



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4121128/2018 & S/4106427/2019

Held in Glasgow on 9, 10, 11, 12, 13 & 19 March 2020, 24, 25, 26 & 27 October
& 3, 7 & 14 November 2022 & 9, 10, 11, 12, 13, 24 & 25 January 2023

Employment Judge F Eccles

Members Mr A McFarlane

Mr H P Boyd (on 9,10, 11, 12, 13 & 19
March 2020)

10 Mr M Sutherland

Claimant
Represented by:
Mr LG Cunningham
- Advocate

15 Glasgow City Council

Respondent
Represented by:
Mr D Hay -
Advocate

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claims of harassment, victimisation and failure to make reasonable adjustments under the Equality Act 2010 are not well-founded and shall be dismissed.

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REASONS

Background

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1. The first claim – S/4121128/18 - was presented on 5 October 2018. The second claim – S/4106427/19 - was presented on 3 May 2019. In both claims, the claimant complains of failure on the part of the respondent to make reasonable adjustments, harassment and victimisation under the Equality Act 2010. The claims are resisted. The claims were conjoined by Order of an Employment Judge dated 2 August 2019. The respondent does not dispute that the claimant is a disabled person for the purposes of proceedings under the Equality Act 2010. They deny having discriminated against the claimant

by failing to make reasonable adjustments, harassment or victimisation. It was agreed that the parties would provide the Tribunal with witness statements which would stand as the witnesses' evidence in chief. A final hearing was listed to determine liability only. The final hearing was listed for various dates
5 in March 2020 and could not be completed due to the covid pandemic. For health reasons, Mr H Boyd was unable to sit as Tribunal Member from January 2022 onwards. With the consent of parties, the continued hearings were before the Employment Judge and Mr A McFarlane.

2. The claimant was represented by Mr LG Cunningham, Advocate. The
10 respondent was represented by Mr D Hay, Advocate.

3. The Tribunal heard evidence from the claimant. For the claimant, the Tribunal heard evidence from Angela Sutherland, the claimant's mother and Andrew Sharp, a family friend. For the respondent the Tribunal heard evidence from
15 Lynne Scartaccini, Faculty Head of Mathematics at All Saints Secondary School; Marisa Murphy, Former Deputy Head Teacher at All Saints Secondary School; Mark Geddes, Mathematics Teacher and the claimant's Mentor at All Saints Secondary School; Brain Feeney, Head Teacher at All Saints Secondary School; Colin McKenzie, Head of Faculty in Expressive Arts and Probationer Supporter at All Saints Secondary School; Fiona Downey,
20 Quality Improvement Officer in the respondent's Education Department with responsibility for the Student Placement Programme in Glasgow; Ian McIntyre, Mathematics Teacher and the claimant's Mentor at Hillpark Secondary School; Graham Edgar, Depute Head Teacher and Probationer Co-Ordinator at Hillpark Secondary School; Mandy Krause, Principal Teacher
25 of Mathematics at Hillpark Secondary School; Fiona Milligan, Co-Ordinator in the Language and Communication Resource at Hillpark Secondary School; Gillian Guild, Mathematics Teacher at Hillpark Secondary School; Sharon Crawford, Depute Head Teacher at Hillpark Secondary School; Geri Collins, Head Teacher at Hillpark Secondary School; Debby Brown, Teacher of
30 Additional Support for Living and Nurture at Hillpark Secondary School; Alison Allan, Senior HR Officer with the respondent's Education Department and

Jane McDonald, HR Officer with the respondent's' Education Department. The Tribunal was provided with a joint Bundle of Productions.

4. The Tribunal had regard to the Equal Treatment Bench Book in the conduct of the hearing and gave, where possible, clear instructions about procedure and regular timed breaks during the hearing.

Findings in fact

5. The Tribunal found the following material facts to be admitted or proved; the respondent is a large local authority. The claimant was employed by the respondent as a Probationer Teacher from 11 August 2017 to 20 December 2018. The claimant has Asperger Syndrome.

6. Before starting his employment with the respondent, the claimant had completed a post graduate diploma in education (secondary) (PGDE) at Strathclyde University. The claimant's teaching subject is mathematics. The PGDE included placements at two secondary schools in Glasgow during the academic year 2016 to 2017. The placements went well and the claimant received positive and encouraging feedback (P34-37). The claimant obtained provisional registration with the General Teaching Council for Scotland (GTCS).

7. In order to obtain full registration with the GTCS, the claimant had to complete a probationary period and demonstrate an ability to meet the standards for full registration (P23 & 24) ("the standards"). During their probationary period, probationer teachers are observed teaching and receive regular reviews of their teaching abilities. Probationary teachers are required to regularly update a GTCS digital profile.

All Saints Secondary School

8. The claimant was offered a probationary contract with the respondent to teach mathematics at All Saints Secondary School ("All Saints") from 11 August 2017 to 26 June 2018. In advance of starting at All Saints, the claimant attended an informal meeting for teachers on 8 June 2017 where he met the newly appointed Faculty Head of Mathematics, Lynne Scartaccini, and other

members of staff. Lynne Scartaccini introduced herself to the claimant and they both spoke to a number of other teachers. During the meeting on 8 June 2017, the claimant mentioned to another teacher that he has Asperger Syndrome. Lynne Scartaccini subsequently learned of this conversation from another teacher. She was concerned the claimant had not told her that he has Asperger Syndrome. She sought advice from the then Head Teacher who suggested that she monitor the situation rather than raise it with the claimant direct.

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9. During the meeting on 8 June 2017 the claimant and Lynne Scartaccini discussed when the claimant might receive his timetable for the coming term. The claimant was anxious to receive his timetable well in advance of the term starting. Lynne Scartaccini informed the claimant by e mail dated 13 June 2017 (P38/280) that she would provide him with a timetable as soon as she had worked it out herself. The claimant received his timetable along with other members of the department on or about 11 August 2017.

10. On or about 15 August 2017, the claimant discussed with the school's Probationer Support, Colin McKenzie, and other probationer teachers that he has Asperger Syndrome. It was the first day of term and the meeting was an informal introduction for probationer teachers. Colin McKenzie asked the claimant how the condition affected him and whether he required any particular support from the school. The claimant reassured Colin McKenzie that the condition did not affect him in any way that required support and that he was able to manage his condition. Colin McKenzie informed the claimant that he should not hesitate to let him know if he required any additional support. On the basis of the claimant's reassurance that he was able to manage his condition and did not require any additional support, Colin McKenzie did not report his discussion with the claimant to any members of the school's management team. The claimant discussed having Asperger Syndrome at a lunch time gathering of staff on or about 17 August 2017. Lynne Scartaccini was not present at the gathering.

11. As a result of the claimant having Asperger Syndrome, he has difficulty processing and responding to information. He finds stressful situations

negatively impact upon his ability to process information and to communicate. The claimant has difficulty embracing change at short notice. He has difficulty recognising non-verbal communication and social cues which affects his ability to assess social interactions. He reacts negatively to criticism. He has a tendency to take things literally and struggles to assimilate guidance. The claimant has difficulty with normative social interactions though the use, for example, of eye contact. He can feel vulnerable if not supported during official meetings.

12. As a probationer teacher the claimant was assigned a Mentor. The claimant's Mentor was Mark Geddes, a Teacher in the Mathematics department. The claimant had a good working relationship with Mark Geddes.
13. Mark Geddes met with the claimant on a weekly basis for around an hour. As a Probationer Teacher, the claimant was responsible for identifying issues to be discussed at the mentor meeting and for producing minutes to be uploaded to the claimant's digital profile with GTCS. On at least three occasions the claimant failed to prepare a list of issues to be discussed with Mark Geddes. During their meetings, Mark Geddes would regularly ask the claimant if there was anything else that he wished to discuss or raise with him about his probationary period. Mark Geddes would regularly ask the claimant if he required any additional support. The claimant did not raise concerns at the Mentor meetings with Mark Geddes about having Asperger Syndrome.
14. Shortly after the start of his probationary period, Mark Geddes became concerned about the claimant's teaching abilities. Having observed him teaching on 13 September 2017 and from discussions at their meetings, Mark Geddes had concerns about the claimant's ability to manage behaviour in the classroom, plan lessons and develop positive pupil relations. He was concerned about whether the claimant was accepting and following advice provided to him during their meetings. He was concerned about the claimant's working hours and whether he was failing to focus on essential aspects of lesson planning and spending a disproportionate amount of his time on non-essential tasks. Mark Geddes was concerned that pupils in the claimant's classes were falling behind. Mark Geddes reported his concerns to Lynne

Scartacinni as Head of Faculty. Mark Geddes provided the claimant with additional support on a number of areas of his teaching practice including lesson planning; use of language to avoid confrontation; use of technical equipment and related software and forward planning. Arrangements were made for the claimant to observe other classes.

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15. Lynne Scartacinni and Mark Geddes both observed the claimant teaching on various dates during September and early October 2017. They were both concerned by the claimant's teaching. Lynne Scartacinni observed the claimant teaching on 2 October 2017 (P114). She identified areas for development as lesson planning and more appropriate use of resources. Lynne Scartacinni was not satisfied that there had been any significant improvement in earlier areas of concern about the claimant's teaching including his ability to manage behaviour in the classroom and measure pupil engagement and understanding.

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15 **Early warning**

16. On or about 2 October 2017 Lynne Scartacinni and Mark Geddes in consultation with the Head Teacher, Marisa Murphy decided that it was appropriate to issue the respondent with an early warning (P46/305-307) in relation to the claimant.
17. Lynne Scartacinni completed the early warning form for submission to the respondent (P46/305-307). Areas of concern identified by Lynne Scartacinni included the claimant's time management, planning and pace, ability to read situations in the classroom and ability to *“act on advice given and ensure he doesn't take things too literally.”*

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25 **Meeting – 5 October 2017**

18. Marisa Murphy, Lynne Scartacinni and Mark Geddes met with the claimant on 5 October 2017 to discuss the areas of concern identified in the early warning (P46/305-307). They wished to discuss the early warning with the claimant before it was sent to the respondent. During their meeting, Lynne Scartacinni discussed with the claimant the reasons for concern.

