EMPLOYMENT TRIBUNALS

Claimant: **Mr Festus Olatoye**

Respondent: **The Khalsa Academies Trust Limited**

Heard at: **East London Hearing Centre (by CVP)**

On: **13, 14, 15, 20, 21 & 22 March 2024**
(in-chambers) 19 April 2024

Before: **Employment Judge Povey**
Members: **Ms P Alford**
Ms J Clark

Representation:
For the Claimant: In person
For the Respondent: Mr Burgess (Paralegal)

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaints of direct race discrimination and victimisation which occurred before 17 January 2022 were brought out of time. It was not just and equitable to extend time and the Tribunal has no jurisdiction to consider and determine them.

2. The complaints of direct race discrimination are not made out and are dismissed.

3. The complaints of victimisation are not made out and are dismissed.

4. The complaints of breach of contract are not made out and are dismissed.

5. The complaint of wrongful dismissal was not made out and is dismissed.

REASONS

Background

1. At the culmination of the hearing of this claim, the Tribunal reserved its decision. Following deliberations, we reached decisions on all the complaints and set out our reasoning, below.

Introduction

2. The Claimant was employed as a maths teacher by the Respondent at its Atam Academy in Romford, Essex from 31 August 221 until his dismissal, which took effect on 8 February 2022.

3. ACAS Early Conciliation began on 8 February 2022 and ended on 10 March 2022. The Claimant presented his claim in form ET1 to the Tribunal on 15 May 2022. He brought complaints of direct discrimination on grounds of race, victimisation, breach of contract and wrongful dismissal. The complaints were resisted in their entirety by the Respondent.

4. The Claimant identified his race/ethnicity as black African.

The final hearing

5. The final hearing was conducted over five and half days remotely by video. The Tribunal reserved its decision and undertook deliberations on the afternoon of 22 March 2024 and on 19 April 2024.

6. In advance of the final hearing, the Respondent sought permission to adduce a witness statement from Satvinder Basra and additional documentary evidence. The Claimant objected. On the morning of the first day (13 March 2024), the Tribunal determined the applications in the Respondent's favour and provided our reasons orally. On 20 March 2024, the Claimant asked for those reasons in writing, which were duly provided. A copy of our decision and reasons is at Appendix 1.

7. On the evening of 13 March 2024, the Claimant applied for a reconsideration of our decision allowing the Respondent's additional statement and documents into evidence. The Tribunal refused that application, provided our reason orally on 15 March 2024. On 20 March 2024, the Claimant asked for those reasons in writing, which were duly provided. A copy of that decision and reasons is at Appendix 2.

8. During the hearing, we heard evidence from the Claimant. For the Respondent, we heard from the following witnesses (all of whom are employed by the Respondent in the posts indicated at the relevant time):

    8.1. Satvinder Basra (Chief Financial Officer, Atam Academy)

8.2. Sunita Bhabra (Food Teacher & Assistant Principal, Atam Academy)

8.3. Sukhdev Shoker (Head of School, Stoke Poges Academy)

8.4. David Martin (Principal, Atam Academy)

8.5. Christian Atwell (Maths Teacher & Assistant Principal, Atem Academy)

8.6. Julian Williams (Vice Principal, Atem Academy)

8.7. Samantha Williams (Assistant Principal for Teacher & learning, Atem Academy)

8.8. Simon Webb (Director of School Improvement, Atem Academy)

9. Each witness we heard from confirmed and adopted their respective witness statements. We were provided with a paginated, indexed bundle of documents ('the Bundle') and a further, smaller bundle of documents ('the Supplementary Bundle').

10. The Bundle contained a number of the Respondent's polices. Two in particular were of relevance, as they were integral to the Claimant's breach of contract complaints, namely the Grievance and Probation Policies. We were provided with two versions of each policy. The Respondent invited us to rely upon the versions which were in force at the time of the alleged breaches (and which appeared, respectively, at [110] – [123] and [124] – [131] of the Bundle).

11. In contrast, the Claimant relied upon earlier versions of both policies (the Grievance Policy approved in 2019, at [560] – [573] and the Probation Policy of February 2021, at [578] – [585] of the Bundle). The Claimant's explanation was that these were the policies which he claimed had been provided to him by the Respondent.

12. In truth, there was little difference between the respective policies. However, the Tribunal was of the view that it should have regard to those polices actually in force at the time of the Claimant's employment, irrespective of what might or might not have been sent to him. They were the polices which the Respondent was required to follow and those were the policies which, on the Claimant's case, were part of his contract of employment. Those polices were the ones relied upon by the Respondent (at [110] – [123] and [124] – [131] of the Bundle).

13. We received oral and written submissions from Mr Burgess for the Respondent and from the Claimant. We have taken all the evidence and the submissions into account in reaching our decisions.

14. The Claimant is a litigant in person. The Tribunal explained the process and procedures to the Claimant, checked his understanding, encouraged him to ask questions and gave him guidance throughout. The Tribunal

was satisfied that the Claimant was able to fully engage in the process and present his claim to the best of his abilities.

15. The Tribunal was grateful to the Claimant and Mr Burgess for the assistance they provided and the work they had undoubtedly undertaken both before and during the hearing. We were also grateful to all witnesses, including the Claimant, who attended and answered the questions asked of them to the best of their recollections.

16. At the outset of hearing, we checked that the issues as agreed earlier in the management of this case remained the issues we were required to determine. The parties confirmed that they were and a copy of the List of Issues is at Appendix 3.

17. We only made findings required to determine the complaints brought by the Claimant. A number of other matters were raised by both parties in the course of their oral and written evidence. We have not engaged with those, save where they were relevant to the determination of the issues.

18. We will explain our reasoning in accordance with the List of Issues, save that we deal with the time issues last.

The relevant law

Discrimination

Direct discrimination

19. Direct discrimination is defined by section 13(1) of the Equality Act 2010 ('EqA 2010'), and states 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 "relevant protected characteristics" include race (per section 26(5) EqA 2010).

21. In comparing whether there has been less favourable treatment because of a protected characteristic, the comparator (B) can be actual or hypothetical but there must be no material difference the circumstances of A and B (per section 23 of the EqA 2010; Watt v Ahsan [2007] UKHL 51).

Victimisation

22. Section 27 of the EqA 2010 defines victimisation, so far as relevant, as follows:

> (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
>
> (a) B does a protected act, or
> (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

23. In order for an allegation (whether express or otherwise) that the employer has contravened the EqA 2010 to amount to a protected act, the asserted facts must be capable of amounting to a breach of the EqA 2010 and must be sufficiently clear (see, for example, Chalmers v Airpoint Ltd UKEATS/0031/19; Beneviste v Kingston University UKEAT/0393/05).

24. The test for detriment in victimisation cases (as in all discrimination cases). is "is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment?" (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337).

25. Victimisation occurs where a claimant is subjected to a detriment "because" they have done (or might do) a protected act. Whilst the protected act need not be the main or only reason for the treatment (victimisation will occur where it is one of the reasons), the protected act must be more than simply causative of the treatment (in the "but for" sense). It must be a real reason (per Chief Constable of Greater Manchester Police v Bailey [2017] EWCA Civ 425; Ahmed v Amnesty International [2009] IRLR 884, CA).

26. Post-employment victimisation can be unlawful under the EqA 2010 (per section 108 of the EqA 2010, as interpreted by the Court of Appeal in Jessemey v Rowstock Ltd [2014] EWCA Civ 185).

Standard of proof and time limits

27. The standard of proof is the balance of probabilities. The burden of proof in discrimination complaints has two stages, as follows (per section 136 of the EqA 2010, Efobi v Royal Mail Group Ltd 2021 ICR 1263, SC; Madarassy v Nomura International plc [2007] IRLR 246 and Igen Ltd (formerly Leeds Careers Guidance) v Wong 2005 ICR 931, CA):

27.1. The Claimant has to prove facts from which the Tribunal could infer that discrimination has taken place;

27.2. If so, the burden 'shifts' to the Respondent to prove that the treatment in question was in no way because of a protected characteristic.

28. Section 123 of the EqA 2010 requires that proceedings under the EqA 2010 may not be brought after the end of the period of three months

starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable. By reason of section 123(3), conduct done over a period of time is treated as being done at the end of the period, for the purpose of calculating the three-month time limit for bringing proceedings.

Breach of contract

29. Employment tribunals in England and Wales were given power to deal with breach of contract claims by the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the 1994 Order").

30. The jurisdiction under the 1994 Order only applies to breaches of contract outstanding on the termination of employment, so current employees cannot claim and the Tribunal cannot deal with breaches occurring after termination.

31. Section 86 of the ERA 1996 affords rights of notice to employees, the length of which is determined by their period of continuous employment with their employer. Any failure by the employer to give correct notice constitutes a breach of his contract of employment, save where either the employee waives his rights to, or accepts payments in lieu of, notice. In addition, an employer is entitled to dismiss an employee without notice where satisfied that the employee's conduct amounted to a repudiatory breach of the employment contract and discloses a deliberate intent to disregard the essential requirements of that contract. The employer faced with such a breach by an employee can either affirm the contract and treat it as continuing or accept the repudiation, which results in immediate dismissal.

32. Complaints under the 1994 Order must be presented to the Tribunal within three months of the effective date of termination of employment (subject to ACAS Early Conciliation).

<u>Findings of fact</u>

33. The Claimant was appointed as a Maths Teacher at the Atam Academy with effect from 31 August 2021. Under his contract of employment, dated 12 July 2021, the Claimant was subject to a six month probationary period, which included the following provision (Paragraph 4, at [81] of the Bundle):

> … The Trust will assess and review your work performance during this time and reserves the right to terminate the employment with one month's written notice…

34. In conjunction with this provision in the Claimant's contract, the Respondent operated a Probation Policy (at [124] – [131] of the Bundle). The policy included provision for a meeting "*during the first week of employment, the line manager/Senior Leader will arrange a meeting with the employee. This meeting will form part of the induction process and should be used to set the 2 formal probationary meetings for the duration*

of the probation period along with the performance expectations and standards. Meetings are usually held after months 2 and 5" (at [126]).

35. The Claimant's evidence was that the initial meeting and the two month probationary meeting did not take place. Mr Attwell was responsible for setting the Claimant's targets in the first few weeks of his employment. In his oral evidence, he could not recall if he met with the Claimant in his first weeks or undertook the first probationary meeting after two months.

36. The Respondent subsequently acknowledged that neither the initial meeting or the month two meeting took place. Mr Martin later apologised to the Claimant for that failure to adhere to the Probation Policy (in their meeting on 19 January 2002, discussed further, below).

The first term

37. On 10 September 2021, the Claimant reported that a student in his class had told him to "*Go back to Nigeria."* (at [335] of the Bundle). In his written evidence, Mr Martin recalled the incident and how it was dealt with by the Respondent (the student's parents were informed, sanctions were imposed and a restorative meeting held between the student and the Claimant, mediated by Steven Isaacs, one of the vice principals, per Paragraphs 25 – 27 of Mr Martin's statement). That account was not materially challenged by the Claimant and the Tribunal had no reason not to accept it, including that the Claimant took no issue at the time with how the Respondent had dealt with the incident.

38. In our judgment, the Respondent was best placed to know how to deal with such an incident and was entitled to act as it did. There was nothing unreasonable or problematic in the approach adopted. In addition, the student apologised to the Claimant and it was not suggested by the Claimant that the student in question made any further derogatory or racist comments, which was suggestive that the approach taken by the Respondent at the time had been effective in addressing and moderating the student's behaviour.

39. The Claimant later alleged (in both his resignation letter of 1 February 2022 and his grievance of 21 February 2022) that, in the same week as the above incident with the student, the school caretaker, Brain Rosenwould, "*barged into my classroom to speak to me in the most condescending, rude and disrespectful manner because I had complained about him humiliating teachers by writing warnings on their whiteboards. Brian never apologized for his behaviour but continues to ignore and treat me with contempt on the corridor"* (at [219] of the Bundle).

40. The Claimant alleged that on 22 September 2021, Faima Yasmin (another teacher) came to speak to him about issues which had been raised by students in her form class regarding their maths classes with the Claimant (at [146] of the Bundle). Similar issues had been raised by students with another teacher, Farhana Zaman. In his written evidence, Mr Martin recalled the matter, concluding that it was professional disagreement between the teachers. As such, Mr Martin arranged a restorative meeting

between the Claimant, Ms Yasmin and Ms Zaman, which he believed was productive. Mr Martin did not, at the time, understand the Claimant to be raising a formal grievance against Ms Yasmin or Ms Zaman (per Paragraphs 16 – 19 of Mr Martin's statement).

41. Again, in our judgment, it was a matter for the Respondent how it managed its staff and dealt with such disagreements. The approach taken by Mr Martin in this instance was appropriate, proportionate and clearly open to him in the circumstances.

42. The Tribunal also found that it was open to Mr Martin to conclude that the Claimant was not, at that time, raising a grievance. The only evidence of the Claimant raising a grievance regarding Ms Yasmin and Ms Zaman was in February 2022, which was the earliest evidence of the Claimant claiming that he had raised a grievance in October 2021 (at [243] of the Bundle). In our judgment, if the Claimant believed that in October 2021 he was raising a grievance, why did he not say so when Mr Martin proposed resolving the disagreement with Ms Yasmin and Ms Zaman by way of a restorative meeting? That somewhat undermined the Claimant's claim and suggested that even he did not believe that he was seeking to pursue a grievance in October 2021.

43. For those reasons, we found it more probable that the Claimant was not raising a grievance in October 2021.

44. The Respondent regularly undertook what were known as learning walks, where members of the senior leadership team ('SLT') would spend a morning or afternoon dropping in to numerous lessons and observing what was going on for a few minutes. A copy of the Atam Academy's Learning Walks and Drop-ins Policy was in evidence (at [132] of the Bundle).

45. So far as relevant, learning walks took place in the first term of 2021/22 on 23 September 2021, during the week of 27 September 2021 and the week of 15 November 2021 (per the email of 13 January 2022, at [175] of the Bundle).

46. During the week of 15 November 2021, it was not in dispute that multiple learning walks took place in error. The Respondent's consistent evidence was that the error was due to poor planning and apologies were issued to those teachers affected. It was also not in dispute that the Claimant was one of those teachers who was subject to excessive learning walk visits during this period.

47. The Claimant alleged that he was being targeted and was observed more than any other teacher (per his email to Mr Martin on 12 January 2022, at [176] of the Bundle).

48. In contrast, we read and heard from numerous witnesses who all confirmed that the excessive number of learning walks during November 2021 had been an error of planning, that it had impacted on numerous teachers, not just the Claimant, and that apologies had been issued.

There was also no obvious or apparent reason or basis at that time to have undertaken additional learning walks in respect of the Claimant.

49. Indeed, Ms Williams emailed a number of teachers, including the Claimant, on 1 December 2021 as follows (at [154] of the Bundle):

> Thank you for having Julian, Paul and myself in your class yesterday. It was lovely to see how accommodating our staff are to visitors. The purpose of a learning walk is never to 'catch you out' or put you on the spot; we have an open-door policy here at ATAM and visitors to our classrooms are only in a supportive capacity. That being said, it was great to see so much learning happening in your class; pupils are engaged and it is evident that progress is being made. A developmental area and next step would be to try and move around the classroom more; command the whole room with your presence and try to avoid remaining stationery at the front of the class.

