EMPLOYMENT TRIBUNALS

Claimant: **Shamim Master**

Respondents: **(1) London Borough of Waltham Forest**
(2) Governing Body of Gwyn Jones Primary School

Heard at: **East London Hearing Centre**

On: **15-17 and 21-24 May 2024**

Before: **Employment Judge Housego**
Members: **Ms M Daniels**
Mr L Rylah

Representation

Claimant: In person, supported by her husband
Respondent: Shyam Thakerar, of Counsel, instructed by Mitchell Springer, solicitor

JUDGMENT

1. The claims against the 1st Respondent are dismissed.

2. Claimant was unfairly constructively dismissed by the 2nd Respondent.

3. The claims of race discrimination are dismissed.

4. The claims of public interest disclosure are dismissed.

5. The claim will be relisted for a remedy hearing in respect of the claim of unfair dismissal.

REASONS

Summary

1. The Claimant was a part time teacher at the 2nd Respondent ("the School"). She was a part time PPA teacher, which means she covered other teachers throughout the school when they were not teaching and had directed time for planning, preparing and assessment. She became unhappy at the way she was treated in a variety of ways, mainly involving a wish to be a full-time class teacher. She raised a grievance and was not satisfied with the process or the outcome, nor the fact she was not allowed to appeal for what she considered spurious reasons. She resigned when told that an advert had gone live for a full-time role, as she thought there was no chance of her being appointed, and that she should have been invited to apply for it without it being advertised externally, or at least told about it before it was advertised. She says all this was a breach of mutual trust and confidence and so unfair dismissal. She says that the people she was dealing with discriminated against her on the basis of race (she describes herself as an Asian Muslim woman and so visibly different from white British people). She says further that she raised public interest disclosures and suffered detriment as a result.

2. The Tribunal found that there was sufficient evidence to show, on the balance of probabilities, that there was a breach of mutual trust and confidence by the School, that this was the reason she resigned and that she did so in good time and without affirming the contract of employment. Therefore the claim for unfair dismissal succeeds.

3. The Tribunal decided that there was not sufficient evidence to show any causative connection between any adverse treatment and the Claimant's race and so the claim for race discrimination failed.

4. The Tribunal found that the claimed 1st public interest disclosure was not a public interest disclosure because it was all about her own personal position without wider ramification, and so was not made in the public interest. The Tribunal found that the 2nd public interest disclosure was also not a public interest disclosure because it was either specific to her circumstances (and so not in the public interest) or was a generic allegation (and so not the disclosure of information), and so that claim is also dismissed.

5. The Tribunal decided that the correct Respondent was solely the School, and so dismissed the claims against the 1st Respondent. This is because the 1st Respondent supervises and funds the School but does not run it. This made no difference in practice because the 1st Respondent would support the 2nd Respondent if it were unable to meet any award.

Claims made and relevant law

6. The Claimant claims unfair constructive dismissal[1] and that the dismissal, as well as being unfair was direct race discrimination[2]. She claims other

[1] S98 of the Employment Rights Act 1996
[2] Section 13 of the Equality Act 2010:

matters were harassment contrary to the Equality Act 2010[3].She makes a claim that she suffered detriment after making public interest disclosures.

7. In respect of the claim for unfair constructive dismissal, the Claimant has to show that she resigned because of a fundamental breach of contract (in this case the implied term of mutual trust and confidence), that she did so in good time and without affirming the contract of employment. She relies on a "last straw" which need not itself be a breach of contract but must not be trivial.

8. The test for a claim that the Claimant has suffered unlawful discrimination is whether or not the Tribunal is satisfied that in no sense whatsoever was there less favourable treatment tainted by such discrimination. It is for the Claimant to show reason why there might be discrimination, and if she does so then it is for the Respondent to show that it was not. The Tribunal has applied the relevant case law[4], and has fully borne in mind, and applied S136[5] of the Equality Act 2010. Discrimination may be conscious or unconscious, the latter being hard to establish and (by definition) unintentional. It is the result of stereotypical assumptions or prejudice. The test for a claim for harassment differs from that for direct discrimination[6].

9. The law concerning the public interest disclosure claim is set out in Part IVA of the Employment Rights Act 1996. The burden of proof required is set out in Kuzel v Roche Products Ltd [2008] EWCA Civ 380.

Issues

10. The Claimant brought two claims. The issues were set out in two case management orders, settled in hearings on 23 May 2023 and 04 September 2023, both taken by EJ Beyzade. The Respondent had prepared a combined list of issues based on these lists, with much input from the Claimant. It is somewhat discursive, but the Tribunal uses it in this judgment so that the Claimant may better understand why her race discrimination and public interest disclosure claims did not succeed.

11. That list is set out below, with the Tribunal's findings.

12. The Tribunal was concerned at one aspect of the Respondent's list of issues. The issues listed (at 15 onwards) as reasons why the resignation was an unfair dismissal included the matters said to be race discrimination.

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

[3] S 26 Harassment
(1)A person (A) harasses another (B) if—
(a)A engages in unwanted conduct related to a relevant protected characteristic, and
(b)the conduct has the purpose or effect of—
(i)violating B's dignity, or
(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B

[4] The law is comprehensively set out in Royal Mail Group Ltd v Efobi [2021] UKSC 33 (23 July 2021)

[5] "136 Burden of proof
(1) This section applies to any proceedings relating to a contravention of this Act.
(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision.
…"

[6] Set out fully in Bakkali v. Greater Manchester Buses (South) Ltd (t/a Stage Coach Manchester) (HARASSMENT - Religion Or Belief Discrimination) [2018] UKEAT 0176_17_1005

It was submitted that if these matters were not race discrimination then they were not relevant to the claim of unfair dismissal.

13. The panel decided this point against the Respondent. It would be perverse to find that there had been less favourable treatment but that because it was unconnected with race it could not be relevant to the Claimant's claim that there was a breach of the duty of mutual trust and confidence. It could still be a breach of the duty of mutual trust and confidence. This would have the remarkable consequence that the Claimant could have won the unfair dismissal claim had she not said it was race discrimination as well. The Respondent is not prejudiced in any way. There is no difference in the factual matrix nor the claims being brought. This point was explored during the closing submissions. The Tribunal bore in mind the guidance in Shailesh Parekh v London Borough of Brent [2012] EWCA Civ 1630:

> "A list of issues is a useful case management tool developed by the tribunal to bring some semblance of order, structure and clarity to proceedings in which the requirements of formal pleadings are minimal. The list is usually the agreed outcome of discussions between the parties or their representatives and the employment judge. If the list of issues is agreed, then that will, as a general rule, limit the issues at the substantive hearing to those in the list: see Land Rover v. Short Appeal No. UKEAT/0496/10/RN (6 October 2011) at [30] to [33]. As the ET that conducts the hearing is bound to ensure that the case is clearly and efficiently presented, it is not required to stick slavishly to the list of issues agreed where to do so would impair the discharge of its core duty to hear and determine the case in accordance with the law and the evidence: see Price v. Surrey CC Appeal No UKEAT/0450/10/SM (27 October 2011) at [23]. As was recognised in Hart v. English Heritage [2006] ICR 555 at [31]-[35] case management decisions are not final decisions. They can therefore be revisited and reconsidered, for example if there is a material change of circumstances. The power to do that may not be often exercised, but it is a necessary power in the interests of effectiveness. It also avoids endless appeals, with potential additional costs and delays."