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Meeting - 11 October 2017

19. On 11 October 2017, Marisa Murphy wrote to Fiona Downey (P50/327), the respondent's Quality Improvement Officer and Probationer Manager about concerns in relation to the claimant's *"ability to cope with the learning and teaching in the classroom and to deal appropriately with situations"*. Marisa Murphy was sure Fiona Downey was aware that the claimant *"has Asperger's and while we cannot allow this to colour our judgment, the characteristics of this which he displays, are indeed compromising his ability to effectively manage his learning and teaching."*
20. This was the first occasion that Fiona Downey was made aware of the claimant having Asperger Syndrome. Later that day, she replied to Marisa Murphy (P50/327) confirming that she could see that All Saints had been *"working quite extensively with (the claimant) and have been supporting him well."* Fiona Downey confirmed that she had not been aware of the claimant's disability and that she would *"rectify this with HR."* Fiona Downey also confirmed that the claimant had not yet raised any concerns in training although she now had a better understanding of an e mail that he had sent to her about assessments. Fiona Downey asked whether the claimant had *"awareness of the concerns raised by the school and how his Asperger's contributes to them."*
21. Marisa Murphy contacted Lynne Scartaccini to enquire whether the claimant was aware of the concerns raised about his teaching and how having Asperger Syndrome might contribute to them. Lynne Scartaccini replied (P50/326) that the claimant was aware of the concerns as she and Mark Geddes were supporting him and talking to him about them at meetings. Lynne Scartaccini confirmed that she had not indicated to the claimant that she thought having Asperger Syndrome was *"contributing"* and that she was *"not sure about the ethics behind this"* Marisa Murphy checked (P50/326) with Fiona Downey whether the school should speak to the claimant about the *"impact of his condition"*.

22. Lynne Scartaccini was hesitant about raising the subject of having Asperger Syndrome with the claimant. Marisa Murphy recommended that she ask the claimant if his condition was contributing to behaviour management issues in the classroom. In her capacity as Faculty Head and the claimant's Mentor, Lynne Scartaccini attended the claimant's mentor meeting with Mark Geddes on 11 October 2017 (P48). They discussed areas of concern identified in the early warning. Following the advice, she had received from Marisa Murphy, Lynne Scartaccini asked the claimant whether having Asperger Syndrome might be contributing to behaviour management issues in the classroom and whether he was taking advice "*too literally.*" The claimant disagreed. The claimant responded that Asperger Syndrome had nothing to do with his ability to manage the behaviour of pupils and did not cause him difficulties with reading situations in the classroom. The claimant did not ask for additional support. It was recorded in the notes of the meeting (P48) that the claimant would "*take on the points raised and (to) focus on issues in run up to Christmas.*"
23. The claimant was upset about the early warning. He disagreed with it. He felt it was unjustified and in an email to Fiona Downey later that day (P49/322) identified the concerns in the early warning as either due to "*settling in*" or class allocation. The claimant questioned whether any of the reasons for concern were "*ongoing*" and expressed concern about how the early warning "*looks.*" He stated that he did not wish "*things to escalate, as the department have been a very nice bunch of people to me.*" Fiona Downey replied to the claimant later that day advising him to respond to the early warning by discussing the issues identified with his mentor, developing better methods of understanding and responding to pupils and by being more flexible. Fiona Downey informed the claimant that the timescale for improvement was Christmas when his first recommendation was to be made to GTCS. She asked the claimant to have a chat with her at the next training session. Fiona Downey informed Marisa Murphy by e mail dated 12 October 2017 (P50/325) that she had spoken with HR and suggested that the school could ask the claimant "*about his Asperger's and what support he feels he needs.*"

24. Following the early warning, Lynne Scartaccini became more involved in mentoring the claimant. Mark Geddes continued to meet with the claimant on a regular basis. He focused on providing pastoral support and support with lesson planning generally. Lynne Scartaccini took over responsibility for supporting the claimant to meet the GTCS standards and keep his GTCS paperwork including GTCS digital profile up to date.

Second allegation of harassment

25. The claimant resisted Lynne Scartaccini's increased involvement in his probationary period. Lynne Scartaccini was more inclined than Mark Geddes to comment on his teaching methods. She was methodical in checking that he was completing his GTCS paperwork. Lynne Scartaccini was anxious to see the claimant's teaching improve. The claimant struggled to accept Lynne Scartaccini's advice. He did not agree with it. Their working relationship became increasingly strained. On 30 October 2017, Lynne Scartaccini sent an e mail to teachers in the Mathematics Department including the claimant (P52/331). The claimant replied correcting her spelling of a pupil's name. Lynne Scartaccini was taken aback by the tone of the claimant's e mail in particular given that it had been sent to her as his Faculty Head. She subsequently spoke to the claimant about the e mail and advised him against sending e mails in similar terms if we wished to develop positive relationships with members of staff.

Third allegation of harassment

26. On or about 2 November 2017 the claimant attended a training session for probationary teachers with Fiona Downey. The claimant was still upset about the early warning and blamed Lynne Scartaccini for issuing it. He spoke to Fiona Downey about the early warning. Fiona Downey did not know Lynne Scartaccini. She sought to reassure the claimant about the possibility of making improvements and encouraged him to follow advice provided by Lynne Scartaccini as his Faculty Head. She offered the claimant support. He did not identify anything that might assist him.

Observation by Colin McKenzie – 8 November 2017

27. On 8 November 2017 the claimant was observed teaching by Colin McKenzie, in his capacity as Probationer Support. Colin McKenzie's substantive post is Head of Faculty (Expressive Arts). During his observation, Colin McKenzie focussed on the claimant's teaching methods generally. He knew that the claimant has Asperger's Syndrome from the discussion at the start of term. Colin McKenzie prepared a report following the classroom observation (P57). He identified concerns including the atmosphere in the classroom, lack of clarity and flexibility in delivery and pace of learning. Colin McKenzie was particularly concerned about the claimant's ability to relate to pupils and recognise when they had understood learning points. Colin McKenzie met with the claimant to provide feedback. Colin McKenzie was anxious to support the claimant and provide constructive feedback while identifying areas for improvement. The claimant did not respond well to Colin McKenzie's feedback. He disagreed with Colin McKenzie's observations.

Observation by Marisa Murphy – 13 November 2017

28. On 13 November 2017 the claimant was observed teaching by Marisa Murphy, Depute Head Teacher. Marisa Murphy knew that the claimant has Asperger's Syndrome. Marisa Murphy prepared a report following the classroom observation (P57/349). She identified concerns that were similar to those identified by Colin McKenzie such as the atmosphere in the classroom, delivery and pace of learning. Marisa Murphy was also concerned about the claimant's ability to relate to pupils. Marisa Murphy met with the claimant to provide feedback on or about 14 November 2017). Marisa Murphy was anxious to support the claimant and provide constructive feedback while identifying areas for improvement. The claimant did not challenge Marisa Murphy's feedback.

Observation by Fiona Downey - 1 December 2017

29. Marisa Murphy was sufficiently concerned about the claimant's lack of progress in obtaining his GTCS standards that she contacted Fiona Downey on 7 November 2017 (P54). Fiona Downey replied suggesting additional

supports be put in place and confirmed that she would attend All Saints the following week (P54). Arrangements were made for the claimant to observe other teachers during January 2018. There were concerns about the claimant failing to update his GTCS digital profile. The claimant informed Fiona Downey that he did not agree with the feedback from observed lessons. It was agreed that Fiona Downey would observe the claimant teaching. On 1 December 2017 the claimant was observed teaching by Fiona Downey in her capacity as Quality Improvement Officer. She prepared a report following the classroom observation (P63). She identified strengths and areas for development. Her concerns were similar to those identified by Colin McKenzie and Marisa Murphy including the atmosphere in the classroom, delivery and pace of learning.

30. On or about 11 December 2017, Fiona Downey met with the claimant to provide him with feedback. The claimant did not accept that Fiona Downey had grounds for concern about his standard of teaching. Marisa Murphy joined the meeting. The claimant was asked whether there were any reasonable adjustments that could be made to support him. The claimant said there were none that the respondent could make. The claimant was offered time to identify any reasonable adjustments. The claimant did not suggest any reasonable adjustments.

31. Fiona Downey was concerned about the claimant's GTCS profile. She arranged for the claimant and Lynn Scartaccini to discuss the GTCS profile which was unlocked to allow updates where it was considered that the profile did not accurately reflect the concerns and areas for development previously identified at mentor meetings and following teaching observations. The claimant did not agree with the concerns raised about the accuracy of his GTCS profile.

Fourth allegation of harassment

32. Relations between the claimant and Lynne Scartaccini did not improve after the Christmas holiday. The claimant continued to resist the involvement of Lynne Scartaccini as his mentor. This concerned and frustrated Lynne

Scartaccini. On or about 11 January 2018 Lynne Scartaccini and the claimant had a tense exchange about whether the claimant was listening to advice from Lynne Scartaccini. After their exchange the claimant spoke to Brian Feeney, the Head Teacher. The claimant mentioned to Brian Feeney about having a strained relationship with Lynne Scartaccini and of discussions with his trade union. He expressed concern about the loss of Mark Geddes as his sole Mentor. Brian Feeney was not persuaded that there were grounds to change the claimant's mentoring arrangements.

Observation by Lynne Scartaccini – 19 January 2018

33. On 19 January 2018 the claimant was observed teaching by Lynne Scartaccini. She prepared a report following the classroom observation (P437) in which she identified areas of strength and for development. She recorded that the claimant should "*try to act on advice he is given.*" She identified concerns including the atmosphere in the classroom, lack of clarity and flexibility in delivery and pace of learning. Lynne Scartaccini met with the claimant on 22 January 2018 to provide feedback. The claimant did not agree with Lynne Scartaccini's feedback.

Progress report

34. During January 2018, Marisa Murphy instructed Lynne Scartaccini to prepare a Probationer Teacher Progress Report for the claimant. From her observations of the claimant, Lynne Scartaccini felt unable to confirm in her report (P68/443) that the claimant was able to demonstrate or would be able demonstrate by the end of his probationary year, the GTCS standards for full registration. In her report, Lynne Scartaccini identified the support and additional support provided to the claimant (P69/443). This included additional time spent advising the claimant on teaching methods, classroom management and structured lessons, team teaching and arranging for the claimant to observe other Teachers. Brian Feeney, Head Teacher also felt unable to confirm that the claimant had met the standards for full registration or that overall, he would meet them by the end of his probationary year (P73/476), He was unable to recommend the claimant for a permanent post.

He recorded that the claimant had significant areas for development in relation to lesson planning, areas of learning and teaching and assessment, He did not doubt the claimant's professionalism or that he was an extremely hard-working individual who was willing to improve. The claimant scored 2 out of a possible 6. A score of 2 is given when a Probationary Teacher is "*operating to the required standard in some areas*".

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35. Lynne Scartaccini sent the claimant a copy of her report (P69/443) on 31 January 2018. She offered to join his mentor meeting with Mark Geddes later that day. Marisa Murphy also attended the mentor meeting with the claimant.
10 (P133/674). At the meeting, Marisa Murphy and Lynne Scartaccini sought to reassure the claimant that although he had not met the required standards, with continued improvement, this was achievable. Areas for improvement were discussed. The claimant was asked to reflect on the support offered to date and to feedback on how effective it had been. He was asked to provide
15 details of any further support strategies that could help and to inform Lynne Scartaccini after he had had time to reflect.

