EMPLOYMENT TRIBUNALS

Claimant: **Mr Festus Olatoye**

Respondent: **1. Royal Greenwich Trust School**
2. University Schools Trust

Heard at: London South, by CVP On:3,4,5 and 8 April 2024 (9, 10 and 12 April 2024 in chambers)

Before: EJ Rice-Birchall
Ms Leverton
Mr Adkins

Representation
Claimant: No attendance
Respondents: Mr Fitzpatrick, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. **The complaint of being dismissed for making a protected disclosure is not well founded and is dismissed.**
2. **The complaint of being dismissed on grounds related to union membership or activities is not well founded and is dismissed.**
3. **The complaint of direct race discrimination is not well-founded and is dismissed.**
4. **The complaint of indirect race discrimination is not well-founded and is dismissed.**
5. **The complaint of harassment related to disability fails and is dismissed.**
6. **The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.**
7. **The complaint of victimisation is not well-founded and is dismissed.**
8. **The claimant's claim for holiday pay is not well founded and is dismissed.**

REASONS

Background

1. The claimant was employed as a maths teacher for the first respondent(referred to in these reasons as the respondent) from 1 September 2018 until his dismissal in July 2020. The issue of which of the respondents employed the claimant remained to be determined by the Tribunal at the final hearing.

2. By a claim form presented on 22 October 2020, following a period ofearly conciliation between 18 September and 6 October 2020, the claimant brought complaints of unfair dismissal, race and disability discrimination and monetary claims in respect of outstanding accrued annual leave and notice pay.

3. The respondents denied the claim in its entirety in a response that waspresented to the Tribunal on 16 December 2020.

4. The claim has been through a number of private preliminary hearings forcase management:

    a. 11 February 2022 before Employment Judge ("EJ") Self.
    b. 24 October 2022 before EJ McLaren.
    c. 5 March 2023 before EJ Cowen.
    d. 24 August 2022 before EJ Andrews.
    e. 11 January 2024 before EJ Tsamados; and
    f. 14 February 2024 before EJ Tsamados.

5. The claimant's complaints of breach of contract and wrongful dismissalwere dismissed on withdrawal by the claimant in a judgment sent to the parties on 9 December 2022.

6. A final list of issues was determined at the preliminary hearings as setout below.

The Hearing

7. Notably, for reasons given separately, the hearing proceeded withoutthe claimant being present as his postponement application was refused. The Tribunal heard the claim in the claimant's absence.

Issues

8. The final list of issues is set out below:

JURISDICTION

1. Have any claims below been brought outside the time limit provided by s.123(1)(a) of the Equality Act 2010 ('**EqA 2010**'), as adjusted for early conciliation?

2. If so, has the Claimant shown it is just and equitable to extend time tobring those claims pursuant to s. 123(1)(b) EqA 2010?

UNLAWFUL DEDUCTIONS FROM WAGES

3. The Claimant says he is owed holidays for the month of August 2020.

The Respondent says the Claimant had taken all accrued annual leave prior to dismissal and is owed no holiday pay.

AUTOMATICALLY UNFAIR DISMISSAL S. 103A ERA 1996

4. The Claimant says that he made the following protected disclosure to the Respondent:

a. '*On 18th November 2019, I wrote an 'information rights concern' letter to the school stating my concerns over the abuse of CCTV camera in my classroom without following the ICO guideline and without a CCTV policy in the school at the time*'.

5. Did the Claimant make this disclosure?

6. Did the Claimant reasonably believe that this disclosure tended to show:

a. That the Respondent was failing to comply with a legal obligation, namely the ICO guidelines on usage of CCTV in the workplace.

b. That a miscarriage of justice had occurred or was likely to occur as:

(i) the Respondent commenced a disciplinary investigation on 6th November 2019 after viewing CCTV footage of a fight in the Claimant's classroom,

(ii) no action was taken against Mr. Efunkomaya or Mr.Mbhuyonga for covering a CCTV camera in their classrooms, whereas the Claimant was so disciplined; and/or

c. That information tending to show a relevant failure had been or was likely to be concealed as

(i) in response to the Claimant's November 2019 and February 2020 Subject Access Requests, the Respondent did not provide footage of the fight and said the footage had been deleted.

(ii) the Respondent '*covered up the fact that they had no CCTV policy so they could continue to take disciplinary action on the CCTV allegations against me*'; and

(iii) '*After they became aware of my complaint to the ICO, they started putting up CCTV signages on the corridors and reception (I have time stamp photo evidence of before and after of the corridors/buildings), Louise Howard quickly came up with a CCTV policy. They started removing CCTV cameras in the classrooms in the Maths department (modular building). However, they still carried on with disciplinary actions against me. The disciplinary*

actions started with an abuse of CCTV by the respondent'?

7. Did the Claimant reasonably believe that this disclosure was made in thepublic interest?

8. The Claimant says he made the following disclosures to the ICO:

a. On 18th November, the Claimant made an oral complaint to the ICO that the Respondent had '*failed to comply with its data protection obligation to its staff*', '*abused the use of CCTV*', failed to comply with '*the ICO guideline on the use of CCTV in the workplace*', and that the use of CCTV in Maths classrooms only was indirectly discriminatory.

b. On 5th January 2020, the Claimant made a written complaint to the ICO that 'the respondent has continued to fail its data protection obligation, there was a miscarriage of justice going on and the evidence is now likely to be concealed'; and

c. On 14th April 2020, the Claimant sent a '*follow up*' e-mail to the ICO.

9. Did the Claimant make these disclosures?

10. Did the Claimant reasonably believe that alleged default fell within theremit of the ICO, i.e., compliance with the requirement of legislation relating to data protection and to freedom of information, per BEIS Guidance on prescribed persons?

11. Did the Claimant reasonably believe that the information disclosed, andany allegation contained in it, were substantially true?

12. Has the Claimant shown that the reason or principal reason for hisdismissal was the protected disclosures referred to above? The Respondent says that the Claimant was not dismissed for an inadmissible reason but, rather, was summarily dismissed for gross misconduct.

S. 152(1)(B)

13. The Claimant relies upon the following as a trade union activity for thepurposes of s. 152(1)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992: in September-November 2018, running in an internal NEU election to the become the NEU representative for the Respondent school.

14. Did the Claimant take part in this activity at an appropriate time?

15. If so, does this activity amount to a trade union activity for the purposesof s. 152(1)(b)?

16. Was the sole or principal reason for the Claimant's dismissal taking partin this activity?

E - RACE

17. The Claimant's race is Black African.

Direct Race Discrimination

18. The Claimant relies upon the following treatment:

a. Ms. Gasson-Mulcahy failing to act on the Claimant's complaints of race discrimination on 14th October 2019, in that she should have but did not
   (i) pass the Claimant's complaints of discrimination made against Mr Rahman and Mr Marshall on to their replacements and
   (ii) conduct an investigation of the 14th of October 2019 complaint;

b. Failing to act on the Claimant's complaint that three students did a '*Nazi salute*' towards him on 18th October 2019, in that the Respondent ought to have, but did not, ensure '*exclusion of those students from the teacher's class, apology from the students to the affected teacher, meeting with the student's parents and the students made to complete weeks of community service in the school*';

c. In November 2019, Ms. Alam told the Claimant he was not speaking clear English to students.

d. Ms. Alam wrote a report titled '*Extracurricular Review-Maths*' of 13th November 2019 and stated that Maths Teachers '*are incompetent and cannot even speak English*';

e. On 13th November 2019, Ms. Alam wrote a report about the Maths department in which she said, '*the literacy of some teachers caused some concerns*'.

f. On 23rd. January 2020, during a meeting Ms. Alam told the Claimant that his '*lack of ability to speak clear English' was 'causing a breakdown of relationship with…students*' and commencing an investigation regarding the same.

g. Ms. Gasson-Mulcahy and Ms. Powell failing to act on the Claimant's complaint regarding Ms. Alam's alleged comments on 23rd January 2020. The Claimant says that the Respondent should have investigated Ms. Alam for this behavior; and

h. Dismissing the Claimant.

19. Did the alleged treatment occur as alleged or at all?
20. Was this less favorable treatment?

21. If so, was it because of race?

22. The Claimant relies upon a hypothetical comparator only.

Indirect Race Discrimination

23. The Claimant relies upon the following PCP:

a. '*Installing CCTV in the Math's classrooms in the modular building. The Claimant explains that in all classrooms in the modular building, in contrast with the main building which only has corridors with CCTV,*

there is CCTV'.

24. The Claimant says this PCP was applied from December 2018 until May2020.
25. Did the Respondent apply this PCP?

26. If so, did this PCP put Black Africans at a particular disadvantage whencompared with persons who do not share this protected characteristic? The Claimant says that, should students fight in class, CCTV where available would be used to investigate the response of teachers to such a fight. The Claimant says that what occurred in his classroom would have occurred in other classrooms and it was only the fact that there was CCTV that led to him being criticized and disciplined.

27. If so, did it put the Claimant to that disadvantage?

28. Can the Respondent show this PCP to be a proportionate means ofachieving a legitimate aim? The Respondent relies upon the legitimate aims of:

a. Requiring the use of the modular buildings, with the use of CCTV being arequirement for the same by the council; and

b. Ensuring a safe environment for staff and students.

F- DISABILITY

29. Disability has been conceded by the respondent. The Claimant is disabled by reason of depression and anxiety and was disabled at the material times.

Duty to Make Reasonable Adjustments

30. Did the Respondent operate the provision, criterion, or practice of requiring the Claimant to exclusively have a Key Stage 3 Timetable? The Claimant alleges that other staff members had mixed stages/age groups, and that in September 2019 he specifically asked to have more mix in his timetable as Key Stage 3 is the most difficult/stressful class to teach.

Disability Related Harassment

31. The Claimant relies upon the following conduct:

a. The headteacher, Ms Toye (nee Longhurst), on 30th June 2020, denigrated the Claimant by making a statement in an email about his sickness '*how can this be appropriate;* and

b. On 16th October 2020, during the disciplinary appeal hearing, Caroline Longhurst made a comment about the Claimant's depression '*as 'inappropriate"*', which the Claimant says (i) meant that it was inappropriate for him to raise his depression, and (ii) that Caroline Longhurst was saying it was in fact not true that the Claimant had depression.

32. Did this conduct occur as alleged or at all?

33. If so, was this conduct unwanted?
34. Did it have the purpose or effect of violating the Claimant's dignity, orcreating an intimidating, hostile, degrading, humiliating or offensive environment for him, taking into account:

a. the perception of the Claimant.

b. the other circumstances of the case; and

c. whether it is reasonable for the conduct to have that effect.