50. In the course of the hearing, the Claimant alleged that the above email and the email of 13 January 2022 (at [175], which recorded the learning walk dates for the first term) were fraudulent and had, in effect, been created for the purposes of this litigation. That was a very serious allegation. Falsifying evidence is a criminal offence and is viewed, understandably, as extremely serious. It is reasonable to assume that anyone working in education found guilty of such a charge would be likely to lose their job and, perhaps, their career.

51. Against that background, we found the Claimant's allegations to be utterly groundless and lacking in any evidential support whatsoever. Rather, we were of the impression that the Claimant's allegations were somewhat impromptu and a reaction to evidence which he perceived to be unsupportive of his case. Quite apart from the lack of any serious evidence to support his allegations, the Claimant was unable to explain why the Respondent would falsify these pieces of evidence which were, at best, related to a discrete aspect of the claim.

52. For the avoidance of any doubt, the Tribunal rejected any suggestion that the Respondent, any of its staff or any of its legal representatives falsified, doctored, tampered or interfered in anyway with the evidence before us.

53. For those reason, we found it more probable that the number of learning walks undertaken in November 2021 in respect of the Claimant's lessons were part of a wider issue of poor planning, which resulted in learning walks being duplicated across a number of classes and teachers. Whilst unfortunate, the excessive number of learning walks were not personal to the Claimant and not motivated by anything other than erroneous planning by the SLT.

54. On 18 November 2021, there was an incident in the Claimant's class with a student ('Pupil A'), who asked to leave the class. The Claimant reported at the time that Pupil A had presented a note which was out of date. When the Claimant refused to allow Pupil A to leave the lesson and questioned her in front of the class, she disobeyed him and left anyway.

55. It subsequently transpired that Pupil A was in fact due to attend a mental health support session (a music therapy session) but did not have the requisite note to do so. As such, she presented the Claimant with an out of date note for a music lesson. There was evidence that Pupil A had a number of special educational needs and was receiving regular mental health support during term time. There was also consistent evidence from the Respondent's witnesses that Pupil A's needs and vulnerabilities were regularly flagged up to staff in meetings and were also accessible via her digital school records. It followed that the Claimant knew or ought reasonable to have known that Pupil A was vulnerable and engaged with support services during the school day.

56. In addition, there was written and oral evidence that the timing of such session were changed from week to week, so that Pupil A did not continually miss out on or disrupt the same lesson (see, for example, the oral evidence of Mr Williams). As such, we accepted that staff would be informed in advance if a student had a therapy appointment during their lesson. On that basis, we found that it was probable that the Claimant knew or ought reasonably to have known that Pupil A was scheduled to attend a music therapy session during his maths class on 18 November 2021.

57. Shortly afterwards, the Respondent received a complaint from Pupil A's mother about the Claimant's treatment of her daughter on 18 November 2021. Mr Martin asked Mr Williams to investigate. The Claimant was asked to provide his account of what had happened, in addition to what had been reported by Pupil A. The matter was subsequently raised with the Claimant via his line manager, Mr Atwell and guidance was provided on how the manage such situations in the future.

58. However, Pupil A continued to report feeling uncomfortable in the Claimant's lessons and asked for a restorative meeting to resolve matters. As a result, Mr Williams approached the Claimant on 10 December 2021 and asked if he would attend a restorative meeting during the lunch break, taking time to explain that "*it was not a finger pointing or blaming meeting but an opportunity for both parties to say how they felt and then move on"* (see, for example, Mr William's statement at Paragraphs 14 – 17 and his contemporaneous note of the meeting of 10 December 2021, at [206] of the Bundle).

59. The restorative meeting with Pupil A, the Claimant and Mr Williams took place on 10 December 20121, as planned. It did not go well. In his note of the meeting, Mr Williams recorded the following (at [206] of the Bundle):

> The meeting started civily [sic] with me sat in between [the Claimant] and [Pupil A]. I explained that I would explain how she felt first and then [the Claimant would then explain how he felt. We would then agree a positive way to move forward.
>
> [Pupil A] was mature and calm. She explained how she felt at the time and how she felt now. She sad since the incident she found learning was not sticking and she wanted to move on and put this behind her.

> [The Claimant] did not respond well to this and became animated and agitated. At times he was sweating and wiping his brow. He accused I of lying and disrespect. He grabbed her book as evidence to show her she was learning. He clearly felt and stated that I was making insinuations about his teaching which she was clearly not.
>
> On two occasions I had to remind [the Claimant] of the objective of the meeting but he would not listen and remained defensive, and verbally aggressive.
>
> He twice said he did not want her in his class any more.
>
> [Pupil A] was visibly shaken and had attempted to answer back, I reminded her to listen and she remained much calmer than [the Claimant].
>
> When it was clear that [the Claimant] was not able to listen to [Pupil A] and would not moderate his behavior [sic] I was forced to end the meeting and I asked [Pupil A] to leave.
>
> After she left the room I said to [the Claimant] that his conduct was unacceptable and inappropriate and I would need to speak with him about this. I was not able to speak with him then and there as I was concerned for [Pupil A's] 's welfare.

60. The Tribunal reminded itself that Mr William's note was created shortly after the meeting. In addition, Mr Williams immediately raised what had happened with Mr Martin (speaking to him the same day). In his written evidence, Mr Martin recalled that feedback (at Paragraph 38 of his statement):

> The feedback I received from Julian Williams was that the restorative meeting did not go well and that this was due in large part to the behaviour of [the Claimant]. Julian Williams told me that it was one of the worst meetings he had attended in his career and it had been difficult for him to distinguish which attendee was the teacher and which was the child.

61. So concerned was Mr Williams by the Claimant's behaviour in the meeting with Pupil A, he drafted an email to send to the Claimant, upon which he sought Mr Martin's advice. The agreed email was sent to the Claimant on 13 December 2021 and merits setting out in full (at [163] – [164] of the Bundle):

> Following the attempted restorative meeting on Friday, I would like to express my disappointment with your approach to the meeting and the way in which you spoke to [Pupil A].
>
> As I explained to you at the start of the day and at the start of the meeting, the meeting was a restorative meeting to clear the air explain how both parties felt about the events a fortnight ago and move on. The meeting was requested by [Pupil A] as she still had some residual emotions following the event and wished to move on from it. The meeting was not intended to make accusations, put anyone on the spot or question either sides perspectives of the events. It was intended to listen to how each party had felt about the events and rebuild the working relationship.

> Unfortunately, you appeared to view this differently and came across as extremely defensive and somewhat aggressive. The comments you made about wanting [Pupil A] removed from your class were highly inappropriate and damaging. It seemed to me that you had failed to appreciate that you were the adult in this situation and that by listening to [Pupil A], rather than taking the more defensive and accusatory approach you adopted, you may have resolved the situation and improve the working relationship with her. Instead the situation has been significantly worsened and I was left visibly shaken by your tone and approach towards the meeting.
>
> While I can understand you may have felt aggrieved by what occurred on the day of the incident, I expected you to conduct yourself professionally and to appreciate the need to listen to [Pupil A] and accept how she felt about the situation.
>
> I think it is important you reflect upon this meeting and my points above and consider how you might adopt a more constructive approach to building relationships with your pupils in future.

62. The description of what happened in the meeting, specifically pertaining to the Claimant's behaviour, was wholly consistent with the note made by Mr Williams, the recollection of Mr Martin about what had been reported to him straight afterwards and Mr William's evidence to the Tribunal.

63. For those reasons, the Tribunal was able to place weight on the above records of what happened both before and during the restorative meeting. In particular, the concerns of both Mr Willaims and Mr Martin regarding the Claimant's approach to, and conduct during, the meeting were justified and clearly explained.

64. The Tribunal also recalled that, by the time of the restorative meting on 10 December 2021, the Claimant had already attended two previous restorative meetings (as detailed above). It was reasonable to conclude that he would have known what they were about, their purpose and what was expected of him as a participant. In addition, and as noted, Mr Williams had also taken time prior to the meeting with Pupil A to remind the Claimant of the purpose of such meetings.

65. Mr Williams explained that he sent the email above on 12 December 2021 (which was a Sunday) but delayed its delivery until Monday, 13 December 2021. As such, the email arrived in the Claimant's email inbox on 13 December 2021. However, unbeknownst to Mr Williams at the time he sent the email, the Claimant reported as sick on the morning of 13 December 2021.

66. The restorative meeting with Pupil A was not the only issue of significance which occurred on 10 December 2021.

67. Another teacher (Bharat Singh) emailed Mr Martin and Mr Williams on 10 December 2021, regarding complaints he had received from students in respect of two allegations against the Claimant, namely (at [157] – [158] of the Bundle):

67.1. On 10 December 2021, the Claimant had "*slammed"* students bags against a wall, damaging one student's water bottle (the complaint had been raised by the student's parents); and

67.2. The Claimant was picking on a student and making fun of her surname.

68. Mr Martin forwarded the email to Mr Attwood and copied in Mr Williams, asking to meet to discuss and noting that "*this is another incident that needs looking at"* (at [157] of the Bundle). In our judgment, these were further complaints which included allegations of the inappropriate reaction or behaviour of the Claimant towards students, which quite properly could not be ignored by the Respondent (not last because two of the allegations had been raised by parents).

69. In his oral evidence, the Claimant denied that he had thrown the bags or caused any damage to a water bottle. He also claimed to call all students by their surnames, said it took him time to learn students' names and accepted that he did call the student who made the complaint by her surname. This was at odds with the contemporaneous documents in evidence, with the dismissal letter of 7 February 2022 recording as follows (at [234] of the Bundle, emphasis added):

> One other student claims that you have picked on her by only referring to her using her surname, <u>which is different to how you refer to other members of your tutor group</u>.

70. There was also a complaint raised by another student that the Claimant had made derogatory comments about the fact that he lived in a flat (referred to in the same dismissal letter, at [234] of the Bundle). This allegation was denied by the Claimant.

71. On 14 December 2021, that day after receiving the email regarding the restorative meeting with Pupil A, the Claimant submitted a grievance against Mr Williams, alleging "*victimisation, bullying and discriminatory treatment*" (at [165] – [167] of the Bundle).

72. In response, Mr Martin agreed to meet with the Claimant later on 14 December 2021 to discuss the grievance and his concerns. Unbeknownst to Mr Martin and without his agreement, the Claimant recorded that meeting. The audio recording was relied upon the Claimant and in evidence. The Tribunal endeavoured to listen to it but it was a very poor recording (presumably because the mobile phone on which is was recorded was concealed) and we struggled to make out much of what was said. Whilst we had great difficulties identifying what was being said, we were able to discern some of what was said and get an impression of the tenor of the meeting.

73. What particularly came across from the recording of the meeting were the following:

73.1. That Mr Martin remained calm and professional throughout ; and

73.2. He repeatedly asked the Claimant if there was anything he could reflect upon regarding the restorative meeting that he might have done differently.

74. The fact that the Claimant felt the need to covertly record the meeting was noteworthy. He had yet to complete the first term of what was a new appointment. However, by 14 December 2021, he was attending a meeting with the head teacher where he was feeling sufficiently defensive and lacking in trust that he felt it necessary to secretly record it.

75. On 17 December 2021, Mr Martin emailed the Claimant, explained that Mr Shoker would be conducting the investigation into his grievance, that he was entitled to be accompanied to any investigation meeting and provided details of where the Claimant could access support and counselling (at [178] of the Bundle).

76. Thereafter, term ended for the Christmas break.

77. We reminded ourselves that the Claimant was within his probation period and had completed the first term of the academic year. What was noteworthy to the Tribunal (and no doubt to the Respondent at the time) were the number of incidents being raised against the Claimant from different quarters (from staff, from students and from parents). The Claimant's response to all of them was defensive and at times confrontational. At no point was the Claimant appearing to take on board the support and suggestions being offered. There appeared to be no contrition and no willingness to accept any responsibility or seek to change or moderate his behaviour or his approach.

78. The only common factor in all the issues which arose in the first term, detailed above, was the Claimant.

<u>The second term</u>

79. On 14 January 2022, the Claimant attended the grievance investigation meeting with Mr Shoker. As noted above, Mr Shoker was head of a different school altogether and had had no prior dealings with the Claimant. Also attending the meeting was a note taker and the minutes of the meeting were in evidence (at [178] – [190] of the Bundle).

80. In addition, and again without the other attendees knowledge or consent, the Claimant covertly recorded the meeting. That recording was also in evidence and the Tribunal faced the same difficulties in being able to discern what was being said and by whom. However, after spending sometime comparing the recording to the minutes, which were satisfied that the minutes were a broadly accurate and captured the salient points of what was said.

81. At 19:44 on 14 January 2022 (after the meeting had concluded), the Claimant emailed Mr Shoker, wherein he criticised the arrangements for, and length of, the meeting, raised issues with some of the questions asked

by Mr Shoker, alleged that some points of his grievance had not been addressed, asked a number of questions, including about Mr Martin's involvement in the process, and shared links to online articles about stereotyping black men (at [191] – 192] of the Bundle).

82. In his oral evidence, Mr Shoker stated that he did not feel the need to hold a further meeting with the Claimant, answer the questions he had posed or comment on the allegations made in the email. The Claimant sent Mr Shoker a further email on 25 January 2022 (at [442] of the Bundle), to which Mr Shoker did respond, reiterating that the scope of his investigations were limited to the grievance against Mr Williams (at [441] – 442]).

83. As part of his investigations, Mr Shoker was provided with a copy of Mr Williams' contemporaneous notes of the restorative meeting with Pupil A of 10 December 2021 (per Mr Williams' email to Mr Shoker of 21 January 2022, at [205] of the Bundle).

84. On 17 January 2022, Mr Martin invited the Claimant to his five month formal probationary meeting, scheduled for 24 January 2022. In that letter, Mr Martin detailed what would be discussed at the meeting and the options, depending upon the outcome of the meeting, as follows (at [193] of the Bundle):

> This meeting is intended to address any concerns, highlight strengths and weaknesses and suggest any appropriate support to improve performance and to give you an opportunity to respond. I will be reviewing your performance with regard to the following:-
>
> • concerns centre on teaching standards 7 and 8;
> • poor teacher student relationship;
> • not developing effective professional relationships with colleagues;
> • concerns have been raised by certain students in your tutor group and in your maths classes;
> • some staff in the humanities department have struggled to develop professional relationships with you.
>
> Depending on the outcome of our meeting, I will decide whether or not to:
>
> A. confirm your permanent/fixed term appointment;
> B. whether or not in exceptional circumstances, extend your probationary period by up to 6 months;
> C. terminate your employment giving 1 months' notice.

85. There followed an exchange of emails between the Claimant and Mr Martin, culminating in Mr Martin's letter of 31 January 2022, inviting the Claimant to a rearranged probation meeting on 7 February 2022, on the same terms as the invitation of 17 January 2022, save for one amendment (at [216] – [217] of the Bundle). As the probationary meeting had already been postponed once (at the Claimant's request), he was informed that "*the meeting will go ahead in your absence should you not attend"* (at [216]).