36. The claimant added his comments to the report. (P73/477) He commented that he was "*unhappy and disheartened*" by the assessment. He disputed the accuracy of the report. He commented that previous reports did not take
20 account of his "*specific probationary context, where (he) experienced a number of unnecessary difficulties and challenges which are exacerbated by having Asperger's*" The claimant stated that he had informed the school from the outset of his disability but they did not "*put reasonable adjustments in place to accommodate any Asperger's related challenges in the first few
25 months*". He claimed to have been presented with additional challenges. He commented that his "*probationary experience (had) been more inconsistent and challenging compared to other probationary teachers' experiences, and they do not have particular disabilities/challenges*" which he claimed had not been "*conducive towards (his) probationary teacher development.*" The
30 claimant described feeling "*wholly uncomfortable*" signing off the report which he refused to do. He confirmed that he would continue to reflect on its content

and endeavour to work towards demonstrating the standards for full registration and professional development.

37. A meeting was arranged to discuss the progress report and support that could be offered to the claimant to meet the GTCS standards. The claimant and his trade union representative met with Brian Feeney and Marisa Murphy on or about 8 March 2017. The claimant had requested that Marisa Murphy did not attend the meeting. Brian Feeney insisted that Marisa Murphy attend the first half of the meeting to explain the support that had been put in place to assist the claimant since the start of his probationary year. During the meeting there was discussion about the possibility of an additional placement after June 2018 to help the claimant to meet the standards for full registration. During the meeting the claimant was critical of the support he had received from Lynne Scartaccini and Marisa Murphy. The claimant did not agree with Brian Feeney that there were grounds for concern about his teaching standards. He challenged the accuracy of the early warning. Brian Feeney spoke to Marisa Murphy and Lynne Scartaccini after the meeting about the level of support provided to the claimant. He was satisfied that the claimant had received an appropriate level of support.

38. On 13 March 2018, the claimant left work early due to concerns about his health. The claimant consulted his GP later that day and was diagnosed as suffering from work related stress. He was provided with a Fit Note confirming he was unfit to work for two weeks. Marisa Murphy attempted to contact the claimant and confirmed by e mail dated 15 March 2018 that he would be referred to Occupational Health in accordance with standard practice. The claimant felt stressed by contact from the respondent. The claimant's health did not improve. He had a telephone meeting with Occupational Health on 28 March 2018. He informed Occupational Health that he felt starting at another school would benefit him. Occupational Health recommended that a "*change in school should be considered due to the events that have happened in this school and because of their effect on (Michael's) health.*" Based on information provided to them by the claimant, Occupational Health referred to the "*unsupportive events/ situation at the school*" and that if they were not

resolved they were unable to specify when the claimant would be able to return to work. (P143/699).

Protected act

39. On 24 April 2018 the claimant's solicitor wrote to Brian Feeney about concerns over the claimant's treatment at All Saints. In his letter (P78), the claimant's solicitor referred to the early warning and alleged remarks by Lynne Scartaccini and Fiona Downey as amounting to harassment. He also referred to the claimant's concerns that his treatment by the respondent was because of his disability and that there had not been proper account or adjustments made to allow for his disability. The claimant sought the opportunity to re-start his probationary year in a different school.
40. The solicitor's e mail was forwarded to Fiona Downey who contacted the claimant's trade union representative (P79). Fiona Downey confirmed that All Saints had "*opted for extension as the final recommendation.*" The claimant's solicitor replied on 4 June 2018 (P86). He invited Fiona Downey to reconsider the claimant's request that he be allowed to re-start his probationary year at a different school. He described the early warning and reports as factually incorrect and "*linked to the claimant's' disability or tainted by a failure to take account of his disability.*" He requested a meeting to discuss the claimant's concerns. In advance of meeting with the respondent, the claimant provided Jane MacDonald from the respondent's HR with a list of concerns relating to his probationary period at All Saints (P90/561).
41. On 8 June 2018 the claimant met with Fiona Downey and Jane MacDonald from the respondent's HR. The purpose of the meeting was to discuss the claimant's absence from work. The claimant attended the meeting with his solicitor. The claimant and his solicitor wished to discuss matters raised in their correspondence about the claimant's alleged treatment at All Saints and their request for that the claimant be allowed to re-start his probationary year. Alison Allan, Senior HR Officer was present at the start of the meeting to confirm that the purpose of the meeting was to discuss the claimant's absence from work and to provide support for his return to work including a move to a

new school. Fiona Downey was not persuaded that GTCS would agree to the claimant restarting his probationary year. She suggested that the claimant was offered a 90-day extension. The claimant reiterated his concerns about the accuracy of the early warning and reports from All Saints. He did not want them to be copied to a new school. Fiona Downey was unable to provide the claimant with an undertaking that records of his performance at All Saints would not be shared with another school. No such undertaking was given to the claimant.

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42. Jane MacDonald wrote to the claimant on 14 June 2018 (P88/549-550) confirming what had been agreed at the meeting on 8 June 2018. Jane MacDonald confirmed that the respondent accepted a change of schools was a reasonable adjustment.

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43. A case overview report (P91) was submitted to GTCS recommending that the claimant be given an extension to demonstrate that he had met the standard of competence required to gain full registration. The case overview report (P91) was agreed by Brian Feeney, Marisa Murphy and Fiona Downey. A copy was sent to the claimant on or about 28 June 2018 confirming that a copy had also been sent to GTCS. The extension recommended by All Saints was granted and accepted by the claimant on 18 June 2018. An extension was granted of 90 days rather than the standard 60 days.

Hillpark Secondary School

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44. Hillpark Secondary School (“Hillpark”) was identified by the respondent’s HR as a suitable school for the claimant’s extension. It was approved by Fiona Downey in part because it has a large Mathematics department, and both the Head and Deputy Head Teacher had a background in Mathematics. It also has a Language & Communication Resource which support pupils with a diagnosis of Autism.

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45. The claimant began working at Hillpark on 13 August 2018. Ian McIntyre, Maths Teacher was appointed as the claimant’s Mentor. The claimant had regular Mentor meetings with Ian McIntyre (P206 – P236).

46. On 14 August 2018, Graham Edgar, Depute Head Teacher and probationer coordinator at Hillpark, contacted Fiona Downey for advice about the claimant's placement. (P158/760). Fiona Downey replied on 22 August 2018 (P158/759) confirming that the claimant's case was "*more complex*" and that she would appreciate time with Graham Edgar and Geri Collins, Head Teacher "*so that we get this right*". Fiona Downey confirmed that the claimant has Asperger Syndrome and that she had sought advice from the Autism Scotland Society. Fiona Downey was particularly concerned that Hillpark was a successful placement and that steps were taken to identify support in addition to the usual support that would be put in place for a probationary teacher. She recommended keeping an eye on the long hours that the claimant may work and to try and focus the claimant on the right tasks to work on and to encourage him to socialise with colleagues to avoid becoming overanxious. On or about 22 August 2018 Fiona Downey provided Graham Edgar and Geri Collins with a copy of the claimant's Case Overview Report (P158/759-792) from All Saints. This was in accordance with the practice of providing information, such as a case overview report, to a new school in circumstances where a probationary teacher changes schools. This is for the purpose of the extension school being made aware of the areas required for development on the part of the probationary teacher and intended to assist a probationary teacher who moved to another school. Graham Edgar and Geri Collins read the Case Overview Report (P158/759-792) to help identify the areas where the claimant required to improve his teaching at Hillpark and to identify how the claimant might be supported during his extension.

25 **Meeting on 30 August 2018**

47. The claimant attended a meeting with Geri Collins, Graham Edgar, Fiona Downey and Jane Macdonald from HR on 30 August 2018. They were all anxious that the claimant should succeed at Hillpark and demonstrate the required GTCS standards to obtain full registration. The claimant was informed in writing (P159/793) by Geri Collins that the purpose of the meeting was to "*discuss your experience working in Hillpark so far and for you to be given the opportunity to bring to our attention any support needs you may*

have and to open discussions in terms of meeting said needs". The claimant was advised that he could be accompanied by a trade union representative or other person of his choosing.

48. The claimant prepared a document in advance of the meeting entitled
5 *Disability – how it might affect me (recognised so far!!)* (P243/1135). The document (P243/1135) was dated 31 August 2018 and read as follows:

“Disability – how it may affect me (recognised so far!!)

31st August 2018

- 10 • ***Starting tasks*** – *it may take me longer to adjust to courses/online systems/rules. I take longer to learn the complexities of rules.*
- ***Time for change*** – *‘I may need longer to adjust to changes in courses etc (more than one or two days’ notice for example)*
- 15 • ***I may communicate things*** *to staff (in a different mannerism with pupils) that may come across as ‘different’, ‘simple’, or ‘repetitive’; I’m sometimes simply recognising the specific ‘rules’ of systems.*
- 20 • ***Opportunities to develop*** – *discussions with staff on what they think my development needs are, no matter how honest it is! I’d like to know about developmental needs before it goes straight to council before I knew it was an issue. I like specific instructions, and perfectly honest and honestly worded feedback, no matter how ‘offensive’ it may ever seem. I appreciate regular reviews of my progress”.*

49. The claimant distributed copies of his document (P243/1135) at the meeting. He confirmed that there was nothing further that those attending the meeting should know or further adjustments required. At the meeting the claimant was
25 reminded by Geri Collins to keep an open dialogue and to raise concerns as and when they arose. Graham Edgar prepared a note of the meeting (P266/1181). Jane Macdonald wrote to the claimant by letter dated 12 September 2018 (P161/797) confirming what had been agreed in terms of providing the claimant with support. This included arranging peer

observations, sharing classroom strategies, avoiding change where possible and providing clear deadlines and instructions. The claimant was encouraged to maintain an open dialogue with colleagues including the Head Teacher and to raise concerns as and when they arose.

5 50. On or about 4 September 2018 the claimant asked Graham Edgar, Depute
Head Teacher whether he could observe some of his pupils being taught by
other Teachers. (P162/803). The claimant was finding the behaviour of the
pupils challenging. Graham Edgar agreed to the claimant's request and
arranged the observations. He provided the claimant with a list of possible
10 classes at a mentor meeting with Ian McIntyre on 7 September 2018. A
number of the observations took place.

15 51. On or about 7 September 2018, Fiona Downey contacted Scottish Autism, an
organisation that provides information and support for people with a diagnosis
of Autism. Fiona Downey sought advice from Scottish Autism as to how the
claimant might be supported in the workplace. Scottish Autism provided Fiona
Downey with information (P166/814-815) about "*potential difficulties and
potential strategies*", links to Apps for adults on the Autism spectrum and
organisations that offer guidance on employment. Fiona Downey passed on
the information received from Scottish Autism (P166/814-815) to Geri Collins
20 who forwarded it to Graham Edgar and Mandy Krause, Principal Teacher in
Maths for consideration as to how the claimant might be supported and to
identify any reasonable adjustments. Fiona Downey requested that she be
told of any changes made using the information provided "*to show that (we)
have made reasonable adjustments to support Michael to be successful.*" Geri
Collins requested that Mandy Krause inform Ian McIntyre, who was also
25 provided with the information from Scottish Autism (P166/814-815), of the
request from Fiona Downey that she be informed of any reasonable
adjustments made to support the claimant. Geri Collins was anxious that the
school identify how to support the claimant.