35. Was the conduct related to disability?

G – VICTIMISATION

36. The Claimant relies upon the following alleged protected acts:

a. '*In October 2019, I made complaint against Mr Rahman and Mr Marshall about racial discrimination of me. The complaint was made to Jacinta Gasson-Mulcahy (HR Manager at the time)*';

b. '*Also in October 2019, I made complaint against Mr Rahman and Mr Marshall about racial discrimination of me to Ms Longhurst (incoming headteacher at the time)*';

c. '*On 23rd January 2020, I made a complaint against Ms Alam about a racist comment she made to me in a meeting with her. I also complained about her aggressive unprofessional behavior towards me in that meeting. The complaint was made to Ms Gasson-Mulcahy and Ms Powell*';

d. '*On 18th November 2019 and 5th January 2020, I made a protected disclosure to the ICO regarding the respondent's abuse of CCTV cameras in the Math's department (the modular building). The protected disclosure was also about the respondent's non-compliance with the Surveillance Camera Code of Practice and Data Protection Code of Practice for Surveillance Cameras and Personal Information*';

e. In or about April 2023 during the process of document exchange, theclaimant provided the respondent with evidence of racial discrimination.

37. Does this amount to a protected act for the purposes of s. 27(2) EqA2010?

38. Were the allegations made false?

39. If so, were the allegations made in bad faith?

40. The Claimant relies upon the following as allegations of detrimentaltreatment:

a. The 2019 and 2020 disciplinary investigations, which he says werecaused by the first protected disclosure.
b. '*Unfairness and prejudice*' in the investigation of the disciplinary allegations in that *'key witnesses'* were not *'interviewed in disciplinary investigations*', namely (i) Felicia Obeng, (ii) Gbengba Efunkomaya, and (iii) Fidelis Boyanga;
c. In December 2019, Ms. Longhurst and Ms. Gasson-Mulcahey told theClaimant they would trigger the absence procedure.
d. '*Covert CCTV monitoring of me by the respondent and excessive scrutiny of my work. Multiple members of senior leadership were seen (by students who came to tell me) watching CCTV footage of my classroom*';
e. Inconsistency of treatment around covering CCTV cameras as only theClaimant was dismissed.
f. In April 2020, failing to drop the CCTV disciplinary issues when CCTVwas removed.
g. Delay in investigating the Claimant's February 2020 grievance.
h. Communicating the outcome of the Claimant's grievance on 31st July 2020.
i. Dismissing the Claimant; and
j. (As it relates to the alleged protected act at paragraph 38e) The Respondent's referral of allegations against the claimant to the Teaching Regulation Authority ("TRA") and the TRA's resultant investigation into those allegations.

41. Did this detrimental treatment occur as alleged or at all?
42. If so, was it because the Claimant did a protected act or was believed tohave done a protected act?

Evidence

9. The Tribunal had the benefit of a Bundle of documents of approximately 1400 pages and a supplementary bundle of documents which primarily included documents which related to two issues which had been included following an amendment application made by the claimant. The claimant had not prepared or exchanged witness statements with the respondent either from himself or his witnesses. The respondent called four witnesses to give oral evidence all of whom had prepared a witness statement which had been sent to the claimant. Those witnesses were

Ms Alam, Deputy head (Quality of Education); Ms Gasson Mulcahy, HR Consultant; Ms Toye, Headteacher; and Louise Manthorpe, Data Protection Consultant. The claimant had access to the Bundle of documents from June 2023.

10. The Tribunal found the respondent's witnesses to be honest, reliableand credible.

11. The Tribunal notes that the claimant had obtained a witness order inrespect of two witnesses both of whom were members of the maths department at the respondent. The witness orders were dated 5 February 2024. However, as stated above, there was no witness statement for either witness and neither witness attended the Tribunal hearing. The Tribunal considered that it was for the claimant to arrange their attendance.

12. The Tribunal had the benefit of an extract of CCTV footage of theclaimant teaching a class in which there had been a fight between two pupils. The footage lasts some 50 minutes and shows the claimant in the classroom with pupils who are disengaged and restless, with some entering and leaving the classroom at will. Two boys have a fight; one of the boys moves and there is a further minor altercation between him and his new neighbour. Largely, the claimant appears not to notice and ignores all of the behaviour, though there is no sound, so it is impossible to know what the claimant actually says and whether he does notice, and tried to deal with it, but is ineffectual, or whether he just ignores it.

13. This CCTV footage features heavily in these proceedings. It forms partof the subject matter of the claimant's alleged protected disclosures, along with the claimant's objection to the CCTV cameras being used in his classroom at all. It was also the subject of discussion during a preliminary hearing (see below).

14. Before his disciplinary hearing, the claimant was given the opportunityto review the unredacted version of the CCTV footage with the respondent but he never did so, because of the" stringent" conditions which he said were attached. As far as the Tribunal was aware, the only condition was that he couldn't "have" or be sent to do with whatever he would wish, the unredacted CCTV footage.

15. Although the claimant was provided with a redacted version of theCCTV footage as part of these proceedings, to protect the children involved, he was given the opportunity to review the unredacted version with the respondent. Following the preliminary hearing on 14 February 2024, EJ Tsamados wrote to the parties having reviewed the CCTV footage. He concluded that the redacted version of the footage was unclear and that the claimant should be permitted to review the unredacted CCTV footage at the respondent's premises. As far as the Tribunal is aware, the claimant did not do so.

Facts

The respondent

16. When the claimant commenced his employment, the respondent was anew school. This meant there were only pupils in key stage 3 (the first three years of secondary school) and in sixth form. The pupils who were in sixth form were either studying for A levels or they were students who had failed their maths and/or English GCSEs and were studying for resits.

17. The school was, and is, very ethnically diverse, both in terms of itspupils and staff. A breakdown to this effect, in relation to staff, appeared in the Bundle.

18. When Ms Toye arrived at the respondent in the claimant's secondteaching year, she arrived to a school which was not in a healthy place and which needed some significant input into its culture; its curriculum and behavioural standards.

Ms Toye's headship

19. Ms Toye was an experienced senior teacher who commenced in theschool in the claimant's second year of teaching. As stated above, when she arrived, she found a school in need of some significant change and input.

20. Ms Toye took over as Head in October 2019, after half term.

21. One of the systems she put into place was an on-call system wherebyat least one of the senior or middle leadership team would be on call and would walk around the school, effectively to troubleshoot, and would be available to be contacted should a teacher require support. This was coupled with an open-door policy in classrooms. Whilst the on-call system was available as a support, it wasn't designed to be at the forefront of a teacher's strategy.

22. Ms Toye would often walk the school to check for incidents and to geta feel for the school; the classes; and any issues. Despite the input required into the school, Ms Toye described the children as "biddable". Serious behavioural incidents are rare.

Teaching standards

23. Teachers have teaching standards which they are expected, as a professional, to uphold. By way of example, number 1 requires a teacher to establish a safe and stimulating environment rooted in mutual respect. Number 4 refers to a requirement to plan and teach well-structured lessons. Number 7 requires a teacher to manage behaviour effectively and to create a good and safe learning environment.

The claimant

24. The claimant commenced his employment with the respondent as amaths teacher on 1 September 2018. He was dismissed on 30 July 2020. He was on the upper pay spine as he was an experienced teacher.

25. Ms Alam described how the claimant had his own ideas about how todeal with behavioural issues which were not aligned to the school's policies. She described "a concerning pattern where he would send children out of his class permanently and say that they could not return, but he did not take that through any sort of line management process." A decision such as that should be taken by the leadership team of the school, involving the head of department, with clear evidence and focussed on the progress of and provision for the student.

26. It was clear to the Tribunal, from the witness and documentaryevidence, as well as from the CCTV footage, that the claimant had a poor rapport with the children in his class and was not an effective teacher.

The maths department

27. The maths department taught its classes mainly in the school'stemporary modular classrooms. It was a condition of the Royal Borough

    of Greenwich when they were built that they would have CCTV installed, partly for security. It was known that, in these classrooms, which were away from the main school, behaviour could be worse than in the main school.

28. The department consisted of approximately six teachers; line managedby Mr Gbenga Efunkomaya.

CCTV

29. Whilst not all classrooms in the main school had CCTV installed, it waspresent in some of the teaching environments, for example in IT. Maths was not the only department with CCTV. In any event, the maths classrooms had CCTV simply because they were located in the modular buildings and not for any other reason.

30. The second respondent had a CCTV policy which was adopted by therespondent. It states that CCTV is used for protecting buildings and assets; increasing personal safety and to reduce the fear of crime; to support the policy in deterring and detecting crime; to assist in identifying; apprehending and prosecuting offenders; to protect members of the public and private property; and assist in managing the school.

31. In accordance with the policy, CCTV footage was not used to monitorstaff or students. However, if there was an incident and CCTV

footage was available, it would be reviewed as part of any investigation. Indeed, the claimant himself asked for it to be viewed after one behavioural incident (the nazi salute incident – see below).

Trade union activity

32. The claimant alleges that he organised some staff to elect him as theNEU union representative for the respondent in September 2018, which he alleges antagonised Mr Marshall and Mr Rahman, hence their ensuing "victimisation" of him.

33. However, none of the members of staff involved in the claimant'sdismissal were employed at that time or knew anything about this. In fact, it is only more recently that the school has had elected trade union representatives, as the Tribunal accepted Ms Toyes' evidence that when she first joined the respondent in October 2019 there was no union representative for any union. Further there is no documentary evidence of the claimant either becoming a trade union representative or standing to be elected as such.

Ms Gasson-Mulcahy - HR

34. In October 2018, Ms Gasson-Mulcahy commenced employment with the respondent. Ms Gasson-Mulcahy was an independent Human Resources (HR) consultant who worked usually one or two days a week. She continued providing consultancy services to the respondent until January 2021.

First disciplinary issue

35. On 31 October 2018 the claimant was alleged to have usedinappropriate language at a parents' evening. This was raised by way a parental complaint.

36. On 1 November 2018, the claimant was alleged to have behavedinappropriately in respect of removing a student's earphones.

37. The claimant was suspended on 1 November 2018 pending adisciplinary investigation. The suspension meeting was conducted by Ms Farwell, School Business Manager who was accompanied by Ms Gasson-Mulcahy. The suspension was because of the incidents of 31 October and 1 November 2018 and a further allegation that the claimant had pushed a child out of the class.

38. The investigation was concluded on 17 December 2018 and theclaimant returned to work. Only the allegation about the parents' evening was upheld and informal disciplinary action was recommended.

39. In fact, Mr Rahman, who was at that time the head of the school, wroteto the claimant on 24 January 2024 to inform him that no action would be taken but that he was advised to reflect on his behaviour and consider strategies that he could use to prevent complaints. He was reminded

that he was a role model to pupils and that he must act professionally and ensure emotions were kept under control in all situations. He was reminded that, should there be any repeat of such behaviour then disciplinary action may be taken.

Second disciplinary issue

40. In his letter, Mr Rahman also confirmed that there had been a furtherparental complaint made against the claimant on Wednesday 16 January 2019 involving allegations of unprofessional conduct. The claimant was suspended again. The allegations included discussing his suspension with students, use of inappropriate nicknames for students, threat of counter claims against students should they raise complaints and inappropriately adjusting a student's chair.

41. Ms Gasson Mulcahy commenced a disciplinary investigation into theseallegations on 21 January 2019.

42. On 24 January 2019, the claimant wrote to say he was not in the rightmental state to attend an investigation meeting. He was signed off sick with anxiety and depression and stress at work until 2 September 2019.

