EMPLOYMENT TRIBUNALS

Claimant:	Ms. Donnis Brown
Respondent:	Stanley Learning Partnership
Heard at:	Newcastle CFCTC in person
On:	22, 23, 24 & 25 January 2024 and 12 February 2024
Before:	Employment Judge Loy
Members:	C Hunter S Carter
Representation:	
Claimant:	In person
Respondent:	Miss Millns, counsel

JUDGMENT

The unanimous Judgment of the Employment Tribunal is that:-

1. The claimants claim for constructive unfair constructive dismissal is not well founded and is dismissed.

2. The claimant's claims of direct disability discrimination contrary to section 13 (1) Equality Act 2010 are dismissed on withdrawal by the claimant.

3. The claimant's claims of failures to make reasonable adjustments contrary to sections 20-21 Equality Act 2010 are not well founded and are dismissed.

4. The claimant's claims of harassment related to disability contrary to section 26 (1) Equality Act 2010 are not well founded and are dismissed.

Written Reasons having been requested pursuant to Rule 63(2) of The Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 the following reasons are provided

REASONS

Background

1. By a claim form presented on 15 September 2022 the claimant claims to have been constructively unfairly dismissed and subjected to disability discrimination. By the end of this final hearing, the claimant's remaining claims in respect of disability discrimination were claims of disability-related harassment and failure to make reasonable adjustments.

2. In its response form the respondent denied all liability.

Claims and issues

Constructive unfair dismissal

3. Did the respondent fail to take reasonable steps to stop the claimant from being bullied by colleagues at Bloemfontein Primary School up to and including allegedly making false allegations that the claimant caused emotional harm to a child in February 2022?

4. If so, was this a fundamental breach of the implied term of trust and confidence in the claimant's contract of employment? Specifically:

   a. Did the respondent conduct itself in a way which was calculated or likely to seriously damage or destroy the relationship of mutual trust and confidence with the claimant?

   b. If so, did the respondent do so without reasonable and proper cause?

   c. If so, was this a breach of contract which was fundamental in nature?

5. Did the investigation conducted by Mr. Tallentire and the investigation report which he prepared lack thoroughness, balance and impartiality?

6. Was the requirement for the claimant to attend a disciplinary hearing to address an allegation of potential gross misconduct unreasonable and/or unfair?

7. If so (on either of the above points), did they individually or collectively amount to a breach of the implied term of trust and confidence in the claimant's contract of employment? Specifically:

a. Did the respondent conduct itself in a way which was calculated or likely to seriously damage or destroy the relationship of mutual trust and confidence with the claimant?

b. If so, did the respondent do so without reasonable and proper cause?

8. If so, was this a breach of contract:

9. a. Fundamental in nature; and/or

b. A 'last straw', being a more than trivial breach of contract which is capable of reviving one or more previous fundamental breaches of contract suffered by the claimant?

10. If the respondent has fundamentally breached the claimant's contract of employment, did she resign in response to that breach and not for some other reason? **The respondent's position is that the claimant resigned to avoid being potentially dismissed at the upcoming disciplinary hearing rather than in response to any alleged fundamental breach of contract.**

11. If the claimant resigned in response to a fundamental breach of her contract of employment by the Respondent, did the claimant affirm that breach by virtue of a delay in resigning and her conduct in the intervening period? **The respondent's position is that the claimant waived any alleged fundamental breaches of contract which occurred prior to her suspension in February 2022 by remaining employed, accepting pay and engaging with the disciplinary process until her resignation.**

Equality Act 2010 claims

Time limits

12. In relation to complaints 1-7, was the claimant's claim brought in time?

a. The claimant having commenced ACAS Early Conciliation on 26 July 2022 and having lodged her claim on 15 September 2022, was each complaint made within three months (plus early conciliation extension) of the act to which the complaint relates? **The respondent's position is that any claim which relates to an act which took place prior to 27 April 2022 is 'out of time'.**

b. If not, did this complaint form part of discriminatory conduct by the respondent extending over a period?

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

d. For any complaint which was not brought within the primary time limit under section 123(1)(a) Equality Act 2010, was it brought within a further period that the Tribunal thinks is just and equitable?

Disability

13. Was the claimant a disabled person by virtue of her depression at the relevant time(s)? **The respondent accepts that the claimant was a disabled person by virtue of her depression at the relevant time(s).**

14. Did the respondent have or ought the respondent to have had knowledge of the claimant's disability? **The respondent accepts that it had knowledge of the claimant's disability.**

Complaint 1

15. Did the respondent apply a provision, criterion or practice ("PCP") of requiring the claimant to work with Year 6 from November 2018? **The respondent accepts that it applied such a PCP.**

16. If so, did this PCP put the claimant at a substantial disadvantage compared to employees who do not share the claimant's disability by virtue of the additional pressure which the claimant says that this placed upon her?

17. If so, would it have been a reasonable step for the respondent to take to avoid this disadvantage to move the claimant into a different class?

Complaint 2

18. Did the respondent apply a provision, criterion or practice ("PCP") of requiring the claimant to work with Year 6 from November 2018? **The respondent accepts that it applied such a PCP.**

19. If so, did this PCP put the claimant at a substantial disadvantage compared to employees who do not share the claimant's disability by virtue of the additional pressure which the claimant says that this placed upon her which she says made it more difficult for her to perform her role?

