



## EMPLOYMENT TRIBUNALS

Claimant

**Mrs. Aldona Done**

v

Respondent

**Ellesmere College Limited**

Heard at: **Birmingham**

On: **19,20,21,22,23 and 2 February 2024 and 18  
March 2024 & In chambers 19 and 20 March 2024,  
11 June 2024**

**Before:** **Employment Judge Wedderspoon**

**Members :** **Ms. Sonia Campbell**

**Mr. J. Reeves**

**Representation:**

**Claimant:** **In Person**

**Respondents:** **Mr. M. Williams, Counsel**

## JUDGMENT

1. All of the claims for public interest disclosure detriment are not well founded and are dismissed.
2. All claims of discrimination arising from disability are not well founded and are dismissed;
3. All claims of indirect disability discrimination are not well founded and are dismissed;
4. All of the claims of failure to make reasonable adjustments are not well founded and are dismissed;
5. All claims of harassment related to disability are not well founded and are dismissed;
6. All claims of victimisation are not well founded and are dismissed;
7. All the claims of s.44 (1)(c) of the Employment Rights Act 1996 are not well founded and are dismissed;
8. All the complaints of trade union victimisation are dismissed upon withdrawal.

## REASONS

1. By claim forms dated 24 March 2022 and 21 September 2022 the claimant pursued claims of public interest disclosure detriment, discrimination arising from disability, indirect disability discrimination, failure to make reasonable adjustments, harassment related to disability, victimisation and detriment by reason of health and safety. At the end of the hearing and

during submissions, the claimant withdrew her complaint of detriment by reason of trade union membership. The Tribunal dismissed that particular claim on withdrawal.

2. In summary, the claimant's case is she had an eating disorder which amounted to a disability. The claimant alleges the respondent was aware of her disability or should have so aware since 2019. In her dual roles as a mathematics teacher and housemistress she alleges she was poorly treated and as a result resigned her role as a housemistress. Her case is that she raised a number of health and safety concerns and she was subject to detrimental treatment. The respondent denies that it had any awareness of the claimant's eating disorder until 27 July 2022 when this was noted in an Occupational Health Report and the claimant had actively hidden her disability from the respondent and she was not treated less favourably or unfavourably by the respondent.
3. The Tribunal determined to deal with liability first.
4. The agreed list of issues are set out below :
5. List of Issues

The claimant alleges that she made the following specific complaints during her employment:

1.1 January to March 2021, the Claimant expressed to the Respondent that she was experiencing stress due to having to look after the five international boarders in her Boarding House;

1.2 18 May 2021, the Claimant told Mr Mullock (Deputy Head, External Relations) of her concerns that the House was not a good environment as she was dealing with girls with mental health issues, self-harming, suicide attempts;

1.3 7 July 2021, the Claimant told the Senior Management Team that she needed more support and that her mental health was deteriorating;

1.4 16 August 2021, the Claimant informed the Headmaster that not being involved at all in St Aidan's was making her very anxious;

1.5 6 September 2021, the Claimant emailed the Headmaster and the Deputy Heads, expressing her concern that their "return to work programme" was having a detrimental effect on her mental health and that being completely forced out from St Aidan's was very distressing for her;

1.6 Reporting the incident of 31 January 2022 with X's mother to the Senior Management Team and asking for support as she felt vulnerable;

1.7 On or around 24 March 2022, the Claimant reported to the Deputy Head (Pastoral) that she had had to meet with a parent an hour after having a panic attack and that she had had to teach student X and faced provocation from student X in class;

1.8 27 March 2022, the Claimant told the Deputy Head (Pastoral) that she was unhappy, that she felt discriminated against after her breakdown and that she wanted to raise a grievance;

1.9 Emails from the Claimant to the Headmaster, Deputy Head (Academic), Deputy Head (Pastoral) and Head of Middle School over January to March 2022, expressing that she did not feel safe regarding student X;

1.10 February to March 2022, reporting incidents in the House to the Deputy Head (Pastoral) and Deputy Head (Academic), explaining that she felt unsafe in her job;

1.11 1 April 2022, informing the Headmaster that she was really struggling with her mental health and she was going to raise a formal grievance;

1.12 Reporting to the Deputy Head (Pastoral) at the end of March 2022 that she was stressed resulting from student X attempting to record her; and

1.13 Submitting a formal grievance on 21 April 2022.

1.14 Her correspondence with Ms Avery in August 2022 in which she complained of the failure to make reasonable adjustments

2. The specific complaints of discrimination and/or detriment which the Claimant makes are as follows:

2.1 Being required to continue to deal with issues concerning the students on the swimming club without additional help of support between October 2019 - May 2021 and October 2021 - April 2022;

2.2 Failure by the Respondent to carry out any stress audits or risk assessments concerning the Claimant from October 2019 - present;

2.3 Being required to continue attending lunchtime meetings, where people were eating around her, between October 2019 – May 2021 and October 2021 – April 2022;

2.4 Failure to provide support or amend the Claimant's duties during lockdown, including furloughing one of the Claimant's assistants and not requiring the other one to come in at all during both COVID lockdowns;

2.5 Failure to provide support during the investigation into the complaints against the swimming club and coaches, between May – June 2020 and October – December 2020;

2.6 The Deputy Head (Academic) telling the Claimant, in response to her expressing that she was stressed, that she should find everything a lot easier as she only had 5 girls to look after in January 2021, during second COVID lockdown;

2.7 14 May 2021, the Deputy Head (Academic) failing to offer support to the Claimant when she broke down and saying to the Claimant "I hope you are not breaking down on us. We had this before when members of staff looked all confident on the outside and broke down suddenly";

2.8 18 May 2021 - failure by Stephen Mullock and the Respondent to support the Claimant;

2.9 Failure to support the Claimant after her breakdown on 21 May 2021;

2.10 7 July 2021 the Senior Management Team told the Claimant that they had decided to give her time off from her Housemistress duties completely and did not explore the Claimant's suggestion that other duties that could be taken away from her;

2.11 7 July 2021, the Deputy Head (Academic) made a comment that the Claimant "must be quite fragile";

2.12 26 August 2021, the Claimant was told it was not possible for her to resume her Housemistress duties;

2.13 The Head Master sent an email to the Claimant following their meeting on 16 August 2021: "I am still a little uncertain as to why you wanted your union representative involved, but - as you know- I made no objection to this. I think most employers might have objected to this, or at least expressed concerns, as on the face of it seemed a rather 'escalating' approach to things, but I didn't want to take that view...".

2.14 When term started on 6 September 2021, no provision or adjustments were made for the Claimant. She was not allowed in St Aidan's and her classroom was used by another teacher. The Deputy Head (Pastoral) told the Claimant that she could go home if she wanted;

2.15 Failure to respond to the Claimant's email of September 2021 asking for more support to protect her mental health, failure to manage / reduce her working hours

2.16 15 September 2021, the Claimant received a letter from the Deputy Head (Academic) threatening her with disciplinary action;

2.17 October 2021, failure to follow up the Occupational Health report or to arrange a meeting with the Claimant to discuss the report;

2.18 1 April 2022, threatening to evict the Claimant's husband from their accommodation;

2.19 Failure to support the Claimant in light of the issues with the mother of student X between January – March 2022;

2.20 10 May 2022, being informed by the Headmaster in a return-to-work meeting that she was again not going to be allowed to run St Aidan's;

2.21 26 June 2022, the Headmaster writing on the Claimant's Occupational Health assessment consent form that the Local Authority Designated Officer issue was on hold because of her mental health issues.

2.22 The failure to implement a return-to-work plan, between July - October 2021 April May 2022, November 2022 – July 2023;

2.23 The referral of the Claimant to the Local Authority Designated Officer on 1 April 2022 and again in July 2022 ;

2.24 The delay in providing / failure to provide the Claimant with the outcome of the referral to the Local Authority Designated Officer and the Respondent's own investigation into the same, between April – October/November 2022;

2.25 The delay in progressing / failure to progress the Claimant's grievance, failure to reasonably and promptly afford a reasonable opportunity to the Claimant to obtain

redress of her grievance between April – November 2022, appeal filed in November 2022, outcome received in July 2023. Second grievance filed in November 2022, hearing and outcome in July/August 2023;

2.26 Informing the Claimant in May 2022, during her return-to-work meeting that she had been referred to the Local Authority Designated Officer;

2.27 Failure to appoint a temporary line manager in accordance with advice from the Claimant's GP, between April 2022 – June 2022;

2.28 Failure to refer the Claimant to clinical psychological / mental health services, from October 2019 - present;

2.29 The appointment of an Acting Housemistress to St Aidan's for the start of term in September 2022; and

2.30 The circulation of information showing the Claimant as performing her teaching duties only for the start of term in September 2022.

3. The issues the Tribunal will decide are set out below:

#### **4. Time limits**

4.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 24 March 2022 (the First Claim) or 21 September 2022 (the Second Claim) may not have been brought in time.

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

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

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

4.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

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

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

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

4.3 Were the complaints brought under Section 44 and Section 47 Employment Rights Act 1996 made within the time limit in Section 48 of the Employment Rights Act 1996? The Tribunal will decide:

4.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the acts complained of?

4.3.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

4.3.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

4.3.4 If it was not reasonably practicable for the claim to be made to the Tribunal

4.4 within the time limit, was it made within a reasonable period?

4.4 Was the complaint made under Section 146 Trade Union and Labour Relations (Consolidation) Act 1992 brought within the time limit in Section 147(1)? The Tribunal will decide:

4.4.1 Was the complaint made to the tribunal within three months (plus early conciliation extension) of the act complained of?

4.4.2 If not was the act complained of part of a series of similar acts or failures and was the last of them?

4.4.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

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

## **5. Protected and other disclosures**

5.1 Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

5.1.1 What did the Claimant say or write? When? To whom? The Claimant says she made disclosures as set out in paragraphs 1.1 to 1.14 above.

5.1.2 Did s/he disclose information?

5.1.3 Did s/he believe the disclosure of information was made in the public interest?

5.1.4 Was that belief reasonable?

5.1.5 Did s/he believe it tended to show that:

5.1.5.1 a criminal offence had been, was being or was likely to be committed;

5.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation;

5.1.5.3 the health or safety of any individual had been, was being or was likely to be endangered;

5.1.5.4 information tending to show any of these things had been, was being or was likely to be deliberately concealed.

5.1.6 Was that belief reasonable?

5.2 If the Claimant made a qualifying disclosure, it was a protected disclosure because it was made to the Claimant's employer.

If so, it was a protected disclosure.

5.3 Being an employee at a place where there was no representative or safety committee, or it was not reasonably practicable for the employee to raise the matter by those means, did she bring to her employer's attention, by reasonable means, circumstances connected with her work as set out at paragraph 1.1 to 1.14 above which she reasonably believed were harmful or potentially harmful to health or safety (Section 44(1)(c) Employment Rights Act 1996)?

## **6. Detriments**

6.1 Did the Respondent do the things set out at paragraph 2 above:

6.2 By doing so, did it subject the Claimant to detriment?

6.3 If so, was it done on the ground that:

6.3.1 She made a protected disclosure? And/or

6.3.2 She made disclosures as set out in paragraph 5.3 above?

6.3.3 Did the act set out at paragraph 2.13 above have the sole or main purpose of preventing or deterring the Claimant from making use of trade union services at an appropriate time, or

penalising her for doing so (Section 146(1)(ba) Trade Union and Labour Relations (Consolidation) Act 1992?

## **7. Remedy for Protected Disclosure and other Detriments**

7.1 What financial losses has the detrimental treatment caused the Claimant?

7.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

7.3 If not, for what period of loss should the Claimant be compensated?

7.4 What injury to feelings has the detrimental treatment caused the Claimant and how much compensation should be awarded for that?

7.5 Has the detrimental treatment caused the Claimant personal injury and how much compensation should be awarded for that?

7.6 Is it just and equitable to award the Claimant other compensation?

7.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

7.8 Did the Respondent or the Claimant unreasonably fail to comply with it?

7.9 If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

7.10 Did the Claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the Claimant's compensation? By what proportion?

7.11 Was the protected disclosure made in good faith?

7.12 If not, is it just and equitable to reduce the Claimant's compensation? By what proportion, up to 25%?

7.13 To what remedy is the Claimant entitled under section 149 Trade Union and Labour Relations (Consolidation) Act 1992?

## **8. Discrimination arising from disability (Equality Act 2010 section 15)**

8.1 Did the Respondent treat the Claimant unfavourably by:

8.1.1 The Deputy Head (Academic) commenting on 7 July 2021 that the Claimant "must be quite fragile".

8.1.2 The Deputy Head (Academic)'s comments in the grievance investigation report (May – September 2022) that the Claimant was "emotionally all over the place" and "annoyed" about having to attend a working lunch (in the context of the Claimant's eating disorder);

8.1.3 Alleging in June 2022 that the Claimant's seeking of a further Occupational Health assessment was a way of refusing to cooperate in the LADO disciplinary investigation;



8.1.4 Alleging in August 2022 that the Claimant providing written responses to the LADO investigation and not meeting face to face (which she had requested as a reasonable adjustment) was hampering the disciplinary investigation;

8.1.5 Criticising in April 2022 and June – August 2022 the Claimant's 'black and white' thinking.

8.2 Did the following things arise in consequence of the Claimant's disability:

8.2.1 her mental ill health resulting from her disability?

8.3 Was the unfavourable treatment because of her mental ill health resulting from her disability?

8.4 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:

8.4.1 The Respondent denies that the above acts amount to unfavourable treatment that arose from something in consequence of the Claimant's disabilities. If it is considered that the above acts did amount to unfavourable treatment, the Respondent considers that the legitimate aim of such comments was to ensure the successful running of the boarding house whilst taking into consideration the welfare needs of the children and of the Claimant herself.

8.5 The Tribunal will decide in particular:

8.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

8.5.2 could something less discriminatory have been done instead;

8.5.3 how should the needs of the Claimant and the Respondent be balanced?

8.6 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

## **9. Indirect discrimination (Equality Act 2010 section 19)**

9.1 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

9.1.1 requiring attendance at lunchtime meetings, where serious issues are discussed whilst staff eat their lunch.

9.1.2 changing its dress code in November 2021, to the effect that leather should not be worn.

9.1.3 Requiring staff to work in an environment without risk assessments and where staff and management are not trained on equalities issues

9.1.4 Failing to maintain confidentiality and allowing rumours to circulate in the workplace in relation to disciplinary issues, parental/student complaints and Local Authority Designated Officer referrals.

9.2 Did the Respondent apply the PCPs to the Claimant?

9.3 Did the Respondent apply the PCPs to employees without the Claimant's disability or would it have done so?

9.4 Did the PCP put employees the Claimant's disability at a particular disadvantage when compared with employees without the disability, in that:

9.4.1 They find it difficult to meet around food?

9.4.2 They are more likely to have an unusual preoccupation with body image?

9.4.3 They are at increased risk because of stress levels caused by disability?

9.5 Did the PCP put the Claimant at that disadvantage?

9.6 Was the PCP a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:

9.6.1 With respect to 9.1.1 above, the Respondent did hold various lunchtime meetings, with Head of Departments, Senior Management Team etc where serious issues could be discussed. The legitimate aim for doing so was to have all staff present to discuss important topics where staff were not required to give up their evenings to attend work meetings.

9.6.2 With respect to 9.1.2 above, the Respondent sent an email to all staff explaining that the dress code will be strictly adhered. The dress code policy outlined *Typical business/office wear which constitutes jackets, tailored trousers (full length) skirts/ dress of modest length. Clothing should not be of a casual fabric such as denim, plastic, or leather. Shoes/boots as opposed to trainers or casual sandals.* The legitimate aim for having such a policy was to ensure that all staff were wearing appropriate office wear.

9.6.3 With respect to 9.1.3 above, it is denied in its entirety that the Respondent required staff to work in an environment without risk assessments and where staff and management are not trained on equalities issues.

9.6.4 With respect to 9.1.4 above, it is denied in its entirety that the Respondent had the PCP of failing to maintain confidentiality and allowed rumours to circulate in the workplace.

9.7 The Tribunal will decide in particular:

9.7.1 was the PCP an appropriate and reasonably necessary way to achieve those aims;

9.7.2 could something less discriminatory have been done instead;

9.7.3 how should the needs of the Claimant and the Respondent be balanced?

## **10. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**

10.1 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

10.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

10.2.1 Requiring employees to attend Housemasters' meetings during lunch times where others were eating and discussing serious issues including welfare issues

10.2.2 Changes to working practices during Covid lockdowns, including switching to online teaching, going into the School to teach the children of key workers, requiring the continuation of pastoral duties

10.2.3 Requiring employees to deal with serious welfare issues including students' mental health issues and safeguarding issues

10.2.4 Requirement to be interviewed by governors as part of the investigation into complaints against the swimming club

10.2.5 Requiring return to work without an adequate return to work plan;

10.2.6 Requiring Housemistresses/Housemasters to undertake evening duties;

10.2.7 Requiring full duties to be undertaken;

10.2.8 Requirement to look after 80 boarders, including junior boarders

10.2.9 Requirement to stay off sick despite a fit not advising reduced duties

10.2.10 Requiring duties to be carried out without adequate support;

10.2.11 Requiring attendance at meetings without companions;

10.2.12 Requiring attendance at investigation meetings without being informed

under which policies and procedures they are being held;

10.2.13 Requiring return to work without adequate handovers;

10.2.14 A stressful working environment;

10.2.15 Requiring Housemistresses to be responsible for a high number of students;

10.2.16 The length of time to investigate and conclude a referral involving the Local Authority Designated Officer;

10.2.17 The Respondent's grievance process;

10.2.18 The Respondent's system of line management;

10.2.19 Requiring employees to work as many hours as necessary to keep on top of their workload;

10.3 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that:

10.3.1 Exposure to triggers related to eating disorders during mealtimes. Heightened anxiety and discomfort due to being surrounded by food and feeling excluded from social interactions.

10.3.2 Increased stress and anxiety due to the sudden shift in teaching methods and adapting to new technologies. Difficulty in managing personal mental health while providing support to students remotely. Exposure to triggers and challenges in maintaining self-care routines while working in different environments.

10.3.3 Emotional strain and exacerbation of personal mental health conditions due to the nature of the issues being addressed. Emotional exhaustion from consistently providing support and dealing with potentially distressing situations.

10.3.4 Increased anxiety and stress related to formal interviews and the potential negative consequences for the College. Emotional distress caused by being involved in a complaint investigation process.

10.3.5 Lack of support and guidance in transitioning back into work, leading to increased anxiety and difficulty in managing workload and responsibilities.

10.3.6 Impact on personal well-being and self-care routines due to additional working hours.

10.3.7 Increased stress and anxiety related to managing responsibilities during non-standard working hours.

10.3.8 Increased workload and strain on mental health due to managing a high volume of responsibilities.

10.3.9 Physical and emotional exhaustion from providing care for a large number of teenage girls, many dealing with mental health issues themselves. Difficulty in managing personal well-being and self-care needs while attending to the needs of others.

10.3.10 Negative impact on mental health and well-being due to being forced to

believe that the recovery she made was not good enough.

10.3.11 Increased stress and anxiety from not having sufficient resources or assistance in fulfilling job responsibilities. Overload of tasks leading to burnout and negative impact on mental health.

10.3.12 Increased anxiety and discomfort due to the absence of a support system familiar individuals during meetings.

10.3.13 Heightened stress and anxiety caused by uncertainty and lack of clarity regarding the investigation process.

10.3.14 Increased pressure and potential confusion in resuming duties without proper information or context.

10.3.15 Increased anxiety and exacerbation of mental health conditions due to high levels of stress in the workplace. Difficulty in managing symptoms and maintaining well-being in a challenging and demanding environment.

10.3.16 Increased workload and potential strain on mental health due to the responsibility of managing a large number of students' needs and well-being. Difficulty in providing individual attention and support to each student, leading to feelings of guilt or inadequacy.

10.3.17 Prolonged periods of uncertainty and waiting contributed to heightened anxiety and emotional distress. Difficulty in managing symptoms and maintaining stability during the investigation process.

10.3.18 Lack of support and resolution for an individual with disabilities who filed grievances.

10.3.19 Emotional strain and re-traumatisation caused by navigating a process that did not adequately address the concerns.

10.3.20 Lack of understanding or accommodations for individuals with disabilities within the line management structure. Lack of support or appropriate guidance in managing mental health conditions and work-related challenges.

10.3.21 Increased risk of burnout and negative impacts on mental health due to excessive working hours. Difficulty in maintaining work-life balance and engaging in self-care activities. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

10.4 What steps could have been taken to avoid the disadvantage? The Claimant suggests:

10.4.1 Schedule meetings at times that do not conflict with mealtimes or provide alternative accommodations for disabled individuals who may be triggered by food-related environments.

10.4.2 Ensure that individuals with disabilities can effectively transition to online teaching or remote work. Provide additional support and flexibility in managing workload and adapting to

new working conditions. Establish clear guidelines and expectations for pastoral duties during lockdowns to alleviate stress and maintain work-life balance.

10.4.3 Offer comprehensive training and resources to disabled employees to effectively handle welfare issues and provide support to students. Implement a support system for employees with disabilities, to seek assistance and manage the emotional toll of dealing with such issues. Ensure reasonable caseloads and workload distribution for employees with disabilities to prevent excessive stress and burnout.

10.4.4 Establish clear protocols and support mechanisms for disabled individuals involved in investigations, including providing information about the process, offering emotional support, and ensuring a fair and unbiased investigation.

10.4.5 Develop and implement comprehensive return-to-work plans that address individual needs and provide appropriate accommodations and support to disabled employees. Conduct regular check-ins and evaluations to ensure a smooth transition back to work and address any challenges or concerns.

10.4.6 Establish fair and reasonable duty schedules that take into account the well-being and work-life balance of disabled employees. Provide additional support or resources during evening hours to alleviate the burden and stress of these duties.

10.4.7 Assess workload distribution and ensure that it is manageable and reasonable for individuals, considering their disabilities and mental health conditions. Provide accommodations and support to alleviate excessive workload and prevent burnout.

10.4.8 Consider adjusting the number of boarders assigned to individuals with disabilities to ensure that the workload is manageable and conducive to their well-being. Provide additional support or resources to assist with the care and supervision of boarders.

10.4.9 Implement policies and procedures that allow for flexible work arrangements or reduced duties when a disabled employee is experiencing health-related challenges, even if they do not present a formal fit note.

10.4.10 Ensure that disabled employees have access to the necessary resources, tools, and support systems to effectively carry out their duties. Provide training and additional staffing to offer assistance and support when needed. Establish a support system to assist with tasks that may require extra support.

10.4.11 Advise individuals to have a support person accompany them to meetings if needed, especially if they have disabilities or mental health conditions that may benefit from additional support or advocacy.

10.4.12 Clearly communicate the policies and procedures governing investigation meetings to participants in advance to ensure transparency and understanding. Provide disabled individuals with the necessary information and support to participate fully and confidently in the investigation process.

10.4.13 Implement a comprehensive handover process that ensures important information, tasks, and responsibilities are properly communicated to employees returning from leave or absence. Provide sufficient time and support for disabled individuals to catch up on any missed information or updates.

10.4.14 Promote a positive work culture that prioritises employee well-being and mental health. Establish mechanisms for identifying and addressing sources of stress in the workplace, such as workload management, conflict resolution, and disabled employee support programs.