43. On 20 March 2019, a further allegation was added to the disciplinaryallegations being investigated. It was alleged that the claimant had a "spot of shame" in his classroom where he would make pupils stand.

44. The investigation concluded that there was a disciplinary case toanswer.

45. The disciplinary hearing took place on 12 and 19 July 2019. Theclaimant was given a final written warning which was reduced on appeal to a written warning as the claimant had not been interviewed due to his sickness absence and the panel felt he may have been able to present further mitigation.

Second School Year of the claimant's employment

46. In September 2019, the claimant's second school year, Ms Toye (thenLonghurst) joined the respondent, as did Ms Alam. The claimant also returned to work following his long-term absence.

47. A support plan was put in place for the claimant. However, it does notappear to have been followed.

Reference complaint

48. On 30 September 2019, the claimant met with Ms Gasson-Mulcahyand complained about a poor reference provided by Mr Marshall in respect of a job application made by the claimant. In fact, the claimant was complaining because Mr Marshall had referenced the disciplinary

process, which was ongoing in respect of the claimant, which he was obliged to do.

49. Although the claimant believed that the conversation with Ms GassonMulcahy took place on 14 October 2019, the Tribunal found that nothing turned on the date. The complaint was about the content of the reference. Ms Gasson-Mulcahy does not recall anything being said about discrimination, or that the claimant indicated that e felt he was being discriminated against. The Tribunal finds that no allegation of discrimination was made by the claimant during that meeting, when the claimant focussed on the content of the reference.

The alleged “nazi salute” incident

50. On 17 October 2019, the claimant complained to Ms Alam about herresponse to an alleged “nazi salute”. Ms Alam, as a senior leader, was called upon to assist the claimant after an incident in which he accused three children of making a gesture of a nazi salute. Ms Alam investigated it and was satisfied that the children had been mimicking a gesture of the claimant rather than attempting a nazi salute and, as a result, she returned them to the classroom (the claimant had sent them out) and suggested a restorative conversation between the children and the claimant, facilitated by her. The claimant was unhappy with Ms Alam’s response and flet that it undermined his authority.

51. In October 2019 Ms Toye took over as interim Headteacher after halfterm, following Mr Rahman stepping down.

The fight

52. On 6 November 2019, there was a fight in the claimant’s class. One ofthe children was so fed up with the noise that she asked to leave and work in another classroom. She was in a classroom with another

teacher, Mr Mbouyangha. There was so much noise that he asked the pupil to go and see if everything was alright and whether the claimant needed assistance. It was discovered that there had been a fight.

53. On 7 November 2019, the claimant reported that there had been a fightand reported that he had been hit in the face. The fight was reported on the respondent’s Behaviour Management Log (the SIMS system). The CCTV footage was reviewed by Ms Toye as part of her investigation into this matter.

54. On 11 November 2019, there was a meeting between Ms Toye and theclaimant. The claimant was accompanied by Mr Efunkomaya. The claimant was told he should stay at home the following day; that his nonengagement warranted investigation; and that the Local Authority Designated Officer (LADO) would have to be notified. In that conversation, the claimant was defensive. He did not accept that he had done anything wrong and blamed the students.

55. Ms Toye asked the Director of Learning, Mr Martin, to interview a crosssection of students who had been in the lcass at the time. All five confirmed that children were getting up, shouting and throwing things, that a fight had occurred and that the claimant had not done anything to control the situation.

56. The claimant waws asked to attend a meeting on 13 November,however, he said he could not attend because his trade union representative would not be available.

57. On 13 November 2019, the claimant was signed off sick with stress atwork until 27 November 2019.

58. On 13 November 2019, Ms Alam, accompanied by Ms Mirza, compiledan external curriculum review of the maths department. Maths was the second department to be reviewed, the first being English, as Ms Alam started with the core subjects. The review was in line with the Ofsted requirements and reviewed the efficacy of the department in general but in line with the Ofsted framework criteria which have to be used to benchmark departments. One of the grade descriptors in the Ofsted School inspection handbook for judging the quality of education is “Teachers ensure that their own speaking, listening, writing and reading of English support pupils in developing their language and vocabulary well…One of the criticisms found, in line with those criteria, was that: “ The literacy of some teachers caused some concern – basic spelling and grammar was of a low quality in one lesson, suggesting a need for further monitoring of resources.”

59. On 16 November 2019, the claimant was informed that he would notbe suspended as a result of the fight; that Ms Toye would discuss the fight with him on his return from sick leave; and that he would be referred to OH.

60. On 18 November 2019, a letter was sent to Ms Toye by the claimant. Itwas headed “Information rights concern” and concerned the footage of the CCTV camera which included the fight between the students and the claimant’s role in that. He sent a further letter to Miss Toye, the “my wellbeing and CCTV incidence letter” which informed the respondent that the claimant had reported to the police that he had been assaulted by the student who hit him while he broke up the fight and that the respondent’s failure to support him had undermined his authority with the class. The claimant also alleges that he made a verbal complaint to the ICO on this date. The Tribunal accepts, on the balance of probabilities, that the claimant did make the verbal complaint as his letter to the respondent, referred to above, states, “I understand that before reporting my concern to the ICO I should give you the chance to deal with it.” However, the respondent was unaware of it. The claimant felt that having the CCTV in his classroom offended his data privacy and information rights.

61. On 28 November 2019, the claimant returned to work. A return-to-workmeeting was held on 29 November 2019 with Ms Toye and the

claimant was told he would be referred to OH and that she wanted to re-introduce the support plan, which she found lacking, along with a mentor and a support teacher. For completeness, the support plan was raised by the claimant in his grievance (see below). Ms Toye also explained that, now he was back, the respondent would re-open the investigation into the fight.

62. On 4 December 2024, the claimant refused the mentor but acceptedthe support teacher. Ms Toye wrote to him about the investigation and said that an OH appointment had been made on 9 December and that the investigation meeting would take place on 12 December.

63. In December 2019, the claimant was informed that his absence levelshad triggered the first formal meeting. However, this was rescinded following further investigation, as the claimant was given the benefit of the doubt over some of the dates that the respondent had recorded as absence.

64. On 9 December 2019, the claimant did not attend the OH appointment.

65. Ms Kearns conducted investigation interviews in December 2019 withMr Martin, Ms Saunders and the claimant. On 16 December 2019, the claimant attended his investigation meeting, accompanied by his trade union representative. The interviews were all recorded and attached to the investigation report.

66. The witnesses were all asked to sign their interview transcripts toconfirm their accuracy. The claimant did not return his script until 27 January 2020 and had fundamentally altered the content of some of his answers. Ms Kearns disregarded these amendments as it was clearly agreed with the claimant that this was not the purpose of asking him to review his script. Ms Kearns also interviewed Mr Efunkomaya by email and telephone (as he was off sick).

67. Also on 16 December 2019, Ms Manthorpe produced a report entitled“Report into Allegation of Breach surrounding the viewing of CCTV footage at the Royal Greenwich Trust School”. She sent that report with an email on 18 December 2019 to the claimant and explained that, if he was unhappy with the content of the report, he was entitled to contact the ICO.

151. On 5 January 2020, the claimant alleges he made a written complaint to the ICO. None of the respondent’s witnesses were aware of that at the time of the complaint and the respondent was not copied in. However, that the claimant did make such a complaint is accepted by the Tribunal as it is referred to in an email from the claimant to the ICO on 9 April 2020.

68. The first the respondent knew of any complaint to the ICO was on 27 May 2020, when the respondent received a letter from the ICO. Ms Manthorpe sent a detailed response to the ICO on 10 June 2020

providing the information required. Further correspondence with the ICO ensued.

69. An investigation report in relation to the fight was prepared on 21 January 2020 by Ms Kearns, but it was a draft version as the claimant had not returned his signed notes. The investigation report recommended a disciplinary hearing to consider potential gross misconduct.

70. On 23 January 2020, the claimant had a meeting with Ms Alam. Ms.Alam raised concerns with the claimant regarding his relationship with his students, such as telling students they were permanently excluded from his class without following procedure, and concerns that he could not control the class. The claimant did not take kindly to the feedback given to him by Ms Alam. He tried to shut down the meeting and accused her of being racist.

71. The claimant subsequently complained about Ms Alam and allegedshe made a racist comment about him. He appears to allege that she told him that his “lack of ability to speak clear English” was causing a breakdown of relationship with students” and that she was commencing an investigation regarding this. The claimant alleges that he spoke to Ms Gasson-Mulcahy about this meeting and alleges he informed her of a racist comment.

184. Ms Gasson-Mulcahy did not recall the claimant complaining to her about the comments he alleges Ms Alam made; that his “lack of ability to speak clear English” was “causing a breakdown of relationship” with students. The Tribunal accepts Ms Gasson-Mulcahy’s evidence that the clamant did not tell her about those comments at the time, so she could not have investigated them or recommended an investigation into them.

72. The Tribunal finds that the claimant misinterpreted the meeting with MsAlam. The report she prepared, in line with Ofsted requirements, was not personal and did not have any direct consequences for any individual teacher. No teacher was named, and it was not the purpose of the report to identify poor individual teachers, but rather to comment on the efficacy of the department as a whole.

73. In fact, Ms Alam went to Ms Gasson-Mulcahy to report that theclaimant had called her a racist. Ms Gasson-Mulcahy went to speak to

the claimant to confirm that his allegation had been reported and to ask him to keep it confidential. The claimant then went to the HR office and said that he did not call Ms Alam racist but that she would not listen, and she was pre-judging him whilst he was trying to tell her what was going on. He said it made him feel that she was discriminatory and racist.

<u>24 January 2020 incident</u>

74. Before the investigation report regarding the fight was sent to theclaimant, two further conduct allegations were made in relation to

an incident which occurred on 24 January 2024. Two students had been taken out of the claimant's class after they had complained about him. When they came into his class to collect some worksheets, he told the entire class that they had complained about his conduct and some students said he called them liars in front of the class. It was also alleged that the claimant had breached a management instruction to keep this matter confidential as he had been told not to directly talk about the matter to any member of staff or student (the 24 January allegations).

75. On 28 January 2020 the claimant attended an OH appointment.

76. On 3 February 2020, Ms Toye wrote to the clamant to confirm that theinvestigation was still not complete as the claimant had only returned his signed script on 27 January, which had contributed to the delay. She also confirmed that the 24 January allegations had been made, which required further investigation. These new allegations were added to the ongoing investigation.

77. On 5 February 2020, the claimant was signed off sick with a "stressrelated problem".

78. On 10 February 2020, the claimant raised an informal grievance aboutstudents being sent out of his lessons and then coming back to collect worksheets and that Ms Saunders had been escalating students' complaints without seeking an explanation from him first. It is worth noting that the respondent's policy, under Ms Toye's headship, is that sending children out of class is not a sanction that should be taken by the class teacher without the involvement of the senior leadership team because of the numerous and complex problems that such a sanction could involve.

79. On the same date, the claimant raised a formal grievance against MsToye in relation to his workload, on the basis that there had been no implementation of a reduced workload as had been recommended.

