EMPLOYMENT TRIBUNALS

Claimant: Ms S Byfield

Respondents: (1) The Governing Body of Whitmore High School (1R)
(2) The Vale of Glamorgan Council (2R)
(3) Mr I Robinson (3R)

Heard at: Cardiff

On: 3, 4 and 5 July 2023, 20 and 21 November 2023 and 30 January 2024. Tribunal panel only in chambers 31 January 2024.

Before: Employment Judge R Harfield
Mrs L Bishop
Mr M Vine

Representation
Claimant: Mr Adkins (Trade Union Representative)
Respondents: Ms O'Callaghan (Counsel)

RESERVED JUDGMENT

1. The Claimant's complaint of harassment related to race about the Chair of Governor's letter of 25 November 2021 is well founded and is upheld against the First and Second Respondent;

2. The Claimant's other complaints against all three Respondents of harassment related to race and direct race discrimination are not well founded and are dismissed.

3. The Claimant's successful complaint will be listed for a remedy hearing.

REASONS

Introduction – the procedural background to these proceedings

1. The claim form was presented on 1 September 2022 alleging direct race discrimination and harassment related to race [4-20]. An ET3 response form was filed on behalf of all respondents denying the complaints [21– 38]. A case management hearing took place before Employment Judge Webb on 23 December 2022. The issues were clarified in the course of that hearing and a list of issues was produced by EJ Webb [52-55]. The parties were directed

that if they considered the list was incomplete they were to write to the tribunal by 13 January 2023. The parties were told if they did not write in the list would be treated as final unless the tribunal decides otherwise. Neither party wrote in to express any concerns about the list of issues. EJ Webb also listed the final hearing and made case management orders to get the case ready for that hearing. It was identified at that case management hearing that the claimant was relying upon three comparators.

2. In advance of the final hearing listed for 3 – 6 July 2023 the respondents made an application for an anonymisation order. The claimant made an application for further information about the 3 comparators. There was then a further application to rely upon a fourth comparator. The applications were to be considered at the start of the hearing.

3. At the July 2023 hearing we had before us a core bundle and index extending to 592 pages. We had an additional bundle of 76 pages. We also had, by agreement, some additional documents which were the respondents' response to the claimant's application for further and better particulars about the first three comparators, an occupational health report of 14 December 2021, an email chain between 15 June and 22 June 2020 relating to the claimant's shielding and a powerpoint about training given on safeguarding and professional conduct. During the course of the hearing we raised an issue as to the degree of redactions in a safeguarding strategy meeting document and we then received a further copy with reduced redactions. We had an agreed cast list and an agreed chronology. We had an agreed list of individuals to be subject to a restricted reporting order and anonymisation order.

4. We had a written witness statement from the claimant, two witness statements from Mr Robinson (the second statement addressed the first three comparators), one statement from Dr Browne, two statements from Ms Ballantine (the second statement followed our giving permission to the claimant to rely on the fourth comparator).

5. At the start of the July 2023 we heard the claimant's application to add a fourth comparator. Having heard submissions from the parties we granted permission to the claimant to rely on the fourth comparator. We gave oral reasons at the time. Our permission was caveated that we gave permission on the basis that the claimant understood she faced a risk that there would be little evidence before us about the circumstances of the fourth comparator as the respondents had foreshadowed that there were limits as to the evidence Mr Browne and Ms Ballantine could give. We highlighted that these witnesses could only be fairly asked about what they knew, there were no agreed facts about comparator four, and the claimant's side were not themselves putting forward witness evidence about the fourth comparator. We said the addition of the fourth comparator was not a vehicle to call additional witnesses or produce new documents.

6. We made a restricted reporting order and anonymisation order prohibiting the identification of Child A, the mother of Child A, the father of Child A, and comparators 1, 2, 3 and 4. These orders remain in place indefinitely.

7. We heard oral evidence from the claimant on the afternoon of day 1. On day 2 we heard oral evidence from 3R and Ms Ballantine. Ms Ballantine completed her evidence on day 3. Mr Browne then gave evidence. Before the lunch break on day 3 Employment Judge Harfield raised with the parties a concern that witnesses were being asked questions about the actions of other individuals who were not being called as witnesses. The questions were alleging that such other individuals, such as Mr Redrup, had committed acts of race discrimination. We said we were not inviting any particular applications but were simply flagging it up for consideration, and to give time for the parties to take instructions. We identified our concern we may be ultimately asked to make findings about the decision making of people that we had not heard evidence from.

8. After the witness evidence had completed, the respondents made an oral application to call three further witnesses: Mr Redrup, Ms Devonish, and Ms James. In essence, the application came about because of a lack of common understanding, which had become increasingly evident through the cross examination of the respondents' witnesses, about whether the complaint concerning the referral of the claimant to a safeguarding strategy meeting before any internal investigation, was levelled just against 3R or also against other employees of 2R. This in turn led to a further discussion with the parties about the List of Issues and whether the claimant needed to make an application to amend. The respondents' position was that the claimant did need such permission, and they objected to it. We deliberated and then made a decision, supported with oral reasons, that the claimant should have permission to further particularise the complaint concerning referral to the safeguarding strategy meeting so that it covered the actions of Mr Redrup and Ms Devonish as well as 3R. In essence, we accepted that there had been a misunderstanding between the parties as to exactly who that complaint was levelled against, and the interests of justice meant that the further particularisation should be allowed. In turn this meant the respondents should have permission to call their additional witnesses. Indeed, the claimant had never objected to additional witnesses being called. In the course of the hearing Mr Adkins also clarified that the allegation in the List of Issues of "pursue allegations of racism against the claimant" related to a letter sent by the Chair of Governors. EJ Harfield said in the circumstances she would send out a short case management order setting out the further particularisation of the claim so that everyone was clear what the issues in the case were going forward.

9. There was one day of hearing time left and it was hoped that at least some of the additional witnesses would be able to give evidence that day. This did not ultimately prove possible and therefore there was no hearing on 6 July 2023. EJ Harfield made directions for the provision of witness statements from the additional witnesses and for a further 2 day listing.

10. An additional two days were listed for 20 and 21 November 2023. The parties then asked if a third day could be added as timings were looking tight. At that time it was not possible for the tribunal to reconvene that week for a third day. Nearer the time of the hearing in fact the tribunal panel had additional time freed up and the clerk did investigate whether it would be possible to add more time but it did not ultimately prove possible.

11. In advance of the reconvened hearing the claimant made an application questioning the veracity of Ms Ballantine's previous evidence about comparator 4 and seeking disclosure of documents. The parties also made a joint application to add a further additional witness, Ms Forte. EJ Harfield gave permission for Ms Forte to be called. The tribunal's principal concern remained that individuals who were facing serious allegations have the opportunity to give evidence.

12. It was not possible to decide the dispute about comparator 4 by correspondence, and therefore it was dealt with at the start of the reconvened hearing. We heard oral submissions and deliberated. We initially gave an oral decision that the application was refused on the basis that permission to rely on comparator 4 had been given in caveated circumstances to start with, and because despite having spent fairly extensive time reviewing all of the panel's notes we could not find a record in our notes of the particular piece of evidence alleged to have been given by Ms Ballantine that the claimant was now seeking to impugn. Ms O'Callaghan then appropriately tried to further direct the tribunal as to where in Ms Ballantine's evidence the observation about seeing comparator 4's terms of reference was said. We were then ultimately able to find a record of the comment, which was tucked away as an aside in a much longer answer about something else. We did then raise with Mr Adkins as to whether he wanted us to revisit our earlier decision. By this time Mr Adkins thought that clarification he had received from Ms O'Callaghan about terms of reference for comparator 4 meant that there was not much to be gained by pursuing the point. Ms O'Callaghan then explained that there may be confusion on Mr Adkins' part about what she had said, but she was constrained by the fact she could not give evidence herself. In those circumstances we decided that the best course of action was to recall Ms Ballantine to give evidence so that she could clarify further her evidence about the terms of reference for comparator 4 and the claimant could ask further questions or challenge her further if the claimant/ Mr Adkins' so wanted.

13. Ms Ballantine therefore gave evidence again. We then heard from Ms Forte and Mr Redrup. Mr Redrup's evidence continued into day 5. During the course of Mr Redrup's evidence an issue arose as to whether the decision made at the safeguarding strategy meeting was a specific pleaded issue in the case. Mr Adkins initially argued that it was there by implication but ultimately accepted that the claimant's case would be confined to what was in the List of Issues (as further particularised in the case management order produced after the July hearing). Mr Redrup completed his evidence and we then heard from Ms Devonish and Ms James. At the reconvened hearing we were given an updated file of witness statements and an updated hearing file extending to 725 pages. To that was added at [726] a letter from Ms Devonish of 8 December 2021 and at [727 to 730] a document about section 5 strategy meetings. References in this Judgment in square brackets are references to that updated hearing file.

14. Two further dates were listed for 30 and 31 January 2024. The parties exchanged written closing submissions in advance and provided further oral submissions on the morning of 30 January 2024. We hoped to be able to give an oral judgment with reasons on the afternoon of 31 January 2024 but tribunal panel deliberations did not complete in time to allow us to do so. Our

deliberations only concluded in the late afternoon of 31 January 2024. Judgment was therefore reserved to be delivered in writing. EJ Harfield apologises for the delay in providing this Reserved Judgment which was caused by the pressure of other judicial work and some ill health.

15. We do not summarise in this Judgment the closing submissions made but instead incorporate particular points raised at the appropriate point when making our findings below. We did also take all written and oral submissions into account when making our decision.

16. We would add that in his oral submissions Mr Adkins accused Ms O'Callaghan of making disingenuous submissions. We do not agree that she did. Ms O'Callaghan was performing her professional duties, and we are grateful for the level headedness Ms O'Callaghan displayed throughout these proceedings.

The Issues to be decided

17. The List of Issues for us to decide as originally set out by EJ Webb and further particularised as set out in EJ Harfield's case management order is as follows (limited to liability matters):

1. Time limits

1.1 Were the complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.1.2 If not, was there conduct extending over a period?

1.1.3 If not, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.4.1 Why were the complaints not made to the Tribunal in time?

1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Direct race discrimination (Equality Act 2010 section 13)

2.1 The aspect of the Claimant's race that is relevant is that she is Black British.

2.2 Did the Respondent do the following things:

2.2.1 Refer the Claimant to a safeguarding strategy meeting before an internal investigation. In particular through:

2.2.1.1 3R's decision to refer the parental complaint to Mr Redrup (the claimant's position being that 3R should have made a decision that it was not a safeguarding matter following an internal investigation);

2.2.1.2 Mr Redrup's decision to take the referral to Ms Devonish (the claimant takes particular issue with the basis on which Mr Redrup presented it to Ms Devonish);

2.2.1.3 Ms Devonish's decision to refer it to a Part 5 meeting (on the basis of her evaluation or response to the allegations that were before her in the parental complaint and any other information she had been given)

2.3 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's

The Claimant has been directed to provide further and better particulars about the identify of the three comparators. [1]

2.4 If so was it because of her race?

2.5 Did the Respondent's treatment amount to a detriment?

3. Harassment related to race (Equality Act 2010 section 26)

3.1 Did the Respondent do the following things:

3.1.1 Pursue allegations of racism against the Claimant[2];

3.1.2 Refer the Claimant to a safeguarding strategy meeting before an internal investigation; In particular through:

3.1.2.1 3R's decision to refer the parental complaint to Mr Redrup (the claimant's position being that 3R should have made a decision that it was not a safeguarding matter following an internal investigation);

3.1.2.2 Mr Redrup's decision to take the referral to Ms Devonish (the claimant takes particular issue with the basis on which Mr Redrup presented it to Ms Devonish);

[1] The Claimant did so, and further as set out above, the Claimant was given permission to also rely on a fourth comparator.

[2] As set out above Mr Adkins stated that this allegation related to the letter of 24 November 2021 sent by the Chair of Governors Ms Forte.

3.1.2.3 Ms Devonish's decision to refer it to a Part 5 meeting (on the basis of her evaluation or response to the allegations that were before her in the parental complaint and any other information she had been given);

3.1.3 Fail to provide an opportunity for the Claimant to address allegations informally;

3.1.4 Fail to provide an opportunity to provide her response formally to the allegation before the safeguarding meeting was concluded;

3.1.5 Pursue the allegation through the disciplinary process that concluded on 27 May 2022;

3.1.6 Fail to investigate the Claimant's complaint of 24 January 2022 through the disciplinary process;

3.1.7 Fail to refer the Claimant to an occupational Health Assessment in January 2022.

3.2 If so, was that unwanted conduct?

3.3 Did it relate to the Claimant's race?

3.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

3.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect."

The legal framework

Direct race discrimination

18. Under section 9 Equality Act race includes colour, nationality, ethnic or national origins.

19. Direct discrimination is defined in section 13(1) Equality Act as follows:

"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."

20. The crucial question in a direct discrimination complaint is why the claimant received the less favourable treatment. The seminal case is Nagarajan v London Regional Transport [200] 1 AC HL where Lord Nicholls said:

"*… in every case it is necessary to inquire why the complainant received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job? Save in obvious cases, answering the*

crucial question will call for some consideration of the mental processes of the alleged discriminator…"

21. In Richmond Pharmacology v Dhaliwal [2009] IRLR 336 Mr Justice Underhill referred to the above and said:

"*It is also worth observing that, although establishing the reason why a respondent in a discrimination case acted in the way complained of typically involves an examination of the "mental processes"…of the decision-taker, that is not always so. In some cases, the "ground" of the action complained of is inherently racial. The best known example in the case-law, though in fact relating to sex discrimination, is the decision of the House of Lords in James v Eastleigh Borough Council [1990] 2AC 751 … In that case the criterion applied by the Council inherently discriminated between men and women, and no consideration of the thought processes of the decision-makers was necessary: the application of the inherently discriminatory criterion could without more be identified as "the reason why" the plaintiff had suffered the detriment of which she complained. It is only because in most cases the detriment complained of does not consist in the application of an overtly discriminatory criterion of that sort that the "reason" (or "grounds") for the act has to be sought by considering the respondent's motivation (not motive). It seems to us particularly important to bear that point in mind in harassment cases. Where the nature of the conduct complained of consists, for example, of overtly racial abuse the respondent can be found to be acting on racial grounds without troubling to consider his mental processes."*

22. The concept of treatment being less favourable inherently suggests some form of comparison and section 23(1) provides:

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

23. The effect of section 23 is to ensure that any comparison made must be between situations which are genuinely comparable. The case law, however, makes it clear that it is not necessary for a claimant to have an actual comparator to succeed. The comparison can be with a hypothetical person. That said the case law also identifies that given the real question is usually about the "reason why" the decision maker acted as he or she did, or whether conduct is inherently discriminatory, and it is sometimes possible for the tribunal to make a finding as to the reason why a person acted as he or she did without the need to concern itself with constructing a hypothetical comparator.

24. In order to satisfy the "because of" test, it is not necessary for the protected characteristic to be the whole of the reason, or even the principal reason, for the treatment. In Nagarajan Lord Nicholls also said:

"*Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial*

and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others…If racial grounds…had a significant influence on the outcome, discrimination was made out."

Harassment related to race

25. Section 26 of the Equality Act defines harassment under the Act as follows:

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

26. In Richmond Pharmacology v Dhaliwal [2009] IRLR 336 the employment appeal tribunal ["EAT"] set out a three-step test for establishing whether harassment has occurred:

- was there unwanted conduct;
- did it have the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them; and
- was it related to a protected characteristic.

27. It was also said that the tribunal must consider both whether the complainant considers themselves to have suffered the effect in question (the subjective question) and whether it was reasonable for the conduct to be regarded as having that effect (the objective question). The tribunal must also take into account all the other circumstances. The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for her, then it should not be found to have done so.

28. In Grant v HM Land Registry [2011] IRLR 748 the court of appeal reiterated that when assessing the effect of a remark, the context in which it is given is highly material. A tribunal should not cheapen the significance of the words "intimidating, hostile, degrading, humiliating or offensive" as they are an important control to prevent trivial acts causing minor upset being caught up in the concept of harassment. The court of appeal also said "*It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable."*

29. In Betsi Cadwaladr University Health Board v Hughes [2014] UKEAT/0179/13 it was said: "*The word violating is a strong word. Offending against dignity; hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence."*

30. The phrase "related to" a protected characteristic in a harassment complaint is a different test from whether the conduct is "because of" a protected characteristic in a direct discrimination complaint. It is a broader, more easily satisfied test. It encompasses conduct associated with the protected characteristic even if not caused by it; Equal Opportunities Commission v Secretary of State for Trade and Industry [2007] ICR 1234. In that case the following examples were accepted as being "associated" with the complainant's sex but not "caused by it" in the sense of forming part of the motivation:

    - A RAF NCO using offensive and obscene language in front of group of male and female staff but was particularly offensive to the women;
    - A claimant who is unfairly treated by her manager who was jealous of the claimant's sexual relationship with a colleague; and
    - A manager barging into a female toilet but would equally barge into a male toilet.

31. "Related to" does however have limits. The conduct complained about must relate to the protected characteristic which is a matter for the tribunal to determine based on all the facts as found. It was said in Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and Heads UKEAT/0039/19 the "related to" test may be satisfied by looking at the motivation of the individuals concerned but it is not the necessary or only possible route. It was also said:

    "Nevertheless there must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim… Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be."

Burden of Proof under the Equality Act 2010

32. The Equality Act 2010 provides for a shifting burden of proof. Section 136 so far as material provides:

    "(2) if there are facts from which the Court (which includes a Tribunal) 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. (3) But subsection (2) does not apply if A shows that A did not contravene the provision."

33. Consequently, it is for a claimant to prove facts from which the tribunal could infer (absent explanation from the respondent) that discrimination has taken place. If such facts have been made out to the tribunal's satisfaction, applying the balance of probabilities, the second stage is engaged. At the second stage the burden shifts to the respondent to prove, again on the balance of probabilities, that the treatment in question was "in *no sense whatsoever"* because of the prohibited reason / that the protected characteristic was not a ground for the treatment in question. A tribunal would normally expected cogent evidence to discharge that burden of proof.

34. In Hewage v Grampian Health Board [2012] IRLR 870 the supreme court approved guidance previously given by the court of appeal on how the burden of proof provisions should apply. That guidance appears in Igen Limited v Wong [2005] ICR 931 as supplemented in Madarassy v Nomura International Plc [2007] ICR 867. Here it is important to note that although the concept of the shifting burden of proof involves that two-stage process, the analysis should only be conducted once the tribunal has heard all the evidence. Further, as to what is required to discharge the burden at the first stage; it must be something more than a difference in protected characteristic and a difference in treatment.

35. It is not necessarily an error of law for a tribunal to effectively assume the burden has shifted and look to the respondent to provide an explanation for the treatment in question. It was said in Hewage that the burden of proof provision may have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another. But the burden of proof provisions do require careful attention where there is room for doubt as to the facts necessary to establish discrimination; a point recently emphasised by the employment appeal tribunal (with its particular words of caution in paragraph 41 and thereafter) in Field v Steve Pye &Co [2022] EAT 68.

36. In Raj v Capita Business Services Ltd [2019] UKEAT 74 19 2006 the employment appeal tribunal confirmed that the burden of proof provisions in a harassment claim mean that it is for the claimant to establish facts such that, absent any other explanation for it, the tribunal could conclude that the conduct was related to the protected characteristic. The burden then shifts to the respondent to show that it was not in fact so related. It was also said: "*I am doubtful that establishing unwanted conduct that had a prohibited effect could ever of itself give rise to a prima facie case that the conduct was related to a protected characteristic and in any event, I am quite satisfied that it did not do so in these circumstances."*

The time limit for disability discrimination complaints.

37. The initial time limit for complaints under the Equality Act 2010 is 3 months starting with the date of the act of discrimination complained about. The effect of the early conciliation procedure is that, if the notification to ACAS is made within the initial time limit period, time is extended, at least, by the period of conciliation.

38. Under Section 123(3) of the Equality Act conduct extending over a period is to be treated as done at the end of the period. A continuing course of conduct might amount to an act extending over a period; Hendricks v Commissioner of Police of the Metropolis [2003] IRLR 96.

39. Under Section 123(3) a failure to do something is to be treated as occurring when the person in question decided on it. Under section 123(4) in the absence of evidence to the contrary, a person (P) is to be taken to decide on a failure to do something when either P does an act inconsistent with doing it, or if P does not do an inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

40. A tribunal may consider a complaint out of time if it considers it just and equitable to do so in the relevant circumstances.

Findings of fact

Introduction

41. We do not need to make findings on every point put forward or disputed by the parties; only those necessary to decide the Issues in the case. Where there is a dispute between the parties we make our decision on the balance of probabilities.

42. The claimant started working at Whitmore High School in September 2002. She is a history teacher. 1R is the governing body of the school. 2R is the local authority. 3R at the relevant time was Head of School and had been in post since September 2019. The claimant at the time was the only black member of teaching staff. 3R told us that the proportion of BAME pupils was around less than 10%.

The parental complaint of 11 October 2021

43. at 12:25 on 11 October 2021 the mother of Child A sent an email marked with high importance and with the subject "URGENT – safeguarding issues" to Mr Kennedy (Assistant Headteacher), Mr Browne (Executive Headteacher), and 3R [163]. The mother of Child A was a school governor. The father of Child A was a police officer. The body of the email [76-77] said:

    "*Please see below a letter from my husband. This is of huge concern for us both and welcome your immediate attention.*

    Many thanks,

    I would like to alert you to some very disturbing behaviour that has been brought to my attention by my son

    [ ] has mentioned that on the morning of Friday 8th October 2021 he had form class as normal with Miss Byfield. During form class she engaged the whole class in an open discussion, and numerous topics were given her attention. I am all for this type of interaction and would even encourage it, so our children learn of current affairs and other persons points of view. However, it must be remembered that the year group is only 13/ 14 years of age and so very easily influenced especially by a figure of authority, namely a teacher.