20. If so, would it have been a reasonable step for the respondent to take to avoid this disadvantage to implement some or all of the following potential

adjustments identified by the Occupational Health report dated 17 March 2020 for consideration:

a. Changing working patterns when feeling tired and extra rest breaks

b. Providing a quiet place for the Claimant to go to when feeling stressed or anxious. **The respondent says that it put this in place.**

c. Consideration of specific measures to assist with concentration such as reducing distraction and interruptions, private office or workspace, and breaking large tasks down into small stages.

d. Providing memory aids by way of written instructions.

Complaint 3

21. Did the respondent apply a provision, criterion or practice ("PCP") of not requiring its employees to wear face masks and/or visors to work from September 2020? **The respondent accepts that it applied such a PCP.**

22. If so, did this PCP put the claimant at a substantial disadvantage compared to employees who do not share the claimant's disability by virtue of exacerbating her mental health issues?

23. If so, would it have been a reasonable step for the respondent to take to avoid this disadvantage to require all staff to wear face masks or visors, and/or to enforce additional social distancing measures?

Complaint 5

24. Did the respondent apply a provision, criterion or practice ("PCP") of requiring employees to maintain attendance levels which it considered reasonable and appropriate? **The respondent accepts that it applied such a PCP.**

25. If so, did this PCP put the claimant at a substantial disadvantage compared to employees who do not share the claimant's disability by virtue of her having more sickness absence as a result of her depression (and therefore more likely to lose her job as a result of this PCP)? **The respondent accepts that the claimant was placed at this substantial disadvantage?**

26. If so, would it have been a reasonable step for the respondent to take to avoid this disadvantage to:

    a. Speak to colleagues of the Claimant about their conduct towards her with a view to stopping them from acting in a way which upset the claimant? **The respondent's position is that it did this to an appropriate degree.**

    b. Relax or extend the trigger points under the respondent's sickness absence procedure?

Complaint 6a

27. Did the respondent do or fail to do the following acts:

    a. Ms. Liddell not taking a statement from Ms. Henderson and Ms. Chambers when they first approached her regarding the safeguarding allegation against the claimant.

    b. Ms. Liddell not taking a statement from the claimant after being made aware of the safeguarding allegation against her. The Respondent accepts that Ms. Liddell did not take an initial statement from the Claimant.

    c. Mr Tallentire not conducting a thorough disciplinary investigation.

    d. Mr. Tallentire misrepresenting the balance of probabilities in relation to the allegation against the claimant by failing to outline in his report that more people interviewed didn't make the allegation against the claimant than did.

    e. Mr. Tallentire falsely stating in the investigation report that the claimant "*stated in an abrupt manner that as Jayden had infringed her human rights….*".

    f. Mr Tallentire delaying taking statements from witnesses for five weeks.

28. If so, did these acts amount to unwanted conduct?

29. If so, did this unwanted conduct relate to the claimant's depression?

30. In the alternative, if so did these acts amount to less favourable treatment than would have been provided to a colleague of the claimant who does not suffer from depression in materially the same circumstances?

31. If so, was the claimant's disability the reason for this less favourable treatment?

Complaint 7

32. Did the respondent place the claimant with a pupil with ADHD from September 2021 in order to deliberately make her mental health issues deteriorate?

33. If so, does this amount to unwanted conduct?

34. If so, did this unwanted conduct relate to the claimant's depression?

35. In the alternative, if so did this amount to less favourable treatment than would have been provided to a colleague of the claimant who does not suffer from depression in materially the same circumstances?

36. If so, was the claimant's disability the reason for this less favourable treatment?

Complaint 8

37. Was the claimant's constructively unfairly dismissed (see above)?

38. If so, did this constitute less favourable treatment than would have been provided to a colleague of the claimant who does not suffer from depression in materially the same circumstances?

39. If so, was the claimant's disability the reason for this less favourable treatment?

Evidence

40. The tribunal was provided with an agreed bundle of documents of 632 pages to which additional documents were added during the course of the hearing.

41. The claimant gave evidence on her own behalf. The claimant produced a witness statement of 76 paragraphs over 27 pages. The claimant was cross-examined by Miss Millns.

42. The claimant also produced two witness statements as character evidence from Kath Wire and Marion Clasper. Neither witness was called to give evidence.

43. The respondent called three witnesses:

- Laura Liddell, Head Teacher of Bloemfontein Primary School near Stanley in County Durham at the time relevant to these proceedings. Mrs Liddell produced a written witness statement of 55 paragraphs over 17 pages. Mr Harrison was cross-examined by the claimant.

- Michael Tallentire, the respondent's Operations Director, who produced a written witness statement of 22 paragraphs over 8 pages. Mr Tallentire was cross-examined by the claimant.

- Mark Stewart, the respondent's Chief Executive Officer, who produced a written witness statement of 21 paragraphs over 5 pages. Mr Stewart was cross-examined by the claimant.

The tribunal's approach to the evidence

44. But before moving to the findings of fact, the tribunal sets out a number of points of general approach, some of them commonplace in our work.

45. In this case, as in many others, evidence and submission touched on a wide range of issues. Where the tribunal makes no finding on a point about which it heard, or where the tribunal does make a finding, but not to the depth with which the point was discussed, that is not oversight or omission. It reflects the extent to which the point was truly of assistance to the tribunal.

46. While that observation is made in many cases, it is particularly important in this one, where the claimant felt very strongly about a number of issues, and was inexperienced in the law and procedure of this tribunal.

Findings of fact

47. All of the tribunal's findings of fact were made on the balance of probability.

48. On 6 September 2008, the claimant started work as a Teaching Assistant at Bloemfontein Primary School in Stanley, County Durham.

49. At some point after that date, SLP took over responsibility for operating the school as an Academy. SLP has a number of schools under its operational control.