30 52. On 18 September 2018, Mandy Krause circulated proposed dates for formal
observations of the claimant teaching (P163/805). She asked that the
claimant was given at least one week's notice of any observation.

Observation by Geri Collins – 18 September 2017

53. The claimant was struggling with disruptive behaviour in his classes. He was observed by Mandy Krause and other Teachers failing to maintain order during lessons. On 18 September 2018, Geri Collins informally observed the claimant teaching a class. She had been approached by a pupil from one of the claimant's classes with concerns about management by the claimant of her class. The pupil wished to be moved to another class. This was an unusual situation. Geri Collins mentioned it to the claimant. She offered to observe the class informally and provide the claimant with feedback and to suggest improvement strategies, as appropriate. The claimant accepted her offer. During the observation on 18 September 2018, Geri Collins was concerned by the pace of the lesson, the lack of different teaching methods to reflect the ability of pupils and class organisation generally. Geri Collins provided the claimant with detailed feedback and suggested a number of steps that he could take with the class to improve his teaching (P247/1146).

Observation by Mandy Krause – 20 September 2018

54. Mandy Krause observed the claimant teaching on 20 September 2018. She was concerned about the pace of the lesson. There was a lack of engagement with the pupils. There was evidence of lack of lesson planning and some misunderstanding on the part of the claimant in the subject matter. Mandy Krause was concerned about the claimant's teaching. She met with the claimant on 1 October 2018 to discuss the observation and provided detailed written feedback on a classroom observation pro-forma (P248/1147-1150). In her written feedback (P248/1147-1150), Mandy Krause identified areas of strength and a significant number of areas for the claimant to consider. These included matching the level of the lesson to meet pupil needs and varied teaching strategies, careful planning, careful listening of pupil responses and improved pace with increased pupil engagement. Mandy Krause was sufficiently concerned from her observation of the claimant teaching and how stressed he seemed that she raised with him whether he was certain about teaching. She was also concerned that the claimant resisted her suggestions

for improvement and instead sought to question the accuracy of her observations and challenge her feedback.

Observation by Ian McIntyre - 3 October 2018

55. Ian McIntyre observed the claimant teaching on 3 October 2018. The observation fell on a day when there was to be a school assembly before the lesson. Ian McIntyre asked the claimant whether in the circumstances he wished to postpone the observation. The claimant informed Ian McIntyre that he would prefer to proceed with the observation. As anticipated the class was late arriving at the claimant's lesson due to their attendance at the school assembly. Ian McIntyre observed the claimant struggling to adapt his lesson plan to the remaining time available for the lesson. There was a lack of engagement from most of the pupils. The claimant failed to observe that a number of pupils were not learning. Ian McIntyre was concerned about the claimant's ability to manage the class and check for pupil understanding.
56. Ian McIntyre provided the claimant with detailed written feedback about the lesson. He completed a pro-forma observation report (P249/1151-1154) in which he identified the claimant's strengths and areas that he should consider for improvement. The claimant was defensive about the lesson and reluctant to accept the areas for improvement. The claimant met again with Ian McIntyre on 5, 11 and 12 October 2018 to discuss the feedback. The claimant challenged many of the issues identified by Ian McIntyre as areas for improvement. The claimant provided Ian McIntyre with his observations on the lesson (P188/ 885-888). The claimant observed that there had been significant improvements since his previous observation. Ian McIntyre did not agree. Ian McIntyre was concerned about the accuracy of the claimant's observations (P188/885-888). The claimant wanted Ian McIntyre to amend his feedback. Ian McIntyre was reluctant to make any material changes.
57. The claimant presented a claim to the Tribunal on 5 October 2018 in which he complained of failure on the part of the respondent to make reasonable adjustments, harassment and victimisation.

58. Mandy Krause was concerned about the number of pupils that the claimant was removing from the classroom. She was concerned about the claimant's ability to maintain control in the classroom. She was having to visit his classroom throughout the day to deescalate disruption. She regularly provided the claimant with advice on strategies to maintain discipline and to avoid escalation of disruptive behaviour. Mandy Krause arranged for another Teacher, Gillian Guild to also provide the claimant with support and advice on who to maintain order in the classroom. The claimant was not responding to the advice offered, in particular by Mandy Krause. He challenged the accuracy of the feedback provided to him by Mandy Krause with a member of staff outside the Maths department. Mandy Krause felt that the claimant's conduct undermined her authority and was not consistent with collegiate working in the Maths department.

Early warning - cause for concern

59. On or about 11 October 2018, Mandy Krause completed an early warning cause for concern in relation to the claimant (P246/1143-1144). The actions for improvement identified in the cause for concern included honest self-evaluation, planning ahead, improved communication with pupils, better time management and encouraging pupil engagement. The claimant did not agree with the areas for improvement identified in the early warning cause for concern. They were similar concerns to those identified at All Saints. He considered them to be exaggerated and untrue. He considered them to be a continuation of, and influenced by, his time at All Saints.

Observation by Geri Collins - 24 October 2018

60. Geri Collins observed the claimant teaching again on 24 October 2018. She provided the claimant with detailed written feedback (P250/1155-1159) in which she identified areas of strength and a significant number of areas for the claimant to consider. Many of her concerns were similar to those already identified by Ian McIntyre and Mandy Krause. They included lack of pupil engagement and understanding. The claimant challenged observations made by Geri Collins. He was not agreeable to accepting her advice about how he

might improve his teaching. He was unhappy about Geri Collins questioning students in his class about their understanding of the lesson.

5 61. Mandy Krause arranged to discuss the early warning cause for concern with the claimant before sending it to the respondent. A meeting was arranged for 25 October 2018. It was postponed until the following day at the claimant's request. At the meeting, Mandy Krause raised with the claimant the importance of collegiate working. She had concerns about the claimant discussing her feedback with another Teacher outside the Maths Department. They discussed the benefits of the claimant preparing lesson plans for the week ahead. Following their meeting, Mandy Krause sent the early warning cause for concern to the respondent.

Observation by Mandy Krause - 30 October 2018

15 62. The claimant's classes were reduced in size. The claimant's teaching did not improve. He continued to struggle with student behaviour. He would regularly remove pupils from his class for discipline issues. Mandy Krause would visit his class on most occasions when a pupil was removed. She was concerned about the regularity with which certain pupils were removed from the claimant's class. Mandy Krause observed the claimant teaching on 30 October 2018. Overall, Mandy Krause did not observe an improvement in the claimant's teaching. There was still lack of engagement with the pupils, in particular during group work. Mandy Krause had concerns about the claimant's ability to plan and deliver a lesson. She provided the claimant with detailed written feedback (P251/1161-1163). The claimant did not agree with Mandy Krause's feedback. He did not sign the observation pro-forma that she had completed (P251/1161-1163) and did not add it to his online GTCS profile.

Observation by Debby Brown – 5 November 2018

30 63. Hillpark has a Language and Communications Resource Unit (LCR) that provides additional support to pupils with Autism Spectrum Condition. Concerns were expressed to Debby Brown, a Teacher from the LCR by supply teachers and pupils about the claimant's classes which contained

pupils for whom she was responsible. Debby Brown attended one of the claimant's lessons on 5 November 2018. She was concerned about the lack of discipline and the claimant's lack of presence in the classroom. She was concerned about his ability to deliver the lesson at an appropriate pace. She suggested to the claimant that she take a group of around 6 pupils to another classroom. She suggested this to help the claimant and not because she had concerns about the any of the pupils' behavioural needs. The claimant spoke to Debby Brown informally about his teaching methods and how he might improve them. Debby Brown sought to encourage the claimant. She suggested that he could be more assertive in the classroom and provided the claimant with supportive advice about how he might improve discipline in the class room.

Support meeting

64. Geri Collins was concerned about whether the claimant would be able to demonstrate the GTSC standards before the end of his extended probationary period. Fiona Downey contacted her on 14 November 2018 about arranging a support meeting with the claimant. Geri Collins was keen that the meeting take place as soon as possible. She was aware of the claimant's request that he be given notice of meetings but wished to maximise the time available to the claimant to evidence his competency for full registration. Geri Collins tried to speak to the claimant before the end of the school day. This was not possible, and she contacted the claimant later that day by e mail (P185/878) and suggested that the meeting could take place the following day. The claimant replied to Geri Collins by e mail later that evening (P185/878). He expressed concern about the meeting having been arranged at short notice and on the same day as his final observation. The claimant referred to the reasonable adjustment of "*more than one or two days' notice.*" He requested that the meeting was rescheduled. Arrangements were made to reschedule the meeting and final observation.

65. Mandy Krause also contacted Geri Collins by e mail dated 14 November 2018 (P260/1193-1194) setting out her concerns about the claimant's lack of improvement notwithstanding the level of support provided by her and other

members of the Maths department. The claimant was now receiving support from teachers remaining in the classroom with the claimant during classes that he found particularly challenging. The school was receiving complaints from pupils and parents about the claimant's classes. Mandy Krause expressed concern that the pupils in the claimant's class were being disadvantaged. She referred to a deterioration in the behaviour of some of the pupils and the lack of opportunity for others to learn and demonstrate progress. She referred to concern having been voiced by parents and pupils and expressed the wish that classes revert to their original teachers to get them "*back on track with progress and behaviour.*"

66. On 16 November 2018, the claimant contacted Mandy Krause by e mail (P263/1199-1200). He described the previous week as being "*particularly challenging with regards to the challenging behaviour presented in his classes.*" He referred to a large number of his pupils demonstrating persistent disruptive behaviour. He referred to the level of upset that he had experienced following receipt of Geri Collins' e mail (P185/878) about the proposed meeting on 15 November 2018. Mandy Krause forwarded the claimant's e mail (P263/1199-1200) to Geri Collins. There was no evidence of the pupils identified by the claimant displaying similar levels of disruptive behaviour in other classes across the school.

