symptoms.

Disability related Harassment

183. As has been recorded, a number of these allegations were withdrawn by the Claimant. As has been set out in the Tribunal's findings insofar as any of these events occurred, they had absolutely nothing to do with the Claimant's disability and would not fall within the definition of harassment.

Issue 24.7 - disability related harassment – on 13 November 2019 Kevin Martin requiring the claimant to return to work or submit to the respondent's absence management process

Issue 24.8 – disability related harassment – Kevin Martin sending an email to the claimant requiring her to answer personal questions about her disability which had already been answered in an OH report dated 23 October 2019

Issue 24.9 - disability related harassment – during December 2019 and January 2020 Kevin Martin requiring the claimant to return to work or submit to the respondent's absence management process

184. The tribunal is satisfied that the respondent took a perfectly reasonable approach in offering the claimant's trade union representative various options as to how the absence management process could be followed. The option chosen was by the claimant's trade union representative. The claimant accepted that but maintained in cross examination that this correspondence still amounted to harassment of her due to her disability as she had to provide the information to Mr Binder. The tribunal has of course noted that option 2 in the letter of 13 November 2019 was a telephone call with Mr Binder when he would provide the respondent with an update. From hearing the claimant's evidence the tribunal is satisfied that the option that was chosen namely to answer questions put to them was chosen by the claimant in conjunction with her trade union representative. It was important that the respondent obtain an update from

the claimant herself (albeit via her trade union representative) in addition to the information provided by occupational health and this was in any event a further one month later. The means by which this was to be done having been agreed it could not amount to 'unwanted conduct' within the statutory definition.

Discrimination Arising from Disability – s.15 EqA 2010

185. The important aspect of a claim under this section is for a Claimant to identify the 'something arising' from the disability. The Claimant has said throughout in the List of Issues that this was the perception of others (sometimes not even named) that the Claimant lacked the ability to carry out her role, either because of her disability related sickness absence, or because of the symptoms of her disability. She has never identified the actual 'something arising' from the disability itself that she says was the reason for her being treated in this way. The claim under s.15 EqA 2010 was misconceived and must fail.
186. Further, some of the allegations under Section 29 of the List of Issues are wrong in fact. Issue 29.11 states that Sarah Mortimer refused to look at or review the Claimant's written materials and that is not in fact the case as she did look at them.
187. Issue 29.12 is the allegation that Cathy Barr restarted and then proceeded with the absence management process and the something arising was the Claimant's disability related absence. That could potentially be 'something arising'. However, the allegation is the restarting of the process when the Claimant criticised the Respondent for pausing it in the first place. The Tribunal does not accept it was unfavourable treatment in that it did not put the claimant at a disadvantage. The Claimant was referred to Occupational Health and the Respondent were trying to see if they could get her to return to work.

Failure to make Reasonable Adjustments

188. The Claimant had identified nine provisions, criterion or practice (PCPs) in the List of Issues, with the ninth being withdrawn. The Tribunal accepts the submissions made on behalf of the Respondent from paragraph 101 of its written closing submissions, that most of the PCPs do not come within the meaning of the statutory definition. There is clear focus on the way that it is alleged the Claimant was treated as opposed to the requisite neutrally applied PCP to the Claimant and others. Issue 31.1 – 31.4, 31.6 and 31.8 all relate to things that it is alleged on behalf of the Claimant the Respondent did to her. There was no evidence that these were practices carried out by the Respondent towards the Claimant and others.
189. The only PCPs which could come within the statutory meaning were: 3.15, a policy of not allowing employees to be accompanied to Grievance

Hearings by a legal representative; and 3.7, the Absence Management Procedure.

190. In relation to not allowing a legal representative, the Respondent accepts it applied that PCP. The Claimant has not established that she was placed at a substantial disadvantage. The Claimant had been advised of her right to bring a union official or work colleague. She asked to bring a legal representative as she was no longer represented by the union. She gave no indication that that was anything to do with her health. When the Respondent explained that it could not permit a legal representative, the Claimant did not express any concerns about that whether in relation to her health or any other reason. There is no indication in the Grievance Meeting notes that the Claimant was under any disadvantage from not being able to bring her solicitor.
191. In relation to the Absence Management Procedure itself, the Claimant's case appeared to relate to the alleged lack of variation of the triggers of the Policy given that the Claimant would have had greater sickness absence. However, it is clear from the Tribunal's findings that the Respondent did not in fact apply its Policy. The triggers were not applied and those referred to on behalf of the Claimant were only relevant to short term sickness absence. The Long Term Sickness Absence Policy was also not applied in that the Respondent expressly varied the approach to take into account the Claimant's union representative saying she was too ill to attend the proposed ill health review and then her Grievance.

Victimisation

192. The Claimant's grievance of 15 January 2020 was a protected act within the meaning of s27 of the Equality Act 2010. The Claimant withdrew three of the allegations of victimisation, leaving only that Kevin Martin pursued a disingenuous or unfair redundancy process and that he dismissed the Claimant. They were not acts of victimisation. The Tribunal has found that there was a redundancy situation as set out above and that neither he nor the respondent acted in the way they did due to the claimant's grievance.