It is with sadness that I inform you of her total lack of professionalism within this setting. I feel outraged at what I have been informed by my child! The first matter I would raise is the discussion around the Sarah Everard murder, which I am sure you are [aware] was a horrendous crime committed by a serving police officer. Miss Byfield has stated to the class "I do not trust the police. No one should trust them, don't get into the back of their car as they are rapists"

She went on to tell of an experience she has had where she did find herself in the back of a police car, due to her brother saying to a police officer "Can you smell the bacon?" I'm led to believe this was said in a slightly jovial manner. I am proud to say that my [ ] said to her that his father is a police officer and she could trust him and his team. This was dismissed and not explored in any way. I am a serving Detective Sergeant of 21 years who in the last fortnight has taken a rape case to court featuring 3 victims and 11 counts of rape. A guilty verdict was returned, and he awaits sentence. I head a team of seven detectives whose sole purpose is to investigate this serious offence. I am part of the solution to that despicable officer's actions.

To tell 13/ 14 year olds not to trust the police is a serious misjudgement, and a safeguarding issue. How many of your pupils over this weekend could possibly have an interaction with police for numerous reasons. They may be involved in crime or ASB, but what about the ones involved in CSE or are victims of crime who need assistance. I could go on, but I'm sure you realise how misjudged the comments have been.

I wish this was the end, but racism was discussed and apparently Miss Byfield states it's OK for her to use the word nigger due to her race. I leave that there for you to get your own thoughts around in the present climate, and the challenges faced by our communities around race relations. However I know one of [ ] friends who has a fragile mindset about minority groups. I wonder how he takes on the use of this word.

[ ] has also highlighted comments made earlier in the week during a different conversation with the class. The LBGTQ+ community was also discussed. Miss Byfield stated that there are only two genders. If this was done sensitively then no problem here, bearing in mind her audience. She has then gone on to discuss the queers and the fact that she hates the pretend ones with the silly put on voices. She has then highlighted to the form class an individual pupil who she stated she hates because of his put on silly voice. I am sure you are as shocked at this behaviour as I am. What if there is a pupil in this form class who is struggling with his or her sexuality who has now self-harmed this weekend due to her ill advised comments.

Sensitive matters do need to be discussed by everyone in our community, but in a sensitive way which leads to understanding especially with our children. Miss Byfield has bypassed a lot of understanding and has had no sensitivity around her audience when she is expressing her own views while representing Whitmore high school and its values.

This needs addressing and is no trivial matter. However I would be concerned of [ ] involvement as I do not wish him to lose friends due to us informing you of this matter. However again I am very proud that [ ] is

as outraged about this as I am. We do need people like [ ] to stand up over such actions. ***Saying that [ ] would like it kept confidential of his involvement in this complaint.***

I would welcome contact from you in regards to this matter and your own investigation. Further, do certain referrals now need to be made? I realise this possibly places you in a difficult position in regards to taking action.

I am contactable on..."

44. To be clear the claimant vehemently denies this version of events as put forward by Child A and his parents. She categorically denies saying that it was ok for her to use the N word and has given evidence as to how utterly offensive she finds the word and her experience of being on the receiving end of racial abuse that has included use of this word. The claimant's wider version of the matters contained in the parental complaint is summarised below as part of the subsequent disciplinary investigation. But the parental complaint at [76-77] is what the respondents were initially dealing with. At 12:33 Mr Kennedy replied to the parent to acknowledge the email. He said it would be dealt with in the strictest confidence, and he would be in contact at the end of the school day [81].

Response to the parental complaint on 11 October 2021

45. It is difficult to be certain as to the exact sequence of events on 11 October 2021 in terms of who spoke to whom when and in what order. For example, 3R says that he spoke to Ms Ballantine (Principal HR Business Partner for 2R) before he asked the claimant to come and see him. However, Ms Ballantine says she was on annual leave that day and did not speak to 3R until about 2:30pm. But we know that 3R's PA had already emailed the claimant at 13:54. By way of another example, Ms Forte (Chair of Governors) said that the mother of Child A had telephoned Ms Forte before lunchtime saying she had sent the email. Ms Forte said she had then phoned 3R who had not yet picked up the email. Whereas 3R says he phoned Ms Forte following advice from Ms Ballantine (albeit we accept that it is also possible there was more than one conversation between 3R and Ms Forte). We do not consider that any witnesses were seeking to mislead us as to the sequence of events. We consider any lack of precision is down to the passage of time since October 2021. We also acknowledge it can be particularly hard to remember the exact sequence of events where there have been multiple discussions with different people about the same matter over a period of days.

46. What is known is that at 13:54 3R's PA emailed the claimant asking her to see 3R after school that day [79]. The claimant replied straight away saying: *"Dare I ask why? Would like to have at least some idea what it's about!".* 3R's PA, responded at 13:58 to say: *"It is regarding an email he has received from a parent."* We find that this wording must have originated from 3R.

47. At 14:13 the claimant asked to be forwarded the email from the parent as it mentioned her. There was then no immediate response and at 14:41 the claimant [78] emailed Ms 3R's PA again to say: "*Just to confirm I won't be seeing Innes today or attending any meeting without an agenda. At the very*

least I should be able to see the e-mail. I am assuming it is not good news, as I cannot see why that would require myself and Innes to meet. If you could inform Innes of my decision, and rationale I'd appreciate it. I'm happy to meet once I have a full explanation as to what the meeting entails."

48. 3R says that after he read the parental complaint (which had been acknowledged already by Mr Kennedy), he decided that he needed to seek advice, particularly as the email was headed "Urgent safeguarding issue." He says that he contacted Ms Ballantine who advised him to speak with the Local Authority Designated Officer ("LADO"), and that he then telephoned Mr Redrup. 3R says that following policy he also informed Ms Forte by telephone. He says that following Ms Ballantine's advice he also asked his PA to contact the claimant to request a meeting. Albeit, as already stated, that timeline does not match the evidence of Ms Ballantine or the timing of the email to the claimant. 3R says he did not want to deviate from the advice received from Mr Redrup or Ms Ballantine. He says the purpose of the requested meeting with the claimant on the afternoon of 11 October was to tell the claimant a complaint had been made, and to ask whether she was aware of matters that could have led to a complaint. He says he would not have disclosed details of the complaint. 3R says the advice he received was that he was unable to share the details of the allegations with the claimant.

49. Ms Ballantine says she was on annual leave and had a missed call from 3R that she returned at approximately 2:30pm. She says that 3R outlined the details of the parental complaint and 3R also told her the parents wished for the identity of the child to remain confidential. She says she felt some of the comments had the potential to cause emotional harm to pupils, specifically the comments about the gay pupil and advising pupils not to trust the police. She said that for this reason, and erring on the side of caution, she felt it could potentially be a safeguarding matter and suggested that 3R contact Mr Redrup who had more experience in the area. We accept her evidence in that regard. She says that her advice was based on Welsh Government Guidance and would be the process she would follow in any potential child protection case. She says she also advised 3R to notify Ms Forte that a complaint had been received and that it was being referred to Mr Redrup, because this was the procedure in the school's disciplinary policy. In the subsequent grievance investigation in December 2022, Ms Ballantine said that what information could be shared with the claimant would dependent on the advice provided by Mr Redrup and 3R's decision following that advice. She said that if Mr Redrup raised concerns that amounted to a recommendation that the matter progress to safeguarding then the nature of the complaint could not be shared with the claimant, and that the purpose of a meeting with the claimant would have been to notify the claimant of a parental complaint but not to discuss the details.

50. 3R says that after speaking with Ms Ballantine he telephoned Mr Redrup and subsequently forwarded on the parental complaint at 16:02 that afternoon. The email is at [80] where 3R says: "*Hi Jason, Here is the parent complaint. Staff and pupil details coming now Innes."* We do not have whatever staff and pupil details were then separately sent.

51. Mr Redrup is a Safeguarding Officer for Education in the Learning and Skills Directorate, employed by 2R. He is not the LADO. He had been in post since

May 2020, having previously had a career in the police service. Part of his role is to be a safeguarding link for schools in the Vale of Glamorgan. In his statement Mr Redrup records receiving the email from 3R but does not mention a telephone discussion with 3R on the afternoon of 11 October. In his earlier statement provided as part of the grievance process Mr Redrup did confirm he had spoken to 3R that afternoon [699], that 3R had told him about the complaint, and he had asked for a copy to be forwarded on to him.

52. Mr Redrup said he saw the parental complaint as potentially meeting safeguarding referral criteria because the allegations in the complaint centred around potential racism, gender denial/ homophobia/ moral views on mistrust in law and order. He said such matters could potentially call into question the claimant's suitably to work with children, as applies under Section 5 of the Wales Safeguarding Procedure. Mr Redrup said it was not for him to investigate the allegations as the approach was to focus on the voice of the child and what the child was alleging. Mr Redrup said in evidence how he assessed the parental complaint was therefore not about the claimant's race. He said the allegation in the parental complaint, as he saw it, was not that the claimant was racist, but was that racism was discussed and apparently the claimant had alleged said it was ok for her to use the N word due to her race and with concerns then raised about the potential implications of that. Mr Redrup said that it was not a matter for him to express in work a personal opinion about whether, for example, a black person is allowed to use then N word or not and that he was looking at the allegation from the perspective of the child, and the alleged context in which it was said to be used in that it could create racism. Mr Redrup also said that if it was alleged that any teacher had said not to trust the police, not to get in the back of their car, and that they were all rapists, he would have considered making a referral under Part 5. Mr Redrup said after he received the email, he contacted Ms Devonish to ascertain her preliminary view of the matter reported and he subsequently forwarded the complaint to Ms Devonish. He did so at 16:19 that afternoon.

53. Ms Devonish is a qualified social worker. She is employed by 2R as Adult Safeguarding Manager in the Social Services Directorate and is Designated Officer for Safeguarding ("DOS") fulfilling duties delegated by the LADO, Ms James. Ms Devonish has been in this post since January 2020. Ms Devonish's role is to respond to reports or referrals in respect of allegations against practitioners/those in positions of trust and to make a decision if they meet the criteria to progress to a strategy discussion with the police and other relevant agencies. Ms Devonish confirmed she was contacted by Mr Redrup on the afternoon of the 11 October and that he subsequently forwarded on the email.

54. The father of Child A was known to Mr Redrup professionally because when Mr Redrup had been a Detective Chief Inspector in the police service, the father had been one of his team leaders for a short period of time. Mr Redrup raised this with Ms Devonish who did not have concerns about a conflict of interest. We accept Mr Redrup's evidence in this regard.

55. Ms Devonish's evidence was that the elements in the parental complaint that concerned her were: the allegation that the claimant had said she did not trust the police, no one should trust them, not to get into the back of their car as they are rapists; the allegation the claimant had said it was ok for her to use

the N word due to her race; that the claimant had allegedly discussed the queers and that she hated the pretend one with silly put on voices and had highlighted an individual pupil in this regard. Ms Devonish said she considered the allegations, if true, had the potential to cause emotional harm to the children the claimant was teaching, and that if the claimant was expressing such views she may not be suitable to work in the role of a teacher. Ms Devonish said she was aware the children were 13/14 years old and was concerned they may not have the maturity to understand the implications of using the N word and the risk that a young person could go out in public and use the word with repercussions for themselves or another. She said that if the allegations were true the claimant may have been ridiculing the police, and children may not potentially trust the police if they were in a situation where they needed to. Ms Devonish said there was a concern that if a child in the class was struggling with their sexuality then the alleged views expressed may have had an impact on them. Ms Devonish said she therefore considered that the allegations as a whole, if proven, may deem the claimant unsuitable to work with children. She said that she therefore proceeded with engaging Section 5 of the Wales Safeguarding Procedures.

56. Ms Devonish said that once she had determined to progress through the section 5 procedures, her next step was to have a strategy discussion with the police to share information and to allow the police to consider whether they would take any action. In the statement she provided in the grievance process [696] Ms Devonish said she had a discussion with South Wales Police before deciding the matter would proceed to a professional strategy meeting. On the afternoon of 12 October, Mr Redrup emailed Ms Devonish [85] saying: "*have you managed to make contact with Police/school over the allegation we discussed yesterday*…" which supports the evidence that Ms Devonish and Mr Redrup did have a discussion on the 11 October and that Ms Devonish was going to have an initial conversation with the police.

57. 3R said in evidence it was his practice to follow subject matter expert advice. He said the advice he was generally given was that he was not allowed to give extra details before a part 5 meeting, and that he should not get in the way of a criminal investigation or a conduct investigation by doing his own investigation.

58. Mr Redrup said in evidence that when a school is made aware of a potential allegation that may fall within section 5 of the Wales Safeguarding Procedures they are advised to contact the Education Safeguarding Team for advice and guidance and the Education Safeguarding officer (i.e. Mr Redrup or his job share colleague) will consider and advise if they think the matter has potentially reached the threshold for consideration by the LADO/DOS. He said that at the time schools would come to him and he would assist by getting in touch with Ms Devonish and explain an allegation had been received by the school, rather than the school making direct contact with Ms Devonish as DOS. He said he would make a referral to Ms Devonish if he thought the threshold for section 5 was met. Mr Redrup also said it is standard practice for staff to be told the bare fact an allegation has been made and it has been referred to safeguarding and no more than that. He said this was because any police investigation would take primacy, that the police need time to consider that, and also because of a general risk of potential coercion of complainants or witnesses. Mr Redrup said part of any eventual strategy meeting would

involve a decision about what information could be provided as Childrens' Services and the police would be present at that meeting.

59. Ms James' evidence was that the school had a duty to report a potential safeguarding concern. She described Mr Redrup's role as being a critical friend to a school and to give advice on what information is needed to make a decision. She said if a school took a decision without taking advice from a safeguarding perspective the school would be failing in their statutory duties.

Wales Safeguarding Procedures and other policy and procedure documents

60. Section 5 of the Wales Safeguarding Procedures set out the process where there are safeguarding concerns about people in a position of trust who work with children. Every council must have a LADO who may delegate responsibilities to a DOS (Here Ms James and Ms Devonish respectively). The Section 5 procedures [729] say that when considering use of the procedures a number of factors should be considered and some concerns could be considered poor professional practice and may be appropriate to be dealt with via an agencies' own internal processes or through giving advice/training. It is said any decision not to take further action should be recorded and if agencies are unclear what action to take they must seek appropriate advice from the DOS. It is said the procedures should be used in all cases where it is alleged a person who works with children has:

    - behaved in a way that has harmed or may have harmed a child;
    - May have committed a criminal offence against a child or that has a direct impact on the child;
    - Behaved towards a child/children in a way that indicates they are unsuitable to work with children.

61. We were not given other parts of the Section 5 procedure other than the part headed "concluding the process" [727]. But we were given other policy and procedural documents. There is the statutory Welsh Government Guidance on safeguarding children in education: handling allegations of abuse against teachers and other staff. It says it applies to all cases where it is alleged a member of staff has behaved in a way that falls under the three bullet points set out above. The Guidance says that allegations need to be dealt with by applying common sense and that many cases may not meet the criteria above where local arrangements can be followed to resolve cases without delay. It then says [309] that the LADO should be informed of all allegations that come to a school's attention and appear to meet the criteria, so that the LADO can consult children's social services and the police, as appropriate.

62. That statutory guidance also says that the headteacher/case manager should immediately discuss the allegation with the LADO and the purpose of the initial discussion is for the LADO and case manager to consider the nature, content, and context of the allegation and agree a course of action. It says the initial enquiries should establish that an allegation has been made, what is alleged to have occurred, when and where the episode is alleged to have occurred, who was involved, and any other person present [310].

63. The guidance says the initial evaluation between the case manager and LADO may lead to a decision that the allegation is demonstrably false or unfounded and no further action is to be taken. Otherwise, the guidance says that the case manager should inform the accused person about the allegation as soon as possible after consulting the LADO and*: "It is important that the case manager provides them with as much information as possible at that time. However, where a strategy discussion is needed, or police or children's social services need to be involved, the case manager should not do that until those agencies have been consulted and have agreed what information can be disclosed to the person."* It also says that whilst the statutory authorities are considering the allegation, governing bodies should take no action other than to review and confirm the membership of staff disciplinary committees or if there needs to be a decision to suspend [312].

64. The guidance says that if an allegation is not demonstrably false or unfounded and there is cause to suspect a child is suffering or is likely to suffer significant harm a strategy discussion should be convened. It also says [315] that individuals should be informed of concerns or allegations as soon as possible and given an explanation of the likely course of action unless there is an objection by children's services or the police.

65. There is also separate Welsh Government statutory guidance on disciplinary and dismissal procedures for school staff which has a section about procedures for handling allegations of abuse against teachers and other staff [400]. It refers back to the guidance on safeguarding children in education. It again says that all allegations of child abuse against teachers must be reported to the headteacher who must immediately discuss the allegations with the LADO who is responsible for overseeing such allegations, liaising with the statutory authorities and providing advice to the school governing body [403]. It says the purpose of the initial discussion is to consider the nature, content and extent of the allegation and agree a course of action but not to investigate. It says the discussion will establish that an allegation has been made, what is alleged to have occurred, when and where it is alleged to have occurred, who was involved and any other person present. It goes on to say that this evaluation may lead to a decision the allegation is demonstrably false or unfounded with no action to be taken. If so, agreement will be reached as to what information to put in writing. Otherwise, as per the other guidance, if a referral is made, the governing body is to take no action other than reviewing their committee memberships or if they have to consider suspending or reassignment to other duties.

66. We have been given two model staff disciplinary procedures. One is appended to the statutory guidance on disciplinary and dismissal procedures for school staff [411]. The guidance itself is dated February 2020. The other version is at [322] dated January 2021 but says it is based on a model procedure in a Welsh Government circular 002/2020. Ms Ballantine in her witness statement refers to this version starting at [322]. It includes a "formal procedure where the allegation relates to child protection issues" [338]. It says that allegations involving issues of child protection will be brought immediately to the attention of the headteacher. It says: "*The headteacher… will make an initial assessment (but not investigate) to determine the nature and circumstances of the allegation, i.e. witnesses, when it occurred, etc. If the conclusion is that beyond any doubt it is impossible for the allegation to be*

true the matter will be discussed by the chair of governors, headteacher and the lead child protection officer in the LA, to determine whether a referral to social services and/or the police is required". There may then be a decision not to take any further action. On the other hand, if the initial assessment by the headteacher, in discussion with the LA lead child protection officer, indicates that an allegation might be true, there will be an immediate referral for a strategy discussion involving the statutory authorities (social services and/or the police) in accordance with local child protection procedures.

67. The disciplinary procedure also says: "*The employee will normally be informed of the decision, as agreed by the statutory authorities that a referral is being made.*" It goes on to say there may be some circumstances where this will not be appropriate, for example to avoid evidence being tampered with or if there is concern about the employee's wellbeing.

68. As stated that seems to be the version Ms Ballantine was working from, but we note for completeness that the model agreement appended to the Guidance on Disciplinary and Dismissal procedures for school staff says allegations of child abuse will be discussed by the headteacher with the local authority designated lead officer for safeguarding in education where there is cause to believe a member of staff has harmed a pupil at the school. There is capacity to conclude that the allegation is not true beyond reasonable doubt. On the other hand if the initial discussion and assessment indicates an allegation might be true and there are concerns about the welfare of a child the local authority designated lead officer for safeguarding in education will arrange a strategy discussion involving the statutory authorities and in accordance with local child protection procedures. It says: "*The headteacher or chair will inform the member of staff about the allegation as soon as possible after consulting the local authority designated lead officer for safeguarding in education. However, if a strategy discussion is needed, or police or children's social services need to be involved, no information will be given until those agencies have agreed what information can be disclosed to the member of staff*."

69. There is also a document entitled: "Information for practitioners and those in positions of trust who are subject to an allegation/concern under the Wales Safeguarding procedures [595]. It says:

"*On receipt of an allegation, if after making initial enquiries (but not investigating) the headteacher considers unequivocally that the allegation is false (i.e. the circumstances show it is not possible for it to be true) they must still discuss the matter with the Chair of Governors… and the Local Authority Designated Lead Officer for Child Protection. If all parties agree that the allegation cannot be true, the Headteacher need take no further action.*

If it is not possible to unequivocally say the allegation is false, there will be a referral to the statutory authorities.

You may be told that a referral is being made at this time but there may be circumstances where this might not be appropriate, if for example it could prejudice any inquiry/investigation."

Comparators

70. We were also referred to some comparator cases. Mr Adkins had a tendency to make assertions about the comparator cases that were not supported anywhere by witness evidence. The claimant side could have called their own evidence about the comparators whether from the claimant herself or Mr Adkins or others. They did not do so. We therefore base our findings not on the assertions or submissions of Mr Adkins where unsupported by evidence, but instead on the witness evidence we were given (tested under cross examination) by the respondents.

71. Comparator 1 concerns an allegation that comparator 1 did not leave the room when (together with a learning support assistant) dealing with a pupil with learning difficulties who was not fully clothed. 3R did not personally deal with comparator 1 and became aware of the incident in separate tribunal proceedings brought by another teacher against R1 and R2. The tribunal's judgment in that case can be found at starting at [538]. The issue was raised with the school by a Unison representative. Mr Kennedy referred the allegation to the safeguarding team who concluded that the allegation did not raise a safeguarding concern and that the pupil had been properly supported. 3R did not know who, in particular, Mr Kennedy spoke with although the judgment in the Lancaster case at [570] states the referral email was sent to the education safeguarding officer. There were no disciplinary proceedings against comparator 1.