Observation by Ian McIntyre – 16 November 2018

67. Later that day, Ian McIntyre observed the claimant teaching. This was his second observation of the claimant. It had been due to take place on 15 November 2028 but had been rearranged because the claimant felt unprepared. The claimant was being observed more regularly and by more colleagues than is usual for a probationary teacher because of the difficulties that he was experiencing with teaching and to provide him with additional support. Ian McIntyre was concerned that the claimant failed to challenge misbehaviour in the classroom. The claimant focussed on a small number of pupils. He appeared unable to control the class. Ian McIntyre was concerned that these were similar issues to those that he had identified during the previous observation. He was also concerned about the lesson. There were

technical inaccuracies, the tasks were vague and the lesson was not paced appropriately. Ian McIntyre provided detailed written feedback of the observation (P252/1165-1168). The claimant did not agree with the feedback. He did not sign the observation pro-forma (P252/1165-1168) completed by
5 Ian McIntyre.

Meeting on 23 November 2018

68. The claimant met with Geri Collins, Fiona Downey and Jane Macdonald, HR for the respondent on 23 November 2018. The claimant was accompanied by Andy Sharp, a family friend. The purpose of the meeting was to obtain the
10 claimant's response to the early warning cause for concern and to identify how the respondent could support the claimant to meet the GTCS standards before the end of his extended probationary period. The claimant expressed concern about the length of time remaining of his probationary period. He challenged the accuracy of the feedback from observations. He claimed that
15 he was not being listened to in terms of the observations and disagreed with comments made about his progress. He gave this as the reason for refusing to enter all but one of the five observations to date had been entered on his online profile. The claimant denied that there had been any discussion with him about the cause for concern before it was submitted. He described it as
20 harsh and negative and not the reality.

69. Fiona Downey sought to reassure the claimant that Geri Collins was willing to consider any other reasonable adjustments that he could suggest to help make progress. The claimant asked whether his Supporter, had received specific training on Asperger Syndrome. Geri Collins explained that all staff
25 had received training in how to support children with Autism including Asperger Syndrome. The claimant said he felt that staff were not empathetic or understanding of his disability and that he felt there was negativity towards him from Mandy Krause. Geri Collins did not accept the claimant's assessment of the staff at the school. She suggested that contact could be
30 made by the claimant with Fiona Milligan in the LCR. The claimant was encouraged to identify additional adjustments that the school could make to support him. He requested that he was supported in identifying priority areas

on which to focus in the early warning cause for concern. Geri Collins suggested that this was something that he should work on with Mandy Krause. Fiona Downey prepared a record of the meeting (P244/1137-1139).

5 70. Following the meeting on 23 November 2018, it was decided that the claimant should no longer be responsible for two of his classes. Class sizes were reduced and team teaching was arranged to allow the claimant to focus on the areas identified in the early warning cause for concern. A further meeting with Geri Collins was arranged for 26 November 2018. At this meeting, the claimant informed Geri Collins that he was content with the outcome of the meeting on 23 November 2018. Geri Collins confirmed the position to staff supporting the claimant by e mail on 26 November 2018 (P264/1201).

Observation by Graham Edgar - 4 December 2018

15 71. On 4 December 2018, Graham Edgar observed the claimant teaching. This was intended to be the claimant's final observation. The class was limited to 12 pupils. The lesson was disorganised from the start. The claimant was not in control of the lesson. There was a lack of engagement with the pupils. There was a lack of ability demonstrated by the claimant to adapt the lesson plan. Graham Edgar was taken aback by the claimant failing to give a pupil time to answer a question. He was concerned about the claimant's ability to understand some of the mathematical concepts being taught and to understand whether the pupils were able to undertake parts of the lesson and to differentiate their learning needs. Graham Edgar was concerned that the level of teaching provided by the claimant was potentially detrimental to the pupils in his class.

25 72. Graham Edgar provided the claimant with detailed written feedback of his observation (P195/901-909). The feedback was detailed and identified numerous suggestions for improvement. The claimant met with Graham Edgar on 6 December 2018. The claimant agreed with Graham Edgar that the lesson had not gone well. He signed the feedback form prepared Graham Edgar (P195/909).

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73. On 7 December 2018 the claimant received National 4 preliminary examination results for one of his classes. The average result was 61%.

Meeting with Fiona Milligan – 7 December 2018

5 74. The claimant met with Fiona Milligan, Co-ordinator of the LCR on 7 December 2018. The claimant told Fiona Milligan about how he felt he had been treated by members of staff having disclosed that he had Asperger Syndrome. He expressed concern about information being shared with Hillpark by All Saints. Fiona Milligan offered to observe the claimant teaching. She suggested various support organisations that might be able to provide advice on Autism
10 in the workplace.

Observation by Sharon Crawford - 12 December 2018

15 75. At the claimant's request an additional observation was arranged on 12 December 2018. It did not go well. Sharon Crawford, Depute Head Teacher who observed the claimant, was particularly concerned by the claimant's inability to control the class or engage with the pupils. She was concerned by his lack of self-reflection during their discussion after the lesson. Sharon Crawford provided detailed written feedback of her observation (P198a).

Meeting on 13 December 2018

20 76. On 13 December 2018 the claimant met with Geri Collins, Fiona Downey and Jane McDonald from the respondent's HR. The claimant was accompanied by Daniel Johnstone, Campus Police Officer. The purpose of the meeting was to review the previous four weeks of the claimant's extended probationary period, feedback from observations, support provided, completion of the claimant's GTCS profile and to notify the claimant of the school's final
25 recommendation. Geri Collins was not satisfied that there was evidence to show sufficient improvement on the part of the claimant to meet the GTCS standards for full registration. While Geri Collins was satisfied that the claimant's ability to plan lessons had improved, she was unable to find sufficient evidence to show any improvement in his delivery of lessons. The
30 claimant was unable to engage with constructive feedback and accept advice

on how to improve his teaching methods. Geri Collins concluded that in all the circumstances she was unable to recommend the claimant for full registration. She decided that she should recommend cancellation of the claimant's registration. This was explained to the claimant. Fiona Downey prepared a record of the meeting (P245/1141-1142).

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77. Geri Collins drafted the Case Overview Report for submission to the GTCS (P200). In the Case Overview Report (P200), Geri Collins recommended cancellation of the claimant's provisional registration. The Overview Report (P200) included detailed evidence to support the recommendation including a general overview with extracts from a log kept by Mandy Krause, notes on observations and meeting notes. The Case Overview Report (P200) was submitted to GTCS on 20 December 2018.

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78. The claimant presented a second claim to the Tribunal on 3 May 2018 in which he complained of failure on the part of the respondent to make reasonable adjustments, harassment and victimisation.

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Observations on evidence

79. As observed in the respondent's submissions, the Tribunal heard from a substantial number of witnesses of whom 16 were for the respondent. The majority of the respondent's witnesses were qualified teachers with experience of supporting probationary teachers in obtaining full GTCS registration. For some witnesses, this experience was extensive. The evidence of all the witnesses was relevant and helpful to the Tribunal. The fact that their evidence is not commented upon in detail below should not be seen as suggesting otherwise, in particular the evidence of Mandy Krause and Ian McIntyre in relation to the support provided to the claimant during his time at Hillpark. The claimant's mother, Angela Sutherland, gave evidence about the claimant's health and her concerns for his general well-being while employed by the respondent. Her evidence was not challenged. Specific comments have been provided by the Tribunal where the evidence of a witness was central to an issue to be determined by the Tribunal as opposed to background or supporting evidence.

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Claimant

80. The Tribunal did not doubt that the claimant believed his version of events to reflect the truth. He repeated on a number of occasions that he was only interested in the truth. He described the statements of the respondent's witnesses as saying things that "*did not happen*." He struggled to accept the possibility of people having a different perception of events. For example, the Tribunal found that when Hillpark School reduced the size of his classes, it was in the genuine hope that it would allow him to improve his teaching practice. It was difficult to understand the claimant's evidence that this was done to prevent him from gaining full registration. It was the claimant's position that when the respondent's witnesses did not agree with him, it must follow that they were not telling the truth. The Tribunal did not accept this and on balance generally preferred the evidence of the respondent's witnesses where disputes arose about what happened or was said to the claimant.
81. The Tribunal found that on occasions, the claimant sought to avoid answering questions. For example, when asked about when he first came to understand the meaning of "*pastora*" in a teaching environment and when he was first asked about failing to complete a list of issues for meetings with Mark Geddes. His evidence was selective and only supported his case. The Tribunal was unable to accept his evidence that so many people with whom he came into contact at the two schools had all sought to prevent him from becoming a qualified teacher.
82. While any suggestion of collusion was withdrawn by the stage of submissions, it was the claimant's position, when giving his evidence, that events had been completely made up by a number of staff. He spoke about statements being crafted to deliberately mislead a Tribunal. He did not answer direct questions about whether for example he accepted that he sent out a substantial number of students from the classroom at Hillpark. In response, he chose to speak at length about the lack of alleged support he had received from the respondent. He said of Lynne Scartaccini that "*she did not want me to pass*" and that she had used "*his Asperger's as a point of criticism*". She was "*crafting an agenda*." The claimant described the response of Hillpark to his teaching as

an “*agenda similar to the previous school.*” It was no coincidence that both schools had similar concerns about the claimant’s ability to meet the standards required for full registration. They were, according to the claimant, supporting each other. The claimant described the staff at Hillpark as being
5 “*under pressure to fail him.*” Ian McIntyre’s concerns were “*genuinely not accurate*” and “*made to “support previous findings.”* The claimant described Debby Brown and Fiona Milligan not supporting his version of events as being “*to protect each other.*” The Tribunal, having considered the evidence overall, was unable to accept that the claimant’s evidence about the treatment he
10 received at both schools could be relied upon.

83. The claimant relied on a record of events (P227 & P228) that he claimed consisted of contemporaneous notes made by him of significant events. The Tribunal was not persuaded that the record was a collection of contemporaneous notes as opposed to a document created and edited at
15 various times and for various purposes including the present proceedings. The Tribunal did not accept the claimant’s evidence that for the most part it was a typed version of handwritten notes taken at the time, or very shortly after the time, the event described was said to have occurred. There is reference for example to “*supporting evidence*” (page 49) and retrospective
20 reflections on how the claimant had treated staff which the claimant accepted in his evidence was added to the document at a later date to “*scope out context*” and “*give light to (his) personality*”.

Mark Geddes

84. Mark Geddes was probably the witness in whom the claimant placed most
25 trust while employed at All Saints. They had a good working relationship and the claimant appreciated the support Mark Geddes provided in his capacity as a Mentor. Mark Geddes recalled the claimant declining offers of additional support. When it was put to the claimant in cross examination that Mark Geddes did not agree with his version of events, the claimant described Mark
30 Geddes as having “*turned his back*” on him and of “*siding with the establishment.*” He claimed that Mark Geddes had failed to fully record what they had discussed during mentor meetings for fear of causing offence to

Lynne Scartacinni. The Tribunal did not agree with the claimant. Mark Geddes was an open, honest, and straightforward witness. From the start he had been keen to support the claimant and it was clear from his evidence that he was genuinely disappointed that the claimant struggled while at All Saints.