10.4.15 Assess and adjust student-to-staff ratios to ensure that the workload is manageable for a disabled Housemistress and allows for quality care and support for each student. Provide additional resources and staff members to help her manage the responsibilities effectively.

10.4.16 Streamline investigation processes to minimise unnecessary delays and provide timely resolution. Ensure clear communication with all parties involved regarding the expected timeline and progress updates.

10.4.17 Review and improve the grievance process to ensure it is fair, impartial, and accessible to individuals with disabilities. Provide clear guidelines and support to disabled employees navigating the process to address their concerns effectively.

10.4.18 Train line managers on disability awareness and accommodations to ensure they can effectively support employees with disabilities. Establish regular communication channels between employees and line managers to address concerns, provide feedback, and monitor well-being.

10.4.19 Promote a healthy work-life balance by implementing workload management strategies, such as delegation, and realistic goal setting. Encourage open communication between disabled employees and supervisors to address workload concerns and explore solutions, such as redistributing tasks and hiring additional support if needed.

10.5 Was it reasonable for the Respondent to have to take those steps and when?

10.6 Did the Respondent fail to take those steps?

**11. Harassment related to disability (Equality Act 2010 section 26)**

11.1 Did the Respondent do the following things:

11.1.1 the Deputy Head (Academic) telling the Claimant on 14 May 2021: "I hope you are not breaking down on us. We had this before when members of staff looked all confident on the outside and broke down suddenly"?

11.1.2 the Deputy Head (Academic) commenting to the Claimant on 7 July 2021 that she "must be quite fragile"?

11.1.3 the Deputy Head (Academic) stating in the grievance investigation/report sometime between 21 April 2022 and 22 November 2022 that the Claimant was "emotionally all over the place", "struggling with reality", "annoyed" for having to attend a working lunch?



11.1.4 the Deputy Head (Pastoral) stating in the grievance investigation/report sometime between 21 April 2022 and 22 November 2022 that the Claimant was "jumping up and down" in his office when she didn't receive the support she needed?

11.1.5 the Head Master stating in the grievance investigation/report and Local Authority Designated Officer report sometime between 21 April 2022 and 22 November 2022 that the Claimant is "very black-and-white" and "has low opinion of other humans"?

11.2 If so, was that unwanted conduct?

11.3 Did it relate to disability?

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

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

**12. Victimisation (Equality Act 2010 section 27)**

12.1 Did the Claimant do protected acts as set out in paragraphs 1.8, 1.11, 1.13 and

1.14 above?

12.2 Did the Respondent do the things which are set out at paragraph 2 above and/or:

12.2.1 Change its dress code In November 2021?

12.3 By doing so, did it subject the Claimant to detriment?

12.4 If so, was it because the Claimant did a protected act?

12.5 Was it because the Respondent believed the Claimant had done, or might do, a protected act?

5 **13. Remedy for discrimination or victimisation**

13.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

13.2 What financial losses has the discrimination caused the Claimant?

13.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

13. If not for what period of loss should the Claimant be compensation

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

13.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

13.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

13.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

13.9 Did the Respondent or the Claimant unreasonably fail to comply with it?

13.10 If so is it just and equitable to increase or decrease any award payable to the Claimant?

13.11 By what proportion, up to 25%?

13.12 Should interest be awarded? How much?

The hearing

6 On day 1 of the hearing the claimant made an application to strike out the respondent's case for failure to provide full disclosure of documents. On 8 February 2024 Employment Judge Perry had ordered that by 13 February 2024 the respondent should disclose emails referred to in the LADO report. The claimant identified today that references to pages 714 and 725 had been disclosed unredacted but had been redacted in the bundle. The claimant alleged that unredacted pages in the bundle referenced at pages 721 4 August 2022; 17 August 2022; 24 August 2022 and 31 August 2022 had not been not disclosed. Further reference at page 722 dated 11 November 2022 the disciplinary report had also not been disclosed. It was also unclear whether the reference at page 721 to a document dated 1 September 2022 namely the investigation summary had been disclosed. The claimant also noted that pages 718/719 remained redacted; and the full documents dated 8 February 2022 and 31 March 2022 were not available. The claimant stated she had not seen the final paper file until

- 16 February 2024. She wanted to continue with the case because of the effect on her mental health.
- 7 The respondent sought instructions but was unable to clarify why all the documents had not been provided. The Tribunal determined if disclosure was provided to the claimant in good time namely by 2 p.m. on the first day of the hearing a fair trial was possible and the claimant would be given time to prepare her case. The Tribunal noting that the claimant was a litigant in person provided additional time for her preparation and extended the hearing dates by reason also of the amount of material the Tribunal needed to digest. The hearing was extended on 18 March; 19 March; 20 March 2024; and 3 May and 7 May 2024. It was not proportionate at present to strike out the case as a fair trial with these adjustments. The initial listing of the trial taking account of the number of allegations was wholly inadequate as identified by Judge Perry on 8 February 2024.
  - 8 On day 4 the respondent confirmed it was not running the defence of reasonable practicability in respect of the discrimination claims.
  - 9 Although the claimant confirmed at the commencement of the hearing that she continued to pursue a section 146 (BA) of the TULR Act 1992 claim, at the end of the case and during submissions, the claimant withdrew the claim. The Tribunal dismissed that claim on withdrawal.
  - 10 The claimant also confirmed that she was running a section 44 (1)(c) ERA 1996 case; her case is that she raised a number of child protection issues from 2016 to May 2021 and she was accused of not being able to manage her workload; accused of not being able to let go and accused of aggravating situations. However the list of issues concerned the matters which formed part of the PID claim.
  - 11 The claimant provided an additional document C1 which set out the categories she placed her protected disclosures in pursuant to section 43B of the Employment Rights Act 1996.
  - 12 The Tribunal heard from the claimant and for the respondent heard from Vicky Pritt Roberts, Deputy Head Academic; Dr. Chatterjee, Deputy Head Pastoral; Rona Avery, Director of Finance; Mike McCarthy, Director of Operations. The respondent submitted a written representation in the form of the witness statement of Mr. Brendan Wignall, Headmaster who had passed away earlier this year. The bundle consisted of 1908 pages. The respondent also added an additional document marked R1 "Staff Code of Conduct".
  - 13 Following a break in the proceedings for the respondent to locate documents, the claimant made a further application to strike out the respondent's defence on the basis that there was (i) incomplete disclosure and (ii) the statement providing disclosure was incomplete and untruthful; documents were missing (iii) that there were lots of inconsistencies in the respondent's evidence. The claimant submitted she could have no confidence in the respondent to tell the Tribunal the truth. The respondent submitted the document the claimant alleged was outstanding was not in the list she identified on the first day of the hearing; the respondent would make a search. In any litigation there were differences in recollection; the Tribunal as a fact finding will determine this matter. A fair trial was still possible.
  - 14 The Tribunal refused the application to strike out. The respondent will search for the document identified as missing (but not on the list provided by the claimant to the Tribunal on day 1). Differences in evidence is a feature of litigation and the Tribunal will determine the facts on hearing all of the evidence; the claimant is able to challenge the witnesses she believes have given inconsistent

recollections and invite the Tribunal to infer that the witness was dishonest. A fair trial was still possible.

- 15 At the end of the evidence, both parties provided and exchanged written submissions and supplemented these with oral submissions. The respondent failed to exchange the written submissions in accordance with the Tribunal's orders; they were disclosed late. The claimant was provided with additional time to make her submissions.
- 16 The deliberations could not be completed within the hearing timetable and the Tribunal set further dates to deliberate. Unfortunately, due to sickness and the Tribunal's other sitting commitments the Tribunal was unable to meet until June 2024 to complete its deliberations. The Employment Judge then required further time to prepare the written judgment.

### Facts

- 17 On 5 October 2011 the claimant commenced employment as a mathematics teacher for the respondent (see page 266 -287 contract of employment). In September 2013, the claimant became housemistress for St. Aidan's House (page 344). As part of that role, the claimant received an increase to her £34,000 salary as a maths teacher, with an additional allowance of £7,691 (page 344) along with a maintenance allowance of £100. Further, the claimant also lived on site in free accommodation provided by the college.

#### Term of housemistress role and responsibilities

- 18 There was a dispute of evidence as to the term of the claimant's housemistress role. The claimant's evidence in her witness statement was that the headmaster appointed her to this post for some 15 years. Her oral evidence differed; she stated that she was not interviewed by the headmaster but nevertheless was granted 15 years in this post and spoke to Vicky Pritt Roberts a few days later who increased the term to 16 years. There was no written document which set out the term of employment as a housemistress (see page 344). Vicky Pritt Robert's evidence to the Tribunal is that she had no recollection of a conversation with the claimant of extending the term to 16 years at all; nor was it in her gift to grant any term to the claimant as a housemistress; it was only in the Headteacher's gift. Mrs. Pritt Roberts evidence was that the college's custom and practice was a 10 year term only as housemistress. The Tribunal did not find the claimant's evidence credible or consistent with her written statement and did not accept the claimant was given such a significantly longer tenure in the post. On the balance of probabilities, the Tribunal preferred the evidence of Vicky Pritt Roberts and found that the claimant was offered the role; with the understanding in accordance with custom and practice that she would do the housemistress role for a period of 10 years.
- 19 In the claimant's role of housemistress, the claimant led a team that was responsible for the welfare and safeguarding of pupils, as well as pastoral care. The claimant also had an input and oversight into their academic progress. As a house mistress of a residential boarding house the claimant was required to work some evenings and some weekends. The claimant was responsible for the safety and security and emotional happiness of the young people in the house. As housemistress the claimant was under a duty to act at all times in the best interests of the children and to provide guidance and ensure that they were safe living in college. On average brief evenings a week in about 11 or 12 weekends for 33 weeks of term time this is the same for all seven boarding houses and their

housemasters stroke mistresses. The boarding house was occupied by duty overnight supervisors namely Rebecca, Nikki and Sarah. There was also a nursing sick bay which was staffed 24 hours a day seven days a week. On occasions, Dr. Chatterjee's wife stepped in to assist for example in June of 2017.  
Code of Conduct

- 20 Pursuant to the respondent's code of conduct R1, general guidance is provided that teachers professionalism and vigilance to ensure the safety of children and reduce the risk of an allegation of impropriety against a member of staff. Further it stated that teachers needed to exercise professional judgement and always act within the spirit of the guidelines. Further that a teacher must report any actions which could be misinterpreted any misunderstandings accidents or threats involving the teacher and a pupil or a group of pupils to the designated safeguarding lead. At paragraph 1.6 it states that teachers should use appropriate language at all times and avoid any forms of aggressive or threatening words avoid any words or actions that are over familiar not use any sort of offensive language in front of pupils avoid the use of sarcasm or derogatory words when punishing or disciplining pupils and avoid making unprofessional personal comments about anyone. The dress code at paragraph one point 6.2 states you should dress appropriately and in a professional manner Chris must not be offensive distracting revealing or sexually provocative embarrassing or discriminatory.

Knowledge of disability of anorexia nervosa/generalised anxiety depression

- 21 On 7 October 2019 the claimant stated she informed the respondent that she engaged in dieting/had anorexia nervosa (page 1759-1760). There was a dispute of evidence as to what the claimant actually told the respondent. The claimant informed the Tribunal she had a long-standing impairment of anorexia nervosa and bulimia since the age of 16 years. The claimant's witness statement at paragraph 16 stated that she made sure to inform the deputy head academic Vicky Pritt Roberts about her disability. The claimant's oral evidence is that she showed her manager Ms. Vicky Pritt Roberts a letter dated 30 September 2019 that she needed time off for CBT. What the claimant actually informed her manager was a matter of dispute. Under cross examination, the claimant disputed that she minimised her impairment but later stating that she was ill; "maybe she hadn't made it clear at the time".
- 22 On the balance of probabilities, the Tribunal found that the claimant showed Ms. Pritt Roberts the letter at page 1759 which is headed "NHS Midlands Partnership NHS Foundation Trust". It states "*this brief letter is to confirm that Mrs Done has been advised to attend for weekly CBT E sessions as a treatment for her current health problem. The sessions are likely to run for 16 to 20 weeks and will begin from October 7 2019.*" The letter was signed by a senior nurse therapist at the eating disorder service. On providing the letter to Ms. Pritt Roberts, the claimant explained to Ms. Pritt Roberts that she tended to yo-yo diet. Ms. Pritt- Roberts asked the claimant if she required any further support; (although the claimant could not recall in her evidence, the Tribunal found that Miss. Pritt Roberts did ask her). The claimant answered no. The claimant downplayed her symptoms and did not inform her manager that she had suffered from anoxeria nervosa as a long-term condition. The Tribunal determined that the claimant did this because she was acting as a housemistress and caring for a number of the young women who themselves had eating disorders. The claimant was concerned her own

condition could impact on her continuing role as a housemistress. The Tribunal found that this was also corroborated by the fact the claimant did not discuss her longstanding eating disorder with the Occupational Health Physician in October 2021. The Tribunal found it was not until May 2022 page 1767 that the claimant mentioned she had an eating disorder. The claimant had no previous time off work for an eating disorder.

- 23 Although the claimant complained in her evidence that nobody at the respondent checked whether the claimant was coping or how she was finding the CBT treatment, the Tribunal found that in the context that the claimant had played down her symptoms the respondent was unlikely to do so.
- 24 By February 2020 the claimant stated she was in recovery and at the end of her treatment and there were no records in her GP notes about this condition around this time. On 30 March 2021 (page 1779) the claimant is described as eating well and on 7 April 2021 (page 1779) the claimant was eating well.
- 25 The claimant suffered stress in May 2021 on the note it says there was no previous history of medical health (see page 1778). The OH report dated 4 October 2021 (at page 542) states that the claimant does not have an inherent mental health condition. On 27 July 2022 the consultation is taken up by discussing the claimant's eating disorder. There was a mention of generalised anxiety disorder which was suggested the claimant should discuss it with her GP. The claimant's CBT scores on 24th August 2022 have substantially improved. The claimant was keen to get back to her housemistress role in 2021 despite her acknowledgement that it made her stressed. The OH report did not alert the respondent to any mental health condition which could lead it to consider that the claimant may be disabled. By Autumn 2021 the claimant was back in her role as a housemistress and did not raise concerns about her health at this time. The respondent could not reasonably have known that the claimant had a disability of generalised anxiety disorder in 2021. The claimant's fit notes in 2021 referred to stress at work. The fit noted 21 April 2022 referred to stress at work exacerbating panic attacks it was not until 6 of May 2022 signature page 1767 that it states stress at work anxiety panic attacks and eating disorder. The tribunal finds that it was not until May of 2022 but the respondent should have realised that the claimant was disabled by reason of anxiety.

#### Lockdown 2020

- 26 During lockdown March 2020, schools closed, and a number of lessons went online. Children who boarded at the school went home and stayed home and there were far fewer pupils at the school. The claimant stated that she continued to manage 84 girls around the world which was stressful for her as they were doing online lessons. There was a dispute as to whether the burden of work for the claimant was less. The Tribunal found that it was a different time, which brought its own stresses. The Tribunal found that the pastoral element of the claimant's role was significantly reduced because the children were no longer at the boarding house and had gone home; nor was the claimant involved in ensuring that the children were in the dining hall. Her responsibilities were different namely to ensure that the children were participating in online lessons.
- 27 On 23rd March 2020 (page 350) Mrs. Pritt Roberts stated that the school could manage without the claimant and if she wanted to keep her own child at home she could. The claimant was offered time off and she took it. The Tribunal found that the school was supportive to the claimant.

28 The claimant raised a concern about a parent to Mrs. Pritt Roberts. The respondent did offer support for the claimant (see 5 May 2020, page 352) as to how to respond and Mrs. Pritt-Roberts offered the claimant practical advice to collaborate with colleagues. Where the claimant raised a child protection concern, on 25 November 2020 (page 354) Dr. Chatterjee offered support and advice to the claimant.

2021

29 In March 2021 and in April 2021 the claimant's G.P. recorded that the claimant "eats well" (see page 1779 April of 2021).

30 In May 2021 the claimant was engaged in correspondence with Ms. Pritt Roberts about an increase in an increment. Ms. Pritt Roberts was supportive of the claimant and assisted her by editing the claimant's application for an increased increment (page 359). In response to the claimant's application for an increased increment the Headteacher stated this would have to be considered after September when he knows the situation the college faces on the financial front.

31 On 14 May 2021 the claimant was raising a concern about an increase in difficult students and parents (page 360) and sought a meeting with Stephen Mullock. A meeting took place with the claimant and Mr. Mullock and the claimant became upset talking about the day to day challenges she was currently experiencing. Mr. Mullock spoke to Ms. Pritt Roberts and Mr. Chatterjee who acknowledged they were aware of the current situation and that some adjustments had been made and they were taking further steps to support the claimant with this (see page 363). The claimant was signed off from work due to stress at work from 21 May 2021 to 3rd July 2021 see pages 1763 to 1764. The respondent put in place a temporary teacher support to manage the house and cover the claimant's teaching. The claimant returned to work from 4 July but resumed her teaching responsibilities at the beginning of term on 6 September.

Claimant goes off sick in May 2021

32 The claimant informed the Tribunal the respondent was not supportive following her absence from work in May 2021 but this was completely contradicted by what the claimant was saying at the time. On 22 May 2021 page 475 the claimant thanked Mrs. Pritt Roberts for her support during this difficult time. In emails dated 12 July 2021 at pages 480 and 481 the claimant thanked Mrs. Pritt Roberts and the Head.

33 On 10 June 2021 (page 1777) the claimant informed her G.P. that she did not like the housemistress role but had an exit plan. The Tribunal asked the claimant about this in evidence and she said she was considering resigning at this stage.

34 On 18 May 2021 in a meeting with Mr Mullock she raised that she was struggling with her role. Mr. Mullock (p.361) spoke to Mrs. Pritt Roberts and Dr. Chatterjee that the claimant has described struggling with day-to-day challenges. The claimant continued to work between the 18 to 21 of May 2021. On 21 May the claimant became upset and crying in the common room. Dr. Chatterjee (see paragraph 10 of his statement) had asked the head of middle school Siobhan Phillips to pick up more work to assist the claimant. There was nothing to alert the respondent that the claimant was under excessive stress or pressure. The Tribunal noted on 4 April 2022 page 361 the Claimant contacted Mr. Mullock to ask him whether he recalled saying he had concerns about my health. The Tribunal took the view this was a way of bolstering the claimant's case against the school. Mr. Mullock's recollection of what the claimant says she told him was not the same.

- 35 On 21 May 2021 the claimant informed her GP she was feeling stressed at work and had broken down. By 24 May 2021 the claimant “binged on food for a few days last week.” (see page 1778).
- 36 On 22 May 2021 the claimant emailed Mrs. Pritt- Roberts and Dr Chatterjee *“I’m writing to let you know that I am unwell and unfortunately unable to come into work at the moment. I had an emergency phone consultation with the GP yesterday at the end of the school day there was advised to take time off work rest and look after myself. I will seek further medical advice next week and I will make sure you receive the documentation required. Thank you for your support through this very difficult time.”* The claimants fit note dated 26 May 2021 described the claimant being unfit for work due to “stress at work”
- 37 On 10 June 2021 (page 367) Dr. Chatterjee emailed the claimant reassuring her not to worry about anything as everything was in hand. He stated *“In order for you to switch off completely, Vicky and I are looking to redirecting your email, so you do not need to pass us any emails from parents as we will pick those up. This will also get rid of any confusion of general emails.”*  
Meeting 7 July 2021
- 38 The claimant was absence until 4 of July 2021 and had a meeting with the Head teacher on 7 of July 2021; the handwritten notes of Mrs. Pritt Roberts see page 478; these notes were not verbatim record but her summary. The claimant was permitted to bring a friend with her to the meeting. The GP note page 1764 refers that the claimant was suffering stress at work and maybe fit for work with amended the duties and altered hours. In the meeting it is accepted by the respondent that Vicky Pritt Roberts said to the claimant she must be fragile. The claimant had been off work for 1.5 months and had had a breakdown and she was fragile. The Tribunal found Mrs. Pritt Roberts was being sympathetic and was trying to convey to the claimant that it was ok to feel like that. Although the claimant’s evidence was that this was not said in a caring manner; the Tribunal rejected her assertion. Further, the correspondence of the claimant indicated at the material time that she did accept that it was a genuine and caring comment; see her email to Vicky Pritt Roberts dated 12 July 2021 page 481.
- 39 The claimant in her evidence said that she felt she was shut down about the decision to return the claimant to teaching duties only. However, her email to the respondent dated 12 July 2021 page 480 which stated that she “understood; thank you for your support; the decision was made in the best interests..I know this is the best way forward. “
- 40 The respondent did not seek Occupational Health advice when the claimant returned to work. The headteacher took the view that the housemistress role had given the claimant stress and was best to see how the situation went. He took into account the interests of the children and suggested that they review the situation with an intent to the claimant to return to housemistress duties at half term. There was a return to work plan and the Tribunal found it was sincere and intended to be supportive.
- 41 It was noted that the job had not changed but there was an increasing self-imposed workload by the claimant by micromanaging. The claimant appeared to have some difficulties delegating work. It was noted that the claimant’s teaching timetable had been reduced as part of being a house mistress so that she can take breaks when it suits her. The support in place was weekly informal meetings with her line manager and protected time for counselling. The claimant perceived her relationships as good but it was observed that she could be aggressive and highly critical of most colleagues in addition to management. The claimant



understood her job description but there was some misperception on accountability and where college policies give protection around loco parentis. The claimant appeared to understand the role and the individual pupils accepting that every year changes come along. There was some evidence of a conflict in challenging decisions of medical staff and a concern about having challenging issues to respond to within the pastoral core framework. It was also noted that the house mother presented as very nervous about not running everything past the claimant before she actually acted. At the conclusion of the meeting it was determined that the claimant was not fit to return to her pastoral role as yet. She appeared ready to return to her teaching. The respondent accepted the suggestions on the fit note of reduced duties and reduced hours. The strategy was to move slowly towards returning to the core duties operating from September to mid-October and to include reviewing with the claimant her management style and team building. It was also decided that occupational health should provide information. The respondent identified a change in practise so to the reduce risk of the claimant feeling stressed once she returns to her pastoral role; namely sharing the workload. The claimant requested an additional meeting with a trade union representative it was determined to share the strategy for moving forward with the union at the next meeting. The respondent deemed that it was not possible to return to take responsibility for a boarding House of girls on reduced hours and amended duties basis by reason of the need for consistency of care and support for these students. The meeting finished positively and the claimant emailed on 12 July 2021 (page 480) stating *thank you very much for your support the meeting on Wednesday meant a lot to me and I'm very grateful for all your support through this very difficult time I have mixed feelings about the prospect of not being in Edens at the beginning of next academic year but I'm working on fully accepting it as I know this is the best way forward and the decision was made in my best interest I hope you have a nice summer holiday and thanks again for everything.* The claimant accepted the removal of her housemistress duties until September/mid October and was pleased with this.

- 42 The claimant complained in her evidence that Mrs. Pritt Roberts had stated that she “was fragile”. The Tribunal determined that Mrs. Pritt-Roberts comments were intended to be supportive and caring and that she was reassuring the clamant it was ok to be fragile.