80. On 12 February 2020, Ms Toye wrote to the claimant about a numberof matters including that the investigation was being extended to include the new allegations; that these issues needed to be resolved as soon as possible on the recommendation of OH; and that, on his return to work she would also like to discuss with him his performance; two parental complaints received on 31 January 2020; and the fact that Ms Alam had found him asleep at his desk on 3 February 2020.

81. On 14 February 2020, the claimant returned to work.

82. On 24 February 2020, the claimant, his line manager Mr Efunkomayaand Mr Boyanga, another maths teacher, covered the CCTV camera in the maths office (which had formerly been used as a classroom).

83. On 26 February 2020, the claimant covered the CCTV in hisclassroom. This was brought to Ms Toye's attention as the maintenance team noted something was wrong and upon investigation found that the camera had been covered. Ms Toye wrote to the claimant regarding his having covered the CCTV and added it to the existing disciplinary allegations in the ongoing investigation on 11 March 2020. It was stated that this was potential gross misconduct. The claimant was not suspended.

84. On 11 March 2020, Ms Toye wrote to the claimant again to advise himthat there had been further allegations made against him, this time in relation to the covering up of the CCTV. It was explained to him that this matter was considered to be a serious allegation of potential gross misconduct which potentially impacted on trust and confidence. The investigation interview with the claimant was scheduled for 19 March 2020.

85. On 16 March 2020 the claimant was signed off sick with "stress atwork". Between 23 March and 30 April 2020, the claimant did not want to be contacted.

86. On 14 April 2020, the claimant sent a "follow up email" to the ICO. Therespondent had no knowledge of that email.

87. On 6 May 2020 the claimant raised a second grievance. The grievancewas about alleged undermining of his position and monitoring by the CCTV cameras.

88. On 8 June 2020, the claimant returned to work. The respondentinvestigated the 24 January allegations.

89. The claimant was invited to a grievance hearing on 26 June 2020 by aletter dated 15 June 2020.

90. On 15 June 2020, the claimant advised the investigating officer that hewould not agree to answer investigation questions by email.

91. On 23 June 2020, the investigation report was concluded. The claimantwas given a management advice letter regarding the 24 January 2020 allegations.

92. The grievance hearing took place on 26 June 2020 in respect of boththe formal grievances raised by the claimant. The grievance was dealt with by one of the respondent's governors.

93. There was an email from Ms Toye on 30 June 2020 to Ms GassonMulcahy and to a Ms Howard. The email attaches a sick note received from the claimant and states: "How can this be appropriate? This is a period of some 11 weeks including the holidays without a review point. Do we need to re-refer to OH/offer EAP?". Ms Toye felt it was inappropriate for the claimant not to be reviewed by the GP over such a long period of time.

94. The claimant was signed off sick between 30 June and 30 September2020.

95. On 26 July 2020 the claimant's grievance outcome was delivered. Thegrievance was partially upheld as it was found that the support plan had not been implemented effectively, but it confirmed that the use of CCTV would continue as outlined in the CCTV policy.

96. The claimant was summarily dismissed on 30 July 2020. He was senta letter confirming his dismissal on 5 August 2020.

97. The claimant lodged an appeal which was heard on 16 October 2020. In relation to the appeal, the claimant makes an allegation that Ms Toye referred to his depression as inappropriate.

98. Ms Toye's evidence, which is accepted, and which is corroborated by the transcript of that hearing, indicates that the comment of "inappropriate" was made in relation to the governors having access to the claimant's medical records.

99. Around April 2020, the claimant relies upon, "during the process ofdocument exchange, the claimant provided the respondent with evidence of racial discrimination" as his new alleged protected act. Neither the Tribunal nor the respondent knew what the claimant was referring to in this regard, though it was assumed that it was something that the claimant disclosed.

Law

Causation, Evidence, & Probability

100. The application of the balance of probabilities necessarily needs to take account of the type of case or allegation which is being made. Where a party is asking a court to find that something serious – or unusual – has occurred, the evidence must be all the stronger to satisfy the court that the standard has been met. In **Re H & Ors (Minors)** [1995] UKHL 16, Lord Nicholls succinctly set out the approach and the relevant adjustments to the standard of proof in such cases: 'The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence…Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean

that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of

an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established. Ungoed-Thomas J. expressed this neatly in *In re Dellow's Will Trusts* [1964] 1 W.L.R. 451, 455:"The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it."'

Automatically Unfair Dismissal

s. 103A: Protected Disclosures

What must be proved?

101. Section 103A of the Employment Rights Act 1996 ('**ERA 1996**') provides: An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

102. What is in issue is the respondent's reason for dismissing, i.e. the set of facts known to the respondent or a set of beliefs held by the respondent which causes them to dismiss (**Abernethy v Mott Hay and Anderson** [1974] ICR 323, CA, per Cairns LJ). The task of a tribunal hearing a case is to determine the respondent's reason for dismissing by examining the factors operating on the mind of the decision-maker (**Dahou v Serco Ltd** [2017] IRLR 81 at [29]). For such a claim to succeed, the Tribunal must accept that the reason or principle reason for the employee's dismissal (of which the Act presupposes there can only be one) was the making of a protected disclosure, see the judgment of Mummery LJ in **Kuzel v Roche Products Ltd** [2008] ICR 799, [52]: The unfair dismissal provisions, including the protected disclosure provisions, pre-suppose that, in order to establish unfair dismissal, it is necessary for the tribunal to identify only one reason or one principal reason for the dismissal.

103. While in a case such as the instant case, it is for the respondent to show the reason for dismissal, there is an evidential burden on the claimant to show, e.g., the making of the protected disclosures which they allege have led to dismissal, see **Kuzel**, [57]: "I agree that when an employee positively asserts that there was a different and inadmissible reason for his dismissal, he must produce some evidence supporting the positive case, such as making protected disclosures. This does not mean, however, that, in order to succeed in an unfair dismissal claim, the employee has to discharge the burden of proving that the dismissal was for that different reason…"

104. Should an employer fail to make out the reason for dismissal they rely upon, it does not necessarily follow that dismissal was for the prohibited reason alleged by the claimant, see: **Kuzel**, [59-60]. It is for the Tribunal to determine the reason for dismissal in the round.

105. As the reason for dismissal is a protected disclosure, the law on qualifying disclosures remains relevant. Of particular importance in this case is that the worker must have a reasonable belief that the matter complained of amounts to, e.g., a breach of a legal obligation. What is required is a genuine subjective belief and that the belief be objectively reasonable. It is not necessary that, e.g., the matter in fact amount to a breach of a legal obligation, see: **Babula v Waltham Forest College** [2007] IRLR 346 (CA).

s. 152(1)(b) ERA 1996: Trade Union Activities

106. Section 152(1)(b) ERA 1996 provides as follows: (1) For the purposes of Part X of the Employment Rights Act 1996 (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee— (b) had taken part, or proposed to take part, in the activities of an independent trade union at an appropriate time . . .

107. The law on the burden of proof and principal reason for dismissal relevant to whistleblowing apply in a like manner to trade union cases.

Trade Union Activities

108. The statute does not define the phrase 'activities of an independent trade union'.

109. The existence of trade union activities are essentially a question of fact to be determined by the Tribunal, see: **Brennan and Ging v Ellward (Lancs) Ltd** [1976] IRLR 378, but with the guidance that the expression should not be construed restrictively, see: **Dixon and Shaw v West Ella Developments Ltd** [1978] IRLR 151.

110. Actions undertaken for some organisation or cause other than the union, and not undertaken also for the union, would not be activities of the union, see: **Mihaj v Sodexho Ltd** UKEAT/0139/14 (23 May 2014, unreported).

111. Ultimately it is a question of fact for the employment tribunal whether the employee's activities were in some sense done for and on behalf of his union, or whether he was acting as an employee independently of his union.

112. Under the related topic of time off for union activities, the ACAS Code at [37] refers to voting in a union election as a trade union activity.

Appropriate Time

113. Section 152(2) ERA 1996 provides: In subsection (1)4 "an appropriate time" means — (a) a time outside the employee's working hours, or (b) a time within his working hours at which, in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in the activities of a trade union or (as

the case may be) make use of trade union services; and for this purpose "working hours", in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

114. For the purposes of the definition an employee's own time includes tea breaks and meal breaks and times immediately before or after worktimes when he is customarily on his employer's property but not actually required to work, see: **Post Office v Union of Post Office Workers and Crouch** [1974] IRLR 22, per Lord Reid at p. 24.

Direct Race Discrimination

Burden of Proof

115. Section 136 of the Equality Act 2010 ('**EqA 2010**') considers the burden of proof in cases of discrimination brought under that Act.

116. Per, s.136(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 the contravention occurred. Subsection (2) does not apply if A shows that A did not contravene the provision.

117. There is therefore a two-stage approach to the burden of proof:

a. Firstly, it must be considered whether the Claimant has established factsfrom which it can be inferred that discrimination occurred. The burden of proof is therefore firstly on the Claimant to establish a *prima facie* case of discrimination.
b. Secondly, if, and only if, the first limb is satisfied, the burden shifts to theRespondent to show that there is a non-discriminatory explanation for the conduct complained of.

118. Conduct which is unreasonable or unfair is insufficient to make out a prima facie case. In **Bahl v The Law Society** [2004] IRLR 799, the Court of Appeal upheld the reasoning of the EAT and emphasised that unreasonable treatment of a claimant cannot in itself lead to an inference of discrimination, even if there is nothing else to explain it; at [89]: '…merely to identify detrimental conduct tells us nothing at all about whether it has resulted from discriminatory conduct'.

119. What a prima facie case requires has been considered on several occasions, most notably in **Madarassy v Nomura International plc** [2007] EWCA Civ 33. The Court of Appeal at [57] concluded that the phrase 'could conclude' meant 'a reasonable tribunal could properly conclude' from all the evidence before it'. Significantly, the Court of Appeal also held at [54]: I am unable to agree …that the burden of proof shifts to Nomura simply on Ms Madarassy establishing the facts of a difference in status and a difference in the treatment of her. This analysis is not supported by **Igen Ltd v Wong** [2005] ICR 931 nor by

any of the later cases in this court and in the Employment Appeal Tribunal.'

120. A difference in treatment and a difference in status can only go as far as indicating the 'possibility' of discrimination; not that a prima facie case is made out.

121. This has become known as the 'something more' test, namely that the claimant must prove a difference of status, a difference of treatment, and 'something more' before the burden shifts to the respondent.

Less favourable treatment

122. Section 13(1) EqA 2010 provides that: 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.'

123. Per s.23(1), on comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.

124. A claim of direct race discrimination therefore requires the claimant to show that they have been treated less favourably than a person of another race whose circumstances are not otherwise materially different. This less favourable treatment must be because of the Claimant's race.

125. To establish direct discrimination, it must be shown that not only was the claimant treated less favourably than an actual or hypothetical comparator, but that the less favourable treatment was because of the claimant's race. What was the reason for the Claimant's treatment?

126. The test in considering the reason for alleged less favourable treatment, per **Nagarajan v London Regional Transport** [2000] 1 AC 501, is: what was A's conscious or subconscious reason for treating B less favourably?