Evidence

14. The Tribunal had a bundle of documents running to nearly 800 pages, some of the documents being added during the hearing. The Claimant gave oral evidence first. For the Respondent, oral evidence was given by Sian Boutalbi, head teacher, Ruth Doak, at the time deputy head teacher, Carlene Reid, a human resources adviser with Waltham, Forest, Lynette Pervez, a retired head teacher who took Ms Master's grievance, Nicola McEwan, head of governors, Gerry Kemble, then a senior person in Waltham Forest's human resources department.

The hearing

15. At the start of the hearing Ms Masters asked the Tribunal to strike out the response of the Respondents for failure to provide documents. The Respondents said that the Claimant had failed to provide a witness

statement and so the hearing would have to be adjourned, for that reason and because they had not given the Claimant their witness statements.

16. The Tribunal decided that the Respondent would have to produce the documents the Claimant asked for by the next day or accept that they did not exist. The Claimant's Particulars of Claim and the matters set out in the list of issues as assertions would stand for the witness statement. The Claimant would give her evidence orally on the first day, then be cross examined the next day. The third day was a Friday, which the Tribunal would vacate and instead sit the following Friday, adding that day to the listing, so maintaining the 6 days. That gave the Claimant four full days to prepare her cross examination of the Respondent's witnesses. The parties agreed this was fair, and that was how the case was heard. Counsel for the Respondent conducted a rigorous cross examination and from the way they were conducted the Claimant plainly had time to prepare her cross examinations carefully. At the end of the hearing the parties accepted that the hearing had been a fair hearing.

Witnesses

17. The Claimant is sincere in her belief that she has been subject to race discrimination. She feels that she has long been overlooked, and that as a qualified teacher of 20 years' experience with a degree she should have been afforded more consideration and respect. She feels that she would never have been offered a full-time role with the School. Given her background and the justified pride she feels at her achievement in becoming a teacher she feels slighted at the way she was treated. Her evidence was truthful, but the Tribunal was unable to agree with all the conclusions she drew. In particular as a 1.5 days a week ppa teacher she was always in a marginal role.

18. Sian Boutalbi did not manage Ms Master well. In particular, the recommendation of the grievance report that Ms Master was entitled to return to work and be paid for 2.5 days a week was not acted upon. Throughout Ms Boutalbi said that she relied on human resources advice from the external provider retained by the school, but there was no evidence of any such advice other than that assertion. It is not credible that an outsourced human resources provider would not record any of its advice in emails or attendance notes. Ms Boutalbi knew that Ms Master wanted to work in the nursery, and her statement that she had not taken it into account as Ms Master had not put it in writing is not sustainable. Her letter stating that she would "bear in mind" Ms Master's wish to work more and in the nursery was an empty promise, as she did no such thing. Her explanation, that this was what human resources told her to write, and that it meant that she would have to apply for advertised jobs, is not credible. Ms Master is right when she says that it was unlikely that she would be appointed to a full-time role within the School.

19. Ruth Doak plainly did not like Ms Master. Lynette Pervez described their relationship as "frosty". Ms Pervez found that there was a "Ruth clique" and you were either in it or you were not – Ms Master was not. Other members of staff reported to Lynette Pervez that Ruth Doak could be somewhat overbearing towards Ms Master. Ms Doak failed to provide the performance

management report from 2020 for two years. Her explanation, that paperwork is not her strongest point, may mean that this was not aimed at the Claimant, but is no less unsatisfactory. It is somewhat remarkable as she was a non-teaching deputy head at the time. Her direction of Ms Masters was so highly detailed that micromanagement is not inaccurate.

20. Carlene Reid was not connected with human resources advice for the School. She was assisting Lynette Pervez. The Tribunal did not think she acted as a filter. It was unfortunate that she did not give Ms Master direct access to Lynette Pervez, to which Ms Pervez had no objection, but the Tribunal did not think this sinister. The Tribunal did not agree with Ms Master that Ms Reid was on the side of the School. The Tribunal noted that in her oral evidence Ms Reid often said "we decided" but it was clear from Ms Pervez' evidence that the decisions on the grievance were those of Ms Pervez alone. Ms Reid's advice about an appeal from the grievance outcome was less than satisfactory.

21. Nicola McEwan was chair of Governors at the time. Her evidence was transparently honest. She readily accepted that with hindsight she should have done some things differently. The main complaint against her was that it was "racially profiling" when she emailed Ms Boutalbi (accidentally copying in Ms Masters) saying that she hoped Ms Boutalbi's letter would enable Ms Master to "calm down". The Tribunal did not find that to be so.

22. Lynette Pervez conducted a thorough and fair grievance process. She had no previous connection with the School. The timescale was acceptable. Since she was appointed in July nothing was going to happen until early September. The report was early November and a month or so was to try to speak to Jamila Almaghrab, as requested by Ms Master. The Tribunal agreed with the findings of Ms Pervez.

23. Gerry Kemble spoke to Ms Masters on the phone at length. He says he took no notes of what Ms Masters described as pouring her heart out to him. Mr Kemble took no part in the grievance process. His involvement was to see that the Governors could not deal with it, and that there needed to be an independent person to do so, which he could find but the school would have to fund. He was part of the flawed decision not to allow the appeal to proceed.

Facts found

24. The list of issues sets out the chronology, and events that occurred. These are not in dispute and to that extent are adopted as findings of fact.

25. In recent years there has never been any criticism of Ms Master's performance.

26. In her closing submissions Ms Master provided a detailed chronology to which the Tribunal paid close attention. It is unnecessary to set out a detailed account of the last 10 years of Ms Master's employment because the Tribunal has dealt with all the issues raised by the parties in the list of issues.

Conclusions – general

27. Some of the complaints fall into more than one heading. The Tribunal's conclusions are given only once to avoid this judgment being even longer than it is already.

Conclusions – time limits

28. There is no issue with time limits. The "last straw" precipitated Ms Master's resignation and was the culmination of a long litany of matters Ms Master was unhappy about, all stemming from the management of Ms Boutalbi and Ms Doak. This cannot be seen as other than a series of events.

Conclusions - unfair dismissal

29. The Tribunal noted that the senior leadership team is entirely white British. The Tribunal noted that the School is very diverse in the make-up of its staff parents and pupils. There is no reason to think that the composition of the SLT is other than chance.

30. The Tribunal noted that there were a series of things which were less than satisfactory in the way Ms Master was treated. They are:

    30.1. Ms Master was science lead for the school. When the School went to two form entry Ms Doak was appointed as a non-teaching deputy head. For that reason [286] 05 July 2014 she took the science lead role from Ms Master (along with other lead roles from others). However, when Ms Doak went back to some teaching because of Covid-19, and they appointed a new teacher, that teacher was given the science lead role. While that may have been a sensible decision it was insensitive not to tell Ms Master that she was not getting it back, and why (although perhaps understandable given a five-year gap).

    30.2. The failure to provide her 2019 performance management document for two years, although Ms Master asked for it.

    30.3. Not taking account of Ms Master's wish to be in the nursery because although it was communicated it was not in writing.

    30.4. The WhatsApp message of 20 May 2021 from Carly Rourke to the WhatsApp group of nursery staff (which did not include Ms Master) from which it is clear that:

    30.4.1. Ms Doak had spoken to Ms Rourke about the future staffing in the nursery;
    30.4.2. Ms Doak had told Ms Rourke that Ms Almaghrab was to be placed in the nursery school; and
    30.4.3. Ms Rourke had given her view to Ms Doak in no uncertain terms.
    30.4.4. Ms Master was excluded from that group. The explanation that she was there only half a day a week highlights the fact that as she was not there most of the time she would have benefitted from knowing what was going on.