<u>The Claimant's resignation & dismissal</u>

86. On 1 February 2022, the Claimant's GP issued a fit note, stating that the Claimant was unfit for work for the period 1 February to 6 March 2022 by reason of anxiety and work-related stress (at [222] of the Bundle). On the same day, at 08:19, the Claimant sent an email to Mr Martin (and copied to HR), with his letter of resignation attached (at [218] – [221]).

87. The letter gave notice that the Claimant was resigning with effect from 1 May 2022. It set out the reasons for the Claimant's resignation, which included allegations of victimisation, poor handling of a number of issues (the racist comments by the pupil in September 2021, the conduct of Mr Rosenwould and the grievance against Mr Williams), racial stereotyping, retaliatory actions by Mr Martin, stress at work and a breach of the duty of care.

88. On 2 February 2022, Mr Martin acknowledged receipt of the Claimant's resignation letter. He informed the Claimant of the following (at [224] of the Bundle):

    88.1. Given the serious nature of the allegations contained within the resignation letter, it had been passed to Mr Webb "*who will be in contact with you shortly";* and

    88.2. It was still necessary to conduct the probationary review meeting on 7 February 2022 (and to let Mr Martin know if there was any reason he would be unable to attend).

89. The Claimant alleged in these proceedings that the Respondent refused to accept his resignation. We did not agree.

90. In our judgment, it was wholly appropriate for Mr Martin to continue with the probationary meeting and process. The Claimant would continued to be employed until at least 1 May 2022 (on the basis of his resignation). The Claimant's resignation did not change the concerns which had arisen in the course of his employment during the first term and which were referenced in the probationary meeting invite letter

91. If the Claimant had resigned with immediate effect, we could understand why it would not have been necessary to continue with the probationary process. However, as the Claimant was planning to remain in post until 1 May 2022, it was reasonable, proportionate and appropriate to conduct the probationary review meeting. Indeed, in light of the concerns identified at the time, it would have been irresponsible of the Respondent to allow the Claimant's employment to continue until 1 May 2022 without conducting the probationary meeting.

92. On that basis, the Tribunal did not find that the Respondent refused to accept the Claimant's resignation. Rather, it decided to proceed with the probationary meeting within the duration of the Claimant's remaining employment, which, for the reasons set out above, it was entitled to do.

93. On or around 4 February 2022, statements were taken from five students regarding comments made by the Claimant to them about other members

of staff, including allegations that "*the higher staff*" were bullying him and being racist (at [226] – [231] of the Bundle). The Claimant suggested in the course of the Tribunal hearing that these statements had been concocted or that the Respondent had exerted influence over the students to write them. We found no evidence to support that allegation and had no basis not to accept the letters as what they purported to be, namely written confirmation of information students were independently sharing with their teachers. Apart from being a serious allegation (not least because the Respondent included the letters in evidence in these proceedings), given the evidence that was already before the Respondent by this stage (and as detailed above) there was no reason or basis for the Respondent to try and embellish its case against the Claimant.

94. What the students were reporting about the Claimant's behaviour was also consistent with a message posted by him at 03:17 on 8 February 2022 to students in the STEM Club which he had been involved in (at [236] of the Bundle). He informed students that he had resigned, that the Stem Club was ending and that "*[Y]ou guys will need to speak to Mr Martin about what skills you have gained and how sad it is that your fantastic STEM opportunities will now come to an abrupt end*."

95. In response, Mr Martin agreed to block the Claimant from future access to the Respondent's IT systems (at [235] of the Bundle).

96. By the time he posted his message in the early hours of 8 February 2022, the Claimant had already been dismissed. On 7 February 2022, the probationary review meeting took place in his absence (the Claimant having been forewarned on 31 January 2022 that if he failed to attend, it would proceed without him). The Claimant did not attend the meeting. Save for sending in his fit notes and his letter of resignation effective on 1 February 2022, the Claimant had made no further contact with Mr Martin, neither asking him to rearrange the probation meeting or requesting any adjustments to it.

97. By a letter dated 7 February 2022, Mr Martin dismissed the Claimant with effective from 8 February 2022, with a month's pay in lieu of notice (at [233] – [234] of the Bundle). The letter set out Mr Martin's reasons for dismissal (which related to the Claimant's poor relationships with students and his unsubstantiated allegations against colleagues). For those reasons, Mr Martin concluded as follows (at [234]):

> In conclusion as you did not attend today's meeting in order to provide either a response in person or a written response to any of the above concerns, I have determined that you have failed your probationary review meeting. Do you not agree with me that it is essential that any teacher should maintain professional relationships with fellow colleagues and given the evidence you have demonstrated the complete opposite? By discussing with students and suggesting to them that your employer is somewhat racist is unacceptable for any adult to share with young impressionable people especially as we see no evidence to support your unfounded allegations. By your actions you are bringing your employer into disrepute and now this is a complete breakdown in trust and confidence.

98. Mr Martin also asked the Claimant to arrange the return of school property and the collection of any of his personal items.

99. In our judgment, the reasons relied upon by Mr Martin were supported by evidence and entirely open to him, as was the consequential decision to terminate the Claimant's employment during his probationary period. In addition, whilst the Claimant had tendered his resignation which was scheduled to take effect on 1 May 2022, it was clearly open to the Respondent to dismiss him before then, given the concerns that had arisen and the conclusions set out in Mr Martin's letter of 7 February 2022.

Post-termination

100. The Claimant commenced ACAS Early Conciliation on 8 February 2022. He also sent emails to Mr Martin on 9 February 2022 (at [237] – [239] and [240] of the Bundle) The Claimant made allegations of racial discrimination, breach of contract and victimisation. Mr Martin responded by email at 06:22 on 11 February 2022, refuted the allegations, re-stated that the only reason the Claimant failed his probationary assessment was because "*your performance has been unsatisfactory"*, reminded him to return the school property in his possession and concluded as follows (at [242]):

> I have decided that I will not be engaging in any further correspondence with you.
>
> Can I respectively ask you not send any further correspondence to me as this will not be acknowledged or responded to.

101. The Claimant ignored that final request. At 07:48 on 11 February 2022, he sent another email to Mr Martin, repeating his allegations and making others (at [241] of the Bundle).

102. On 21 February 2022, the Claimant sought to raise a grievance against Mr Rosenwould, Ms Yasmin and Ms Zaman, regarding the events of September 2021 and the subsequent restorative meeting of 12 October 2021, by sending a letter to Mr Martin (at [243] – [246] of the Bundle).

103. On 23 February 2022, Mr Martin emailed the Claimant, after it came to light that he had asked a member of staff to write him a job reference. Mr Martin informed the Claimant that any requests for a reference had to come to him. In addition, he asked the Claimant to return the school property in his possession, namely a laptop, ID badge and keys, by 4 March 2022 (at [247] of the Bundle).

104. On 25 February 2022, the Respondent paid the Claimant his final salary of £3,047.16 (at [303] of the Bundle). That figure was made up of the following elements (net of tax and national insurance):

    104.1. Eight days employment (1 – 8 February 2022) = £593.15

    104.2. One months pay in lieu of notice = £2454.01

105. The payment in lieu of notice was per the dismissal letter of 7 February 2022 and as permitted under the Claimant's contract of employment (Paragraph 12.3, at [84] of the Bundle).

106. On 28 February 2022, the Claimant emailed Mr Shoker, listing a number of questions which were, in effect, chasing his decision on the grievance (at [251] of the Bundle). Mr Shoker responded on 4 March 2022, as follows (at [250]):

> Thank you for your patience.
>
> The investigation was not stopped at any point. However, overlapping half term breaks at ATAM and KSA and other commitments from my part caused a delay.
>
> The investigation has now been concluded. I will now compile my report with my conclusion and any recommendations. This will be shared with you by the 14th March 2022.

107. On 6 March 2022, the Claimant emailed the academy's governors about Mr Martin (at [252] – [254] of the Bundle). In it, he made a number of allegations against Mr Martin, Mr Atwell, Mr Williams, Ms Zaman, Ms Yasmin and Ms Bhabra.

108. On 14 March 2022, Mr Shoker published his investigation into the Claimant's grievance of 14 December 2021 against Mr Williams (at [256] – [263] of the Bundle). The report set out the nature of the grievance, the extent of the investigation (including who was interviewed) and the findings made by Mr Shoker. In respect of the central allegations that Mr Williams had victimised, bullied and racially discriminated the Claimant, Mr Shoker concluded that all three were unfounded.

109. Despite not upholding any aspects of the Claimant's grievance against Mr Williams, Mr Shoker chose to make a number of recommendations in any event, as follows (at [263] of the Bundle):

> 1. Although no longer employed at the school, [the Claimant] would benefit from a safeguarding refresher on KCSIE 2021 and general safeguarding practices. He allowed [Pupil A] to leave the classroom without confirmation of where she was going and did not chase this when she failed to return as requested. This in itself possess a safeguarding risk as the student's location was unknown
>
> 2. The school behaviour system to be followed consistently to address student behaviour
>
> 3. The pastoral/safeguarding team to inform staff of any student meetings via email and/or written passes to ensure effective communication and safeguarding
>
> 4. The school to ensure all learning walks are planned where appropriate and that staff wellbeing is considered when deciding upon multiple lesson visits

5. To ensure staff are consulted regarding any meetings to obtain assurances on times and requirements of the meeting

6. To provide staff with training on restorative practices to avoid future incidents

7. Staff refresher on racial abuse/discrimination to aid their knowledge and understanding

110. It was entirely a matter for Mr Shoker to make the recommendations that he did and it was no part of our task in determining this claim to comment on those recommendations or draw any inferences from them. What we were entitled to consider and making findings on was the manner, extent and procedure adopted by Mr Shoker in undertaking his investigation.

111. In our judgment, the report demonstrated a fair, open minded and detailed grievance investigation, which reached conclusions based on those investigations and contained clear and cogent reasons for Mr Shoker's outcomes. In addition, Mr Shoker identified lessons that could be learned by all, notwithstanding that the grievances themselves were not upheld. In addition, it was not lost on the Tribunal that the grievance process was continued and competed notwithstanding the Claimant's dismissal. All those facts led us to conclude that the grievance process was fair, it was approached conscientiously by the Respondent and the concerns raised by the Claimant against Mr Williams were taken seriously.

112. On 15 March 2022, the Claimant emailed Mr Shoker in response to his investigation report (at [264] – [265] of the Bundle). He raised a number of concerns and criticisms regarding the investigation and subsequent findings. He alleged that Mr Shoker was "*highly prejudiced in your comments.*" He also made a request for disclosure of documents relating to Mr Shoker's investigation.

113. On 22 March 2022, Ms Binder Gill (Senior HR Manager) emailed the Claimant in response to his emails to the board of governors of 6 March 2022 and his grievance of 21 February 2022 (at [270] – [272] of the Bundle). In it, she informed the Claimant of the following:

113.1. A meeting was proposed for 29 March 2022, where the Claimant could discussed his allegations which he made to the governors regarding Mr Martin and Mr Wiilliams in particular;

113.2. At the same meeting, the Claimant could raise his concerns about Mr Shoker's grievance report (notwithstanding that, as a former employee, he did not have right of appeal);

113.3. Confirmation that Mr Martin, as head teacher, was solely responsible for approving and issuing employment references;

113.4. The grievance of 21 February 2022 fell outside the three month time limit in the Grievance Policy and would not, therefore, be addressed; and

113.5. The information requested regarding Mr Shoker's investigation was exempt from disclosure under data protection laws and would not therefore be disclosed.

114. The Claimant responded on 23 March 2022, repeated a number of allegations, made some new ones, cited a number of legal provisions that he relied upon and stated that he was unavailable to meet on 29 March 2022 (at [269] – [270] of the Bundle). There followed a further exchange of emails between the Claimant and Ms Gill (at [266] – [269]), culminating with a meeting being proposed for 5 April 2022.

115. The fact that the Respondent not only agreed to set up a meeting with the Claimant to explore and discuss his complaints against Mr Martin and Mr Williams and his reasons for disagreeing with Mr Shoker's grievance investigation report, at a time when he was no longer employed, but also agreed to rearrange it to a date that was convenient to the Claimant, was wholly inconsistent with the Claimant's characterisation of the Respondent. He had already been dismissed and yet they were continuing to engage with his complaints and concerns.

116. Despite that, the Claimant took the view that Ms Gill was bullying him *"by your constant deadline to give a time for a meeting"* and continued as follows (per his email of 29 March 2022, at [276] of the Bundle),

> I was clear in my last email. I would only agree to meet you for any other matters on one condition. And that is the condition that my grievance raised in February 2021 will now be heard formally and you would follow your own policy in doing so. The behaviour of [Mr Rosenwould], [Ms Zaman] and [Ms Yasmin] towards me were directly linked to an evidence [Mr Martin] used to terminate my contract. The evidence was based on falsehood and I should not have lost my job on false evidence. Apology cannot bring food to my table or remedy a loss of my livelihood. Like I have said before, if that condition is not met, then I cannot meet with you unfortunately.

117. Ms Gill responded later the same morning, as follows (at [275] of the Bundle, emphasis retained):

> In the spirit of addressing your issues expediently and End of Term coming up, this has been the reason to offer you an opportunity to attend the proposed meeting as soon as possible.
>
> At the meeting., we can explore and consider your claim as stated below ***"The behaviour of [Mr Rosenwould], [Ms Zaman] and [Ms Yemen] towards me were directly linked to an evidence [Mr Martin] used to terminate my contract"***
>
> For the record, we will have been very reasonable in attempting to address your concerns:

- Given you 3 opportunities to attend a face to face meeting allowing you to be accompanied by a tu rep or work companion;
- Proposed holding a meeting at a neutral venue
- Proposed holding the meeting with several dates being offered
- Proposed holding meeting nearer to where you live
- Arranged for an independent officer (who does not work at ATAM) to conduct the meeting
- Informed you of a number of outcomes that could follow (some which could be in your favour).

If it is your intention not to attend (unless on your terms) then I suggest you seek legal/professional advice before taking a final decision.

118. In the course of their email exchange on 29 March 2022, Ms Gill reiterated that the Claimant's grievance of 21 February 2022 was lodged out of time (at [266] of the Bundle).

119. Despite being told that, as he was no longer an employee of the Respondent he was not entitled to the appeal provisions under the Grievance Policy (as the same only applied to employees), the Claimant submitted an appeal against Mr Shoker's grievance outcome on 2 April 2022 (at [277] – [280] of the Bundle).

120. On 7 April 2022, Mr Martin emailed the Claimant, asked him to stop contacting the Respondent and if he ignored the request "*we will have no hesitation in reporting this matter to the Police citing a case of harassment"* (at [281] – [282] of the Bundle). The Claimant immediately ignored Mr Martin's request, responding to the email a little over an hour later (at [281]).