50. In November 2018, the claimant was assigned to Year 6. The respondent says that decision was motivated by the claimant's expertise in diabetic care and the needs of diabetic pupils in Year 6.

51. The claimant originally claimed that this was motivated by a desire to harm the claimant's own mental health, regardless of the effect on the ADHD pupil to which she was assigned. The claimant at the end of these proceedings conceded that none of the respondent's managers (either at school level or at the level of the trust board as a whole) took this (or any other) decision motivated by a desire to exacerbate the claimant's mental health condition.

52. The tribunal accepted the respondent's reasons for assigning the claimant to year 6 from November 2018 (and for the school years that followed) were for operational reasons including the obviously compelling reason given at paragraph 50 above.

53. The Covid 19 pandemic caused enormous disruption when it hit the UK from around March 2020. In common with all employers, the respondent had to comply with government guidance some of which was tailored to primary schools.

54. On 11th February 2022, a year 1 class went on a forest school activity. For present purposes, that is relevant only to the fact that it was alleged that the claimant had behaved inappropriately during that activity with a pupil who was referred to in these proceedings as pupil X.

55. Specifically, the claimant was alleged to have lost her temper and shouted at pupil X, threatened to destroy his Lego and behaved in a way which significantly agitated and upset the pupil to the point of causing him emotional harm. The tribunal does not have to (and does not) make any determination on the merits of that allegation.

56. The claimant resigned her employment on 28 April 2022. The claimant contacted ACAS on 26 July 2022. Conciliation ended on 6 September 2022. The claimant presented a claim form on 15 September 2022.

57. The tribunal will deal with the facts material to the issues in dispute when considering each issue in turn in the 'Conclusions' section below.

The relevant law

Disability discrimination

58. Section 4 EqA provides that disability is a protected characteristic.

Burden of proof

59. Section 136 EqA identifies where the burden of proof lies. It is for the claimant to prove facts sufficient to establish a prima facie case. At this stage, the tribunal must have regard to all of the facts, from whichever party the evidence originated. A prima facie case is established if, in accordance with section 136(2), there are facts from which the tribunal could decide, in the absence of any other explanation, that the employer contravened the provision concerned. A difference in status and a difference in treatment is not, without more, sufficient material from which a tribunal 'could decide' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination: Madarassy v Nomura International [2007] ICR 867. That is not a rule of law, however, there should be some fact or feature which the tribunal identifies as potentially capable of supporting an inference of discrimination: Jaleel v Southend University Hospital NHS Foundation Trust: [2023] EAT 10.

60. However, there will be no contravention if the employer shows that it did not contravene the provision: section 136(3). This is the second stage and it is only reached if the claimant has successfully discharged the burden on him/her; it requires careful consideration of the employer's explanation for the treatment complained about: Igen Ltd v Wong [2005] ICR 9311 approved by the Supreme Court in Hewage v Grampian Health Board [2012] ICR 1054.

61. It is not always obligatory to follow the two-stage process, particularly where the tribunal is in a position to make positive findings on the evidence one way or another (Hewage).

62. In the case of direct discrimination, it is necessary to consider the mental processes, conscious or unconscious, operating on the mind of the alleged discriminator: Amnesty International v Ahmed [2009] ICR 1450 EAT. Motive is irrelevant. In order for the treatment to be 'because of the protected characteristic', it is sufficient that it was an effective cause. It need not be the main or sole cause.

63. In some cases, the best way to approach the question whether or not there has been direct discrimination within the meaning of section 13 EqA is by asking what was the reason why the conduct or omission in question occurred. That is the effect of the decision of the House of Lords in: Shamoon v Chief Constable of the RUC [2003] ICR 337.

Harassment

64. Section 26 EqA provides as follows:

' (1) **A person (A) harasses another (B) if-**

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

(b) the conduct has the purpose or effect of –

(i) violating B's dignity, or

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

…

(4) in deciding whether conduct has the effect referred to in subsection (1)(b),

each of the following must be taken into account

(a) The perception of B;

(b) The other circumstances of the case;

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

65. The tribunal has had regard to the guidance given by the EAT in Richmond Pharmacology v Dhaliwal [2009] IRLR 336 as reviewed by the Court Of Appeal in Pemberton v Inwood [2018] EWCA Civ per Underhill LJ at [85-88].

Failure to make reasonable adjustments

66. Sections 20 and 21 EqA provide as follows:

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 practice of A's puts a disabled person at a substantial

disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

…

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a 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.

67. Section 20 EqA read with Schedule 8, provides that an employer who applies a PCP to a disabled person which puts that disabled person at a substantial disadvantage in comparison with persons who are not disabled, is under a duty to take such steps as are reasonable to avoid that disadvantage. Section 21 provides that a failure to comply with a duty to make reasonable adjustments in respect of a disabled person is discrimination against that disabled person. Section 212 (1) EqA provides that 'substantial' means 'more than minor or trivial'.

68. A respondent is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know both that the complainant has a disability and that he or she is likely to be placed at the relevant substantial disadvantage (Schedule 8, para 20 EqA).

69. When considering a reasonable adjustments claim, a tribunal must identify:

- the provision, criterion or practice applied by or on behalf of an employer;
- the identity of non-disabled comparators (where appropriate); and
- The nature and extent of the substantial disadvantage suffered by the claimant: Environment Agency v Rowan [2008] ICR 218, EAT at [27] per Judge Serota QC.