August 2021

- 43 On 11 August 2021 the claimant emailed the head teacher to ask for a meeting at page 482 as a result of her meeting with Dr. Chatterjee and she sought some assurances. The Headteacher met with the claimant again on 16 August 2021 see page 515. The claimant brought her trade union representative. The headteacher explained to the claimant that the claimant should make clear to Rebecca that she can call on the claimant if she needs any assistance. In respect of the claimant being present at St. Aidans at the start of term the Head expressed he understood the claimant's desire to do so but thought it was actually going to cause more confusion for parents and pupils if you are there than if you are not. He described it as making a confusing start of the year as parents then start e-mail into the claimant having seen the claimant and met the claimant only to find the emails are being dealt with by somebody else. He thought therefore that it's best that you leave the team who have agreed or perfectly capable to manage things “I know that's not the answer you're looking

for and I'm sorry disappoint you but I do not think that given the return to work plan that we have in place it is the most sensible way forward”.

- 44 The headteacher followed this up with an e-mail to the claimant dated 19 August 2021 (page 515) stating “with regard to you being present in St. Aidan's start of term I completely understand your desire to do this however I think is actually going to cause more confusion for parents and pupils if you are there and if you are not it is going to make for a confusing start of the year as parents then start e-mail into you having seen you and met you only to find the emails are being dealt with by someone else I think therefore that it is in the best interest that you leave the team who we have agreed are perfectly capable to manage things”. The claimant under cross examination stated that at this time there was an investigation commenced into the Titans swimming club and she “did not want her disappearance mangled up with that”. There was never any suggestion that the claimant had done anything wrong in respect to the Titans swimming club but the Tribunal found that the claimant was seriously concerned that others might think that she was implicated, hence why she wanted to return to housemistress duties despite that this would be a cost to her health.
- 45 On 23 August 2021 (page 516) by email from Mrs. Pritt Roberts to the claimant clarified, it was confirmed what the claimant would be doing on return to work the claimant wrote on 23 August 2021 at page 413 to query whether she should would receive a full return to work interview before the school term started to discuss the return to work plan. The return to work plan had already been discussed at previous meetings. The claimant appeared concerned that while she was not running St Aidans she wanted to be seen as running St Aidan's house. The claimant stated that she was confused about a return to work plan because she hadn't seen it or agreed to anything. She said she wanted some clarity as she was unhappy with the way her return to work was being handled. She stated she had the much needed rest “I'm relieved that I discussed with you the issues that caused me distress, caused by me not receiving the support I needed from the SMT in dealing with very difficult situations so I'm ready now to put everything behind me and move on. The Head replied in a long e-mail dated 26 August 2021 (page 411) said that he remains of the view the source of stress in your job had not been the core teaching responsibilities so that it made sense for the claimant to focus on that area as a step one of return to work; it was a temporary allocation of duties. In respect of running the house it was determined the claimant to have in effect a phased return to work. The claimant was to return to work in September to allow time to assess the situation and ensure that when you take up your full responsibilities a full stress risk assessment can be carried out. He indicated a review meeting schedule for October will cover the demands of the additional responsibility of being a house mistress. Support received from managers and colleagues in carrying out the role. The control the claimant had over her workers as house mistress and the management of relationships within the house team and the management of change or unexpected events the claimant had expressed in the meeting feeling unsupported on certain issues. Mrs. Pritt Roberts had raised a question with the claimant when they met as to whether the claimant was claiming to be a super house mistress in the context that the claimant expressed the view that she had higher standards and did a better job than other house mistresses. The Head said in that context he could understand why the line manager phrased the question in that way. He indicated that the work returned to work plan was clear.

- 46 The claimant emailed the Head again on 31 August 2021; she did not understand the reasoning as to why she was not able to return to her role as house mistress page 1642 to 1643. The headteacher responded on 1 September 2021 and suggested meeting with her line manager to discuss a return to work page 1641 to 1642. By e-mail 6 September 2021 the claimant wrote to the headteacher again copying in Mrs Pritt Roberts and said she felt she was being forced out (see page 393). Dr. Chatterjee responded saying that he knew the claimant had found it hard today but it's what we feel is best at the moment. The head teacher responded (page 394) stating it was not accurate to say that she was being forced out of St Aidan's completely; that the school's approach had been clear across three meetings and in emails. The respondent wanted the claimant to focus on the core job as a teacher and allow colleagues to run the house as they did very successfully last term. The Head explained he was following normal practise in having the claimant resume her duties in a staged way following an illness. He explained his approach was consistent in how he had managed things and the approach had worked well. He took into account the welfare of an employee returning to work following a stress related illness; his primary concern was to operate an effective return to full responsibilities. The Head also referred he needed to give due consideration to the welfare of the girls in the house and the clarity of the position with respect to those managing them during the period. He stated it's for both the reasons that he had asked the claimant to focus on her teaching and leave the smooth running of St. Aidans to others for the time being.
- 47 Although the claimant was temporarily relieved of her responsibilities as house mistress, she retained all the benefits including enhanced pay, free accommodation and a reduced teaching timetable.
- 48 On 21 September 2021 at page 533 the claimant emailed Dr. Chatterjee and Mrs Pritt Roberts to say that she accepted the way she was feeling was nobody's intention; she didn't like the gradual return to work but understood that the smooth management of the house for the welfare of the children had to be priority in making these decisions. The claimant stated *"thank you very much for your efforts in supporting me to navigate these very unpleasant times for me I am really struggling I'm desperately trying to turn things around but it is very very hard for me."*
- 49 In the meantime, the respondent had organised an occupational health referral for the claimant and on 16 September 2021 at page 531. The claimant thanked Mrs Pritt Roberts stating *thank you very much for organising the occupational health referral for me and for taking your time to deal with all the other issues related to my return to work I won't be having anything to do with St Aidans until further notice from you I did what I did because I love that part of my job and always want to do my very best for the girls.*
- 50 There was a swimming club which trained at the school known as Titan Ellesmere College. The two coaches of the swimming team were not employees of the respondent some of the students were members of the swimming club. Dr. Chatterjee was also involved in the club and was the child protection officer. Allegations were raised with Swim England about the treatment of some of the members of the swimming club. The school governors undertook an investigation. The claimant was interviewed. The claimant was concerned how this would look for her despite the fact there was no criticism of her conduct at all.

Visiting the House

- 51 The claimant was advised not to visit the house but she did so. The claimant was also publicly critical of others and how they ran the house in her absence. The claimant had a difficulty with letting go control of the house. The claimant was informed not to visit the house again and if she did so that this could result in disciplinary action. The claimant stated that she understood this.
- 52 On 6 September 2021 page 525-6 the claimant emailed the headmaster Dr Chatterjee and Vicky Roberts to state "I'm just writing a short note to inform you that being forced out of St. Aidans completely is hard and very upsetting for me".
- 53 The headmaster responded to this on the 7 September 2021 (page 525) stating I do not think it is accurate to say that you are being forced out of St.Aidans completely I believe that our approach has been clear with you across three meetings now and my e-mail to you outlining the process by which you would presume resume your responsibilities was also clear in asking you to focus on your core job as a teacher and allow your colleagues to run the house as they did very successfully last term I am following our normal practise in having you resume your responsibilities in a staged way following your illness I am also seeking to ensure clarity and fairness for other staff who are charged with the welfare of the girls in the house during this. Over my primary concern is to operate an effective return to full responsibilities programme I need to give due consideration to the welfare of the girls in the house and the clarity of the position with respect of those managing them during that. It is for both reasons that I have asked you to focus on your teaching and leave the smooth running of St. Aidans to others for the time being I hope that you will soon be able to arrange a time for your next return to work meeting.
- 54 The claimant had met with the respondent on three occasions.
- 55 On 14 September 2021 p.529 Siobhan Phillips head of Middle school and Head of Art e-mailed Dr.Chatterjee to state that the claimant had attended St. Aidans in the morning. The claimant had stated that she didn't feel that the house was being run smoothly and asked for Dr.Chatterjee's opinion. The claimant kept using the office computer and then locking it so Rebecca could not get into the office.

Further Return to Work Meeting

- 56 On 14 September 2021 the claimant attended a further return to work meeting at the start of the term with her trade union representative, Mr. Thomas, page 527 to 528, along with Dr. Chatterjee and Mrs. Pritt Roberts. At this meeting the claimant described the fact that she was feeling very well and strong and when asked how the first week had gone of term the claimant replied fine except for not being allowed back running the boarding house. The respondent reiterated that the claimant had returned to her teaching role with the intention to stage the return to pastoral duties at half term. The claimant described that the past few years had been increasingly more difficult, and she had found the changes due to COVID made things even more difficult making her feel stressed and overtired. The claimant raised the need for herself to issue paracetamol rather than the student to go to the sick pay. The respondent explained that this was done as a control measure during the pandemic where sickbay was housing pupils with COVID. Mr Thomas expressed concerns that staff are being told to administer paracetamol in this way. The claimant also said that having younger pupils join the boarding

house was a stress factor. Her participation in a formal complaint process instigated by an ex-parent that went through all levels to the governors and parents and staff and pupils all needed more compassion from her so took up more of her time. Dr. Chatterjee responded that extra staff had been allocated to the boarding house to enable the claimant's normal duties to be reduced, this was an additional person. The claimant acknowledged it but said it did reduce her duties but it was insufficient during the pandemic. The boarding house was closed so there were no duties or they were substantially reduced due to the girls being in another boarding house. A counselling service was provided and offered to the claimant during this time; regular drop in opportunities were also given to the claimant to come and talk things through with Dr. Chatterjee on an informal basis. The claimant had taken up the counselling and the sessions with Dr. Chatterjee. The claimant said she did not feel they helped because there was a difference of opinion on the value of these measures. The respondent stated there were concerns that the claimant was not ready for the additional pressure of running a boarding house, evident from observations this week and Mrs Pritt Roberts suggested the claimant undergo an occupational health assessment as the claimant had displayed signs of stress which caused concerns. It was stated the claimant was not following the guidance put in place to protect her from stress; she had been told not to go into the boarding house or involve herself with boarding activities to give herself the mental space from that side of her work. However the claimant had ignored that instruction and gone into the house on several occasions which had made things difficult for the staff who were running the house. The claimant stated it was just to pick up things and she was having nothing to do with the running of the house. Dr. Chatterjee stated that the claimant needed follow what we asked them to do.

- 57 On 6 September 2021 the claimant remained on her usual teaching timetable she was not allowed in St Aidens so as not to confuse pupils and allow staff to run the house. The claimants classroom was used by another teacher as the claimant was always in the house. However when this was realised the tutor group was moved out of her teaching classroom. Dr. Chatterjee told the claimant that she could go home if she was free. Dr. Chatterjee said this to support her; the claimant lived on the school site and it would just take a few minutes to get back to.
- 58 On 27 September 2021, the claimant emailed (page 535) stating she was finding it difficult and awkward that students were asking questions about when she would be returning to her boarding house. Mrs. Pritt-Roberts responded (page 534 to 535) stating that it had been arranged to wait until the outcome of her occupational health report. It was suggested the claimant told pupils she was feeling better and hoped to return after half term. The claimant accepted this was the right approach (page 534). On 28 September 2021 the claimant approached Mrs. Pritt-Roberts in the staffroom. The claimant was concerned that pupils kept asking about when she would back in the boarding house, adding her daughter was hearing rumours about her health. Mrs. Pritt Roberts reassured the claimant it was difficult when working and living on the same premises and when children attend the same school to prevent people from talking but now she was back in work the rumours should stop. The claimant acknowledged this in her e-mail page 534 stating rumours were nobody's fault and agreeing she would counter them by continuing to say that she will be back as soon as she can. The claimant thanked Mrs Pritt Roberts for discussing the matters and felt she said she felt "heard".

Occupational Health Report

- 59 The Occupational Health report dated 4 October 2021 page 542-545 stated that there was no inherent mental health condition that would make the claimant unfit or prevent her from carrying out her role as a maths teacher or as a boarding housemistress. The claimant had not disclosed her long-term eating disorder to the practitioner or indicated that it would affect her ability to work (see page 542). The claimant was on anti-depressants and under the supervision of G.P. (page 544). The occupational health report did not suggest any particular adjustments were needed in the report the claimant reported she had been experiencing workplace stress for the past few years. She stated her responsibilities as a house mistress in charge of teenage girls is stressful and demanding even under normal circumstances but so far she has been able to meet the challenges of the role. She described a number of schoolchildren with severe mental health problems including self-harming suicide attempts and behavioural problems had increased. In the medical background section of the report, the claimant did not reveal that she had a long standing eating disorder. The conclusion was that the claimant did not have an inherent mental health condition that would make her unfit or prevent her from carrying out her role as a math teacher or a boarding house mistress. It stated that there are some undue stress due to unresolved issues in the workplace which causes her some concerns there were no medical barriers to prevent her from undertaking both her roles and that she was immediately fit to carry out suitable roles within the school consistent with the educational qualifications, training experience, expertise and interest. He referred to the disagreements with management regarding how the boarding house should be managed is not a medical health issue.
- 60 On 18 October 2021 page 546 the claimant attached the occupational health assessment to the email to the Head stating she was looking forward to getting some sort of normality back into work life and hoping to meet very soon to discuss her plans for the future. She stated she decided to let go of the past for now and focus on being grateful that "I am where I am healthy able wanting to resume more of my responsibilities I miss being St Aidans housemistress". She was hoping that she would be leading the next stage of her return to St Aidans as housemistress as she really wanted the process to take a positive turn for everybody from now on. Mrs Pritt Roberts was in the process of setting up a meeting for the claimant along with Dr. Chatterjee as dual managers covering academic and pastoral.

Return to housemistress duties

- 61 Mrs. Pritt-Roberts emailed the claimant on 18 October 2021 page 548 to 549 to arrange to meet with the claimant to discuss her transition back into house mistress role. The claimant did not have much faith in the boarding staff that she line managed. Mrs Pritt Roberts had monitored them during their cover of the claimant's absence and had observed they were competent. Mrs. Pritt-Roberts thought there was an opportunity here for the claimant to develop a more team approach on her return to the boarding role and requested the claimant to complete a TEI PPA. The claimant did so; page 537 to 541. This was to provide the respondent with an independent insight into the style of working and inform the respondent in assisting and guiding the claimant to effectively manage in her

boarding role. The college routinely used the Thomas International Personality profiling software for recruitment and staff issues so to provide information on the working strengths and areas to develop. The feedback showed a 90% score of well being indicating the claimant was more upbeat and fulfilled; 91% score of self-control indicating that the claimant was more comfortable in dealing with stresses and strains in life; 99% score of emotionality indicating an awareness of personal and others feelings; 83% of sociability indicating a preference to social situations; being more self- confident than others.

- 62 Miss Pritt-Roberts and Dr. Chatterjee met the claimant on 21 October 2021 (see page 550 to 553). The claimant expressed concerns if she made mistakes going forward she may be subject to disciplinary action. She was reassured that this was not the college's style. The return to work plan was discussed along with the TEI PPA questionnaire and it was suggested to the claimant to develop a more flexible decision making style; have awareness that excessive time and energy and emotional issues can lead to fuelling rather than subduing the situation and recognising the claimant's strong assertiveness could be perceived as aggressive rather than assertive. The claimant recognised and accepted the constructive feedback and gave an example that members of the historical team were reluctant to come to her because of the perception that she was overly assertive and she had to apologise to a colleague. The claimant was reminded to avoid criticising colleagues that covered her work even if things were done differently. Further the claimant had been using CCTV to monitor staff and people movement when she was off duty and she was informed by the respondent she must not do that; CCTV was there to be used for reference after an incident. The claimant acknowledged this. The claimant could come onto duty later on some days to improve her work life balance and that she should not answer emails after 9:00 p.m. or when she was not on duty. The claimant apologised to the boarding team if she had upset them in the past (see pages 1070 to 1085).
- 63 The claimant emailed on 29 October 2021 (page 554) to acknowledge the meeting notes and provided her amendments, expressing gratitude for the feedback in the meeting and guidance as to how to manage her workload. Although the claimant requested a follow up meeting in November it was determined that as the claimant was returning to boarding work in November it was better to continue with weekly monitoring as the term ended in early December.
- 64 The claimants boarding line manager checked with her weekly to monitor all that was going well. Dr. Chatterjee continued to liaise with her regularly and monitor how she was settling in. Mrs Pritt-Roberts continued to offer support on case work. In November feedback was positive see e-mail dated 10 November 2021 page 556 relating to a border that the claimant had previously referenced as a difficult people.

#### Change of Dress Code Policy

- 65 The Headteacher had noted that several staff had returned to work from working online dressed in more casual wear including denim, gilets, leather or plastic base trousers. The dress code for the college was smart office wear. A number of staff had been spoken to before half term and it was decided to do an update to all staff after half term. By e-mail dated 7 November 2021 to all staff (page 1163) the respondent addressed the dress code. The e-mail was applicable to everybody and not directed specifically at the claimant. The previous dress code

page 1905 does not mention leather but refers to jackets which are the norm for male teachers and smart office attire for female teachers. The claimant felt this was an act of victimisation because she attended work with PVC snakeskin trousers and a leather jacket. Her case is that with a disability of eating disorder she is pre-occupied with image. Under cross examination, Mrs. Vicky-Pratt stated a lot of staff coming back to school dressed casually hence the need to remind everyone of the dress code. It was a general email applicable to all staff and the Tribunal rejected that this was targeted at the claimant.

- 66 The claimant had sought a position as the sixth form housemistress at St. Hilda's. On 3 February 2022 (page 572) the headteacher told the claimant despite a good application and interview on 3rd February 2022 at page 572 that she could not offer her this post.

#### Complaint against the claimant

- 67 On 30 January 2022 the student's mother entered the boarding house and entered an office. The mother informed the claimant that she hopes one day the claimant will let things go as the claimant was the most confrontational person she has ever met. She shouted at the claimant to leave her daughter alone. On 30 January 2022 (p.571) the claimant raised the incident with Mrs. Pritt Roberts and Mr. Chatterjee. The claimant sought support to sort the matter out.
- 68 Between February 2022 and 27 March 2022 p.573-5;583-4;586-7 the claimant emailed the respondent several times indicating that she did not feel safe at work and felt a lack of support. The respondent was supportive of the claimant; see email from Mrs. Pritt Roberts dated 7 February 2022 (page 573). She informed the claimant she had spoken to the mother and said the claimant was not picking on the child. The Tribunal found that Mrs. Pritt Roberts tried to calm the parent down. The parent accused the school it was shielding the claimant.
- 69 On 8 February 2022 page 718-724 a mother of a student (1) complained about the claimant's behaviour. She raised her concerns with LADO. The claimant's case is that the school was actually behind the complaint but the claimant did not have any evidence to establish this. Mrs. Pritt Roberts was supportive of the claimant and in fact informed the parent, her daughter needed to observe the rules. The Tribunal rejected the claimant's contention.
- 70 The respondent was informed 1 April 2022 about the complaint ( page 718-724). The claimant was informed about the complaint at a return to work meeting on 10 May 2022.
- 71 On 23 March 2022 (page 580) a parent contacted the college and accused the claimant of bullying her daughter for the second time in one term. She alleged that the claimant said to her daughter that she did not want to see Y in her swimsuit and that nobody in this school wants to see Y in her swimsuit. The parent described the comments as inappropriate, insulting and emotive and were designed cruelly to bully. She also alleged that the claimant had said that the daughter did not belong in this school. Mrs. Vicky Pritt- Roberts met with the mother in March 2022 (see page 578). She told the claimant that she was able to resolve the parent's perceived lack of information about the rules but required the claimant to be very precise in the words she used to minimize the reaction of the student. She gave the claimant guidance namely to state "*You should be in your uniform by now go and get dressed.*" Child M wanted to speak to the claimant; the claimant stated she would speak more fully when a senior member of the management staff was present. Mrs. Pritt Roberts and the claimant met the child.



The child expressed how the claimant's behaviour was making her feel and she was tearful; she gave a number of examples. The claimant said she was sorry if the child felt that way but she was applying the rules. The claimant followed this meeting up with an email to Mrs. Pritt Roberts at page 586, thanking Mrs. Pritt Roberts for her support and saying the child was not easy to manage. The claimant stated she expected the student to obey the rules. She stated she appreciated the advice about how she should talk to a student but *"I am who I am and I can only be me, real and truthful. I run the House by the book and if anybody breaks the rules or misbehaves I pull them up on it.. Nobody has ever been allowed to walk around wrapped in towels in my presence.. When she faked tanned her face I was generally worried that she had a skin reaction so I was generally scared for her.. I know I keep saying this but I do feel emotionally unsafe in my role as I am being asked to carry on doing a job but I haven't got the correct tools to do it the school discipline procedure doesn't work for her.. So I'm working on eggshells and it's not easy.."*

- 72 Mrs. Pritt Roberts responded to the claimant copying in the Head Teacher stating that the student was upset and crying in the meeting and she was making her case. She stated that if the school wants to operation effective management of conflict resolution the child should be allowed to speak. Mrs Pritt Roberts stated the student's behaviour was not inappropriate for a distressed adolescent; she was not aggressive. She shared that she felt angry but she was coherent. Miss Pritt Roberts also raised with the claimant she could choose different words which cannot be misconstrued and would be prudent to depersonalise language noting it was unfortunate that the claimant used the phrase "scared of her face".
- 73 On 24 March 2022 (page 583) the claimant emailed the head teacher to express how disappointed and humiliated and hurt she felt. She was to have a meeting with a parent at 10:00 and she would try her best to remain strong although she was really struggling.
- 74 On 25th April 2022 headmaster met with the mother of CM the people the meeting went well and see him was happy with the outcome of the complaint without any action being taken against Mrs Jane. In line with ladders advice for both the protection of mrs stone and the pupil Mrs stone and the people were kept apart by the only possible expedient which was the claimant stepping down from housemistress duties it was discussed with the lado and no welfare solution was possible see e-mail page 621
- 75 Following this, the unchallenged evidence of Miss. Pritt Roberts was that the claimant's husband began to intimidate her; standing outside her house and staring into her window. Miss. Pritt Roberts reported this conduct to the police.
- 76 On 1 April 2022 the claimant made the respondent aware she wished to raise a grievance against Dr. Chatterjee and Vicky Pritt-Roberts for their lack of support of her role as housemistress.

Claimant's grievance

- 77 On 4 April 2022 the claimant gave notice she intended to lodge a formal grievance. On 21 April 2022 (page 615-620), the claimant raised a formal grievance raising allegations against several senior managers including the headmaster surrounding health and safety at work; work related stress and allegations of harassment and discrimination and attached a large document in tabular form "History of failures of duty of care, bullying and harassment" (page 653 to 675). The respondent determined in the circumstances an external specialist companies should handle the investigation. From this date, the claimant

was signed as unfit for stress at work which was exacerbating panic attacks; see page 1766.

- 78 IBEX Gale was appointed to investigate the claimant's grievance. It conducted a detailed investigation. A report was provided with an outcome letter to the claimant; it found the claimant's complaints were not well founded (see page 869). The investigation did not find there was evidence to support that the college and or any member its management team fail to recognise its duty of care is their claim to relation to health and Safety at Work management expectations of the claimant were in reasonable her workload could reason be regarded as excessive felt undertake a stress specific work assessment but there was a lack of support and some vision of the claimant. Instead it found that the college had provided the claim with additional support to assist her in a role and that she hadn't been bullied or harassed on the basis of her race nationality or disability that she has experienced any harassment and that reasonable adjustments were put in place to support her.
- 79 On September 2022 page 910-916 an addendum to the grievance report was prepared following receipt of an occupational health appointment which indicated that the claimant was struggling with her mental health. Ibex Gale's conclusion was that there was insufficient evidence that this was as a result of the respondent.