It was plainly inappropriate for this to happen. The message itself was deeply upsetting - *"100% not Sham!".* At the time Ms Master did not want this investigated because it might compromise the person who had shown it to her. It was nevertheless a failure of management not to stress to everyone that WhatsApp groups had a place in the efficient running of the School but had to be used professionally.

30.5. Not putting Ms Master back to 2.5 days a week when she requested this. It was her contractual right.

30.6. Not putting her back to 2.5 days a week for many months after Ms Pervez' grievance outcome report clearly recommended that Ms Master's contract was at 2.5 days.

30.7. While putting Ms Master in the nursery with Ms Almaghrab was understandable, the way it was done was unfortunate, for it meant that an experienced qualified teacher was in effect being led by a much younger unqualified person. There was no reason why they could not have worked 2.5 days a week each with Ms Masters being the lead. Ms Pervez in her report said that Ms Master "had a point" here.

30.8. The appeal against the grievance outcome was treated insensitively. It was not possible to *"reserve the right to appeal"* but they had only to reply *"Is this an appeal or not?"* to resolve matters. The other reasons given for non-acceptance were spurious. It was said to be out of time. The time is 10 days. It was longer than 10 days. But on closer inspection in oral evidence it became clear it was 10 working days – two weeks. It was in time. The Respondents' witnesses accepted that the letter was received within that time period. It was not on the correct form – but it was accepted that this is often the case and yet such appeals are accepted as a matter of routine. The decision not to accept the appeal was that of the Governors advised by Carlene Reid and Gerry Kemble. However, the grievance outcome report was fair, balanced and partly in favour of Ms Masters. There was little to no prospect of the appeal resulting in any substantive change to it. It was still wrong and an affront to Ms Master to stifle it.

30.9. The time period for the grievance outcome was not excessive, but Ms Master felt that she was not updated. To a limited extent she is correct, but when she or her union representative asked, Ms Reid responded promptly.

30.10. Ms Master was on a timetable as a teaching assistant. This must have been deliberate as she is also on the same timetable as a teacher on a different day. The other teaching assistants were highlighted green and she was highlighted red, so plainly Ms Boutalbi appreciated the difference. Timetabling was difficult so it was understandable that Ms Boutalbi might need to put two teachers in that class that day for want of a teaching assistant. The pro forma would not easily show two teachers. That is most likely

why Ms Master was highlighted in red, not green. Ms Boutalbi did not say this – her evidence was that she could not recall, but that is the explanation which fits the evidence. From Ms Master's point of view it was demeaning to her, both because she was treated as a teaching assistant, and because this was publicly as the timetable went to everyone.

30.11. She was called to a routine performance management meeting after school hours when almost everyone else had theirs in school hours (only one other (Carly Rourke). This is understandable as Ms Master was a ppa teacher, so all the time she was working she was covering others, and if she had her meeting in school time another person would be needed to cover the person Ms Master was covering. It was something else that meant that Ms Master felt she was being treated unfairly. It was insensitive of Ms Boutalbi to criticise Ms Master for having her child with her (the child being in the nursery) particularly when Ms Boutalbi's own child was in the next room.

30.12. June 2021 copied into email by Ms McEwan 11 June 2021 [336]. This said that Ms McEwan hoped the response would enable Ms Master to "calm down". Ms Master says this was racial profiling. The Tribunal explored this with Ms Master, enquiring what racial profile she thought was being projected onto her. This was that as a person of colour she was perceived as prone to anger. She accepted that there is no recognised racial profile of women of Asian heritage being angry but asserted that this was to assume all not white people (or at least people of black or brown skin hue) were stereotyped. This was a bold claim, and the panel preferred Ms McEwan's explanation, which was that it was plain that Ms Master was far from calm, and all that was meant was that Ms McEwan hoped the response would enable Ms Master to understand and move on. It was still unfortunate that Ms Master was accidentally copied in, and the letter sent by Ms Boutalbi did not make Ms Master feel better, for her concerns were not satisfied but rebutted.

30.13. The "final straw" was based on an email of 05 July 2021 [341]. Ms Boutalbi had written to Ms Master to say:

> "Thank you for your email dated 15.6.2021 where you requested to change your hours back to 2 and a half days from September 2021. Unfortunately due to staff arrangements already being out into place for September 2021 and current budgetary constraints I am currently unable to change your days.
>
> However, should the situation change in September or at any point in the next academic year and I am able to increase your days I will do so. I will keep this request in mind when I am looking at staffing next year."

30.13.1. However, Ms Boutalbi did not do so. On 10 June 2022 Ms Boutalbi emailed Ms Master to tell her that an advertisement for a full-time teacher had been placed

two days before and attached the information "for your reference". There was not, for example, an invitation to apply.

30.13.2. Ms Master was understandably deeply unhappy about this. She was not told in advance that there was a job available. The job was not advertised internally. The letter of the previous year clearly indicated that she would be offered increased hours if there was a need and the budget for more teachers, which clearly there was. She felt there was no prospect of her ever being appointed, and she had good reason to think so.

30.13.3. Ms Master had applied for two previous roles and not been shortlisted for one of them. Her application was marked on various criteria as met, not met or partially met. As some of the criteria [304-307] were entirely subjective or not capable of being judged from a written application (eg good sense of humour, integrity loyalty enthusiasm and dynamism, good personal presence) it is hard to see any objective basis for those marks. No reason was given for a grading of "not met" for "ability to manage and defuse conflict" – the Tribunal is drawn to the inevitable conclusion that the conflict being considered was between them and Ms Master. Nor was she offered feedback on her application, which is surprising for an internal applicant. Ms Master had good reason to think that a selection panel of three, two of whom were Ms Boutalbi and Ms Doak would not approve an application.

31. The Tribunal finds that the cumulative effect of all these matters (and the whole course of her employment) was a breach of the implied fundamental term of mutual trust and confidence and that was the reason Ms Master resigned. This is nothing in the facts to show an affirmation of the contract and Ms Master resigned promptly after the "final straw". The Tribunal accepted Counsel's submission that the final straw cannot be trivial, but this was not trivial, and, after all, the phrase is "final straw".

Conclusions – race discrimination

32. Having looked at all these matters carefully (and the public interest disclosure claims) the Tribunal did not find that matters were proved which could lead to an inference of race discrimination.

33. One of the matters Ms Master says was indicative of pervasive race discrimination in the School by the Senior Leadership Team was an email of complaint, described by Ms Master as a "Collective Black and Asian Staff Complaint to the Governing Body about the Leadership Team" dated 03 December 2020 (318). There are two points to be made about this. First there is no mention of race discrimination in that email. Secondly, the people sending it in did not ask Ms Master to join in. Plainly she did not come to mind as someone suffering race discrimination.

34. Those said to have discriminated against Ms Master on the grounds of her race work in a highly diverse environment and do so from choice and conviction. It is unlikely that they would be motived adversely by considerations of race. It is logically possible that could be race discrimination specifically against Ms Master's racial heritage, but again this is unlikely and the Tribunal found this was not the case. Ms Master conflates what happened with race without there being any evidence of the one being caused by the other[7]. The sad fact is that Ms Boutalbi, Ms Doak and others (in the nursery) just did not like Ms Master. Given their characteristics and their working and social environment it is unlikely that this was anything to do with her race. There was nothing to suggest that anyone else was affected by race discrimination towards Asian women.

35. It is, however, unsurprising that Ms Master should think that many things were connected with her race given the length of time and the number of things which were detrimental to her, to the extent that her claim of constructive unfair dismissal succeeds.