72. Comparator 2 concerns an allegation by 4 female pupils in September 2019 that a teacher had an overly friendly relationship with a child. There were no allegations of sexual impropriety. The concern was raised with the head of sixth form who contacted 3R. 3R then made the education safeguarding officer aware (not Mr Redrup). 3R says he was new in post at the time and had limited experience of dealing with safeguarding matters and that he was reliant on guidance from the education safeguarding team and HR. 3R arranged to meet the teacher and told her that there had been an allegation but provided no information beyond that. This was in accordance with the safeguarding advice 3R had received. The teacher knew what the allegation was about and gave some information that 3R was able to add to the strategy meeting. Two strategy meetings took place with an eventual decision the allegations were unsubstantiated. The concerns ultimately held related to the teacher needing to reflect on professional boundaries. 3R, HR and the Chair of Governors decided it was not appropriate to commence disciplinary proceedings but to instead speak to comparator 2 about professional boundaries. Comparator 2 had not been suspended as there was no suggestion from the local authority that it was needed.

73. Comparator 3 faced an allegation in May 2021 relating to alleged inappropriate touching and language. 3R referred the allegation to the safeguarding team which included speaking initially with Mr Redrup. 3R also took advice from HR who recommended that the teacher not remain in the school whilst the safeguarding investigation was ongoing. 3R telephoned the teacher to say that there had been an allegation and 3R was considering suspending comparator 3. The teacher proposed working from home without any pupil contact and due to the covid 19 pandemic there was work they could undertake. There was a strategy meeting and then a police

investigation who found no evidence in support of the allegations. There was then a second strategy meeting where the allegation was found to be unsubstantiated. The school decided not to undertake separate disciplinary proceedings, following advice from HR, on the basis that a disciplinary investigation would not elicit more information than that already obtained in the police investigation. Comparator 3 had been told there was an allegation against him with no further detail of that allegation, including during the 3 week police investigation.

74. Comparator 4 works at a different school and therefore was not dealt with by 1R or 3R. The allegations were also not dealt with by Mr Browne. There have been several different allegations against comparator 4. One allegation was passed on by Mr Adkins which was a handwritten note signed by a young person. It was referred to safeguarding who directed that parental consent be obtained, and that has not yet taken place. The second allegation was referred and found not to meet the threshold for safeguarding as the account given by the child to a Youth Officer differed to the allegation the parent had made. The third allegation related to alleged comments to a pupil of an alleged inappropriate nature. Again, the allegation was referred to safeguarding. There was a police investigation who found there had been no criminal offence. There was a strategy meeting at which it was found the threshold had not been met as the comments was not considered to be predatory, albeit they had made pupils feel uncomfortable. It was referred back to the school to deal with. Comparator 4 was then told about the specific allegations. We accept Ms Ballantine's evidence, which she reiterated when recalled to give evidence, that terms of reference have been drawn up for an investigation, part of which covered this matter as well as other separate issues which had since come to light. We also do not find it established (it was denied by Mr Redrup in cross examination) that he said at the strategy meeting to a police officer that the Vale of Glamorgan like to do their own investigations. We were given no positive evidence that Mr Redrup had done so.

Findings of fact about the initial steps on receipt of the parental complaint

75. From the evidence we do have we conclude that it was 3R's approach at the time to take advice from HR and from safeguarding, via Mr Redrup. 3R was relatively new in post as head and, in terms of his teaching career, did not come from a safeguarding background. We consider it likely and find that he was worried when he saw the parental email. It was headed "urgent-safeguarding matter." It came from parents who were a school governor and a police officer. We consider it likely that 3R's reaction was that he needed to seek advice. He had done so in other cases too, such as with comparators 2 and 3. We consider it likely that 3R had not definitively decided exactly what he was going to say to 3R when asking to meet with her that afternoon because he was in the process of seeking advice in the meantime. The immediacy of that was then taken of his hands because the claimant declined to meet with him unless in the circumstances she had outlined.

76. We do not think it likely that 3R undertook a forensic analysis of particular aspects of the parental complaint. The specific complaint about alleged used of the N word was therefore not forefront in his mind or actions. 3R spoke with Ms Ballantine. She did not have a copy of the parental email and 3R did not

read the whole thing out to her. We accept her evidence that she thought some of the alleged comments that 3R had summarised to her had the potential to cause emotional harm and therefore be a safeguarding matter, specifically the alleged comments about a gay pupil and the alleged comment not to trust the police, and that to err on the side of caution 3R should contact Mr Redrup for advice. 3R followed that advice and telephoned Mr Redrup. We think it likely and therefore find that the conversation between 3R and Mr Redrup on 11 October was likely to be quite short as it is likely Mr Redrup would have asked 3R to forward on the email. Mr Redrup is a retired police officer and used to receiving and assessing evidence, and we consider it likely he would have asked to see the actual email. 3R then forwarded it on to Mr Redrup as requested. At that point, in our judgement, it was then in reality taken out of 3R's hands.

77. We consider that in taking these steps 3R and Ms Ballantine were following the course of action that they generally took when a potential safeguarding concern arose, and was the process they understood the statutory guidance and policies and procedures said that they should follow. Their evidence is consistent that part of Mr Redrup's role was to give advice as to whether something has potentially reached the threshold for being a safeguarding matter and that, irrespective of the exact wording of policies or statutory guidance, in practice Mr Redrup or another education safeguarding officer would generally be their first port of call rather than going straight to the DOS or LADO. 3R and Ms Ballantine's actions in that regard are also consistent with the comparator cases. It is also consistent with Mr Redrup's evidence that he delivers annual training to school leaders, part of which is to tell schools to contact the education safeguarding team to discuss whether a referral needs to be made and Ms James' evidence that Mr Redrup's role was to act as a critical friend.

78. We find that Mr Redrup, for the reasons outlined in his evidence summarised above, considered it was a potential safeguarding matter. He discussed it with Ms Devonish and forwarded on the email to her. We find that Ms Devonish, likewise considered it was a potential safeguarding matter, again for the reasons set out in her evidence summarised above. Ms Devonish decided to engage section 5 Wales Safeguarding Procedures. Ms Devonish then undertook the first step that she would in any case, which was to contact the police for a strategy discussion. Thereafter a strategy meeting would be arranged. We find it likely that all of this had happened on the afternoon of 11 October 2021, or at the very latest early in the morning of 12 October 2021 because by the next morning 3R was recording in his email records (see below) that there was to be a safeguarding meeting.

12 October 2021

79. On the morning of 12 October 2021 3R spoke again with Ms Ballantine at 9:52 [84]. Just after 10am 3R then spoke with Mr Redrup about completing a risk assessment whilst the allegations were being considered under the safeguarding procedures. By then it was known that there was to be a safeguarding meeting because 3R records that in his note at [84]. Mr Redrup's advice was that the claimant could remain in school teaching but a second adult should be present in the classroom. He advised 3R to meet with the claimant and say briefly that an allegation had been made, was being

looked at by safeguarding, and to protect her and the pupils a learning support assistant would be in her lessons. Later that afternoon Mr Redrup also emailed Ms Devonish [85] referring to the school and HR having been in touch querying the process and about the completion of a risk plan, and asking her if she had managed to make contact with the police/school.

80. 3R asked Mr Kennedy to visit the claimant in her classroom and request she attend 3R's office. They spoke in the corridor and the claimant said that 3R was aware of her reluctance to meet with 3R as no further information had been forthcoming. Mr Kennedy told 3R that the claimant would not meet with him.

81. 3R therefore contacted Ms Ballantine for further advice [84]. They decided that someone should be placed in the claimant's classroom straight away. Ms Ballantine told 3R to go to the claimant's classroom himself and tell her an allegation had been made, was being considered by safeguarding, and as a consequence a teaching assistant would need to be in the claimant's classes. Ms Ballantine considered that they could not just ask a learning support assistant to walk in and sit in a class without first notifying the claimant.

82. 3R followed Ms Ballantine's advice and went to the claimant's classroom and asked the claimant to speak with him. 3R was accompanied by a LSA who went to sit with the class. 3R and the claimant went into a nearby empty classroom and 3R told the claimant he had received an allegation that was being looked at by safeguarding. The claimant asked for further information about the nature of the complaint and 3R stated that he could not inform her of the details. The claimant felt this was not the case and said she would contact her union. She said she had to teach a whole day and could not deal with it. 3R told her she had a choice what to do next and the claimant then returned to her classroom. We reject the claimant's assertion that 3R was taking some form of gratification from the situation or that he had somehow inappropriately taken her into an empty classroom against her wishes. We preferred 3R's account in this regard, not least because the claimant's account of the meeting had become more extreme as time went on and was not reflected in the initial account she gave to her union at [89-90]. We accept 3R found it was a difficult situation and indeed the claimant had forced his hand in that regard in refusing to meet with him other than on her terms. But we also accept the claimant was understandably unnerved and upset and feeling vulnerable as she did not have the details of the complaint that had been made. The claimant became increasingly upset at the situation and later went home with a migraine. It was not known at the time, but she ultimately ended up being signed off work for a 6 month period.

83. In the afternoon Ms Setchfield from the NASUWT emailed 3R asking to see a copy of the parental complaint [83]. 3R responded to confirm a parental complaint had been received which had been sent to the safeguarding team and he had followed their advice in telling the claimant that an allegation had been made which the safeguarding team were currently looking at. 3R said he was unable to provide details of what the allegation is at the time and to protect the claimant and pupils an LSA would remain in lessons until he received further advice from the safeguarding team.

84. We find that in not giving the claimant information beyond the fact a parental complaint/ allegation had been received 3R was following the advice he had been given by Mr Redrup. It also accorded with the advice and approach that had been taken in other cases such as comparators 2 and 3. It also accorded with the Welsh Government statutory guidance which says that the case manager should not provide information until the agencies have been consulted/ the strategy discussion has taken place to agree what information can be disclosed. Likewise, the disciplinary policy says that an employee will normally be informed of the decision that a referral is being made (i.e. that there is a referral, but not the details of the allegation).

Run up to the safeguarding strategy meeting

85. On 14 October 2021 3R emailed Mr Redrup chasing up if Mr Redrup knew when the part 5 meeting would be [92]. Mr Redrup in turn chased Ms Devonish and Ann Williams, a Principal Officer in social services [93]. Ms Devonish said that it would be the following week and she would make contact with 3R that day [93]. That afternoon Ms Devonish emailed 3R and Mr Redrup with the likely date for the professional strategy meeting. She also said: "*The current information we have is third party and it will therefore be difficult to outcome the meeting based on this alone, whilst I'm aware no type of "investigation" can take place, a preliminary should happen; potentially this could involve clarifying with the child what was actually said and asking other children in the class to describe the lesson? Would there be any problem with this?"* [94].

86. On the morning of 15 October 2021 [100] Mr Redrup emailed saying he thought the suggestion made sense and asked 3R if 3R would be able to "*facilitate a very open non-leading chat with the child who reported to, clarify what is contained in letter/ what was said.*

Perhaps it would be an idea to ask the child who else in the class heard what was said so that a selection of students/ use your professional judgement as to the most suitable students to be spoken who could be spoken to as opposed to a general canvass of children.

Innes, HR and me from education would need to attend the s.5. I can then link back in with the school governing body dependent on the outcome of the meeting."

87. By 15 October Mr Adkins had taken over as the claimant's NASUWT representative. He emailed 3R asking for an update. Mr Adkins asked 3R why he had breached the statutory disciplinary procedure in failing to make initial inquiries into the complaint, on what basis 3R considered it to be a safeguarding matter, and why 3R had failed to disclose details of the nature of the complaint other than in the most general of terms. Mr Adkins accused 3R of having made a knee jerk reaction. Mr Adkins questioned 3R's management capabilities, and said 3R had delegated his management responsibilities to social services and HR [96]. 3R forwarded the email on to Ms Dickinson in HR [96] and said he was not happy to deal with Mr Adkins given the language being used and accusations made.

88. On 15 October Ms Ballantine emailed 3R to say she had spoken to Ms Williams on the afternoon of 14 October. She says, and we accept, that it was following 3R raising concerns about the claimant, her welfare, and what details could be shared with her. Ms Ballantine said in her email: *"We discussed what you can advise Steph as I know you are concerned about her, and she advised me that now the police has given the go ahead for the preliminary inquiries to take place we can advise Steph the matter relates to the content of the lesson where a parent has subsequently raised a concern.*

    When who ever undertakes the preliminary investigation, can you ensure that there are no leading questions asked of other pupils in the room so they would be more general so how did you find the lesson on x date? and what was it about? and not a case of asking did the teacher say x y and z"

89. We do not have the email itself but it is apparent that following this 3R sent an email to Ms Setchfield (in place of Mr Adkins). It led to Mr Adkins sending a rely to 3R [98] saying: "*I note you do not respond to my email but to Mrs Setchfield in advising her the complaint was in respect of the content of the lesson. This is not a safeguarding matter. Your ability to act in apparent absence of any knowledge of the safeguarding procedures gives rise to further concerns about your capability*." Mr Adkins asked 3R to look at the definition of emotional abuse, accused 3R of taking relish in seeking to incriminate the claimant, and said that all content would be detailed in a lesson plan as part of a scheme of work produced or approved by the Head of Faculty/ Department rather than the claimant personally.

90. Ms Devonish's evidence is that she could recall 3R being concerned about what information he could share with the claimant and that she had directed him in accordance with section 5 procedures that he could only share that a safeguarding concern had been raised in relation to the specific lessons and was there anything the claimant would like to put forward.

91. There does not appear to be any evidence of Ms Devonish and 3R directly speaking at this point in time. It appears to us that most likely the enquiry went through a chain from 3R to Ms Ballantine to Ms Williams to Ms Devonish. As stated, we do not have the actual email then sent by 3R to Mr Adkins but it appears to us likely from Mr Adkins' response that he was simply told by 3R that the complaint was about the content of a lesson, with no further indication being given as to which particular lesson on a particular date. We consider it likely and find as a matter of fact that this was 3R's genuinely held understanding of Ms Ballantine's email where she referred to the "content of the lesson." But we do not consider that this is what Ms Devonish actually intended. Ms Devonish referred in her evidence to the "specific lessons" and we consider it likely that she intended the claimant be told what specific lesson or lessons the parental complaint related to. It accords with what else was going on at the time which was that the police had been spoken to, and the preliminary enquiries taking place with pupils at which they would be asked open questions, but open questions about a lesson on a particular date – i.e. some frame of reference was being given to the pupils. It accords with the sense Mr Redrup gave in his evidence that what information is to be released to the subject of the allegation is tightly controlled at the start whilst there is evaluation by the statutory authorities, who can then risk assess and decide who can be told what and when from

there. It also accords with Ms James' evidence that a decision how much information to give would be made on an individual basis.

92. Also on 15 October the claimant contacted her GP and was signed off work. She was prescribed sleeping tablets and migraine relief.

93. Ms Prosser, Assistant Headteacher, was tasked with making enquiries with pupils. She sent 3R an email on 18 October 2021 [101] saying that she had spoken to 5 children. She wrote:

"Child one (the original complainant): was extremely clear about what was said and felt that the comments made were inappropriate for a teacher to make.

Child two: agreed that there had been some political views shared and that some of what the teacher said was to insight discussion but that some of her views made him uncomfortable (notably the use of the word "n" and "queer" and the description of a year 11 pupil who spoke in a particular voice.

Child three: felt that the teacher had expressed her lack of trust for the police and stated that she would not go into a police car late at night and would ask for support from a friend.

Child four/five could not remember details of the discussion".

Safeguarding Strategy Meeting

94. The part 5 strategy meeting took place on 19 October 2021 attended by Ms Devonish as chair, Ms Ballantine, Mr Redrup, Mr Robinson and Detective Inspector Allsopp from South Wales Police. The minutes are at [671] albeit they are drafted in a way that makes the sequence of discussion difficult to follow because they summarise each individual's input rather than summarising sequentially the discussion as it happened.

95. The minutes record Ms Devonish acknowledging that concluding an outcome in this way was problematic at times. She said that words and events can be interpreted differently. The minutes say "*Nicole cited Brian's example that the context of the conversation involving the N word may have been in relation to some starting to use it as a form of empowerment. Conversely, questions remained about the use of the word "Queer" and her specifically referencing a child who's voice she described as annoying, which was personal.*

Nicole concluded her determination would have been unsubstantiated at this stage in the process until further information had been collated. Conversely, the majority of professionals had determined the allegation is substantiated. This adjacent to Miss Byfield stating there only being 2 genders and other concerns, concluded that the allegation status at present would be substantiated. The school would now need to complete their own internal investigation and disciplinary and feedback the findings outcome to Nicole."

96. Ms Devonish had also stated that the next stage in the process would be for the school to conduct their own internal investigation but conversely an

outcome from the section 5 meeting was required before this could transpire. She also identified the need for support for the claimant and the pupils.

97. In the minutes Mr Redrup acknowledged the difficulty in determining an outcome based on restricted information and there being no account from the claimant, but referred to some consistencies in the accounts of the pupils. His perspective on balance was that the allegation should be concluded as substantiated.

98. 3R acknowledged concerns expressed by DI Allsopp but agreed with Mr Redrup on the balance of probability the outcome should be substantiated. DI Allsopp raised the question of whether child one and child two knew each other and whether they could be close friends. He said: "*Moreover, the teachers background in relation to ethnicity wasn't known and outside of the professional arena there was an awareness of some using the word as a form of empowerment. Conversely any professional should prove mindful of their audience and context. In relation to the other matters, they would not be categorised as criminal in nature as much as they were concerning in regard to transferable risk. This was a matter for the employer to manage as seen appropriate."*

99. DI Allsopp said he would prefer further information before determining an outcome on such limited information and the claimant's version of events had not been heard. Conversely he acknowledged that it was part of the process and there were three pupils depicting similar elements of conduct which would direct towards the outcome of substantiated. But he expressed unease the outcome was being based on the interactions with those three pupils. He asked that if anything came to light in the course of the internal investigation that could prove impactive to the initial outcome, the professionals are proactive and reconvene to reconsider the information and finalise an appropriate outcome.

100. So despite some misgivings Ms Devonish found on the information available that the initial concern raised by the parents, confirmed by the child, and the account of two further children in the class, and taking into account the views expressed by the other professionals at the strategy meeting, confirmed on the balance of probabilities the outcome was substantiated. It was said the views allegedly expressed by the claimant could potentially mean she posed a risk to children. The process was concluded and was to be passed back to the school to undertake an investigation. It was recorded: "*The determination of substantiated was made by the majority of the group, it was accepted that all members would have preferred to hear Ms Byfield's explanation of events, however Ms Byfield was off sick and had not engaged with Innes even to be advised that a concern had been raised. It was agreed that if the disciplinary investigation brought to light new information a review professional strategy meeting could take place under these procedures."*

101. In safeguarding terms the outcome of substantiated simply means "*there is sufficient evidence to prove the allegation*"; it is not an actual finding. The other options are unsubstantiated, unfounded, or malicious.

102. Ms Devonish told us in evidence that this was the first situation she had dealt with where there was no account from the subject of the complaint.

She said that her initial starting point had been that the allegations may be unsubstantiated because they did not have the claimant's account. She said that she listened to the views of others and eventually decided on an outcome of substantiated as there was some corroboration from some of the other pupils spoken to. She said the decision of substantiated was ultimately hers. She was the DOS and we accept she understood her responsibilities and we accept her evidence in this regard.

Potential for further meeting with the Claimant

103. On 20 October 2021 3R emailed the claimant [112] saying the part 5 meeting had taken place the day before and the outcome was the allegations were substantiated. He said: "*This was bearing in mind your refusal to attend any meetings and your subsequent illness which let there to be no input from yourself. I have gained agreement from the chair of the panel should you wish to participate in a preliminary meeting (which is not the investigation meeting), consideration would be given to reconvening the part 5 meeting to discuss your evidence as further information."* The claimant was offered a meeting with Ms Prosser, with 3R commenting that Ms Prosser had done a preliminary meeting with pupils.

104. Mr Adkins responded [116] by accusing 3R of ambushing female members of staff and NASUWT members. Mr Adkins disputed that the claimant had refused to attend meetings.

105. On 21 October 2021 a meeting took place between Ms Ballantine, 3R, Mr Redrup and Ms Forte under paragraphs 82 and 83 of the disciplinary procedure [339] which governs allegations relating to child protection issues where the statutory authorities have completed their consideration. The options available were:

- Whether the allegation is of a child protection nature and the behaviour constitutes gross misconduct which requires it to be independently investigated prior to any disciplinary hearing;
- Whether there is evidence of misconduct which should be treated as lesser misconduct;
- Whether no further action is required.

There is a statutory requirement for to the governing body to refer child protection allegations for independent investigation.

106. The decision was reached that the allegation was one of a child protection nature and had the potential to amount to gross misconduct and therefore should be remitted for an independent investigation [117].

107. On 22 October the claimant emailed 3R again setting out her version of events and asserting that she had never refused to attend a meeting with 3R but had asked for clarification as to what the meeting was about and that she was not able to give an input when she did not know what the allegations were. She said she was happy to meet with Ms Prosser by video conference [123].

108. 3R responded to the claimant on 3 November [128] to say that he did not agree with her version of events but it could be discussed at a later date. He said Ms Prosser could meet that week and: "*The purpose of the meeting is simply to state that an allegation has been made and to give you an opportunity to respond to this. It is not part of an investigation but is the process that would normally take place when a member of staff agrees to meet."* Ms Prosser set up a meeting. Mr Adkins asked again for further information to be given, pointing out that the preliminary meeting was said to be an opportunity for the claimant to put her point across, but she could not do so if she was given no information [126].

