



## EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Dos Santos

**Respondent:** Alpha Plus Group Limited (R1)  
~~DLD College London (R2)~~<sup>1</sup>  
Ms V Hutchinson (R3)  
Mr MF Chowdhury (R4)  
Ms M-D Reza (R5)

**Heard at:** London South                      **On:** 20/11/2023 - 24/11/2023  
(Croydon) a hybrid  
hearing

**Before:** Employment Judge Wright  
Ms C Bonner  
Ms N O'Hare

**Representation:**

**Claimant:** Mr A Otchie - counsel

**Respondent:** Mr A Leonhardt - counsel

## REQUEST FOR WRITTEN REASONS

Oral judgment having been given on the 24/11/2023 and further to the respondent's request for written reasons, these written reasons are provided.

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<sup>1</sup> Dismissed from the proceedings.

## WRITTEN REASONS

1. It was the unanimous Judgment of the Tribunal that the claimant's claims under the Equality Act 2010 (EQA), the Employment Rights Act 1996 (ERA) and the Part-Time Worker Regulations 2000 are not well founded, they therefore fail and are dismissed.
2. The claimant presented a claim form on 12/4/2020 following a period of early conciliation which started on 12/2/2020 and ended on 12/4/2020. Any act therefore prior to the 13/11/2019 is out of time. The claimant was employed by the respondent as a Business Studies Teacher from the 23/9/2019 and her employment terminated on 6/12/2019. R1 is a company which operates a number of independent schools and colleges across the UK. The claimant worked at DLD College, a trading name of R1.
3. A case management hearing took place on 19/2/2021 and that resulted in an agreed list of issues. At the outset of the hearing, the claimant confirmed that she was pursuing all of the allegations.
4. Under the Equality Act 2010 (EQA), the claimant relies upon the protected characteristics of sex (s.6) and maternity. The prohibited conduct upon which she relies is: direct discrimination (s.13); indirect discrimination (s.19); harassment (s.26) and victimisation (s.27). The complaint is dismissal (s.39(2)(c)). The claimant did not set out a comparator for the s.13 or s.19 claims and casually relied upon a hypothetical comparator in submissions (s.23).
5. In addition to a claim under the Part-Time Worker Regulations, the claimant also brings claims of: breach of contract/notice pay; holiday pay; unauthorised deduction from wages; and a failure to provide itemised pay slips.
6. The Tribunal heard evidence from the claimant. For the respondents it heard from: Mr Mohammed Chowdhury (Head of Faculty) (via video); Ms Marie-Dominique Reza (Vice Principal Academic); Mr Irfan Latif (Principal DLD College); Ms Venessa Hutchinson (HR Officer) (via video); and Ms Kelly Blake (Head of Talent at R1).
7. There was a 828-page bundle. The Tribunal had hard and electronic copies. On the second day, the claimant produced a supplementary bundle of policy documents (35-pages) which it was said were relevant. The Tribunal was however never taking to the supplementary bundle. One other policy was produced and a short set of minutes, were added and relied upon.
8. Submissions were heard and considered. The respondent provided written submissions.

9. The following findings of fact were reached by the Tribunal, on the balance of probabilities, having considered all of the evidence given by the witnesses during the hearing. That included the documents referred to by the witnesses and took into account the Tribunal's assessment of the evidence.
10. Only relevant findings of fact pertaining to the issues and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below. That does not mean it was not considered if it was referenced to in the witness statements/evidence.

#### Findings of fact

11. The claimant brings a claim based upon the protected characteristic of maternity. She relies upon the prohibited conduct of direct discrimination. The list of issues refers to her being treated 'less favourably by reason of her ... or pregnancy / maternity'.
12. The claimant ticked the box for maternity in the ET1, however there was no evidence from her as to how she came within s.18 EQA. The only reference was to her being a mother and having a young child. There is reference to maternity leave, but no evidence as to her taking ordinary or compulsory maternity leave, when and where. The Tribunal therefore did not consider the claim based upon the protected characteristic of pregnancy or maternity.
13. There are some events which pre-date the allegations which require setting out to put the events which follow into context.
14. The respondent decided to recruit a business studies teacher in summer 2019 to start the following academic year. It is not clear whether or not the role was advertised as a full-time or part-time role. The Tribunal heard conflicting evidence on this and there was no documentary evidence. The claimant did not give any evidence-in-chief on this aspect. The claimant contends (witness statement paragraph 11) that she replaced two full-time members of staff. The email she referred to (page 359) does not support this. All that email shows (dated 16/12/2019) was that after the claimant's departure, R1 decided to advertise the role as full-time.
15. In respect of the status of the role offered, the Tribunal finds that the role was advertised as part-time/four days per week (expressed as 0.8 full time equivalent (FTE)). The rationale for this is that in her email of 5/9/2019 the claimant offered to increase her working time from four-days-per-week to five, to work on Fridays; although she requested that this extra day be set aside as

planning, preparation and assessment time (PPA), not teaching time (page 658).