Indirect Race Discrimination

127. 'The law of indirect discrimination is an attempt to level the playing field by subjecting to scrutiny requirements which look neutral on their face but in reality, work to the comparative disadvantage of people with a particular protected characteristic', see **Chief Constable of West Yorkshire Police v Homer** 2012 ICR 704, SC, per the speech of Lady Hale at [17].

The Statutory Framework

128. Sub-sections 19(1)-(2) EqA 2010 provide that: (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 thecharacteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at aparticular 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 legitimateaim.

The Burden of Proof

129. It is for the claimant to prove (i) the PCP, (ii) 'group' particular disadvantage, and (iii) 'individual' particular disadvantage. 'Only then' are the reverse burden of proof provisions of s. 136 EqA 2010 engaged such that the burden shifts and the respondent is 'required to justify the provision, criterion or practice…to provide both explanation and justification', see **Dziedziak v Future Electronics Ltd** EAT 0271/11, per Langstaff P at [42].

Justification

130. The burden of justifying an otherwise discriminatory act falls on the respondent.

131. For otherwise discriminatory treatment to be justified objectively, notwithstanding its discriminatory effect, it must be proportionate; it must be an '*appropriate and necessary*' means of achieving the aim pursued. This proportionality exercise is at the heart of which is a balancing exercise, described in Lady Hale's speech in **Seldon** in the following terms at [50(6)]: "The gravity of the effect upon the employees discriminated against has to be weighed against the importance of the legitimate aims in assessing the necessity of the particular measure chosen".

132. Per **Homer** at [20], ultimately citing **de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing** [1999] 1 AC 69, 80, this involves a three-stage test: "First, is the objective sufficiently important to justify limiting a fundamental right? Secondly, is the measure rationally connected to the objective? Thirdly, are the means chosen no more than is necessary to accomplish the objective?"

'Appropriate'

133. 'Appropriate' in this context means that a policy must be capable of achieving the aim sought.

134. Where a measure is inappropriate to the aim in question, discrimination arising from its application will not be justified (see

the examples cited by Lady Hale at **Seldon**, [50(5)] and **Homer**, [22]).

135. The question for the Tribunal is whether the means could achieve the legitimate aim in question or whether they are unconnected to it, see **Fuchs**, [85]: must be observed, in accordance with settled case law, that legislation is appropriate for ensuring attainment of the objective

pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner.

'Necessary'

136. As for the concept of necessity, this focuses scrutiny on whether there were other non-, or less, discriminatory ways of achieving the same legitimate aim. This does not call for a counsel of perfection; it does not mean that other aims should have been adopted – necessity in this context means 'reasonable necessity' (see **Hardy & Hansons**, [32]). This principle was reiterated by the Employment Appeal Tribunal in **Seldon v Clarkson Wright and Jakes (No 2)** [2014] ICR 1275, [27]: The issue for the employment tribunal is to determine where a balance lies: the balance between the discriminatory effect of choosing a particular age (an effect which, as the employment tribunal noted, may work both ways, both against someone in the position of the claimant but in favour at the same time of those who are associates, and thereby in the interests of other partners, whose interests lie in the success of the firm and its continued provision for them and its success in achieving the aim held to be legitimate). That balance, like any balance, will not necessarily show that a particular point can be identified as any more or less appropriate than another particular point. This is not to accommodate the band of reasonable responses rejected in **Hardy & Hansons plc v Lax** but to pay proper and full regard to its approach to what was reasonably necessary, given the realities of setting any particular bright line date.

Harassment Related To Race

137. Section 26(1) EqA 2010 provides that: '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.'

138. Per s. 26(4) EqA 2010, in deciding whether conduct shall be regarded as having the effect referred to above, the following must be taken into account:
a. The perception of B.
b. The other circumstances of the case; and
c. Whether it is reasonable for the conduct to have that effect.

139. The question of 'reasonableness' in the context of s. 26(4) is a matter of fact for the tribunal to determine, having regard to all the relevant circumstances including the context of the conduct. Therefore, the ultimate judgment as to whether conduct amounts to unlawful harassment involves an objective assessment by the Tribunal of all the facts, albeit that the claimant's subjective perception of the conduct in question must also be considered.

Victimisation

140. Section 27 EqA 2010 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 underthis 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 personhas 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.

141. A claimant seeking to establish that he or she has been victimised must therefore show two things:

a. First, that he or she has been subjected to a detriment; and
b. Secondly, that he or she was subjected to that detriment because of a protected act.

142. For causation to be made out there must be knowledge of the 'act' and sufficient knowledge of the content of the 'act' to know it is protected.

143. Protected acts are defined at s. 27(2) EqA 2010 and cover a wide range of conduct related to the EqA, such as alleging a breach of the Act, doing anything 'in connection with' the Act, or making an allegation (whether or not express) that A or another person has contravened the Act.

144. An allegation of discrimination on the grounds of race is a protected act (see, e.g., **Durrani v London Borough of Ealing** EAT 0454/12).

Reasonable Adjustments

145. Sections 20 and 21 EqA set out the framework of the duty to make reasonable adjustments. So far as relevant, they provide as follows:
20. Duty to make adjustments
(1) Where this Act imposes a duty to make reasonable adjustments on aperson, this section, sections 21 and 22 and the applicable Schedule

apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion orpractice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

…

21. Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failureto comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with thatduty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to complywith the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

146. The requirement must put the disabled person at a 'substantial disadvantage in comparison with persons who are not disabled' which the statute defines as something that is 'more than minor or trivial', see: s. 212(1) EqA 2010. The Tribunal is under an obligation to identify the nature and extent of the disadvantage to which the claimant is subjected with some degree of precision. As substantial disadvantage must be established via a comparison of 'persons who are not disabled', the duty to make reasonable adjustments will only be triggered if it is established that the relevant PCP causes greater disadvantage to the disabled claimant than it does to non-disabled people, not generally, but in relation to persons to whom the requirement is applied.

147. The claimant bears the burden of establishing a prima facie case that the duty to make reasonable adjustments has arisen and that there are facts from which it could reasonably be inferred — absent an explanation — that the duty has been breached.

148. Once satisfied that the s. 20 duty has potentially been triggered, the tribunal will turn its mind to what adjustments could and should have been made. It will need to identify the 'step' or 'steps', if any, the employer could reasonably have taken to prevent the claimant suffering the disadvantage in question. Again, the onus falls on the claimant, not the employer, to identify in broad terms the nature of the adjustment that would ameliorate the substantial disadvantage. Having done so, the burden then shifts to the employer 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.

Reasonableness

149. The test of reasonableness in this context is an objective one and, per the EHRC Code, [6.23], '…will depend on all the circumstances of each individual case.'

150. A step that is relatively easy for the employer to take is more likely to be reasonable than one that is difficult, see: **Secretary of State for Work and Pensions (Jobcentre Plus) and ors v Wilson** EAT 0289/09.

151. Likewise, low cost and low disruption adjustments are also more likely to be reasonable than those which are expensive as compared to the failing to make the adjustment and given the circumstances of the employer, and as compared with adjustments which are disruptive, see, e.g., EHRC Code, [6.28].

Knowledge

152. For the duty to arise, the respondent must have actual or constructive knowledge of both disability and of the substantial disadvantage alleged, see: Sch. 8, Para 20(1) EqA 2010.

153. The question is what objectively the employer could reasonably have known following reasonable enquiry.

Conclusions

The employer

154. The issue of whether both or one of the respondents employed the claimant remained to be determined by the Tribunal at the final hearing.

155. The Tribunal finds that the claimant was employed by the first respondent (R1) as a maths teacher from 1 September 2018 until his dismissal in July 2020.

156. Counsel for the respondents explained that it made little difference, in that any remedy would "come from the same purse". The claimant's contract of employment was with R1 and he was managed by the senior staff from R1.

Reason for dismissal

157. The claimant had disciplinary issues from the beginning of his timewith the respondent which continued through to his dismissal. At the time of his dismissal, the claimant had already received a written warning from the respondent.

158. The Tribunal has reminded itself that it is not here to determinewhether the claimant was fairly dismissed. There is no claim of unfair dismissal. The issue is what was the reason for dismissal, as the claimant alleges that his dismissal was potentially for three automatically unfair reasons.

159. The Tribunal is satisfied that two matters ultimately led to theclaimant's dismissal. The first of these is the claimant's (lack of) response to the 6 November 2019 fight in his classroom / the build-up to that fight ('the fight'). The second is the claimant covering up CCTV in the Maths staff room on 24 February 2020 (together with Gbenga Efunkomaya) and, primarily, in his classroom on 26 February 2020 ('CCTV cover-up').

The Fight

152. The Tribunal reviewed the footage of the fight and the time in the claimant's classroom leading up to the fight.

153. The fact of the fight in the claimant's class was not the issue. As explained by Ms Toye in her evidence to the Tribunal, fights between students happen, even at the best of schools with the best of teachers. The fact of a fight is not necessarily a reflection on the teacher's conduct. Rather, what was at issue here was the claimant's conduct in the lead up to this fight and what steps were (not) taken to prevent the fight or to control the class and create a safe learning environment for the pupils, in accordance with the Teaching Standards.

154. The respondent considered that the CCTV footage showed that matters were spiraling out of control such that it was apparent it may result in a serious disciplinary matter or disorder. In such circumstances, it is for the teacher to intervene, de-escalate, and restore discipline, in accordance with the teaching standards, and to report the incident or request help according to the respondent's procedures. It was clear to the Tribunal on viewing the footage, that the respondent's interpretation of events was accurate.

155. The students who gave evidence during the disciplinary investigation also confirmed what can be seen on the CCTV, and that whilst he may have attempted to give the odd verbal instruction, the claimant showed a distinct lack of engagement when students were up out of their seats and throwing things around the classroom.

156. Upon reviewing the CCTV footage, Ms. Toye was concerned about the claimant's conduct. The note of the meeting of 11 November 2019 taken by Mr. Efunkomaya said: "The evidence from the CCTV warrants investigation due to FOL's non engagement with the students. CLO further explained that she needs to refer the matter to LADO. FOL to stay at home the following day on leave while they wait for further guidance from LADO." In this extract, CLO is Ms Toye and FOL is the claimant.

157. The letter from HR referred to this issue, in the letter of 16 November 2019, as: '*concerning behaviour on your part in relation to the management of the class prior to the altercation itself*'.

158. This issue was central to the disciplinary panel's decision to dismiss after considering all the evidence presented. The dismissal letter states:

"The panel concluded that there was no evidence of effective behaviour management in the classroom on 6th November 2019 including insufficient use and recording of the Consequence system in line with the Behaviour for Learning Policy and a failure to utilise the on-call system. There was also no evidence that procedures were followed for safehousing the pupil removed from the class. This undermines the trust and confidence that the school/Trust has in you to respond appropriately and effectively manage pupil behaviour…The panel concluded that on the balance of probabilities there was sufficient evidence to substantiate all the allegations and that your actions amounted to gross misconduct.

159. The Tribunal accepts the respondent's evidence, as set out above, that this was one of two reasons for the claimant's dismissal.