70. The tribunal must also identify how the adjustment sought would alleviate that disadvantage, although an adjustment may be reasonable even if it is unlikely wholly to avoid the substantial disadvantage: Griffiths v Secretary of State for Work and Pensions [2017] ICP 160 at [29]. The nature of the comparison between disabled and non-disabled people is not like that between claimant and

comparator in a direct discrimination claim: it is immaterial that a non-disabled person with all the characteristics of the disabled person but for the disability would be treated equally, what matters is whether *'the PCP bites harder on the disabled, or a category of them, than it does the able-bodied'* as a result (for example) of the disabled person being more likely to be disadvantaged by the PCP than a non-disabled person: Griffiths at [58].

71. The duty to make reasonable adjustments may frequently involve treating disabled people more favourably than those who are not disabled.

72. As Simler P in Sheikholeslami v Edinburgh University [2018] IRLR held:

> 'The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are those who are not disabled, and whether what causes the disadvantage is the PCP…
>
> *The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see section 212 (1). The EHRC Code of Practice states that the requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people: see paragraph 8 of App 1. The fact that both groups may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the PCP may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability.'*

73. The concept of a PCP is one which is not to be construed narrowly or technically. Nevertheless, as the Court Of Appeal said in Ishola v Transport for London [2020] IRLR 368:

> *'[To] test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of the disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. However widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief that the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor*

disability -related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP in the 2010 Act. In context, and having regard to the functional purpose of the PCP in the 2010 Act all three words carry the connotation of a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurs again. 'Practice' connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or 'practice' to have been applied to anyone else in fact. Something may be a practice or done 'in practice' if it carries with it an indication that it will or would be done again if a hypothetical similar case arises.'

74. What is reasonable is a matter for the objective assessment of the tribunal: Smith v Churchills Stairlifts plc [2006] ICR 524, CA. The tribunal is not concerned with the processes by which the employer reached its decision to make or not to make particular adjustments, nor with the employer's reasoning: Royal Bank of Scotland v Ashton [2011] ICR 632, EAT.

75. Although EqA does not set out a list of factors to be taken into account when determining whether it is reasonable for an employer to take a particular step, the factors set out in the Disability Discrimination Act 1995 are matters to which the tribunal should generally have regard including, but not limited to:

- the extent to which the step would prevent the effect in relation to which the duty was imposed;
- the extent to which it was practicable for the employer to take the step;
- the financial and other costs that would be incurred by the employer in taking the step and the extent to which it would disrupt any of its activities;
- the extent of the employer's financial and other resources;
- the availability to the employer or financial or other assistance in respect of taking the step;
- the nature of the employer's activities and the size of its undertaking;
- where the step would be taken in relation to a private household, the extent to which taking it would: (i) disrupt the household or (ii) disturb any person residing there.

76. Section 136 EqA provides that the claimant bears the burden of establishing a prima facie case that the duty to make reasonable adjustments has arisen and that there are facts from which it could reasonably be inferred, in the absence of an explanation, that the duty has been breached. There must be evidence of some apparently reasonable adjustment which could be made, at least in broad terms. In some cases the proposed adjustment may not be identified until after the alleged failure to implement it and this may even be as late as the tribunal hearing itself. Once that threshold has been crossed, it is for the employer to show that the proposed adjustment is not reasonable: Project Management Institute v Latif [2007] IRLR 579, EAT.

Jurisdiction

77. The general rule under section 123(1)(a) EqA is that a claim concerning work-related discrimination under Part 5 of the EqA (other than an equal pay claim) must be presented to the employment tribunal within the period of three months beginning with the date of the act complained of. For this purpose: conduct extending over a period is to be treated as done at the end of that period (section 123(3)(a) EqA); failure to do something is to be treated as done when the person in question decided on it (section 123(3)(b) EqA); in the absence of evidence to the contrary, a person is taken to decide on a failure to do something either when the person does an act inconsistent with deciding to do something or, if they do no inconsistent act, on the expiry of the period in which they might reasonably have been expected to do it (section 123(4) EqA).

78. Time limit is subject to the extensions of time permitted by the ACAS Early Conciliation provisions, i.e. by virtue of section 140B EqA, but as with other cases, the early conciliation period does not extend time where the primary time limit has already expired.

79. If a claim is not brought within the primary time limit, the tribunal has a discretion under section 123(1)(b) EqA to extend time if it considers it is just and equitable to do so.

80. The burden is on the claimant to persuade the tribunal that it is just and equitable to extend time: Robertson v Bexley Community Centre t/a Leisure Link [2003] EWCA Civ 576, [2003] IRLR 434 at [24]. The discretion whether or not to extend time is a broad one to be exercised taking account of all relevant circumstances, in particular the length of and reasons for the delay, and balancing the hardship, justice or injustice to each of the parties: Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23. In that case, Underhill

LJ, giving the judgement of the Court Of Appeal at [37] deprecated the practice that developed following the judgement of the EAT in British Coal Corporation v Keeble [1997] IRLR 336 of referring to the checklist in section 33 of the Limitation Act 1980, holding that while it would not be an error of law for a tribunal to consider those factors, *'I would not recommend taking it as the framework for its thinking'* when considering the exercise of discretion under section 123(1)(b) EqA.

81. Although the length and reasons for the delay will always be relevant, there is no rule of law that time cannot be extended even where there is no explanation for the delay: Concentrix CVG Intelligent Contact Ltd v Obi [2022] EAT 149, [2023 ICR at [50] per Auerbach J.

82. In appropriate cases, the substantive merits may be relevant, provided that the tribunal is properly in a position to make an assessment of them: Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132 at [63]. The fact that an internal appeal is ongoing is not ordinarily sufficient of itself for time to be extended, although it is one factor to be taken into account: Apelogun-Gabriels v Lambeth [2001 ICR 713 at [16].