Claimant's health

- 80 The claimant's fit note provided 6 May 2022 page 1767 stages stress at work anxiety panic attacks and eating disorder. The fit note recommended on return to work that the claimant could not have any in person communication with the headmaster or the deputy head bracket safeguarding lead nor the people whose parents had made the complaint. This was not practical in the day-to-day operations of school and could not be implemented. A further fit note dated 30 May 2022 recommended a return to work with reduced duties citing the grievance lodged by the claimant was causing extra stress.
- 81 A return to work meeting took place on the 10th of May 2022 with the claimant and a family friend page 643-644 and the headmaster they discussed the fit note made recommendations for adjustments such as no lunchtime work meetings no activities over lunch breaks; no working past nine p.m. and no face to face contact with Vicky Pritt-Roberts, the Head or Dr. Chatterjee or the student (whos mother had complained about the claimant). They also told the claimant she could not return to the housemistress role if these adjustments were to be implemented although the claimant was resistant to this. The suggested adjustments meant the claimant could meetings and work past 9 which was part and parcel of a role of being a housemistress. The respondent determined it was not possible to devise a system where the claimant could avoid the student as the work of a house mistress in is a residential setting mostly focused on evenings. Lunchtime meetings were also an integral part of being housemistress. The fit note therefore really ruled out a return to the claimant's housemistress duties. She was given options she could return in line with a fit note and only carry out teaching; or she could remain off until the outcome of the grievance on full pay; or she could remain off until the outcome of the occupational health assessment again on full pay.
- 82 On 12 May 2022 the claimant emailed page 646 to advise she needed to return to the role of maths teacher. The Head emailed the claimant on page 647 on 26th May 2022 noting the claimant's wish and suggesting correspondence by email if they needed to contact each other in line with the fit note. On 26 May

736-737 the Head advised the claimant about the arrangements to be made for someone to deal with the claimant's and updated her about the LADO investigation. LADO had advised at this stage with the on going investigation the claimant should not return to the duties of housemistress. The claimant provided a further sick note at page 1768 dated 30 May 2022 that the claimant required reduced duties. The respondent determined there was no need to appoint a temporary line manager as Mrs. Jones the head of mathematics was the claimant's line manager which was one person she had not criticised. A member of the senior management team was nominated and identified as Mr Stephen Mullock as her contact point for matters which might be appropriate to senior management team.

- 83 On 30 June 2022 (page 760) the claimant requested a further occupational health review prior to engaging in the LADO investigation. On 27 July 2022 claimant lodged another grievance page (789 to 790) claiming disability discrimination and referred to the delay in dealing with her previous grievance. A further occupational health review took place 27 July 2022 (see page 791 to 793) which recommended the claimant was not fit for work and should be reviewed again at the end of August. A further OH review took place on 24 August 2022 and recommended that the claimant was fit for work and fit to engage with management including participating in mediation and attend meetings (page 907 to 908).
- 84 On 31 August 2022 page 909 the Head teacher emailed the claimant stating "good news that she could return to her role as teacher" but she couldn't return to the role of house mistress until the Head had confirmation from LADO they were happy for her to do so. An acting housemistress had been appointed to St. Aidan's at the start of the term. In September 2022 information was circulated to show the claimant was teaching from the start of term in September 2022. The respondent stated this was done with a focus on the welfare of the children.
- 85 On September 2022 the claimant emailed the head raising a supplemental grievance (see page 919). When the first grievance of three was finally settled having gone to appeal, a second grievance was heard by HR professional and retains the college.
- 86 The claimant was on sick leave from 26 September to 21st October 2022 citing stress at work; she indicated she would return to work after half term and a return to work meeting was arranged for Monday 31 October 2022 (page 1359 to 1361). The claimant was accompanied by Mr Mullock as part of a reasonable adjustment agreed with the headmaster. The fit note indicated she was not fit for work recommending adjustments to the role and hours; page 1774. The note added the claimant should not work evenings due to medication side effects and that the claimant could not supervise the dining hall or attend meetings where people would be eating in front of her. The claimant wished to return to work in the boarding house but the respondent deemed this was not practical as the fit note stated she could not work evenings. The respondent determined that as the claimant was on medication which made her drowsy so that she could not supervise children; if she could not supervise children if they were eating it was not feasible for her to return to the boarding house.
- 87 From October 2022 the claimant continued as a maths teacher but received the financial allowance for her boarding role and had a reduced timetable she did not return to boarding housework because her fit note stated she was unable to work evenings and became drowsy with medication.

- 88 There was some speculation among students about why the claimant was not in the house. The claimant complained people were talking about her and in particular one child. The claimant e-mailed the headmaster and requested that the child M and parents be investigated for making malicious allegations against her referring back to the complaint made in March 2022. The claimant stated if the complaint was malicious the child should be asked to leave the school.
- 89 ABC Human Resources dealt with the claimant's second and third grievances on 23rd of June 2023 (page 1285 to 1288) did not uphold the grievance. The claimant was informed of her right of appeal which she exercised on 29 June 2023 (page 1292 to 1293). The complaint was not upheld and the claimant did not appeal. Her final appeal was considered by counsel and was not upheld.
- 90 The Tribunal comments below on some specific points.

#### Lunchtime Meetings

- 91 The college held weekly lunchtime meetings. The claimant had said she wanted to go running during the lunch time meeting. The claimant did not disclose at this time it had anything to do with an eating disorder.

#### Investigation Interviews

- 92 Once the claimant received copies of all the interviews in the grievance she approached each member of staff who did not endorse what she had said in her grievance and took issue with them, despite the fact that the information was given in a private and confidential interview.

#### LADO Investigation

- 93 LADO requested that an internal investigation take place. The headmaster Brendan Wignall asked Rhona Avery, Director of Finance at the college to carry out an investigation on behalf of LADO due to the referral made to the LADO about the claimant see page 755.
- 94 On 1 August 2022 at page 873 Miss Avery invited the claimant to discuss the investigations of the LADO complaint and informed the claimant she could be accompanied at the meeting. On 3 August 2022 (page 881 to 884) the claimant wrote to Miss. Avery challenging the purpose of the meeting and requesting to know what adjustments would be put in place the claimant made accusations of discrimination whistle blowing and raised a further grievance against Miss Avery. The claimant's response was unnecessarily aggressive. Miss Avery was genuinely shocked, upset and surprised by the claimant's response and was unaware at this time that the claimant had a disability or would require adjustments. This was Miss. Avery's first investigation of this kind and she had been given some limited guidance from LADO as to what to do. Miss Avery raised her concerns with the head teacher (page 885) as she was unaware how to actually respond to this headmaster advised Miss Avery to seek legal advice. Following doing so she wrote to the claimant on 8 August 2022 page 893 to 894. She decided to postpone the investigation and to give the claimant further time to consider what adjustments she required and make arrangements to be accompanied Miss. Abrams should the claimant wish to. It was simply a fact-finding meeting. It was agreed the claimant could submit written representations. The claimant responded on 9 August 2022 (page 895 to 896) and advised she

- did not wish to have the meeting face to face and preferred it in written form. On 11 August 2022 (page 905 to 906) Miss Avery sent the claimant a list of questions and asked her to provide her response by 18 August. She again assured the claimant she was simply a fact finding exercise.
- 95 In the course of Miss. Avery's investigation, she met with two pupils of the college Vicky Pritt-Roberts and Dr. Chatterjee and considered the Colleges code of conduct and the complaint. She did not interview child 1's parent. Miss. Avery also received the claimant's response to the questions and consider these as part of our investigation 951 to 953 she also considered numerous documents that were provided by Vicky and Dr. Chatterjee attached to the report.
- 96 On 15 September Miss Avery prepared and sent to the headteacher a detailed report setting out her findings into the complaints raised by LADO page 930-937. There were seven allegations in the report and based on the evidence she determined 3 allegations against the claimant namely that the claimant had told the pupil that she was scared of her face; The claimant did single out the pupil and the claimant told the pupil that no one wanted to see her in a swimsuit. She made a finding that this matter should progress to a disciplinary hearing. The investigation report was sent to the claims a short time afterwards as part of the disciplinary papers. 983.
- 97 On 1 September 2022 the claimant submitted a claim with the Employment Tribunal. From September 2022 to October 2022 pages 1772-3 the claimant was on sick leave due to stress.
- 98 Mike McCarthy, director of operations was appointed to carry out the disciplinary hearing of the claimant. He had no prior dealings with the claimant's grievances absences performance or investigation that led to the disciplinary. On 23 September 2022 he wrote the claimant invited her to attend a disciplinary hearing (see pages 1019-1021) scheduled for 6 October 2022. He set out the three allegations to be considered and the policies and procedures he was taking into account or documentary evidence was provided with the letter he also informed the claimant of her right to be accompanied. The hearing was postponed at the claimant's request to give her more time to prepare which was agreed and re-scheduled on 19 October 2022 (see pages 1093 to 1097). The claimant was accompanied by a family friend who did most of the talking Mr Colin Callaghan because the claimant said she was not feeling up to it. The claimant's request to record the meeting was permitted.
- 99 At the end of the meeting Mr. McCarthy explained he needed some time to consider all the evidence including the claimant's responses and would reconvene the meeting at 10:00 the next morning. It was determined he would contact the claimant by e-mail by 10:00 AM the following morning with the decision rather than reconvene. He emailed the claimant the next day (page 1157 and page 1898) with the decision that having heard the evidence presented by both parties he reached the conclusion that no disciplinary action was required and the matter was now closed. The Employment Judge asked him why he had determined that no action was required. Mr. McCarthy replied that he took into account all the evidence and determined there was no need for a disciplinary sanction.
- 100 On 17 October 2022 page 1063-1085 a further grievance meeting was held following the claimant's supplementary grievance which was submitted on 6 September 2022 (page 919). The outcome on 9 November 2022 (page 1111-1127) Professor Sutton did not uphold the claimant's grievance but she made 11 recommendations including a paper stress risk assessment be carried out and

mediation and gave the claimant a right of appeal. The claimant appealed on 22 November 2022 page 1132 to 1141.

- 101 On 26 February 2023 (p.69-97) a further claim was issued by the claimant with both claims being consolidated.

### Credibility

- 102 The Tribunal found some of the claimant's evidence to be unsatisfactory. The claimant's narrative as to how badly she was treated by the respondent was inconsistent with the contemporaneous e-mail correspondence. The claimant was very passionate and conscientious about her role at the school. The Tribunal did not doubt that the claimant believed that what she was doing and how she was behaving towards students was justified and correct. However, she failed to consider other peoples' feelings and did tend to lack empathy and flexibility in dealing with young people. At times the claimant allowed her emotions about a situation to guide her conduct and she could be perceived to be aggressive and unprofessional. She was also very reluctant to delegate and wished to maintain control of the house at all costs (even to her health).
- 103 The claimant was a litigant in person and inexperienced in terms of legal process. Much of her pleaded case was not put to the respondent's witnesses in particular issues concerning reasonable adjustments namely whether pleaded PCPs were applied and whether the adjustments she pleaded were reasonable and could have avoided any alleged disadvantage. The claimant was not assisted by a convoluted list of allegations taken from her pleading which in some cases did not make sense and lacked any real analysis as to whether they were applicable in the circumstances. The claimant tended to run her case as a breach of the duty of care case as opposed to the specific pleaded claims before the Tribunal. In respect of the alleged public interest disclosures, there was no consideration by the claimant as to whether any alleged disclosure was made in the public interest or whether she had at the material time any reasonable belief that they did so. The Tribunal did raise this with the claimant during the case. The claimant ran her public interest disclosure case in the main as involving disclosures of health and safety.
- 104 The Tribunal found Mrs Vicky Pritt-Roberts to be a very impressive witness who was highly professional and competent. Dr. Chatterjee was a reliable and honest witness. Miss Rhona Avery was an honest witness, but she was inexperienced in investigations. Mr McCarthy was an honest witness. Mr Wignall had sadly passed away by the time of the hearing of this case. The respondent relied upon his witness statement as a written representation, but the Tribunal noted that much of his evidence was corroborated by contemporaneous material in the bundle.

### Submissions

- 105 Both parties were given the opportunity to make written submissions and supplement these with oral submissions.
- 106 The claimant made a number of submissions she had not evidenced at the hearing. The claimant submitted in respect of discrimination arising from disability that she had disclosed an eating disorder in October 2019 so that she was entitled to protection against discriminatory treatment from that date. The claimant submitted that the description by the Deputy Head Academic on 7 July 2021 about the claimant as "quite fragile" was discriminatory because it perpetuated stereotypes associated with individuals with eating disorders portraying them as overly delicate or weak due to their disability. The claimant

also submitted describing her in June 2022 in the grievance investigation report as “emotionally all over the place” and “annoyed about attending a working lunch” in the context of her eating disorder was also discriminatory. The claimant submitted allegations made in June 2022 that the claimant's was seeking a further occupational health assessment as a way of avoiding cooperation in the LADO disciplinary investigation and in August 2022 providing written responses instead of meeting face by face was hindering the investigation were discriminatory. Finally, the claimant suggested that black and white thinking was a criticism made against her in April 2022. In June to August 2022 the claimant raised concerns of discrimination arising from disability. The claimant submitted it was a criticism.

- 107 In terms of the indirect disability discrimination claim under section 19 of the Equality Act 2010 the claimant stated the requirement for her to attend lunchtime meetings where serious issues were discussed while staff at the lunch was indirect disability because as an individual with an eating disorder being in an environment focused on food consumption creates her heightened stress, discomfort and triggered negative behaviours related to her condition. This practise inadvertently disadvantaged her due to the nature of her disability without a justifiable reason for such a requirement. Further in respect of the change in the dress code in November 2021 prohibiting the wearing of leather was indirect disability discrimination because she requires to wear specific clothing to manage her sensory issues and comfort relating to her eating disorder so that the new dress code policy and the timing of implementing it did disproportionately affect her compared to others. The claimant submitted she has a very intense preoccupation with body image. The claimant submitted the requirement for staff to work in an environment without adequate risk assessments and where staff and management lack training on equality issues was indirect disability discrimination. In the context of her eating disorder the lack of awareness and training on how to support individuals with disabilities lead to an environment that failed to accommodate her specific needs. The situation resulted in disadvantage for the claimant; she suffered a burnout in May 2021 and was diagnosed with anxiety and depression in May 2022. She was forced to resign from her housemistress role due to her disability. The claimant submitted the failure on the part of the college to confirm confidentiality and allow rumours to circulate in the workplace constituted indirect disability discrimination. The claimant submitted the rumours negatively impacted on her reputation, her mental health and her work environment. Due to her disclosed disability, the dissemination of sensitive information affected her more based on her disability. The claimant stated that the employers had a legal obligation to ensure that their policies and practises do not inadvertently disadvantage individuals with disabilities and to provide reasonable accommodations to mitigate such discrimination where possible.
- 108 In respect of a failure to make a reasonable adjustment the claimant stated that requiring to attend house masters meetings during lunch times where others were eating and discussing serious issues including welfare matters represented a failed to make reasonable adjustments for her, given her disorder, being an environment focused on food consumption; intense discussions were distressing and detrimental to her well-being. She submitted the employer should have considered alternative arrangements to accommodate her needs in such situations. Secondly the changes to working practises during COVID lockdown such as transitioning to online teaching going to the school to teach key workers

children and continuing pastoral duties was another failure to make reasonable adjustments. These changes placed additional stress and responsibilities on her so impacting on her ability to manage her eating disorder effectively. The employer could have explored adjustments to alleviate the burden on her during these challenging times. The claimant also submitted the requirements for disabled employees to handle serious welfare issues such as mental health concerns and safeguarding matters without adequate support or accommodations was another failure to make reasonable adjustments given the potential triggers and challenges associated with her eating disorder. The employer should have provided appropriate support and adjustments to enable her to avail these duties effectively or managing her disability. In addition, the necessity for the claimant to participate in interviews with governors regarding complaints against the swimming club without considering her specific needs and accommodations was another failure to make reasonable adjustments. The employer should have taken steps to ensure that the interview process was conducted in a manner that accommodated her disability and minimised any adverse effects on her well-being. In terms of requiring that she returned to work without an adequate return to work plan, was a failure to make a reasonable adjustment because without a comprehensive plan to support the claimants transition back to work including considerations of her eating disorder the employer neglected their duty to ensure her well-being and effectiveness in the workplace. The claimants case that there was a demand for her to continue to undertake evening duties after she disclosed that her disability got triggered without considering potential impact on her eating disorder. This was another failure to make reasonable adjustments. Duties which disrupted her routine meal schedules and self-care practises were essential for managing her condition. Further the claimant submitted requiring her to continue to perform full duties without considering adjustments or accommodations for her eating disorder was another failure to make reasonable adjustments; the employer should have assessed her capabilities limitations and needs related to her disability to ensure that she could fulfil her duties effectively without undue hardship or detrimental effects on health. The obligation to look after teenage girls such as 40 borders including junior borders without considering the potential strain on her well-being or need for accommodations due to her eating disorder was a failure to make reasonable adjustments. The claimants submitted the high level of the responsibility and workload had a negative impact on her ability to manage her condition effectively. Further, requiring her in July 2021 that she remain off sick despite being fit for work and not advising reduced duties the employer didn't consider accommodating her return to work with reduced duties or modified responsibilities to support her recovery and well-being; this too was a failure to meet their obligations under the Equality Act. Her duties were required to be carried out without adequate support; the employer did not provide necessary support resources or assistance to enable her to fulfil her duties effectively given her eating disorder this resulted in undue stress difficulties and disadvantages for her at work. Requiring attendance on 21 October 2021 at a return to work meeting without companions; without considering the best potential benefits of having companions to support her due to my eating disorder was another failure to make reasonable adjustments. Requiring attendance that investigation meetings in August 2022 without providing information on the policies and procedures guiding those meetings was another failure to make reasonable adjustments without clear guidance or understanding of the process involved.



The claimant submitted she experienced heightened anxiety uncertainty and difficulties in participating effectively due to her disability the employer should have ensured that she had access to necessary information and support to mitigate the impact of such meetings on her well-being. The demand for her to return to work without adequate handovers in November 2021 was another failure to make reasonable adjustments; insufficient information in preparation for her return increased stress, confusion and challenges in managing her workload and responsibilities affectively. The employer should have provided an appropriate support and communication resources to facilitate a smooth transition back to work for the claimant. A stressful working environment significantly impacts individuals with disabilities including those with eating disorders. Her employer failed to address or mitigate sources of stress in the workplace so this constituted a failure to make reasonable adjustments. Employers had a duty to promote a supportive and inclusive work environment that considers the well-being and needs of employees with disabilities to prevent undue hardship and discrimination. Requiring the claimant to oversee a high number of students without considering the impact of her eating disorder, the claimant alleged exacerbated stress anxiety and difficulties in managing her condition and her employer should have assessed the workload and provided necessary support or adjustments to ensure her well-being and effectiveness in the role. The length of time taken to investigate and conclude the referral involving a local authority designated officer prolonged uncertainty and stress and negative impacts on her well-being. The employer should have taken steps to expedite the process and provide necessary support to mitigate the effects of such delays on the claimant. The claimant contended that employers have a legal obligation to accommodate the needs of employees with disabilities including adjustments to ensure a fair and inclusive working environment that prevents discrimination and disadvantages based on disability.

- 109 In respect of protected interest disclosures, the claimant stated on 27 of March 2022 she informed the deputy head about feeling discriminated against and her intention to raise a grievance she believed that the disclosure was in the public interest as it concerned potential discrimination unfair treatment which was a reasonable belief considering the gravity of her concerns regarding the practises of the college and their impact on her employment situation. Reporting the incident with student 1's mother to senior management team on 30th of January 2022 and seeking support due to feeling vulnerable she believed that the disclosure was in the public interest as it relates to teachers and students safety and well-being belief was reasonable given the potential endangerment of health or safety in the workplace. The claimant submitted that she informed the headmaster on 1st April 2022 about her struggles with mental health and a decision to raise a formal grievance I believe that the disclosure was in the public interest as it concerned employees well-being and the need for appropriate support at work which was the reasonable belief which impacted on her mental health struggles and ability to perform her job effectively. By submitting a formal grievance on 21 April 2022, she believed that the disclosure was in the public interest as it related to two issues affecting employment and workplace environment the belief was reasonable given the nature of her grievances and their potential implications for everybody at the college. In correspondence with Mrs Avery in August 2022 when she complained about the failure to make reasonable adjustments, she believed that the disclosure was in the public

- interest as it concerned potential breaches of legal obligations regarding accommodations for disabled employees which was a reasonable belief.
- 110 The respondent provided a detailed written submission. The respondent's case is that there was no actual or implied knowledge about the claimant's eating disorder until May 2022; that is the first mention of an eating disorder. The conversation between the claimant and Mrs Pritt Roberts was limited to a suggestion that the claimant had yoyo dieting and the respondent relied upon the GP note page 1782 that indicates the claimant was very anxious that work might know about her eating disorder. The claimant suffered stress in May 2021 on the note it says there was no previous history of medical health (see page 1778). The OH report dated 4 October 2021 (at page 542) states that the claimant does not have an inherent mental health condition. On 27 July 2022 the consultation is taken up by discussing the claimant's eating disorder. There was a mention of generalised anxiety disorder which was suggested the claimant should discuss it with her GP. The claimant's CBT scores on 24th August 2022 have substantially improved.
- 111 As a house mistress the claimant's role was supervisory and required her to be available three to four evenings per week. During the first lockdown there were no borders during the second there were about 5. Her duties therefore dramatically reduced during COVID. No teachers were furloughed in COVID see page 350 but the claimant was given the option of working from home. Irrespective the claimants whistle blowing allegations it is not accepted that any were protected and as pleaded do not accurately reflect what was said in any event. It is accepted that the grievance letter is a protected act but victimisation is denied. The respondent changed the dress code because staff were dressing in a relaxed way if the claimant snakeskin trousers fell foul of the code it was because they were leather which was not considered by the respondent to be professional. The respondent disputed the discrimination arising from disability claim. There was no unfavourable treatment and the reason for the treatment was not the claimants mental ill health it did not arise in consequence of the ill health. The comments were justified by the respondent as they were made during the various processes which were instituted to ensure the smooth running of the school and boarding houses. The indirect discrimination complaint was also denied the requiring of attendance at lunch meetings was applied to all staff it was not applied to the claimant as she was not obliged to attend such meetings after her request not to do so when her eating disorder became known. The dress code was applied to all staff having a dress code which requires staff to be smart and professional doesn't put disabled persons at any particular disadvantage. Working without a risk assessment was not a PCP if it was the claimant wasn't required to work without a risk assessment. She and all staff were constantly assessed against risks according to what was happening at the time the claimant suffered no judgement. A failure to prevent rumours to circulate was not a PCP not supplied by the respondent and didn't happen. The claimants harassment claims were denied the claim has taken the comments out of context which were comments by senior management to be supportive and empathetic to the claimant comments made by Dutch ashy and Mrs pritt Roberts were paid part of an investigation and could not have had the effect of violating the claimants dignity creating an intimidating hostile degrading humiliating or offensive environment for her. The black and white comments and low opinion of herself did not violate the claimants dignity particularly the claimant uses the phrase herself and there was no dispute that the claimant had criticised other team members who managed the

house while she was absent. He respected the payments reasonable adjustment complaints the claimants eating disorder was not known until 6th of may 2022. The claimants mental health issues arose in May 21 but denied that they constituted a disability. The claimant was stood down from house mistress duties from July 21 to November 2021 and given support in her role. The claimant is a well qualified highly educated woman holding professional position there were some periods of sickness for the claimant but there was no reason to prevent the claimant for being able to bring a claim in fact the claimant brought grievances when she was unwell.