16. The Tribunal finds that had the role been advertised as a full-time role and the claimant had negotiated that down to a part-time role, in her email suggesting that she increase her working days to five per week, she would have said something along the lines of: 'actually, now I have the timetable and taking into account the workload, I can see it is a full-time not a part-time role'. The significance of that finding however is that it was not a full-time role 'squeezed' into a part-time role. Therefore from the outset, the teaching sessions and other responsibilities (such as the PPA) (the claimant accepted she did not have additional responsibilities) allocated to the role reflected the fact the role was part-time/0.8FTE.
17. It is important to note that the claimant was not a qualified teacher and part of the terms which she negotiated, included her working towards qualified teacher status. This however was subject to the claimant completing a successful probationary period of two terms during which the notice period was two weeks (page 57 and clause 2.2 page 61).
18. As a result of safeguarding checks needing to be obtained from overseas, the claimant's employment did not start until 23/9/2019 (page 104). The contract of employment was signed by the claimant on 29/8/2019 (page 68). The contract also provides at 7.4 (page 63):

'7.4. You may be required to attend training or INSET days in respect of your job, prior to you commencing employment with us. Please note that you are not entitled to any additional payment in respect of any training that you are required to undertake out with your core working hours.'
19. The claimant complains (list of issues 6.1.1.) that R1 breached her contract in that she was not paid 'in respect of work carried out by her prior to 23/9/2019, including but not limited to the days that she was required to attend [the school] before her 'official' start date e.g. for the induction'.
20. It can be seen from clause 7.4 there was no entitlement to pay for that work. In closing submissions, the claimant withdrew this allegation, however, this demonstrates how she was inclined to take up a certain position which was contradicted by the evidence.
21. There was no free-standing allegation in respect of the delayed start.
22. Prior to the offer letter being sent out, the claimant was in email correspondence with Ms Hutchinson regarding CPD and other qualifications. Initially, she requested R1 fund a PhD in Education to start in September 2019 to complete over three years (page 55).

23. On the 28/8/2019 the claimant referred to the fact R1's Maternity Policy (the claimant complained<sup>2</sup> she did not receive other policies) does not include a 'Lactation Support Policy for mothers who are nursing. She also requested breaks twice a day to express milk and set out other requirements (page 75).
24. In an email of 5/9/2019 the claimant wrote to Ms Hutchinson to say that she had received her timetable (page 658). She said that the teaching periods (of 32) were excessive for her 0.8FTE role. She proposed 6 teaching periods a day (a total of 24). Alternatively, she suggested that if the teaching schedule remained at 32 periods that she worked full-time, teaching over the four days scheduled and to be employed on Fridays, using that time for PPA (page 658).
25. The Tribunal finds that the reason the claimant was given 32 teaching periods was due to R1's move to a higher teaching ratio for teachers moving forwards. R1 was in the process of negotiating an increase with the existing staff. It would make no sense to put new starters onto the lower ratio and then to have to negotiate an increase with them; in addition to the existing staff. Furthermore, the Tribunal finds that this is the reason why the claimant's colleagues expressed surprise at her teaching ratio at the induction day on the 5/9/2019 and they advised her to seek a reduction in her teaching hours. If they compared it with their understanding of the average at that time, they

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<sup>2</sup> This is not an allegation, although it was referred to many times during the hearing. Ms Reza's email of the 21/8/2019 included (page 77):

- The Policies and Procedures, including:
  - o Alcohol & Drugs Policy
  - o The Code of Ethical and Professional Conduct (including affirmation statement to be signed annually)
  - o HR Document - Portal College Teaching Contract January 2019
  - o Computer Use Policy
  - o Data Protection Policy
  - o Disciplinary Procedure
  - o Equal Opportunities & Harassment Procedures
  - o Flexible Working Policies
  - o Grievance Procedure
  - o Health and Safety Policies
  - o Maternity & Paternity Leave Procedures
  - o Occupational Sick Pay Policies
  - o Public Interest Disclosure (Whistle-blowing) Policy
  - o Retirement policy

Furthermore on the 23/8/2019 Ms Hutchinson attached to an email (page 76):

- Absence Policy
- Alcohol and Drugs
- Flexible Working
- Grievance Procedures
- Maternity Leave
- Occupational Sick Pay

would think that it was about 10% higher than what they would expect and that led to their comments.

26. On the 6/9/2019, Ms Reza informed Ms Hutchinson that she had managed to reduce the claimant's timetable from 32 to 28 periods a week and furthermore, there were no classes scheduled between 8.50-10.10am on a Monday and between 3.35-4.55pm on a Tuesday at the claimant's request (page 91). This shows Ms Reza accommodating the claimant and does not demonstrate any resentment towards part-time working.
27. The claimant never taught on the 32 periods per week schedule. It is the claimant's case that R1 had a ratio of teaching time out of total sessions (of 44 for her which including non-teaching time) of 62%. Had the claimant taught 32 sessions out of 44 her ratio would have been 72.72%. Clearly well over the 62%. R1 however was looking to increase its ratio to 72% for the following academic year (September 2020) and that it was making adjustments to implement that, which it did. If that were the intention and if in fact that increase was implemented, the Tribunal accepts that R1 would implement that change for new starters. To provide a contrast, the state schools ratio is 80%.
28. Therefore from the 23/9/2019 to around the 10/10/2019 (it is not clear the precise date the change took effect) the claimant taught 28 teaching sessions of 40 minutes each, over four days. Her working hours were 8.30am to 5pm. By this time, her ratio of teaching to non-teaching time was 63.6%, higher than 62%, however it is accepted the claimant did not have additional responsibilities.
29. On the 7/10/2019 the claimant emailed Ms Reza to say that her teaching ratio was still too high and asked that her timetable be reduced (page 117). She said she was grateful for the reduction from 32 sessions to 28, however, she contended for a further reduction to 24 sessions (6 teaching periods over 4 days). Her justification was that she did not have sufficient PPA time.
30. Ms Reza (quite rightly as it turns out) flagged to Mr Chowdhury and one of the claimant's line managers that she felt that if she did not meet the claimant halfway, the claimant would leave (page 782). Ms Reza reduced the claimant's teaching schedule by a further 2 sessions to 26 teaching sessions per week, a 59% ratio.
31. Despite Ms Reza reducing the claimant's teaching workload, although not to the extent the claimant wished, the claimant wrote to Ms Reza on 15/10/2019 and said (page 123):