83. The EAT has held that where delay in presenting a claim is attributable to incorrect legal advice from the claimant's solicitor, this should not be visited on the claimant by refusing an extension of time, notwithstanding that the claimant may have a valid claim in negligence against the solicitor, since this would confer a windfall on the respondent: Chohan v Derby Law Centre [2004] IRLR 685. This does not mean that time should be extended in all such cases, but that all other factors must also be considered.

84. When considering whether time should be extended to hear a complaint about a series of acts constituting a course of conduct, the tribunal should consider the prejudice suffered by the respondent if it has to deal with the early allegations as well as the most recent ones, and may which different conclusions in respect of different parts of the same case as to whether time should be extended: Concentrix at [68]-[72].

Constructive dismissal

85. Section 95 Employment Rights Act 1996 (ERA) sets out the circumstances in which an employee is dismissed:

> ***(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if) –***

> ***a. the contract under which he is employed is terminated by the employer (whether with or without notice),***
>
> ***b. he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract,***
>
> ***or***
>
> ***c. the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."***

86. Plainly, if an employee has been expressly dismissed by his employer then section 95(1)(a) applies, and there is no need for the employee to show that he has been constructively dismissed. The test of whether an employee has been constructively dismissal is as set out in section 95(1)(c) ERA and is the statutory version of a principle originally established at common law. However, where there has been no express dismissal and there has been no termination by virtue of a limiting event under section 95(1)(b), it will be for the employee to show that the provisions of section 95(1)(c) have been satisfied and that s/he has been constructively dismissed .

87. If an employee who has resigned his/her employment is unable to show that the provisions of section 95 (1)(c) have been satisfied, that employee will not be treated as having been dismissed. It follows that if an employee has resigned and not been dismissed s/he cannot assert a right not to have been unfairly dismissed. If an employee does satisfy the provisions of section 95(1)(c) then his/her resignation would be treated as a dismissal for the purposes of the law of unfair dismissal set out in Part X ERA.

88. Importantly, satisfying section 95(1)(c) establishes only that a claimant has been dismissed. Provided that the employee satisfies the other qualifying conditions to bringing a claim of unfair dismissal (such as any requirement for a qualifying period of service), that employee has the right not to be unfairly dismissed and the right to bring proceedings in the Employment Tribunal complaining of unfair dismissal. An Employment Tribunal might nevertheless find in appropriate circumstances that a constructive dismissal is fair where that dismissal is for a potentially fair reason under section 98 (1) or (2) ERA and that the claimant's constructive dismissal for that reason meets the requirements of fairness under section 98(4) ERA.

89. In order to establish that the requirements of the section 95(1)(c) are met, the employee must show:

a. there was a fundamental breach of contract on the part of the employer that repudiated the contract of employment;

b. the employer's breach caused the employee to resign; and

c. the employee did not delay too long before resigning, thereby affirming the contract.

Breach of contract

90. The first step is to identify the term of the contract of employment which is said to have been breached by the employer, and to consider whether there has been a breach of that term. The breach relied upon may be of either an express or implied term or, where the breach has not yet occurred, an anticipatory breach of an express or implied term.

91. The term relied upon by both claimants is the implied term of trust and confidence. Breach of the implied term of mutual trust and confidence is the breach most frequently relied on in constructive dismissal cases. The term provides that employers (and employees) will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties – Malik v Bank of Credit and Commerce International SA 1997 ICR 606, HL.

92. In cases where a breach of the implied term is alleged, the Tribunal's function is not the same as the range of reasonable responses test. That test applies in relation to the statutory test for unfair dismissal, not the contractual test for constructive dismissal.

93. An example that has been given by the Employment Appeal Tribunal (EAT) to illustrate the reasonable and proper cause element of the test is that in any employer who proposes to discipline an employee for misconduct is likely to be doing an act which is capable of seriously damaging or destroying the relationship of trust and confidence between employer and employee, whatever the result of the disciplinary process. However, if the employer had reasonable and proper

cause for taking the disciplinary action, the employer cannot be said to be in breach of the implied term of trust and confidence - Hilton v Shiner Ltd Builders Merchants 2001 IRLR 727, EAT.

94. The second element of the test is whether the conduct was calculated or likely to destroy or seriously damage trust and confidence. This requires the Tribunal to consider the circumstances objectively, from the perspective of a reasonable person in the claimant's position Tullett Prebon plc v BGC Brokers LLP 2011 IRLR 420, CA. The test is met where the employer's intention is to destroy or seriously damaged trust and confidence, or where the employer's conduct was likely to have that effect.

95. A breach of the implied term of trust and confidence can be caused by one act, by the cumulative effect of a number of acts or a course of conduct. A last straw incident which triggered the resignation must contribute something to the breach of trust and confidence itself - Omilaju v Waltham Forest London Borough Council 2005 ICR 481, CA. There is no need for there to be proximity in time or in nature between the last straw and previous acts - Logan v Commissioners of Customs and Excise 2004 ICR 1, CA.

Fundamental breach

96. If there has been a breach of contract, the breach must be fundamental. This requires considering whether the conduct is:

> *"a significant breach going to the root of the contract of employment, which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract."* Western Excavating (ECC) Ltd v Sharp 1998 ICR 221, CA.

97. Fundamental breach is probably synonymous with repudiatory breach, that is a breach which is a repudiation of the whole contract - Photo Production Ltd v Securicor Transport Ltd 1980 ACA 27, HL.