121. On 29 April 2022, Mr Martin wrote to the Claimant about the school property which he had still failed to return. He gave the Claimant until 12 May 2022 to return the laptop, keys and ID badge, failing which steps would be taken to recover their costs of £550. The Claimant responded by email on 4 May 2022 (at [284] – [285]). In his oral evidence, the Claimant confirmed that he still has the school property and has not returned it.

122. As noted above, the Claimant presented his claim to the Tribunal on 15 May 2022.

<u>The inference issue</u>

123. The Tribunal were provided with a list of staff who started their employment with the Respondent on 31 August 2021 (at [331] of the Bundle). We were also provided with a list of staff who left the Respondent's employment between 1 January 2021 and 30 November 2022, which included their ethnicity (at [332]).

124. We were invited by the Claimant, because other black staff had left the Respondent's employment between January 2021 and November 2022, to infer that the treatment he alleged had happened to him had also been

meted out to others (see, for example, per Paragraphs 130 – 132 of the Claimant's statement).

125. The Tribunal was unable to draw such an inference. There was no evidence to support the Claimant's allegations. We received no evidence from those other members of staff whom the Claimant alleged had been racially discriminated against by the Respondent. There was no evidence of any attempts by the Claimant to contact them or ask them to provide a statement.

126. In the absence of any corroborative evidence, we were left with simple conjecture and allegation from the Claimant. That was insufficient to permit any inference to be drawn, as contended for by the Claimant or otherwise.

<u>The pension issue</u>

127. There was a discrete issue regarding contributions to the Claimant's pension, which formed part of his breach of contract complaint.

128. The Claimant was a member of the Teachers' Pensions Scheme ('TPS'). During his employment with the Respondent, contributions were taken from his monthly pay toward his pension. Contributions were also made by the Respondent, as his employer. The Respondent's payroll was managed by a payroll company called Baxters (per Paragraph 5 of Satvinder Basra's statement).

129. Each month, the employee and employer pension contributions for all teachers were paid by Baxters to the TPS (per Paragraph 6 of Mr Basra statement and [7] – [12] of the Supplementary Bundle). Those contributions were also subject to an annual auditing process (per Paragraph 7 of Mr Basra's statement and [16] – [19]).

130. On 9 November 2022, the Claimant reported that the TPS did not have his service history with the Respondent or its pension contributions recorded (at [318] of the Bundle). Mr Basra made enquiries of Baxters and, in effect, discovered that due to an error when the Claimant's employment began with the Respondent, his service history was not properly recorded. The error was rectified by 7 December 2022 and the Claimant's service history fully updated (at [315] – [317]).

131. The Claimant alleged that, in addition to not properly recording his service history, the Respondent (via Baxters) also failed to make the appropriate contributions to the TPS. What was clear from the email correspondence and the documentary evidence was that the remittances to the Claimant's pension had been made at the relevant time. The error only pertained to his service history.

132. The Claimant argued that service history and remittances were the same thing. The Tribunal found that they were not. There was no evidence that the financial contributions, both from the Claimant and the Respondent, were not paid and allocated to the Claimant's specific plan within the

TPS. The evidence pointed in the opposite direction – the remittances were made on time and allocated appropriately.

133. As such, we found that whilst there had been an error in recording the Claimant's employment with the Respondent in his TPS service history, it was rectified by 7 December 2022. There had been no errors with the payment of the relevant employer and employee contributions to the TPS during the Claimant's employment with the Respondent.

134. The error with the Claimant's service history would have had no bearing on the value of the Claimant's pension. That value derived from the remittances and they were all paid on time and in full.

135. We reached those conclusions from the clear and cogent written and oral evidence of Mr Basra and the documents in evidence, including those in the Supplementary Bundle. The Claimant alleged in the course of the hearing that all the documents in the Supplementary Bundle were either forgeries or had been doctored. He provided nothing to substantiate those very serious allegations. They were nothing more than bare assertions and the Tribunal had no basis whatsoever to not accept the documents for what they clearly purported to be.

Analysis & conclusions

136. We applied our findings of fact to the matters set out in the List of Issues, save that we determined the question of time limits last.

Wrongful dismissal

137. As found above, the Respondent's payment to the Claimant on 25 February 2022 qualified as a payment in lieu of notice as per the Claimant's contract. In addition, by terminating the Claimant's contract on 8 February 2022 with immediate effect and making a payment equivalent to one month's pay in lieu of notice, the Respondent acted in accordance with the terms of the Claimant's contract of employment.

138. The Claimant was paid a sum equivalent to the notice period he was entitled to and in a manner permitted under his contract.

139. It followed that the Claimant was not wrongfully dismissed and the complaint was dismissed.

Breach of contract

Did the policies relied upon have contractual status?

140. The Claimant relied upon two policies, which he said had contractual status – the Probation Policy (at [124] – [131] of the Bundle) and the Grievance Policy and Procedure (at [110] – [123]).

141. The Claimant's contract referred to the probationary period (Clause 4, at [81] of the Bundle). Nowhere did the contract make any reference to the

Probation Policy. If it was intended for the provisions of the Probation Policy to form part of the Claimant's contract of employment, it was reasonable to expect it to have been referred to in some form, either within Clause 4 or elsewhere.

142. That conclusion was reinforced by the provisions at Clause 18 of the contract, which referred to disciplinary procedures (at [85] of the Bundle). That clause expressly stated that the disciplinary procedure "*is in accordance with the policy adopted by the Trust from time to time.*" Had the Respondent intended to afford contractual status to the Probation Policy (or at least that part of it concerning procedure), it was reasonable to conclude that it would have adopted similar wording at Clause 4 as it had adopted at Clause 18. That it had chosen not to led us to conclude that the Probation Policy was not intended to be part of the Claimant's contract and did not have contractual effect.

143. In contrast, Clause 17 of the contract was titled "*Grievance procedures*" and stated as follows (at [85] of the Bundle):

> The grievance procedure is in accordance with the policy adopted by the Trust from time to time. A copy is available from the Headteacher on request. If you wish to submit a grievance, it should be submitted in writing and addressed to the HR Manager at the Trust.

144. Given the clear wording of Clause 17 and adopting its ordinary meaning, we concluded that the procedures for dealing with grievances, as detailed in the Grievance Policy and Procedure, were part of the Claimant's contractual terms. That did not, however, extend to the policy aspects of the Grievance Policy and Procedures (again, on an ordinary reading of Clause 17). If the Respondent wanted to include the whole of the Grievance Policy and Procedure into the contract, it could have said so. Instead, it limited the contractual remit to the grievance procedures.

145. As noted above, the Tribunal found that, notwithstanding the Claimant's arguments to the contrary, the relevant policies in force at the time of his employment were to be found from [88] – [134] of the Bundle. In particular, the Grievance Policy and Procedure relied upon by the Claimant (at [560] – [573], which he claimed had been sent to him) stated on its face that it was scheduled for review in 2021. The Grievance Policy and Procedure at [110] recorded that it was approved on 20 January 2021 and due for review on 20 January 2023. It followed that it was the procedure contained within the document at [110] – [123] which was incorporated into the Claimant's contract.

<u>The alleged breaches of contract</u>

146. The Claimant detailed 10 alleged breaches of contract. We considered them in the order that they appeared in the List of Issues (at Paragraph 4 b). The alleged breaches are in italics.

David Martin did not hold a meeting with the Claimant during his first week of employment to agree targets under the Probation Policy.

147. Whilst it was not in dispute that Mr Martin did not meet with the Claimant to set targets, this was not a breach of the Claimant's contract, for two reasons. First, the Probation Policy was not contractual. Second, in any event, it was not for Mr Martin to meet with the Claimant to set targets but Mr Atwell, as the Claimant's line manager.

David Martin did not hold a second month review with the Claimant under the Probation Policy.

148. Again, it was not in dispute that Mr Martin did not hold a second month review meeting with the Claimant. However, for the same reasons as above, this was not a breach of the Claimant's contract. The Probation Policy was not contractual and it was for Mr Atwell, not Mr Martin, to undertake the second month meeting.

The Respondent failed to acknowledge the Claimant's grievance in October 2021 and did not resolve it.

149. For the reason set out above, the Tribunal found that the Claimant did not submit a grievance in October 2021. As such, there was no failure on the part of the Respondent to either acknowledge or resolve it at that time.

Sukhdev Shoker, the investigating officer for the Claimant's 14 December 2021 grievance, failed to answer questions that had been posed by the Claimant during the grievance meeting on 14 January 2022 and via email on 25 January 2022 and 28 February 2022. The questions related to discriminatory practices in the organisation and how Sukhdev Shoker conducted the investigation.

150. As the Tribunal found, Mr Shoker concluded that the questions posed by the Claimant were outside the remit of the grievance he was investigating. In addition, as was clear from the minutes of Mr Shoker's meeting with the Claimant, there had been ample time to cover all the relevant matters and it was reasonable for Mr Shoker to conclude that he had sufficient information.

151. The manner in which Mr Shoker conducted the meeting and the conclusions he reached regarding the Claimant's additional questions were not in breach of the relevant provisions of the Grievance Policy and Procedure (per Sections 10.4 and 10.5, at [117] - [118] of the Bundle).

152. As such, there was no breach of the Claimant's contract.

In respect of the grievance submitted on 14 December 2021, the Respondent did not hold an investigation meeting with the Claimant until 14 January 2022.

153. Whilst factually correct, the requirement under the Grievance Policy and Procedure was as follows (Section 10.5, at [118] of the Bundle):

> On receipt of the grievance, the Investigation Officer will arrange a meeting with the employee, within a reasonable period of time…

154. Two factors impacted upon when Mr Shoker was able to arrange his meeting with the Claimant. First, there was the Christmas break (wherein the school was closed and staff were on holiday for a two week period). Second, Mr Shoker contracted Covid. This was relevant as he had decided that a face to face meeting with the Claimant was appropriate.

155. In the circumstances, the Tribunal concluded that the meeting with the Claimant was convened within a reasonable period of time, as required under the Grievance Policy and Procedure.

156. As such, there was no breach of the Claimant's contract.

Sukhdev Shoker conducted the grievance investigation meeting on 14 January 2022 as though it was a disciplinary procedure against the Claimant.

157. The Claimant was afforded the opportunity to set out the grounds of his grievance and the allegations he was making against Mr Williams. Mr Shoker, as investigating officer, was entitled to question and query those allegations as part of his investigation. His role was not to simply accept what the Claimant was alleging.

158. In our judgment, the manner in which Mr Shoker questioned and challenged the Claimant was consistent with his role of investigating the grievance and reaching a conclusion. He did not conduct the meeting on 14 January 2022 as though it were a disciplinary against the Claimant. Rather, he investigated the grievance, which included questioning all the witnesses he spoke to.

159. Mr Shoker acted in accordance with the Grievance Policy and Procedure and there was no breach of the Claimant's contract.

On 14 January 2022, Sukhdev Shoker repeated questions to the Claimant that David Martin had already asked on 14 December 2021. The Claimant alleges that this suggests Sukhdev Shoker was biased and that the grievance outcome was predetermined.

160. There was nothing untoward or suspicious in Mr Martin and Mr Shoker asking the same or similar questions of the Claimant. The topic being discussed at both meetings was the same, namely the Claimant's grievance against Mr Williams.

161. Mr Martin met with the Claimant upon receipt of the grievance. Mr Shoker met with the Claimant as part of his investigation of the grievance. It was to be expected that they would be likely to cover similar ground with the Claimant.

162. In addition, Mr Shoker was acting as an independent investigator. It was quite proper that he should ask any question he wished, including any already asked of the Claimant by Mr Martin. To do otherwise could have compromised the extent of his investigation. In any event, it was not

suggested that the Claimant was not given a full opportunity on both occasions to answer the questions asked of him.

163. In their evidence to the Tribunal, both Mr Martin and Mr Shoker confirmed that they had not colluded. Mr Shoker was clear that he had approached his task with an open mind. In our judgment, there was an obvious and simple explanation. The Claimant was being asked about the same issue and it was to be expected that some questions would be replicated.

164. No other evidence was presented or relied upon by the Claimant to support this allegation, save that both Mr Martin and Mr Shoker had asked the same or similar questions. As such, we concluded that the fact that the Claimant was asked such questions did not prove that there was collusion or that Mr Shoker was biased or that the outcome of the grievance was premeditated.

165. It followed that there was no breach of the Claimant's contract of employment.

David Martin terminated the Claimant's contract on 8 February 2022, citing a probationary procedure in the Claimant's absence.

166. The Claimant did not attend the probationary meeting on 7 February 2022. However, his contract was not terminated because of that non-attendance. The reasons for his dismissal were clearly set out in the letter of 7 February 2022.

167. In addition, Mr Martin had forewarned the Claimant on 31 January 2022 that the meeting would proceed in his absence, if he did not attend.

168. For those reasons, there was no breach of the Probation Policy, which, in any event and as explained above, was not part of the Claimant's contract (save for the provision pertaining the length of the probationary period).

169. It follows, therefore, that there was no breach of contract.

The Respondent failed to acknowledge the Claimant's grievance submitted on 21 February 2022 and did not resolve this, despite the Claimant having raised the same complaint informally with David Martin and HR in October 2021.

170. This allegation was factually incorrect. Contrary to what the Claimant claimed, the Respondent did acknowledge his grievance of 21 February 2022 but informed him on at least two occasions that it had been presented out of time and would not be considered (by Ms Gill on 22 March 2022 and again on 29 March 2022, at [270] – [272] and [266] respectively of the Bundle).

171. That decision was consistent with the Grievance Policy and Procedure, which stated as follows (Paragraph 10.2, at [117] of the Bundle):

A grievance should be raised as soon as possible after an event or incident but no later than 3 months of the incident taking place.

172. Since the February 2022 grievance was presented out of time (as it related to alleged incidents occurring in September and October 2021), the Respondent was entitled, under its Grievance Policy and Procedure not to deal with it.

173. In addition, whilst the Claimant did raise concerns at the time, they were addressed by way of a restorative meeting in October 2021. As we found, the Claimant did not raise a grievance at that time nor at any time prior to 21 February 2022 (regarding Ms Yasmin and Ms Zaman). Those involved (and the Respondent) were entitled to conclude that the matter had been resolved following the restorative meeting.

174. The Tribunal noted that Section 15 of the Grievance Policy and Procedure specifically addressed the circumstance where a grievance was raised by an employee who had left the organisation (at [121] of the Bundle). In those circumstances, "*the ACAS Code of Practice should be followed…HR advice should be sought."* A link to the ACAS Code was also provided.[1]

175. We noted the following:

175.1. Paragraph 32 of the ACAS Code of Practice requires employees to raise their grievance "*without unreasonable delay"*; and

175.2. Ms Gill, who made the decision not to investigate and decide the February 2022 grievance was a Senior HR Manager.

176. In our judgment, there had been unreasonable delay in the Claimant's decision to wait until 21 February 2022 to raise a grievance about events which had occurred in September and October 2021. There had also been clear involvement of (and advice from) the Respondent's HR department, in the guise of Ms Gill.

177. As such, had the February 2022 grievance been considered under the provisions for former employees (which the Claimant was at that point), the decision not to progress it remained in accordance with the Grievance Policy and Procedure.