109. On 4 November 3R emailed the claimant and Mr Adkins saying [129]: "I *must inform you that I am following the advice of the Vale Safeguarding team as to what can be discussed in the meeting on Friday. As explained in the previous e-mail the purpose of the meeting is simply to state that an allegation has been made and to give you an opportunity to respond to this. It is not part of an investigation but is the process that would normally take place when a member of staff agrees to meet.*

The next part of the process is an investigation that will be carried out by an external agency. At that stage of the process, you will be given full details of the complaint as per the process detailed by HR in the Vale."

110. The meeting therefore did not take place as the claimant could see no point in attending when she would not be given any further details of the allegation [132]. Mr Adkins pointed out that almost 4 weeks had passed, and the claimant still was not aware of the exact nature of the allegation, and it was causing her considerable stress and anxiety.

111. On 8 November 2021 Mr Adkins emailed Ms Devonish saying 3R had reneged on a commitment that would allow the claimant to give her side of the story on direction from Ms Devonish. He said if that was correct then it was overreaching on Ms Devonish's part to dictate employment matters, that the safeguarding procedures allowed some information to be given, and it was absolutely perverse for Ms Devonish to seek to direct the school in the way she had done. Mr Adkins said that the only basis on which to deny the detail is that Ms Devonish must believe that the claimant would in some way harm the pupil and that, if so, it was an appalling suggestion. He indicated that they may challenge the "defamatory assertion" [133]. Mr Adkins asked Ms Devonish to tell the school that they may disclose details to the claimant. Ms Devonish emailed Ms Dickinson [134] saying she was really unhappy with the way she had been accused and that she found the tone of the email aggressive and it was a wholly inaccurate portrayal of what had taken place. Ms Devonish said she was not happy to respond to the email in its current format. On 15 November 2021 Mr Adkins chased Ms Devonish for a response [135].

112. On 16 November 2021 Ms Devonish emailed 3R saying she had spoken with Ms James that day who had advised that as the professional strategy meeting had happened and they had reached an outcome, any meeting with the claimant would need to be part of the schools disciplinary investigation as opposed to a safeguarding preliminary enquiry. Ms Devonish said that as agreed in the professional strategy meeting, if after that has

occurred, there was information with the potential to produce a different outcome, then a follow up part 5 meeting could be arranged. She said: "*hope that makes sense and sorry for the confusion."* Ms Devonish also told 3R that as usual practice she would be writing to the claimant that week "*to advise that a professional strategy meeting was convened under part 5 of the Wales Safeguarding Procedures due to concerns raised by a Pupil that during a lesson she conveyed personal views that were racist, homophobic and undermined confidence in the Police. And that as a group of professionals on the information we had available to us the concern was substantiated, furthermore it was considered that she does potentially present a risk to children which will now be considered through the school's own disciplinary procedures."*

113. We consider it likely, and find, that 3R left the strategy meeting with a genuine belief that they could, in short order, arrange a meeting with the claimant at which the claimant may be able to give further information, and that the Part 5 meeting could be promptly reconvened potentially with a different outcome. In effect that there could be some form of preliminary enquiry. That was not ultimately possible because Ms James said there had already been an outcome at the professional strategy meeting. As we understand it, Ms James was, in effect, saying there could not be further preliminary enquiries to inform the Part 5 safeguarding process decision making because the outcome decision had already been made. If further information was to be obtained it should therefore be via the disciplinary investigation. The fact that Ms Devonish checked this with Ms James, and then wrote to 3R apologising for the confusion tends to suggest it is likely there was genuine misunderstanding at the time as to what could happen. It demonstrates 3R did originally genuinely believe it was an option and one that he was genuinely trying to take forward.

114. We also find that 3R genuinely believed that the position remained that the claimant could not be given any details beyond that already given. We have already found that this was not what Ms Devonish had in mind and that there was already in existence a misunderstanding between telling the claimant that the complaint arose out of a lesson as against telling her the specific lesson or lessons that the complaint related to. We find it is likely that this misunderstanding remained in place and led to 3R believing that because it was a meeting that was part of the safeguarding process (rather than being part of the disciplinary process) the same restrictions would remain in place. It led to 3R telling the claimant and Mr Adkins what he did and that the restrictions came from safeguarding.

The disciplinary investigation invite letter

115. On 24 November 2021 Ms Forte wrote to the claimant [137]. The letter said:

"As you are aware, a parental complaint was received raising concerns about the content of one of your lessons. Unfortunately, the Governing Body until now has only been able to share limited information with you due to the nature of the issues, which were referred to the Council's Safeguarding Officer. A professional strategy meeting was considered necessary. This has

now taken place and you will receive separate correspondence in relation to this.

This process having concluded, the Governing Body is of the opinion that it is necessary to consider the concerns further under its procedures. The matters will need to be investigated under the School's disciplinary processes because the allegations, if true, potentially would amount to misconduct and/or gross misconduct.

The concerns raised allege that you had conveyed personal views to students when conducting a lesson in your capacity as a teacher which were racist, homophobic, and undermined confidence in the Police. The Governing Body is of the view that, if these allegations are proven, your actions may amount to misconduct or gross misconduct.

The particular areas of concern identified are that:

1. *you conveyed personal views in a lesson that were racist, homophobic and undermined confidence in the police;*

2. *in stating these views in a lesson, you breached the Equality Act and behaved in a discriminatory manner;*

3. *your views and your conduct in relation to these events were in breach of safeguarding;*

4. *you have failed to behave professionally in accordance with your role as a teacher;*

5. *you have brought the School and the Governing Body's reputation into disrepute;*

6. *you have breached the Education Workforce's Code of Conduct."*

116. The claimant was told Nerissa Williams from Blue Turtle Consultancy would be conducting the investigation and the claimant would be contacted shortly to arrange a meeting to be given the opportunity to comment and provide a statement to the investigating officer.

117. Ms Forte told us, and we accept, that draft letter had been prepared within 2R's legal team. We did not hear evidence from the original drafter. It seems likely to us given the almost identical phraseology, that the drafter took the wording of the allegation from Ms Devonish's email of 16 November 2021. Ms Forte had not seen that email and we accept that Ms Forte did not know the origins of the wording adopted. Ms Forte's evidence was that she considered the draft wording to be an accurate summary of the allegations and therefore she approved it. Ms Forte said to us in evidence that it was not her intent to allege that the claimant was racist, but that the claimant had expressed personal views that were racist in the lesson in question. Ms Forte said she saw that as an accurate portrayal of what the parental complaint email was saying. Ms Forte said the letter was drafted on the basis of the parental complaint email and advice from the legal department. It was put to Ms Forte in cross examination that the parental email did not describe the

claimant's comments as being racist. Ms Forte said that the very fact the N word was in there made the reading of the complaint as being an allegation that personal views that were racist had been used.

118. The letter itself did not give the claimant the specifics of the personal views it was said she had conveyed that were racist, homophobic and undermined confidence in the police. It also did not identify the lesson or lessons in which it was alleged she had conveyed such views.

119. On 24 November 2021 Mr Adkins emailed Ms Dickinson asking, in the absence of a response from Ms Devonish, that she ask Mrs Prosser to detail the safeguarding concerns to the claimant to allow the claimant to give her side of the story [605]. On 25 November 2021 Ms Dickinson responded to say that the claimant had been offered the opportunity of the meeting with Mrs Prosser on 5 November and the meeting was intended to discuss the matter in more detail with the claimant. She said that whilst it was not the recommendation of the safeguarding strategy group, the group had agreed with 3R that once the meeting took place they would recall the strategy meeting to ensure the claimant's position was put forward. She said that in the absence of the meeting the internal investigation process had now commenced. She said the outcome of that investigation would now be referred back to the safeguarding strategy group once concluded [605]. Mr Adkins responded to say that what Ms Dickinson had been advised was not true. He sent a further email [602-603] setting out the claimant's version of events. In essence he said that the claimant was not being afforded the opportunity to present her position as she would be given no further details of the allegation.

120. On 3 December 2021 Mr Adkins emailed Ms James [142]. He said Ms Devonish had gone into matters outside of the remit of the Wales Safeguarding Procedures, that social services departments were setting themselves up as "commissars" into the overall conduct of teachers when it was none of their concern, and that the findings of the strategy meeting were a nullity. He said it was evidence of 3R abusing the safeguarding procedures to continue his victimisation of NASUWT members and that was a safeguarding matter in its own right. Mr Adkins said:

> *"if the service maintains that the matters considered fall within the remit of the safeguarding then I believe the formulations which substantiated the allegations which informs the contents of the disciplinary letter are in turn:*
>
> - *The belief that discussion of Black peoples' experience of racism as expressed by Black Lives Matter and other organisations is racist is itself racist;*
> - *the belief that discussion of women's fears for their safety following the murder of Sarah Everard by a police officer is discriminatory is itself discriminatory;*
> - *The belief that discussion of a self-identifying woman participating in the Olympics is homophobic is itself transphobic;*
> - *The belief that discussion of these matters undermines the police is symptomatic of a state of denial which can only be*

informed by those who are in turn racist, sexist and transphobic."

121. Mr Adkins said he was therefore referring the professionals and police who participated in the findings against the claimant to safeguarding and that Ms James was bound to convene a Part 5 strategy meeting against them as otherwise Ms James would compound the discriminatory and racist treatment that the claimant had suffered at the hands of Ms James' service. The detail that the claimant had been given therefore had allowed her to make an educated guess as to what the allegations may relate to.

Initial efforts to arrange a disciplinary investigation meeting

122. On 3 December 2021 Nerissa Williams wrote to the claimant [144] inviting the claimant to an interview on 15 December 2021 on Teams. Ms N Williams said if the date was not convenient she could arrange a date in the New Year (as Christmas holidays were then due to the start). No further details were given as to the specific allegations.

123. On 6 December 2021 Ms Dickinson emailed Mr Adkins saying that as the matter had now been referred to an independent investigation the claimant would have opportunity to discuss her points with the investigator.

124. On 7 December 2021 the claimant emailed Ms N Williams to say she was not available on 15 December and so would like to take up the offer of arranging a meeting in the new year [146].

125. A date of 5 January 2022 was then agreed [151]. Mr Adkins said that they required disclosure of all documents that Ms N Williams intended to rely on to conduct the interview, the parental letter, and the interviews with pupils [149].

126. On 8 December 2021 Ms Devonish wrote to the claimant [726] saying: *"I am writing to confirm the outcome of a Professional Strategy Meeting held under the above procedures in relation to a concern raised that it was alleged during a lesson you gave personal views that were considered racist, homophobic, and likely to undermine public confidence in the Police."* The letter said the strategy meeting concluded that on the information available the concerns were substantiated. The letter said the process was now concluded at the School/Governing body would be undertaking their own internal process.

127. On 10 December 2022 Ms N Williams responded to Mr Adkins saying he would have to revert to the Chair of Governors to request any documents as her remit was only to investigate the allegations in the letter sent to the claimant. She said she could give the claimant some outline questions to prepare for interview and would be able to put some specific detail in there for the claimant. Ms N Williams said she would be able to get the sample questions out before the end of term.

128. On or around the 10 December 2022 the NASUWT raised a collective grievance for 3 teachers including the claimant [140-141] against 3R. He was accused of predatory targeting of specifically NASUWT staff at the top of their

scale. It was alleged that 3R had entrapped women into meetings with serious professional ramifications, without following due process. It was said that 3R had targeted these NASUWT female members by deliberately escalating the severity of allegations against them whilst intentionally de-escalating serious sexual allegations made against 3 non NASUWT staff members. There was no mention of a race discrimination complaint in respect of the claimant.

129. Mr Adkins responded to Ms N Williams to say: "*You should also be aware that this is the modus operandi of Mr I Robinson, Head of School for WHS. He seeks a meeting with the member of staff concerned without giving reasons for the meeting let alone details of any allegations and then escalates the nature of the complaint by referring the matter to safeguarding where he details what was allegedly said*." Mr Adkins referred to the three female members of staff filing a grievance. He questioned how Ms N Williams could investigate without evidence from the parents and pupil statements. He said the case was likely to end in litigation and if she continued to conduct the interview in the absence of the documents Mr Adkins would add her personally as a co-respondent to the discriminatory treatment the claimant was receiving [153].

130. Ms Williams responded to say that the email had been forwarded on to Ms Forte [154].

131. On 14 December 2021 the claimant had an occupational health appointment [669]. A letter was produced addressed to a Jo Hale, Assistant HR Business Partner. For reasons unknown, there is no evidence that this report was passed onto anyone in the school. We accept Dr Browne's evidence that he could not recall seeing the report. We accept that 3R also would not have received it as he had by then stepped out of dealing with the claimant's case. The report said: "*Stephanie had not been given the details of the allegation and was initially given opportunity to fully discuss and understand the case against her and this has been a major contributing factor to the stress and anxiety she had experienced in the past few months. Stephanie was not made aware that she had been accused of making racist and homophobic comments until she received a letter from the Chair of Governors, on Friday 25th November."* The OH letter said the whole situation had caused the claimant a great deal of anxiety, resulting in the GP prescribing anxiolytics and hypnotics and the claimant had suffered a recurrence of severe headache/migraine which have been exacerbated by her anxiety. The letter said there is no doubt the claimant is extremely stressed about the situation at the school, and is upset she feels she has not been treated fairly and the school has not followed the correct safeguarding guidelines towards her. The doctor said this had added yet more stress to an already stressful situation. The doctor said the claimant was unfit to return to work and unfit to attend any meetings. He said it was hopeful medication would eventually help the claimant to control her anxiety more successfully and she would be able to attend meetings accompanied by her TU representative. The OH doctor said he would review the claimant in January.

132. The investigation meeting originally arranged for 5 January 2022 did not take place. On 7 January 2022 the Claimant was signed off work for a further 6 weeks with "Acute reaction to stress" [155].

133. On 8 January 2022 Ms Forte wrote to Mr Adkins [158-159]. She said the terms of reference for Ms N Williams to investigate were as set out in the letter to the claimant of 23 November 2022. Ms Forte said Ms N Williams had sight of the parental complaint and would be able to give the claimant further information as part of the investigation process. Ms Forte said: "*The parental letter of complaint has not been given to Ms Byfield or you because the parent expressly asked for this not to be shared, and, having taken advice on how best to deal with this aspect, and being mindful of the Governing Body's obligations to Ms Byfield, the pupil and parents, I wish to respect this request for anonymity."*

134. Ms Forte went on to say: "*The intention is to furnish Ms Byfield with as much information as possible so that she knows what the allegations are without compromising the parents' wishes, which I have tried to do in my letter of 23rd November. We are not required to provide the letter to Ms Byfield providing she knows the nature of the allegations against her, (which she does). As we both know this is a difficult balancing act. I have asked Ms Williams to prepare her questions for Ms Byfield and for these to be sent to you as soon as possible, as this should assist Ms Byfield in having as much information as possible when meeting with Ms Williams as part of the investigation process."* Ms Forte said that Ms Willams did not have any paperwork from the safeguarding process and would conduct her investigation separately from that process, including obtaining information independently from pupils.

135. On 8 January 2022 Mr Adkins responded to say the matter should be dealt with under the school's complaints procedure because it had not yet been determined whether they constitute potential disciplinary acts. He said the complainant could not maintain anonymity because they may wish to counter complain [156].

136. On 11 January 2022 Mr Adkins wrote to Ms Forte to say he had taken advice from the Information Commissioner, and the claimant was entitled to all evidence on which the allegations are based, including the pupil statements taken by Mrs Prosser and the parental complaint with the name of the complainant and other identifying features redacted [160].

137. On 11 January 2022 Ms N Williams sent through her sample questions for the claimant [161]. Mr Adkins responded to ask what were the comments which the claimant was alleged to have said, and again seeking the pupil statements taken by Mrs Prosser and the parental complaint with names redacted, in case they wished to counter complain.

138. On 14 January 2022 the claimant sent a letter to Mr Browne, as being the person considered to be the data controller at the school, requesting the parental complaint and pupil statements [162, 165]. The letter suggested the school may be able to redact certain identifying features. The letter said she wished to consider whether the complaint and actions of the school following receipt constitute harassment on the grounds of her ethnic origin for which the school carries vicarious liability [162].

Request for referral to occupational health under the Burgundy Book

139. On 24 January 2022 Mr Adkins wrote to Ms Forte [166] saying: "*I am writing to ask the unit to make a referral to occupational health to determine whether Miss Byfield's current absence from work arises from an accident at work under Section 4: Para 9.1 of the Conditions of Service for School Teachers in England and Wales, more commonly known as the Burgundy Book as a result of her being subject to harassment on the grounds of her ethnic origin by the parental complaint and by the schools subsequent prejudicial management of this complaint."* There was then a list of more specific complaints including the failure to disclosure details of the complaint other than saying one had been made, and inappropriate escalation to safeguarding and under the disciplinary procedure. Mr Adkins said in a previous Cardiff case he had agreed set questions to be referred to occupational health and he proposed the questions that should be referred. This included whether the claimant suffered an accident, injury or assault as a result of the alleged treatment as set out in Mr Adkins' email.

End of January 2022 and February 2022

140. On 24 January 2022 Mr Adkins wrote to Ms Forte [167] saying he wanted to file a complaint against 3R that 3R had harassed the claimant on grounds of her ethnic origin and/or gender in respect of 3R's management and pursuit of a parental complaint. Mr Adkins said that if the complaint was not treated in the same way as the parental complaint against the claimant (i.e. potential gross misconduct and a referral to safeguarding) then he would consider this to be a discriminatory act on the part of the school. On 2 February 2022 Ms Forte responded to check which parental complaint Mr Adkins was referring to [169 and 171]. On 2 February Mr Adkins confirmed it was the same parental complaint [170].

141. On 1 February 2022 the claimant attended a further occupational health appointment [168]. The doctor said that if anything the claimant's mental health problems had increased since their last discussion. He said the claimant was quite tearful and upset during their consultation and became very upset discussing any issues related to work. He recorded the claimant saying she was still awaiting evidence of the complaint. He recorded that the claimant's collective grievance had now been forwarded to the Minister of Education at the Senedd for their opinion. The doctor said the claimant was so distressed at that time she was unfit to return to work and unfit to attend meetings to discuss her absence. He said the grievance procedure needed to be completed as soon as possible and that until the investigation was complete her mental health would continue to deteriorate. Mr Browne did receive this report.

142. On 1 February 2022 Ms Forte responded to the request for a referral to occupational health in respect of the injury attestation [607]. Ms Forte said: "*As I am sure you will appreciate, I will have to take advice before responding fully, but will do so as soon as I am able."*

143. On 2 February 2022 Mr Adkins wrote to Ms James making a formal complaint against Ms Devonish. He alleged that Ms Devonish had either deliberately or unwittingly joined herself to the actions of 3R in harassing the

claimant on grounds of her ethnic origin and/or gender in 3R's management and pursuit of the parental complaint. He said Ms Devonish had harassed the claimant by convening a safeguarding strategy meeting outside the definition of emotional and significant harm. Mr Adkins said it was only potentially a conduct matter which should have simply been referred back to the school. He said as a result of Ms Devonish's actions the claimant had suffered an extreme psychological reaction which had resulted in an application for an injury payment. He said: "*We seek as a remedy that this strategy meeting is reconvened and chaired by a competent social worker and the referral closed with No Further Action."*

144. On 4 February 2022 Ms Forte wrote to Mr Adkins. We do not have the letter but from subsequent responses it can be gleaned that the letter said the claimant's complaint against 3R would be processed under the grievance procedure rather than the disciplinary procedure and the claimant was invited to complete a complaints form under the grievance policy. Mr Adkins responded that day [173] to say 3R had potentially committed disciplinary acts and the disciplinary procedure should be used. On 8 February Ms Forte responded [174,175] to say she urged the claimant to complete the complaints form under the grievance procedure so that it could proceed in a timely manner. Ms Forte also encouraged the claimant to engage with Ms N Williams so that the claimant's evidence could be considered by the Disciplinary and Dismissal panel.

145. On 10 February 2022 Mr Adkins responded to Ms Forte to again say he wanted the complaint against 3R treated as a disciplinary matter. Mr Adkins repeated again that it was not true that the claimant had failed to engage in the safeguarding process, but that she could not give her point of view if she did not know the nature of the allegations. Mr Adkins said they were at an impasse and proposed that the parental complaint be treated under the complaints procedure in the first instance [176].

146. On 10 February 2022 Mr Adkins wrote to Ms James saying he wished the department to withdraw the false allegation the claimant had failed to engage. He said again that the referral was outside of safeguarding and that her department had engaged in "craven acquiescence" with 3R abusing safeguarding procedures [178]. That day Mr Adkins received a response from Ms James that we do not have details of. Mr Adkins then wrote to Ms Forte [179] asserting that 3R was prejudicing the wellbeing of pupils by failing to comply with safeguarding procedures. He referred to comparators 1, 2 and 3.

147. On 11 February 2022 Mr Browne provided a redacted version of the parental complaint to the claimant [163-164]. We do not have a copy of the covering email, but later Mr Adkins referred to Mr Browne having said that the questions asked by Mrs Prosser to the pupils were not written down and no notes were taken [190]. The provision of the redacted parental complaint happened following Mr Browne taking advice from the Local Authority Freedom of Information section and also getting approval from the family as to the redacted version that would be provided.

148. Mr Adkins then wrote to Ms James [182] saying the resolution they were now seeking was for the preliminary safeguarding meeting to take place with a view to reconvening the part 5 meeting, as previously offered by 3R.