CCTV cover-up

160. It is not in dispute that the claimant did cover-up CCTV on two occasions, as referred to in the dismissal letter which states: '…During the investigation you had admitted to covering up the CCTV cameras on 24th and 26th February 2020 and had provided data privacy concerns as a reason for these actions…'

161. The finding of gross misconduct was as a result of this reason also. In her oral evidence before the Tribunal, Ms Toye said that, of the two reasons for the claimant's dismissal, this was the most serious and the one on which she relied most heavily. The Tribunal accepted Ms Toye's evidence in this regard.

162. In respect of the first coverage, that was less serious as it was done with two other staff members, one of whom was the claimant's line manager, and it was done in a classroom that was being used as a staff room rather than as a classroom. However, as regards the second coverage, that of the CCTV camera in his own classroom, there are some relevant points to note.

163. First, the claimant was already under investigation in relation to the fight, and CCTV was an important aspect of that investigation.

164. Second, the claimant did not discuss coverage of the CCTV iin his classroom with anyone or request permission. He just went ahead and covered the CCTV camera, which was there because it had been a requirement of the Royal Borough of Greenwich when the modular classrooms were installed.

165. The Tribunal also notes that the claimant had not awaited a substantive response from the ICO as regards his complaints about monitoring by CCTV before acting to cover up the cameras.

166. The dismissal letter sent to the claimant by Ms Toye states: "During the investigation you had admitted to covering up the CCTV cameras on 24 and 26 February 2020 and had provided data privacy concerns as a

reason for these actions. The panel deemed there to be sufficient evidence that the CCTV was used in line with school policy for protecting staff and pupils and that by covering it without prior discussion or authorization you seriously breached a school safety practice. The panel were concerned that during the investigation you demonstrated no understanding of the seriousness of your actions in regard to the CCTV and found that your actions fundamentally and detrimentally impacted on the trust the School/Trust has in you as an employee".

167. The Tribunal is satisfied that the fight and the covering up of the CCTV were the two reasons for the termination of the claimant's employment. These resulted in a finding of gross misconduct and the claimant's summary dismissal on 30 July 2020.

168. For the above reasons, the Tribunal is satisfied that the claimant was not dismissed because of his race; because he had done a protected act; because he had made a protected disclosure; or because of his trade union activity or involvement.

AUTOMATICALLY UNFAIR DISMISSAL

S. 103A ERA 1996

169. The respondent accepts that the claimant made a protecteddisclosure to it on 18 November 2019, when the claimant wrote an 'information rights concern' letter to the school stating his concerns over the CCTV camera in his classroom. The letter alleged that the respondent had not followed the ICO guidelines and that there was no CCTV policy in the school at the time.

170. The respondent also accepted that the claimant reasonably believed that this disclosure tended to show that the respondent was failing to comply with a legal obligation, namely the ICO guidelines on usage of CCTV in the workplace.

171. However, the Tribunal does not find that the claimant reasonablybelieved that this disclosure was made in the public interest. The disclosure was made because there was an investigation into the claimant's handling of a class, as a result of which CCTV footage of him teaching was being reviewed. It could be said that, in the absence of any evidence from the claimant to the contrary, the claimant was seeking to protect himself by not allowing the CCTV footage to be taken into account.

172. In any event, for the reasons stated above, the Tribunal is satisfied thatthe claimant was not dismissed because he had made the protected disclosure, nor did it form any part of the respondent's consideration of the appropriate disciplinary sanction for the claimant.

173. The claimant further says he made three further protected disclosures tothe ICO, the first of which he alleged took place on 18 November 2019 when he reported the respondent to the ICO verbally. The Tribunal

accepts, on the balance of probabilities, that the claimant did make a verbal report to the ICO on this date, as his letter to the respondent, referred to above, states, “I understand that before reporting my concern to the ICO I should give you the chance to deal with it.”

174. There is no evidence of this oral complaint to the ICO, but it can beinferred from the claimant’s letter of 18 November 2019 that it did in fact occur. It was the respondent’s evidence that they were unaware of it. The Tribunal accepts that this disclosure was made.

175. On 5 January 2020, the claimant alleges he made a written complaint to the ICO that ‘the respondent has continued to fail its data protection obligation, there was a miscarriage of justice going on and the evidence is now likely to be concealed’. The respondent has no record of this being sent to the ICO, it does not appear in the Bundle and the respondent was unaware of it being sent at the time.

176. However, that the claimant did make such a complaint is accepted bythe Tribunal as it is referred to in an email from the claimant to the ICO on 9 April 2020.

177. On 14 April 2020, the claimant sent a further email to the ICO, which followed a response from the ICO asking for further information.

178. The Tribunal finds on the balance of probabilities that the claimant didsend the three communications relied upon to the ICO, but that the email of 14 April 2020 was a follow up email only and was not therefore

a protected disclosure.

179. There was no evidence before the Tribunal to suggest what exactly wassaid or written on 18 November 2019 or 5 January 2020 and so the Tribunal is unable to conclude that these were protected disclosures.

180. In any event, as stated above, the claimant was not dismissed for an inadmissible reason, namely his alleged protected disclosures but, rather, was summarily dismissed for gross misconduct. That was the reason for his dismissal, which had nothing to do with any protected disclosures.

S. 152(1)(B)

181. The claimant relies upon the following as a trade union activity for the purposes of s. 152(1)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992: in September-November 2018, running in an internal NEU election to become the NEU representative for the respondent.

182. The claimant has provided no evidence corroborating this election occurring or his involvement in the same.

183. The election (if indeed it occurred) would have taken place prior to any of the relevant individuals joining the respondent. It is the evidence of the relevant decision makers that they do not know about this alleged election. That evidence is accepted by the Tribunal.

184. Accordingly, the claimant was not dismissed because of his trade union activity.

RACE DISCRIMINATION

185. The claimant's race is Black African.

Direct Race Discrimination

183. Concerning the claimant's allegation that he was dismissed because of his race; the Tribunal does not consider that the claimant has established facts from which it can be inferred that discrimination occurred. The claimant has not satisfied the burden of proof in this regard. As stated above, the reason for the claimant's treatment was the fight and coverage of the CCTV. The claimant's race was not a factor in the respondent deciding to dismiss him. Even if the burden has shifted, the respondent has provided an explanation for the claimant's treatment, which is accepted.

185. The claimant's first allegation of race discrimination (18a in the list ofissues above) is set out as follows: Ms. Gasson-Mulcahy failing to act on the claimant's complaints of race discrimination on 14 October 2019, in that she should have but did not (i) pass the claimant's complaints of discrimination made against Mr Rahman and Mr Marshall on to their replacements and (ii) conduct an investigation of the 14th October 2019 complaint.

186. This is a reference to the claimant's conversation with Ms GassonMulcahy about the reference, which recorded the claimant's ability as poor and referred to the fact that the claimant was suspended pending a disciplinary investigation, information which had to be provided and was factually true.

187. The Tribunal concludes that the claimant did not complain about race in his conversation with Ms Gasson-Mulcahy. The Tribunal accepted Ms Gasson -Mulcahy's oral evidence that race was not raised during the conversation in which the claimant complained about the reference. The Tribunal accepts Ms Gasson-Mulcahy's evidence that she is an experienced HR advisor and would likely have remembered and acted if race had been raised as an allegation in the context of the complaint about the claimant's treatment.

188. Ms Gasson-Mulcahy explained to the claimant that the information provided in the reference was factual and had to be provided and considered that explanation to be sufficient. She did not consider that any further explanation or investigation was required. Her explanation was accepted by the Tribunal.

189. The respondent's failure to act was therefore entirely unrelated to the claimant's race and was because the claimant did not allege that the reference was racially motivated. The claimant has not established facts from which it can be inferred that discrimination occurred and the burden of proof does not shift to the respondent.

Allegation 2

190. The claimant also relies on the following: failing to act on the claimant's complaint that three students did a 'Nazi salute' towards him on 18 October 2019**,** in that the respondent ought to have, but did not, ensure 'exclusion of those students from the teacher's class, apology from the students to the affected teacher, meeting with the student's parents and the students made to complete weeks of community service in the school'.

191. The claimant alleged that three students performed a nazi salute in his class, and that the appropriate response would be as set out above, namely exclusion, apology, meeting and community service. He alleges that failure to take those steps was an act of direct race discrimination.

192. It appears that the alleged perpetrator is Ms Alam. Ms. Alam did act on the claimant's complaint: she spoke to the students. What is at issue therefore is not whether Ms. Alam acted but the response which she deemed appropriate; it is this choice which would have to be infected by a prohibited motive.

193. Ms Alam concluded from her investigations that the students in question had not been performing a Nazi salute, rather that they were mimicking the claimant's gesture.

194. Despite that she found that the gesture was not intended to be a Nazi salute, she was 'still concerned with their conduct around

mimicking a teacher' which she deemed disrespectful and sought to arrange a restorative conversation with the claimant and the students.

195. The claimant was not content with a restorative session and said this undermined him.

196. The claimant's complaint (that the respondent failed to act) is not made out on the facts and, in any event, was entirely unrelated to the claimant's race. Rather, it was a disagreement about how the students' behaviour should be dealt with or punished, which was a point of contention more generally between the claimant and the respondent (see for example the claimant's attitude to removing pupils from his class).

197. The claimant has not established facts from which it can be inferred that discrimination occurred and the burden of proof does not shift to the respondent.

198. The claimant further alleges that, in November 2019, Ms. Alam told the claimant he was not speaking clear English to students; that she wrote a report titled 'Extracurricular Review-Maths' of 13 November 2019 and stated that Maths Teachers 'are incompetent and cannot even speak English'; and that, on 13 November 2019, Ms. Alam wrote a report about the Maths department in which she said, 'the literacy of some teachers caused some concerns' (allegations c,d and e).

199. The Tribunal could find no evidence to suggest, and did not accept, that Ms Alam told the claimant he was not speaking clear English to the pupils. Ms Alam's evidence, which was accepted, was that the purpose of conducting the review which culminated in the report was not to review the performance of individual teachers but to review the performance of the department as the whole. She believed that the claimant had not been observed during the review process in any event.

200. The report Ms. Alam wrote, after she had conducted a curriculum review with Ms Mirza, did not include all of the words alleged by the claimant. Ms Alam made a comment in the report as follows: "The literacy of some teachers caused concern- basic spelling and grammar was of a low quality in one lesson, suggesting a need for further monitoring of resources." This was not written, or said, about the claimant.

201. Ms Alam was assisted with the report, as regards the maths department, by Ms Mirza, who was not a Maths teacher with the respondent. One of the matters assessed was language use, that being a Ofsted requirement for the assessment process.

202. Ms. Alam was highlighting a general issue. The document wasn't prepared with a view to reviewing the skills of individual teachers.

203. The claimant has not established facts from which it can be inferred that discrimination occurred and the burden of proof does not shift to the respondent.

January 2020

204. The claimant further alleges that Ms. Alam, in a meeting on 23rd January 2020, told him that his '*lack of ability to speak clear English' was 'causing a breakdown of relationship with…students*'; and

that she was commencing an investigation regarding the same.