Unfair Dismissal

193. The Tribunal is satisfied that the reason for the Claimant's dismissal was redundancy and that there was a genuine redundancy situation.
194. The Claimant was invited to consultation, but she did not wish to be part of it and withdrew from it.
195. The Tribunal does not have a problem with the pool of one in that she was the only person conducting that role, which was no longer needed.
196. The Claimant's case seemed to be that the Respondents should have performance managed her sooner. Perhaps they should have done, but

that is not the issue for this Tribunal and it must look at what it actually did. They did have performance concerns, but tried to find a role that suited the Claimant's skills so that they could retain her. That was agreed to with the trade union representative. On the facts that the Tribunal has found, it has not found that the Claimant was de-skilled and undermined in the carrying out of those new roles.

197. However, the meeting on 24 September 2020 was unfair as the Claimant was given no advance warning that redundancy was to be discussed and she thought she was to discuss her role with Cathy Barr and then a follow up to be conducted. Kevin Martin was still saying that in his email to her on 22 September 2020 (at page 464). That was what the Claimant thought she was going into and the process was made unfair by not making that clear to her.
198. On that basis alone, the Tribunal would find the dismissal ordinarily unfair under the provisions of s.98 of the Employment Rights Act 1996.

Polkey

199. Applying, however, the principles of Polkey - would dismissal have occurred in any event if the Respondent had told the Claimant what that meeting was to be about? The Tribunal is satisfied it would as the role the Claimant was in no longer existed. The Claimant did not want to participate in any consultation and there was no alternative role for her.
200. The Respondent did pause the absence procedure whilst the grievance was being investigated. The Claimant had been off from work for a substantial time with no return to work date. There had been adjustments where Nicholas Binder had answered on behalf of the Claimant and she was allowed written material at the Grievance Hearing. They had tried with the Grievance to investigate the Claimant's workplace issues, but the Grievance was not upheld.
201. The claimant's health was not improving and has not in fact improved. The claimant's view of her alleged treatment was not going to change. It was not going to be possible for the respondent to remove the 'stressors/triggers' as suggested by OH. The tribunal accepts that there was a redundancy situation but had there not been then it accepts that the claimant would still have been dismissed even if it had taken longer with further reports to reach that position.
202. As dismissal would have occurred in any event for redundancy there will be no compensatory award.

Wages claim

203. The Claimant's claim of unauthorised deduction from wages was brought as that and not a breach of contract claim. She confirmed in cross

examination that the sole basis was the argument put forward by her then union representative in December 2019. She stated that while she was not aware of the content of the case law referred to by him, her understanding was that work related illness equalled full pay under Clause 9.1 of the Burgundy Book.

204. The case relied upon of Roberts does not deal with contractual interpretation, but is a case about constructive dismissal. The Claimant did not resign in connection with this matter and the case is not relevant.
205. The Respondent has provided the case of Cooke v Highdown School and Sixth Form Centre Governors [2016] 7 WLR 37 which does deal with the interpretation of Clause 9 of the Burgundy Book. That held that sickness absence which a GP had recorded as being for work related stress was not sufficient to entitle the claimant to full pay. As in the case before this tribunal there had been no attestation by an approved medical practitioner. The Claimant could not point to any such attestation, but then sought to rely upon Occupational Health. Occupational Health is not such a medical practitioner and is only reporting on what the Claimant told them. In any event, they did not categorically state that the Claimant's illness had been caused by the employer.
206. The Claimant and her representative's understanding of the provisions was wrong, the claimant received what she was entitled to and the claim of unauthorised deduction must fail and is dismissed.

Time Limits

207. Although the tribunal has dealt with all the claims on their merits it does accept the submissions made on behalf of the respondent that the claims against Louise Lee are significantly out of time by 3 years. Several of the allegations go back to 2016. The claim was issued on 24 November 2020. Issue 11.1.20 in December 2017 is the last discriminatory act alleged against Louise Lee. There is no evidence of much interaction between her and the claimant from then on and neither did she have any involvement in the management of the claimant's sickness absence.
208. On 22 May 2017 Nick Binder wrote to the claimant in connection with the meeting that day advising her of the courses of action open to her. The first was through a tribunal. Stating whilst 'the possible rewards through a tribunal are not great. But this is certainly a route we can pursue or threaten to pursue.' The claimant continued to have trade union advice up to January 2020. No grounds have been put forward as to why it was not reasonably practicable to have brought the ERA proceedings or the basis on which it would be just and equitable to extend time in connection with the EA proceedings. The tribunal therefore has concluded that the allegations from 2016 to 2017 were presented out of time and the tribunal

did not in fact have jurisdiction to determine them.

Employment Judge Laidler

Date: 1 September 2023

Sent to the parties on: 5 September 2023

For the Tribunal Office