'Timetable and employment

As discussed, I am not able to regularly work additional hours after college. Unfortunately, the current timetable, although improved (thank you), does not provide enough PPA time for me to fulfil my duties in a timely manner. **As a result, I regret to inform you that I must submit my resignation.** I apologise sincerely for the disappointment that my leaving may cause. This has been a very difficult decision. Please do let me know when you have a date in mind that helps your recruitment efforts so that I can offer my notice to HR and the relevant line managers on time. For the college's convenience, I am flexible to an earlier or later leaving date up to November 2019, to allow the school to hire my replacement. For your interest / reference, I have attached a copy of the timetable that would allow me to meet my working commitments and continue employment at DLD. It includes teaching BTEC and A Level students only. If DLD were able to provide this working arrangement I would be delighted to work here. Unfortunately I understand the limitations and hence this decision.'

[emphasis added]

32. It is important to analyse this email and the view taken of it by both parties as it feeds into the majority (if not all) of the claims and the reasons why the parties took the actions which they did.
33. The claimant's solicitor's letter of the 15/1/2020 did not address this email or the respondent's response to it (page 389). The letter referred to Mr Chowdhry 'encouraging' the claimant to resign. It did not refer to the fact the respondent had understood the claimant to have resigned; but that it was her case she had *considered* resigning.
34. Whilst represented by the same solicitors, the claimant's particulars of claim dated 12/4/2020 referred to her having 'offered' to resign and that the issue was eventually resolved (paragraph 5 page 14). They then referred to 'encouraging' the claimant to resign and attempting to 'force' her to resign. The particulars went on to say that the claimant's 'offer to resign had been withdrawn' (paragraph 9 page 15).
35. The claimant said in her witness statement that she was being placed in a position where (witness statement paragraph 32):  
  
'I had little choice but to consider resigning.'
36. At the hearing, the claimant also relied upon clause 2.6 of her contract of employment which provides (page 62):

'2.6 Any written notice required to be served hereunder shall be properly served if, in the case of a notice addressed to the Employer, it is handed to the Employee's line manager, or, in the case of a notice to be given by the Employer, it is handed to the Employee personally or sent by post to the Employee's last known residential address in the United Kingdom. Notices sent by post shall be sent by first class post and be deemed to have been received and served on the first day after posting.'

37. It is not in dispute that the claimant did not hand a notice addressed to the respondent to her line manager and did not comply with this clause.

38. In contrast, the respondents' grounds of resistance set out that (page 34):

7. On 15th October 2019, the Claimant sent an email to R5 thanking her for the previous week's meeting and outcomes but informing her of her resignation. The Claimant's email explained that although the new timetable was improved, she considered that it did not provide enough PPA time ("planning, preparation and assessment") to fulfil her duties and that, as a result, the Claimant advised that she had to submit her resignation.

8. R5 responded to the Claimant's email on 17th October 2019 as the Governors had visited the College on 16th October 2019 and R5 was involved with their visit. R5 expressed surprise at the Claimant's resignation and suggested a meeting between herself and the Claimant later that day to discuss her resignation.'

39. An employment contract may be terminated by the employee resigning; in addition to other methods of terminating the contract. The employee can communicate their resignation by either words or deeds. The resignation need not be expressed in a formal way and may be inferred from conduct and from the surrounding circumstances. An intention to resign at some future point is not a resignation, whereas here, the claimant submitted her resignation, but was open to discuss a termination date. Notice can be given orally or in writing and it cannot be unilaterally withdrawn; although an employer can agree to allow an employee to rescind their resignation. Finally, a resignation is a unilateral act by the employee. There is no need for the employer to 'accept' the resignation or to acknowledge it.

40. Neither party argued that R1 had to accept or acknowledge the resignation.

41. Having reminded itself of the legal position, the Tribunal finds that the claimant's email was unambiguous and she had resigned from her employment. That was how Ms Reza interpreted it and how the Tribunal and how an ordinary, reasonable hypothetical person (the man on the Clapham omnibus in old legal parlance) would interpret it.

42. For the purposes of this litigation the respondent accepted the claimant believed she had not resigned and as per her case; she thought she had 'expressed' an intention to resign if her teaching timetable was not further reduced. The Tribunal similarly accepts the claimant's position at face value; although her stance does undermine her credibility. The claimant is an intelligent and articulate person and she is a graduate of prestigious universities. It is difficult to accept; although it is accepted, she did not believe she had resigned.

43. The Tribunal has considered whether or not there could have been a miscommunication. For example was a word missing from a sentence or an



incorrect word used? For example, 'I am resigning' rather than 'I am not resigning'. Even if there was an error in the sentence highlight in bold, the following sentences all refer to the same context (in paragraph 31 above). The claimant had resigned, however she was open to discussions about the actual termination date and she wanted to mitigate the disruption for R1. This the Tribunal finds was as a result of her knowing the difficulties her resignation would cause for R1 at this point in time, shortly before half-term.