205. While Ms. Alam did have a meeting with the claimant on this date and raised concerns with the claimant regarding his relationship with his students, English language was not one of the concerns and was not said to be the cause of the problems. There were far more pressing concerns regarding the claimant's relationship with students which needed to be addressed, such as telling students

they were permanently excluded from his class without following procedure, and concerns that he could not control the class. Further, no investigation was launched regarding the claimant's English language skills.

206. The Tribunal finds that Ms Alam did not say the words alleged.

207. The claimant further alleges that Ms. Gasson-Mulcahy and Ms. Powell failed to act on the claimant's complaint regarding Ms. Alam's alleged comments on 23 January 2020. The claimant says that the respondent should have investigated Ms. Alam for her behaviour.

208. In fact, Ms Alam went to Ms Gasson-Mulcahy to report that the claimant had called her a racist. Ms Gasson-Mulcahy went to speak to the claimant to confirm that his allegation had been reported and to ask him to keep it confidential. The claimant then went to the HR office and said that he did not call Ms Alam racist but that she would not listen and she was pre-judging him whilst he was trying to tell her what was going on. He said it made him feel that she was discriminatory and racist.

209. Ms Gasson-Mulcahy did not recall the claimant complaining to her about the comments he alleges Ms Alam made; that his "lack of ability to speak clear English" was "causing a breakdown of relationship" with students. The claimant did not tell Ms Gasson-Mulcahy about those comments at the time, so she could not have investigated them or recommended an investigation into them.

210. The claimant has not established facts from which it can be inferred that discrimination occurred and the burden of proof does not shift to the respondent.

Indirect Race Discrimination

211. The claimant alleges that installing CCTV in the maths classrooms indirectly discriminated against Black Africans.

212. The claimant relies on the following PCP: 'Installing CCTV in the maths classrooms in the modular building".

213. The claimant explains that in all classrooms in the modular building, in contrast with the main building which only has corridors with CCTV, there is CCTV'.

214. As to the alleged PCP, CCTV was present in classrooms as required by the Royal Borough of Greenwich (RBG) who constructed the buildings in 2018. The claimant appears to accept this in that he makes implicit reference to the reason for CCTV in the modular building in his disciplinary appeal: 'It was acknowledged in the formal grievance decision letter and CCTV policy that CCTV was installed in the temporary building owned by RBG for safety reasons. CCTV footage is

therefore not supposed to be used to performance manage a teacher and/or observe a lesson'. It was not therefore installed by the respondent, nor was it used as a performance management or observation tool.

215. Further, CCTV was installed in all modular building classrooms, not only the maths classrooms. Ms Manthorpe explained in her witness statement that: 'As at September 2019, 46% of the usage of rooms in the modular building was by the maths department. The rest of the time, the rooms were in use by other lessons and registration'. Ms Toye also confirmed, which was accepted, that CCTV cameras were also installed in certain places in the main school building, such as the IT department, where classes would be held.

216. As to particular disadvantage, the claimant says that, should students fight in class, CCTV where available would be used for appropriate investigation purposes. The claimant says that what occurred in his classroom would have occurred in other classrooms and it was only the fact that there was CCTV that led to him being criticized and disciplined.

217. However, the claimant has not made out that Black Africans were more likely to work in the modular building than in other sections of the school which did not have CCTV in classrooms. The school has a highly ethnic diverse staff and the Tribunal did not have access to the ethnicity of the staff of each department.

217. Further, the claimant has not made out that Black African teachers weremore likely to have fights / serious disciplinary issues in their class than teachers of other races. There was no evidence before the Tribunal to this effect. In any event, the Tribunal considers that it would be unlikely that the claimant would be able to evidence such an assertion.

218. The claimant has further not been able to make out that the lack ofCCTV in classrooms in other sections of the school meant that staff were less likely to, for example, be disciplined for fights / serious disciplinary issues than were staff in the modular building. Again, there was no evidence before the Tribunal as to this assertion.

219. The Tribunal is, in any event, satisfied that there is no group disadvantage. What must be shown is that Black Africans suffer, or would suffer, a particular disadvantage and that race is 'associated with particular disadvantages' (per ***Chief Constable of West Yorkshire Police v Homer*** [2012] ICR 704 per Lady Hale at [14]). The true disadvantage is to teachers who improperly manage their classes, regardless of race. As Ms. Toye pointed out, CCTV is equally likely to exonerate a teacher falsely accused. The claimant had previously asked that the CCTV in his classroom be checked to confirm his alleged version of events as regards the Nazi salute incident and asked to be sent the footage of the fight.

220. In any event, even if the PCP put Black African teachers to particulardisadvantage, the same is justified given the legitimate aims relied upon, namely requiring the use of the modular buildings, with the use of CCTV being a requirement for the same by the council; and ensuring a safe environment for staff and students. The respondent adopted a proportionate means of achieving those aims, by adopting the CCTV policy.

DISABILITY

221. The Claimant says he was disabled at the material times by reason of depression and anxiety. Disability by reason of these impairments is conceded by the respondent.

Duty to Make Reasonable Adjustments

222. The claimant alleges that the respondent operated the provision, criterion, or practice (PCP) of requiring the claimant to exclusively have a Key Stage 3 (KS3) timetable. The claimant alleges that other staff members had mixed stages/age groups, and that in September 2019 he specifically asked to have more mix in his timetable as he regarded KS3 as the most difficult/stressful class to teach. The respondent accepts that the claimant did have a KS3 timetable.

223. The Tribunal finds that the proposed adjustment (of a mixed timetable) would not have been effective.

224. The cause of the claimant's difficulties and stress appears to have been the frequent disciplinary allegations which he faced rather than teaching. He was otherwise fit for work. The OH report of 28 January 2020 states: '…he has been experiencing work related stress since after 2 months of commencing his role when he was subject to an investigation and suspension'; and: 'In my opinion, Mr. Olatoye is currently fit for work. However,…. it is not uncommon for prolonged perceived stressful situations at work (or in any setting for that matter) to lead to clinically significant illness. Therefore, the key medical advice here is that there is some degree of urgency about drawing these employment issues to a conclusion'.

225. The claimant makes a similar point by his 12 March 2020 e-mail: 'Before I left the school yesterday, I made a statement .. that these constant investigations are not only putting my career at risk, they are putting my life at risk, I no longer feel safe, I feel my life is in danger by all the constant investigatory activities, anxiety has risen to the highest level, depression has set in, my blood pressure has risen, I am under an unbearable stress and mental torment. I can no longer bear all these burdens of constant investigations. I have carried my family and close relations along in this whole matter, just in case anything happens to me. This is now very unfortunate and sad .....'. Assuming what the claimant describes here is true, then the effect of the ongoing disciplinary matters would not be cured by a mixed timetable.

226. Finally, the further report of April 2020 (drafted 9th April 2020, revised 15th April 2020 (at the claimant's request), accords with the view that the claimant's '*significant ongoing stress*' was solely related to the disciplinary investigations and conflict with management and, crucially, was not 'related to his day-to-day teaching duties'. All that can possibly remedy the situation is for the disciplinary matters to end: 'Ultimately, it is likely that Mr Olatoye will continue to experience significant stress until and unless the issues of conflict with the school are resolved'.

227. Despite speaking with the claimant regarding his stress and managinghis stress, the OH reports do not suggest a mixed timetable. Dr. Williamson states: 'I do not believe that Mr Olatoye has any difficulties with his day-to-day duties and when he does return to work do not think any adjustments will be required in that regard in terms of type of work undertaken. There may be some merit in temporarily reducing the quantity of work given to him upon his return if feasible while he continues with his psychological recovery. Based upon the information available to me today, and particularly if Mr Olatoye is able to rapidly gain some psychological support as discussed above, I think it is a reasonable to provisionally plan on him returning at the cessation of his current sick note… With regards to any further adjustments, other than potentially temporarily reducing his day-to-day workload in the short term if feasible, the main issue is in taking whatever steps are feasible to bring the disciplinary proceedings to a close as swiftly as possible and to address to as close to mutual satisfaction is (sic) proves possible the matters that Mr Olatoye feels need action regarding his ongoing workplace difficulties'.

227. As to comparative levels of difficulty and stress, the KS3 classes werenot more stressful than the other classes available (the A-Level class and the re-sit class), which each had their own stressors. Given the reason for and cause of the claimant's work stress, the claimant is likely in any event to have found teaching these classes equally stressful.

228. In any event, the respondent had taken steps which were likely to be farmore effective and which had not improved matters.

229. It had reduced the claimant's workload. In his grievance appeal, theclaimant accepts his timetable was reduced at least from 10 February 2019: 'The headteacher started removing some lessons from my timetable, the moment I submitted my grievance on 10 February 2019. This is not coincidence'. An email of 11 March 2020 states that the claimant had 17 periods rather than the full 26: 'You full allocation of periods is 26 and currently there are 17 periods on your timetable'.

230. The respondent provided the claimant with a classroom assistant for atime. This was actioned on 4 December 2019 to commence on 9

December 2019. Ms. Toye's e-mail states: 'With respect to my offer for support to be allocated to some of your classes, I will look to do this as

from Monday 9th December. I am meeting with Felicia on Friday so will talk to her about this then'.

231. Further, the Tribunal accepts that the claimant had removed studentsfrom his class who he found difficult:

232. The respondent submits, and the Tribunal agrees and concludes, that If these steps were not effective, then the lesser step of tinkering with the make-up of the claimant's timetable would not have been effective.

233. Further, the respondent did not have knowledge of the particulardisadvantage said to be caused by teaching only KS3 as, insofar as the claimant raised work issues, they focused on workload.

234. Despite discussing his health with two OH practitioners, neitherrecord the KS3 timetable as presenting a difficulty or the claimant mentioning the same. The sole matter referred to by Dr. Williamson is workload reduction (which had occurred): 'With regards to any further adjustments, other than potentially temporarily reducing his day-to-day workload in the short term if feasible, the main issue is in taking whatever steps are feasible to bring the disciplinary proceedings to a close as swiftly as possible and to address to as close to mutual satisfaction as proves possible the matters that Mr Olatoye feels need action regarding his ongoing workplace difficulties'.

235. The claimant did not explicitly address this with line management,as confirmed in the grievance appeal outcome, which acknowledged that staff must take ownership and bring matters to the attention of management to seek a resolution and confirmed that the claimant had not done so despite weekly line management meetings.

236. In any event, the proposed adjustment was not reasonable. The alternative classes were exam classes, which require continuity. They had already been timetabled and the claimant was frequently off sick. Those classes also required a strong teacher. The respondent accepted that the claimant was not a strong maths teacher, as evidenced by numerous concerns and complaints around the claimant's performance.

237. The claimant's claim that the respondent failed to make reasonable adjustments fails and is dismissed.

Disability Related Harassment

238. The claimant relies upon the following conduct: The headteacher, Ms Toye, on 30 June 2020, denigrated the Claimant by making a statement in an email about his sickness '*how can this be appropriate?*'

239. Ms Toye did write an email including those words. Her evidence before this Tribunal was that her words referred to the fact that it was inappropriate for the GP to sign the claimant off for such a long period, in this case 11 weeks, without a review period, as she believed that it

was in the claimant's best interests to be reviewed during such a long period. As a result, she referred the claimant to OH.