## The Law

### Knowledge of disability

112. In the case of **A Limited v Z (UKEAT/0273/18)** the EAT held the tribunal was wrong to attribute knowledge to a respondent. The EAT summarised the legal principles in relation to constructive knowledge at paragraph 23 of the judgement and considered **York City Council v Grosset (2018) ICR 1492 CA**, **Donelien v Liberata UK Limited UKEAT/0297/14**, **Pnaiser v NHS England & Another 2016 IRLR 170**, **Henry v Dudley Metropolitan Council (2017) ICR 610** and **Secretary of State for Work and Pensions v Alam 2010 ICR 665** stated that “reasonableness for the purposes of section 15(2) must entail a balance between the strictures of making inquiries, the likelihood of such inquiries yielding results and the dignity and privacy of the employee as recognised by the code”. The EAT upheld arguments of the appellant that if a proposed inquiry would not have yielded the requisite knowledge it cannot have been reasonable to have had to make it and it could not be the function of section 15 (2) to impose significant obligations and burdens on employers nor should an employer be required to impose itself upon an employee's concerted wish to suppress exposure of a health condition in particular a mental health condition. To determine otherwise would run counter to the requirement in the code that investigations are conducted in accordance with dignity and privacy. The ET in this case had found that the employer would not have obtained knowledge of the disability even if it had asked the right questions of her the respondent did not have constructive knowledge of the disability at the relevant time.

113. The Code of Practice from the ECHR about constructive knowledge states that an employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will be based on the circumstances this is an objective assessment (see paragraph 5.15 of the equality and Human Rights Commission code of practice on employment 2011 the code).

### Reasonable Adjustments

114. By section 39 (5) of the Equality Act 2010 the duty to make reasonable adjustments applies to an employer. The duties set out in section 20 and 21 of the Equality Act 2010 and schedule 8. Sections 20 and 21 provides so far as relevant

“section 20 duty to make adjustments

(1) where this act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable schedule apply; and for those purposes a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

- (3) The first requirement is a requirement where a provision criterion or practise PCP of AIDS puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled to take such steps as it is reasonable to have to take to avoid the disadvantage...

section 21 failure to comply with duty

- (1) a failure to comply with the first.. requirement is a failure to comply with a duty to make reasonable adjustments.
- (2) A discriminates against a disabled person if a fails to comply with that duty in relation to that person.
- (3) A provision of an applicable schedule which imposes a duty to comply with the first requirement applies only for the purpose of establishing whether a has contravened this act by virtue of subsection 2; a failure to comply is accordingly not actionable by virtue of another provision of this act or otherwise.

87. Part three of schedule eight sets out limitations on the duty as follows at paragraph 20

“Part 3 limitations on the duty

lack of knowledge of disability

20(1) a is not subject to a duty to make reasonable adjustments if a does not know and could not reasonably expect it to know.

#### Burden of Proof

1. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two stage process is followed. Initially it is for the claimant to prove on the balance of probabilities primary facts from which the Tribunal could conclude in the absence of an adequate explanation from the respondent that the respondent committed an act of unlawful discrimination.
2. At the second stage discrimination is presumed to have occurred unless the respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof the respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the claimant's sexual orientation. The respondent does not have to show that its conduct was reasonable or sensible for this purpose merely that its explanation for acting the way that it did was non-discriminatory.

In the case of **Hewage v Grampian Health Board (2012) IRLR 870**. The Supreme Court approved guidance on the burden of proof were set out by the Court of Appeal in **Igen Limited v Wong 205 EWCA Civ142** and the **Madarassy v Nomura International PLC (2007) ICR 867**. Although the concept of the shifting burden of proof involves a two stage process, that analysis should only be conducted once the tribunal has heard all the evidence including any explanation offered by the employer for the treatment in question. However if in practise the tribunal is able to make a firm finding as the reason why a decision or action was taken the burden of proof provision is unlikely to be material.

#### Section 15

115. Section 15 of the Equality Act 2010 provides

- (1) a person A discriminates against a disabled person B if –

(a) a treats B unfavourably because of something arising inconsequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving A legitimate aim.

(2) subsection 1 does not apply if a shows that a did not know and could not reasonably have been expected to know that B had the disability

The burden of proof is on the employer to establish justification under section 15 (1)(b) of the Equality Act 2010. When assessing whether unfavourable treatment can be justified as a proportionate means of achieving a legitimate aim, the discriminatory effect of the treatment must be balanced against the reasonable needs of the employer. The treatment must be appropriate and reasonably necessary to achieving the aim. The most seriously impact the more cogent must be the justification for it. The tribunal must weigh the reasonable needs of the employer against the discriminatory effect of the treatment and make its own assessment of whether the former outweighs the latter; see the case of **Hardy & Hansons plc v Lax (2005) ICR 1565; Homer v Chief Constable of West Yorkshire Police (2012) UKSC 15 and MacCulloch v ICI (2008) IRLR 846**. The Supreme Court set out a four stage approach to the balancing exercise in the case of **Ackerman-Livingstone v Aster Communities Limited (2015) UKSC 15** namely first, whether the aim is sufficiently important to justify the treatment; second whether there is any rational connection between this aim and the less favourable treatment or disadvantage suffered; third, whether the means chosen are no more than is necessary to accomplish the aim (and whether proportionate alternative measures could have been taken without a discriminatory effect) and fourth, whether the steps complained of strike a fair balance between the need to accomplish the aim and the detriment suffered. When conducting the balancing exercise required by section 15(1)(b) of the Equality Act, the tribunal is entitled to give weight to the fact that an employer did not make reasonable adjustments as required by sections 20 and 21 of the Equality Act see paragraph 26 of **Griffiths the Secretary of State for work and pensions 2015 EWCA Civ 1265** and paragraph 64 of **Northumberland Tyne and Wear NHS Foundation Trust v ward UKEAT/0249/18** and paragraph 57 of **City of York council v Grosset**.

#### 116. Harassment

Section 26 of the Equality Act 2010 provides

(1) a person A harass is another B if

(a) a engages in unwanted conduct related to a protected relevant characteristic and

(b) the conduct has the purpose or effect of

(i) violating B's dignity or

(ii) creating an intimidating hostile degrading humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b) each of the following must be taken into account-

(a) the perception of B;

(b) the other circumstances of the case

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

117. Well the unwanted contact need not be done on the grounds of or because of innocence of being causally linked to a protected characteristic in order to

amount to harassment the need for that conduct be related to the protected characteristic does require a connection or association with that see R EOC v Secretary of State for Trade and Industry 2007 ICR 1234. In relation to the prescribed effect although the claimants perception must be taken into account the test is not a subjective 1 satisfied merely because the claimant thinks it is the tribunal must reach a conclusion that the conduct found reasonably brought about the effect see the case of Richmond Pharmacology v Dhaliwal 2009 IRLR 336. In **Grant v HM Land Registry 2011 EWCA Civ 769** that the words violating dignity intimidating hostile degrading humiliating offensive are significant words so that “tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.”

### Victimisation

118. Pursuant to section 27 (1) of the Equality Act 2010 A person A victimises another person B if A subjects B to a detriment Because

- (a) B does a protected act;
- (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.

(2) giving false evidence or information or making a false allegation is not a protected act if the evidence or information is given or the allegation is made in bad faith.

Indirect discrimination is defined by section 19 of the Equality Act 2010 as follows

- (1) a person A discriminates against another B if A applies to B a provision criterion or practise which is discriminatory in relation to a relevant protected characteristic of B's
- (2) for the purposes of subsection 1 a provision criterion or practise is discriminatory in relation to a relevant protected characteristic of B's if
  - (a) A applies or would apply it to persons with whom B does not share the characteristic;
  - (b) it puts A at a particular disadvantage when compared with persons with whom B does not share it
  - (c) it puts B at that disadvantage and
  - (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

The first question is whether the PCP in issue has been applied to the claimant there is no definition of provision to the criterion or practise for these purposes although the case law makes clear the words are not to be read too narrowly see *British Airways PLC V Stamer*. PCP can relate to formal and informal practises of employers and there is no requirement that

the employee should have been coerced or expressly ordered to comply with it.

#### Public Interest Disclosure Detriment

119. A qualifying disclosure is defined by section 43B which is made by a worker in accordance with any sections of 43C to 43G.

120. The term qualifying disclosure is defined by section 43B ERA as any disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following –

- (a) that a criminal offence has been committed is being committed or is likely to be committed,
  - (b) that a person has failed is failing or is likely to fail to comply with any legal obligation to which he is subject
  - (c) that a miscarriage of justice has occurred is occurring or is likely to occur
  - (d) that the health or safety of any individual has been or is likely to be endangered
  - (e) that the environment has been is being or is likely to be damaged or
  - (f) the information tending to show any matter falling within any of one of the preceding paragraphs has been is being or is likely to be deliberately concealed.
- (3) for the purposes of subsection 1 it is immaterial whether the relevant failure occurred occurs or would occur in the United Kingdom or elsewhere and whether the law applying to it is that of the United Kingdom or of any other country or territory
- (4) a disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it...

121. The disclosure must in the reasonable belief of the worker. Section 43 B of the ERA sets out a number of steps that must be taken in deciding whether a qualifying disclosure has been made. HHJ Auerbach in **Williams v Michelle brown (UKEAT/0044/19)** first there must be a disclosure of information; secondly the worker must believe that the disclosure is made in the public interest. Thirdly the worker does hold such a belief it must be reasonably held. Fourthly the worker must believe that the disclosure tends to show one or more of the matters listed in subparagraphs A to F. Fifthly, if the worker does hold such a belief it must be reasonably held.

122. Once the qualifying disclosure is established the next stage is to consider whether it is a protected disclosure. A disclosure to the employer is a protected disclosure.

#### Health and safety detriment; section 44(1)(c) of the ERA 1996

123. An employee has the right not to be subject to any detriment by any act or any deliberate failure to act by his employer done on the ground that being an employee at a place where there was no such representative or safety committee or there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, she brought to the respondents attention by reasonable means circumstances connected with her work which she reasonably believed were harmful or potentially harmful to health or safety.

Findings

124. Actual or constructive knowledge of disability

There was a conflict of evidence as set out above as to what the claimant actually told Mrs. Pritt Roberts in October 2019 about her eating disorder. The Tribunal preferred the evidence of Vicky Pratt Roberts and found on the balance of probabilities that the claimant gave Vicki Pritt Roberts a letter which was headed NHS eating disorders. The letter itself did not state that the claimant had an actual eating disorder or describe it. The Tribunal found in accordance with Vicky Pritt Robert's evidence the claimant disclosed to her she had issues with diet which he had since she was in her teens and requested time off work to attend CBT sessions. The claimant did not inform her manager that she had an eating disorder that impacted on her work she asked for time off to attend CBT sessions which was granted Vicky Pratt Roberts who asked the claimant if she needed any support. The claimant declined saying she was managing it. The claimant made no requests regarding her daily routines in work; she requested only to have time off to attend the sessions as outlined in the NHS letter dated 30 September 2019 at page 1759. The Tribunal found that the claimant played down this issue. She did not mention at any time she had a specific eating disorder but passed it off as having issues with diet. The Tribunal did not find that the respondent actually knew the claimant had a disability. The Tribunal considers it is important to bear in mind the context; the claimant had no time off work up until this point with an eating disorder. Further the tribunal finds that the claimant played down her condition because she perceived a conflict in her role as a house mistress because she was managing young women who themselves suffered from eating disorders. Furthermore, the tribunal does not find on the particular facts of this case that the respondent had constructive knowledge of her disability in the circumstances that the claimant was very keen to hide this from her employer; had the respondent referred the claimant to occupational health at this stage, the tribunal does not believe on the balance of probabilities that the claimant would have revealed her eating disorder. The tribunal reached this conclusion because the claimant was referred to occupational health in October 2021 and made no reference whatsoever to her eating disorder to the occupational health doctor. The claimant wished to keep this condition private from her employer due to her concerns that posed a conflict to her role as a housemistress dealing with young women with eating disorders themselves. The Tribunal takes into account the case law above and in particular the comments of Mrs. Justice Eady in the case **Casey** at paragraph 23 which refers to if the respondent had conducted further inquiries that the disability would have not been revealed. The claimant was very shy to inform her employer and also told her GP she did not want her employer to know. The tribunal concluded that it was not reasonable to expect the respondent to be aware of the eating disorder until May 2022.

125. The claimant's fit note dated 6 May 2022 page 1767 expressly refers to eating disorder. It was not until the respondent received the fit note that the respondent was aware the claimant had a disability of an eating disorder. From the sick note the claimant could not take part in administrative work or attend meetings. At lunchtime she must not be involved in activities because



she needs to keep her calorie count high and she was unable to work past 9:00 PM.

126. The claimant suffered stress in May 2021 on the note it says there was no previous history of medical health (see page 1778). The OH report dated 4 October 2021 (at page 542) states that the claimant does not have an inherent mental health condition. On 27 July 2022 the consultation is taken up by discussing the claimant's eating disorder. There was a mention of generalised anxiety disorder which was suggested the claimant should discuss it with her GP. The claimant's CBT scores on 24th August 2022 have substantially improved. The claimant was keen to get back to her housemistress role in 2021 despite her acknowledgement that it made her stressed. The OH report did not alert the respondent to any mental health condition which could lead it to consider that the claimant may be disabled. By Autumn 2021 the claimant was back in her role as a housemistress and did not raise concerns about her health at this time. The respondent could not reasonably have known that the claimant had a disability of generalised anxiety disorder in 2021. The claimant's fit notes in 2021 referred to stress at work. The fit noted 21 April 2022 referred to stress at work exacerbating panic attacks it was not until 6 of May 2022 signature page 1767 that it states stress at work anxiety panic attacks and eating disorder. The tribunal finds that It was not until May of 2022 but the respondent should have realised that the claimant was disabled by reason of anxiety.

127. Alleged protected interest disclosures

- 8.1 January to March 2021 the claimant expressed to the respondent that she was experiencing stress due to having to look after the five international borders in her boarding house

The Tribunal accepted the evidence of the Deputy Head Academic, Mrs Pritt-Roberts that the claimant said that she was stressed in or about January 2021; the claimant did not relate this to five international borders; the Tribunal found it was a general comment of feeling stressed. Miss Pritt Roberts commented that it was probably a lot easier as the claimant only had five girls to look after in January 2021 during the second COVID lockdown. The Tribunal did not find that this was a qualifying disclosure within the meaning of section 43B of the Employment Rights Act 1996 because (a) the expression that a person is experiencing stress is insufficient to convey information that the health and safety of any individual has been, is being or is likely to be endangered so to amount to a disclosure within the meaning of **Kilraine**. (b) fundamentally the claimant was expressing that she was experiencing stress. There was no suggestion by the claimant in this allegation that it could have any impact upon the students the claimant was looking after so to have a wider impact; the impact at best was upon 5 students in any event. The Tribunal did not find that such an allegation could be a disclosure in the public interest, where any alleged disclosure of information pertained solely to the claimant; she had no reasonable belief that this allegation was made in the public interest at the time. There was no suggestion in the disclosure made by the claimant that this impacted on the wider public within the meaning of **Chesterton Global Limited v Nurmohamed (2017) EWCA Civ 979**. This allegation fails.

8.2 18 May 2021 the claimant told Mr Mullock Deputy Head External Relations of her concerns that the house was not a good environment as she was dealing with girls with mental health issues, self harming suicide attempts

The claimant's evidence was not entirely accepted by Mr Mullock in an e-mail dated 4 April 2022 (page 361). The claimant had written to Mr Mullock on 2nd April 2022 asking whether he remembered having a meeting with the claimant about 17 May 2021 and that she broke down and mentioned she had concerns about her health and inquired whether he had shared his concerns with any members of the SMT. Mr. Mullock's response at page 361 on 4 April is that he remembered the claimant had become upset when she started to talk about the house and the day-to-day challenges she was currently experiencing. He stated he had raised this with Mrs. Pritt-Roberts and Dr. Chatterjee later that week; they had both acknowledged they were aware of the current situation and challenges in the house and that some adjustments had been made and they were taking steps to support the claimant. The Tribunal did not find on the balance of probabilities that the claimant disclosed the information she alleged (as set above) namely that she was dealing with girls with mental health issues; self harming suicide attempts but the Tribunal do find that the claimant alleged that she raised with Mr. Mullock that she was struggling with the role of housemistress. The Tribunal found that such a general allegation did not meet the requirements of disclosure in accordance with **Kilraine** that the health and safety of any individual has been, is being, or is likely to be endangered. In any event, the Tribunal did not find that such an allegation could have been made in the public interest because the claimants content of her allegation revolved around the effect solely to the claimant herself. She did not have any reasonable belief that she was making a disclosure in the public interest at the time. This did not meet the threshold test set out in **Nurmohamed**. This allegation fails.

8.3 7 July 2021 the claimant told the senior management team that she needed more support and that her mental health was deteriorating.

There is no dispute that the claimant met with Miss Pritt-Roberts on 7 July 2021. Notes of the meeting are set out at pages 478 to 479. The context of that meeting was that the claimant was finding the needs of the boarders difficult to manage. The Tribunal did not accept that the claimant told the senior management team that she needed more support and that her mental health was deteriorating. The claimant's evidence to the Tribunal was inconsistent with the following e-mail dated 12 July 2021 at page 480 that the claimant sent to the head teacher stating *"thank you very much for your support the meeting on Wednesday meant a lot to me and I'm very grateful for all your support through this very difficult time I have mixed feelings about the prospect of not being in St. Aidans at the beginning of next academic year but I'm working on fully accepting it as I know this is the best way forward and the decision was made in my best interest. I hope you have a nice summer holiday and thanks again for everything."* Contrary to the claimant's assertions the respondent was providing support to the claimant at this time. The Tribunal does not find that the claimant disclosed that she needed more support and her mental health was

deteriorating or that she disclosed her health or safety of any individual has been, is being or is likely to be endangered within the meaning of section 43B of the Employment Rights Act 1996. The claimant was actually supported by the respondent. She further emailed Mrs. Pritt Roberts on 12 July at page 481 *“thank you very much for all your support.* In any event, the alleged disclosure did not amount to a qualifying disclosure because it failed to meet the public interest test; the alleged disclosure concerned the claimant only and she could have no reasonable belief at the time, that the allegation was made in the public interest. This allegation fails.

8.4 On 16 August 2021 the claimant informed the headmaster that not being involved at all in St Aidan's was making her very anxious

There is no dispute at a meeting on 16 August 2021 the claimant expressed a desire to be present at St Aidan's at the start of term. The Tribunal did not find that the claimant informed the headmaster that not being involved at all in St. Aidan's was making her very anxious. Following the meeting the headteacher emailed the claimant on 19 August 2021 at page 515. Mr. Wignall stated *“ with regard to you being present in St Aidans at the start of term I completely understand your desire to do this. However I think it is actually going to cause more confusion for parents and pupils if you are there than if you are not. It is going to make for a confusing start of the year as parents then start to e-mail into you having seen you and met you only to find the emails are being dealt with by someone else. I think therefore that it is best that you leave the team who we have agreed are perfectly capable to manage things. I know that it is not the answer you are looking for and I'm sorry to disappoint you but I do think that given the return to work plan that we have in place it is the most sensible way forward.”* The claimant responded to this e-mail on 23 August 2021 at page 413; the Tribunal noted that she did not challenge the sentiment of the headteacher's e-mail dated 19 August 2021 nor did the claimant express not being involved in St. Aidens would cause her stress. On the facts found by the Tribunal, this allegation fails. In any event the claimant could not have any reasonable belief that the allegation was made in the public interest; the alleged disclosure was that the claimant was very anxious which was a personal concern and not in the public interest. It does not meet the threshold test contained within **Nurmohamed**. This allegation fails.

8.5 On 6 September 2021 the claimant emailed the headmaster and the deputy heads expressing her concern that their return to work programme was having a detrimental effect on her mental health and that being completely forced out from St Aidans was very distressing for her.

By e-mail dated 6 September 2021 (page 525 to 526) the claimant stated that *“being forced out of St. Aidans completely is hard and very upsetting for me.”* This was not quite the same as the pleaded alleged disclosure of having a detrimental effect on the claimant's mental health. The claimant was not being completely forced out as the head teacher responded on 7th of September 2021 at page 525. The Tribunal did not find that the claimant made the pleaded disclosure; what she said is set out in the email dated 6 September 2021 at page 526; an allegation of

being forced out which was very upsetting did not meet the test of qualifying disclosure in section 43B of the Employment Rights Act 1996; it did not disclose that the health or safety of any individual has been or is being or is likely to be endangered nor could the claimant have any reasonable belief that it did so. Furthermore, the Tribunal found that this was not a public interest disclosure in accordance with **Nurmohamed** because the claimant was simply complaining about the effect upon her. She could have no reasonable belief the disclosure was made in the public interest. This allegation fails.

8.6 Reporting the incident of 31 January 2022 with X's mother to the senior management team and asking for support as she felt vulnerable

By e-mail dated 30 January 2022 at page 571 the claimant did complain about a mother who had entered St Aidans and accessed Elaine's office to put food away. The claimant stated that it was not ok to find the mother in the boarding house, inside an office that she had unlocked without permission around children that the school has a duty of care for. The mother was not wearing a mask. The claimant requested support with sorting out the issue as she felt shaken and felt uncomfortable. This was in breach of the rules of the school and could pose a potential risk to students. The Tribunal found that the claimant made a qualifying disclosure by raising her concerns that a parent had entered St. Aidans and entered the office where other pupils are present; this disclosure raised that the health and safety of the claimant and pupils had been endangered. The Tribunal found in the context that the mother's behaviour was in breach of the rules of the school; she had failed to comply with wearing a mask and entered a house where other students were present that the claimant had a reasonable belief that the disclosure tended to show the health and safety of the claimant and other pupils was being or likely to be endangered. The Tribunal also found that the claimant had a reasonable belief that the disclosure was made in the public interest by reason of the effect that it had on her along with other pupils. The rules that parents do not enter boarding houses at the school is an issue of safeguarding and protection of students. That is an issue of fundamental importance to the protection of children; although the number of students was not vast the implications of a breach of such a school rule has a significant impact on others health and safety and in that context the Tribunal found that this disclosure was made in the public interest and the claimant had a reasonable belief at the time that she made a public interest disclosure in accordance with **Nurmohamed**.

8.7 On or around 24 March 2022 the claimant reported to the deputy head pastoral that she had to meet with a parent an hour after having a panic attack and that she had to teach student X and faced provocation from student X in the class.