Mr Adkins also wrote to Ms Forte [183] proposing another remedy to the complaint/grievance along the same lines and suggesting that the school stay the investigation pending the meeting. He said the school could then decide whether to continue and, if so, whether under the complaints or disciplinary procedure. Mr Adkins said that if agreed the NASUWT would formally withdraw their complaints. On 14 February 2022 Ms Forte responded to say it seemed a sensible way forward if Ms Devonish's offer remained open [184]. Ms Forte said she had asked Ms N Williams to suspend the investigation but regardless of the outcome of the strategy meeting the school would still need to consider the concerns raised one way or another. Ms Forte queried whether the NASUWT withdrawal of complaints included the collective grievance.

149. On 18 February 2022 the claimant's GP signed her off as unfit for work until 1 April 2022 because of "stress."

150. On 21 February 2022 Ms Forte wrote to Mr Adkins to say that the request had been passed to the safeguarding team but due to the amount of time that had passed since the initial hearing, and because the investigation had started, the safeguarding team had advised it will now not reconvene until the investigation process had completed. Ms Forte said she therefore had asked Ms N Williams to complete the investigation as quickly as possible [186]. Mr Adkins responded to say he accepted the school had to investigate but requested that it happen under the parental complaints procedure [187].

151. On 24 February 2022 Mr Adkins wrote to Mr Browne. He raised some concerns about the level of redactions to the parental complaint [190-191]. He also raised concerns about the process following in taking the pupil accounts and in the delay in giving to the claimant the detail of the allegations against her and the impact that it was all having on her health.

152. On 28 February 2022 Ms Forte wrote to Mr Adkins saying that she could not accede to the request to deal with the matter under the parental complaint procedure. She referred to Welsh Government guidance saying that where the concern, if proven, would be likely to result in disciplinary proceedings being instigated then the matter should be dealt with under the disciplinary procedure. She said she would be contacting Ms N Williams to ask Ms N Williams to resume her work [193].

Blue Turtle Consultants disciplinary investigation

153. On 8 March 2022 Ms N Williams wrote to Mr Adkins suggesting an interview in the week commencing 28 March. She re-sent the sample questions. The sample questions refer to the form class on 8 October 2021 and ask whether the claimant made any comments about her own opinions regarding discussion topics, for example, about the police and any recent events that had been in the media, her own experience of the police, and her opinion of the trustworthiness of the police. The claimant was also asked if during the class she made any comments about her own opinions regarding discussion topics, for example about racism and whether she used any racially inappropriate language. The claimant was asked whether in any other classes, possibly earlier in that week, she made comments about her own opinions about discussion topics, for example, the LBGTQ+ community in relation to her opinions of gender identity.

The claimant was also asked if at any time she had identified any specific pupils in the school by reference or name that the claimant had specific opinions about, in relation to the LGBTQ+ community. She was asked if she made any comments about any perceived stereotypical behaviour they may have exhibited, to pupils in the form group [194-196].

154. Mr Adkins proposed dates for the week commencing 4 April as the claimant was signed off by her GP until 1 April [198]. He then wrote again to say that the claimant was in fact well enough to attempt a phased return to work the week commencing 28 March [199], requesting dates that week and saying the claimant now preferred to get the interview over with.

155. On 15 March the claimant had a further occupational health review [200]. The report said the claimant continued to be very anxious about the complaint made against her but was pleased an investigation meeting had been arranged for 29 March. The doctor said the claimant was very keen to return to work as soon as possible, her medical certificate finished on 1 April, and she would like to attempt a phased return to work on 4 April. The doctor agreed and recommended that the phased return to work then continue after the Easter break.

156. On 15 March Mr Browne responded to Mr Adkins about the subject access request. Mr Browne had taken further advice from the Freedom of Information Team and provided a further copy of the parental complaint with some of the redactions reduced [201]. Mr Browne said he was otherwise unable to comment on the other issues raised by Mr Adkins as he was dealing just with the subject access request. Mr Browne said there was no intention in the SAR process to cause distress and he had needed to take advice as it seemed the request was not straight forward. He said ultimately the author of the concerns gave consent to its disclosure, otherwise he may well have been in a position of not being able to disclose.

157. On 25 March the claimant forwarded the latest occupational health report to Mr Browne, proposing she start her phased return to work on Tuesday 5 April [204]. Mr Browne suggested that they meet that morning [205].

158. Mr Adkins wrote to Mr Brown chasing up the injury at work attestation issue. He said: "*Due to Miss Byfield's impending return we wish for the current episode of absence to be attributed to being caused by an injury at work."* Mr Adkins says the email was dated 25 February 2022 [192] although it seems more likely it was 25 March 2022 given it refers to an impending return to work and because it is referred to in a subsequent email of 30 March at [206].

159. On 29 March 2022 the claimant had her interview with Ms Williams.

160. On 30 March 2022 Mr Adkins wrote to Mr Browne about the return to work meeting [206]. In his email he said there may be a counter complaint against the parent and also if the parent was a public servant, to their employers. He said they would shortly be filing a complaint of racial discrimination against the chair of the strategy meeting.

161. In April 2022 Ms N Williams provided her investigation report. She had interviewed Child A and 9 other pupils in the form selected at random. In her report she summarised the claimant's career history, including that the claimant had, as the only ethnic, black, minority history teacher the school had ever had, tried to introduce elements of black history throughout the curriculum where appropriate.

162. Ms N Williams' report [223] records the claimant saying that in the form class on 8 October 2021 she had asked the class to nominate a news story from the week that had interested them. The structured tasks for the form to complete in the 20 minute tutorial were a couple of riddles that they had quickly solved. One pupil mentioned Black History Month and as nothing else had been mentioned the claimant referred to a video they had previously watched about the Mangrove 9. The claimant explained that she told the form about another film that was part of the same series which detailed the struggles of a black man who joined the Metropolitan Police in the 1980s, both in relation to his working life and his family life. The claimant also explained that another pupil had mentioned the murder of Sarah Everard and that she had asked the pupil why the news story concerned the pupil. The claimant reported that the pupil had said: "*because the man was a policeman Miss and people are supposed to trust the police."* The claimant said she had quoted to the form comments made by Cressida Dick, Commissioner of the Metropolitan Police Service, that the fact the murderer was a serving member of the police force had undermined the public's confidence in the police. The claimant recounted that there was then a wider discussion about personal safety and ways that men and women can participate in creating a safe environment for themselves and others. The claimant expressly denied making comments about not trusting the police or saying: "*don't get in the back of the car they are all rapists."*

163. Of the 10 pupils spoken to, Child A (he is identified as Pupil B in the report), said to Ms N Williams: "*Miss said that all police are rapists and not to trust them."* Pupil A asserted: *"Ms Byfield said if a police officer told her to get into the police car, she wouldn't trust them after the incident that happened. I cant think of anything else."* Pupil F said: "*She made a statement saying she would never get in a Police car on her own. She would always make them walk back to her police so that she could get in the car with her husband because she wouldn't feel safe getting in a police car on her own*" and: "*she said not to trust them and anyone could dress up like a policeman. She said not to trust them because they're horrible and they could do anything, like what happened to Sarah Everard*." Pupil F was asked how that made them feel and said: "*I really didn't think much of it until she went into more detail. In Primary we were always told the Police were good and now I've got mixed emotions. Do I, or don't I? I don't know anymore."*

164. Pupil I's recollection was: "*She said she thought you could trust most of the Police, it was just some of them*" and: "*She said you could trust most of the them but some of them are bad and you should always ask to see their Police ID in case they're lying*."

165. Pupil H said they could remember they were talking about Sarah Everard and the claimant talking about trusting the police and stuff like that. Pupil H was asked if the claimant expressed her own opinions about trusting

the police and said: "*Not so much her own opinions, she was asking whether we trusted them or not.*" The pupil could not remember anything else. Pupil D recalled the claimant saying to be careful and to ask the police if you can go with somebody you know, and that the claimant was just telling them to be more careful.

166. Pupil G said the claimant only mentioned the case and said the claimant did not give any opinion. Pupil J recalled them talking about the case and how it was wrong and said the claimant had not said anything about her opinions of the police. Pupil E could not remember the claimant saying anything about the police other than talking about the Sarah Everard case. Pupil C could not remember anything about the police being discussed.

167. In respect of the allegation the that the claimant had recounted a family story where her brother had allegedly said to a police officer: "*can you smell the bacon*," Ms N Williams report's sets out the claimant's account that she did also talk with the form about her own dealings, and those of her family with members of the police, which had been both positive and negative. The claimant explained that it was not her brother who had made the comment: *Can you smell the bacon*" and that she had not herself been sat in the back of a police car. She explained the tale was really about her own brother's then poor choices about the company he was keeping at the time. She said she did not at any point say that this led her or her family to demonstrate any hatred or mistrust of the police, and that in telling these personal stories she was trying to get the class to understand where mistrust can come from and how opinions can be based on personal experience as well as cultural issues and how they can change over time, especially as people mature and develop.

168. Only three pupils recounted the claimant discussing her family's encounters with the police which all differed. Miss N Williams summarised it as: "*SB has admitted to making the comment, "Can you smell the bacon?" in relation to a story she was telling to the pupils about her brother and his friends' encounter with the Police, and she also discussed her own and her families' experiences with the Police Force. <u>This needs to be taken in context to the narrative of the discussion.</u>*"

169. In respect of the allegation that the claimant "discussed racism with the pupils" and allegedly; "Miss Byfield stated it's OK for her to use the word nigger due to her race"; the report [229] sets out the claimant's statement:

"As I've stated previously, I've always understood the responsibility I have, as a black minority ethnic teacher, to help my students understand the experiences of other races and cultures. I have, where appropriate shared with my classes my own experiences of racism and that of my family. I told my class of the racism I had experienced as a teacher at Barry Comprehensive when I had been referred to as a nigger on three separate occasions. I expressed to my class how the use of that word made me feel and also the history and the weight of it.

This last point is important as they are a Year 9 form, and Year 9 study the slave trade and will hear this word in some of the film clips we use. So, I feel it is vital that I get my class to understand the historical and cultural

connotations of this word especially as they may have been de-sensitised to it in rap music and films. I tell my class how the word nigger was used to de-humanise an entire race and to justify their poor treatment for hundreds of years. I am a fan of the comedian and social commentator Dick Gregory who says that the word nigger can kill a man and this is the way I wish my students to view that word.

We discussed that there are two schools of thought about it and how some black people feel that it's okay but that I am firmly in the camp of no, it is not okay and it's not a word I use. I did not say it's okay for me to use the word nigger to describe myself as I am black."

170. The report records that the claimant was very clear she had *not* said it was ok for her to use the N word because of her race and how the idea she would stand there and say that was abhorrent to her.

171. As summarised within the report only Child A had alleged the claimant said it was ok to use the N word. Two pupils said the claimant had used the N word but in the context of conversation regarding Black History and slavery and they appeared to recognise it was unacceptable to refer to people in that manner. One pupil said they had been told the claimant had used the N word but had not heard her say it themself. The remainder of the pupils did not recall the claimant using the term or said if she were to use it, it would be in the correct context of a lesson topic.

172. Child A also alleged: "*She also said that there are only two genders*". The remainder of the pupils either did not recall the topic of gender identity or said that the claimant was supportive of the LBGTQ+ community. The claimant explained that she did talk about gender identity in relation to a discussion topic, but it was a pupil who made the comment which the claimant had challenged. As summarised within the report, the claimant also confirmed she had discussed (but not by name) a former pupil who had come out as gay and had changed his voice, appearance, personality and that she had told him that it upset her at the thought he felt he had to change who he was to fit in with society's ideas of what a gay man should sound like. She said the pupil continued to check in with her until he left after his GCSEs. Child A alleged the claimant had said: "*She has laughed about a boy in a different class, saying that he sounds stupid and is putting on a voice to pretend he is gay. She also said that he pulled this boy over to tell him just that."* Two other pupils alleged the claimant had made comments about a pupil who had changed his voice. Only one of those thought the pupil had been identified by name rather than being a year 10 pupil. The other pupils interviewed did not recall it.

April 2022

173. On 1 April Ms Dickinson emailed Mr Adkins asking for further detail about the allegation that 3R had treated a member of staff in a discriminatory way. She said that alternatively a grievance could be submitted but there would again need to be more detail with a specific allegation [243]. Mr Adkins responded to say a grievance would not be submitted as an alleged act of misconduct did not need a grievance to be submitted. He said the evidence would be given to the investigator once appointed [242]. Ms Dickinson

pressed again for details of the actual allegations [244], which Mr Adkins responded to on 2 April [245] alleging that 3R had: "*contrived with a parent to make a false and malicious complaint against SB. To pursue a false allegation against a person of colour racist is itself racist. To pursue a false allegation that SB used a racist epitaph without any context is as if the word came out of his own mouth."* It was alleged 3R did not talk to the claimant about the parental complaint because 3R wanted to pursue disciplinary allegations because the claimant had given evidence in support of another member of staff in a disciplinary process. It was alleged 3R had escalated the complaint to safeguarding when it did not meet the definition of abuse /significant harm because it was 3R's: *"modus operandi because he wishes to elevate the nature of the allegations in the minds of any subsequent decision maker."* It was alleged 3R had presented false information to the safeguarding strategy meeting because 3R wished to incriminate SB and 3R had contrived to deny the claimant the opportunity to provide her version of events as requested by the chair of the strategy meeting.

174. On 5 April 2022 the claimant (together with Mr Adkins and Ms Alderman from HR) met on Zoom with Mr Browne to discuss her phased return to work. Mr Browne followed it up with a summary letter dated 6 April 2022 [246-247]. It was explained that the investigation had been completed and that the report would be considered by the Chair of Governors to determine the next steps. The letter recorded that Mr Adkins referred to his email in connection with the request to extend sick pay for industrial injury/accident at work. It then recorded:

"*Sue Alderman explained that she was advising on this matter as it is something that affects all schools in the Vale. Colin requested that certain questions were referred to Occupational Health as per his email. Sue replied that she did not believe it was the role of Occupational Health to decide whether a stress related illness was a psychiatric injury as this was a complex legal matter and that it would be necessary for each case to be determined on its own merits. Whilst she was unable to find any case law regarding the extension of sick pay as in this scenario, she had established that there was case law that identified that stress was not normally classed as a psychiatric injury and that there were certain key aspects that had been considered by the courts. As this request is no longer relevant to Stephanie's case, she had requested that, if necessary, Colin pursues this via the Local Authority separately."*

Outcome meeting with the claimant

175. On 3 May Ms Forte met with Mr Browne about the Blue Turtle report. There are minutes at [249]. The minutes say there was a lengthy discussion about whether the allegations had been substantiated or not. It was recorded:

"- *It was felt that, in respect of the allegation considered by the Safeguarding Panel (whether the comments made by SB to the class would have led to a loss of confidence in the police by pupils), there was a sufficient concern to warrant an informal conversation with SB about the content of that lesson and the effect on impressionable and/or vulnerable students.*

- In respect of the other allegations: whilst the evidence was inconclusive, it was felt that sufficient ambiguity had been raised regarding the appropriateness of the comments (particularly those citing personal family detail) to necessitate a further meeting with SB to explain and discuss the concerns. Furthermore, it was felt that information that could have led to the identification of certain individuals not in that class should not have been included in the lesson.

- It was decided that the seriousness of the concerns should be conveyed and discussed with Ms Byfield by the EH.

- It was decided that the Chair of Governors should write to Ms Byfield advising that such a meeting take place, and that as a result of that meeting, disciplinary action could still be a possibility."

176. Ms Forte then wrote to the claimant saying that she was of the opinion there was sufficient evidence that the matters be discussed further with the claimant, and she had asked Mr Browne to arrange to see the claimant on an informal basis in accordance with the disciplinary procedure [248]. The letter said the meeting would be held to discuss the content of the report and what, if any, action training or strategies can be put in place to ensure that a similar situation did not reoccur.

177. On 14 May Mr Adkins wrote to Ms James seeking a review of the strategy meeting outcome following receipt of the Blue Turtle report [250]. He said if safeguarding positively reviewed the outcome it would be the end of all matters he had with the service arising out of the referral.

178. On 15 May Mr Adkins wrote to Ms Forte seeking to make a complaint against Child A's mother (in her role as a governor) alleging she had conspired with 3R to pursue demonstrably false allegations against the claimant on grounds of her ethnic origin and/or gender. He said he was also considering making a complaint against the police officer father and he would also be making a referral to safeguarding. Mr Adkins said in the absence of a failure to consider a disciplinary case against 3R he was also making a referral to the Education Workforce Council [251].

179. On 18 May Ms Dickinson emailed Mr Adkins saying that they had previously spoken about the complaint against 3R and that she had told Mr Adkins at the time her position was that it should be dealt with under the grievance procedure. She said that Mr Adkins had disagreed and said he was seeking legal advice. Ms Dickinson said she had not heard further from Mr Adkins, and that if she did not hear from him by the end of the week she would put the grievance process in place and would be seeking further evidence to support the allegations made [255]. Mr Adkins responded on 19 May [626] saying he must have misadvised Ms Dickinson, and he did not require legal advice to inform his position. He said again his complaint against 3R should be considered under the disciplinary policy because the complaint against the claimant had been treated as such.

180. On 19 May Ms Forte wrote to Mr Adkins. We do not have the letter but from Mr Adkins response at [258] it appears she declined to make further references to safeguarding regarding Child A's parents. He concluded: "*There*

will be accountability for the appalling way WHS has treated SB under your leadership mark my words." Ms Alderman sought to intervene expressing concern about the potential impact of ongoing allegations, and counter allegations on the wellbeing of the claimant [260]. Mr Adkins said he saw this as a threat to stop further action.

181. It appears that Ms Alderman suggested to Mr Adkins that they have a discussion and Mr Adkins emailed Ms Alderman in advance on 23 May 2022 [263]. In that email he said that 3R on receipt of concerns from parents directs them to raise them as safeguarding concerns with the objective of subjecting members to undue pressure and elevating the nature of the alleged conduct in the minds of decision makers. He said the parental concerns should have been addressed with the claimant and then an investigation (if needed) through the complaints procedure. He said 3R had prevented the claimant from giving her version of events to safeguarding. Mr Adkins reiterated some other points and said he was seeking a resolution that it be confirmed the claimant had no case to answer, and the school accept that the parental concerns were not a safeguarding matter. He said Ms James should be asked to review the outcome of the safeguarding strategy meeting to establish they were unfounded and he would then withdraw his complaint against Ms Devonish. Mr Adkins requested a restorative meeting with the parents and said that if undertaken he would not pursue his complaint with the police [264].

182. A discussion took place between Mr Adkins and Ms Alderman on or around 26 May [265] which Ms Alderman followed up with an email. She said again that the complaints against 3R would be considered under the grievance procedure and that if a grievance identifies misconduct it will then be addressed under the disciplinary procedure. Mr Adkins replied to say again he considered that 3R should be treated the same way as his members.

183. On 26 May 2022 Ms Alderman emailed Ms Devonish asking if it was possible for a review to be undertaken [267].

184. On 27 May 2022 Mr Browne met with the claimant (and Mr Adkins and Ms Alderman) on Zoom. Mr Browne followed it up with a letter dated 6 June [269-270]. The letter said: "*I felt it appropriate to remind you that it is important to consider pupils' perceptions when dealing with difficult/sensitive topics in class. In response to your concern that the pupils' comments were taken as being completely true, I explained that the reminder was intended in general terms and did not mean that there was acceptance that you had exactly said the things as reported by some pupils. However, it is important for all teachers to consider appropriate content of lessons and delivery to pupils."*

185. On 7 June Dr Williams provided a further occupational health report stating that the claimant said she had been totally exonerated and was pleased to be able to return to work, but continues to be upset about the way in which the complaint was handled, and it affected her trust in her managers and some colleagues. Dr Williams said he felt the claimant had done remarkably well consider the stress she had been through due to the complaints made against her and had made no further appointments to speak with the claimant again [627].

186. On 28 June 2022 Ms James emailed Mr Adkins saying a further strategy meeting would be convened [272]. The strategy meeting took place on 25 August 2022]273–279]. The allegations were found to be unsubstantiated, it being recorded that there was no evidence to prove or disprove what had exactly transpired but also not sufficient evidence to outcome the allegations as unfounded. It was agreed there was not sufficient evidence to suggest the claimant posed a risk to children. On 14 September Ms Devonish wrote to the claimant [280] confirming that outcome.

Grievance

187. On 5 October Mr Adkins sent an email with: "*as promised greater detail of the discriminatory treatment suffered by SB at the hands of IR which he believe should be investigated under the disciplinary procedure*" [284]. Mr Adkins also said the claimant wanted to pursue some elements of the collective grievance that had been put on hold. Ms Alderman pulled this together in an email of 6 October [286] and asked for it all to be included (including resolution sought) on one grievance form. Mr Adkins did so on 17 October, apologising for the time taken [289 – 292].

188. An independent investigator was appointed, Joel Williams. He interviewed the claimant on 7 November. There is a summary of the claimant's account at [636-639] in the subsequent investigation report. Mr J Williams interviewed 3R on 14 November 2022 [293-301]. Mr J Williams interviewed Ms Ballantine on 1 December 2022 and there is a summary of her interview in the investigation report at [640-644]. Mr Redrup was interviewed on 5 December 2022 and Ms Devonish on 22 December 2022. Their interview notes are at [695-701].

189. Mr Williams provided his report on 13 January 2023 [302 and 631-656]. A grievance meeting then took place with Mr Browne on 1 March 2023. Mr Browne provided the grievance outcome in a letter of 16 March 2020 [657 - 662]. The grievance conclusion included that in informing safeguarding before speaking to the claimant about the matter it appeared that 3R was following Welsh Government guidelines and had been following the advice of Ms Ballantine and the Local Authority Safeguarding Officer.