Conclusions as to harassment on the grounds of race

36. The further back in time the harder it is to establish a causative link between it and anything which happened later. The complaint about Ms Doak back in 2014 may have led to Ms Doak having an unfavourable view of Ms Master, but there is nothing to suggest that race had anything to do with it, as set out above. Ms Doak has been active in promoting equality diversity and inclusion within the borough, and it is hard to see that she was motivated in any way by considerations of race.

37. Ms McEwan did not harass Ms Master on the grounds of race, or at all, for reasons given elsewhere in this judgment. The Tribunal does not accept the assertion that Ms McEwan racially profiled Ms Master.

Conclusions public interest disclosure

38. The claimed public interest disclosure was a letter of 05 July 2014 from Ms Master to the School's governing body (284/285). This raised the issue of underpayment. Ms Master came to the school from a post where she had been placed on the Upper Pay Scale. This is personal to a teacher, not attached to the teacher's post. Ms Master was paid at the standard rate. Her attempts to resolve this had been unsuccessful. She had volunteered to be an unpaid science co-ordinator, but later found that others were paid (TLR payments). She then was told she was no longer to be science co-ordinator as that role was to go to the new non-teaching deputy head, and this post was not advertised internally. She said that staff felt undervalued. She made various suggestions to improve matters.

39. This was not a public interest disclosure. While there is of course a public interest in schools being well run, this was all about her own personal circumstances. That does not meet the test for a disclosure being in the

[7] Bahl v The Law Society & Anor [2004] EWCA Civ 1070

public interest[8]. The other matters in the letter were not disclosures of information. They were suggestions as to how morale might be improved. There was no specific piece of concrete information in the letter.

40. It follows that the claim for public interest disclosure detriment based on this document fails, although it is possibly a reason why Ms Master was not in what was described by a contributor to Ms Pervez' report as "Ruth's clique". If so, the Tribunal noted that is not a matter connected with anyone's racial heritage.

41. The second public interest disclosure claim arose from an email she sent to the London Borough of Waltham Forest on 06 July 2021 (342-345). This said that the School was mismanaged by Ms Boutalbi and Ms Doak. It gave a series of things Ms Master was unhappy about. This resulted in the grievance investigation of Lynette Pervez. Ms Master accepted in that email that her identity would be known when something was done about it, so there is no detriment arising from it being made known that she had raised this complaint. It is possible that some of the matters raised could be public interest disclosures, but this takes Ms Master nowhere with her claim, as there was no detriment to her arising from any part of it. Ms Pervez was a good choice to investigate the grievance and she found in favour of Ms Master in large part. Her conclusions were all objective, rational and evidence based, and her recommendations fair and sensible. It was unfortunate that Ms Boutalbi did not implement them swiftly. That was not Ms Pervez' fault or responsibility.

42. It follows that this public interest disclosure claim also fails.

43. The List of Issues, with the Tribunal's findings in italics is set out here:

Employment Judge Housego
Dated: 4 June 2024

[8] Chesterton Global Ltd (t/a Chestertons) & Anor v Nurmohamed (Victimisation Discrimination: Whistleblowing) [2015] UKEAT 0335_14_0804

IN THE EMPLOYMENT TRIBUNAL
CASE NUMBERS: 3203960/2022 & 3205732/2022

BETWEEN

MRS SHAMIM MASTER **CLAIMANT**

and

LONDON BOROUGH OF WALTHAM FOREST (1)
GOVERNING BODY GWYN JONES PRIMARY SCHOOL (2) RESPONDENTS

FINAL LIST OF ISSUES

1. The Claimant was employed as a Class Teacher. She worked at Gwyn Jones Primary School from 01 January 2013 until 31 August 2022 (her last working day was on 21 July 2022) Early conciliation started on 13 April 2022 and ended on 24 May 2022. The first claim form was presented on 23 June 2022 and the second claim form was presented on 27 November 2022.

2. The Complaints

The Claimant is making the following complaints:

2.1 Constructive Unfair Discriminatory Dismissal

2.2 Direct Race Discrimination

2.3 Harassment related to race;

2.4 Suffering detriments on the ground that the claimant made protected disclosures which resulted in Victimisation.

2.5 Suffering detriments on the ground that the claimant made Public Interest Disclosures

3. Time limits

4 Given the date the claim form for the First Claim (3203960/2022) was presented and the dates of early conciliation, any complaint about something that happened before 13 January 2022 may not have been brought in time.

5. Given the date the claim form for the Second Claim (3205732/2022) was presented, any complaint about something that happened before 28 August 2022 may not have been brought in time.

There is no time issue. All the matters form a sequence ending with the "last straw" of the advert for the job which precipitated Ms Master's resignation.

6. Equality Act 2010 Complaints

7. Were the complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
   i. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaints relates?
   ii. If not, was there conduct extending over a period?
   iii. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
   iv. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
      1. Why were the complaints not made to the Tribunal in time?
      2. In any event, it is just and equitable in all the circumstances to extend time?

As above.

8. Employment Rights Act 1996 Complaints

9. Were the protected disclosure detriments complaints made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

i. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?
ii. If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
iii. If not, was there a series of failings and delay tactics by Respondent 1. London Borough of Waltham Forest?
iv. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

v. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

The public interest disclosure claims fail, one as not being a public interest disclosure, the second because there was no detriment. Assuming all the preliminary points were determined in favour of the Claimant the public interest disclosure claims still fail. Therefore it is not necessary to deal with the time point, and better for the Claimant to know the Tribunal's decision on the merits rather than lose on a technicality. However, the Tribunal found that the matters all have a common feature, that they emanated from Ms Boutabi or Ms Doak, and so would be a sequence. Even if not, it would be just and equitable to extend time given the long history of difficulties experienced by Ms Master.

Direct discrimination (Equality Act 2010 section 13)

10.The claimant alleges that the respondent has directly discriminated against her because of her race. Did the respondent do the following things:

First claim

10.1 Fail to appoint the claimant to a role in the Nursery of Gwyn Jones Primary School in September 2021. The Respondent admits that the claimant was not appointed to the Nursery and that the Deputy Head Teacher, Ruth Doak and a HLTA (Higher Learning Teaching Assistant), Ms Jamila Almaghrab, were assigned to the Nursery for budgetary reasons.

There was much evidence and submission about Ms Almaghrab, Ms Master claiming that she is white as it appears that her mother is Irish and that she is said to have pale skin, and the Respondent pointing to her heritage, which appears to have Palestinian or Algerian elements. The Tribunal will not attach any label to Ms Almaghrab. How she identifies is a matter for her alone. It is common ground that Ms Almaghrab has a light skin tone. It is possible that discrimination can occur for this reason, Ms Master describing herself as brown and as obviously Muslim from her dress and so visually different to others. In such a diverse environment, both staff and pupils, and socially in Waltham Forest this is inherently unlikely, and there is no reason to think, that Ms Almaghrab was preferred over Ms Master for reasons of race. It is the case that Ms Almaghrab as an HLTA was paid less than Ms Master,

who was on the upper pay scale as a 20+ years qualified teacher. Ms Boutalbi was also (wrongly) resisting increasing Ms Master's hours to half time from 1½ days a week and this also contributed to the selection of Ms Almaghrab. The School had a high regard for Ms Almaghrab, and she was not alone in being given the opportunity to progress to study and advance her career, and she is now a qualified teacher. This is a laudable aim, and was, the Tribunal finds, the reason Ms Almaghrab was selected.