There is no dispute on 24 March 2022 at page 583 the claimant contacted Dr Chatterjee and Vicky Pritt Roberts stating *"I am very disappointed once again humiliated and hurt. I have a meeting with a parent at 10:00 AM I will try my best to remain strong and get myself back together before that or but I am really struggling."* The Tribunal found that the claimant made an allegation she was humiliated and hurt

and struggling having to meet a parent. This was sufficient to establish a qualifying disclosure that the claimant's health has been is likely to be or was likely to be endangered and the Tribunal found that the claimant did have a reasonable belief that this was the case. However the concern raised by the claimant did not meet the public interest test because again the claimant was simply complaining about her struggles and nobody else. She could have no reasonable belief that this disclosure was made in the public interest. This allegation fails.

- 8.8 27 March 2022 the claimant told the deputy head pastoral that she was unhappy that she felt discriminated against after her breakdown and that she wanted to raise a grievance.

The Tribunal found that in the claimant's email dated 27 March 2022 (page 588) the claimant stated "*I informed you early and informally on several occasions that I'm being bullied and discriminated against at work by the DHA while in your presence and with your involvement.*" The Tribunal found that this amounted to a disclosure of information namely conveying that the respondent's senior managers were in a breach of the Equality Act 2010 and that the claimant did have a reasonable belief that the senior managers were in breach of the Equality Act 2010. However the Tribunal did not find that the claimant had a reasonable belief at the time that such a disclosure was made in the public interest. This disclosure concerned only the claimant and she could have no reasonable belief that she was making such a disclosure in the public interest The allegation fails.

- 8.9 Emails from the claimant to the headmaster, deputy head academic, deputy head pastoral and head of middle school over January to March 2022 expressing that she didn't feel safe regarding student X

On 30 January 2022 at page 571 the claimant emailed the senior management team describing having found a mother of the student in St. Aidan's boarding house in Elaine's office; it appeared the parent had unlocked the office and was putting away food in Elaine's office she brought in for the student. The mother did not have a mask on. The claimant described that it wasn't OK for her to find the mother in the boarding house inside an office that she unlocked without permission around children that the respondent had a duty of care for. The claimant asked for support with sorting the issue out; stating she felt shaken and felt very uncomfortable. The Tribunal found that the claimant made a qualifying disclosure by raising her concerns that a parent had entered St. Aidans and entered the office where other pupils are present; this disclosure raised that the health and safety of the claimant and pupils had been endangered. The Tribunal found in the context that the mother's behaviour was in breach of the rules of the school; she had failed to comply with wearing a mask and entered a house where other students were present that the claimant had a reasonable belief that the disclosure tended to show the health and safety of the claimant and other pupils was being or likely to be endangered. The Tribunal also found that the claimant had a reasonable belief that the disclosure was made in the public interest by reason of the effect that it had on her along with other pupils. The rules that parents do not enter boarding houses at the school is an issue of safeguarding and protection of students. That is an issue of fundamental importance to the protection of

children; although the number of students was not vast the implications of a breach of such a school rule has a significant impact on others health and safety and in that context the Tribunal found that this disclosure was made in the public interest and the claimant had a reasonable belief at the time that she made a public interest disclosure in accordance with **Nurmohamed**.

Further the claimant emailed the senior management team on 23 March 2022 page 586, she described her interactions with student X . The claimant described that the student made a big deal of everything and makes the claimant's job "really really hard". The claimant described she was hoping to get through the last few weeks left; I know I keep saying this but I do feel emotionally unsafe in my role as I'm being asked to carry on doing a job but I haven't got the correct tools to do it. She described the feeling of walking on egg shells and it was not easy, it is hard going and I cannot see a way out of it at the moment but I will keep going. The Tribunal found that the claimant made a qualifying disclosure; the claimant disclosed in the emails that her health was being endangered and the claimant had a reasonable belief that this was the case. However the Tribunal did not find that the disclosure was made in the public interest or that the claimant had any reasonable belief that it did so. These comments simply concerned the claimant and no one else. She could have no reasonable belief that such concerns were raised in the public interest. This allegation fails.

- 8.10 February to March 2022 reporting incident in the house to the deputy head pastoral and deputy head academic explained that she felt unsafe in her job.

This allegation concerns the correspondence set out above (email 23 March 2022). As stated, they did not amount to public interest disclosures because they simply concerned the fact that the claimant felt unsafe in her job. This allegation fails.

- 8.11 1 April 2022 informing the headmaster that she was really struggling with her mental health and she was going to raise a formal grievance.

On 4 April 2022 the claimant contacted the head teacher page 614 to state *"I decided to raise a formal grievance as I believe the lack of support I received from my line managers in the last five years resulted in me getting ill health. The way I've been treated after I brought this to your attention last summer I believe it is bullying."* The Tribunal determined that this was a disclosure of information that the health and safety of the claimant was being or was likely to be endangered and the claimant had a reasonable belief that was the case. However, it did not amount to a qualifying disclosure because it lacked the essential element of public interest; the claimant's comments simply concerned the effect that the claimant stated were having on her mental health and the claimant could have no reasonable belief at the time that she made a disclosure in the public interest. This allegation fails.

- 8.12 Reporting to the deputy head pastoral at the end of March 2022 that she was stressed resulting from student X attempting to record her  
By e-mail dated 31 March 2022 page 462 the claimant emailed Dr. Chatterjee stating *"I am pretty sure that X tried to record me on her Ipad in the maths lesson today. This is not ok."* The Tribunal determined that

the claimant raised a concern that she was recorded without her permission. No evidence was led as to whether any part of section 43B (1) was engaged. In the circumstances the Tribunal could not find that the claimant made a qualifying disclosure in accordance with the statute. In any event this matter was not raised in the public interest; the claimant was complaining about an issue related to her alone and could have no reasonable belief that the issue was raised in the public interest. This allegation fails.

8.13 Submitting a formal grievance on 21 April 2022

On 21 April 2022 the claimant submitted a grievance at page 615 to 620 along with a table of history of failures of duty of care bullying and harassment from pages 653 to 675. The grievance raised by the claimant complained that she was subject to an excessive workload, there was a failure to make reasonable adjustments for her; failure to undertake a risk assessment pursuant to the Management Health and Safety at Work Regulations 1999; The claimant referred to being harassed pursuant to the Equality Act 2010. The claimant stated that the college had knowledge of her eating disorder and discriminated against her referring to a difficulty in attending housemasters meetings during the lunch breaks. the claimant alleged she had been bullied and harassed by senior management and discriminated against by reason of her nationality and impairment The Tribunal determined that the claimant had made a qualifying disclosure; the claimant has specifically referenced breaches of the Equality Act 2010 and the factual context she relied upon ; this was a qualifying disclosure pursuant to section 43B (1)(b). Further the claimant had also described that she had been caused ill health by poor treatment; the Tribunal determined that this was a disclosure about the health and safety of the claimant being endangered; see section 43 B (1)(d). The Tribunal determined that the claimant did hold a reasonable belief in both these matters. However, the Tribunal determined that the claimant did not at the material time have a reasonable belief that such disclosures were made in the public interest. The claimant was complaining about her treatment alone and the effect that it was having upon her. The disclosures were not raised in the public interest. This allegation fails.

8.14 Her correspondence with Miss. Avery in August 2022 in which she complained of the failure to make reasonable adjustments

The claimant by letter dated 3 August 2022 at page 881 alleged that Miss Avery had omitted to suggest any reasonable adjustments within the invite letter to a meeting on 9 August 2022 to remove the disadvantage or substantial disadvantage on protected grounds of disability; see page 883. The Tribunal determined that the claimant had made a disclosure that the respondent had failed to comply with a legal obligation namely the obligation to make reasonable adjustments under the Equality Act by failing to make or suggest any reasonable adjustments for the meeting and that the claimant had a reasonable belief that this was the case. However, the Tribunal did not find this disclosure was in the public interest; the claimant's disclosure was about a failure to make reasonable adjustments to a meeting she was required to attend; it simply concerned the claimant's attendance at a meeting.

The claimant had no reasonable belief that the said disclosure was made in the public interest. This allegation fails.

### Alleged detrimental treatment

The Tribunal concluded that the claimant had made only two protected public interest disclosures; namely on 30 January 2022 and on 21 April 2022 (the claimant has framed the same disclosure under two different headings above). The Tribunal then considered if the claimant was subject to any detrimental treatment. The Tribunal reminded itself that the statute requires that the act or deliberate failure to act of the employer must be done on the ground that the worker in question has made a protected disclosure. This requires an analysis by the tribunal of the mental process (conscious or unconscious) which caused the employer so to act and the test is not satisfied by the simple application of a but for test see the case of **Harrow London Borough v Knight 2003 IRLR 140**. The employer must prove on the balance of probabilities that the act or deliberate failure complained of was not on the grounds that the employee had done the protected act meaning that the protected act did not materially influence in the sense of being more than a trivial influence the employer's treatment of the whistleblower see the case of **Fecitt v NHS Manchester 2011 EWCA Civ 1190**.

#### 2.1 Being required to continue to deal with issues concerning the students on the swimming club without additional help of support between October 2019 to May 2021 and October 2021 to April 2022.

On the basis that the Tribunal's finding is that the first protected interest disclosure was made on 30 January 2022 the Tribunal looked at this allegation from that date. Factually the Tribunal did not find that the claimant had a lack of additional help or support from January 2022 to April 2022. Dr. Chatterjee's unchallenged evidence was that he put in extra staff to reduce the claimant's house duties. The Head of Middle school also began to pick up more of the girls House case work to support her as did other House staff along with Dr. Chatterjee and the DHA to provide practical support. The claimant introduced the issue of the student swimming club into evidence. By way of background an individual not directly employed by the respondent had been investigated for a safeguarding matter concerning a swimming club the Titans; some of the respondents students were members of the Titans. There was no suggestion at all that the claimant was guilty of any wrongdoing concerning the individual or the swimming club. On 24 January 2022 the claimant emailed Dr. Chatterjee to advise she was resigning from her role of Head of Talbot house one of the competitive houses (page 569) and thanked the head teacher for the opportunity stating she was resigning to give someone else the opportunity to bring in new initiatives. She did not resign from her position as a teacher or housemistress of St. Aidan's. At her request the claimant maintained her responsibility for a competitive house when she became a boarding house mistress. In a letter to the headmaster and chair of governors on 24 February 2022 see page 574 to 575 the claimant raised a concern that the issues with the Titans had increased her workload due to an increase of welfare issues with students and that she had requested



some support. In response the claimant was informed that she was doing everything correctly and that the pastoral system was robust enough to deal with issues the claimant was addressing. The Tribunal noted that in the claimant's role as housemistress she has a pastoral role and there may well have been welfare issues arising from the investigation into the Titan swimming club. However, the respondent determined that the claimant was dealing with issues satisfactorily and advised in a meeting on 21 October 2022 that the claimant should develop a more flexible decision-making process; be aware that excessive time and energy in emotional issues can lead to fuelling rather than subduing the situation and recognising that the claimant's strong assertiveness could be perceived as aggressive. The Tribunal did not find that the claimant had a lack of additional help or support or in any event that the protected interest disclosures made on 30 January 2022 or 21 April 2022 had a material influence (being more than a trivial influence) on the employer's treatment of the claimant. This allegation fails.

2.2 Failure by the respondent to carry out any stress audits or risk assessments concerning the claimant from October 2019 to present

On the basis that the claimant's first protected interest disclosure took place dated 30 January 2022 the Tribunal looks at this allegation from that date. From 1 September 2021 Mrs Pritt Roberts opened a live document/risk assessment starting at page 1142. Factually the Tribunal did not find that the respondent had failed to carry out a stress audit/risk assessment of the claimant; it did. This allegation fails.

2.3 Being required to continue attending lunchtime meetings where people were eating around her between October 2019 to May 2021 and October 2021 and April 2022.

On the basis that the claimant's first alleged protected interest disclosure was dated January 2022 the Tribunal looks at this allegation from that date. It was an integral part of the claimant's role to attend lunchtime meetings to discuss any issues in the course of her work as a house mistress. There was no suggestion that the claimant could not attend lunchtime meetings until much later in the chronology namely in the updated fit note 6 May 2022 when it was explained that the claimant could not attend meetings because she needed to keep her calorie intake up. In the circumstances there was no causative link between the protected interest disclosure and having to attend lunchtime meetings between January to April 2022.

2.4 Failure to provide support or amend the claimant's duties during lockdown, including furloughing one of the claimant's assistants and not requiring the other one to come in at all during both COVID lockdowns

The Tribunal has found the first protected interest disclosure took place on 30 January 2022. For completeness, on 23 March 2020 at page 350 Mrs. Pritt Roberts informed the claimant that there was sufficient staff in to cover so if the claimant had any concerns and with elderly in-laws who may need your support Mrs. Pritt Roberts said she was happy to support the claimants need to be at home. If the claimant preferred to keep her daughter off then the claimant should stay off. She also told the claimant that if she preferred to

continue coming in and her daughter to attend then that's fine too. Mrs. Pritt Roberts said it was the claimant's decision as to what is best for your family and the claimant just had to let Mrs. Pritt Roberts know and John know and he can sort out who will run the sessions. Mrs Pritt Roberts was very supportive and there was no evidence to suggest the fact the claimant was treated in a detrimental way. During the second lockdown from January 2021 there were only 5 borders and this was a difficult time for everybody. Dr. Chatterjee informed the Tribunal in accordance with paragraph 22 of his witness statement very few teaching staff were furloughed during term time. The majority of borders went home so only a few borders remained. The number of boarding houses in use were cut down. The boarding staff across the seven houses were part of a rota to supervise those pupils who had to stay in school. The claimant benefitted from reduced duties during this time in the same way as all other boarding staff did. Those living on site were required to assist with supervision of the key worker children so as to reduce other staff travelling unnecessarily and the staff in contact with pupils. The claimant asked due to family circumstances to be excused from this for a period. The claimant worked from home for a period and was removed from the rota. The claimant lived on site and the other staff had to travel a long distance and the school was trying to reduce contact in line with COVID-19 guidance. Other staff on site picked up duties as well, so the claimant had much fewer duties than usual with only a few pupils. The claimant was actually provided with support during the lockdowns. There were no lockdowns in 2022. The Tribunal determined that there was no detrimental treatment and in any event there was no causative link between this and making an alleged protected interest disclosure in January or April 2022. The allegation fails.

2.5 Failed to provide support during the investigation into the complaints against the swimming club and coaches between May to June 2020 and October to December 2020.

The alleged detrimental treatment to which the claimant complains relates to a period of time prior to the claimant making a public interest disclosure. This allegation fails.

2.6 The deputy head academic telling the claimant in response to her expressing that she was stressed that she should find everything a lot easier as she only had five girls to look after in January 2021 during second COVID lockdown

This allegation occurred prior to the claimant making a public interest disclosure. For completeness, Mrs Pritt-Roberts gave evidence to the Tribunal which was accepted that in the staff room a conversation took place between the claimant and Mrs Pritt Roberts. At that time their reduced number of staff in the school and they were not seeing much of each other and socially distancing the claimant said she was feeling OK but a bit stressed in a jovial manner Mrs Pritt Roberts stated at least things must be easier with less pupils in. The Tribunal did not find that this comment in the context of joviality and support could be considered to be a detriment namely a disadvantage and no reasonable person could have considered that such a jovial comment

in the context was putting the claimant at any disadvantage. This allegation fails.

2.7 On 14 May 2021 the deputy head academic failing to offer support to the claimant when she broke down saying to the claimant I hope you are not breaking down as we had this before when members of staff looked all confident on the outside and broke down suddenly.

This alleged detrimental treatment occurred prior to the public interest disclosure on 30 January 2022 so there can be no causative link between any alleged detrimental treatment. For completeness, on the balance of probabilities, the Tribunal determined that the Deputy head did not say this to the claimant. The Tribunal reached this conclusion on the basis that Mrs Pritt-Roberts was the consummate professional and would never have made comments of such a personal nature to a member of staff. The allegation fails in any event.

2.8 18 May 2021 failure by Stephen Mullock and the respondent to support the claimant.

This allegation occurred prior to the claimant making a protected interest disclosure so there can be no causative link between any alleged detrimental treatment. Further, the Tribunal found that Mr. Mullock did speak to Mrs Pritt Roberts and Dr. Chatterjee and adjustments had been made to the claimant's workload. In any event Mrs Pritt Roberts already knew because the claimant had told the deputy head how she was feeling. The respondent put support in place; such as extra staff to help the claimant on a day-to-day basis; the deputy head to the middle of school and Mrs Pritt Roberts were picking up more of the case work of the house to provide further support to the claimant. Factually there was no failure provide support to the claimant. There was no detriment and no causal connection with any alleged protected interest disclosure. This allegation fails.

2.9 Failure to support the claimant after her breakdown on 21 May 2021

This allegation occurred prior to the claimant making a protected interest disclosure so there can be no causative link between any alleged detrimental treatment. Factually the Tribunal found no evidence that the respondent failed to support the claimant after her breakdown on 21 of May 2021 and in fact the allegation was inconsistent with the contemporaneous e-mail sent by the claimant to the respondent at this time namely on 22 of May 2021 (page 475); the claimant wrote to the headmaster along with Mrs Pritt Roberts and Dr. Chatterjee stating "*thank you for your support through this very difficult time*". Further on 12th July 2021 the claimant stated (at page 480) "*thank you very much for your support I'm very grateful for all your support through this very difficult time thanks again for everything*". Further in an e-mail to Mrs Vicky Pritt Roberts dated 12 July 2021 (at page 481) the claimant writes "*thank you very much for all your support*". There is no evidence that the claimant lacked support from her colleagues and in any event no causative link between the alleged protected interest disclosure dated 30 January 2022 and this contention; this allegation fails.

- 2.10 7 July 2021 the senior management team told the claimant they had decided to give her time off from her house mistress duties completely and did not explore the claimant suggestion that other duties that could be taken away from her

This allegation occurred prior to the claimant making a protected interest disclosure so there can be no causative link between any alleged detrimental treatment. For completeness, at a meeting with the claimant it was noted that the claimant's work as a house mistress was causing her stress. It was determined to the claimant's best interests and that of the students that the housemistress role be removed on her return to work from a sickness absence. Although the claimant suggests that this was a detriment at the material time on the 12 of July 2021 page 480 the claimant wrote to the headmaster stating thank you very much for your support I'm very grateful for all your support through this very difficult time I have mixed feelings about the prospect of not being at Aidans at the beginning of next academic year but I'm working on fully accepting it as I know this is the best way forward and the decision was made in my best interest. I hope you have a nice summer holiday and thanks again for everything. The Tribunal determines that at the material time the claimant did not consider this to be a detriment. This allegation fails.

- 2.11 On 7 July 2021 the Deputy Head Academic made a comment that the claimant must be quite fragile

This allegation occurred before the claimant made a protected interest disclosure. For completeness there is no dispute that Mrs Pritt Roberts did use the phrase fragile. The context is that at the meeting on 7 of July the claimant had stated she found the past year difficult. The Tribunal found Mrs. Pritt Roberts' approach to her return to work was to be supportive and wanted to reassure the claimant it was OK to feel fragile. Mrs. Pritt Roberts adopted a gentle approach with the claimant concentrating on her teaching first where she felt most confident was in the best interests of the claimant and the school. The Tribunal accepted Mrs Pritt Roberts' observations that the claimant has taken the use of the word fragile in a derogatory sense instead Mrs Pritt Roberts was trying to be empathetic to the claimant's difficult situation. The Tribunal accepted the evidence of Mrs Pritt-Roberts that she was seeking to reassure the claimant that feeling that way is OK and the school was seeking to help. This was not detrimental treatment. The allegation fails.

- 2.12 26 August 2021 the claimant was told it was not possible for her to resume her house mistress duties

This allegation occurs before the claimant made a protected interest disclosure so that there can be no causative link. For completeness, by e-mail dated 26 of August the headmaster informed the claimant at pages 410 and 411 that he was instigating a phased return to work consistent with the current college policy he stated the source of stress in your job has not been your core teaching responsibilities it makes sense to focus on that area as step one of the return to work in our first meeting it was clear about what we were proposing you seemed happy and felt that our approach was generous as you know

at no time have I suggested any contractual changes for you and you will continue to receive a reduction in teaching time as though you are running a house, accommodation as though you are running a house, and financial allowances though you are running a house. Effectively this is a temporary reallocation of duties if you want to be overly formal about things as part of a return to work plan your primary employment is as a teacher and the house mistress responsibility is an additional role which we are temporarily relieving you of in order to operate an effective phased return to work. The Tribunal finds that this was a supportive step and a temporary measure to allow the claimant to return to work without undue pressure and the removal of the stressor. Furthermore from 1st of September 2021 the respondent started to commence stress risk assessments. The Tribunal do not find in all the circumstances that this could amount to a detriment namely a disadvantage. This allegation fails in any event.

- 2.13 The headmaster sent an e-mail to the claimant following their meeting on 16 August 2021 I am still a little uncertain as to why you wanted your union representative involved but as you know I made no objection to this I think most employers might have objected to this or at least expressed concerns as on the face of it seemed a rather escalating approach to things but I didn't want to take that view

This alleged detriment took place before any protected interest disclosure so there can be no causative link. In any event the Tribunal did not deem this to be a detriment; in the sense that any reasonable person could not have considered an innocuous comment a disadvantage.

- 2.14 When term started on 6 September 2021 no provisional adjustments were made for the claimant. She was not allowed in St. Aidans and her classroom was used by another teacher. The Deputy Head of Pastoral told the claimant that she could go home if she wanted.

This alleged detriment took place before any protected interest disclosure. There can be no causative link. For completeness the Tribunal did not find this was made out on the facts. The respondent made a reasonable adjustment on the claimant's return to work by removing the stressful aspect of the claimant's role (as she agreed the housemistress duties were the stressful part of her role) so that she could focus on her teaching of mathematics. The claimant was not allowed into St. Aidans by reason of the fact that it would cause some confusion to students and parents which is explained fully by the headmaster in an e-mail dated 19 August 2021 (page 515); *he stated with regard to you being present in St. Aidans at the start of term I completely understand your desire to do this however I think it is actually going to cause more confusion for parents and pupils if you are there than if you are not it is going to make for a confusing start of the year as parents then start e-mail into you having seen you and met you only to find the emails are being dealt with by someone else I think therefore that it is best that you leave the team who we have agreed are perfectly capable to manage things I know that is not the answer you're looking for and I'm sorry to disappoint you but I*

*do think that given the return to work plan that we have in place it is the most sensible way forward.* In respect of the use of the claimant's classroom when she returned this was used by a another tutor group. The claimant raise it with Dr. Chatterjee, deputy head of Pastoral, who told the claimant if she had free time she could go home. By reason of human error and by the next time the room was the tutor group was re assigned a different room so that the claimant could use up her usual teaching space. The tribunal did not deem that any reasonable person could view this as a detriment/disadvantage

2.15 Failure to respond to the claimants e-mail of 21 September 2021 asking for more support to protect her mental health failure to manage reduce her working hours

This occurred prior to the protected interest disclosure so there can no causative link. For completeness, the claimant's e-mail dated 21 September 2021 at page 533 did not demand or require a response; in fact the claimant wrote to the headmaster Vicky Pritt Roberts and Dr. Chatterjee stating *"I'm not asking for anything I'm just letting you know without reacting or wanting a reaction that despite trying my hardest to accept what is going on in work for me at the moment I'm really struggling* The claimant went on to say *I know nobody intends to make me feel this way the claimant was not asking for any more support I'm not asking for anything.* The claimant followed this on with a further e-mail on 27 of September in respect of seeking advice stating that *she was finding it very awkward and difficult to cope with* in the context of girls asking the claimant when she was returning to St. Aidans (page 535). Vicky Pritt Roberts responded to this stating that *they were awaiting the outcome of the occupational health assessment.* The claimant stated *thank you for getting back to me* (page 534) on 28 of September and raised no concerns that the 21 of September email required any action on behalf of the school. The Tribunal did not find the claimant was subject to detrimental treatment in the circumstances. This allegation fails.