190. The grievance report also said [660-661]: "*On further discussion with IR, it is quite clear to me that IR felt being able to tell SB that "that the complaint related to the content of the lesson where a parent had subsequently raised a concern" was providing SB with more information than he had given her on 12 when he stated that an allegation was being looked into by safeguarding. IR was also of the opinion that if, as a result of providing slightly more information to SB, she was able to provide more relevant information from her perspective then the strategy meeting would reconvene to consider this evidence… Again, on the advice of his HR Business Partner and Principal Officer for Social Services, IR was offering SB a preliminary meeting. IR was quite clear in his correspondence about the level of information he was permitted to share in this meeting."*

191. Mr Browne concluded that 3R appeared to have followed advice and followed appropriate safeguarding procedures and there was no evidence that

3R had harassed the claimant. The grievance was not upheld. The claimant appealed the grievance outcome [663 – 666]. We do not have the grievance appeal outcome although understand from Ms Forte's statement that it was not upheld.

Discussion and Conclusions

192. Applying our findings of fact and the relevant law to the issues identified in the List of Issues our conclusions are as follows.

Referring the Claimant to a safeguarding strategy meeting before any internal investigation (harassment or direct discrimination). Which includes:

- **3R's decision to refer the parental complaint to Mr Redrup (the claimant's position being that 3R should have made a decision that it was not a safeguarding matter following an internal investigation);**

- **Mr Redrup's decision to take the referral to Ms Devonish (the claimant takes particular issue with the basis on which Mr Redrup presented it to Ms Devonish);**

- **Ms Devonish's decision to refer it to a Part 5 meeting (on the basis of her evaluation or response to the allegations that were before her in the parental complaint and any other information she had been given)**

3R's decision to refer the parental complaint to Mr Redrup (the claimant's position being that 3R should have made a decision that it was not a safeguarding matter following an internal investigation)

193. We do not find that the claimant has established facts from which we could conclude (in the absence of any other explanation) that 3Rs decision to refer the complaint to Mr Redrup was less favourable treatment because of race. 3R in seeking advice from Ms Ballantine and Mr Redrup was doing what 3R did in the comparator cases. Indeed, it is the claimant's own case that this is 3R's "modus operandi."

194. But in any event we heard evidence from all the relevant witnesses and we are in a position to make positive findings of fact about what happened and why. We find that the respondents have established that the treatment was in no sense whatsoever because of race. 3R, relatively new to dealing with potential safeguarding issues, was worried to see the parental complaint headed "urgent – safeguarding matter" that came from a school governor and a police officer. 3R resolved to seek advice, as he had done and would do in other cases. Ms Ballantine had some potential concerns on her understanding of the complaint, and advised the claimant to contact Mr Redrup. That was her understanding of the appropriate process. Likewise, to contact Mr Redrup was also 3R's understanding of the appropriate process if there was a potential safeguarding concern. 3R therefore made that contact with Mr Redrup. 3R was reacting to the parental complaint he had received, following

the advice he received and applying his understanding of the procedures. He was doing what he had done in other cases. Ms Ballantine would have given the same advice and 3R would have taken the same steps if faced with the same material circumstances and a teacher of another race as indeed happened in the comparator cases.

195. The policies and procedures do not permit 3R to undertake his own investigation and 3R understood that to be the case. Where there is a potential safeguarding concern, as explained by Mr Redrup in his evidence, the policies and procedures give primacy to the safeguarding referral and assessment because of the potential need for a police investigation and also to minimise the risk of contact with complainants and witnesses whilst there is a police assessment and thereafter, if there is no police investigation, to allow the appropriate statutory authorities to assess how best to take the concern forward. 3R would have taken the same step of not investigating for himself but instead seeking advice and following that advice if he faced similar circumstances but involving a teacher of a different race.

196. The policies and procedures do permit enquiries as to what is alleged to have occurred, when, where and who was involved/present. But that was all evident from the parental complaint which 3R was therefore able to forward to JR. We do not accept that such enquiries extend, for example, to interviewing the claimant. The policies and procedures do make provision for the potential conclusion that it was impossible for the allegation to be true (or equivalent wording). But even then they provide for such a conclusion to be discussed with the LADO/ lead child protection officer. In any event, and this was not a situation in which 3R could have simply concluded that beyond any doubt it was impossible for the allegations to be true. Mr Adkins himself conceded the allegations needed to be investigated (albeit he says they were not safeguarding matters). Again, we consider that 3R would have taken the steps that he did/would not have undertaken his own investigation when faced with the same circumstances but involving a teacher of a different race. This was not less favourable treatment because of race.

197. Turning to the harassment complaint, we accept that being referred to safeguarding/Mr Redrup was unwanted conduct from the perspective of the claimant. But we do not consider that the claimant has established a prima facie case that the referral was related to race. But in any event we have been able to assess the evidence and make findings of fact and find the respondents have established through cogent evidence it was not related to race.

198. In the direct race discrimination complaint above we have already analysed 3R's mental processes to find that the referral was not made because of (in the sense of being materially influenced by) race but was because 3R saw the complaint received as a potential safeguarding concern, 3R's practice was to seek advice particularly as he did not consider himself experienced in safeguarding matters, 3R then had advice from HR to contact Mr Redrup, and indeed 3R believed the procedures and policies meant he should contact Mr Redrup for advice.

199. The test of "related to race" is of course broader than the test of "because of race" but nonetheless the "related to" needs to be properly

established. We do not find that it has been. The referral by 3R did not, in our judgement, relate to the claimant's race of being black British. That the claimant's race as being black British is there as a background fact does not, in our judgement, make the referral to Mr Redrup related to race. One allegation made in the parental complaint was the alleged inappropriate use of the N word. However, that does not, in our judgement make the referral itself related to race. That part of the parental complaint was about the alleged inappropriate use of the word. Furthermore, that aspect of the parental complaint was not particularly operative in 3R's mind or his actions and he had not looked at its detail in any forensic sense. 3R was reacting to the whole parental complaint, how it was headed, and who it had come from. We also accept Ms Ballantine's evidence as to the particular aspects of the parental complaint that caused her potential concern. Again this particular allegation was not her key focus. Furthermore neither 3R nor Ms Ballantine termed or saw the complaint as being (compared with what happened later) the claimant "conveying personal views that were racist."

200. The claimant asserts that the referral of a complaint which asserted she had allegedly undermined trust in the police, and that allegedly undermined her ability to safeguard children, was born out of racially stereotyped beliefs concerning black people's attitudes towards the police. The claimant also asserts it was assumed that she was a threat to a group of predominantly white pupils in a way that a white teacher having the same discussion about Sarah Everard would not have been perceived. She says this was conscious or subconscious bias.

201. We do not find on the evidence before us or infer on the evidence before us, that this was operating, whether consciously or subconsciously in the minds of 3R or Ms Ballantine. As already stated, we do not consider that 3R forensically analysed the individual content of the parental complaint and we find that 3R would have behaved in that manner whatever the race of the subject of the complaint. One of Ms Ballantine's concerns in giving her advice was a concern about whether the claimant had allegedly advised pupils not to trust the police and whether that had the potential to cause harm. But we do not find that in doing so she was operating on the basis of racially stereotyped beliefs concerning black people's attitudes towards the police (or that in turn 3R was doing so). We find it was a concern that Ms Ballantine would have held whatever the race of the subject of the allegation. It vested in a concern of a potential risk of pupils not trusting police in circumstances where pupils may need to do so.

202. We also address some further points made on behalf of the claimant. First, whilst Mr Redrup is not the LADO, we are satisfied that the procedure that was in place in practice was to contact Mr Redrup (or his job share colleague) in the first instance and that 3R in doing so (and Ms Ballantine in so recommending) was doing what had been done in other comparator cases and would be his standard practice. Indeed, even Mr Adkins refers to it as being 3R's "modus operandi."

203. Second, Mr Adkins argues that the respondents have not produced evidence that a white member of staff would be subject to the same treatment on the basis of the same baseless complaint. That is not however how the burden of proof works. Moreover, the analysis presupposes that the parental

complaint was a baseless complaint and/or that it was known to be a baseless complaint. But the parental complaint vested in what the parent was asserting their child had said, and which they were asserting gave cause for potential concern. Even Mr Adkins accepted the complaint would need investigating (albeit he says it was not a safeguarding complaint). Even Mr Adkins appears therefore to accept it could not be deemed "baseless" at the point the complaint was made and received. The whole point of the process being followed was for a safeguarding risk/assessment to be done and for the complaint to then be investigated in the proper forum. We are satisfied that is what was being legitimately done, and would have happened irrespective of the race of the member of staff concerned.

204. The harassment complaint would not succeed on the "related to" point. However, we will briefly address the question of purpose and/or effect. We do not find that 3R made the referral to 3R with the purpose of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant or violating the claimant's dignity. We have not accepted the claimant's assertion that 3R was somehow taking "gratification" from the claimant's situation. We also do not accept, which appears to be asserted, that 3R had some kind of pre-existing plan or intent to harass the claimant and that he then used the parental complaint as a basis to do so or that 3R intended to pursue the complaint as a safeguarding matter because 3R saw it as a way to elevate the nature of the complaint/alleged conduct in the mind of subsequent decision makers.

205. We also do not find that 3R deliberately failed to tell Mr Redrup (or anyone else at the strategy meeting) details of the claimant's ethnicity which as we understand it is alleged to be part of a scenario of manipulating the process against the claimant. Mr Redrup (as he acknowledged), and any reader, would have some idea from the fact it was alleged that the claimant had said it was ok for her to use the N word due to her race. The minutes of the strategy meeting have to be treated with caution because of the odd way in which they are structured. We accept 3R's evidence he could not recall being specifically asked at the strategy meeting. We accept Mr Redrup's evidence that the minutes are likely to show CI Allsopp knowing that the claimant was BAME but not knowing the exact way she would define her ethnicity.

206. We also do not find that 3R was in some way colluding with 3R or indeed the parents of Child A. 3R was reacting to the parental complaint as it came to him and in a way, as we have found, he would have done and did do with other potential safeguarding matters. It is said that 3R repeatedly stated that the claimant refused to meet with him as an attempt to undermine the claimant's professional integrity and drive the process forward against her. We do not accept that was the case. In our view 3R made a reasonable management request to the claimant to meet. The claimant did decline that twice unless it was on the terms she outlined, such that he had to ultimately go to her classroom.

207. To avoid duplication in the setting out of our reasoning we have dealt with separately below the complaint about 3R not making enquiries of the claimant. But the themes do overlap and we do not find 3R's actions in that regard are indicative of any malintent on the part of 3R.

208. In terms of "effect" we accept that the claimant perceived the referral to safeguarding as having the proscribed effect and subjectively her distress is understandable. However, in the particular circumstances we do not consider it reasonable for the conduct to have the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment. We say this because, as the guidance, policies and procedures set out, this was a process to be followed where potential safeguarding concerns were raised relating to a teacher. What was happening to the claimant, as uncomfortable and distressing as it was, was the application of that process. Schools and statutory authorities have to, in general, be able to follow legitimate safeguarding processes without being found to be committing unlawful harassment as a matter of course. As Ms O'Callaghan drew to our attention, the point was well put (albeit in the different context of a priest's license to officiate) by the court of appeal in Pemberton v Inwood [2018] ICR 1291 where it was said:

> *"I have no difficulty understanding how profoundly upsetting Canon Pemberton must find the Church of England's official stance on same-sex marriage and its impact on him. But it does not follow that it was reasonable for him to regard his dignity as violated, or an "intimidating, hostile, degrading, humiliating or offensive" environment as having been created for him, by the Church applying its own sincerely-held beliefs in his case, in a way expressly permitted by Schedule 9 of the Act. If you belong to an institution with known, and lawful, rules, it implies no violation of dignity, and is not cause for reasonable offence, that those rules should be applied to you, however wrong you may believe them to be. Not all opposition of interests is hostile or offensive. It would be different if the Bishop had acted in some way which impacted on Canon Pemberton's dignity, or created an adverse environment for him, beyond what was involved in communicating his decisions; but that was found by the ET not to be the case."*

Mr Redrup's decision to take the complaint to Ms Devonish (the claimant takes particular issue with the way in which it was presented to Ms Devonish)

209. We do not find the claimant has established a prima facie case of less favourable treatment because of race, in Mr Redrup deciding to refer on the parental complaint to Ms Devonish. We could not see anything to say that Mr Redrup would not have referred on an equivalent complaint in respect of a teacher of a different race. In any event we find that the respondents have established through cogent evidence that Mr Redrup's action were not because of race.

210. We accept Mr Redrup's witness evidence above, as to how he saw the complaint. We accept and find Mr Redrup genuinely considered that the parental complaint was a potential part 5 safeguarding matter in raising questions, if true, as to the claimant's suitability to work with children. We accept and find that Mr Redrup would have viewed the parental complaint and would have taken the same action in contacting Ms Devonish if faced with a complaint about a teacher of a different race but otherwise in the same

material circumstances. Like 3R Mr Redrup was not able to undertake his own investigation first. Mr Redrup was assessing things from the perspective of the child and based on the parental complaint. We are satisfied Mr Redrup would likewise have not undertaken further investigations before passing the referral on to Ms Devonish, if faced with the equivalent complaint and a teacher of a different race.

211. We also do not find that the complaint was presented by Mr Redrup in some particular way to Ms Devonish so as to influence her. The complaint was there to be read and assessed for itself and we accept that Ms Devonish made her own assessment of it.

212. Turning to the harassment complaint, we accept that Mr Redrup's action, in passing the referral on to Ms Devonish, was unwanted conduct from the perspective of the claimant. But we do not find that the claimant has established a prima face case that this was related to race. In any event we would find the respondents have established through cogent evidence that it was not.

213. Mr Redrup did not make his assessment of the complaint relating to the alleged use of the N word based on the claimant's race. Mr Redrup's evaluation was based on, if the complaint were correct, the perspective of the child, the concerns in that regard raised in the parental complaint, and the potential for the use of the word to, in Mr Redrup's view (as he said in cross examination), create racism in how it was then reacted to/further referred to or used. It was about the use of the word to pupils in a class as alleged, and the potential consequential impact on others, and not about or related to the claimant's race.

214. We also do not find on the evidence before us, or infer on the evidence before us, that racially stereotyped beliefs concerning black people's attitudes towards the police were operating, whether consciously or subconsciously in the minds of Mr Redrup. As stated, Mr Redrup was focused on the potential impact of what was allegedly said on children. We accept his evidence that he would have held the concerns he did about the alleged comments relating to the police irrespective of the race of the teacher concerned.

215. We also would not find that Mr Redrup had the intention of creating the proscribed effect. We do not find that he was seeking to cause harm to the claimant or was acting in consort with or on the direction of 3R. Mr Redrup was independently exercising his own judgement as part of his role.

216. Whilst again we accept that the claimant would perceive Mr Redrup's actions in passing on the referral to Ms Devonish as having the proscribed effect, overall in our judgement it is not reasonable for the conduct to be seen to have that effect. Mr Redrup was applying and following the statutory safeguarding process. As distressing as that understandably is to the claimant, it is not reasonable to regard the application of that process as having a harassing effect.

217. We also address some other allegations made by the claimant relating to Mr Redrup. We do not accept the assertion that Mr Redrup engaged in the

selection of pupils for the preliminary enquiries undertaken by Ms Prosser as a means to "fit up" the claimant based on racial prejudices. Part of Mr Redrup's role is to give advice. We accept he genuinely suggested an approach based on the geography of the room and who was most likely to hear. There are different ways a selection could be undertaken. It was a genuine, practical suggestion on Mr Redrup's part.

218. Further, during the course of the first strategy meeting we do not accept that Mr Redrup was forcing a view on others or dismissing concerns of others about not having input from the claimant. The minutes must be read with care because they do not follow the actual sequence of the meeting. We accept that Mr Redrup simply stated his opinion, giving his justification, which is the very purpose of the multi agency strategy meeting. Mr Redrup had no particular authority over anyone, and the decision ultimately was that of Ms Devonish as DOS. The emails between Ms Devonish and Mr Redrup show she was the decision maker in the safeguarding process.

219. As already stated we also do not find that Mr Redrup (or indeed 3R) declined to clarify the claimant's ethnicity at the strategy meeting when mentioned by Chief Inspector Allsopp. We do not accept the allegation that it was a deliberate omission to prejudice the claimant and ensure the complaint as was found to be substantiated. The claimant asserts that there is no evidence these things are standard practice in a strategy meeting and therefore suggest less favourable treatment because of race. But again, that misplaces the burden of proof. Furthermore, neither the claimant nor Mr Adkins can actually give evidence about or assert what is standard practice at a strategy meeting.

220. We do not accept there was anything unusual or an abuse of position in Mr Redrup raising the complaint with Ms Devonish rather than it being passed to her by 3R as headteacher. The policy and guidance documents do in places refer to information sharing and evaluation between the LADO and the headteacher. Ms Devonish as DOS had delegated authority as LADO. Mr Redrup is of course not the LADO or the DOS but we accept his evidence that his role was in part liaison and he did at that time sometimes pass referrals on as he did here. Ms Devonish did not say otherwise and was of course free to contact 3R as she saw fit in the exercise of her own independent functions.

221. We also do not accept the allegation that Mr Redrup deliberately failed to recuse himself, and instead manipulated the process to get an outcome he desired. We accept Mr Redrup's evidence that he told Ms Devonish of his professional connection to the father of Child A, and she told him there was no conflict. We deal with the complaints about the withholding of information from the claimant further below. But we do not find, as alleged by the claimant, that Mr Redrup agreed or acted in consort with 3R to withhold details with the purpose of intimidating the claimant on the basis of her race.

Ms Devonish's decision to refer the concern to a Part 5 meeting (on the basis of her evaluation or response to the allegations that were before her in the parental complaint and any other information she had been given)

222. We have found as a matter of fact that Ms Devonish made a decision to engage Part 5 procedures either the day of the referral or early the next

morning. We would not find that the claimant has established a prima facie case of less favourable treatment because of race. The comparator cases put forward were of white teachers similarly referred to a strategy meeting, with the exception of comparator 1. The comparator evidence is not evidence that we consider is indicative of less favourable treatment because of race. Three went to strategy meetings, and the fourth (comparator 1) was referred to safeguarding but found not to meet the threshold for the reasons given on its own particular facts. None of the cases are in our judgement true parallels. They are individual decisions made on their own facts and include, on their particular facts, white teachers being referred to part 5 meetings too.

223. But if we are wrong, in any event we would find that the respondent has, through cogent evidence, shown a non-discriminatory reason for the treatment complained about. We accept Ms Devonish's evidence as to her analysis of the parental complaint, and that she considered that the allegations, if true, had the potential to cause emotional harm to children and may not be suitable to work as a teacher. Ms Devonish was concerned that the pupils may not have the maturity to understand the implications of using the N word which could lead to harm; the alleged comments about the police could lead to children not trusting the police when in a situation they needed to; and the alleged words regarding LBGTQIA+ and a particular pupil could impact on a child who was struggling with their sexuality. We accept that this was Ms Devonish's genuine reasoning and was her own reasoning having reflected on the allegations in the parental complaint. We do not find that Ms Devonish was acting at the behest of either 3R or Mr Redrup. Ms Devonish is a qualified social worker and was exercising her professional responsibilities. We accept and find Ms Devonish would have undertaken the same analysis and made the same decision if faced with a teacher of a different race.

224. Turning to the harassment complaint, we accept the decision to refer to a Part 5 strategy meeting was unwanted conduct when assessed from the claimant's position. We do not find that Ms Devonish made her assessment of the specific element of the complaint relating to the alleged use of the N word based on/related to the claimant's race. We take account that Ms Devonish said she did not know the claimant's race or ask questions or make assumptions about the claimant's race. We cannot accept that assertion. It would have been apparent to Ms Devonish, bearing in mind the actual allegation was the claimant had said it was ok for her to use the N word because of her race, that the claimant was likely to be black or minority ethnic. But we find this reflects the fact that Ms Devonish's essential focus was on the potential impact of the alleged expression on vulnerable pupils rather than on the claimant or the claimant's race.

225. We do also take into account in our analysis of both the direct discrimination and the harassment complaints that Ms Devonish later (i.e. not at this time but after the professional strategy meeting) wrote that a pupil had raised concerns that the claimant had conveyed personal views that were racist. Ms Devonish's evidence is that that choice of words could misrepresent what she meant which was that the language allegedly used by the claimant could be considered racist (or discriminatory or offensive) and she did not mean to say or suggest that the claimant was racist. She said her concern, which we accept, was about how then a child could potentially use the word in an inappropriate way. Ms Devonish's subsequent poor choice of

wording after the strategy meeting is not a complaint before us of direct race discrimination or harassment related to race although it can be relevant evidence as to her thinking at the actual time. Here we do ultimately find that the decision was not related to (or because of) the claimant's race but to the content of the parental complaint, Ms Devonish's concern that the pupils may not have the maturity to understand the implications of using the N word, and the risk that could then pose to them and others. We accept Ms Devonish's evidence and find we have adequate evidence in that regard.

226. We also do not find on the evidence before us, or infer on the evidence before us, that racially stereotyped beliefs concerning black people's attitudes towards the police were operating, whether consciously or subconsciously in the minds of Ms Devonish. Ms Devonish was focused on the potential impact on young pupil if they may not trust the police when faced with a situation they may need to. We accept Ms Devonish would have held such concerns irrespective of the race of the teacher concerned.

227. If we are incorrect as to the "related to" question we would in any event find that the conduct did not have the proscribed purpose or effect. We do not find that Ms Devonish was seeking to cause harm she was simply fulfilling her role as DOS. Ms Devonish was not acting in consort with or at the direction of 3R or indeed Mr Redrup. We find Ms Devonish was independently exercising her delegated duties as DOS.

228. The claimant would perceive Ms Devonish's action in deciding the threshold was met in referring to a part 5 meeting as having the proscribed effect. But Ms Devonish was applying and following the statutory safeguarding process. As distressing as that understandably is to the claimant, it is not reasonable to regard the application of that process, when having been undertaken on a legitimate basis, as having a harassing effect.