44. The position is therefore at the time Ms Reza read the claimant's email of the 15/10/2019, Ms Reza understood that the claimant had resigned from her position as a business studies teacher. This was despite the efforts she had made to adjust the claimant's teaching timetable and the fact that those lessons had to be covered elsewhere and by the claimant's colleagues. Ms Reza had invested considerable time and effort into accommodating the claimant and her requirements. The resignation was subject to agreeing a termination date with the claimant and it acknowledged she had offered to stay on potentially until a replacement was recruited. The resignation would result in additional and unexpected work for Ms Reza, after half term, during a busy period running up to the Christmas holidays with exams in January. Ms Reza communicated the resignation to the Principal, Mr Chowdhury and Ms Hutchinson.
45. This then feeds into several of the claimant's complaints of direct discrimination, harassment and victimisation. If the claimant thought she had not resigned and she saw her job being advertised, she would be right to be disgruntled. She must however see that the reason for R1 advertising her role, was due to it believing she had resigned. Conversations which followed were driven by the fact Ms Reza (rightly) understood the claimant had resigned and communicated that understanding to others. Even if Ms Reza's view was doubted by one of her colleagues; for example if during a conversation the claimant stated and was adamant that she had not resigned; if that individual were to check her email, they would come to the same view as Ms Reza.
46. Addressing the claims as set out in the list of issues, the first allegation of direct discrimination based upon the protected characteristic of sex is 1.1.1, 'the comments made by Mr Chowdhury and Ms Reza regarding the claimant's inability to manage her teaching commitments alongside being a young mother'. This is also relied upon as an allegation of sex related harassment 2.1.1.
47. This is a vague and undated allegation. As such, it is not clear whether or not the allegation is in time. Based upon the claimant's evidence-in-chief, this appears to be in fact two allegations made in two separate meetings.

48. In paragraph 38 of her witness statement, the claimant referred to a meeting on the 5/11/2019 when Mr Chowdhury 'expressed a number of discriminatory assumptions, in essence questioning my ability to perform my role at the same time as being the mother to a young child.'
49. Mr Chowdhury agrees there was a discussion or conversation on the 5/10/2019; not a meeting. The rationale behind the discussion was that the claimant had resigned on the 15/10/2019 and as a result, Mr Chowdhury offered to speak to the claimant (his email of the 17/10/2019 (page 131)).
50. The period of 21/10/2019 to 25/10/2019 was the half-term break and the claimant did not work on the 18/10/2019 and so no one could speak to her then.
51. The Tribunal finds that the discussion was at cross-purposes. Mr Chowdhury understood the claimant had resigned and the Tribunal could understand if the claimant responded that she had not resigned, he would respond something along the lines of: 'yes, you have resigned', as that was his reasonable understanding. In terms of discussing the claimant's domestic arrangements, the Tribunal accepts Mr Chowdhury's recollection of the conversation, which was that he was empathising with her. That it is difficult for all parents of young children who are working and that in particular, it is more difficult for a mother to be at work, who has a young child.
52. Similarly, the Tribunal accepts that at the meeting on the 6/11/2019, any references made by Ms Reza were also empathetic.
53. The next allegation of direct discrimination (1.1.2) is that Ms Reza stated at some unspecified time, that she did not believe the claimant would 'last very long' because she was the mother of a young child. If there were any discussions regarding the claimant's tenure at R1, it was due to the fact she had resigned on the 15/10/2019 having been in post since 23/9/2019 and after 14 working days. In short, she had resigned as she did not get her way over the teaching sessions.
54. Mr Chowdhury did not encourage the claimant to resign (allegation 1.1.3 and undated). How could he encourage her to resign when he believed she had in fact resigned? The Tribunal has made findings as to how that conversation would have proceeded. Resignation was discussed; however, it was on the basis that Mr Chowdhury understood quite rightly, that the claimant had resigned.
55. Allegations 1.1.4 and 1.1.5 of direct discrimination and 2.1.2.3 and 2.1.2.4 of harassment are that on 13/11/2019 and 19/11/2019 Mr Chowdhury instructed several members of staff to observe the claimant's lessons. All the claimant had to say on this point in evidence-in-chief is (her witness statement):

'60. On 13 November 2019 R3, Mohammed Fahim Chowdhury instructed several members of staff to carry out lesson observations of my teaching;

61. On 19 November 2019 R3, Mohammed Fahim Chowdhury instructed [a line manager of the claimant] to carry out further lesson observations and performance reviews of my teaching.'

56. These are vague allegations and as such, are not enough to transfer the burden of proof to the respondents. In fact on 10/10/2019 Ms Reza asked one of the claimant's line managers to observe the claimant, as she had not at that point been observed (page 119). Ms Reza's decision pre-dated the claimant's resignation. As an unqualified teacher, the claimant would be observed and on more than one occasion.

57. Allegation 1.1.6 of direct discrimination and 2.1.2.5 of harassment is that Mr Chowdhury ignored the claimant in a meeting. Again, all the claimant had to say on this point was (her witness statement):

'62. On the same day R3, Mohammed Fahim Chowdhury also completely ignored me during a meeting;'

58. The allegation does not reference a protected characteristic. It is vague and does not transfer the burden of proof.

59. The claimant has less to say in respect of allegation 1.1.7. Her evidence-in-chief is:

'63. During this period I learned that certain colleagues were told not to speak to me'

60. Such a vague statement cannot transfer the burden of proof.

61. The same can be said for allegations 1.1.8 and 1.1.9 of direct discrimination and 2.1.2.5 of harassment. In respect of 1.1.8 and 2.1.2.5 the allegation is Mr Chowdhury requested copies of all meeting notes between the claimant and her line manager. In her witness statement, the claimant had this to say:

'66. On 26 November 2019 [a line manager of the claimant] created an online file to share minutes of all meetings between me and [a line manager of the claimant]. [A line manager of the claimant] told me that R3, Mohammed Fahim Chowdhury had requested copies of all meeting notes.'