2.16 15 September 2021 the claimant received a letter from the deputy head academic threatening her with disciplinary action

This matter arose before the protected interest disclosure so there can be no causative link. For completeness, by letter dated 15 September 2021 (p530) Dr Chatterjee and Mrs. Pritt Roberts stated in yesterday's meeting we discussed our concerns that despite you having been told not to go into the boarding house or involve yourself with boarding activities you have gone in on several occasions. This instruction was given to protect yourself and the staff currently running the boarding house it is in the best interest of all parties and to ensure clarity in the day-to-day operation. This instruction was repeated to you in our meeting yesterday and i am following it up in writing so there is no uncertainty.If you are off the view there is something that you need which is not necessary for the running of the house then we will arrange a specific time for you to collect it.. We have become aware that you have publicly expressed criticism of colleagues who are covering the house both to them and others this must stop I'm obliged to warn you that should you decide to disregard these instructions it will be deemed a disciplinary matter."

The claimant was not threatened with disciplinary action but simply warned if she continued to express criticism publicly about colleagues that she would be subject to discipline. The tribunal found that the claimant had been given a formal instruction not to go into the house and she ignored this and entered the house. The claimant also made negative comments publicly about her colleagues. In the circumstances it was entirely appropriate for the respondent to warn the claimant not to behave in such an unprofessional manner. The treatment had nothing whatsoever to do with making a public interest disclosure.

2.17 October 2021 failure to follow up the Occupational Health report or to arrange a meeting with the claimant to discuss the report

This alleged detrimental treatment occurred prior to making the public interest disclosure so there can be no causative link. For completeness, this allegation was changed by the claimant in evidence to being one of a delay in arranging a meeting to discuss the OH report. The Tribunal found that the claimant received the occupational health report prior to it being disclosed to the respondent. The claimant sent the report to the Head on 18 October 2021 saying Vicky probably shared it with you. On 18 October 2021 (page 548) Vicky Pritt Roberts stated she was pleased to see that the occupational health conclusions were that the claimant was well and she wanted to move to the next step to discuss the claimant's return to boarding duties. The Tribunal rejected the suggestion that the respondent failed to follow up the Occupational Health report or delayed in setting up a meeting. This allegation fails.

2.18 1 April 2022 threatening to evict the claimant's husband from their accommodation

This allegation occurred after the public interest disclosure. The Tribunal determined that the claimant had informed Dr. Chatterjee that she could not be responsible for her husband's actions if he were to encounter Dr. Chatterjee and Mrs. Pritt Roberts about the campus because he was incensed with her treatment by them. Mrs. Done asked Dr. Chatterjee to pass the message to Mrs. Pritt Roberts. The Tribunal determined that this was a threat. The Head told Mrs. Done during the meeting on 1 April 2022 that this represented a threat to the safety of adults who lived on site and she was stating her husband's temper could not be trusted; it was a safeguarding issue. Mrs. Done said the message was not a threat. Mrs. Done wrote on 4 April 2022 at page 614 stating that the Head threatened him with eviction. The Tribunal did not find on the balance of probabilities that there was a threat of eviction, but the Head made clear to the claimant that her husband needed to behave appropriately at all times whilst on site. The claimant did not challenge under cross examination Mrs. Pritt Robert's assertion at paragraph 38 that the claimant's husband intimidated Mrs. Pritt Roberts during 2022 and 2023 including standing outside her house and staring into her window. Mrs. Pritt Roberts eventually reported Mr. Done to the police. This allegation fails.

2.19 Failure to support the claimant in light of the issues with the mother of student X between January to March 2022.

The Tribunal found this allegation to be factually incorrect. Mrs. Pritt-Roberts was supportive of the claimant having informed the mother that she was misinterpreting what the claimant said to her (page 457). Further she provided guidance to the claimant of choosing different words which cannot be misconstrued (page 457). Further in her e-mail to the claimant on 23 March 2022 (page 457) Mrs Pritt Roberts stated "I'm aware that the child and mother do make a fuss over what in reality is small matters however perception is reality to them." Mrs. Pritt Roberts also spoke to the mother and explained her role to help reduce the conflict triggers so in respect of the student getting permission from mum to stay in her room, Mrs. Pritt Roberts advised the mother that all students who feel unwell have to report to sickbay. Mrs. Pritt Robert also explained to mum she does not have the authority to give permissions to override the schools protocols which contributed to conflict in the situation. The Tribunal found no detrimental treatment. This allegation fails.

2.20 10 May 2022 being informed by the Headmaster in a return to work meeting that she was not going to be allowed to run St. Aidan's

The claimant took sick leave in April 2022 and provided a sick note dated 6 May 2022 (page 1767). The fit note stated stress at work, anxiety, panic attacks and eating disorder. This fit note also recommended that on return to work that the claimant could not have any in person communication with the headmaster or the deputy head (the safeguarding lead) nor the pupil whose parents had made a complaint against the claimant. The respondent determined it was not practical in the day-to-day operation of the school for the claimant to run St. Aidans or in fact the recommendations could not be fully implemented. In the circumstances the public interest disclosure had no influence on the respondent's decision that the claimant should not run St. Aidans. The Head explained that the claimant could not run a boarding house if she was unable to attend meetings do administrative work past 9pm or over lunch break see notes of 10 May 2022 page 643. The Head stated for the time being it was best that the claimant did not return to the housemistress duties and just concentrate on her teaching duties. He gave the claimant three options (see page 644) namely do not return to work until the outcome of the grievance; do not return until the Occupational Health assessment has been carried out ad report in or return in line with the sick note, namely just teaching. It was not practical in the light of the restrictions set out in the fit note for the claimant to return as housemistress to St. Aidans; the public interest disclosure had no influence on this treatment. The allegation fails.

2.21 26 June 2022 the Headmaster writing on the claimant's occupational health assessment consent form that the Local Authority Designated Officer issue was on hold because of her mental health issues

The Head stated at page 769 in the occupational health assessment consent form that "*Mrs. Done has suggested that an occupational health assessment should be carried out before she cooperates with*



*the safeguarding investigation.*“ This statement was factually correct. There was no detriment in the sense of disadvantage. The public interest disclosure had no influence on the treatment of the claimant. This allegation fails.

2.22 The failure to implement a return to work plan between July to October 2021, April -May 2022 November 2022-July 2023

The Tribunal did not find that this allegation was factually made out. The respondent did implement a return to work plan which was set out in the minutes of meetings. The claimant having resumed teaching duties on her return to work; when she improved she could return to housemistress duties which was the source of the claimant's stress. On 19 August 2021 (page 515) the Head stated that the claimant should not be housemistress at the start of term. On 14 September 2021 at a return to work meeting (page 527) the fact that the claimant continued to teach was discussed. The claimant had been showing signs of stress and she was informed not to go into the boarding house. She had ignored that instruction. An occupational health assessment would take place to advise as to any reasonable adjustments required before the claimant returned to housemistress duties. The claimant thanked the respondent for referring her for an occupational health report (page 531) and accepted she would not have anything to do with St. Aidans until further notice from the Head. At a return to work meeting on 10 May 2022 following receipt of the latest fit note (6 May 2022, page 1767) that described that the claimant had stress at work, anxiety, panic attacks and eating disorder and recommended that on return to work that the claimant could not have any in person communication with the headmaster or the deputy head (the safeguarding lead) nor the pupil whose parents had made a complaint against the claimant. It further stated that the lunch break must not involve any activities she needs to focus on keeping her calorie count high and she could not work past 9:00 PM although it said she could manage in class duties in most housemistress duties she can lecture and grade papers realistically with these restrictions she could not perform the role of a housemistress on site ready to deal with issues arising with pupils in the house. The claimant had three options not return to work until the outcome of the grievance; not return to work until the occupational health assessment had been carried out and report was received and return in line with a sick note namely just to teach. On 31 October 2022 at a return to work meeting (page 1104 to 1110) the claimant said she is not happy with the return to work arrangements as nothing was in place for her return to work as a housemistress. The Tribunal determined that there was a return to work plan in place; the claimant simply did not agree with it. The respondent put in place a phased return to work plan and removed the claimant's housemistress duties because housemistress duties were a source of stress for the claimant; the respondent had a duty of care to the claimant. Once the claimant was well enough, she could resume her housemistress duties. This allegation fails

2.23 The referral of the claimant to LADO on 1 April 2022 and in July 2022

The Tribunal did not find this allegation made out. The respondent has never reported the claimant to LADO. The parent of the student referred the claimant to LADO in early 2022. The respondent sought advice from LADO on 7 July 2022 page 721 where the claimant had a barbecue in her garden and invited students into the house upstairs to view exotic fish. The staff code of conduct states that staff must not invite pupils into their home. The advice sought states "Given the ongoing investigation she asked for advice about what steps should be taken next." The Tribunal found in the context there was an ongoing LADO investigation and there was a breach of the staff code of conduct it was entirely appropriate to seek this advice. This allegation fails.

2.24 The delay in providing/failure to provide the claimant with the outcome of the referral to the LADO and the respondent's investigation into the same, between April- October/November 2022

The Tribunal did not find this allegation made out. The respondent became aware of the LADO referral from a parent 1 April 2022 page 719. The claimant accepted in her email dated 3 May 2022 that she had been informed about the LADO complaint by the Head on 1 April namely as soon as he knew; see page 633. By 19 May 2022 LADO delegated the investigation to the school see page 720 and this was confirmed by email to the claimant on 19 May 2022. The claimant was off sick at this time and from 21 April 2022 to 30 June page 1766-8 due to panic attacks. She also had a period of sickness from September 2022 to October p.1772-3. On 15 June 2022 page 720 LADO gave guidance as to how the investigation should be conducted; this delay was not the respondent's fault. School summer holidays took place in July/August. On 6 June 2022 (page 746) the claimant wanted an OH report before getting involved in the LADO investigation. On 1 August 2022 the claimant was contacted by Ms. Avery who was delegated to conduct the LADO investigation (see page 873) to invite her to a fact finding meeting. The claimant responded to this in an aggressive email (page 881-4). On 8 August 2022 page 893-4 Mrs. Avery postponed the investigation meeting and gave the options to the claimant of attending a meeting on 15 August 2022 or as a reasonable adjustment if required to provide a written submission. The claimant chose to provide a written submissions and did so on 11 August 2022 (page 905-6). Mrs. Avery prepared the report on 15 September 2022 (page 930-7) and sent it to the Headteacher. The report recommended the claimant to be invited to disciplinary meeting. The disciplinary meeting was fixed for 6 October 2022 (the claimant was invited to the meeting on 23 September 2022 page 1019 to 1021). The meeting was delayed as a result of the claimant's her request to 19 October 2022 (page 1093-7) and chaired by Mike McCarthy, Director of Operations at Ellesmere College. Mr. McCarthy informed the claimant by email on 20 October 2022 no disciplinary action was required and the matter was now closed. The Tribunal determined that there was no delay on the part of the respondent and certainly no deliberate delay; the protected interest disclosure had no influence on delays in the process; delays took place by reason of the time taken by LADO to provide guidance

to Mrs. Avery; the length of time it took to conduct the detailed investigation; the claimant's reaction to the invite to the fact finding investigation. This allegation fails.

2.25 The delay in progressing/failure to progress the claimant's grievance failure to reasonably and promptly afford a reasonable opportunity to the claimant to obtain redress of her grievance between April-November 2022 appeal filed in November 2022, outcome received in July 2023. Second grievance filed in November 2022 hearing and outcome in July/August 2023

The Tribunal did not find this allegation made out on the facts. The claimant lodged a grievance 21 April 2022 (page 615 to 620 which attached a table page 653 to 675). At 27 pages it was a significant and detailed grievance. The respondent appointed IBEX Gale to investigate. Ibex Gale conducted a thorough investigation and interviewed 12 witnesses (see page 799-800). The grievance report amounted to 77 pages; see the report page 794 to 872. There was some delay because the claimant was off sick and the claimant requested that the investigator take account of her medical material. On 7 September 2022 (page 923) it was noted that Ibex Gale said that they would look at the medical material from the claimant namely the occupational health report and prepare an amended report; Anna Sutton was going to contact Ibex Gale; she had been away on holiday. On 8 September 2022 page Ibex Gale lodged a supplemental report on 6 September (see page 927 and pages 910-6). Their findings remained the same. The Head informed the claimant on 8 September 2022 he had no direct control over the independent investigation (see page 929) and that the LADO investigation had been completed and she would receive an update on progress shortly. On 6 September 2022 the claimant raised a second grievance (see page 919). The claimant alleged that the school had failed to support her and was particularly critical of the Head. The school acknowledged the grievance see page 924. This grievance appeal was heard by Professor Sutton on 17 October page 1063 – 1085. The outcome was provided to the claimant by letter dated 9 November 2022 page 1111-1127. On 16 November 2022 (page 1128 to 1131) the claimant raised another grievance. This was sent by the Head to Kelly Mansell on 5 July 2023. Ms. Mansell asked the claimant to meet with her on 17 July 2023; the claimant preferred to send a written submission. The appeal was considered by Ms. Mansell and rejected on 25 August 2023 (pages 1314 to 1329). The Tribunal notes that there was a period of delay here. Mr. Wignall (now deceased) in his witness statement at paragraph 51 says "once the first grievance of three was finally settled – having gone to appeal- the second grievance was heard by a HR professional on retainer to the college. The claimant sent a third grievance on 27 April 2023. The claimant met with Kelly Mansell on 17 May 2023 and her grievance was not upheld by letter dated 23 June 2023. By letter dated 29 June 2023 the claimant appealed the decision of Ms. Mansell (see page 1292 to 1293). The appeal was considered by counsel 1836 to 1860 on 3 August 2023. The Tribunal takes into account the complexity of the grievances and finds that they would

have required time to properly investigate and consider. There was no unreasonable delay save that the Tribunal notes that there was a delay in forwarding the claimant's grievance dated 16 November 2022 to Ms. Mansell to investigate (not sent to 5 July 2023). The evidence of the Head is that once the first grievance was finally settled which was on 9 November 2022 it was sent to Ms. Mansell retained by the college. There was a delay of some 7 months prior to its consideration. In the context that other grievances were forwarded promptly for investigation/appeal the Tribunal does not find on the balance of probabilities that the protected interest disclosure had any influence (more than a trivial influence) on the delay in respect of this grievance. This allegation fails.

**2.26 Informing the claimant in May 2022, during her return to work meeting that she had been referred to the local authority designated officer**

The Head was duty bound to inform the claimant that she was subject to a LADO investigation. The claimant had been absent from work for some time. The return to work meeting on 10 May 2022, page 644, was the first time that the Head and the claimant had met. The protected interest disclosure had no influence on the timing of this information being given to the claimant. This allegation fails.

**2.27 Failure to appoint a temporary line manager in accordance with advice from the Claimant's GP between April 2022 to June 2022**

The Tribunal did not find this allegation made out on the facts. From the claimant's fit note, dated 6 May 2022 (page 1767), it stated that the claimant could have no face to face contact with Mrs. Pritt Roberts, or Dr. Chatterjee or the Head or the student whose parent had complained about the claimant because these people are likely to trigger panic attacks. The claimant was primarily a maths teacher and her line manager was Head of Mathematics. The claimant had no criticisms of Stephen Mullock who was appointed by the respondent to assist the claimant to deal with other matters; (see page 752 on 10 June 2022). This allegation fails.

**2.28 Failure to refer the claimant to clinical psychological/mental health services from October 2019-present**

This allegation occurs prior to any public interest disclosure. For completeness in October 2019, Mrs. Pritt Roberts did expressly ask the claimant if she required any support to which the claimant said no. The claimant had a short period of absence in 2021 and the respondent determined to send the claimant to occupational health for review. The claimant had four OH appointments. In the course of those reports there was no recommendation for psychological or mental health assessment. In fact the claimant hid her eating disorder from the Occupational Health doctor. This allegation fails.

**2.29 The appointment of an Acting Housemistress for St. Aidans for the start of term in September 2022**

The claimant was fit to return to work as a maths teacher but not to complete the full role of housemistress. It was not practical in circumstances where the claimant could not conduct the full duties of a house mistress where she resides on site; she could not take part in administrative works including attending meetings; could not

attend lunchtime meetings; could not work past 9:00 PM and could not have face to face contact with the student whose mother had raised a complaint against the claimant who was on site; could not have face to face contact with the head; the head of academics and head of pastoral care (see the sick note page 1767). It was necessary for the interests of children to appoint an Acting House Mistress for consistency of care. The public interest disclosure had no influence on this determination made by the respondent; its focus was on the claimants health and of the welfare and well-being of the students. This allegation fails.

- 2.30 The circulation of information showing the claimant as performing her teaching duties only for the start of term in September 2022 Information had to be circulated to indicate which individuals were performing particular duties at the school. The decision having been made by the school that the claimant was fit to return as a math teacher but not able to complete the full role of the house mistress with full pastoral duties owed to students on site under her care, it was appropriate to circulate this information for management reasons and for Full disclosure to the students. The protected interest disclosure had no influence on this treatment of the claimant.

### Time

In any event insofar as the complaints occurred before 24 March 2022 (for the first claim) or 21 September 2022 (the second claim) the claims are out of time. From its findings the Tribunal did not find there were a series of similar acts or failure The claimant did not lead evidence in respect as to whether it was not reasonably practicable for her to have brought the complaints within time. The onus rests upon the claimant to establish that it was not reasonably practicable to have pursued her complaints in time. There is no evidence before the Tribunal that it was not reasonably feasible for the claimant to have brought her complaints in time. The claimant is a highly intelligent teaching professional with the means to seek independent legal advice and/or research her claims.

### 3. Health and Safety Complaints

3.1 Being an employee at a place where there was no representative or safety committee or it was not reasonably practicable for the employee to raise the matter by those means did she bring to her employer's attention by reasonable means circumstances connected with her work as set out in paragraphs 1 to one to 1.14 of the list of issues above which she reasonably believed were harmful or potentially harmful to health for safety pursuant to section 44 one C of the Employment Rights Act of 1996?

There was no such health and safety representative or safety committee at the respondent. Dr. Chatterjee acted as deputy head of pastoral which included duties for welfare of pupils overseeing boarding houses sick pay and discipline. The Tribunal did not find that this covered the issues envisaged in section 44 (1)(c) of the Employment Rights Act of 1996. The tribunal considered whether the claimant had brought to the respondent's attention by reasonable means circumstances connected with her work which she reasonably

believed were harmful or potentially harmful to health or safety and whether the claimant was subject to a detriment by any act or any deliberate failure to act by her employer on the ground she had raised these concerns. The Tribunal determined that in respect of issues 1.6, 1.7,1.8,1.9,1.10,1.11,1.13 and 1.14 of the list of issues that the claimant raised health and safety issues she reasonably believed were harmful or potentially harmful to her health. However, for the reasons set out above (in respect of her public interest disclosure detriment claim) the complaints had no influence on the alleged treatment. This claim fails.

In any event insofar as the complaints occurred before 24 March 2022 (for the first claim) or 21 September 2022 (the second claim) the claims are out of time. From its findings the Tribunal did not find there were a series of similar acts or failure. The claimant did not lead evidence in respect as to whether it was not reasonably practicable for her to have brought the complaints within time. The onus rests upon the claimant to establish that it was not reasonably practicable to have pursued her complaints in time. There is no evidence before the Tribunal that it was not reasonably feasible for the claimant to have brought her complaints in time. The claimant is a highly intelligent teaching professional with the means to seek independent legal advice and/or research her claims.

#### **8. Discrimination arising from disability (Equality Act 2010, section 15)**

Did the Respondent treat the claimant unfavourably by :

8.1.1. The Deputy Head (Academic) commenting on 7 July 2021 that the claimant “must be quite fragile”.

Mrs. Pritt- Roberts did say this to the claimant on 7 July 2021. The claimant has taken the comment out of context. The use of the word “fragile” by Mrs. Pritt Roberts was not used in a derogatory manner; in fact the Tribunal accepted Mrs. Pritt Roberts’ evidence that the comment was made in a supportive way because she wished to convey to the claimant there was no shame in feeling overwhelmed as “we all feel fragile from time to time”. The Tribunal accepted that Mrs. Pritt Roberts made the comment seeking to reassure the claimant that feeling that way is ok. Vicky Pritt Roberts was being empathetic. The Tribunal did not find in the circumstances that it was unfavourable treatment. The Tribunal did not find it was unfavourable treatment to express empathy and kindness in a difficult situation to a work colleague. The claimant did not consider it so either. At page 480 the claimant emailed the Headmaster on 12 July 2021 page 480 *“I am grateful for all your support through this very difficult time.”* Furthermore Mrs. Pritt Roberts did not have any actual or constructive knowledge of the claimant’s disability as set out above. This allegation fails.

8.1.2The Deputy Head Academic comments in the grievance investigation report (May to September 2022) that the claimant was emotionally all over the place and annoyed about having to attend a working lunch in the context of the claimant’s eating disorder.

This featured in the report of IBEX Gale (page 820). The Deputy Head of Academic made these comments on 15 June 2022 in the context of a grievance investigation; she was unaware that her interview would be shared with the claimant. However, the Tribunal found that Mrs. Pritt Roberts was observing the behaviour of the claimant as a manager assessing her capabilities to do her job. It was in the opinion of a teaching professional, a fair and factual statement about the way in which the claimant was presenting herself at the time. However, by reason of the claimant's disability namely her eating disorder the claimant's mental health was poor. The comments arose by way of observation of the claimant's behaviour which arose in consequence of her disability which affected the claimant's mental health at that time. In the circumstances the Tribunal found that this was unfavourable treatment which arose in consequence of her disability. Further by this time the respondent had received the claimant's fit note dated 6 May 2022 and did know or could have reasonably been expected to know that the claimant had a disability and that her conduct may be affected by this. In the context of the statement being a true factual statement and in the context that Mrs. Pritt Roberts was setting out her observations at the time in an investigation hearing the reference to the claimant being emotionally all over the place was justified. This allegation fails.

8.1.3 Alleging in June 2022 that the claimant's seeking of a further occupational health assessment was a way of refusing to cooperate in the LADO disciplinary investigation

This allegation was not factually made out. On 6 June 2022 (page 746) the claimant requested to have an OH referral prior to the LADO investigation. The Head commented on the OH referral at page 769 that Mrs Done felt fit to proceed with the grievance process. However, the Head also noted that Mrs. Done had suggested that an occupational health assessment should be carried out before she cooperates with the safeguarding investigation. The Tribunal did not find that the Head was suggesting that the claimant's request for a OH assessment prior to engaging in the investigation process was a way of refusing to cooperate with the LADO disciplinary investigation; the allegation is a huge stretch as to what the Head actually stated. The Head simply recorded accurately the factual picture. This did not amount to unfavourable treatment. This allegation fails.