178. For those reasons, the Respondent's decision not to determine the Claimant's grievance of 21 February 2022 was in accordance with its own Grievance Policy and Procedure. There was, therefore, no breach of the Claimant's contract of employment.

179. In any event, the alleged breach of contract occurred after the termination of the Claimant's employment and, by reason of the 1994 Order, the Tribunal did not have jurisdiction to determine it.

[1] www.acas.org.uk

In respect of the grievance submitted on 14 December 2021, the Claimant did not receive an outcome until after his employment had been terminated. The grievance outcome was not provided until 14 March 2022.

180. As detailed above, Mr Shuker's grievance outcome report was not provided until 14 March 2022. He had met with the Claimant on 14 January 2022. In addition, Mr Shoker met with Mr Atwell, Mr Martin and Mr Williams (per [258] of the Bundle).

181. On 4 March 2022, Mr Shoker also indicted to the Claimant that delay had been caused by the overlapping half term breaks between his academy and Atam Academy.

182. The Grievance Policy and Procedure provided the following, relevant guidance on time frames (Paragraph 10.5, at [118], emphasis added)

> Following the investigation, a report will be produced and a recommendation made to the Headteacher/CEO. <u>The employee will be notified of the outcome within a reasonable period of time.</u>

183. In our judgment, the Claimant was provided with the outcome of his grievance within a reasonable period of time, having regard to the number of witnesses interviewed by Mr Shoker and the issues raised by him on 4 March 2022 that caused some delay.

184. It followed that Mr Shoker had provided his grievance outcome in accordance with the Grievance Policy and Procedure and, to the extent it was incorporated, there was no breach of the Claimant's contract.

In addition, did the Respondent breach the Claimant's contract by failing to remit his pension contributions to the Teachers' Pension Scheme during his employment?

185. The Tribunal found, as explained above, that the Respondent did properly and correctly remit both it's and the Claimant's pension contributions during his employment. The error that occurred related to the Claimant's service history, which was distinct and separate from the pension remittances.

186. As such, the allegation was not factually made out and there was no breach of contract.

<u>Breach of contract: conclusions</u>

187. For the reasons detailed above, there were no breaches of the Claimant's contract. The alleged breaches either did not happen as claimed or were not contractual breaches.

188. As there were no breaches, the complaints of breach of contract were not made and were dismissed.

Direct discrimination on grounds of race

189. The Claimant relied upon 14 instances of alleged treatment, which he said constituted less favourable treatment. His comparators were the staff who started on 31 August 2021 with him, all of him he said were either of White or Asian ethnicity (listed at [405] of the Bundle and per Paragraphs 78 – 80 of the Claimant's statement).

190. We began by considering the alleged treatment relied upon by the Claimant and then went on to determine whether the Claimant was treated less favourable because of his race, as alleged (the alleged treatment are in italics and taken from the List of Issues).

The alleged treatment

191. *In October 2021, after the Claimant reported to David Martin that a Year 9 pupil had shouted at him "Go back to your country, Nigeria" ("the Incident"), David Martin did not fulfil his duty of care towards the Claimant. David Martin did not speak to the Claimant about the Incident.*

191.1. As we have found, the incident with the student was addressed by way of a restorative meeting between the Claimant, the student and Mr Isaacs. Mr Martin was aware of what had occurred and it was managed at the time in a way which the Respondent deemed appropriate. Indeed, there was no evidence of the Claimant raising any objections to the approach taken, asking to speak to Mr Martin about the issue or how it was handled or raising any concerns in the aftermath of the restorative meeting.

191.2. As such, there was no breach of any duty of care by Mr Martin or the Respondent and if Mr Martin did not speak to the Claimant about the incident, it was because he chose to manage it via Mr Isaacs, an approach which he was entitled to adopt and was clearly open to him.

191.3. It followed that there was no less favourable treatment.

192. *The Claimant asked for the pupil involved in the Incident to be removed from his class but David Martin, Christian Atwell and Julian Williams did not facilitate this.*

192.1. We repeat our findings as to how the Resppndent chose to handle the matter and manage it going forward. The student may not have been removed from the Claimant's class but did issue an apology and, following the Respondent's actions in holding a restorative meeting, no further racist or derogatory comments by the student toward the Claimant were reported.

192.2. Again, the Tribunal found that matter was dealt with appropriately and professionally by the Respondent. There was no less favourable treatment.

193. *Nobody at the Respondent, including David Martin, Christian Atwell and Julian Williams offered any mental health support or assistance to the Claimant following the Incident.*

193.1. It was not suggested that the Claimant ever asked for any support, regarding his mental health or otherwise, following the incident and the restorative meeting.

193.2. In addition, there was nothing inherent in what had happened that required or obligated the Respondent to enquire about the Claimant's mental health. The restorative meeting appeared to go well. The student's behaviour was addressed and moderated. The Claimant did not raise any issue with how the matter was managed at the time.

193.3. Indeed, during his grievance investigation meeting with Mr Shoker on 14 January 2022, the Claimant, in comparing it to the restorative meeting with Pupil A and Mr Williams, appeared to confirm the success of the meeting with the student and Mr Isaacs, as follows ([at 182] of the Bundle):

> I have attended restorative meeting with Mr Issacs when a student told to go back my country and it [went] well, and I have good relationship with this student.

193.4. As such, whilst there were no enquiries about the Claimant's mental health at the time or the incident or afterwards, there was no less favourable treatment.

194. *Between September 2021 and December 2021 Julian Williams instructed Christian Atwell to refer to the Claimant as an "angry, aggressive, and confrontational person". The Claimant alleges that this was a stereotype based on his race.*

194.1. This allegation was not made out. Mr Atwell denied ever referring to the Claimant as an "*angry, aggressive and confrontational person".* Rather, a number of witnesses recalled how they suggested to the Claimant that his behaviour and demeanour may, on occasions, come across as aggressive to the students. That was a very different observation and made within the context of the how the students, as children, may perceive some of the Claimant's behaviours (and considered further, below).

194.2. Both Mr Williams and Mr Atwell denied in their evidence to the Tribunal that there were any instructions as alleged or at all. In addition, there was simply no evidence to suggest that Mr Atwell was in any way instructed by Mr Williams to refer the Claimant as alleged or in any other stereotypical way.

195. *On 14 December 2021, Julian Williams sent the Claimant an email in which he called the Claimant "aggressive". The Claimant alleges that this was a stereotype based on his race.*

195.1. This allegation was a reference to the email of 13 December 2021, sent by Mr Williams to the Claimant following the restorative meting with Pupil A (at [163] – [164] of the Bundle, and reproduced in full, above).

195.2. As can be seen from the email, Mr Williams did not call the Claimant aggressive. Rather, he believed that the Claimant "*came across as…somewhat aggressive*", before going on to explain why.

195.3. The context was paramount. This was a restorative meeting with someone who was not only a child but one with a number of complex vulnerabilities. On any ordinary and reasonable reading of his email, Mr Williams was clearly referring to what Pupil A (and his own) perceptions were of the Claimant's behaviour. As Mr Williams said in his oral evidence, those perceptions had nothing at all to do with the Claimant's race and everything to do with his behaviour in the meeting.

195.4. Mr Williams did not call the Claimant aggressive and what he did set out in his email of 13 December 2021 was not a stereotype based upon race.

196. *During a meeting on 14 December 2021 David Martin made it clear to the Claimant that he believed and supported Julian Williams in relation to the grievance that the Claimant had submitted against Mr Williams.*

196.1. In his written evidence, Mr Martin reiterated the view that he had held at the time, namely that he had confidence in Mr Williams' ability to chair restorative meetings (at Paragraph 41 of his statement).

196.2. In addition, Mr Martin noted that many of the behaviours which Mr Williams had identified from the restorative meeting were witnessed by Mr Martin in his meeting with the Claimant on 14 December 2021 (at Paragraph 41 of his statement).

196.3. Mr Martin's confidence in Mr Williams' abilities to chair restorative meetings was open to him and a reasonable, professional judgment for him to hold. Mr Martin was also entitled to form his own view of the Claimant's behaviour during his meeting with him on 14 December 2021 and draw comparisons between what he witnessed first hand and what was being reported to him by Mr Williams. To do otherwise would have been odd, given Mr Martin's position as head teacher, responsible for the leadership and management of the teaching staff at the Atam Academy.

196.4. To that end, Mr Martin acted properly and reasonably in the circumstances. If the implication was that Mr Martin had pre-judged the outcome of the Claimant's grievance, that appeared to be at odds with his decision to bring in Mr Shoker from an entirely different academy to investigate and determine the grievance.

196.5. It was not possible to discern any pre-judging or bias on Mr Martin's part from the covert recording of the 14 December 2021 meeting. However, when the Tribunal considered Mr Martin's actions in the aftermath of the meeting (namely, appointing Mr Shoker to investigate the Claimant's grievance), we concluded that that he had approached the Claimant's grievance with an open mind and wanted to ensure that the process would be fair.

197. *During a meeting on 14 December 2021, David Martin said to the Claimant words to the effect of: "Festus, you gesticulate when you speak and this is seen as you being aggressive."*

197.1. The Tribunal were able to pick up from the recording of the 14 December 2021 meeting that part of the conversation did touch upon the Claimant's tendency to gesticulate and how that might be perceived by others, especially children. Mr Martyin was heard to comment that it could be perceived as forceful (at 05:20 on the recording).

197.2. In his oral evidence, Mr Martin recalled talking to the Claimant about his gesticulating but could not recall exactly what had been said.

197.3. As such, the Tribunal were able to conclude that Mr Martin did raise with the Claimant in the meeting on 14 December 2021 that gesticulating with his arms could be seen as forceful. However, we reminded ourselves that it was in the context of how the Claimant might be perceived (not how the Claimant actually was), specifically by the students (given that it had arisen from the restorative meeting with Pupil A).

198. *David Martin instructed Christian Atwell and other colleagues, including Sunita Barbra, to carry out multiple lesson observations and monitor the Claimant during December 2021 and January 2022. This was confirmed to the Claimant by Christian Atwell and Sunita Barbra.*

198.1. This allegation was factually incorrect.

198.2. As found, the Claimant was not targeted by way of lesson observations or learning walks. No one was directed to carry out multiple observations of the Claimant's classes. Rather, as a result of poor planning by the SLT, the Claimant and a number of other teachers had multiple learning walks in error.

199. *During December 2021 to January 2022, David Martin and members of the Academy's senior leadership team walked into the Claimant's lessons to observe and monitor him. For example, on one occasion Julian Williams, Simon Webb and Samantha Williams came into the Claimant's classroom one after the other. On another occasion, Christian Atwell, Sunita Barbra and Samantha Williams came into the Claimant's classroom one after the other. The Claimant alleges that no other member of staff was subjected to this treatment.*

199.1. This allegation (to the extent that it was different from the one just considered) was also factually incorrect, for the same reasons as detailed above.

200. *During the grievance meeting on 14 January 2022, Sukhdev Shoker agreed with the allegedly discriminatory opinion that David Martin expressed on 14 December 2021 i.e. "Festus, you gesticulate when you speak and this is seen as you being aggressive.". Sukhdev Shoker defended David Martin and avoided answering critical questions that the Claimant put to him during the grievance meeting and afterwards by email.*

200.1. The only reference to gesticulating in the minutes of the meeting of 14 January 2022 was at [184] of the Bundle. The Claimant alleged that Mr Martin had said that his gesticulating was aggressive and that by doing so, he was racially discriminating against the Claimant.

200.2. We have already set out our conclusions on Mr Martin's reference to the Claimant's gesticulations in the meeting of 14 December 2021, including the context in which such reference was made.

200.3. As regards the allegation that Mr Shoker agreed with Mr Martin's alleged discriminatory characterisation of the Claimant, this was not borne out by the evidence. There was nothing recorded in the minutes of the meeting of 14 January 2022 where Mr Shoker expressed his agreement with what was being alleged against Mr Martin nor did Mr Shoker express his own view of the Claimant's gesticulating nor did he express any view of whether the same was or could be interpreted as aggressive.

200.4. At most, what Mr Shoker did appear to be saying was that gesticulation, body language and aggression were not unique to any specific race (at [184] of the Bundle).

200.5. In our judgment, it was reasonable and appropriate for Mr Shoker to understand what the issues were, explore them and, if necessary, query them. He was not defending Mr Martin in doing so but simply carrying out his investigative role. That was what he did and the first half of the alleged treatment was not made out.

200.6. As to the second half, and specifically Mr Shoker's failure to answer subsequent questions posed by the Claimant, we found

that Mr Shoker answered some but not all of the questions posed by the Claimant. The reason he gave was both reasonable and understandable. Mr Shoker believed that some of the questions went beyond the remit of the grievance and, by extension, his remit as investigator. On the evidence, he was, in our judgment, entitled to hold that belief and choose not to answer questions which he deemed outside of his role.

201. *On 17 and 31 January 2022 David Martin wrote to the Claimant to invite him to a 5-months probationary review meeting. The Claimant relies on Christian Atwell (White) and Sunita Barbra [sic] (Asian) as comparators for this allegation. Both these individuals started employment with the Respondent at the same time as the Claimant, were promoted to Assistant Principal three months into the job and the Claimant alleges that neither comparator went through a probationary process.*

201.1. The Tribunal heard evidence from both Mr Atwell and Ms Bhabra. They both confirmed in questioning from the Tribunal that they had been through some or all of the probationary process.

201.2. They were also clear and consistent in their evidence (as were other witnesses) that the roles of Assistant Principal to which they were both promoted were competitions which were open to all and advertised internally. They recalled having to submit a letter of interest, following which they were interviewed. The fact that they were both promoted to the posts of Assistant Principal was solely based upon their performance in those recruitment exercises, exercises which the Claimant could have also entered.

201.3. It was, in our judgment, also reasonable to conclude that their respective promotions were indicative that any remaining probationary processes had been successfully passed, otherwise neither of them would have been successful in their respective applications.

201.4. For those reasons, the alleged less favourable treatment of the Claimant was factually incorrect and not made out.

202. *In January 2022, David Martin held a probationary review meeting with the Claimant. The Claimant alleges that David Martin singled him out and did not hold probationary meetings with any of the other 15 employees that started at the same time as the Claimant. The Claimant relies on these 15 individuals as comparators for this allegation.*

202.1. Save for the evidence of Mr Atwell and Ms Bhabra, the Tribunal had no other evidence to support this allegation. As such, we were in effect left with a bare assertion by the Claimant regarding the other 13 comparators, unsupported by evidence

202.2. There was also no evidence that Mr Martin singled out the Claimant or held a probationary meeting with him because of his race. What there was instead was ample evidence of concerns

from a range of sources (different staff, students and parents) about the Claimant's behaviour, against the backdrop of a contractual six month probationary period and a non-contractual probationary policy.

202.3. In those circumstances, not only was the Claimant not being singled out, the Respondent (in the guise of Mr Martin) was quite entitled to hold the probationary meeting with the Claimant when it did.

202.4. As for the reference to the other teachers who started at the same time as the Claimant, there was no evidence before the Tribunal that any of them had had the same or similar issues and concerns raised about them, either at all or with the frequency and scope as had been raised regarding the Claimant by the end of their first term.