10.2 Fail to appoint the claimant to a teacher role with EYFS Lead, the Claimant being informed of this on 27 May 2022.

This is factually correct. At the time, the person appointed – Jamila Almaghrab - was 4 days a week (the other day she was studying). Ms Master was 1½ days a week ppa cover. She should have been 2½ days a week, which added to her sense of being overlooked, but given the existing hours it was not unreasonable to put her there 4 days a week and Ms Master 1 day. Ms Master feels a justified sense of hurt that she, a teacher of over 20 years' experience with a degree should be line managed by a much younger person who was not qualified as a teacher and had no degree. This is part of the list of things leading to the success of the claim of constructive unfair dismissal, but there is no racial element to this, because there were convincing practical reasons why this was done.

10.3 Exclude the claimant from
(a) school staff handbooks, documents
The claimant says there were different dates which went as far back as 2014. In relation to excluding the claimant from school staff handbooks and documents, the claimant says she was not put on the staff list (relating to the staff handbook) in September 2014. That was when Ruth Doak was acting Headteacher. When Sian Boutalbi became Headteacher she did the same and she excluded the claimant from the staff list from 2019-2020.

There was a series of errors. The Tribunal was not persuaded, on the balance of probabilities that they were anything more. Ms Master did not have a class and at 1½ days a week for much of the time, covering others, was marginal to the running of the School, and was marginalised further as Ms Boutalbi and Ms Doak did not

regard her highly. The errors are far apart, there were errors affecting others, and Ms Master as a very much part-time ppa teacher was more likely to be overlooked than others.

(b) self-care timetables, PPA timetables and time off.

The Claimant says that every teacher received half a day after pandemic period. This was dedicated time off from coming into school. The timetable for the week made provision for all staff to get a self-care slot. An email was sent on 10 December 2020, she noticed she was not on the timetable. The claimant did get a self-care slot but it was not officially put on the timetable, and this as only provided after she had raised an issue about it (this was indicated to the claimant verbally) There were no further issues relating to this thereafter.

The "self-care" time off was to allow teachers time to recuperate from the stresses of coping with the changes required by Covid-19. The Claimant already had 3½ days a week not teaching so the need for time off for her is not readily apparent, and when she raised it, time was given. This was to do with her being very part time, nothing else.

In relation to planning preparation and assessment, the claimant says it was a legal requirement that teachers were allocated 10% of their teaching time in respect of this. This was to be dedicated time out of class to undertake planning, preparing and assessments with the children. When the Headteacher started in 2019 the claimant said verbally that she did not have planning preparation and assessment time on the timetable and the Headteacher told her that the claimant could get a payment in lieu (which was not appropriate). The claimant thereafter noticed that on 28 May 2020 this was not on the timetable (from 28 May 2020 she was not timetabled for this). She complained about it on 06 June 2021. She started getting timetabled for it after she put in a letter of complaint on 06 June 2021. She experienced no issues regarding this matter after June 2021.

Teachers get ppa time (Planning performance and assessment). Ms Master's role was to cover their classes while they took this 10% of time away from the classroom. It is right that Ms Master was also entitled to ppa time, and she got it,

but in reality the responsibility for planning performance and assessment lay with the class teacher. This was nothing to do with her race.

(c) performance management reviews

The claimant said the respondent failed to undertake performance management. This began when Sian Boutalbi started in October 2019. Sian Boutalbi was appointed in September 2019 as Head Teacher. In October 2019, Ruth Doak, Deputy Head Teacher undertook the Claimant's Performance Management (she never produced a document relating to the claimant wanting a nursery position, and the claimant did not receive a copy of this). This Performance Management document was produced in November 2021, two years later following the Claimant's Grievance Investigation. Claimant is still awaiting to receive this Performance Management document which was conducted in October 2019 by Ruth Doak[9]. The Claimant says she was excluded from the list for performance management. Every academic year from October the claimant explained she should have received three performance reviews (in each academic year) which are carried out by the Headteacher (teachers reviews are conducted by the Headteacher but she had one reviewed completed by Ruth Doak (who was Early Years Lead in October 2019) She complained about this in January 2021. After she raised a grievance in July 2021 her performance management reviews resumed. There was only one performance management review since the claimant's grievance was raised (the claimant did not want performance management to be carried out by Sian Boutalbi or Ruth Doak).

This was far from satisfactory. Ms Doak accepted in her oral evidence that the performance review for 2019 was not completed by her for two years. Her explanation – effectively a shrug and an apology that she was well known for not being very efficient with paperwork – does not sit well with her position as a non-teaching deputy head, even when she resumed classroom work. It was the worse as during that assessment Ms Master said that she wanted to work in early years, and this was unrecorded.

10.4 Give the claimant performance management times after school hours.

[9] It was finally produced in the hearing. It is brief.

The issue with this allegation is that Ms Master's work was to cover other teachers' ppa time. If she had performance management in school time someone else would have to cover the class. That is only the same as her own ppa time, of course. Teachers often have to work outside the school day, such as for parents' evenings. There is nothing inherently wrong with asking Ms Master to come in after the school day. It is that almost no-one else was asked to do so. One person was, Carly Rourke, and she is white. It was nothing to do with race, if somewhat insensitive, as Ms Master had a child in the nursery who would finish school and have to wait for her.

10.5 The Claimant says a performance management meeting was timetabled on 02 March 2020 by the Headteacher, and this was conducted after school hours but this did not take place due to pandemic (she complained about this in subsequent email correspondences) Everyone else was getting their performance management meetings during school directed time except for the claimant. She complained on 09 October 2020. The Claimant's daughter was in nursery at the time, and she told her that all other teachers were getting their performance management meetings completed during schools hours, and the claimant was the only one had a child there. The Clamant says she had to have her daughter there during the meeting and the Headteacher replied that was really unprofessional. The claimant says she had no choice as she was forcing her to attend performance management meetings after school had finished.

This appears to be the same point.

10.6 Wrongly give the claimant the title of Teaching Assistant on the timetable.

This is covered fully earlier in the judgment.

10.7 The claimant says this took place on 30 March 2020 and this was done by the Headteacher. That was the only time it happened (and this was during the pandemic time). The claimant was looking after the needs of key workers' children and children on EHCP Plans. On the Monday she was recorded as class teacher but on Tuesday (she was undertaking 1.5 days' work per week at the time) the claimant was recorded as Teaching Assistant and the Headteacher indicated this

in red (the Teaching Assistants were indicated in green, and the claimant was the only Teaching Assistant recorded in red). The claimant complained about this in an email dated 28 May 2020 which was sent to the Headteacher (along with other complaints).

See above.

10.8 In May 2020, fail to shortlist and appoint the Claimant for the role of Assistant Head Teacher selection being undertaken by Sian Boutalbi and Ruth Doak.

This is factually correct. They did not short list Ms Master. The selection exercise was unusual in that there was supposed to be objective scoring of the application forms of various criteria which could only be assessed in person, such as sense of humour. The grades were met, partially met and not met. The assessment of applications does not seem to be objectively verifiable. The Tribunal's overall finding was that Ms Boutalbi and Ms Doak did not regard Ms Master highly as a teacher and while they were content for her to cover other teachers' ppa time there was no way they were going to appoint her to a full time or give Ms Master her own class, other than marginally and under a HLTA. There is nothing to suggest that this was because of her race.

10.9 In June 2021, Sian Boultabi Head Teacher denied allegations and refused to investigate any wrongdoing when claimant made a litany of allegations in email.