5 85. The claimant's observations on Mark Geddes were also inconsistent with the honest manner in which he gave evidence about the relationship between the claimant and Lynne Scartacinni. While in his opinion "*Lynne Scartaccini was always supportive of the claimant*" (para 39 of witness statement) when giving his evidence in cross examination he did not dispute that their relationship became challenging. This was something that he put down to Lynne Scartaccini wanting to see improvements in the claimant's teaching and to her direct managerial style which he described as being quite "*to the point*" and at times "*blunt*." He did not however recall Lynne Scartaccini making the alleged statement to the claimant about his Asperger's stopping him from being a good teacher. He described it as "*not something Lynne would have said*." He recalled a meeting at which Lynne Scartaccini "informed the claimant that the school was aware that he has Asperger's and asked him if there was anything that he needed to support him" (para 55 of witness statement) and that Lynne Scartaccini asked if "*his condition could be impacting on his interaction with school pupils*" to which he "*definitely said 'no'*".

25 86. When giving his evidence, Mark Geddes did not hesitate in saying when he did not recall events. He was adamant however about the accuracy of his assessment of the claimant's lack of ability to control the class and to adequately explain subjects. He was also adamant that the meeting on 5 October 2017 took place and that the cause for concern was discussed with the claimant at that meeting. The Tribunal preferred his evidence, along with the other witnesses who gave evidence of attending it, to that of the claimant that on balance the meeting of 5 October 2017 did take place. The Tribunal was unable to accept the claimant's evidence that the meeting had been "*completely made up by a number of staff in collusion*." The Tribunal was not persuaded that the lack of a written note of the meeting or the fact that the

claimant undertook some form of training on that day (P65/404) were sufficient grounds to reject the evidence of the respondent's witnesses or to draw an adverse inference. The possibility of the meeting not having taken place because the claimant was off campus attending training was not put to
5 Marisa Murphy who was also adamant that the meeting to discuss the cause for concern had taken place.

Lynne Scartaccini

87. Lynne Scartaccini was understandably defensive when giving her evidence. She was honest about her reluctance to discuss the claimant having Asperger
10 Syndrome because he had not raised it with her directly. The Tribunal accepted her evidence that when she did raise it, the claimant was adamant that having Asperger Syndrome was not connected to the difficulties that he was facing with meeting the GTCS standards. The Tribunal also accepted Lynne Scartaccini's evidence that at the meeting on 11 October 2017 she did
15 not question whether the claimant having Asperger Syndrome might prevent him from being a good teacher, but rather questioned whether having Asperger Syndrome might be contributing to the behaviour management issues in the classroom. Lynne Scartaccini accepted that she might have observed at the meeting on 11 October 2017 that the claimant took advice
20 "too literally". It was something that she had noted in the early warning (P46/305-307).

88. Lynne Scartaccini was honest about the challenges she faced in managing the claimant. In her oral evidence she described how the decision to take over responsibility from Mark Geddes for the administrative side of his mentoring
25 "seemed to be a turning point in (the claimant's) eyes" and was something that he "saw as a very negative thing." She did not dispute that her working relationship with the claimant was tense. The Tribunal was not persuaded that this was, as suggested by the claimant, because she wanted him to fail because he has Asperger Syndrome or for any other reason. The Tribunal
30 found that Lynne Scartaccini was anxious to support the claimant. There was no persuasive reason advanced as to why she would be motivated to see him fail. When viewed objectively, the Tribunal found that tensions in their

relationship and any frustration on the part of Lynne Scartaccini were caused by the claimant's reluctance to accept and follow advice as a probationary teacher without challenge, in particular if the advice came from Lynne Scartaccini. The claimant's position that Lynne Scartaccini was using him having Asperger Syndrome as a "*point of criticism*" was not supported by the evidence before the Tribunal.

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89. Given the tension in their relationship, the Tribunal did not doubt that Lynn Scartaccini was taken a back on receiving the claimant's email of 30 October 2017 correcting her spelling of a pupil's name. The Tribunal was not persuaded however that she had responded in the manner described by the claimant of raising her voice in a public space. The Tribunal concluded that the claimant's description of this exchange was exaggerated. There was no evidence before the Tribunal from the other members of staff who it was claimed had overheard Lynne Scartaccini raising her voice or otherwise behaving inappropriately towards him. Similarly, while the Tribunal did not doubt that there were regular exchanges between Lynne Scartaccini and the claimant and that one such exchange took place on or about 11 January 2018, the Tribunal was not persuaded that Lynne Scartaccini "*snapped*" at the claimant. When questioned about her alleged conduct on 30 October 2017 and 11 January 2018 it was not put to her that it related to the claimant having Asperger Syndrome and in any event the Tribunal was not persuaded that her conduct on either occasion did relate to the claimant having Asperger Syndrome.

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90. As regards the alleged act of harassment based on Fiona Downey's comments about the type of staff member that Lynne Scartaccini wanted in her department, Lynne Scartaccini denied making any such comments to Fiona Downey and in his evidence, the claimant clarified that he was not suggesting that Lynne Scartaccini had made the alleged comment to Fiona Downey.

Fiona Downey

91. In her evidence, which the Tribunal accepted, Fiona Downey denied having made the comment attributed to her. At the time of the alleged comment, she had not met Lynne Scartacinni and had no knowledge of what type of staff member she may want in her department or reason to speculate on the subject. Fiona Downey did not dispute that she may have encouraged the claimant to keep working with Lynne Scartaccini as his Principal Teacher and to respond to the advice provided.
92. As with the respondent's witnesses generally, the Tribunal found that Fiona Downey wanted to support the claimant to achieve the standards required by GTCS for full registration. She was particularly concerned that Hillpark was a successful placement and that steps were taken to identify support in addition to the usual support that would be put in place for the claimant. She wanted there to be "*no dubiety this time round – clear and concise support, structured and ordered.*" (cross examination).
93. Fiona Downey's evidence was clear and persuasive in relation to whether any undertaking was given at the meeting on 8 June 2018 not to send any documents relating to the claimant's time at All Saints to Hillpark. She was adamant that this was not something to which she would, or indeed could, agree as the new school would have to be made aware of the concerns identified at All Saints in order to target the areas for development if the claimant was to achieve the GTCS standards. The Tribunal accepted her evidence that failing to send the Case Overview to the new school would have been contrary to practice when a probationary teacher moves to another school. There was no undertaking referred to in the letter (P88/549-550) following the meeting in which the respondent confirmed the offer of an extension or any persuasive evidence of the claimant or of his solicitor seeking confirmation from the respondent of what was said by the claimant to be a condition of him accepting an extension.

Jane Macdonald

94. Jane MacDonald was also at the meeting on 8 June 2018. She had not seen the letter from the claimant's solicitor (P78). It was not discussed with her before or after the meeting. Her evidence was clear and persuasive that at no point during the meeting was any undertaking given to not send the Case Overview or other documents pertaining to the claimant's employment at All Saints to his next school. Jane MacDonald described her understanding that sharing documentation was "normal practice" if a probationary teacher moved schools. Jane MacDonald was, as the claimant submitted, adamant that she had never come across the hypothetical situation put to her of a specialist coming in to the school to make recommendations. The Tribunal did not accept however that as a result, Jane MacDonald's evidence displayed a lack of awareness as to how the claimant might be supported in his return to work or generally at Hillpark.

15 Geri Collins

95. Geri Collins was clear in her evidence about how she considered the claimant having Asperger Syndrome affected his ability to achieve an effective partnership with his pupils. In her evidence, Geri Collins referred to the claimant having Asperger Syndrome as "*not allowing him to understand the needs of the pupils in his care. He was not able to respond to the learning journey of the pupils and adapt his approach as and when required.*" (paragraph 88 of witness statement), The Tribunal did not agree with the claimant's submission that her assessment of how Asperger Syndrome affected his ability to teach was based on stereotypical thinking. The Tribunal was satisfied that it was based on her observations of the claimant in a teaching environment and her genuine attempts to support the claimant to achieve the GTCS standards.

Colin McKenzie

96. Similarly, the Tribunal did not agree that Colin McKenzie's assessment of the claimant's teaching abilities was an example of stereotypical thinking. His test of a good teacher as someone who he would be happy teaching his own

children was an honest, if somewhat subjective, assessment of the claimant's teaching abilities as a probationary teacher. It was clear from his evidence that this assessment was based on his genuine concerns about the standard of the claimant's teaching at the stage of the observation given the level of support the claimant had received from the school in particular from Mark Geddes.

Discussion & deliberations

97. Both parties helpfully provided written submissions which they supplemented with oral submissions. Parties' submissions were considered in detail along with all of the evidence before the Tribunal. There was very little, if any, dispute over the statutory provisions or legal principles applicable to the case. When reaching its decision, the Tribunal had regard to primary findings in fact and, where applicable, the shifting burden of proof under Section 136 of the Equality Act 2010.

98. It was not in dispute that the claimant is a disabled person for the purposes of his claims under the Equality Act 2010. There was no medical evidence before the Tribunal, but it was accepted that the claimant has Asperger Syndrome. The claimant brought three claims under the Equality Act 2010; harassment, victimisation and failure to make reasonable adjustments.

20 Harassment – Section 26 of the Equality Act 2010

99. The issues to be considered by the Tribunal in relation to the above claim were identified by the parties as follows:

- i. Did the respondent's employee, Lynne Scartaccini engage in unwanted conduct;
- i. In a conversation with the claimant on 11 October 2017 that related to the claimant's Asperger's by telling the claimant "*do you not think that your...your...your...Asperger's is going to stop you from becoming a good teacher?*";

- ii. In a conversation with the claimant on 30 October 2017 that related to the claimant's Asperger's by scolding him for "aggressive emails" after the claimant informed her that she had spelt a pupil's name incorrectly;
- 5 iii. On or around 30 October 2017 in a conversation with Fiona Downey that related to the claimant's Asperger's regarding the type of staff member that Lynne Scartaccini wanted in her department &
- 10 iv. In a conversation with the claimant on 11 January 2018 that related to the claimant's Asperger's by shouting at him in a hallway for not making eye contact and paying attention?
- ii. Did this conduct have the purpose of violating the claimant's dignity or create an intimidating, hostile, degrading, or offensive environment?
100. In terms of Section 26(1) of the Equality Act 2010, a person (A) harasses
15 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
20 offensive environment for B.
101. Section 26(4) of the Equality Act 2010 provides that in deciding whether conduct has the effect referred to in Section 26 (1) (b), each of the following must be taken into account -
- i. the perception of B;
- 25 ii. the other circumstances of the case;
- iii. whether it is reasonable for the conduct to have that effect.
102. In this case, the protected characteristic was disability.