229. Again, we also address some additional key points made by the claimant about Ms Devonish. First, it is said that Ms Devonish could not answer which bullet point she proceeded under in the Section 5 procedures found at [729-730] under the sentence: "*It can be difficult to determine what may fall into the category of "unsuitable to work with children or adults at risk". The employer should consider whether the subject of the allegation or concern has:…"* Ms Devonish said that she was proceeding under the earlier section which says:

> *"[The procedures] should be used in all cases in which it is alleged that a person who works with children or adults at risk has:*
>
> - *Behaved in a way that has harmed or may have harmed a child or adult at risk;*
> - *May have committed a criminal offence against a child or adult at risk or that has a direct impact on the child or adult at risk;*
> - *Behaved towards a child, children or adults at risk in a way that indicates they are unsuitable to work with both children and adults."*

We see nothing wrong with Ms Devonish's account or analysis (that was also supported by Ms James as LADO) that the second set of bullet points are not

mandatory but are there as a tool to assist in an analysis if required. It does not infer anything improper on the part of Ms Devonish.

230. Second it is said that Ms Devonish is not a teaching professional and should have respected that the claimant is a teaching professional, and should have appreciated that the claimant was capable of differentiating her teaching to deliver the tutorial safely. It is said that the supposed concern that a black member of staff is encouraging predominantly white pupils to use or appropriate the N word was bemusing to the point of insult. That was, however, not what was before Ms Devonish; when deciding to engage the part 5 procedures Ms Devonish was responding to the parental concern and, as we have found, Ms Devonish identified the points of concern that she held and for the reasoning as identified. It was Ms Devonish's job as DOS and with the qualifications that Ms Devonish had to do that job to undertake the evaluation she did.

231. It is said that Ms Devonish gave no real evidence as to why she changed her mind from unsubstantiated to substantiated apart from the views of others present. It is alleged that 3R tasked Mr Redrup to pursue the complaint through safeguarding and that Mr Redrup in turn influenced Ms Devonish to take the complaint to a statutory meeting despite her belief it was unsubstantiated. The allegation we are dealing with however is the decision to engage the part 5 procedures. At the point of referral to a part 5 meeting Ms Devonish did not believe the complaint was unsubstantiated. She gave clear evidence what her concerns were about the parental complaint when she saw it and why she decided to engage the procedure. She did later in advance of the strategy meeting (that she had already decided to hold) state that the current information was third party and it would be difficult to give an outcome at the meeting based on this alone. Ms Devonish then suggested the preliminary enquiries take place with the pupils; but it was not a view that the allegations were unsubstantiated but with a view to the difficulties of assessing it. We consider that was Ms Devonish doing her job and was not indicative of her having been influenced by anyone to take the referral in the first place. We have found that she was not so influenced, and that Ms Devonish as a qualified professional holding the role of DOS was exercising her own judgement and is demonstrated by her leading the process in the emails we have.

232. Ms Devonish likewise gave her explanation that at the strategy meeting itself she initially felt it was difficult to come to an outcome when the claimant had not given her point of view, but that she had reflected on the evidence and listened to the views of others expressed as to the consistency in the accounts gained from the preliminary enquiries with pupils. We find it was ultimately Ms Devonish's own decision. We do not find Ms Devonish was inappropriately influenced by Mr Redrup or 3R. They expressed their views, (which is the purpose of having a multi agency forum) on the limited information available that a degree of consistency that appeared to be there. We would note in that regard, which points against Ms Devonish being influenced by the alleged combined actions of 3R and Mr Redrup, that was also an opinion expressed by DI Allsopp at the strategy meeting, and Ms Devonish's decision making processes is recorded in the strategy meetings. We do not find that it evidences that Ms Devonish was inappropriately led

throughout the process by 3R and/or Mr Redrup to engage Part 5 in the first instance.

233. It is also said that Ms Devonish did not explain why she did not delay in making a decision until more information was available. Again, we would observe the allegation before us is about the decision to engage Part 5 and not the decision to substantiate at the Part 5 meeting. However, the minutes show that there was initially a plan to reconvene if new information came to light, and that the Part 5 process needed to complete to allow the school to undertake their own investigation. Again, we do not find that it is evidence to show that Ms Devonish was led by 3R and/or Mr Redrup, because of race, to engage the process. We accept her evidence, which we found cogent, as to why based on the parental complaint she made the decision that she did.

234. The claimant further alleges that Ms Devonish did not disaggregate the allegations or explain why if one allegation was substantiated then they all would be substantiated. Again, the allegation before us is Ms Devonish's decision to engage Part 5 and it is not the decision to substantiate the allegations from a safeguarding perspective. Ms Devonish explained that she believed the concern as a whole met the threshold for a section 5 strategy based on the aspects that she identified that caused her concern. She explained her rationale for each aspect of her concern. Her explanation in that regard made sense to us and we are satisfied was legitimate and genuinely held.

235. Finally, it is said that Ms Devonish was influenced to take steps so that the claimant's voice was not heard. We deal with that particular theme separately below, but we do not find that Ms Devonish was so influenced.

236. These complaints of direct race discrimination and harassment related to race relating to the referral of the claimant to a Part 5 strategy meeting are not well founded and are dismissed.

Failure to provide an opportunity for the claimant to address allegations informally and failure to provide an opportunity to provide her response formally to the allegation before the Safeguarding meeting was concluded.

237. We deal with these two complaints together because there is the potential for overlap.

238. The remaining complaints in the List of Issues are pursued as complaints of harassment related to race and not complaints of direct race discrimination.

Parental complaint procedure / early enquiries with the claimant

239. The claimant asserts that 3R should have given her the opportunity to address the allegations informally via the parental complaint procedure. She also says that under the Welsh Government Guidance initial enquiries could be made such that the claimant could have been given the date of the tutorial and matters discussed and she could have been invited to give her response before considering the engagement of safeguarding. It is alleged this shows

the motive of 3R to contact Ms Ballantine and Mr Redrup and to then press on through safeguarding and to disciplinary proceedings.

240. We accept that being referred to safeguarding (with the limits on what the claimant could be told), as opposed to addressing the complaint through the parental complaint procedure (where the claimant would have details of the complaint), or otherwise asking the claimant for an initial response would be unwanted conduct from the claimant's perspective. We would not find that the claimant has established a prima facie case that such an action was related to race.

241. The comparator cases were all referred to safeguarding. The claimant says that a white comparator would have been given the opportunity to discuss the parental complaint and that two comparators were given that opportunity. We do not accept that is correct. In all cases the same limitations in what the teachers could be told were in place when safeguarding was engaged. Indeed, comparator 3 did not know the details of the complaint against him whilst a 3 week police investigation was carried out.

242. It is also said that a white comparator, if in receipt of the same complaint/in the same material circumstances, would have had the complaint treated as a conduct matter not a safeguarding matter. But there is no actual comparator in support of this proposition that may indicate the treatment was related to race. It is asserted the respondents would be more reticent to make an allegation of racism to a white member of staff in the same material circumstances. But that assertion is not supported by evidence. Furthermore, 3R did not make an allegation of racism against the claimant.

243. In any event we find the respondent has established, through cogent evidence, that the decision not to use a parental complaint procedure (or not treat it as a conduct matter without a safeguarding element, or not make early enquiries with the claimant) and to instead make a referral to safeguarding was not related to race.

244. As set out above, 3R took the action he did because he was concerned about the content of the parental complaint (which had asked for confidentiality and which suggested it may be a safeguarding matter). 3R took advice from Ms Ballantine and followed that advice to contact Mr Redrup. 3R also understood that was the process the policy and procedures said to follow. 3R was constrained, whilst the matter was with safeguarding to evaluate, as to what he could tell the claimant and that was what 3R understood. Such a situation prevented 3R dealing with it as a parental complaint, or simple conduct matter, or making enquiries with the claimant because the safeguarding evaluation would need to come first. The same happened in the comparator cases.

245. As already stated, the initial enquiries in the Welsh Government Guidance [310] are about understanding the allegation made, where and went it allegedly happened and who was present. They are not about taking information from the subject of the concern. This essential background information was already available from the parental complaint itself. 3Rs actions are the actions he would have taken in the same situation with a

teacher of a different race. He was not motivated consciously or subconsciously by the claimant's race. It was not related to race.

246. For the reasons already given above, we would also find that 3R's actions did not have the purpose of creating the proscribed effect. We accept the claimant would consider it to be a harassing effect. Subjectively her distress at being the subject of a complaint (that she did not have the detail of and could not discuss with the parent to resolve), is understandable. But in the circumstances as found it would not, in our judgement, be reasonable to consider it to have such an effect, because 3R was following the processes and guidance in place.

Other early opportunities to respond to allegations?

247. 3R sought to meet with the claimant by asking her to see him on the day the complaint was received, and the claimant declined unless she was appraised of the detail before meeting. 3R had been seeking advice in the meantime. By the time they were due to meet 3R had spoken to Ms Ballantine. The meeting with the claimant did not happen that day, but in our judgement, it is unlikely that 3R would have said more than the fact an allegation had been received and it was being looked at by safeguarding.

248. By 12 October the safeguarding procedures had been engaged. The claimant was invited to meet with 3R via Mr Kennedy. The claimant again declined to do so in the absence of being provided with detail. In our judgement she declined two reasonable management requests to meet. On both occasions there was an opportunity for the claimant to meet and the potential to discuss the complaint informally; albeit we fully accept her ability to respond was constrained by the lack of information she had (or would) be given at that point in time.

249. 3R then actively required the claimant to meet with him. Following advice from Mr Redrup he told her that an allegation had been made, was being looked at by safeguarding, and he could not tell her what the allegation was at that time. Again, there was an opportunity for the claimant to respond with whatever she wished but we again accept her ability to respond was constrained by the lack of information.

250. This limited information was unwanted conduct from the claimant's perspective. But we do not find she has established a prima facie case that it was related to race. Our analysis is similar to the above in relation to the complaints about the referral to safeguarding/not treating it under the parental complaints procedure, because these complaints are all intertwined. The comparators were not told the details of the allegations just as the claimant was not told. Comparator 2 was told what the claimant was or would have been told. But the difference is that comparator 2 was able themselves to make an educated guess what the complaint was about and give an account. That this account could be fed back to safeguarding was a product of a material difference between comparator 2 and the claimant, it was not borne of differential treatment by 3R.

251. In any event, we would find the respondents have provided adequate evidence to show that 3R's actions were not related to race. 3R did not

provide the claimant with information because 3R genuinely believed he could not do so whilst the complaint was with safeguarding. That was followed by Mr Redrup giving advice about the limits on what could be said and 3R acted on that advice. 3R's actions also accorded with 3R's understanding of the policies, procedures and guidance. It was in Mr Adkins' words, 3R's "modus operandi" and is what 3R would have done in respect of any teacher in that position. It was not related to race.

252. The claimant says that there is no blanket policy against disclosure of information and a case by case assessment should have been untaken. She says there can have been no reasonable belief that she would interfere with an investigation as she wanted to engage. The claimant says that it was 3R and Mr Redrup that did not want the process to happen.

253. As explained by Mr Redrup in his evidence, we can understand the importance of have a general standpoint of not providing information about allegations whilst safeguarding are going through a process of an initial evaluation and having a strategy discussion with the police. A potential police investigation would need to take primacy; the integrity of any such potential investigation would need to be protected and the potential for key witnesses or other individuals to be contacted or influenced safeguarded against. It was that general standpoint that Mr Redrup and 3R were following and we are satisfied that they had and would do in other similar circumstances. Again, as Mr Redrup explained, as a safeguarding process it was there to put the voice of the child at its centre.

254. We accept it was not open to Mr Redrup or 3R to prejudge at that point in time and decide that the claimant or someone in her position could never seek to contact a child, parent or witness, or do something that could risk prejudicing potential police enquiries. It flies in the face of having a multidisciplinary evaluation process with appropriate statutory authorities. Once discussed with the police, it then allows more nuanced decisions as to what can be disclosed by whom and when in a particular case. As set out in our findings of fact and in our analysis below, our finding is that this is what Ms Devonish subsequently intended to happen but misunderstanding and miscommunication arose.

255. For the reasons set out in the analysis given above, we also do not find that 3R acted with the purpose of creating a harassing effect for the claimant in limiting what he did or was able to tell her at this time. Subjectively the claimant found it distressing, but again for reasons already given, we would not find that it was reasonable in the circumstances to find 3Rs actions had the proscribed effect when he was following the policies, procedures and guidance in place.

Opportunity for preliminary enquiries with the claimant before the strategy meeting?

256. On our findings on 14 October Ms Devonish authorised the claimant to be told the specific lesson(s) that the allegation related to but there was a misunderstanding. 3R understood it to mean that he could only say that the complaint was about the content of a lesson where a parent had subsequently raised a concern, without identifying which particular lesson. 3R therefore

emailed Mrs Setchfield in the limited terms identified. As such there was no further meeting prior to the strategy meeting as there was, on 3R's mistaken understanding, no further information to impart or that the claimant felt able to respond to.

257. We could not identify any examples of situations with other comparators where 3R went back and told them more. Because of this and because of our analysis undertaken above where we analyse and reject the claimant's allegations that 3R held ill intent towards her and reject the other allegations relating to his actions and motivations we would not find that the claimant has established a prima facie case that failure to provide her with the increased information authorised by Ms Devonish was related to race.

258. But in any event we would find that the respondent has established through adequate evidence it was not related to race. We find that it was a genuine misunderstanding on the part of 3R. It was a misunderstanding based on the wording that 3R was sent which could have been much clearer and no one told 3R otherwise. In our judgement 3R did not reasonably suppose any difference because his understanding from other cases and the policies and guidance was that whilst it was with safeguarding there were restrictions in place about what a teacher could be told. In none of the comparator cases had he been permitted to give more information. We find that 3R would have made such a misunderstanding in the same circumstances but when faced with a teacher of a different race.

Opportunity for preliminary enquiries with the claimant after the strategy meeting to allow it to reconvene?

259. Following the strategy meeting 3R sent the email inviting the claimant to engage in a preliminary meeting. The preliminary meeting ultimately did not go ahead because 3R again said that the purpose was simply to state that an allegation had been made and to give the claimant the opportunity to respond to this. The claimant did therefore have the opportunity to meet to discuss the allegations, but the opportunity remained seriously constrained by the restrictions as to what she would be told.

260. We could not identify any examples of situations with other comparators where there was to be an opportunity for 3R to arrange a preliminary meeting with the understanding the part 5 meeting would then be reconvened. The potential for a preliminary meeting and then reconvening the part 5 meeting was also a step we find that had been driven by 3R. Because of this, and because of our analysis undertaken above where we analyse and reject the claimant's allegations about 3R's wider intent and actions towards her; we would not find that the claimant has established a prima facie case that the limitations placed on what she could be told in the preliminary meeting related to race.

261. But in any event, we would find that the respondents have established through adequate cogent evidence it was not related to race. In particular, we accept 3Rs evidence that he genuinely believed he was limited in what he could tell the claimant. We find that it was a continuation of a genuine misunderstanding on the part of 3R. 3R had been restricted at the start as to what he could say, he then understood (mistakenly) that he could only tell the

claimant the allegation was about the content of a lesson, and that misunderstanding continued once the preliminary meeting was authorised. 3R did not reasonably suppose any different because his understanding from other cases and the policies and guidance was that whilst it was with safeguarding there were restrictions in place about what a teacher could be told. We find that in 3R's mind, bearing in mind the potential to reconvene the strategy meeting, the case remained in safeguarding and with safeguarding restrictions in place. In none of the comparator cases had 3R been permitted to give more information or take this particular step. As set out in 3R's emails of 20 October 2021, 3 November 2021 and 4 November 2021, he saw the process as separate to an investigation meeting where more information could be given (and where the respondents were going to have to give careful consideration as part of that investigation as to what and how the claimant would be told because confidentiality concerns had arisen). But in relation to the safeguarding preliminary meeting, 3R thought he was following the advice and policy of the safeguarding team. We find that 3R would have made such a misunderstanding in the same circumstances but when faced with a teacher of a different race. It was a mistake not related to race. We do not find that 3R deliberately offered the meeting, and then deliberately said more detail could not be given, as a means to deliberately goad the claimant. We do not find that the offer of the preliminary meeting was never meant as a meaningful offer.

262. As we find the limiting of the information given to the claimant was a genuine misunderstanding we do not find that 3R had the purpose of creating the proscribed effect for the claimant. We accept that the claimant found the situation to be intimidating and humiliating. Knowing what is known now it is also reasonable to view the conduct as having that effect. This was not the simple application of the procedure to the claimant; a mistake had been made that objectively speaking should not have happened. But as already stated, we do not find it was conduct related to race.

Other missed opportunities to reconvene the strategy meeting ?

263. On 16 November 2021 Ms Devonish withdrew the opportunity of reconvening the professional strategy meeting at that time. This was on the advice of Ms James. The claimant did not know this because the claimant had already declined to attend the preliminary meeting because of the limits on what she could be told. In that sense it was not unwanted conduct because the claimant did not know about the withdrawal of the opportunity at the time. But in any event, we are satisfied this withdrawal was not an action on the part of 3R. The decision was led by Ms James because there had already been an outcome to the professional strategy meeting and therefore, if further information was to be obtained, it was via the disciplinary investigation. We do find the claimant has established a prima face case that such action on the part of Ms Devonish or Ms James was related to the claimant's race. But we would in any event find the respondents have established through adequate evidence it was not so related. Ms Devonish had genuinely thought it was possible until Ms James clarified it. We are satisfied the same situation would have arisen if the claimant were of a different race.

264. The potential opportunity arose again in February 2022 once the claimant had received the redacted version of the parental complaint. Mr

Adkins wrote to Ms James and Ms Forte seeking the reconvening of the meeting with the claimant and the Part 5 meeting thereafter. Ms Forte was agreeable to the step, but it could not take place because safeguarding's position was because the school's investigation had started it needed to complete. Again, we find that was a position led by Ms Devonish/Ms James. We do not find that the claimant has established a prima facie case that it was related to race. In any event we would find that the respondents have, through adequate evidence, established that it was not related to the claimant's race. It related to the Safeguarding Team's process in place that 1R's investigation needed to first complete.

265. We do not repeat here analysis already undertaken above as to allegations the claimant makes about the respondents' motivations and wider actions but to be clear we do not find that 3R (or anyone else) was using the process as a means to harass the claimant on grounds of her race, or that their actions were rooted in a discriminatory assumption that the claimant must have undermined the police as a black woman owing to her race. We do not find that 3R agreed with Mr Redrup to withhold details of the allegations. Mr Redrup gave some initial advice. In the latter stages there was misunderstanding on the part of 3R.

266. The claimant says that Welsh Government Guidance required there to be a discussion between the headteacher the LADO which did not take place. We have dealt with this point already above where we found the process that was followed (in channelling it through Mr Redrup) would have happened in the same material circumstances with a teacher of another race. The claimant says that the Guidance says the discussion may lead to a decision the allegation is demonstrably false or unfounded and no further action be taken and agreement reached on what information should be put in writing to the individual and by whom. But here, given the content of the parental complaint, the complaint was not, and could not have been considered to be, demonstrably false or unfounded. Therefore it did not trigger the requirement to decide what information be put in writing to the claimant.

267. This complaint of harassment related to race is not well founded and is dismissed.

Pursue allegations of racism against the Claimant (Ms Forte's letter of 24 November 2021)

268. The letter told the claimant that she was under a disciplinary investigation and that the allegations if true potentially would amount to misconduct and/or gross misconduct. One allegation was the claimant had "c*onveyed personal views to students when conducting a lesson in your capacity as a teacher which were racist*…" The letter alleged the claimant had breached the Equality Act and behaved in a discriminatory manner, was in breach of safeguarding, failed to behave professionally, had brought the School and Governing Body into disrepute, and had breached the Education Workforce's Code of Conduct. To be placed under a disciplinary investigation and have those allegations made was undoubtedly unwanted conduct. Any teacher in the claimant's shoes would consider it as such.

269. We have found that the wording used in the letter adopted the wording previously used by Ms Devonish, albeit Ms Forte did not know that at the time because the letter had been drafted by the legal department. We have not heard evidence from the original drafter of the letter. Ms Forte, however, did check the letter and said in evidence she considered that the letter was an accurate reflection of the parental complaint. Ms Forte said she was not saying the claimant was racist, but that the claimant had expressed personal views that were racist in the form lesson in question. Ms Forte said she saw that as an accurate portrayal of what the parental complaint email was saying. Ms Forte said the letter was drafted on the basis of the parental complaint email and advice from the legal department. It was put to Ms Forte in cross examination that the parental email did not describe the claimant's comments as being racist. Ms Forte said that the very fact the N word was in there made the reading of the complaint as being an allegation that personal views that were racist had been used.

270. We find that here the claimant did establish a prima facie case that the conduct was related to race for the reasoning we set out in our analysis below that relates to the specific wording that the respondents chose to adopt. We do not find that the respondents have established through cogent evidence it was not related to race.

271. The respondents deny that this was conduct related to race. They say that the parental complaint was referring to the alleged use of the N word in the context of a lesson and concerns about the impact on impressionable pupils. The respondents say that it was this that the word racist referred to i.e. use of the N word to students in a lesson. They say the concerns raised were about an arguably racist term used in a lesson. The respondents argue that this concern when recorded in Ms Fortes' letter was regardless of race. The respondents observe that it was clear to the claimant (as shown by the email of 3 December 2021), once the claimant received Ms Forte's letter and was aware of the context of the lesson, why the concerns had been raised and that they related to discussions around racism. They respondents argue that how the letter was phrased was based on the parental concerns raised and was not unwanted conduct related to the claimant's race. They say it was conduct not related to the claimant's race but related to the content of the lesson.