8.1.4 Alleging in August 2022 the claimant providing written responses to the LADO investigation and not meeting face to face (which she had requested as a reasonable adjustment) was hampering the disciplinary investigation

The Tribunal found that Rhona Avery (page 932) put in her report "*The questions I put to her were answered in the written form which hamper the investigation the fact that I could not read body language or create a reciprocal dialogue*". The Tribunal determined that it was unfavourable treatment to criticise the claimant for putting her submissions in writing; the claimant was permitted to put submissions in writing as a reasonable adjustment. At this point the respondent were aware that the claimant had a disability of an eating disorder by virtue of its receipt of the fit note dated 6 May 2022 at page 1767. The written responses from the

claimant arose in consequence of the claimant's disability namely her mental ill health resulting from her eating disorder which the respondent knew or ought reasonably to have known at this stage. Nevertheless, the Tribunal determined that the observations of Ms. Avery were justified. Written submissions did prevent the investigator from creating a reciprocal dialogue between herself and the claimant. This allegation fails.

**8.1.5 Criticising in April 2022 and June to August 2022 the claimant's black and white thinking**

The claimant conceded herself that she has "black and white thinking" (see page 1076 on 17 October grievance meeting). Elaine Staples, a good friend of the claimant at pages 1832, 1833 and 1834 uses this expression to. In evidence the claimant used this terminology to describe herself and perceived it as a strength of character. The Tribunal determined that this was not unfavourable treatment and the claimant did not think so either. This allegation fails.

**9. Indirect Discrimination Equality Act 2010 section 19**

9.1 A PCP is a provision criterion or practice Did the Respondent have the following PCPs :

**9.1.1 Requiring attendance at lunchtime meetings where serious issues are discussed whilst staff eat their lunch**

The respondent did apply this PCP to teaching staff including the claimant. The respondent applied this PCP to employees without the claimant's disability. The claimant was placed at a disadvantage because during her lunch break she should not be involved in any activities because she needs to focus on keeping her carry count high; (see fit notes dated 6 may 2022 at page 1767). However, once the claimant explained that this caused her anxiety by reason of her disability, the claimant was not required to do to do so. The tribunal also finds the having meetings for staff at lunchtime was a proportionate means of achieving the legitimate aim of having all staff present for important discussions without requiring them to give up their meetings. In the circumstances the claim fails.

**9.1.2 Changing its dress code in November 2021 to the effect that leather should not be worn**

The respondent had a dress code at all times but amended it in November 2021 to include leather. The tribunal has already dealt with the facts related to this namely that members of staff had adopted a more casual dress since COVID and the school wish to impose a more professional manner of clothing. The respondent applied this PCP from November 2021 and applied the PCP to everybody. The respondent requiring staff to be smart and professionally dressed did not put the claimant or any other person at a particular disadvantage. Having a smart and professionally presented staff was a legitimate aim and the dress code was a proportionate means of achieving it. The tribunal did not find that the imposition of not wearing leather placed the claimant as a disabled person at a particular disadvantage because she was more likely to have unusual preoccupation with body image. The fact that the



claimant preferred to wear leather had nothing whatsoever to do with her disability; it was a personal fashion choice. This claim fails.

9.1.3 Requiring staff to work in an environment without risk assessments and where staff and management are not trained on equalities issues.

The tribunal did not find that the respondent imposed a PCP requiring staff to work in an environment without risk assessments and where staff and management are not trained on inequality's issues. The evidence of Mrs Pritt Roberts which was accepted by the tribunal is that she adopted a live risk assessment in respect of the claimant so that this PCP was not applied. There was however no evidence that management were trained on equality issues. The respondent did apply the PCP of management not being trained on equality issues and applied it to all. However the Tribunal did not consider on the facts of this case that it actually placed the claimant a particular disadvantage when compared with employees without a disability because there was an increased risk of stress levels caused by the disability. Mrs. Pritt Roberts completed a live risk assessment document; when the claimant complained about stress Dr. Chatterjee and Mrs. Pritt Roberts put in extra staff to assist and took appropriate steps to support the claimant. This allegation fails.

9.1.4 Failing to maintain confidentiality and allowing rumours to circulate in the workplace in relation to disciplinary issues, parental/student complaints and Local Authority Designated Officer referrals.

On the facts the Tribunal did not find this was established. The claimant contended that Mrs. Pritt Roberts husband had informed groundsmen about the complaint/LADO. The Tribunal did not find that the PCP was applied generally or that it placed the claimant as a disabled person at a particular disadvantage. The claimant was not investigated by the school or LADO because she had a disability; the claimant was investigated because a mother accused the claimant of bullying her daughter; that was unrelated to the claimant's disability. This allegation fails.

Reasonable Adjustments

Before dealing with the reasonable adjustments complaint the Tribunal wishes to make some general observations. The Court of Appeal made clear in the case of **Smith V Churchill Stairlift PLC 2005 EWCA Civ 1220** that a PCP that gives rise to the disadvantage triggering the duty is a matter which requires considerable care since failure to identify this correctly risks invalidating for the purposes of the duty to make diesel adjustments. HHJ Eady KC as she was then stated the concept of a PCP is not to be approached in too a restrictive manner see the case of **Carrera v United First Parties Research UK EAT/0266/15** "*the protective nature of the legislation means a liberal rather than an overly technical approach should be adopted*". In the judgment of Lady Justice Simler as she was then in **Ishola v Transport for London 2020 EWCA Civ 112** stated a one off decision or act could amount to a practise it will not necessarily be one and the term generally connotes some form of continuum in the sense that it is the way in which things are generally done. Simler LJ explained that the function of the PCP in a reasonable adjustments context is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee and as in a case of indirect discrimination the act of discrimination that must be justified is not the disadvantage suffered by the claimant but the PCP under by or in consequence of which the disadvantageous act is done. To test the PCP, it

must therefore be capable of being applied to others whether actual or hypothetical comparators.

The Tribunal was not assisted in this case by a convoluted list of 19 PCPS with 21 alleged disadvantages and 19 proposed reasonable adjustments to which the claimant had not properly analysed or evidenced and that list had simply been replicated in the preliminary hearing case management order.

10.1 Did the Respondent know or could it reasonably have been expected to know that the claimant had the disability of anoxeria ? From what date?

The Tribunal finds as set out above there was actual knowledge as to the claimant's pleaded disability of anorexia from May 2022 (page 1767) for the reasons set out above.

10.2.1 PCP was applied requiring employees to attend housemasters meetings during lunch times where others were eating and discussing serious issues including welfare issues

The Tribunal found that this PCP was applied to all staff and applied to the claimant until May 2022 when the respondent had actual knowledge about the claimant's disability and the disadvantage she suffered as a consequence of it. The claimant had heightened anxiety and discomfort eating in front of others. Once the respondent was aware of the disability and disadvantage a reasonable adjustment was made so that the claimant did not have to attend lunchtime meetings. This claim fails.

10.2.2 Changes to working practices during COVID lockdowns including switching to online teaching, going into the school to teach the children of key workers, requiring the continuation of pastoral duties

The respondent did apply this PCP during lockdown. However it was not until May 2022 post lockdown when the respondent had actual knowledge about the claimant's disability and the disadvantage she suffered as a consequence of the change in working practises. This allegation fails.

10.2.3 Requiring employees to deal with serious welfare issues including students mental health issues and safeguarding issues

The Tribunal found the claimant's allegations about this matter to be inconsistent with the case she sought to run before the tribunal. A PCP was applied by reason of the claimant's role as a housemistress. The claimant was extremely unwilling to give up her role as house mistress. Following, her first period of sickness which did not mention her eating disorder, she corresponded with the head teacher wishing to resume this role. The head teacher noting that being house mistress was a matter which exacerbated stress for the claimant determined to provide the claimant with a phased return to work and removed house mistress duties until the claimant was fully recovered. Despite this instruction the claimant entered the house and was critical of staff trying to perform the role of house mistress in her absence. The claimant was unwilling to let go of control of the house. The claimant was not alone in dealing with welfare issues of students; she had a team working with her in the house and Dr. Chatterjee provided support as pastoral officer. The house mistress role inevitably is an on site role requiring house mistress to deal with serious welfare issues. Once the respondent became aware that the claimant was unwell, although it did not have knowledge until May 2022 that the claimant had an eating disorder, it took reasonable steps

to prevent the claimant from being exposed to further stress from house mistress duties by removing them. It was the claimant who was reluctant to give this up. Whilst the claimant was recovering and the roles were removed from her she continued to benefit from on site accommodation and payment for the house mistress role although she was not performing it. The tribunal do not find there was a failure to make a reasonable adjustment.

**10.2.4 Requirement to be interviewed by governors as part of the investigation into complaints against the swimming club**

The respondent did apply this PCP in 2020. Safeguarding issues had been raised about the swimming club which did not directly concern the claimant but only in her context as house mistress and how students may be affected. The claimant was never considered to be a perpetrator but only a witness as to affect on some students. The interview by the governors was due to take place prior to the respondent's actual knowledge of the claimant's eating disorder on 6 May 2022. The respondent had no knowledge of the claimant's disability or alleged disadvantage at the material time. This allegation fails.

**10.2.5 Requiring return to work without an adequate return to work plan**

The Tribunal has already dealt above with the claimant's allegation there was an adequate return to work plan and rejected it. This PCP was not applied. This allegation fails.

**10.2.6 Requiring house mistress to undertake evening duties**

The respondent applied this PCP because the nature of a house mistress role is an on site position for which a house mistress receives free accommodation and an additional salary. It is not a mandatory position and was applied for successfully by the claimant. Following the claimant's absence from work in May 2021, the respondent recognising that the house mistress duties (as accepted by the claimant) were causing her stress remove this role. This was a supportive step taken by the respondent for which the claimant complains. Once the respondent was aware in May 2022 that the claimant had a disability by reason of an eating disorder the role of house mistress was removed again. The tribunal finds therefore although the PCP was applied it did not place the claimant disadvantage because once the respondent was aware that the claimant had a disability and could be placed at a disadvantage by carrying out the full rolls of house mistress including evening duties the role was removed.

**10.2.7 Requiring full duties to be undertaken**

The role of house mistress is a free standing position to that of being a teacher. A teacher applies through a process to obtain this role. If successful in the position of house mistress, an additional salary is paid and free accommodation is provided by the respondent. The respondent did require the housemistress position to be undertaken as a full duty role because this provides consistency of pastoral care to students in the house. By 6 May 2022 the claimant was unable to undertake full duties because she was unable to work past 9:00 PM which is part of the role of a house mistress in the pastoral on site position. It was not a reasonable adjustment taking into a consideration the consistency of pastoral care required for students that the claimant be permitted to

undertake duties only to 9:00 PM namely on a part time basis. This allegation fails.

**10.2.8 Requirement to look after 80 boarders including junior boarders**

The PCP was applied by reason of the role of being a house mistress but it was not a continuing PCP. During the 2021 lockdown many of the boarders went home which reduced a significant number of boarders to look after. In 2022 lock down the claimant was only looking after 5 boarders. It was not until the 6 of May 2022 when the respondent was aware that the claimant had an eating disorder disability. She was reluctant to hand over her role as house mistress. During her return to work in 2021 the claimant did not want to hand over her house mistress duties. Once the respondent was aware of the claimants eating disorder on 6 May 2022 the claimant was relieved of her house mistress duties. This allegation fails.

**10.2.9 Requirement to stay off sick despite a fit note not advising reduced duties**

In July 2021 the claimant wished to return to work. The fit note dated 24 June 2021 (to 2 July 2021) page 1765 says the claimant can return with reduced hours and amended duties suggested from 1 July. The respondent complied with this, noting that the claimant's stress resulted from conducting house mistress duties. The claimant was unfit for work by reason of stress (see fit note page 1769 dated 11 July 2021) for the period 10 June 2021 to 3 July 2021. On 4 July 2021 returned to work on 4 July 2021 but resumed to teaching on 6 September 2021. By sick note dated 6 May 2022 page 1767 the GP advised that the claimant could not have any face to face contact with senior management or the student (mother had complained about the claimant); she could not attend lunchtime meetings or work past 9pm. The respondent did not apply the PCP that the claimant should stay off sick but gave the claimant three options in the context it was not practical for the claimant to stay in work with the significant restrictions placed by the fit note. It was not a reasonable adjustment for the claimant to remain in work with the number of restrictions that were in place.

**10.2.10 Requiring duties to be carried out without adequate support.**

This is an entirely vague allegation. The Tribunal did not accept this was a PCP which was not evidenced. The respondent gave the claimant a significant amount of support as noted her sincere thanks to the senior management team in emails.

**10.2.11 Requiring attendance at meetings without companions**

This is an entirely vague allegation and not evidenced or put to the respondent's witnesses. The Tribunal notes that a companion is not required to be present during a return to work interview. The Tribunal was unable to identify from the paucity of evidence on this point that if such a PCP existed that the claimant was placed at a disadvantage. This allegation fails.

**10.2.12 Requiring attendance at investigation meetings without being informed under which policies and procedures they are being held**

This allegation is entirely vague. The allegation fails.

**10.2.13 Requiring return to work without adequate handovers**

The application of this PCP was not established on the evidence. The allegation fails.

10.2.14 A stressful working environment

This is an entirely vague allegation. This allegation fails.

10.2.15 Requiring housemistress to be responsible for a high number of students

The Tribunal noted above that the PCP to look after up to 80 boarders was applied by reason of the role of being a house mistress but it was not a continuing PCP. During the 2021 lockdown many of the borders went home which reduced a significant number of boarders to look after. In 2022 lock down the claimant was only looking after 5 boarders. It was not until the 6 of May 2022 when the respondent was aware that the claimant had an eating disorder disability. She was reluctant to hand over her role as house mistress. During her return to work in 2021 the claimant did not want to hand over her house mistress duties. Once the respondent was aware of the claimants eating disorder on 6 May 2022 the claimant was relieved of her house mistress duties. This allegation fails.

10.2.16 The length of time to investigate and conclude a referral involving the Local Authority Designated Officer

The Tribunal found this to be a nonsensical PCP and dismissed it.

10.2.17 The respondent's grievance process

This is a vague and not particularised PCP. The Tribunal noted that the respondent had a grievance process and applied it. This allegation fails.

10.2.18 The respondent's system of line management

The Tribunal found this to be a nonsensical and vague PCP and not explored in evidence. This allegation fails.

10.2.19 Requiring employees to work as many hours as necessary to keep on top of their workload

The Tribunal did not find that the respondent applied this alleged PCP. The Housemistress job description can be found at page 282-283. In addition the claimant was a maths teacher. As a teaching professional and conducting housemistress duties the claimant was required to manage her time. The Tribunal did not find that the claimant was required to work as many hours as necessary to keep on top of their workload. This allegation fails.

**11. Harassment related to disability (Equality Act 2010 section 26)**

11.1 Did the Respondent do the following things :

11.1.1 The Deputy Head (Academic) telling the claimant on 14 May 2021: " I hope you are not breaking down on us. We had this before

when members of staff looked all confident on the outside and broke down suddenly"? The Tribunal rejected that Vicky Pritt Roberts ever said this. As a consummate professional the Tribunal did not accept that Mrs.

Pritt Roberts would ever make such a comment. This allegation fails.

11.1.2 The Deputy Head (Academic) commenting to the claimant on 7 July 2021 that she "must be quite fragile".

It is accepted by Mrs. Pritt Roberts that she did say this to the claimant. As set out above, Mrs. Pritt Roberts was being sympathetic and supportive. It did not violate the claimant's dignity or create an intimidating, hostile, degrading or offensive environment nor could any reasonable person consider it to do so. This allegation fails.

11.1.3 The Deputy Head (Academic) stating in the grievance investigation/report sometime between 21 April 2022 and 22 November 2022 that the claimant was “emotionally all over the place” “struggling with reality”, “annoyed” for having to attend a working lunch?

These comments were made in the grievance investigation interview by Mrs. Vicky Pritt Roberts on or about 15 June 2022. The comments were related to disability but were made to a third party in the context of an investigation. Mrs. Vicky Pritt Roberts was setting out the facts as she saw them observing the claimant’s behaviour at the time. Although the claimant may have found such comments as unwanted, no reasonable person taking into account the context of the comments could consider that they violated the claimant’s dignity or created an intimidating hostile degrading humiliating or offensive environment for the claimant. This allegation fails.

11.1.4 The Deputy Head (Pastoral) stating in the grievance investigation/report sometime between 21 April 2022 and 22 November 2022 that the claimant was “jumping up and down” in his office when she didn’t receive the support she needed? P1513 (73).

The Deputy Head of Pastoral did make these comments in the context of the grievance investigation. The Tribunal does not find they were related to disability rather it was Dr. Chatterjee’s observation about the claimant’s inability to take instructions. This allegation fails.

11.1.5 The headmaster stating in the grievance investigation/report and Local authority designated officer report sometime between 21 April 2022 and 22 November 2022 that the claimant is “very black and white” and has low opinion of other humans”?

The headmaster did make these comments in the grievance investigation interview. The statement that the claimant has a low opinion of other humans was unrelated to disability. The claimant has been very critical of the team which took over her housemistress duties in 2021. The comment has been taken out of context at page 1544 paragraph 73 the head said *“I think that she has more support than her peer group because she has needs which is fine. This has been around one of the greatest challenges for AD as she has low opinion of other humans and she won't work positively with her tutor team. She's been spoken to about that and I understand that this has been on numerous occasions. Have to say that the tutor team of her house is outstanding and they have been running the house in her absence”*. This allegation fails. Further the comment about being very black and white was a comment made by the Head during the grievance interview at page 1540 (47). The Tribunal did not find that this was related to disability nor did it violate the claimant’s dignity or create an intimidating hostile degrading humiliating or offensive environment for the claimant in the context that the claimant described herself as black and white; the claimant considered this a strong personality trait. This allegation is dismissed.

12. Victimisation (Equality Act 2010 section 27)

12.1 Did the claimant do protected acts as set out in paragraphs 1.8, 1.11, 1.13 and 1.14 of the list of issues at page 246 of the bundle ?

(a) The Tribunal determined that on 27 March 2022 (see page 588) the claimant did not do a protected act. The claimant complained in her email to Dr. Chatterjee that she was being “bullied” and “discriminated against at work” by Mrs. Pritt Roberts and that she wanted to make a formal complaint. The claimant contended in that email that she had spoken to Dr. Chatterjee orally and informally. Following **Durrani v London Borough of Ealing UKEAT/0454/2012** it is not essential that a complainant raises a specific protected characteristic pursuant to section 27 (2)(d) of Equality Act 2010 but there must be something sufficient to show the complaint is potentially covered by the Act and not simply about unfair treatment. The context is that the claimant says she had complained to Dr. Chatterjee. The claimant did not directly question Dr. Chatterjee that she had informed him that she felt discriminated against or that she in fact complained to him about Mrs. Pritt Roberts poor treatment against her. Evidentially the Tribunal was left with the email dated 27 March 2022 that she felt she was unfairly treated by Mrs. Pritt Roberts but not in a discriminatory sense pursuant to the Equality Act 2010. In the circumstances the assertion of bullying and discriminated against at work contained in the email dated 27 March 2022 was not sufficient to be caught as an allegation whether or not express that Mrs. Pritt Roberts has contravened the Act (pursuant to section 27(2)(d) of the Equality Act 2010. The Tribunal finds that there was no protected act here within the meaning of section 27(2)(d) of the Equality Act 2010. This allegation fails.

(b)1.11 : By her email dated 1 April 2022 page 614 the claimant stated that she “decided to raise a formal grievance as I believe the lack of support I received from my line managers in the last 5 years resulted in me getting ill health..” The Tribunal determined that this was a complaint of poor treatment by the claimant’s managers and was insufficient to show the complaint was potentially covered by the Act namely a complaint of discrimination. In the circumstances the claimant did not in making these allegations do a protected act within the meaning of section 27 (2)(d) of the Equality Act 2010. This allegation fails.

(c)1.13 By her email dated 21 April 2022 (page 615-620) which attached page 653 to 675, the Tribunal determined that the claimant did a protected act. The email refers to health and safety breaches but does go on to allege that Mrs. Pritt Roberts had unlawfully harassed her pursuant to the Equality Act 2010 by reason of the claimant’s nationality and impairment. The claimant referred at paragraphs 15 to 16 at page 617 that she had been subject to a systematic campaign of bullying and harassment by Mrs. Pritt Roberts describing it as unwanted, creating a hostile and intimidating environment. The claimant describes at paragraph 25 page 618 the effect of the treatment on her eating disorder and expressly at page 619 says she had been discriminated against by reason of her eating disorder in contravention of the Equality Act 2010. The claimant did do a protected act in this correspondence by making allegations of that the respondent/Mrs. Pritt Roberts had contravened the Act.

(d)1.14 In the claimant’s correspondence with Ms. Avery August 2022 page 881-884, the claimant committed a protected act when she made an allegation that Ms. Avery had contravened the Act see paragraph 13

at page 882. The claimant referred to an express request to her employer, management and the HR department to make reasonable adjustments to the procedures and went on to say at paragraph 14 that the omission on Miss Avery's part "as a director who had fiduciary duties to make adjustments speaks volumes as to the palpable indifference towards the substantial adverse effects which the cumulative effects which my disability have to on my day-to-day activities". The claimant also referred at paragraph 22 at page 883 that there was "an omission to make any reasonable adjustments to accommodate her disabilities" for the said meeting with Miss Avery.

12.2.1 The claimant's case is by reason of the protected acts the school deliberately changed its dress code on 7 November 2021 (page 1163) to exclude staff from working plastic or leather. Even if the claimant had done protected acts, the Tribunal was not satisfied that the claimant was victimised. The claimant's evidence is that she had attended school wearing a new outfit which she described as smart which consisted of snakeprint PVC trousers and matching jacket. She believed that the policy was changed deliberately by reason of her making allegations of discrimination so to prevent her from wearing this outfit ("the detriment"). The Tribunal reminded itself that the Employment Code makes it clear that if the protected act is one of the reason for the detrimental treatment but not the only reason the treatment will amount to victimisation; it does not need to be the only reason for the treatment (see paragraph 9.10). However the protected act must have had a significant influence and/or an important causative factor (see the case of **Nagarajan v London Regional Transport (2000) 1 AC 501**).

Detrimental treatment is described in the Employment Code as anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage (see paragraph 9.8). Detriment has been described as a disadvantage but is not simply an unjustified sense of grievance (see **Shamoon v Chief Constable of the Royal Ulster Constabulary (2003) UKHL 11**). The Tribunal considered that the matter was finely balanced but concluded that excluding an employee from wearing a new outfit to work they considered was smart could amount to a disadvantage namely a detriment. However, the Tribunal accepted the evidence of the respondent, that the introduction of a new dress policy was by reason to ensure all of the staff were smartly dressed after a more relaxed way of dressing during the lockdown period. The respondent described staff members as wearing denim and/or leather jackets to work and deemed leather and PVC not to be smart or professional clothing commensurate with the expected dress code of teaching professionals. The Tribunal determined that the respondent was entitled to take this view. It changed its dress code policy because in its opinion teachers were not dressing professionally for school. This was not solely about the claimant's outfit; it concerned other teaching professionals. The claimant's protected acts did not have a significant influence or an important causative factor in the decision by the respondent to change its dress code. The victimisation claim fails.

128. All of the complaints are not well founded and are dismissed.



Employment Judge Wedderspoon

28 June 2024

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