203. *On 8 February 2022 David Martin terminated the Claimant's employment.*

203.1. It was not in dispute that Mr Martin terminated the Claimant's employment with effect from 8 February 2022.

204. *On 14 March 2022, Sukhdev Shoker confirmed that the Claimant's grievance submitted on 14 December 2022 had not been upheld.*

204.1. It was similarly not in issue that Mr Shoker did not uphold the Claimant's grievance of 14 December 2021.

Was there less favourable treatment because of race?

205. The Claimant compared his treatment with those members of staff who started at the same time as him (citing Mr Atwell, Ms Bhabra, and those listed at [331] of the Bundle). However, in our judgment and as detailed above, there was clear, consistent and reliable evidence which explained all the decisions, actions and findings made by the Respondent. None of them related in any conceivable way to the Claimant's race. Instead, they were informed by the Claimant's performance and behaviour or factors which were wholly separate from him (for example, the planning errors by the SLT regarding learning walks and the internal recruitment process successfully navigated by Mr Atwell and Ms Bhabra).

206. The reasons behind the Respondent's decisions regarding the Claimant were clear and extensively supported by the evidence. Those reasons had nothing to do with the Claimant's race and everything to do with his conduct and his behaviour or other, extraneous reasons unrelated to him. There was nothing in the evidence which came close to shifting the burden to the Respondent. None of the decisions taken by the Respondent were, in any way, informed, influenced or dictated by the Claimant's race, conscious or otherwise.

Conclusions: race discrimination

207. The Claimant had to prove facts from which the Tribunal could infer that race discrimination had taken place. For the reasons set out above, the evidence did not come close to meeting that threshold and, as detailed in our findings of fact, the reasons for each of the decisions under scrutiny were clear, unambiguous and amply supported by the evidence.

208. In short, there was no evidence which was capable of supporting any finding from we which we could infer that any decision or treatment complained of, in any way whatsoever, was related to the Claimant's race.

209. For those reasons, the decisions and treatment relied upon were in no way because of the Claimant's race. It followed that the complaints of direct race discrimination were not made out and were dismissed.

Victimisation

Protected acts

210. The Claimant alleged that the Respondent subjected him to detriment for carrying out protected acts (as defined by section 27(1) of the EqA 2010). He relied upon the followed alleged protected acts (as taken from the List of Issues):

    210.1. Submitting a grievance against Ms Yasmin and Ms Zaman in October 2021 due to them ganging up and conniving against the Claimant;

    210.2. Submitting a grievance against Mr Williams on 14 December 2021; and

    210.3. Submitting a grievance on 21 February 2022 against Mr Rosenwould, Ms Yasmin and Ms Zaman.

211. As found above, the Claimant did not submit a grievance in October 2021. Rather, there were disagreements between him, Ms Yasmin and Ms Zaman, arising from alleged complaints by students about how the Claimant conducted his lessons. Mr Martin deemed it to be a professional disagreement, which was resolved by way of a restorative meting.

212. In our judgment, there was nothing within what was being complained of by the Claimant in October 2021 which could conceivably have constituted a protected act under section 27(1) of the EqA 2010. It was not suggested that the Claimant was making any allegations of discrimination or other breaches of the EqA 2010. Rather, he alleged that Ms Yasmin and Ms Zaman were "*ganging up against me"* (per Paragraph 67 of the Claimant's witness statement).

213. In addition, when the Claimant raised his grievance against Ms Yasmin and Ms Zaman in February 2022 (at [243] – [246] of the Bundle and which related to the events of October 2021), he again made no allegations which could be understood as protected acts under section 27(1) of the EqA 2010. Again, the Claimant complained of Ms Yasmin and Ms Zaman ganging-up on him but did not suggest that it had anything to do with his race or constituted any other prohibited act under the EqA 2010.

214. For those reasons, the Tribunal concluded that the Claimant's complaints against Ms Yasmin and Ms Zaman in both October 2021 and February 2022 were not protected acts.

215. We also reached the same conclusion regarding that part of the grievance of February 2022 which related to Mr Rosenwould. In summary, the Claimant alleged that Mr Rosenwould "*invaded my space without my consent, his manner of approach in speaking to me was extremely rude, disrespectful and highly condescending"* and "*[H]e could have also spoken to me in a respectful manner, if he must speak to me"* (at [243] of the Bundle). However, the Claimant did not suggest that Mr Rosenwould's behaviour towards him was discriminatory, had anything to do with race or constituted any other breach of the EqA 2010.

216. As such, the grievance against Mr Rosenwould of February 2022 was not a protected act.

217. In contrast, the Claimant's grievance against Mr Williams of 14 December 2021 explicitly alleged discriminatory treatment on grounds of race. In the Tribunal's judgment, that was a protected act, as defined by section 27(1) of the EqA 2010.

218. It follows that the Claimant did not carry out a protected act until 14 December 2021 and his grievance of that date was the only act which met the definition for protection.

<u>The alleged acts of detriment</u>

219. The Claimant relied upon 20 alleged detriments, which he said he suffered as a result of doing the protected act (which, for the reasons detailed above, was limited to his grievance against Mr Williams of 14 December 2021).

220. We considered each alleged detriment in turn, adopting the description of each from the List of Issues (at Paragraph 6c and reproduced in italics, below). A number of the alleged detriments were also relied upon by the Claimant as either acts of race discrimination and/or breaches of contract. We have set out the Tribunal's findings on those, above and, where appropriate, rely on and repeat those findings and conclusions, below.

David Martin avoided investigating the complaints that the Claimant raised about Faima Yasmin and Farhana Zaman in October 2021.

221. As the Tribunal found, the Claimant's complaints against Ms Yasmin and Ms Zaman were investigated by the Respondent, culminating in the restorative meeting chaired by Mr Martin. It followed that the alleged detriment was factually inaccurate. The complaints were investigated and engaged with.

222. In any event, the Claimant's complaints of October 2021 and the manner in which they were considered, managed and resolved by the Respondent pre-dated the protected act and, self-evidently, could not have been informed or influenced by it.

During a meeting on 14 December 2021 David Martin made it clear to the Claimant that he believed and supported Julian Williams in relation to the grievance that the Claimant had submitted against Mr Williams.

223. For the reasons set out above, Mr Martin acted reasonably and appropriately and was not biased nor did he pre-judge the outcome of the Claimant's grievance.

224. As such, the alleged detrimental treatment did not occur.

David Martin instructed Christian Atwell and other colleagues to carry out multiple lesson observations and monitor the Claimant during December 2021 and January 2022.

225. The Tribunal repeats its earlier findings on this allegation. Mr Martin did not instruct Mr Atwell or anyone else to specifically observe and monitor the Claimant. Rather, there was a policy of lesson walks and classroom observations adopted across the Respondent's academies.

226. In addition, due to organisational errors by the SLT, there was a period where the Claimant and a number of other teachers had multiple lesson walks, which should not have happened. However, that had nothing to do with the Claimant's protected act, for the following reasons:

    226.1. The Tribunal accepted that the multiple lesson walks were caused by planning errors by the SLT;

    226.2. The Claimant was not the only teacher who had erroneous multiple lesson walks; and

    226.3. Some of those multiple lesson walks pre-dated the protected act.

During December 2021 to January 2022, David Martin and members of the Academy's senior leadership team walked into the Claimant's lessons to observe and monitor him. For example, on one occasion Julian Williams, Simon Webb and Samantha Williams came into the Claimant's classroom one after the other. On another occasion, Christian Atwell, Sunita Barbra and Samantha Williams came into the Claimant's classroom one after the other.

227. We repeat our earlier findings and also what we have set out under the alleged detriment, above. Due to an error of planning, there were multiple lesson walks when there should not have been, which effected teachers other than the Claimant and were in no way related to the fact that he made a protected act.

Sukhdev Shoker conspired with David Martin when determining the questions that were to be asked during grievance investigation meeting on 14 January 2022.

228. This was a re-wording of the allegation made, and determined, earlier, namely that Mr Martin and Mr Shoker asked the same or similar questions of the Claimant at their respective meetings with him (of 14 December 2021 and 14 January 2022).

229. We repeat those findings and conclusions. There was no conspiracy between Mr Shoker and Mr Martin in the questions asked of the Claimant and this alleged act of detriment was not made out.

The questions asked by Sukhdev Shoker during the grievance investigation meeting on 14 January 2022 were not focused on the Claimant's three grievance allegations against Julian Williams. Instead, the questions were geared towards accusing the Claimant and insinuating that the grievance issues were the Claimant's fault. The Claimant alleges that this suggests Sukhdev Shoker was biased and that the grievance outcome was predetermined.

230. For all the reasons detailed above, the Tribunal found that Mr Shoker conducted a fair, reasonable and appropriate grievance investigation and reached conclusions which were open to him, in light of those investigations.

231. Whilst the Claimant had his own opinions as to Mr Shoker's motives and the manner in which he investigated and determined his grievance, the evidence before the Tribunal did not, in our judgment and for the reasons we have given, support those views. Rather, we concluded that Mr Shoker approached and undertook his role as investigating officer with an open mind and allowed the evidence which arose from his investigation to inform his decisions.

232. It followed that, whilst the Claimant disagreed with Mr Shoker's conclusions on his grievance against Mr Williams, the manner of Mr Shoker's investigation (including his meeting with the Claimant on 14 January 202) and the conclusions he reached on the grievance were not acts of detriment for making a protected act.

On 17 and 31 January 2022 David Martin wrote to the Claimant to invite him to a 5-months probationary review meeting. The Claimant alleges that this was in breach of the Respondent's Probationary Policy.

233. In both of the letters inviting the Claimant to the original and the re-scheduled probationary review meetings, Mr Martin set out with clarity

the purpose of the meeting and the specific areas of concern which needed to be discussed regarding the Claimant's performance to date (per [193] and [216] of the Bundle).

234. What was less clear to the Tribunal was why those invitations breached the Respondent's Probationary Policy. In his witness statement, the Claimant relied upon the absence of an earlier two month meeting or initial target setting session (at Paragraph 172). Whilst those missed meetings were in breach of the Probation Policy, the five month meeting was not contingent on those earlier meetings having taken place.

235. In addition, any failure to scheduled the initial and the two month probationary meetings could not have been acts of victimisation, as they pre-dated the Claimant's grievance against Mr Williams.

236. In any event, there was simply no evidence that Mr Martin issued either invitation as an act of detriment because the Claimant had brought a grievance against Mr Williams. Rather, there was evidence of a contractual probationary period of six months, a policy which included a probationary review meeting at month five and an unambiguous invitation to the review meeting which set out in clear terms why the meeting was being held and what would be covered.

237. In addition, and as detailed in our findings of fact, the issues and concerns regarding the Claimant's performance referenced in Mr Martin's invitation letters were squarely based upon, and informed by, concerns which had arisen in the first four months of the Claimant's employment. They were not related to the fact that he had raised a grievance against Mr Williams.

238. For those reasons, Mr Martin's invitations to the probationary review meetings were not acts of detriment in retaliation for the Claimant's protected act.

During the Claimant's sickness absence from 21 January – 8 February 2022, David Martin took false statements from students regarding the Claimant.

239. As found by the Tribunal, this allegation was factually incorrect. The student statements were genuine and not falsified or concocted. It followed that there was no detriment as claimed, by reason of the protected act or at all.

The Claimant resigned on 2 February 2022 (with three months' notice pursuant to s12.1 of his contract) out of frustration at how David Martin had treated him. The Claimant alleges that this resignation was a constructive dismissal.

240. Having regard to our findings of fact and standing back to consider the totality of Mr Martin's management of the Claimant and the decisions he took, there was simply no evidence to support a conclusion that anything Mr Martin (or by extension, the Respondent) did in respect of the Claimant's employment was motivated in a negative or detrimental way because of his decision to raise a grievance against Mr Williams.

241. Instead, there was clear and cogent evidence of concerns being raised from different quarters regarding the Claimant's conduct. However unpalatable that may be to the Claimant, it was his conduct and behaviour which informed Mr Martin's decisions.

242. In addition, there was nothing unreasonable or unprofessional in the manner of Mr Martin's management of the Claimant.

243. The Claimant alleged that he had been constructively dismissed. There was no complaint of unfair dismissal before the Tribunal for good reason. The Claimant was not employed continuously by the Respondent for a period of two years, the threshold which must be met to be entitled to protection against unfair dismissal (per section 108 of the ERA 1996). As the complaint was not capable of before litigated before us and we heard no evidence on it, we say no more about it.

David Martin did not acknowledge the Claimant's resignation letter dated 2 February 2022.

244. The allegation was factually incorrect. Mr Martin did acknowledge the Claimant's letter of resignation, by way of his email of 2 February 2022 (at [224] of the Bundle).

On 8 February 2022 David Martin terminated the Claimant's employment.

245. Mr Martin did terminate the Claimant's employment with effect from 8 February 2022 but in our judgment not because of the Claimant's protected act.

246. In his letter of 7 February 2022, Mr Martin set out in detail the reasons for ending the Claimant's employment (at [233] – [234] of the Bundle). Not only were those reasons wholly separate from and independent of the Claimant's grievance against Mr Williams, they were supported by the evidence available to Mr Martin and dismissal was clearly an option available to him in light of the Claimant's conduct and behaviour.

In terminating the Claimant's employment, David Martin relied in part on the Claimant's poor relationship with Faima Yasmin and Farhana Zaman.

247. The Claimant's poor relationships with teachers and students were at the heart of Mr Martin's decision to end his employment (per his letter of 7 February 2022, at [233] – [234] of the Bundle). It may have been that the issues between the Claimant, Ms Yasmin and Ms Zaman, which led to the restorative meeting in October 2021, played some part in Mr Martin's overall analysis of the Claimant's conduct and performance (although the main focus of the letter was the Claimant's poor relationship with students). If it did, that was neither unreasonable nor surprising.

248. However, and more importantly for the purpose of this aspect of the Claimant's case, the Claimant's issues with Ms Yasmin and Ms Zaman (whether in October 2021 or his grievance of February 2022) were not

protected acts, for the reasons set out above (and the grievance of February 2022 post-dated the decision to dismiss, in any event).

In terminating the Claimant's employment, David Martin relied in part on complaints that had been raised against the Claimant by students.

249. Mr Martin did, quite properly, have regard to complaints made against the Claimant by students, in reaching his decision to terminate his employment. There was nothing unreasonable or unprofessional in that. In fact, it would have been remiss of Mr Martin, as the head teacher, to have not taken such complaints seriously.

250. However, and again for the purpose of the claim being pursued by the Claimant, those complaints and Mr Martin's reliance upon them had nothing to do with the protected act of making allegations of race discrimination against Mr Williams in the grievance of December 2021.

David Martin did not give the Claimant a chance to recover from his illness before holding the probationary review meeting in February 2022. The meeting went ahead in the Claimant's absence.