62. As the line manager of the claimant's line manager, Mr Chowdhury was entitled to an overview of what was going on in his faculty and he said this was 'fairly standard' for him to do so. The claimant has not specified how this was less favourable treatment because of her gender or related to her gender.

63. Mr Chowdhury is then accused of 'acting in a generally hostile manner towards the claimant' (allegation 1.1.9). She says this in her witness statement:

'67. R3, Mohammed Fahim Chowdhury generally acted in a hostile manner towards me.'

64. The burden being upon the claimant, she has not specified how this is because of her gender. It is too vague an allegation to address, however, the Tribunal would observe, that if there was any hostility (which it does not accept) displayed towards the claimant, it was due to her difficult and demanding behaviour, not her gender.

65. The claimant also relies upon this allegation as harassment (2.1.2.1), however in that allegation she gives a date of 5/11/2019. The Tribunal finds that Mr Chowdhry was confused. He understood the claimant had resigned. He knew her role was being advertised. The claimant then contradicted this. It is not accepted that Mr Chowdhry was hostile. He did say if he had done something wrong he would want to know what it was and he was agreeable to mediation. Mr Chowdhry said his communication style is direct and objective driven. The outcome of the grievance found he had a direct style of communicating (page 666).

66. It will have come as a shock to the claimant to find out her role had been advertised and the Tribunal finds that this is the reason she suffered a panic attack that evening and that is demonstrated by the emails she sent the following morning. In any event, the claimant has not satisfied the burden of proof as to how on her case, Mr Chowdhry's 'hostile' treatment was related to her gender.

67. The claimant states that Ms Reza cancelled the mediation meeting scheduled for the 28/11/2019 and that is an act of direct discrimination because of her gender 1.1.10. Conceptually, that is a difficult proposition. It is not clear what is less favourable or detrimental about this. Meetings are cancelled for all sorts of reasons. R1's fundamental purpose is to deliver education to students who are paying privately for that service. R1 via its employees had a duty to its staff, but that duty does not override its fundamental purpose.

68. The chairman of the staff association requested mediation on behalf of the claimant on the 14/11/2019 (page 796). On 21/11/2019 Ms Reza asked the chairman to find a mutually convenient date for the mediation. Besides him, the claimant, Ms Hutchinson, Mr Chowdhury and Ms Reza were all invited to attend (page 201). The date of 28/11/2019 appeared to be convenient for all. Ms Hutchinson confirmed the mediation was going ahead on the 25/11/2019 and the claimant responded with some queries on the 26/11/2019 (page 209). Which Ms Hutchinson responded to (page 211). On the 27/11/2019 the claimant requested that the meeting be moved to the 3/12/2019 (page 227).

Ms Reza responded later on the same day and agreed (page 231). On the 2/12/2019 the claimant submitted a formal grievance and that then superseded the mediation. In effect the claimant withdrew from the mediation (page 263).

69. This allegation is simply not made out.
70. Allegation 1.1.11 of direct discrimination and 2.1.2.7 of harassment is that there was an instruction around the 28/11/2019 to one of the claimant's pupils not to send their work to her anymore. This is a vague allegation which it is not possible to address.
71. Allegation 1.1.12 is that the claimant was excluded from the payroll in November 2019. For some reason, the claimant was removed from the payroll in November 2019. This was recognised and a manual Bacs payment was made to her. The claimant has not satisfied the burden of proof to say how this was because of her gender. She may well have been disgruntled about this, however there is no link to her gender.
72. Allegation 1.1.13 of direct discrimination and also of harassment 2.1.2.2 is that R1 advertised the claimant's role while she was still employed. As noted above, this was done because the claimant had resigned and R1 needed to replace her. There is a logical and non-discriminatory explanation. Even accepting the claimant's contention that she had not resigned, she must have been able to understand that in the respondents' view (and in that of the Tribunal), that she had resigned. It was therefore sensible for her role to be advertised to seek a replacement as soon as possible. Not only is this not less favourable treatment, it is of assistance to the claimant. The sooner she was replaced the sooner she could leave, taking into account her offer to remain to allow R1 to 'hire [her] replacement'.
73. The final allegation of direct discrimination is that that R1 (it was however Ms Reza) took the decision to terminate her contract on the 6/12/2019 (1.1.14).
74. The highest the claimant puts this allegation in respect of direct discrimination is in her evidence in chief:
- '96. I also pointed out the timing of my dismissal not good, coming very shortly after I had submitted a formal grievance complaint about discriminatory comments made by R3, Mohammed Fahim Chowdhury, and R4, Marie-Dominique Reza. R4, Marie-Dominique Reza did not respond to this comment.'
75. Although the claimant had made allegations in her formal grievance, the Tribunal accepts Ms Reza's non-discriminatory explanation. The claimant said that Ms Reza repeated in the meeting that it was not 'working out'.