98. This stage is not needed where the Tribunal has found that there was a breach of the implied term of trust and confidence: any breach of that term is a fundamental breach necessarily going to the root of the contract – Morrow v Safeway Stores plc 2002 IRLR, EAT.

99. Whether a breach of a term is a fundamental breach is a question of fact and degree. Some points about this:

a. the effect on the employee is relevant;

b. the employer's subjective intention is not a key part of the test. It may be relevant, but the intention must be judged objectively - Leeds Dental Team Ltd v Rose 2014 ICR 94, EAT.

100. Some cases have considered whether an employer can remedy a fundamental breach of contract before the employee accepts it. Other than an anticipatory breach of contract, which may be withdrawn up to the moment of acceptance, a fundamental breach of contract cannot be remedied by the wrongdoer. After a fundamental breach has occurred, it remains open to the employee to agree to affirm the contract, or to accept the fundamental breach once it has occurred, whatever action the employer takes following the fundamental breach. This means that the only option available to the employer who wants to correct their action is to invite the employee to affirm the contract - Bournemouth University Higher Education Corporation v Buckland 2010 ICR 908, CA.

101. However, there is a distinction between a fundamental breach of contract that cannot be remedied, and action taken by an employer that prevents the breach of contract occurring or becoming a fundamental breach – Assamoi v Spirit Pub Company (Services) Ltd *EAT 0059/11.*

Resignation

102. If the employer fundamentally breaches the contract of employment, the employee may accept the repudiation and terminate the contract by resigning, either with or without notice. The contract comes to an end at the time of the communication of the resignation to the employer. If the employer is in continuing breach of contract, the employee can resign at any point to while it is continuing – Reid v Camphill Engravers 1990 ICR, EAT.

103. The employee may resign by words or conduct. For example, an employee's failure to return to work following maternity leave has been considered sufficient to communicate acceptance of the employer's fundamental breaches of contract.

104. There are some conflicting authorities as to the relevance of an earlier fundamental breach by the employee, with some authority suggesting that an employee cannot allege constructive dismissal if s/he is in breach of contract him/herself - RDF media group plc v Clements 2008 IRLR 207, QBD . However, there appears to be acceptance that if one party commits a fundamental or repeated breach that the other does not accepted as bringing the contract to an

end, the contract and the obligations under it continue. The obligation of trust and confidence is not suspended when one party breaches the contract, and so it remains open to an employee who has committed a fundamental breach to accept a later repudiation by the employer and end the contract -Atkinson v Community Gateway Association 2015 ICR 1, EAT.

105. In Aberdeen City Council v McNeill 2015 ICR 27 the claimant committed acts of gross misconduct, including sexual harassment and being intoxicated at work. He claimed constructive dismissal in relation to the disciplinary investigation, which the employer carried out in a way which breached the implied term of trust and confidence. The Court of session rejected the employer's argument that the employee's breaches prevented the employee from relying on a later breach of trust and confidence by the employer. However, the employee's own breach could be relevant to compensation. For example, in a complaint of constructive unfair dismissal, breaches such as misconduct could be found to be contributory conduct resulting in a reduction to the basic and compensatory awards.

Resignation caused by breach of contract

106. The breach must have caused the resignation, but it need not be the only cause. The test is whether the employee resigned in response to the conduct which constituted the breach. This is a question of fact for the Tribunal.

107. Once an employer's fundamental breach has been established, the Tribunal should ask whether the employee has accepted the breach and treated the contract of employment as at an end. It does not matter if the employee also objected to other actions (or inactions) by the employer that were not a breach of contract. Constructive dismissal is made out if the employee resigned at least partly in response to the employer's fundamental breach of contract - Logan V Celyn House Ltd EAT 0069/12. The crucial question is whether the repudiatory breach played a part in the dismissal, i.e. whether it was one of the factors relied on by the employee when resigning Abby cars (West Hornden) Ltd v Ford EAT 0427/07.

Delay and affirmation

108. If the employee waits too long after becoming aware of the breach of contract before resigning, s/he may be taken to have affirmed the contract. The question

is whether the employee has shown an intention to continue in employment, rather than an intention to resign. This will depend on the particular circumstances of the case. Factors relevant to this question include the employee's conduct, as well as the length of time which has passed since the breach.

109. In addition to affirmation by delaying, the employee may affirm the contract by taking action which is consistent with employment continuing, irrespective of the timeframe, for example, considering alternative roles, accepting a promotion or a pay rise.

110. Where there is a continuing cumulative breach of the implied term, the employee is entitled to rely on the totality of the employer's acts even if she has previously affirmed the contract. The effect of the last straw is to revive the employee's rights to resign.

111. In a case where a number of breaches of contract are relied on by the claimant, the Tribunal may be assisted by the step-by-step approach of Lord Justice Underhill in Kaur v Leeds Teaching Hospitals [2018] E WCA Civ 978:

a. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, the resignation?

b. Has the employee affirmed the contract since the act? If so, there cannot be a constructive dismissal in respect of that act or earlier acts.

c. If not, was that act (or omission) by itself a repudiatory breach of contract?

d. If not, was it nevertheless a part of a course of conduct comprising several acts and/or omissions which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence? If it was, there is no need for any separate consideration of a possible previous affirmation.

e. Did the employee resign in response (or partly in response) to that breach?