This was dated 06 June 2021 (326/330). It ended "I will no longer tolerate nor accept being deskilled, demoralised, ignored, devalued, side-lined, treated unjustly and unfairly with no accountability." This is how Ms Master felt, and she had reason to feel so for the reasons set out at length in that email.

There was a response, which Ms Master understandably regarded as being fobbed off.

10.10 In June 2021, Sian Boutalbi Head Teacher claimant had a meeting with the headteacher about email allegations. The Headteacher refused to give the Claimant a full-time nursery post. Claimant left crying.

This accurately described what happened. Ms Boutalbi took no action when Ms Master left crying. This was not good management. Ms Master was sincere about her complaints. Ms Boutalbi accepted in her evidence that she made multiple errors though the Covid-19 period, which she attributed to the pressure of constantly changing directives from government. That may be so, but that does not reduce the impact on Ms Master.

10.11 In June 2021, Despite the Claimant detailing her meeting in June 2021 with Sian Boutalbi to them, neither the Chair of Governors, Nicola McEwan or Vice Chair, Liz Jackson took any action. She left upset crying.

This is the same meeting.

10.12 In July 2021, Sian Boutalbi, Headteacher refused the claimant's request dated 15 June 2021 to restore the Claimant's substantive contract of 2.5 days. The claimant reduced her hours to 1.5 days following maternity leave. The Head Teacher, Sian Boutalbi refused the claimant her right to return to her Permanent Contract of 2.5 days.

The documentation was clear. Ms Master asked to reduce from 2 ½ days to 1 ½ days a week, temporarily. This was agreed. The letter agreeing states that the School could require her to resume 2 ½ days a week, and stated that this would be reviewed in March 2020. Ms Boutalbi refused Ms Master's request to resume 2 ½ days a week in an email [341] of 05 July 2021 stating:

> *"Thank you for your email dated 15.6.2021 where you requested to change your hours from 1 and a half days back to 2 and a half days from Sept 2021. Unfortunately due to staff arrangements already being out into place for September 2021 and current budgetary constraints I am unable to change your days.*
>
> *However, should the situation change in September or at any point in the next academic year and I am able to increase your days I will do so. I will keep this request in mind when I am looking at staffing next year."*

The Tribunal did not accept that this was based on human resources advice. This is the email which is the background to Ms Master's resignation, as set out above. Ms Boutalbi was simply wrong to deny Ms Master a return to 2 ½ days a week, as Ms Pervez rightly identified.

10.13. Conclude in the Grievance Report by London Borough of Waltham Forest delivered to the claimant in November 2021 that the claimant may have received unfair or unjust treatment but that it was not as a result of her race.

The Tribunal agreed with Ms Pervez' report. It was a good and thorough piece of work.

10.14.11 Fail to appoint the claimant to a full-time role in the Nursery of Gwyn Jones Primary School in September 2021. The Respondent admits that the claimant was not appointed to the Nursery and that the Deputy Head Teacher, Ruth Doak and a HLTA (Higher Learning Teaching Assistant), Ms Jamila Almaghrab.

This is covered above.

10.15 Did the headteacher act out the discriminatory WhatsApp message on 20 May 2021(and the London Borough of Waltham Forest took no action)?

This was a very poor use of social media. At the time Ms Master did not want anything done about the "100% not Sham!" message in case it had adverse consequences for the colleague who had showed it to her. It does not paint Ms Doak in a good light, for plainly she had discussed matters about future staffing of the nursery with the sender of the message, who had been allowed to set out trenchantly to Ms Doak her adverse views about Ms Master. Waltham Forest could not do anything about this, as by the time it came to their attention the sender, Carly Rourke, had left the School. Ms Boutalbi did not appoint Ms Master to the role, but for the reasons set out elsewhere in this judgment this was never going to happen. It was not Ms Boutalbi doing what Ms Rouke was asking, it having been passed on by Ms Doak. Ms Master felt that Ms Doak had great influence on Ms Boutalbi. The evidence is that Ms Doak has a forceful personality, and it is likely

that Ms Boutalbi was influenced by Ms Doak's opinions. That is just their interpersonal dynamic. The Tribunal did not think they were in any sense conspiring together to discriminate against Ms Master on the grounds of race. It was, however, always going to be an uphill struggle for Ms Master to make any progress in the School as they had a negative attitude towards her.

10.16 Did Carlene Reid, Senior HR Adviser and Lynette Parvez, Investigating Officer- take 4 months to undertake the Grievance investigation and produce a Grievance Report and was the Grievance Investigation deliberately delayed with the Investigating Officer going on leave and thus exceeding time frames?

The chronology is accurate, but Ms Master's union representative accepted that the investigation would not start until early September, August being a lost month in the educational world. Ms Pervez got on with it, and towards the end there was a delay of about a month while she tried to speak to Ms Almaghrab, with Ms Master's consent, until she concluded that Ms Almaghrab did not intend to cooperate with the investigation. Ms Pervez had understandably booked holiday in the summertime, and there was no reason to cancel that holiday when she undertook the investigation. Ms Master's union representative did not ask for her to be replaced with someone immediately available.

10.17 In October 2021, Head Teacher offered an Echo Lead role whilst Claimant's substantive contract of 2.5 days was not restored. Head Teacher Sian Boutalbi refused to give a Teaching and Learning Responsibility payment to the claimant when other teachers were getting this (Second Claim).

This all part of the desire of Ms Boutalbi to minimise Ms Master's role in the School.

10.18. The headteacher refused to investigate the discriminatory WhatsApp message after numerous requests in a meeting in March 2022.

The way this is set out is narrative. There is no dispute of fact in the narrative. The Tribunal's conclusions were that there was not sufficient to show that race played any part in this narrative. The message was 20 May 2021, and Ms Master knew of it almost immediately. She did not want anything done about it then. By March

2022 she did. The Tribunal felt that as soon as the message came to th4e knowledge of management a generic reminder about the need for work WhatsApp groups to be conducted professionally should have been sent to all. 10 months later the School declined to take action. This was not race discrimination, and while the Tribunal would have acted differently in May 2021 and in March 2022, a reluctance to deal with it after Ms Master changed her mind is understandable.

10.19 Second claim

10.20 When the claimant was given her substantive contract back in March 2022 she was teaching in the nursery and Ruth Doak told her things she needed to do in front of the children she was teaching.

The Tribunal accepted Ms Master's evidence about this, and so it is found proved. It added to Ms Master's sense of being demeaned and her professionalism not respected.

10.21. On the same day as the WhatsApp message dated 20 May 2021, Carly Rouke also stated verbally "Sham is not the right fit" The claimant complained about this to the Headteacher, and the Governing Body and they did not take any steps in relation to this.

At the time Ms Master did not want anything done. This forms part of the sequence of events which cumulatively mean that the unfair dismissal claim succeeds.

10.22. Claimant's alleged dismissal. The claimant says that on 7 June 2022 a full-time classroom teacher post was advertised and she was told to apply for this on 10 June 2022. No other teacher was told to apply for a role. The Claimant believes the Headteacher had no intention of giving her a full-time role. The claimant says this was the last straw in terms of her alleged constructive dismissal.

The Tribunal agrees with Ms Master and so finds. In fact Ms Master was not told to apply for it, or even invited to do so. It was just sent to her "for your information". It was also remarkable that Ms Boutalbi said that Ms Master could not expect to be given a nursery post as she needed teachers who could teach anywhere. Ms Master was already doing that in her ppa work.