76. Ms Reza said in her evidence that the 'final straw' was the claimant's attendance as a Judge at a Dragons' Den event she had devised for the students on the 6/12/2019. The background was the claimant had an accident on 26/11/2019 and she went to hospital. She was then absent from work. On the 4/12/2019 she returned to work. Due to her ankle injury, she was being wheeled around/transported on an office chair. Her line manager sent her home for health and safety reasons as this was inappropriate. The Tribunal accepts this rationale and it was not appropriate for the claimant to be in work if she had mobility issues.
77. On the 6/12/2019 Ms Reza called the claimant to ask what the position was as it was not clear to her and to others at R1 whether or not the claimant was fit for work and there were issues over her absence and the reasons for it on 5/12/2019. The claimant informed Ms Reza that she had a doctor's certificate which would certify her as unfit for work for the rest of the term.
78. The claimant went onto say that she was coming into school, would bring in her doctor's certificate and would go and see Ms Reza after the Dragons' Den event.
79. Ms Reza took an understandably dim view of this. The claimant did not work on Fridays and yet she decided to attend school (noting that one of the claimant's complaints was that she did work for which she was not paid prior to her employment commencing). Furthermore, Ms Reza took the view the Dragons' Den event was a 'fun' activity. Not only was the claimant picking and choosing which events she did as part of her role (if she was able to attend that event for a limited period of time, then she could equally have attended school for a limited period of time to teach some of her classes); her colleagues had to cover the lesson she could not teach due to her being absent from work.
80. Much was made of the fact that the claimant's absence was authorised. That was not the point. The point was the claimant's attitude and her approach to her role and which duties she performed.
81. It is accepted that Ms Reza's reasons for terminating the claimant's contract were due to her dissatisfaction with the claimant's approach to the role, despite all Ms Reza had done to accommodate her. It was nothing whatsoever to do with her gender.
82. For the victimisation claim, the claimant relies upon seven protected acts (3.1.1 to 3.1.7). The respondent concedes they are protected acts.
83. Detriments 3.2.1 to 3.2.12 have been dealt with above and the Tribunal's findings are repeated. The respondents' non-discriminatory explanations are

accepted and the matters complained of are not detriments because the claimant has done any protected act.

84. In respect of 3.2.13 the claimant relies upon the 'false assertions' in the termination letter of the 6/12/2019. Ms Reza accepted upon reflection that the letter did not contain the entirety of her reasons for terminating the claimant's employment.
85. It is inevitably the case that when reasons for termination are given in attempt to be neutral or to let an employee down gently, problems ensue. It is far better to be honest (but not necessarily brutal). Even if the dismissal letter was misguided, the Tribunal finds that it was not motivated by any of the protected acts.
86. Ms Reza had repeatedly attempted to accommodate the claimant and her requests. The claimant had tried to call Ms Reza's bluff by resigning in her email of the 15/10/2019 and that backfired and resulted in her having to send damage limitation emails on the 6/11/2019. Ms Reza had finally had enough due to the events which took place on the 6/12/2019 and that was the reason for the termination of the claimant's employment. It was not because of any of the protected acts.
87. Detriments 3.2.14, 3.2.15, 3.2.16 and 3.2.17 all relate to payments upon termination and queries thereupon. The claimant herself said in evidence-in-chief that she does not know the extent to which Mr Chowdhury, Ms Hutchinson or Ms Reza were involved in these decisions. She has not provided any evidential causal link to suggest how these decisions were because of any protected act. As an example, how errors (on her case) in payments post termination are because she complained regarding a location to express milk.
88. Detriment 3.2.18 is the failure to respond to the claimant's grievance until 12/3/2020. The grievance was dated 2/12/2019. The claimant's employment then terminated on 6/12/2019. Ms Hutchinson suggested a grievance meeting on the 10/12/2019. Ms Hutchinson send a further email to the claimant on the 12/12/2019 and asked her to confirm whether she was going ahead with the grievance process by the 18/12/2019 (page 355). The claimant emailed on the 20/12/2019 and Ms Hutchinson responded on the 23/12/2019. Ms Hutchinson responded to an email from the claimant on the 3/1/2020 and suggested a call on the 6/1/2020 to discuss how the grievance would progress (page 369). Ms Hutchinson sent a further email on 13/1/2020 after leaving a voicemail message. On the 15/1/2020 the claimant's solicitors sent a seven-page letter before action, which included a data subject access request (page 389). Ms Hutchinson sent an email to the claimant's solicitors on 12/2/2020 to extend the time-frame for the subject access request and a separate email to state that she had not been able to engage with the

claimant in respect of progressing the grievance. On the 13/2/2020 the claimant's solicitors confirmed that she was not willing to attend a grievance meeting (page 407). The grievance was then passed to the Head of Human Resources, he conducted an investigation and the outcome was sent to the claimant on the 12/3/2020 (page 666).

89. There was no failure to respond to the claimant's grievance. There was no undue delay and any delay was down to the claimant.
90. Detriment 3.2.19 relates to the content of the grievance outcome letter. The reality is the claimant is unhappy with the outcome of the grievance, as her grievance was not upheld. The claimant disengaged from the grievance process and she did not attend the meeting. The claimant has not satisfied the burden of proof to show how the grievance outcome was because of any protected act.
91. Mr Leonhardt submitted that the Part-Time Worker detriment claim does not explicitly say which ground(s) of Regulation 7(3) are relied upon. The list of issues sets out the detriments to be:
- '4.1.1 Mr Chowdhury encouraging her to resign;
  - 4.1.2 advertising the claimant's role; and
  - 4.1.3 terminating her employment.'
92. The Tribunal has found that Mr Chowdhury did not encourage the claimant to resign. Her role was advertised for the factual reason that she had resigned. Ms Reza terminated the claimant's role due to her frustration with the claimant's approach and attitude towards her role. In respect of the claimant being a part-time worker, Ms Reza had adjusted the role as much as she could. That demonstrated her willingness to enable the claimant to perform her role, within the parameters open to Ms Reza; not the opposite.
93. The claimant's claim of indirect discrimination based upon the protected characteristic of sex is based upon two false premises. The first is that the Tribunal should take judicial notice that the claimant was a working mother with a young child and had childcare responsibilities. In fact the Tribunal was never told anything other than the claimant had a young child. Nothing at all was said about any childcare responsibilities and any difficulties that caused her. It seems to have been assumed that having a young child, the claimant had childcare responsibilities; however, that evidence, other than the assumption was never put before the Tribunal.
94. The second is that it was a full-time role squashed into a part-time 0.8FTE role. It was not. It was always a part-time 0.8FTE role. There therefore can



have been no PCP in respect of full-time teaching hours. The teaching hours were set on the basis of the role being part-time 0.8FTE equivalent. Albeit the hours were set at the higher teaching ratio. In submissions it was suggested that the PCP was made out as it affected the claimant as a woman and as a part-time worker; it was not. The fact that the respondent subsequently decided to advertise the role as a full-time role (taking at that point in time actual student numbers as opposed to projections when the role was offered to the claimant) does not affect the when the role was advertised and offered to the claimant, it was on a 0.8FTE basis and the teaching sessions reflected that.