103. The Tribunal did not have to determine whether the claims of harassment were time barred. Had it been necessary to do so, the Tribunal would not have been persuaded by the respondent's primary submission that the balance of prejudice favoured the respondent given the passage of time and the impact this has generally on a witness's recollection of events. The passage of time is a material factor for the Tribunal to consider. These proceedings benefited from the witnesses having provided witness statements. This was particularly helpful given the effect of the covid pandemic on when the Tribunal was able to conclude the hearing. While there were understandably occasions when a witness was unable to recall a specific event, the Tribunal did not find that overall this prejudiced the respondent to such an extent that it would not have been just and equitable to extend the time limit for presentation of the claim.
104. The Tribunal had regard to the guidance from the EAT in the case of **Richmond Pharmacology v Dhaliwal 2009 ICR 724 EAT** when considering whether the essential elements of harassment; (i) unwanted conduct; (ii) that has the proscribed effect and (iii) which relates to a relevant protected characteristic had been established.
105. For the reasons given in the notes of evidence, the Tribunal preferred the evidence of the respondent's witnesses to that of the claimant in relation to the alleged acts of harassment. The Tribunal did not find that Lynne Scarticcini made the remark attributed to her by the claimant or behaved in the manner described. Lynne Scarticcini sought to engage with the claimant, as necessitated by her role as Faculty Head and Mentor. It was in this capacity that she enquired of the claimant whether having Asperger Syndrome might affect his ability to deal with behavioural situations in the classroom. She questioned the tone of an e mail that he sent to her as Faculty Head. There was also frustration on Lynn Scartaccini's part at the claimant's reluctance to accept advice from her in particular on how he might improve his teaching. The Tribunal did not doubt that for the claimant this conduct was unwanted. The Tribunal was not however persuaded that either individually or cumulatively, Lynne Scartaccini's conduct had the purpose or effect of

violating the claimant's dignity or creating for him an intimidating, hostile, degrading, humiliating, or offensive environment.

106. It was not submitted on behalf of the claimant that Lynne Scartaccini intended to harass him and there was no persuasive evidence before the Tribunal to show that this was the case. It was her intention to be supportive of the claimant and to help him obtain full GTCS registration. When viewed objectively the Tribunal was also not persuaded that Lynne Scartaccini's conduct towards the claimant had the proscribed effect of amounting to harassment. The claimant was critical of the respondent for not supporting him as a probationary Teacher with Asperger Syndrome. The Tribunal did not accept that enquiring whether having Asperger Syndrome might affect his ability to deal with behavioural issues, in particular in the context of discussions about how the respondent might support him in demonstrating GTCS standards, could reasonably be said to have the effect of either violating his dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment for him. Similarly, advising the claimant about the appropriate tone to use in correspondence with a senior colleague and becoming frustrated at the claimant's reluctance to accept advice, was not conduct that in all the circumstances could reasonably have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment for him.

107. In any event, with the exception of Lynne Scartaccini asking the claimant at the meeting on 11 October 2017 whether having Asperger Syndrome might affect his ability to deal with behavioural issues in the classroom, the Tribunal did not find that her conduct related to the claimant's disability. The Tribunal found that Lynne Scartaccini advised the claimant against sending an email because she was genuinely taken aback by its tone. The claimant did not seek to show that the tone of his email to Lynne Scartaccini related in any way to him having Asperger Syndrome. There was no persuasive evidence to show that Lynne Scartaccini's advice to the claimant about the tone of his email was related to him having Asperger Syndrome.

108. Similarly, the claimant did not seek to show that his reluctance to accept the advice given to him by Lynne Scartaccini related to him having Asperger Syndrome. He did not accept the advice because he did not agree with it. The Tribunal was not persuaded that in all the circumstances, Lynne Scartaccini becoming frustrated by the claimant's reluctance to accept her advice related to the claimant having Asperger Syndrome. If the Tribunal is wrong about this, it was not persuaded that in all the circumstances it was reasonable of the claimant to perceive her conduct as amounting to harassment. He was a probationary teacher. It was necessary for the respondent to assess his teaching and identify areas for improvement to enable him to meet the standards for full GTCS registration.
109. The Tribunal did not find that Fiona Downey made the comment attributed to her by the claimant. As referred to above, the claimant accepted when giving his evidence that he was not claiming that Lynne Scartaccini had made the comment to Fiona Downey. In any event, the Tribunal was not persuaded that had the remark been made that it related to the claimant's disability or that it was possible to draw an inference from the alleged comments that Lynne Scartaccini had committed acts of harassment that related to the claimant's disability.
110. In all the circumstances, whether the allegations of harassment are taken individually or cumulatively, the Tribunal was unable to conclude that the claim of harassment under Section 26 of the Equality Act 2010 is well-founded and the claim must therefore be dismissed.

Victimisation – Section 27 of the Equality Act 2010

111. As regards the claim of victimisation under Section 27 of the Equality Act 2010, the issues to be considered by the Tribunal were identified by the parties as follows;
- (i) Does the letter from the claimant's solicitor dated 25 April 2018 amount to a protected act?

(ii) Did issues raised at a meeting on 8 June 2018 between the respondent, claimant and the claimant's solicitor amount to a protected act?

(iii) If so, did the sharing of the Case Overview Report by All Saints with Hillpark subject the claimant to a detriment?

(iv) If so, was that detriment because of the claimant's protected act/s?

112. The Equality Act 2010 provides that 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.

113. It was not in dispute that the letter from the claimant's solicitor dated 25 April 2018 in which he complained of disability discrimination amounted to a protected act. The Tribunal was satisfied that the allegations of discrimination were referred to at the meeting on 8 June 2018 which the claimant attended with his solicitor and that this should also be treated as a protected act. The detriment identified by the claimant was the sharing of the Case Overview Report (P158/759-792) by All Saints with Hillpark.

114. It was the claimant's position that he had been given an undertaking by the respondent that the Case Overview Report (P158/759-792) would not be shared with the school at which he would undertake an extension to his probationary period. For the reasons given in the notes on evidence, the Tribunal did not accept that this was established by the claimant. The Tribunal did not accept that the respondent had breached an undertaking and by doing so, had subjected the claimant to a detriment.

115. The Tribunal considered whether, as submitted by the claimant, sharing the Case Overview Report (P158/759-792) in any event amounted to a detriment. As referred to in the claimant's submissions, it is not necessary to demonstrate some physical or economic consequence to establish a detriment. Distress or upset on their own may be sufficient. In all the circumstances however, the Tribunal was not persuaded that the claimant had been subjected to a detriment by All Saints sharing the Case Overview Report

(P158/759-792) with Hillpark. The Tribunal was not persuaded that the claimant had been disadvantaged. There was no persuasive evidence that reading the Case Overview Report (P158/759-792), had adversely affected the attitude or conduct of any of the Teachers at Hillpark towards the claimant.

5 The claimant wanted a “*fresh start*” at Hillpark. For the claimant this meant Hillpark not knowing anything about the concerns identified at All Saints. This was not only unreasonable but also impracticable. In all the circumstances, the Tribunal concluded that the claimant’s perception that he was disadvantaged by Hillpark being sent a copy of the Case Overview Report
10 (P158/759-792) was unfounded and any upset he felt was unreasonable.

116. In any event, the Tribunal was not persuaded that the act of sharing the Case Overview Report (P158/759-792) was because the claimant had done a protected act. Fiona Downey was clear in her evidence, as was Jane Macdonald from the respondent’s HR, that it was standard practice for
15 information such as a Case Overview Report to be sent to the new school in the event of a probationary teacher being granted an extension. This was for the purpose of the extension school being made aware of the areas required for development on the part of the probationary teacher. It was intended to assist a probationary teacher who moved to another school. Fiona Downey and HR were following that practice and there was no persuasive evidence to
20 support the claimant’s position that rather than following this practice, they had shared the Case Overview Report (P158/759-792) with Hillpark because he had done a protected act by making allegations of discrimination against staff at All Saints.

25 117. The Tribunal was in all the circumstances unable to conclude that the claim of victimisation is well-founded and the claim must therefore be dismissed.

Failure to make reasonable adjustments – Sections 20 & 21 of the Equality Act 2010

30 118. Section 20 of the Equality Act 2010 imposes a duty on employers to make reasonable adjustments. Section 20(3) of the Equality Act 2010 requires employers to take such steps as it is reasonable to have to take where a

provision, criterion or practice (PCP) puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled.

5 119. “*Provision, criterion or practice*” is not defined in the Equality Act 2010. The Equality and Human Rights Commission Code of Practice on Employment (“EHRC Code”) states (at paragraph 4.5) that the term “*should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. A provision, criterion or practice may also include decisions to do something in the future – such as a policy or criterion that has not yet been applied – as well as a ‘one-off’ or discretionary decision*”. The EHRC Code also states (at paragraph 4.6) “*the provision, criterion or practice must be applied to everyone in the relevant group, whether or not they have the protected characteristic in question. On the face of it, the provision, criterion or practice must be neutral. If it is not neutral in this way, but expressly applies to people with a specific protected characteristic, it is likely to amount to direct discrimination*”.

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120. When considering whether the respondent was in breach of the duty to make reasonable adjustments, the Tribunal had regard to the guidance provided by the EAT in the case of **Environment Agency v Rowan 2008 ICR 218, EAT** by identifying “(a) the provision, criterion or practice applied by or on behalf of an employer, (b) the identity of non-disabled comparators (where appropriate) and (c) the nature and extent of the substantial disadvantage suffered by the claimant.”

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25 121. The claimant identified the following as potential PCPs:

- i. The respondent’s assessment of one to one interactions between the claimant and pupils in relation to presentation and non-verbal cues.
- ii. The respondent’s assessment of the claimant’s rapport with other staff.
- 30 iii. The absence of structured feedback and support.

- iv. Limiting the extension at Hillpark to four months.
- v. The assessment of the claimant by multiple individuals on an ad hoc basis and
- vi. The requirement to teach classes which included pupils with behavioural difficulties unsupported by a classroom assistant.

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122. The Tribunal was not satisfied that (iii) was a PCP for the purposes of Section 20(3) of the Equality Act 2010 on the grounds that it was not persuaded that there was an absence of structured feedback and support available to the claimant. From the start of his probationary period in both schools, the claimant was provided with a Mentor. His Mentors, Mark Geddes, Lynne Scartaccini and Ian McIntyre, held regular meetings with the claimant. The meetings were conducted in a structured manner with the claimant identifying the issues to be discussed and feedback provided and recorded for uploading to his GTCS profile. Following observations, the claimant was also provided with feedback in what the Tribunal found to be a clear and structured manner. The feedback provided to the claimant highlighted strengths and areas for improvement. The Tribunal did not agree with the claimant that while different Mentors and the Teachers who observed him may have placed greater emphasis on certain aspects of his teaching method and on occasions made different observations about his teaching that this amounted to a lack of structure in either feedback or support. Both schools worked with Fiona Downey to identify how to support the claimant and on the claimant's placement at Hillpark there was to be "*no dubiety this time round – clear and concise support, structured and ordered.*" The Tribunal was satisfied that this advice was followed by the respondent.