112. It follows that if the last straw was part of a course of conduct which cumulatively amounted to a breach of the implied term, affirmation of the earlier acts does not need to be considered: the last straw revives the right to resign even if there has been an earlier affirmation. However, if the last straw is not part of a course of conduct which breaches the implied term, the Tribunal will have to consider

whether earlier acts have been affirmed. In such a case, the claimant can succeed in establishing constructive dismissal if:

a. there has been no affirmation of the contract by the claimant;

b. the earlier act or course of conduct was repudiatory; and

c. the earlier act or course of conduct at least contributed to the eventual decision to resign.

Conclusions

113. Applying the law to the facts as tribunal has found them in relation to each of the allegations the tribunal has come to the following conclusions.

114. However, before dealing with the issues in turn, it is appropriate to summarise the claimant's position as at the end of this hearing. By that time, the claimant had made a number of concessions:

a. The claimant withdrew all claims of direct disability discrimination. That meant that the complaints at paragraphs 31, 32, 36, 37, 39 and 40 were all withdrawn.

b. The claimant's remaining Equality Act claims were therefore the complaints of failures to make reasonable adjustments and disability related harassment.

c. The claimant conceded that none of the respondent's witnesses who gave evidence (in particular Mr Liddell and Mr Tallentire) were at any stage motivated by a desire to cause the claimant personal difficulties, in particular they were not in any way motivated by any desire to exacerbate the claimant's mental health condition.

   In truth, that allegation should never have been made in the first place. Mrs Liddell was caring and compassionate in the way she gave her evidence, including towards the claimant. It did the claimant's credibility no good at all to have made and pursued such an unpleasant and entirely evidentially unsupported allegation.

115. In the light of those concessions, the tribunal needed to proceed with caution in relation to the claims of disability discrimination: in particular, the claimant's claims of disability related harassment which were in large part premised on the allegation that Mrs Liddell and others were motivated by a desire to exacerbate the claimant's mental health challenges.

116. The claimant's disability and knowledge of it were both conceded by the respondent. As set out below, the respondent did take issue with knowledge of comparative disadvantage in respect of certain complaints.

117. The tribunal deals with the issues in the order in which they appear in the list of issues.

Complaint 1: This is a complaint of a failure to make reasonable adjustments. The claimant says that the respondent had a PCP of requiring the claimant to work with Year 6 from November 2018 until March 2020.

The PCP is accepted by the respondent. The comparative substantial disadvantage is not accepted.

118. It was the Head Teacher, Mrs Liddell's decision to assign the claimant to year 6 in November 2018. The claimant has withdrawn any contention that Mrs Liddell was motivated by matters appertaining to the claimant's disability when assigning the claimant to year 6.

119. The claimant had expertise in dealing with diabetic children. There were diabetic children in year 6 needing that support. That was the reason why the claimant was asked to move to year 6 by Mrs Liddell in her capacity as Head Teacher. The tribunal accepts that evidence. As an operational management decision the tribunal can find no fault with Mrs Liddell's decision-making or the reasons operating on her mind to make them. Indeed, in the light of the claimant's concession that Mrs Liddell was not acting out of a desire to harm the claimant's mental health, the tribunal understood the claimant also to be accepting Mrs Liddell's reason for assigning the claimant, who had skills and expertise in helping diabetic children, to a class where there was a need for those skills.

120. The claimant's evidence in support of this complaint was that she felt embarrassed by her lack of appreciation of English grammar and could be made to feel embarrassed because of that by the need to interact with year 6 pupils.

121. There are two difficulties with that approach. First, the claimant was assigned to year 6 to help with SEN children in respect of which there was no expectation of attaining a particular level of achievement in SATS. The second problem is that any challenges the claimant had in relation to her proficiency with English grammar had nothing whatsoever to do with her disability of depression. The tribunal cannot take judicial notice of any connection between clinical depression and proficiency in English grammar. There simply is none. This seemed to be a situation where a claimant who happened to be disabled is complaining about being put at a substantial disadvantage because of a matter entirely unrelated to her disability.

122. In any event, the tribunal concluded that there was no substantial disadvantage to which the claimant was put relating to her disability by assisting the relevant children in year 6.

123. In those circumstances, no duty to make adjustments under the Equality Act arose and this claim for unlawful disability discrimination must fail.

Complaint 2: This is also a complaint of failure to make adjustments.

This complaint is essentially the same in substance as complaint 1. The tribunal has come to the same factual conclusions on the basis that the same facts are common to these two separate claims.

124. There are four separate adjustments that the claimant says could reasonably have been but were not made. All those complaints arose during 2020 and are therefore substantially out of time.

125. In evidence, the claimant could not recall the basis for her contentions 20 a, c and d. Those matters were therefore not pursued.

126. In relation to the provision of a quiet space 20 (b), the claimant appears to be complaining about a period between June 2020 and March 2021. As the claimant accepted, the pandemic overtook those events. The tribinal can find no fault in the respondent for the diligence that it paid to the claimant's situation bearing in mind the overarching and game changing effect the pandemic had on the operation of primary schools.

127. The claimant accepted that she was provided with a quiet room by Mrs Liddell from March 2021. In the circumstances, to the extent that any duty to make an adjustment arose before March 2021 any failing was in the tribunal's judgment reasonable and the situation was remedied as soon as practically possible.

128. This claim of failure to make reasonable adjustments therefore fails.

Complaint 3: This is also complaint of a failure to make reasonable adjustments. The adjustment identified is a failure to require the respondent's staff to wear masks in corridors.

129. It was conceded by the claimant that staff were not asked to wear face masks in corridors before 3 March 2021. After that point, the claimant's adjustment was made.

130. In any event, the tribunal has concluded that there was no failure to make reasonable adjustments. At the time about which the complaint was being made,

Mrs Liddell was simply following government guidance. The guidance for primary schools in relation to mental well-being and learning experience was that wearing of masks was not mandated either in the classroom or in corridors.