11. Was that less favourable treatment?

11.1 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. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The claimant relies on two white part-time teachers as comparators, namely:

11.2 Jolene Easedale (white) was appointed in September 2012 as a newly qualified teacher with no experience. By 2022, she has her own class, full-time but becomes part-time. She has three big responsibility areas with Teaching Learning Responsibility TLR payments for EYFS Lead, Rights Respect Lead and Creative Curriculum Lead. She was given the opportunity to undertake National Professional Qualification for Early Years Leadership (NPQEL).

11.2.1 The Respondent's position in respect of Jolene Easedale is she was appointed in 2011 as a Newly Qualified Teacher. She returned from Maternity Leave and put in a flexible working request for 4 days which was agreed from 1 September 2021. Jolene has a TLR payment for Co EYFS since September 2022-permanent TLR2, she holds a TLR3 which is a temporary post until 31.12.23 for History and Geography. She does not hold a TLR for Rights Respecting Lead. She used to lead on this as part of UPS to demonstrate sustained and substantial contribution to the school. She was given the opportunity to undertake the NPQEL as she was new to leading EYFS-she declined. She used to have a TLR2 for creative curriculum lead prior to EYFS lead as you can't hold 2 TLR 2 she resigned from this and the school restructured the role into two TLR 2 (1 Art and DT2 History and Geography.

11.3 Joy Lau (white) was appointed as part time Planning, Preparation and Assessment, PPA teacher to cover for Claimant's maternity leave in 2015 with a few years teaching experience but no leadership experience. By 2022, she increases her working hours to 3 days, becomes permanent, gets her own class, has 2 responsibility areas with Teaching, Learning, Responsibility payments of

EYFS Lead and Phonics Lead. She was given the opportunity to undertake National Professional Qualification for Early Years Leadership (NPQEL)

11.3.1 The Respondent's position in respect of Joy Lau is she was employed from 04.01.2016 on M6 as a class teacher 2 days per week. At her previous school she led on ICT and Maths across the school. She had been qualified and teaching since 01.08.1999. At some point before Sian Boutalbi joined the school, Joy Lau increased her days to three days per week, she has always been a permanent member of staff. Prior to 2023 she had no TLR responsibilities. She led on RWI as part of UPS to demonstrate sustained and substantial contribution to the school. In September 22 she became CO EYFS Lead with Jolene Easedale. She was given the opportunity to undertake the NPQEL as she was new to leading EYFS and is currently completing this.

There was a full-time post. Two people put in a joint application for it. They were internal candidates, and both were well regarded. It was a sensible decision to appoint them to the role. Ms Master could have applied for it, though understandably did not, either as a full time post or as half of a job share had she someone to apply with. Ms Boutalbi had a settled agenda not to appoint Ms Master to a substantive class teacher post. Ms Master had experience throughout the School given that she was a ppa cover teacher. There were no recorded concerns about her ability. Ms Boutalbi, Ms Doak and others were not well disposed towards Ms Master and as set out above, Ms Boutalbi wished to keep Ms Master marginalised to 1 ½ days mainly ppa cover, save when she was 1 day a week with Ms Albaghrab, when she was in effect led by an unqualified teacher.

11.4 If so, was it because of race?

No, but it is understandable that Ms Master should think so.

12. Harassment related to Race (Equality Act 2010 section 26)

12.1. Did the respondent do the following things:

12.2 First claim

12.3 exclude the claimant from discussions which were taking place over a WhatsApp group which was made up of staff and managers where discussions were taking place concerning the allocation of staff to the Nursery at School.

The WhatsApp group was not a School group. Ms Master was not in it. The explanation that she was not working with the others much was not a good reason for her not to be in it, for if there was relevant information about the School it would be the more important that she was included. It was a friendship group not a work group, so it was not a School decision to exclude Ms Master.

12.4 On 20 May 2021 a member of staff "Carly", is alleged to have stated to others on the group that she had been informed by the Deputy Headteacher, Ruth Doak, of a plan for Ruth Doak and an HLTA, Jamilah Almaghrabi, to work in the Nursery. In the WhatsApp exchange it is alleged that "Carly states" But now that does make sense as I know nursery is her favourite. Xxxx better than Sham! I did stress it 100% can't be Sham!"

This is correct – see above.

12.5 Did Ruth Doak fail to reprimand Carly Rorke in May 2021 under Staff Code of Conduct: instead Ruth Doak breached the Staff Code of Conduct and breached confidentiality (Carly Rourke spoke to Ruth Doak telling her what was in the WhatsApp message).

This is all factually correct save the word "fail". At the time Ms Master asked that nothing be done, concerned for repercussions for the person who showed it to her. The Tribunal thinks that something should have been done instead of doing nothing, as set out above.

12.6 Did the Chair of Governors indicate support for the Head Teacher's actions in any email to the Head Teacher on 11 June 2021 about the Head Teacher's response to concerns raised by the claim.
Did the Chair of Governors state "Hopefully she will calm down and we can move on." The Claimant was copied into this email. The Claimant alleges that this comment "revealed a view of the Claimant based on a racial stereotype."

For reasons set out above this was not racial stereotyping.

12.7 Claimant was mistakenly copied into emails with the Headteacher, Chair of Governors and Vice Chair. Nicola McEwan (Chair of Governors) in June 2021.

This occurred.

12.8 Did Liz Jackson in June 2021 Vice Chair now Chair of Governors fail to take action. Were the Claimant's serious concerns ignored? Did Vice Chair Jackson show support for Headteacher and was biased?

The Governors did not hold the head teacher to account effectively. Ms McEwan agreed that it was unfortunate that she did not ask to see the email to Ms Boutalbi to which she was responding, and closer scrutiny might have resolved the 1 ½ to 2 ½ days a week issue. None of it was race discrimination by the Governors.

12.9 Second Claim

12.10 In March 2022, did Ruth Doak micromanage, bully and undermine the Claimant? When the claimant was given her substantive contract back in March 2022 she was teaching in the nursery Ruth Doak told her things she needed to do in front of the children she was teaching.

This occurred as stated.

12.11 On the same day as the WhatsApp message dated 20 May 2021, Carly Rourke also stated verbally "Sham is not the right fit!" The claimant complained about this to the Headteacher, and the Governing Body and they did not take any steps in relation to this.

See above.

12.12 Claimant's alleged dismissal. The claimant says that on 7 June 2022 a full-time classroom teacher post was advertised and she was told to apply for this on

10 June 2022. No other teacher was told to apply for a role. The claimant says this was the last straw in terms of her alleged constructive dismissal.

The Tribunal agrees (with the comment above that she was not told to apply).

13. if so, was that unwanted conduct?

Yes.

14. Did it relate to race?

No.

15. 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?

That was not the aim.

16. 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.

That was the effect – but it was not connected with race.

17 is the respondent liable under the Equality Act s109?

No.

18. Remedy for discrimination

This is not applicable.

19. What financial losses has the discrimination caused the claimant?

20. Has the claimant taken reasonable steps to replace lost of earnings, for example by looking for another job?

21. If not, for what period of loss should the claimant be compensated?

22. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

23. What personal injury has the discrimination caused the claimant and how much compensation should be awarded for that?

24. Should interest be awarded? How much?

Not applicable as the claims of race discrimination fail. There was no claim for personal injury.

25. Constructive unfair dismissal (Second Claim)

26. Did the respondent di the following things:

27. Did the respondent subject the claimant to direct race discrimination and to harassment related to race as set out above (at paragraphs 5-13 of this list of issues)?

No.