95. For the breach of contract claim, during submissions, the claimant abandoned allegations 6.1.1, 6.1.2 and 6.1.3. She therefore pursues allegation 6.1.4, her wages for the period 1/12/2019 to 20/12/2010. The claimant has not particularised this claim. She was dismissed on 6/12/2019 and given two weeks' notice. That took her to 20/12/2019 and in cross-examination, she accepted she was paid to the 20/12/2019.

96. The claimant's final claim is in respect of a failure to provide wage slips, contrary to s.8 ERA and in particular the December 2019 pay slip. The December 2019 payslip is at page 419 of the bundle.

97. The remedy the claimant seeks is compensation under s.11 and s.12 ERA. In submissions it was said this was a technical breach of s.8 ERA.

98. This aspect of the claimant's case is simply not understood.

## The Law

99. The ERA s.13 provides:

Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

100. The right to complain to the Tribunal is provided for in s.23 ERA:

(1) A worker may present a complaint to an employment tribunal—

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)), ...

101. The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, regulation 7, unfair dismissal and the right not to be subjected to a detriment provides:

(1) An employee who is dismissed shall be regarded as unfairly dismissed for the purposes of Part X of the 1996 Act if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3).

(2) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on a ground specified in paragraph (3).

(3) The reasons or, as the case may be, grounds are—

(a) that the worker has—

(i) brought proceedings against the employer under these Regulations;

(ii) requested from his employer a written statement of reasons under regulation 6;

(iii) given evidence or information in connection with such proceedings brought by any worker;

(iv) otherwise done anything under these Regulations in relation to the employer or any other person;

(v) alleged that the employer had infringed these Regulations; or

(vi) refused (or proposed to refuse) to forgo a right conferred on him by these Regulations, or

(b) that the employer believes or suspects that the worker has done or intends to do any of the things mentioned in sub-paragraph (a).

102. S.136 EQA provides:

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

...

(6) A reference to the court includes a reference to-

(a) an employment tribunal;...

103. S.13 EQA provides:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

104. S.19 Indirect discrimination EQA provides:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

- ...;
- sex;
- ...

105. S.23 EQA provides:

(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

106. S.26 EQA provides:

- (1) A person (A) harasses another (B) if-
  - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of-
    - (i) violating B's dignity, or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) ...
- (3) ...
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account-
  - (a) the perception of B;
  - (b) the other circumstances of the case;
  - (c) whether it is reasonable for the conduct to have that effect...

107. In respect of violating a person's dignity: '[n]ot every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended' (Richmond Pharmacology v Dhaliwal 2009 ICR 724, EAT).

108. The EAT also observed that 'the word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence' (Betsi Cadwaladr University Health Board v Hughes and ors EAT 0179/13).

109. S.27 EQA provides:

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

110. The complaint is of dismissal and detriment s. 39(2)(c) and (d) and s. 40 EQA.

111. S. 123 EQA provides:

- (1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—
  - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
  - (b) such other period as the employment tribunal thinks just and equitable.

...

- (3) For the purposes of this section—
  - (a) conduct extending over a period is to be treated as done at the end of the period; ...

112. In respect of the vagueness of the allegations, it is important that to establish that the treatment was because of a protected characteristic it must

be shown that a named individual (or a number of individuals) who subjected the claimant to a detriment was consciously or subconsciously influenced by the protected characteristic. Unless the claimant identifies the alleged discriminator(s), that exercise cannot be conducted and the claim will fail Reynolds v CLFIS (UK) Ltd [2015] IRLR 562.

113. In Madarassy v Nomura International plc [2007] ICR 867, CA, Mummery LJ stated that: 'The bare facts of a difference in status and a difference in treatment only indicates a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent has committed an unlawful act of discrimination'.
114. If a claimant establishes a *prima facie* case of discrimination, then the second stage of the burden of proof test is reached, with the consequence that the burden of proof shifts onto the respondent. According to the Court of Appeal in Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases [2005] ICR 931, CA, the respondent must at this stage prove, on the balance of probabilities, that its treatment of the claimant was in no sense whatsoever based on the protected ground.

## Conclusions

115. Time limits were not addressed and any allegation pre-dating 13/11/2019 is out of time, subject to s.123(1)(b) and (3) EQA. The claimant did not seek to persuade the Tribunal that the allegations were a continuing act or for it to exercise its discretion to extend the time limit.
116. The exercise of discretion is not a foregone conclusion and 'there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.' (Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA)
117. In Concentrix CVG Intelligent Contact Ltd v Obi 2023 ICR 1 the EAT referred to Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194 CA and the principle that the absence of an explanation does not, as a matter of law, mean that a just and equitable extension must automatically be refused. Failure to consider the length of and reasons for, the delay would be an error of law, but that is not the same as saying that if, upon consideration, no reason is apparent at all from the evidence, then in every case the extension must, as a matter of law, be refused.
118. Notwithstanding that principle, the claimant was professionally represented and the time limit was simply not addressed at all.