240. It is further alleged that, on 16 October 2020, during the disciplinary appeal hearing, Ms Toye made a comment about the claimant's depression '*as 'inappropriate"*', which the claimant says (i) meant that it was inappropriate for him to raise his depression, and (ii) that Ms Toye was saying it was in fact not true that the claimant had depression.

241. Ms Toye's evidence, which is accepted, and which is corroborated by the transcript of that hearing, indicates that the comment of "inappropriate" was made in relation to the governors having access to the claimant's medical records

242. Ms Toye's conduct was not unwanted conduct, nor did it have the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

242. Even if Ms Toye's conduct did have that effect, it was not reasonable for the conduct to have that effect, taking into account the context of the words spoken.

VICTIMISATION

243. The Claimant relies upon the following alleged protected acts:

a. 'In October 2019, I made a complaint against Mr Rahman and Mr Marshall about racial discrimination of me. The complaint was made to Ms Gasson-Mulcahey (HR Manager at the time)';
b. 'Also in October 2019, I made a complaint against Mr Rahman and MrMarshall about racial discrimination of me to Ms Toye (incoming headteacher at the time)';
c. 'On 23rd January 2020, I made a complaint against Ms Alam about aracist comment she made to me in a meeting with her. I also complained about her aggressive unprofessional behaviour towards me in that meeting. The complaint was made to Ms Gasson-Mulcahey and Ms Powell';
d. 'On 18th November 2019 and 5th January 2020, I made a protecteddisclosure to the ICO regarding the respondent's abuse of CCTV cameras in the Maths department (the modular building). The protected disclosure was also about the respondent's non-compliance with the Surveillance Camera Code of Practice and Data Protection Code of Practice for Surveillance Cameras and Personal Information';
e. In or about April 2023 during the process of document exchange, theclaimant provided the respondent with evidence of racial discrimination.

244. In respect of a), the complaint was about the content of the reference.Ms Gasson-Mulcahy does not recall anything being said about discrimination. The Tribunal finds Ms Gasson-Mulcahy's evidence

to be credible in that, as an experienced HR advisor, she would remember, and act upon, any allegation of discrimination. The Tribunal therefore finds that no allegation of discrimination was made by the claimant during that meeting, when the claimant's concerns were the content of the reference. This was not a protected act within the meaning of the Equality Act 2010.

245. In respect of b) there was no evidence before the Tribunal about thisallegation. The respondent is satisfied that the claimant did not do a protected act within the meaning of the Equality Act 2010.

246. In respect of c), the respondent accepts that, whilst the claimant'srecollection of the meeting does not accord in its entirety with that of the respondent's witnesses, a protected act was done as the claimant did complain of alleged discriminatory treatment by Ms Alam. This was a protected act within the meaning of the Equality Act 2010, made on 23 January 2020. The allegation was not false, and there is no evidence to suggest that the allegation was made in bad faith, nor was that an argument advanced by the respondent.

247. In respect of d), the claimant's alleged protected disclosures do notamount to a protected act within the meaning of the Equality Act 2010 as they do not make an allegation that there has been a contravention of that Act.

248. In respect of e), neither the Tribunal nor the respondent could identify a protected act. It may be that the claimant was referring to a document he disclosed but the Tribunal did not know what the claimant was referring to.

249. The Claimant makes a number of allegations of detrimental treatmentwhich he alleges were because of his protected act(s).

250. As regards the 2019 and 2020 disciplinary investigations, the claimantalleges they were caused by the first protected disclosure. As the Tribunal has found that there was no protected disclosure in October 2019, this was not the cause of the two disciplinary investigations. The only protected disclosure was made on 23 January 2020.

251. The first disciplinary investigation commenced on 1 November 2018. The second disciplinary process commenced in January 2019. The first alleged protected act was done in October 2019 and could not possibly therefore have caused either of the disciplinary processes.

252. In any event, both disciplinary processes were investigating legitimateparental complaints raised about matters of concern which were appropriately dealt with under the respondent's disciplinary policy. commenced because of two potential disciplinary issues, one of which was raised by a parent. It had nothing to do with any alleged protected act.

253. The claimant also alleges '*Unfairness and prejudice*' in the investigation of the disciplinary allegations in that *'key witnesses'* were not *'interviewed in disciplinary investigations*', namely (i) Ms Obeng, (ii) Mr Efunkomaya, and (iii) Mr Boyanga. The Tribunal assumes this refers to the final disciplinary process which culminated in the claimant's dismissal.

254. In fact, Mr Efunkomaya was interviewed. It was admitted that MsObeng was not. The Tribunal is satisfied that the reason Ms Obeng was not interviewed was not because the claimant had done a protected act, but because she was no longer employed by the respondent. As for Mr Boyanga, again the Tribunal is satisfied that the reason he was not interviewed was not because the claimant had done a protected act. The respondent did not consider his evidence to be relevant.

255. In December 2019, Ms Toye told the claimant that the respondent wouldtrigger the absence procedure. Again, this precedes the protected act. In any event, the Tribunal is satisfied that this was done because one of things Ms Toye did when she commenced at the school was to tighten up on absence reporting and monitoring. Consequently, all staff with over a certain number of days of absence were sent a report of their absences and were informed that they may trigger the absence process. In fact, the claimant pushed back on the respondent's record of absence and was given the benefit of the doubt by Ms Toye and Ms GassonMulcahy such that he did not trigger the absence procedure at this stage. This was an example of leniency shown to the claimant.

256. The claimant further alleges that the respondent covertly monitored himand excessively scrutinized his work. This allegation is not upheld. There was a CCTV camera in the claimant's classroom because he worked in the modular classrooms as explained above. The CCTV cameras were not used to monitor staff, including the claimant. However, when an incident arose, the footage would be reviewed, if relevant, to be able to ascertain the facts as part of an investigation process. In fact, the respondent had a "ticketing" system in place which logs the time and purpose of any request to view CCTV footage. The Tribunal is therefore satisfied that any viewing of the CCTV footage was on a need's basis rather than for monitoring or scrutiny of any individual teacher or student.

257. The claimant alleges that "multiple members of senior leadership wereseen (by students who came to tell me) watching CCTV footage of my classroom." Whilst the CCTV footage of the fight and the lead up to it were reviewed, that was done as part of the investigation into what had happened in the claimant's classroom that day. It was viewed only by necessary staff as part of the investigation. The respondent's evidence that students would not have been able to see the footage when it was being reviewed is accepted.

258. To the extent that the CCTV footage was viewed, this was done as partof a legitimate investigation into an incident which had arisen in the

claimant's classroom and was not because the claimant had done a protected act.

259. The claimant alleges an inconsistency of treatment around coveringCCTV cameras as only the claimant was dismissed. The respondent denies any inconsistency. However, as regards the first covering, that in which Mr Efunkomaya and Mr Boyanga along with the claimant, covered the camera in the staff room, it is accurate to say that Mr Efunkomaya and Mr Boyanga received only a management advice, and that the claimant went on to face a disciplinary hearing. However, the claimant went on to cover the CCTV camera in his classroom, alone, which was a totally different, and more serious, act, resulting in a much more serious allegation of gross misconduct. There was therefore no inconsistency.

260. In any event, it is clear to the Tribunal that the respondent's treatment ofthe claimant was because he covered the camera in his classroom and because of the fight, two serious disciplinary allegations against him, rather than because of any protected act.

261. The claimant alleges that further detrimental treatment occurred in April2020, when the respondent failed to drop the CCTV disciplinary issues when CCTV was removed. The Tribunal understands the claimant to be referring to the modular buildings being decommissioned, as the classrooms in the modular buildings had CCTV.

262. The respondent did not drop those issues at that time. However, the factremained that the claimant had taken it upon himself to cover the CCTV without any discussion and without requesting permission.

263. The Tribunal is satisfied that the reason the charge was not dropped at that time had nothing whatsoever to do with the claimant's protected act. The CCTV cameras had been a requirement of installing the classrooms as set out above. What was alleged was a serious act of gross misconduct which it was right and proper that the claimant should face.

264. The claimant further alleges that the delay in investigating his February2020 grievance was detrimental treatment because of protected acts.

265. The claimant was absent from work between 16 March 2020 and 30 April 2020 and did not want to be contacted. The country was also in lockdown which resulted in many delays to grievance and disciplinary procedures throughout the country. The Tribunal is satisfied that any delay was not in any way because the claimant had raised a protected act.

266. The grievance hearing was held on 26 June 2020 and the outcomesent to the claimant on 31 July 2020.

267. The claimant alleges that communicating the outcome of this grievanceon 31 July 2020 was detrimental treatment because of a

protected act. The Tribunal was unclear whether the claimant believed that the actual communication of the outcome was detrimental treatment, or whether it was the date on which it was delivered or the content. In any event, the claimant's grievance was upheld in part, as regards the support plan, which was held not to have been properly implemented. The Tribunal is satisfied that the communication of the grievance outcome had nothing whatsoever to do with the claimant's protected act.

268. The Tribunal is satisfied, for the reasons set out above, that the claimantwas dismissed for gross misconduct because of the fight and the CCTV covering. The respondent's reason for dismissing the claimant was not because of the claimant's protected act.

269. Finally, the claimant relies on the respondent's referral of allegationsagainst the claimant to the Teaching Regulation Authority ("TRA") and the TRA's resultant investigation into those allegations. Ms Jackson,

head of HR at the second respondent, referred the claimant to the TRA. This was because the claimant had been found to have obtained personal information in relation to the respondent's students, which he emailed outside of the respondent's network to his personal email address. The claimant denied obtaining any personal student data, hence the report to the TRA (and also to the ICO).

UNLAWFUL DEDUCTIONS FROM WAGES

270. The claimant says he is owed holidays for the month of August 2020 following the termination of his employment on 30 July 2020. The respondent's case is that the claimant had taken all accrued annual leave prior to dismissal and is owed no holiday pay.

271. Holiday pay claims for full-time secondary teaching staff are more straightforward than most other holiday pay claims. The reason is that, for obvious reasons, staff are required to take annual leave when the school is on holiday (as otherwise there would be a shortage of staff if leave was routinely taken at other times) and that these holidays last far longer than the statutory leave entitlement.

272. The claimant was off work during school holidays such that he has no holiday pay claim.

273. Further, or in the alternative, there was no information or evidence available to the Tribunal to indicate why the claimant believed he was owed holiday for the month of August.

JURISDICTION

274. For the avoidance of doubt, the Tribunal concludes that there was nocontinuing act by the respondent and that any claim under the Equality Act 2010 in respect of an allegation which occurred before on

or around 5 August 2020 was brought outside the time limit provided by s. 123(1)(a) of the Equality Act 2010 ('**EqA 2010**'), as adjusted for early conciliation.

275. There was no evidence before the Tribunal to show that it would be just and equitable to extend time to bring those claims pursuant to s. 123(1)(b) EqA 2010.

Employment Judge Rice-Birchall

Date 16th April 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

24th April 2024

P Wing

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-andlegislation-practice-directions/