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123. Having considered the guidance above from the EHRC Code and the facts of this case, the Tribunal was not persuaded that (iv), limiting the extension at Hillpark to four months, was a PCP for the purposes of Section 20(3) of the Equality Act 2010. The decision to allow the claimant to extend his probationary period was made in response to the claimant's inability to meet the requirement that he demonstrate the GTCS standards during the standard

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probationary period of one academic year. It was an act in response to the particular circumstances of the claimant. The extension offered, and accepted by the claimant, was longer than the standard extension. The claimant was allowed to move to another school for his extension. He was provided with additional support at the extension school. There was, in any event, no persuasive evidence that towards the end of the 90-day extension the claimant's teaching was improving to such an extent that had he been offered an extension of an academic year he would have been able to obtain full GTCS registration.

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10 124. In terms of (v), the assessment of the claimant by multiple individuals, this was also a response by the respondent to support the claimant to achieve full GTCS registration as opposed to a PCP that applied to the claimant and his comparator probationary teacher. The claimant was observed more regularly and by more colleagues than is usual for a probationary teacher because of the difficulties that he was experiencing with teaching and to provide him with additional support. It was an act by the respondent to support the claimant with the requirement to demonstrate GTCS standards for full registration. Arrangements were made for the claimant to be observed and assessed at regular intervals by a variety of colleagues, including senior management, in order to identify how the claimant might be supported and to obtain a broad view of how he was performing in the classroom. The arrangements were not ad hoc. The claimant was aware of when observations would take place and alternative arrangements were made on the occasions that the timing of an observation did not suit him. If the Tribunal is wrong and being assessed by multiple individuals was a PCP, the Tribunal was not persuaded that it placed the claimant at a substantial disadvantage when compared to a probationary teacher who does not have Asperger Syndrome and is not disabled. The Tribunal also did not accept that only being observed by one teacher would have been a reasonable adjustment. There was no persuasive evidence how one person trained in Asperger Syndrome assessing the claimant would have resulted in sufficient improvement to the claimant's teaching such that he was likely to demonstrate the standards required for full GTCS registration.

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125. The Tribunal did accept that PCP (i) the respondent's assessment of one-to-one interactions between the claimant and pupils in relation to presentation and non-verbal cues; PCP (ii) the respondent's assessment of the claimant's rapport with other staff and PCP (vi) the requirement to teach classes which included pupils with behavioural difficulties unsupported by a classroom assistant were PCPs applied by the respondent.
126. Having identified the PCPs, the Tribunal went in to consider whether they put the claimant as a disabled person at a substantial disadvantage. As referred to above, in terms of Section 20(3) the duty to make reasonable adjustments will only arise where the claimant was put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. "*Substantial*" is defined at Section 212 of the Equality Act 2010 as meaning "*more than minor or trivial*".
127. The comparator was identified by the claimant of a probationary teacher who did not have Asperger Syndrome and was not disabled. This was not challenged by the respondent.
128. The Tribunal accepted that PCP (i), (ii) and (vi) put the claimant at a substantial disadvantage in comparison with persons who do not have Asperger Syndrome. The Tribunal accepted the claimant's evidence that having Asperger Syndrome made interactions with pupils, rapport with colleagues and teaching pupils with behavioural difficulties very challenging and that in the context of being a probationary teacher seeking full registration with GTCS the PCPs put him at a substantial disadvantage when compared to probationary teachers who do not have Asperger Syndrome. The PCPs, which were all central to the GTCS standards and that the claimant had to demonstrate to obtain full registration as a teacher, were significantly more difficult for the claimant to meet than a probationary teacher who did not have Asperger Syndrome or as the claimant described them "Asperger traits." As a result, he was far less likely than non-disabled probationary teachers to obtain full registration. The respondent did not seek to show that it did not know or could not reasonably be expected to know that the PCPs identified above put the claimant at a substantial disadvantage.

129. The onus is on the claimant to identify, in broad terms at least, the nature of the adjustment that would ameliorate the substantial disadvantage. Having done so, the burden then shifts to the respondent to seek to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one to make.
130. The adjustments that the claimant submitted would have prevented the respondent's PCP (i) of assessing one to one interaction between the claimant and pupils, in relation to presentation and non-verbal cues - from putting him at a substantial disadvantage were identified as follows:
- i. The creation of the claimant's specific teaching assessment plan with input from an Asperger's specialist?
 - ii. The appointment of a mentor who was a specialist in (or had a significant understanding of Asperger's).
 - iii. The seeking of guidance from an Asperger's specialist clinician.
131. It was submitted on behalf of the claimant that the Tribunal should consider the proposed adjustments collectively as a composite adjustment as well as individually. The claimant submitted that all of the above proposed adjustments involve the assistance of a specialist in Asperger Syndrome. The respondent's witnesses, submitted the claimant, including Ian McIntyre and Lynne Scartaccini accepted that such a specialist might have helped in supporting the claimant. The claimant submitted that inferences should be drawn from stereotypical views displayed by the respondent's witnesses about the inability of a person with Asperger Syndrome being able to teach.
132. The difficulty faced by the Tribunal when considering whether it was reasonable for the respondent to make the proposed adjustments was what a Specialist, having examined the claimant's situation, would have recommended and whether any recommendations would have enabled the claimant to demonstrate the GTCS standards required to obtain full registration. The respondent had obtained information from Scottish Autism from which the claimant did not identify any steps that were not already being

taken by the respondent. The claimant was observed by a colleague with detailed knowledge and qualifications in Autism and no steps were identified that were not already being taken to support the claimant. The Tribunal did not accept that the respondent's witnesses demonstrated stereotypical assumptions about the teaching ability of people with Autism.

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133. The Tribunal agreed with the respondent's submission, under reference to **Tarbuck v Sainsbury's Stores 2006 IRLR 664**, that consideration of an adjustment or as in this case asking a Specialist to recommend adjustments to a teaching plan, mentoring of the claimant and seeking guidance generally is not of itself an adjustment.

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134. As stated by the EAT in **Royal Bank of Scotland v Ashton 2011 ICR 632**, it is irrelevant to the questions whether there has been or whether there could be a reasonable adjustment or not what an employer may or may not have thought in the process of coming to a decision as to whatever adjustment might or might not be made. It does not matter what process the employer may have adopted to reach that conclusion. What does matter is the practical effect of the measures concerned. In this case, the Tribunal was unable to ascertain what difference, if any, consulting with a Specialist in Autism would have made to the ability of the claimant to demonstrate the standards required to obtain full registration with GTCS.

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135. The claimant submitted that the Tribunal should consider the decision of the Employment Tribunal case of **Fotheringham v Perth & Kinross Council S/114087/11** to understand the type of expert that the respondent might have consulted about the claimant's condition. This was also a case in which the claimant was a teacher. The claimant was diagnosed as having Asperger Syndrome. Various reports had been obtained and were before the Tribunal from specialists including an Occupational Psychologist. The specialists had been consulted for advice on what, if any, support could be offered to the claimant. One of the difficulties faced by the Tribunal in the present case was the lack of any such evidence. There was no specialist evidence identifying steps that could be taken by the respondent to remove the substantial disadvantages to which the respondent's PCPs put the claimant. The

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Occupational Health report (P143), produced after consultation with the claimant, did not detail any adjustments that might be made in response to the claimant having Asperger Syndrome. The suggestion that the claimant be moved to another school was accepted by the respondent. The Tribunal did not accept the submission on behalf of the claimant that recognition of the contribution that an external expert might make amounts in this case to a reasonable adjustment.

136. In terms of the PCP (ii) that the respondent assessed the claimant's rapport with other staff, the adjustments that the claimant submitted would have prevented the PCP from putting him at a substantial disadvantage were identified as follows:

- (i) Exclusion of this factor from assessment of the claimant.
- (ii) Make allowances for the claimant's Asperger's.

137. The Tribunal did not accept that it would have been reasonable to require the respondent to exclude the factor of creating and sustaining appropriate working relationships with all staff when assessing whether the claimant demonstrated the standards for full GTCS registration. It was accepted by the claimant in his submissions that the proposed adjustment would have been inconsistent with the GTCS standards. In any event the Tribunal found that the claimant's colleagues were well disposed towards him and were taken aback by his resistance to accepting their advice and their suggestions for improvement. The Tribunal was not persuaded that excluding assessment of the claimant's rapport with other staff was a reasonable adjustment which the respondent was required to take. The second proposed adjustment was insufficiently specific for the Tribunal to determine whether it was either reasonable or would for that matter have made any difference to the disadvantage to which assessment of building professional relationships put the claimant. Again, the Tribunal found that the claimant's colleagues did make allowances to the extent that they gave and offered him additional support. The identity of any additional allowances that the respondent could have made were not specified by the claimant.

138. In terms of PCP (vi) that the claimant was required to teach classes which included pupils with behavioural difficulties, unsupported by classroom assistant, the adjustments that the claimant submitted would have prevented the PCP from putting him at a substantial disadvantage were identified as follows:

(iii) Removing some (or all) of these pupils from classes

(iv) Providing a classroom assistant or ASN teacher to be present in the class to deal with negative behaviour.

139. The Tribunal did not doubt that that the claimant found teaching pupils with behavioural difficulties particularly challenging and accepted his evidence that having Asperger Syndrome made matters significantly worse. The Tribunal did not accept however that it was reasonable to require the respondent to remove any more of the pupils from the claimant's classroom than were already being sent out of the classroom by the claimant. The respondent was already making an adjustment to the size of the claimant's classes and providing advice and support in avoiding disruption in the classroom. It would not be reasonable to remove all of the pupils from a class whom the claimant found to be disruptive and by doing so deny them of the opportunity to learn in a classroom setting. It was not in dispute that classroom assistants are a limited resource in any school. They are in the classroom to support pupils. It is unreasonable to expect them to take on the teacher's role of maintaining order in the classroom. Similarly, ASN teachers are employed to teach pupils with additional support needs and not to maintain order for another teacher. Providing the claimant with the support of an ASN teacher in his classroom would deprive another class requiring specific ASN teaching with their teacher and in the assessment of the Tribunal requiring the respondent to take such a step would be unreasonable.

140. The Tribunal therefore concluded that the PCPs that put the claimant at a substantial disadvantage, there were no steps identified that it was reasonable for the respondent to have to take that would have avoided the disadvantage to the claimant. In all the circumstances therefore, the Tribunal

did not find that the respondent was in breach of its duty to make reasonable adjustments. The Tribunal was unable to conclude that the claim is well-founded and it must therefore be dismissed.

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Employment Judge: F Eccles
Date of Judgment: 31 March 2023
Entered in register: 04 April 2023
and copied to parties

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