119. In respect of the claims under the EQA based upon the prohibited conduct of direct discrimination, the Tribunal concluded:
- 1.1.1 the claimant's version of events was not accepted, any comments made were sympathetic and were empathising with the claimant's circumstances as a mother with a young child;
  - 1.1.2 the claimant's version of events is not accepted, Ms Reza believed the claimant had resigned after 14 working days and any reference to her short tenure was due to her resignation, not to her sex;
  - 1.1.3 Mr Chowdhury did not encourage the claimant to resign, she had resigned;
  - 1.1.4 the claimant was a new member of staff and an unqualified teacher, it was expected she would be observed and it was not detrimental;
  - 1.1.5 the claimant's line manager was entitled to observe and review the claimant;
  - 1.1.6 this is a vague allegation and as such, it cannot be answered;
  - 1.1.7 this is a vague allegation and as such, it cannot be answered;
  - 1.1.8 Mr Chowdhury was entitled to oversight of his faculty;
  - 1.1.9 this is a vague allegation and as such, it cannot be answered;
  - 1.1.10 the claimant requested the meeting on the 28/11/2019 be moved;
  - 1.1.11 this is a vague allegation and as such, it cannot be answered;
  - 1.1.12 the claimant was removed from the payroll, she has not however satisfied the burden placed upon her to show how this was because of her sex/gender;
  - 1.1.13 the claimant's role was advertised as she had resigned and R1 would need to replace her as soon as possible; and

1.1.14 the respondents' non-discriminatory explanation for the termination of employment was accepted; Ms Reza had done all she could to accommodate the claimant and her behaviour during the week of 2/12/2019 was the 'final straw' as far as Ms Reza was concerned and she terminated the claimant's employment as a result of that and the fact that every time she attempted to accommodate the claimant's requests, she remained dissatisfied.

120. In respect of sex related harassment, the conclusions set out above are repeated.

121. In respect of Victimisation, the respondents agreed the protected act contended for (3.1.1 to 3.1.7) amounted to protected acts for the purposes of s.27(1) EQA. In respect of the detriments listed under 3.2.1 to 3.2.12, the conclusions set out above are repeated. The following conclusions are also reached:

3.2.13 the dismissal was unrelated to any protected characteristic or protected act, the reasons for the decision to dismiss above are repeated;

3.2.14 this allegation relates to payments upon termination and queries thereupon and the claimant has not satisfied the burden of proof to show how any errors (if indeed there were any errors) were because of a protected act;

3.2.15 ditto

3.2.16 ditto

3.2.17 ditto

3.2.18 Ms Hutchinson did not fail to respond to the grievance; any delay was due to the claimant not engaging in the process; and

3.2.19 the grievance was not upheld and the simple fact is that the claimant was dissatisfied with the outcome.

122. In the list of issues, the claimant lists the detriments as: Mr Chowdhury encouraging her to resign; advertising her role whilst the claimant was still employed; and terminating her employment. The conclusions set out above are repeated.



123. In respect of indirect sex discrimination, the findings were that neither PCP were applied to the claimant. She was a working mother, however there was no evidence at all about any difficulties she had with childcare and whether or not that put her at a particular disadvantage. The claimant's issue was the number of weekly teaching sessions allocated to her. She has failed to show evidentially that she experienced any difficulties as a working mother *with* childcare responsibility. It is noted that the claimant applied for funding to commence a PHD in September 2019 over three years, as well as completing her qualified teacher status during the second year of the PhD. This indicated the opposite of her having any childcare issues; however no such issues were ever raised or evidenced in this claim.
124. In respect of the claims under the Part-Time Worker Regulations 2000 (allegations 4.1.1, 4.1.2 and 4.1.3) the conclusions reached above are repeated.
125. In respect of the breach of contract claim, the claimant withdrew allegation 6.1.1 during submissions. She was paid her two weeks' contractual notice (allegation 6.1.2). She took her holiday during half-term week and there was no specific evidence in relation to this (allegation 6.1.3). She as paid from 1/12/2019 to 20/12/2019 (allegation 6.1.4).
126. The claimant's claim in respect of a failure to provide a payslip is simply not understood (allegation 7.1).
127. There were three named respondents in this case. All three did no more than to carry out their particular role for R1. They were not vindictive towards the claimant and they all tried to support and assist her. Ms Reza did all she could to reduce the claimant's teaching workload. Mr Chowdhury went out of his way to speak to the claimant about her resignation (albeit the conversation was a cross-purposes, however, that was not down to Mr Chowdhury). Ms Hutchinson acted professionally and effectively in respect of the checks which needed to be carried out prior to employment commencing and during the grievance process.
128. The Tribunal does appreciate how difficult it is for the respondents to be unfairly maligned; particularly when they all behaved professionally towards the claimant and until Ms Reza had, understandably had enough, were empathetic and supportive. It is noted however that if Ms Reza was motivated to dismiss the claimant due to her gender or her part-time status, then she would simply have accepted the claimant's resignation. She did not and the claimant was allowed to rescind her resignation. This demonstrates that at that point in time, all the respondents wanted this appointment to work out and for the claimant to be successful. The Tribunal understands the burden the named respondents face when answering allegations of unlawful discrimination contrary to the EQA. It is hoped that the Tribunal resolutely

and resoundingly dismissing the claimant's allegations will assist the named respondents in reaching a resolution to this claim, which had unfortunately dragged on for several years.

129. For those reasons, the claimant's claims are not well-founded and are dismissed.

13 December2023

Employment Judge Wright