28. The grievance was not conducted correctly, and it was biased.

It was conducted fairly and was not biased. The London Borough of Waltham Forest did not run the School. The School had opted out of the LB Waltham Forest human resources service and arranged its own human resources support. When Ms Master complained to LBWF the usual thing to do would be to refer the matter to the Governing Body. However, the complaint was also against the Chair of Governors, so that was not possible. For this reason, Gerry Kemble got in touch with the Governors to tell them of the complaint, and to tell them there would have

to be an external investigation, for which they would have to pay. That was appropriate. They agreed. He found Lynette Pervez. She was a retired head teacher with experience of such investigations and with no connection to anyone at the School. She was an appropriate choice. She could not start until September and Ms Master's union representative understood this. Ms Master objected to the order of interviews, but changed her position as the evidence went on. Her witnesses were interviewed. Ms Albighrab effectively declined to participate. Ms Master agreed to wait to see if she could be contacted, then to proceed without her being interviewed. The timescale was reasonable. The outcome was balanced, well-reasoned and evidence based. It found for Ms Master on a lot of points, particularly about the 2 ½ days, and about a "Ruth clique" and several other points. The process of selecting Ms Pervez was sensible, as set out above. The Tribunal finds no fault with Ms Pervez' report and the process which led to it. Quite the reverse – it was a good and thorough piece of work from an open minded individual.

29. Since she raised her concerns on 6 July 2021, she had been applying for full time positions and she was not able to obtain a full-time role, and none of the recommendations had been put into place.

Correct.

30. She was not allowed to appeal against the grievance outcome.

The Tribunal's findings about this are set out above. It was stifled inappropriately. Ms Master was right to feel aggrieved about it.

31. The "last straw" which led to her decision to leave her role took place on 7 June 2022 when the Headteacher advertised a role for a full-time classroom teacher and the Headteacher sent her (the email was only sent to the claimant) an email on 10 June 2022 advising her that the position was available for her to apply for. The claimant believed she would never obtain a full-time role and that the Headteacher had not intention of offering any such role to the claimant (which was confirmed to the claimant by the fact she had advertised the role externally). She said that no other teacher within the school had been asked to make an application for the role.

She stated she could not take it anymore and she was forced to resign from her employment.

This was a "last straw".

32. Did that breach the implied term of trust and confidence? The Tribunal will need to decide whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between then claimant and the respondent and and whether it had reasonable and proper cause for doing so.

The Tribunal finds for Ms Master on this point.

33. Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

Yes, of the implied term of mutual trust and confidence.

34. Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

Yes, this was why Ms Master resigned.

35. Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

It was not pleaded that there was an affirmation of the contract preventing this from being an unfair constructive dismissal.

36. If the claimant was dismissed, what was the reason or principal reason for dismissal i.e what was the reason for the breach of contract?

This is not well phrased. This was a dismissal within S95(1)(c) of the Employment Rights Act 1996 – the employee terminated the contract under which she was employed (with or without notice) in circumstances in which she was entitled to terminate it without notice by reason of the employer's conduct.

37. Was it a potentially fair reason?

No.

38. Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

This does not apply to a constructive dismissal.

39. Remedy for unfair dismissal

There will be a remedy hearing unless the parties resolve matters. The difficulty with remedy, from Ms Master's point of view, is that compensation is capped at one year's pay (based on 2 ½ days a week: half time). The basic award is a matter of arithmetic.

40. If there is a compensatory award, how much should it be? The Tribunal will decide:
41. What financial losses has the dismissal caused the claimant?
42. Has the claimant taken reasonable steps to replace their lost earnings, for example looking for another job?
43.If not, for what period of loss should the claimant be compensated?
44. What basic award payable to the claimant, if any?

45. Protected disclosure detriment (Employment Rights Act 1996 section 476B) (Second claim)

46. The claimant asserts at paragraph 26 of her second claim that she made a protected disclosure on 6 July 2021.

For reasons given above this was not a public interest disclosure.

47. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Right Act 1996? The Tribunal will decide:

48. What did the claimant say or write? When? To whom? The claimant says she made disclosures on these occasions.

49. The London Borough of Waltham Forest had (in relation to a document within their list of documents dated 16 June 2023) falsified a document dated 05 June 2012 stating that the claimant had “lesson observations concerns”. The claimant was appointed at Gywn Jones Primary School on 01 January 2013, so this was falsified.

This is so far in the past that it can have no relevance. There were no concerns recorded about Ms Master’s teaching ability. This is not a case of a fraudulent document, and the School did not rely on it.

50. Email dated 6 July 2021 was sent from the claimant to David Kilgallon in relation to the protected disclosures that she relies upon. He asked the claimant to send evidence in terms of what was going on. The claimant raised her concerns of race discrimination experienced by herself and other black and Asian staff at school (per paragraph 26 of the Particulars of Claim attached to the claimant’s second claim).

51. Did she disclose information?

52. Did she believe the disclosure of information was made in the public interest?

53. Was that belief reasonable?

54. Did she believe it tended to show
55. a person had failed, was failing or was likely to fail to comply with any legal obligation.

56. Was that belief reasonable?

57. If the claimant made a qualifying disclosure, was it made:
58. to the claimant's employer?
59. to the respondent?
60. If so, it was a protected disclosure?

No, for reasons given above.

61. In relation to the detriments the claimant alleges she was subjected to:

62. Did the respondent do the following things;
63. The Claimant said that the London Borough of Waltham Forest took over her grievance investigation. She received an email from Gerry Kemble who was commissioned to investigate the claimant's public interest disclosures.
64.The claimant complains that her grievance investigation was not conducted correctly and that it was biased. She says there were failings in that investigation and that due process was not followed.
65. There were deliberate delay tactics by Respondent 1 London Borough of Waltham Forest despite raising her grievance in July 2021, the investigation was not initiated until September 2021.
66. The Claimant says her Grievance was submitted by her union representative in July 2021 and the Grievance Report was finally completed in November 2021 which was four months later. Thus, exceeding timeframes to prevent the Claimant from taking further legal action.
67. The claimant says that important matters in her witness statement were omitted and redacted. She said what she had said in her own witness statement about what had happened had been omitted.
68. Failings of Grievance Investigation and conclusion not supported by the extensive evidence to show the actions were non-discriminatory.

The Tribunal did not accept that this was so for reasons already given.

69. She also received an email from the London Borough of Waltham Forest, Gerry Kemble, Head of HR, denying her the right of an appeal to address her concerns.

Ms Master is correct, and this is part of the reason the claim for unfair dismissal succeeds.

70. She had no further recourse none of the recommendations from her grievance outcome were put into place.
71. She had been applying for full time positions since 06 July 2021(which she has not been able to obtain)
72. By do so, did it subject the claimant to detriment?
73. If so, was it done on the ground that she made a protected disclosure?

Not applicable given the Tribunal's findings.

74. Remedy for protected disclosure detriments complaints

Not applicable

75. How much should the claimant be awarded?
76. What financial losses has the detrimental treatment caused the claimant?
77. Has the claimant taken reasonable steps to replace their lost of earnings, for example by looking for another job?
78. If not, for what period of loss should the claimant be compensated?
79. What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?
80. Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?
There was no claim for personal injury.

81. Is it just and equitable to award the claimant other compensation.
82. If the Tribunal determines that the respondent has breached any of the claimant's rights to which the claim relates, it may decide whether there were any aggravating features to the breach and, if so, whether to impose a financial penalty and in what sum, in accordance with section 12A Employment Tribunals Act 1996?

Not applicable given the Tribunal's findings

1 February 2024 [date this list was prepared]