272. The parental complaint alleged that racism had been discussed in the class, and that the claimant had allegedly said it was ok for her to use the N word because of her race. The parent clearly thought that it was an inappropriate thing to have been said to the class hence they were raising it. The parent expressed concerns about the potential impact in communities in the arena of race relations, and expressed a concern about one particular friend of Child A who it was said had a fragile mindset about minority groups. So fundamentally it was about alleged inappropriate use of the N word.

273. But Ms Forte's letter did not say that. It did not give that context. Instead, the letter alleged the claimant had conveyed personal views to students that were racist. As Mr Adkins pointed out to us, the allegation specifically referred to personal views. So it was saying, by implication, that the claimant held personal views that were racist. In everyday language referring to someone as being racist, or holding racist views, is generally

suggesting that they are prejudiced against other people on the basis of membership of a different, particular racial or ethnic group or groups. In our judgement the allegation as written in the letter was inherently related to race. At its heart, as written, it was saying (even if that was not was meant) that the claimant, with her own racial background, was prejudiced against others with a different racial background. We do not consider the fact that it was intending to convey a different allegation about alleged inappropriate use of the N word to a class of pupils makes what was actually set out in Ms Forte's letter as being unrelated to race. Nor does the fact that by 3 December the claimant had supposed that the complaint related to the discussion of black people's experiences of racism as experienced by Black Lives Matter and other organisations.

274. For that reason we find that the expression of that allegation in the letter was related to race. We do not, however, accept that the separate allegation of allegedly undermining confidence in the police was related to race. We do not accept that allegation was rooted in a discriminatory assumption that the claimant must have undermined the police as a black woman because of racist stereotypes about black people's attitudes towards the police, or that as a black woman she was not allowed to discuss the Sarah Everard case. That allegation, we accept, was rooted in concerns about the alleged comments about the police in the parental complaint and their potential impact on pupils.

275. As pointed out by the respondents, we also accept that the letter itself was cumulative and related to various alleged comments by the claimant, of which allegation the claimant had conveyed personal views that was racist was just one part. But it played a part that was more than trivial. It was a significant part and in our judgement the drafting and sending of that letter was related to race.

276. We do not find that the allegation was written with the purpose of creating a harassing environment for the claimant. As Ms Forte subsequently explained, it was written in the context of trying to convey the allegations whilst preserving confidentiality and, in all likelihood, also involved some short cutting of drafting process by copying what Ms Devonish had already written. It was anticipated that further detail would be given to the claimant down the line with assistance of Ms N Williams' expertise. Ms Forte as Chair of Governors is a volunteer and we accept was heavily reliant on advice and assistance from 2R's legal and HR teams. We accept she was, as she said in evidence, doing what she thought was needed to get the process moving forward. Ms Forte did, however, ultimately check and approve the letter. Ms Forte considered it was an adequate summary of what the allegation was trying to get at, and in the context of concerns about confidentiality. Ms Forte was wrong about it being an adequate summary, but we accept that was her intent.

277. The claimant, as set out in her witness statement, was caused acute distress by the content of the letter. There are of course other elements to the letter that also caused distress. But the claimant felt what she was being accused of was tantamount to a hate crime, and one significant element of that was the allegation of conveying racist views. This was particularly so bearing in mind that the claimant was at the time the only BAME teacher at

the school, had some 22 years service, had worked hard to promote a positive view of her race and culture in the school and challenge stereotypes and yet was being accused of racism. The claimant perceived it as violating her dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

278. In our judgement it was reasonable for the conduct to have that harassing effect. We accept that, on the basis of the parental complaint, it was legitimate for the respondent to have concerns, including whether there had been alleged inappropriate use of the N word and to investigate those concerns. In accordance with the principle expressed in Inward v Pemberton generally an employer should be able to investigate alleged legitimate disciplinary concerns and follow their processes, even if the allegation relates to race, without the action being considered to be harassment. However, what happened here was different. The letter did not properly reflect the nature of the concern set out in the parental complaint. There were other ways it could have been drafted in summary form that would have been more accurate. The allegation as drafted was alleging, in effect, the only BAME teacher in the school was prejudiced against others on racial grounds. The letter required careful drafting and checking. The lack of care displayed simply was not reasonable.

279. This complaint of harassment related to race is well founded and is upheld against 1R and 2R.

Pursue the allegation through the disciplinary process that concluded on 27 May 2022

280. An independent investigation was conducted under the disciplinary procedure following the outcome being substantiated by the strategy meeting. This action was unwanted conduct from the claimant's perspective. We do not find that the claimant has established a prima facie case that the decision to follow that process was related to race. We do not consider it is shown by our finding of harassment in relation to Ms Forte's letter. What was driving the respondents' actions was the substance of the concerns relating to the parental complaint, and not its inaccurate recording in Ms Forte's letter.

281. In any event we would find the respondents have established through cogent evidence that it was not related to race. As set out in the meeting notes recorded at [117] the disciplinary investigation process was followed because the complaint was considered to be a child protection matter given it had been substantiated under the safeguarding procedure, and because it was considered that the allegations outlined if substantiated by an investigation could constitute an act of gross misconduct. The disciplinary procedure therefore required the appointment of an external investigator. We accept the evidence of the respondents' witnesses as recorded in the notes that this was the genuine reasoning. The action was related to the need to follow what was understood to be the correct procedure, following the safeguarding outcome.

282. The process was not intended to have a harassing effect. We have already set out our findings on why we do not consider that those involved were motivated by ill intent towards the claimant. Those involved were simply

following what they understood to be the process. Whilst the claimant would have quite understandably subjectively felt that being subject to a disciplinary investigation process did have a harassing effect, it is not in our judgement objectively reasonable to for the conduct to be considered to have that effect, applying the Inward v Pemberton principle.

283. When Ms N Williams completed her investigation report Ms Forte decided that there should be an informal meeting with the claimant. On 27 May 2022 that meeting was conducted by Mr Browne. We have found the claimant was reminded of the importance to consider pupils' perceptions when dealing with difficult/sensitive topics in class. To be given such advice was unwanted conduct from the claimant's perspective.

284. We would not consider the claimant has established facts from which we could conclude that the giving of that advice was related to race. The claimant's comparators were not in the same material circumstances as the claimant. Their circumstances were all individual and took different pathways based on those individual circumstances. The claimant said there is no evidence that a white comparator would receive informal guidance having been exonerated through an investigation. But that misstates the burden of proof and misses the nuances of what was in the independent investigation report that Ms Forte and Dr Brown were considering.

285. In any event we find that the respondent has established through cogent evidence the giving of informal was not related to race. We accept there was a legitimate basis for the decision to give the advice from Mr Browne. The investigation did show the potential for pupils to walk away with mixed messages; for example the pupil left with mixed emotions about whether to trust the police or not. There was also, in our judgment, a legitimate basis to give feedback about the wisdom at times of sharing personal family stories or speaking about the year 10 pupil (albeit not identifying him) which may have left the claimant vulnerable. We do not consider that the complaint about alleged use of the N word was a point that was considered to require specific feedback bearing in mind the investigation findings and the minutes at [249]. We do not find the meeting was, as asserted by the claimant, a fig leaf to justify earlier discriminatory treatment. It was genuine feedback.

286. The claimant refers to Ms Forte saying in evidence that there was a lack of understanding by all pupils what was said to the form. It is alleged that this was false and evidence of Ms Forte having prejudice towards the claimant and having a wilfully biased interpretation of the independent report. It is said this is evidence of a determination to prolong a process that had already caused harm. We do not agree with that interpretation. Ms Forte immediately went on to say she was talking about something discussed 18 months earlier. Ms Forte had already made clear she had not recently re-read Ms N Williams' report. Ms Forte went on to make the point that her understanding, from when she originally read the report, was that sufficient concerns were raised to hold that management meeting but not a formal disciplinary.

287. Ms Forte was not in our judgement displaying prejudice or a biased interpretation of the report or a determination to prolong the process to cause

harm. (Indeed, she had been agreeable to Mr Adkins' request to see if the safeguarding meeting could be reconvened.) On the particular evidential point the claimant is relying upon, Ms Forte was having difficulties remembering. When giving evidence on the detail of the report, she said something that was a slip, recognised that it may have been a slip and not entirely accurate as she had not recently re-read the report, and then did the correct thing in concentrating on what she could now remember about the decision making process. Ms Forte's recollection was not on a granular level because she had not re-read the report, but she could recall a concern about some lack of understanding on the part of some pupils and which accords with the minutes of the meeting held with Mr Browne in 2022.

288. The claimant asserts that she was required to attend the meeting because the respondents felt a concern about a BAME teacher conducting a lesson that contained a discussion about the police. It is asserted that the respondents did not trust the claimant to conduct a lesson of that nature or wish her to take such a lesson again. It is said the claimant is an experienced and capable history teacher and that a white teacher would be trusted to continue to teach the subject and all its nuances whereas the claimant was not. It is said the decision was rooted in a discriminatory assumption that the claimant must have undermined the police as a black woman based on prejudicial beliefs about the black community. We accept the evidence of Ms Forte and Mr Browne as to the concerns they had about some pupils being potentially left uncertain what to think about the police and which was supported by some of the content of the investigation report. We find this was what was in their mind, and not these discriminatory motivations that the claimant ascribes. The decision to hold the meeting and give advice was not related to race.

289. The claimant points to the fact the minutes of the meeting on 3 May 2022 say that as a result of the meeting disciplinary action could still be a possibility. But as Mr Browne observed that was not actually what was said to the claimant in the meeting on 27 May or the letter of 6 June which was clear that there was not to be formal action under the disciplinary procedures. We therefore do not consider it is indicative of some ill intent or discriminatory intent. The claimant also says that the informal meeting was not provided for in the disciplinary policy. There is, however, provision for an informal discussion with a headteacher outside of the disciplinary process (but set out in the disciplinary procedure document) at [330]. The section describes how this can take the form of advice, counselling, training, instruction, coaching or other managerial strategies as appropriate. Moreover, it does also identify the potential for future disciplinary action. There is similar content at [378] and [408]. It was in accordance with the disciplinary policy. We do not find that the conduct, in putting the claimant through the disciplinary process resulting in the informal meeting, was related to race.

290. We also would not find that either Mr Browne or Ms Forte had the purpose of creating the proscribed effect. The intention was simply to discuss the concerns and feedback with the claimant. The claimant would have subjectively felt there was a harassing effect, but we do not in the circumstances consider it reasonable to consider it to have that effect. Again, the respondents were, in our judgement, entitled to conclude the disciplinary process in that way without it being considered to meet the threshold of

harassment. They were following and applying a process that they were entitled to do. This complaint of harassment related to race is not well founded and is dismissed.

Failure to investigate the Claimant's complaint of 24 January 2022 through the disciplinary process

291. This was the complaint by the claimant, raised via Mr Adkins, against 3R that alleged harassment on the grounds of race. Mr Adkins repeatedly submitted that the complaint should be dealt with under the disciplinary procedure rather than the grievance procedure. The grievance procedure, as opposed to the disciplinary procedure, was not the claimant's preferred approach and therefore it was unwanted conduct from her perspective.

292. We do not consider that the claimant has shown a prima facie case that this decision was related to race. The claimant sought to compare her complaints against 3R with how she herself was being treated. We did not consider this was a true comparative situation. The two complaints are different in content, detail and their originating background.

293. We would in any event find that the decision to proceed initially through the grievance route and not the disciplinary route was not related to race. The managing staff in schools staff disciplinary procedure states at [326] that matters outside the scope of the procedure include staff grievances and grievances lodged as a result of disciplinary action. It says that if, however, action under the staff grievance procedure results in the need for disciplinary action then the disciplinary procedure would then apply. There is similar guidance at [409]. 1R decided to process it as a grievance (when they had sufficient detail) because that is what they understood the policy and practice to be. Ms Ballantine and Ms Forte confirmed that in their evidence. Such an approach also accords with the tribunal's general industrial experience as to how employers approach such a situation. It provides a mechanism for complaints against line managers to be investigated and then, if there is a disciplinary case, take the appropriate steps in that regard.

294. The fact that the complaint against 3R made allegations of harassment related to race does not of itself mean that the decision to initially investigate the concerns down the grievance route rather than the disciplinary route was related to race. The decision was made because the complaints against 3R needed to be particularised and then investigated, and because the procedures indicated such complaints should generally fall initially under the grievance procedure.

295. We also would not find that the approach taken was done with the purpose of creating the proscribed effect. It was done because it was seen as the correct and appropriate way to capture and process the claimant's complaints against 3R. The respondents were engaging with Mr Adkins to get him to particularise the complaint so they could actually investigate it. Subjectively the claimant would consider the action to have a harassing effect, but we would not find that it was objectively reasonable to take such a view. The respondents were following their legitimate understanding of the policy and appropriate practice, and they were also offering the claimant an avenue of having her concerns investigated, initially via the grievance

procedure. This complaint of harassment related to race is not well founded and is dismissed.

Failure to refer the Claimant to an occupational Health Assessment in January 2022

296. Mr Adkins made his request for a referral on 24 January 2022. The request was a loaded one given it did not simply assert an industrial injury but asserted the injury was due to the claimant being harassed on ground of ethnic origin by the parental complaint, and the school's subsequent alleged prejudicial management of it. It is difficult to see on the face of it how the respondents could easily have agreed to such an assertion at that particular time, or that such an assertion could have been fairly assessed at that time, particularly with the investigation outstanding. On 1 February 2022 Ms Forte responded to say she was taking advice, which was understandable in the particular circumstances of the request. The request was then passed to Ms Alderman.

297. We have found that on 25 March 2022 Mr Adkins chased the attestation issue with Mr Browne. At that time the claimant's return to work was being arranged. The return to work meeting then took place on 5 April at which the request was discussed where Ms Alderman said she was advising on the matter collectively as it affected all schools in the Vale. Mrs Alderman said that as the request was no longer relevant to the claimant (as the claimant was returning to work, was on full pay and had not been absent for over 5 months), if necessary Mr Adkins should raise it with the Local Authority separately. There is no evidence that he then did so, including on behalf of the claimant.

298. We do not find that the claimant returned to work against clinical advice for fear of suffering loss of pay. The OH reports demonstrates that the claimant was keen to return.

299. There was not a referral to OH (or anyone else) for an attestation in January 2022. We accept from the claimant's perspective that would be unwanted conduct. We cannot see the basis on which it is said such inaction was related to race, and the claimant has not shown a prima facie case in that regard.

300. In any event we would find the respondents have establish adequate evidence to show that it was not related to race. There was a delay in January 2022 because Mrs Forte needed to take advice from HR about something that was a novel point and Mr Adkins had put forward in a complicated way. That was perfectly understandable. The application was then not in Ms Forte's hands. There was then delay because Mrs Alderman needed time to look at it as being a complicated point about the Burgundy Book terms, and being one which had the potential to affect the whole of the Vale of Glamorgan teaching staff. Mrs Alderman also the did not understand that the point was of remaining relevance to the claimant because of the claimant's return to work. These things are not related to race. That the claimant was saying that her injury was because she had been harassed on grounds of ethnic origin did not of itself make the response to the request for

referral to OH related to race. This complaint of harassment related to race is not well founded and is dismissed.

Other complaints

301. The claimant seeks in her closing submissions to advance discrimination/harassment complaints that are not the pleaded case. For example, the placing of a LSA in her classroom and the eventual decision at the reconvened strategy meeting to find the complaint to be unsubstantiated rather than unfounded. It is not possible to advance such a claim in that way. This would have been clear to Mr Adkins given the time spent during the course of the hearing clarifying the issues, discussing whether applications to amend were being made and dealing with such applications. We therefore concentrate this Judgment on the List of Issues (as amended when the hearing went part heard to allow the further particularisation of the complaints and for further witnesses to be called) as they represent the pleaded case and what the parties understood to be the pleaded case.

Time limits

302. The claimant has succeeded on one complaint of harassment related to race: the letter of 24 November 2021. The primary time limit expired on 23 February 2022. The claimant did not enter Acas early conciliation until 28 July 2022 some 4 months out of time. Acas conciliation ended on 24 August 2022 and the ET1 claim form promptly presented on 1 September 2022.

303. We have to consider whether to extend the time limit on just and equitable grounds. We have a very broad discretion. There is no presumption in favour of an extension, and it is for the claimant to satisfy us it is just and equitable to extend time. There is no set list of factors or checklist that we have to take into account, and we have to assess all the factors in the particular case we consider relevant to whether it is just and equitable to extend time. Factors which it is often customarily relevant to consider can include matters such as: the length of and reasons for the delay; the relative prejudice the parties would suffer if the extension is granted or refused (which can include the extent to which the cogency or availability of evidence is affected by delay); the promptness with which the claimant acted once she knew of the possibility of taking action; and the steps taken to obtain professional advice. No one factor is automatically paramount: it is a weighing and balancing exercise. Factors can pull in opposite directions and often the factors are interrelated to an extent. It is not the case, for example, that if there is no good reason for delay it inevitably results in an extension of time being refused. Nor is it the case, again for example, that the absence of prejudice to the respondent, would be inevitably determinative. Everything has to be weighed in the equation in the exercise of our broad discretion.

304. Factors that we took into account include the length of the delay. A four month delay compared against a 3 month limitation period is not a short delay, although likewise it is not egregious. We also took into account that the claimant was represented throughout by her trade union who would have knowledge of the time limits that apply and the capability of advising the claimant about such time limits and assisting with drafting a lodging a claim.

305. In In terms of prejudice, Ms Forte was able to give evidence at the reconvened hearing and give evidence as to why she approved the letter and thought it reflected the parental complaint. The individual who provided the first draft of the letter was not called as a witness, but we have no reason to suppose the respondents could not do so if they so wished and considered the individual had relevant evidence to give. The documents were available. We therefore can identify no real evidential prejudice. The respondents do however suffer a prejudice if time is extended in having to meet a claim they could otherwise successfully defend on time limits.

306. In terms of prejudice to the claimant, if time is not extended the claimant will not succeed in her otherwise one successful complaint. It is a complaint about a serious and important matter. But it is also relevant to note that it was not the claimant's only complaint. Whilst not ultimately successful, she did bring others and had the opportunity to have those complaints fully heard and adjudicated upon their merits.

307. We considered that a particular important factor on the facts of this case was whether it was reasonable to have expected the claimant, with the assistance of her union, to have identified the complaint and then present it within time. It links in with the reason for delay. We gave real consideration to the fact that Mr Adkins was readily firing off accusations of discrimination to various individuals within the primary time limit. On 3 December he accused the safeguarding team, amongst other things, of racism. On 10 December there was the collective grievance (albeit not about race discrimination but alleged trade union victimisation and sex discrimination). On 11 December Ms N Williams, the investigator, was told she may be joined as a co-respondent to a discrimination claim. On 24 January Mr Adkins in seeking the burgundy book referral alleged harassment related to race. On 24 January Mr Adkins made the complaint that 3R had harassed the claimant on the grounds of race and sex. In that sense he, on behalf of the claimant, was quick to accuse but slow to then litigate.

308. But we also considered it important to reflect on the situation from the perspective of the claimant. For the majority of the primary limitation period the claimant had very little information available to her because Ms Forte's letter did not set out the specifics of the alleged personal views considered to be racist that it was alleged the claimant had said. Some of the context had been discerned by the time of Mr Adkins email of 3 December but not the full picture. The claimant and Mr Adkins were understandably trying to obtain the parental complaint or other underlying material from Ms N Williams, Ms Forte and a subject access request.

309. The sample questions for the investigation were not received until 11 January 2022 and the redacted parental complaint not received until 11 February by which time there were only a couple weeks left of the primary limitation period. At that point in time, it was also, in our judgement, important to reflect upon some other relevant points. First, once they had the parental complaint Mr Adkins was trying to resolve matters. He was trying to get the safeguarding meeting reconvened. He wrote to Ms Forte on 11 February seeking a preliminary meeting with the claimant and the part 5 meeting be reconvened, suggesting that in the meantime the school stay the disciplinary investigation which could then be then re-evaluated on the conclusion of the

part 5 process. Mr Adkins said the NASUWT would then withdraw their complaint. In the primary limitation period Ms Forte agreed to that approach, and the claimant did not know until either day of or the day before the expiry of the time limit that the safeguarding team had said it could not be reconvened at that time.

310. Second, the claimant was not just concerned about the letter from Ms Forte, she was facing the whole pressure of the ongoing disciplinary investigation against her that included an allegation of gross misconduct with all its potential implications for her professional career. We consider that it is also important to take into account the claimant's poor health and acute distress as recorded in the contemporaneous OH records. Again, we consider that makes it understandable that the claimant's focus at the time would have been on the wider picture of the ongoing disciplinary investigation, trying to obtain details of the specific allegations, and then seeking to see if a different approach could be negotiated, rather than one particular point relating to Ms Forte's letter.

311. Weighing all of the factors into account and in particular the situation the claimant was in at the time the primary time limit expired, and the lack of forensic prejudice to the respondents, we decided it was just and equitable to extend time.

Remedy

312. We consider it is likely the parties will be able to agree remedy. The claimant has succeeded on one discrete point. It strike us that remedy is likely to focus on the additional injury/loss caused by the particular wording of Ms Forte's letter but against the background of a process that the claimant was going to face in any event.

313. The parties should write to the tribunal after 28 days confirming whether they have been able to agree remedy. If they have not reached agreement, they should write indicating the likely length of a remedy hearing and whether they consider any remedy directions are needed.

Employment Judge R Harfield

Date 3 May 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 7 May 2024

FOR EMPLOYMENT TRIBUNALS Mr N Roche

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