251. As noted above, the probationary review meeting between the Claimant and Mr Martin was originally scheduled for 24 January 2022. There followed an exchange of emails between the Claimant and Mr Martin, resulting in the meeting being rescheduled to 7 February 2022. In the course of those email exchanges, Mr Martin recorded his frustration with the Claimant's behaviour (per his email of 20 January 2022, at [199] – [200]of the Bundle).

252. In addition, Mr Martin made clear in the invitation to the re-arranged probationary review meeting that "*[A]s you have already been afforded one postponement, I need to advise you that the meeting will go ahead in your absence should you not attend"* (at [216] of the Bundle).

253. There was no obligation on Mr Martin to await the Claimant's recovery before conducting the probationary review meeting. In particular:

253.1. There was no such provision within the Probationary Policy;

253.2. There was no medical evidence that the Claimant was unfit to attend the meeting, only that he was unfit to for work (per his fit note at [222] of the Bundle); and

253.3. The Claimant never asked Mr Martin for time to recover ahead of the probationary review meeting.

254. In any event, Mr Martin's decision to proceed with the probationary review meeting on 7 February 2022 in the Claimant's absence had nothing to do with the Claimant's protected act.

David Martin avoided investigating the grievance that the Claimant submitted against Brian Rosenwould, Faima Yasmin and Farhana Zaman in February 2022.

255. As found, the decision not to investigate the Claimant's February 2022 grievance was made by Ms Gill, not Mr Martin.

256. In addition, the decision was in accordance with the Grievance Policy and Procedure, which required grievances to be submitted within three months of the events to which they related. The Claimant's February 2022 grievance was submitted out of time and he was told on more than one occasion that for that reason, it would not be investigated.

257. It followed that the decision not to investigate the Claimant's February 2022 grievance had nothing to do with his protected act (namely, this December 2021 grievance against Mr Williams).

On 23 February 2022 David Martin sent an email to the Claimant in which he warned the Claimant not to request a reference from employees of Academy.

258. It was not in dispute that Mr Martin contacted the Claimant on 23 February 2022 about his request for a reference (at [247] of the Bundle). However, it was not a warning but a clear instruction that any reference request had to be sent to Mr Martin.

259. Not only was it a reasonable request and one which was clearly open to Mr Martin, there was also no evidence that asking the Claimant to direct any reference requests to him had anything to do with the fact of the Claimant's protected act.

In February 2022, David Martin blocked the Claimant from being able to email members of staff at the Academy.

260. There were a number of reasons why the Respondent prevented the Claimant from having access to its email accounts, as follows:

260.1. The Claimant was no longer employed by the Respondent;

260.2. The Claimant had posted an inappropriate message to the STEM group (at [236] of the Bundle);

260.3. Mr Martin had asked the Claimant to stop sending emails to him (on 11 February 29022, at [242] of the Bundle), which the Claimant ignored; and

260.4. The Respondent attempted to deal with the Claimant's post-termination issues via Ms Gill but this did not prevent the Claimant continuing to email Mr Martin.

261. For those reasons, the Respondent was entitled to seek to restrict the Claimant's continued access to its email system. Its decision to do so was reasonable and well within its rights.

262. The decision to restrict the Claimant's access to email, following the termination of his employment, was for the reasons detailed above and, importantly, not because of his protected act.

On 14 March 2022, Sukhdev Shoker confirmed that the Claimant's grievance submitted on 14 December 2022 had not been upheld.

263. Mr Shoker set out in detail why he had not upheld the Claimant's grievance against Mr Williams. His report detailed the evidence he had gathered, the conclusions he had reached based upon his investigations and the reasons for those conclusions (at [256] – [263] of the Bundle).

264. What was clear from his report was that the mere fact that the Claimant had raised the grievance against Mr Williams was not a factor in his decision not to uphold the grievance. It followed that the decision to not uphold the grievance was not because of the Claimant's protected act.

On 7 April 2022 David Martin sent an email to the Claimant in which he warned the Claimant that he would have "no hesitation in reporting this matter to the Police citing a case of harassment" if the Claimant continued to ignore the Academy's requests for no further contact.

265. As detailed above, Mr Martin sent his email on 7 April 2022 because the Claimant was ignoring the decision not to investigate his February 2022 grievance, in addition to taking no heed of the request for him to cease contacting Mr Martin.

266. That was the reason for Mr Martin's email of 7 April 2022 and the indication that, should the Claimant not do as had been requested on numerous occasions, the matter would be reported to the police.

267. What neither the email nor the warning of police involvement had anything to do with was the Claimant's protected act.

On 29 April 2022 David Martin sent a letter to the Claimant in which he asked the Claimant to return to the Academy the laptop, keys and ID badge that had been issued to the Claimant. David Martin warned the Claimant that if these items were not received by 12 May the Academy would contact a debt retrieval agency to recover the sum of £550.00 (the cost of the items) from the Claimant.

268. Again, and as detailed above, the reasons for Mr Martin's letter of 29 April 2022 were clear on it's a face and self-evident. Despite being asked on at least two occasions to return school property, the Claimant had failed to do so. Mr Martin's letter, in those circumstances, was understandable, and a reasonable, proportionate response to the Claimant's failure to return the Respondent's property.

269. The Respondent's approach to the Claimant's failure to return school property (both via the previous requests for their return and the letter of 29 April 2022) was also wholly in keeping wit the terms of the Claimant's contract of employment, which required the immediate return of all

school property upon termination of employment (per Clause 15, at [85] of the Bundle).

270. That was the reason for Mr Martin's letter of 29 April 2022 and the indication that, should the Claimant not return to items by 12 May 2022, he would held liable for their cost (of £550).

271. What neither the letter nor the warning of debt recovery had anything to do with was the Claimant's protected act.

Conclusions: victimisation

272. Only one of the acts relied upon by the Claimant met the definition of a protected act, namely the grievance against Mr Williams of 14 December 2022. Self-evidently, any alleged detriment which pre-dated 14 December 2021 could not have been because of the protected act.

273. The Claimant had to prove facts from which the Tribunal could infer that victimisation has taken place (namely, that the acts complained of and listed about constituted detriment and were because of the protected act) . For the reasons set out above, the evidence did not come close to meeting that threshold and, as detailed in our findings of fact, the reasons for each of the decisions under scrutiny were clear, unambiguous and amply supported by the evidence.

274. In short, there was no evidence which was capable of supporting any finding from we which we could infer that any of the above acts were undertaken because the Claimant had raised a grievance against Mr Williams, in which he had made allegations of race discrimination..

275. For those reasons, the decisions and treatment relied upon were not undertaken because of the Claimant's protected act. It followed that the complaints of victimisation were not made out and were dismissed.

Time limits

276. By virtue of the EqA 2010, complaints of discrimination must be presented to the Tribunal within three months of the alleged act of discrimination occurring (subject to the effects of the ACAS Early Conciliation process which, if started within the three month time limit, serves to stop the clock for the duration of the Early Conciliation and/or extend the time limit by a month, if the three month time limit expires during Early Conciliation). Whether or not complaints have been brought in time goes to the Tribunal's power to be able to consider and determine them, otherwise known as the Tribunal's jurisdiction.

277. So far as relevant, the Claimant began ACAS Early Conciliation on 8 February 2022 and it ended on 10 March 2022. He presented his claim to the Tribunal on 15 May 2022. On that basis, and applying the applicable time limits, anything occurring before 17 January 2022 was out of time.

278. In respect of the discrimination and victimisation complaints, the Claimant would need to either show that any acts pre-dating 17 January 2022 were part of a continuing act of discrimination, the last act of which fell in time (in which case all complaints in the continuum are deemed to have been brought in time) or ask the Tribunal to exercise its discretion under the EqA 2010 to extend time.

279. The Claimant did not address this issue at all, whether in his written or oral submissions or his written evidence. He had been on notice from 14 November 2022 that time limits were an issue (per the Case Management Orders of Employment Judge Gardiner, at [54] – [66] of the Bundle). It was also addressed by Mr Burgess for the Respondent in his written and oral submissions (which the Claimant was provided with and heard in advance of his own submissions).

280. The Claimant engaged with all the other issues in the case but not this one.

281. It was for the Claimant to show that complaints which otherwise would be out of time were treated or deemed to be in time. In the absence of any explanations, submissions or evidence, the Tribunal was unable to treat any pre-17 January 2022 allegations as in time.

282. For those reasons, we had to treat every pre-17 January 2022 allegation as out of time and the Tribunal did have the jurisdiction to consider and determine them.

283. Notwithstanding that and as can be seen, we determined all the complaints before us and have dismissed them (including those allegations of discrimination and victimisation which pre-dated 17 January 2022). It was important for the parties to know and understand our findings and conclusions on the complaints, including those over which, ultimately, we did not have jurisdiction. Discrimination is a serious allegation. We did not want the Claimant believing that his race discrimination and victimisation complaints had failed on a technicality (that of being presented out of time). We did not want those accused of race discrimination and victimisation to be left with any residual sense that they had not been fully exonerated of the allegations against them.

284. For those reasons in particular, we considered all the complaints pursued and, as explained above, dismissed them.

Employment Judge Povey
Dated: 5 June 2024

APPENDIX 1

ORDER OF 13 MARCH 2024 (WITH REASONS)

EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT		**RESPONDENT**
MR FESTUS OLATOYE	**V**	**THE KHALSA ACADEMIES TRUST LIMITED**

HELD REMOTELY AT LONDON EAST ON: 13 MARCH 2024

BEFORE: EMPLOYMENT JUDGE S POVEY
MS P ALFORD
MS J CLARK

REPRESENTATION:
FOR THE CLAIMANT: **IN PERSON**
FOR THE RESPONDENT: **MR BURGESS**

CASE MANAGEMENT ORDER

1. The Respondent's application the following additional evidence to be adduced is allowed:

   1.1. Witness statement of Satvinder Basra, dated 4 March 2024

   1.2. The Supplementary Bundle.

REASONS

1. Reasons for the case management order were given orally to the parties on 13 March 2024. On 20 March 2024, the Claimant asked for those reasons in writing.

2. The parties exchanged witness statements on 26 February 2024. On 4 March 2024, the Respondent's solicitors sent a bundle of additional documents to the Claimant, which the Respondent proposed to rely upon at the final hearing ('the Supplementary Bundle').

3. On 7 March 2024, the Respondent's solicitors sent the Claimant the witness statement Satvinder Basra, which the Respondent also proposed to rely upon at the final hearing ('the Basra statement').

4. The Claimant objected to both being included in evidence.

5. As the Supplementary Bundle and the Basra statement were not provided to the Claimant in accordance with existing case management direction, the respondent needed permission to include them in the evidence before the Tribunal. We dealt with that application at the outset of the final hearing on 13 March 2024.

6. We explained that the key considerations in deciding the Respondent's application were :

    6.1. Why were the Supplementary Bundle and Basra statement provided late?

    6.2. Are they relevant to the issues to be determined by the Tribunal?

    6.3. What is the relative prejudice to the parties of allowing or refusing the application?

7. The Tribunal accepted the Respondent's explanation that both the Basra statement and the Supplementary Bundle were obtained in response to specific allegations which appeared in the Claimant's witness statement regarding the pension contributions issue (for example, at Paragraph 44 of the Claimant's witness statement).

8. The pensions contributions issue was an issue which the Claimant sought to add to his claim on application in December 2022. His application to amend his claim was consented to by Respondent and granted by Employment Judge Barrett on 2 June 2023.

9. In addition, the Claimant's witness statement included clear allegations of fraud, evidence tampering & perjury as regards evidence relating to the pension contributions issue.

10. In our judgment, as the Respondent was being accused of manipulating documents and evidence, it was highly relevant to hear from Mr Basra (against whom some of the Claimant's allegations are made) and to consider the documents in the Supplementary Bundle which were related to those allegations.

11. In addition, because of the amendment to the Claimant's claim, the payment or otherwise of pension contributions was an issue which Tribunal would have to determine.

12. Any prejudice to the Claimant of the late disclosure of the Basra statement and the Supplementary Bundle could be addressed by his ability to ask questions of the Respondent's witnesses, including Mr Basra and his opportunity to address the authenticity and relevance of the documents in the Supplementary Bundle in his closing submissions.

13. In contrast, the prejudice to the Respondent of refusing to allow the Basra statement and the Supplementary Bundle into evidence, is that it would compromise its ability to answer the serious allegations of fraud and perjury which have been raised by the Claimant in his witness evidence. It would also deprived the Tribunal of evidence which was plainly relevant to the issues which we had to decide, both as to the pension contributions issue and the Claimant's allegations that the Respondent had fabricated and tampered with evidence.

14. For those reasons, we allowed the Respondent's application. The Basra statement and Supplementary Bundle were relevant to the issues and prejudice to the Respondent of not allowing that evidence in outweighed prejudice to Claimant of allowing it in.

EMPLOYMENT JUDGE S POVEY

Dated: 20 March 2024

APPENDIX 2

ORDER OF 15 MARCH 2024 (WITH REASONS)

EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT		**RESPONDENT**
MR FESTUS OLATOYE	**V**	**THE KHALSA ACADEMIES TRUST LIMITED**

HELD REMOTELY AT LONDON EAST ON: 15 MARCH 2024

BEFORE: EMPLOYMENT JUDGE S POVEY
MS P ALFORD
MS J CLARK

REPRESENTATION:
FOR THE CLAIMANT: **IN PERSON**
FOR THE RESPONDENT: **MR BURGESS**

CASE MANAGEMENT ORDER

1. The Claimant's application vary or revoke the Case Management Order of 13 March 2024 is refused.

REASONS

The Claimant's Application

1. Reasons for the above Case Management Order ('CMO') were given orally to the parties on 15 March 2024. On 20 March 2024, the Claimant asked for those reasons in writing.

2. On 13 March 2024, the Tribunal allowed the Respondent's application to include the Supplementary Bundle and the witness statement of Satvinder

Basra into evidence, notwithstanding the Claimant's objections to the same. We gave the reasons for our decision at the time ('the 13 March decision').

3. On the evening of 13 March 2024, the Claimant submitted an application to reconsider the 13 March decision. We agreed with the parties on 14 March 2024 that we would consider and determine that application on the basis of the Claimant's email of 13 March 2024 (and attachments) on the morning of 15 March 2024 (since 14 March 2024 was taken up with hearing evidence and it was not until 15 March 2025 that the Claimant was likely to be questioned on the documents in the Supplementary Bundle or the statement of Mr Basra).

Preliminary Issue

4. Rule 1 of the Employment Tribunal's Rules of Procedure 2013 ('the Procedure Rules') defines "a judgment" as including "*a decision which finally determines all or part of a claim regarding liability, remedy or costs*." It defines a "case management order" as "*an order or decision in relation to the conduct of proceedings."*

5. Applying those definitions, the 13 March decision to allow the Supplementary Bundle and Mr Basra's witness statement into evidence was a case management order. It was not a judgment.

6. The power to reconsider (which the Claimant applied for) is only available in respect of judgments, not CMOs (per Rules 70 – 73 of the Procedure Rules). On that basis alone, there is no power to reconsider the 13 March decision.

7. However, and mindful that the Claimant is acting without legal assistance, we instead treated his application as being made under Rules 29 and 30 of the Procedure Rules, which permit a party to apply to vary or set aside an existing CMO. The test for granting such an application is whether it is necessary in the interests of justice, which is, in effect ,the same test to be applied in determining an application to reconsider a judgment.

Guiding Principles

8. A CMO should not be varied or revoked unless there has been a material change in circumstances since it was made. To do otherwise would lead to "*uncertainty and repetition, rather than clarity and finality within the process of tribunal litigation"* (per Bonkay-Kamara v APCOA Parking UK Ltd EAT 0577/12).

9. In addition, "*necessary in the interest of justice*" should be interpreted narrowly in respect of setting aside CMOs (per Serco Ltd v Wells EAT 2016 ICR 768).

The Application

10. In his application, the Claimant referred to an email he sent on 21 December 2023 to the Respondent's solicitors, wherein he indicated that he believed

that emails disclosed (and involving Mr Basra) pertaining to the Teacher's Pension Scheme were fraudulent. The Claimant further claimed that the Respondent's solicitors email response to those allegations was that they were "*noted"*. On that basis the Claimant contended that:

10.1. The Respondent was on notice from 21 December 2023 that the Claimant alleged that Mr Basra's emails were fraudulent, before they received the Claimant's witness statement.

10.2. In addition, the Claimant provided the Respondent with his pension and bank statements on 3 January 2024.

10.3. Despite that, the Respondent did not include a statement from Mr Basra when the parties exchanged witness statements on 26 February 2024.

10.4. As already noted in the 13 March decision, the Supplementary Bundle was sent to the Claimant on 4 March 2024 and Mr Basra's witness statement on 7 March 2024.

11. For those reasons, the Claimant said that allowing the Supplementary Bundle and Mr Basra's witness statement into evidence was prejudicial to him, as they were provided late and their inclusion constituted an unfair process.

The Tribunal's Decision & Reasoning

12. We did not find that these facts or the application as a whole constituted or revealed a sufficient change of circumstances to render it necessary in the interest of justice to revoke or vary the 13 March decision, for the follow reasons:

12.1. It was not until the exchange of witness statements on 26 February 2024 that the Respondent was on notice that the Claimant intended to include the allegations of fraud and evidence tampering in his evidence to the Tribunal (by way of his witness statement). The allegations contained within the Claimant's email of 21 December 2023 were not capable of being 'evidence' before the Tribunal. The email was correspondence between the parties, the contents of which, until 26 February 2024, were not part of the evidence. They only became so when included in the Claimant's witness statement and sent to the Respondent.

12.2. Until the allegations were part of the evidence, they were of no relevance to the Tribunal because we would be precluded from considering them. Once they were included in the Claimant's witness statement, they became evidence which we could have regard to. They also became allegations which the Respondent was entitled to respond to, which it did in relatively quick order by sending the Supplementary Bundle and Mr Basra's witness statement to the Claimant.

12.3. The evidence in question was not voluminous. The Supplementary Bundle runs to 22 pages. Mr Basra's witness statement is nine paragraphs. The points they address are both discrete (whether or not the emails are forgeries) and relevant to what we have to decide (as they go to the Claimant's complaint regarding his pension, which was added to his claim by way of amendment).

12.4. The chronology set out by the Claimant and the arguments he made in this application did not change the fact that any prejudice to him of this evidence being provided shortly after exchange of witness statements can be alleviate by his ability to cross-examine Mr Basra and make closing submissions to Tribunal on the documents in the Supplementary Bundle. Any remaining prejudice was outweighed, by some margin, to the prejudice that would be caused to the Respondent of being unable to respond to very serious allegations, that if correct not only constitute fraud and falsifying evidence but also perjury (by knowingly presenting fraudulent evidence to the Tribunal), which is a criminal offence. Not giving the Respondent the right to respond to those allegations would not only be highly prejudicial, it would be tantamount to an injustice, given the severity of the allegations and the potential consequences for the Respondent, if proven.

13. For all those reasons, the application, as recast by the Tribunal, to vary or set aside the 13 March decision was refused.

EMPLOYMENT JUDGE S POVEY

Dated: 21 MARCH 2024

APPENDIX 3

LIST OF ISSUES

The Respondent ("the Trust") is an independent educational trust, which includes ATAM Academy ("the Academy"), based in Redbridge East London. The Claimant was employed by the Trust from 31 August 2021 to 8 February 2022 and he was based at the Academy.

1. Jurisdiction (s.123 Equality Act 2010)

a. Were any of the Claimant's claims under the Equality Act 2010 ("EqA 2010") brought outside the 3-month time limit prescribed by s123(1)(a) EqA 2010?

b. If so, do the claims or some of them taken together constitute conduct extending over a period, the end of which was in time?

c. Alternatively if so, is it just and equitable to extend time? (s123(1)(b) 2010)

2. Race (s.9 EqA 2010)

For the purposes of the race discrimination allegations, the Claimant identifies his race/ethnicity as black African.

3. Wrongful dismissal

a. Did the Respondent's payment to the Claimant on 25 February 2022 qualify as a payment in lieu of notice as per the Claimant's contract?

b. By terminating the Claimant's employment with immediate effect on 8 February 2022 and making payment to the Claimant of one month's pay in lieu of notice, did the Respondent wrongfully dismiss the Claimant?

c. If so, did the Claimant suffer any loss attributable to the wrongful dismissal and what is the extent of any such loss?

4. Breach of Contract

a. Did the following procedures / policies of the Respondent have contractual status in the Claimant's instance:

i. Probation Policy
ii. Grievance Policy

b. If so, in having done the following, did the Respondent breach either policy:

i. David Martin did not hold a meeting with the Claimant during his first week of employment to agree targets under the Probation Policy.

ii. David Martin did not hold a second month review with the Claimant under the Probation Policy.

iii. The Respondent failed to acknowledge the Claimant's grievance in October 2021 and did not resolve it.

iv. Sukhdev Shoker, the investigating officer for the Claimant's 14 December 2021 grievance, failed to answer questions that had been posed by the Claimant during the grievance meeting on 14 January 2022 and via email on 25 January 2022 and 28 February 2022. The questions related to discriminatory practices in the Organisation and how Sukhdev Shoker conducted the investigation.

v. In respect of the grievance submitted on 14 December 2021, the Respondent did not hold an investigation meeting with the Claimant until 14 January 2022.

vi. Sukhdev Shoker conducted the grievance investigation meeting on 14 January 2022 as though it was a disciplinary procedure against the Claimant.

vii. On 14 January 2022, Sukhdev Shoker repeated questions to the Claimant that David Martin had already asked on 14 December 2021. The Claimant alleges that this suggests Sukhdev Shoker was biased and that the grievance outcome was predetermined.

viii. David Martin terminated the Claimant's contract on 8 February 2022, citing a probationary procedure in the Claimant's absence.

ix. The Respondent failed to acknowledge the Claimant's grievance submitted on 21 February 2022 and did not resolve this, despite the Claimant having raised the same complaint informally with David Martin and HR in October 2021.

x. In respect of the grievance submitted on 14 December 2021, the Claimant did not receive an outcome until after his employment had been terminated. The grievance outcome was not provided until 14 March 2022.

c. In addition, did the Respondent breach the Claimant's contract by failing to remit his pension contributions to the Teachers' Pension Scheme during his employment?

d. If so, did the Claimant suffer any loss attributable to the Respondent's breach and what is the extent of any such loss?

5. Direct discrimination on grounds of race (s.13 EqA 2010)

a. Did the Respondent subject the Claimant to the following treatment:

i. In October 2021, after the Claimant reported to David Martin that a Year 9 pupil had shouted at him "Go back to your country, Nigeria" ("the Incident"), David Martin did not fulfil his duty of care towards the Claimant. David Martin did not speak to the Claimant about the Incident.

ii. The Claimant asked for the pupil involved in the Incident to be removed from his class but David Martin, Christian Atwell and Julian Williams did not facilitate this.

iii. Nobody at the Respondent, including David Martin, Christian Atwell and Julian Williams offered any mental health support or assistance to the Claimant following the Incident.

iv. Between September 2021 and December 2021 Julian Williams instructed Christian Atwell to refer to the Claimant as an "angry, aggressive, and confrontational person". The Claimant alleges that this was a stereotype based on his race.

v. On 14 December 2021, Julian Williams sent the Claimant an email in which he called the Claimant "aggressive". The Claimant alleges that this was a stereotype based on his race.

vi. During a meeting on 14 December 2021 David Martin made it clear to the Claimant that he believed and supported Julian Williams in relation to the grievance that the Claimant had submitted against Mr Williams.

vii. During a meeting on 14 December 2021, David Martin said to the Claimant words to the effect of: "Festus, you gesticulate when you speak and this is seen as you being aggressive."

viii. David Martin instructed Christian Atwell and other colleagues, including Sunita Barbra, to carry out multiple lesson observations and monitor the Claimant during December 2021 and January 2022. This was confirmed to the Claimant by Christian Atwell and Sunita Barbra.

ix. During December 2021 to January 2022, David Martin and members of the Academy's senior leadership team walked into the Claimant's lessons to observe and monitor him. For example, on one occasion Julian Williams, Simon Webb and Samantha Williams came into the Claimant's classroom one after the other. On another occasion, Christian Atwell, Sunita Barbra and Samantha Williams came into the Claimant's classroom one after the other. The Claimant alleges that no other member of staff was subjected to this treatment.

x. During the grievance meeting on 14 January 2022, Sukhdev Shoker agreed with the allegedly discriminatory opinion that David Martin expressed on 1 December 2021 i.e. "Festus, you gesticulate when you speak and this is seen as you being aggressive.". Sukhdev Shoker defended David Martin and avoided answering critical questions that the Claimant put to him during the grievance meeting and afterwards
by email.

xi. On 17 and 31 January 2022 David Martin wrote to the Claimant to invite him to a 5-months probationary review meeting. The Claimant relies on Christian Atwell (White) and Sunita Barbra (Asian) as comparators for this allegation. Both these individuals started employment with the Respondent at the same

time as the Claimant, were promoted to Assistant Principal three months into the job and the Claimant alleges that neither comparator went through a probationary process.

xii. In January 2022, David Martin held a probationary review meeting with the Claimant. The Claimant alleges that David Martin singled him out and did not hold probationary meetings with any of the other 15 employees that started at the same time as the Claimant. The Claimant relies on these 15 individuals as comparators for this allegation.

xiii. On 8 February 2022 David Martin terminated the Claimant's employment.

xiv. On 14 March 2022, Sukhdev Shoker confirmed that the Claimant's grievance submitted on 14 December 2022 had not been upheld.

b. In doing the above, did the Respondent treat the Claimant less favourably than it would have treated a comparator, actual or hypothetical, who did not share the Claimant's race but whose circumstances were otherwise not materially different?

For the purposes of establishing this issue, who is the appropriate actual comparator (if any)? The Claimant compares his treatment with those members of staff who started at the same time These were Christian Atwell, Sunita Barbra, Holly Weston, Abigail Cody, and other members of staff who are to be identified by the
Respondent.

6. Victimisation (s.27 EqA 2010)

a. Did the Claimant carry out a protected act for the purposes of s.27(1) EqA 2010 by doing the following ("the Protected Acts"):

i. Submitting a grievance against Faima Yasmin and Farhana Zaman in October 2021 due to them ganging up and conniving against the Claimant.

ii. Submitting a grievance against Julian Williams on 14 December 2021.

iii. Submitting a grievance on 21 February 2022 against Brian Rosenwould, Faima Yasmin and Farhana Zaman.

b. If so, did the Respondent subject the Claimant to detriment because he had done any of the Protected Acts and/or because the Respondent believed the Claimant had done, or may do, a protected act?

c. The alleged detriments the Claimant suffered as a result of doing the Protected Acts are as follows:

i. David Martin avoided investigating the complaints that the Claimant raised about Faima Yasmin and Farhana Zaman in October 2021.

ii. During a meeting on 14 December 2021 David Martin made it clear to the Claimant that he believed and supported Julian Williams in relation to the grievance that the Claimant had submitted against Mr Williams.

iii. David Martin instructed Christian Atwell and other colleagues to carry out multiple lesson observations and monitor the Claimant during December 2021 and January 2022.

iv. During December 2021 to January 2022, David Martin and members of the Academy's senior leadership team walked into the Claimant's lessons to observe and monitor him. For example, on one occasion Julian Williams, Simon Webb and Samantha Williams came into the Claimant's classroom one after the other. On another occasion, Christian Atwell, Sunita Barbra and Samantha Williams came into the Claimant's classroom one after the other.

v. Sukhdev Shoker conspired with David Martin when determining the questions that were to be asked during grievance investigation meeting on 14 January 2022.

vi. The questions asked by Sukhdev Shoker during the grievance investigation meeting on 14 January 2022 were not focused on the Claimant's three grievance allegations against Julian Williams. Instead, the questions were geared towards accusing the Claimant and

insinuating that the grievance issues were the Claimant's fault. The Claimant alleges that this suggests Sukhdev Shoker was biased and that the grievance outcome was predetermined.

vii. On 17 and 31 January 2022 David Martin wrote to the Claimant to invite him to a 5-months probationary review meeting. The Claimant alleges that this was in breach of the Respondent's Probationary Policy.

viii. During the Claimant's sickness absence from 21 January – 8 February 2022, David Martin took false statements from students regarding the Claimant.

ix. The Claimant resigned on 2 February 2022 (with three months' notice pursuant to s12.1 of his contract) out of frustration at how David Martin had treated him. The Claimant alleges that this resignation was a constructive dismissal.

x. David Martin did not acknowledge the Claimant's resignation letter dated 2 February 2022.

xi. On 8 February 2022 David Martin terminated the Claimant's employment.

xii. In terminating the Claimant's employment, David Martin relied in part on the Claimant's poor relationship with Faima Yasmin and Farhana Zaman.

xiii. In terminating the Claimant's employment, David Martin relied in part on complaints that had been raised against the Claimant by students.

xiv. David Martin did not give the Claimant a chance to recover from his illness before holding the probationary review meeting in February 2022. The meeting went ahead in the Claimant's absence.

xv. David Martin avoided investigating the grievance that the Claimant submitted against Brian Rosenwould, Faima Yasmin and Farhana Zaman in February 2022.

xvi. On 23 February 2022 David Martin sent an email to the Claimant in which he warned the Claimant not to request a reference from employees of Academy.

xvii. In February 2022, David Martin blocked the Claimant from being able to email members of staff at the Academy.

xviii. On 14 March 2022, Sukhdev Shoker confirmed that the Claimant's grievance submitted on 14 December 2022 had not been upheld.

xix. On 7 April 2022 David Martin sent an email to the Claimant in which he warned the Claimant that he would have "no hesitation in reporting this matter to the Police citing a case of harassment" if the Claimant continued to ignore the Academy's requests for no further contact.

xx. On 29 April 2022 David Martin sent a letter to the Claimant in which he asked the Claimant to return to the Academy the laptop, keys and ID badge that had been issued to the Claimant. David Martin warned the Claimant that if these items were not received by 12 May the Academy would contact a debt retrieval agency to recover the sum of £550.00 (the cost of the items) from the Claimant.