131. The tribunal has little difficulty in concluding that the decision to follow government guidance at the material time did not involve any unreasonable failures on the part of the respondent towards the claimant. Mrs Liddell was only doing what was in the best interests of the children based on departmental guidance that it was in the best interests of the children's mental wellbeing and educational needs not to have staff wearing masks in corridors at that stage.

Complaint 4: This complaint has been withdrawn.

Complaint 5: This is also a complaint of failure to make reasonable adjustments. The PCP was the requirement of the respondents for employees to maintain attendance levels that are considered reasonable and appropriate. The respondent accepted that PCP. The respondent also accepted in principle the claimant was potentially substantially disadvantaged by that PCP.

132. However, the fundamental and insuperable difficulty for the claimant here is that the attendance triggers that she identified were not applied literally to her and were in fact either disapplied altogether or applied in a flexible fashion. The claimant was forced to concede this point during cross examination.

133. The factual position was therefore that the claimant accepted in cross examination that the adjustments that she said had not been made had in fact been made. The effect is that this complaint of a failure to make this adjustment must fail on the claimant's own evidence.

134. The same applies to the separate contention that the respondent should speak to colleagues about their conduct towards the claimant with a view to them stopping the way that the claimant perceived they were acting towards her. The claimant in cross examination accepted the evidence of the respondent that it did speak to her colleagues as suggested albeit without having the desired effect as the claimant saw it.

135. This complaint of failing to make adjustments must therefore fail.

Complaint 6a: This complaint is of disability related harassment.

136. The tribunal repeats the point that the claimant conceded by the end of hearing that none of the respondent's managers had any deliberate intention to harm the claimant's mental wellbeing. Previously, that had been a critical part of the claimant's case on harassment.

137. The tribunal is conscious that in order for disability related harassment to be made out, it has to be the purpose or effect of disability related unwanted conduct that the proscribed effect on the complainant takes place.

138. In the light of the claimant's concession that there was no wilful motivation by any of the respondent's managers to bring about the proscribed effect, the claimant will need to show that there was unwanted conduct related to disability that had unintentionally had that proscribed effect. The claimant would need to go on to show (among other things) that it was reasonable that the disability related unwanted conduct had that proscribed effect.

139. It is also an essential requirement of harassment that the unwanted conduct relates in some way to the claimant's disability.

140. The tribunal has concluded that once the nexus between the malevolent intention on the part of any of the respondent's managers is lost, then the whole claim of harassment falls away along with it. That is because the way in which this case was put, the nexus between the unwanted conduct and the protected characteristic of disability was the alleged malevolent intentions of the respondent's managers. That allegation having been withdrawn, the tribunal concludes that the whole case of disability related harassment must fail.

141. The tribunal nevertheless considered each of the matters in turn on their own factual merit.

142. **Complaint 6a (a)** The tribunal accepted that Mrs Liddell did not take statements from either Ms Henderson or Mrs Chambers when they first approached Mrs Liddell regarding the forest school incident. The problem with this allegation is that Mrs Liddell gave evidence (which the tribunal accepted) that she was not the appropriate person to carry out this investigation at all.

143. The advice to that effect came from The Local Authority Designated Officer who needs to be informed when there is any issue of harm to children. The Head Teacher is expressly prohibited from dealing with such matters personally, presumable to avoid the appearance of being seen to be a judge in his/her own cause. It was for that reason that Mr Tallentire carried out the investigation not Mrs Liddell. On its facts, this allegation of harassment goes nowhere since it was not Mrs Liddell's responsibility to take the statements in question.

144. However, for the sake of good order the tribunal concluded that Mr Tallentire acted with all reasonable expedition and so, even if one were to substitute Mr Tallentire for Mrs Liddell in this allegation, it is still is not well founded factually. Mr Tallentire explained, and the tribunal accepted, that LADO was approached, then half term intervened before Mr Tallentire could start his investigation The tribunal accepted that the claimant's trade union official had to cancel one meeting to attend another union meeting which also delayed the process. The interviews were then concluded within two school days either side of a weekend.

Complaint 6 a (b) The tribunal repeats the reasoning set out in relation to complaint 6 a (a) above.

Complaint 6 a (c). This allegation contends that Mr Tallentire did not conduct a thorough disciplinary investigation.

145. The tribunal rejects this allegation on its facts. In the tribunal's judgment, Mr Tallentire carried out a very thorough investigation and did so expeditiously within the timeframe afforded to him and with appropriate diligence. The tribunal can find no fault with the way in which Mr Tallentire went about the difficult task of investigating the forest school incident in the context of a potential safeguarding concern.

Complaint 6 a (d) This allegation is to the effect that Mr Tallentire misrepresented the balance of probabilities in relation to the allegations against the claimant.

146. This allegation was not coherent.

147. It appeared to the tribunal to be based on a misunderstanding of how the balance of probabilities is applied when assessing the weight to be given to evidence in the context of the practical question of reaching factual conclusions. That process is not so precise as to be susceptible to objective statistical analysis. As is the case in this tribunal, when forming views on what happened, assessing the evidence is always a matter of fact and degree.

148. The tribunal also refers back to the claimant's withdrawal of any allegation that there was any malevolence on the part of the respondent's witness towards her mental health.

149. The tribunal finds that leaves the claimant without any clear basis upon which to contend that there had been any gerrymandering of the investigation by Mr Tallentire (which the tribunal finds as a matter of fact there was not).

Complaint 6 a (e) this complaint relates to an accusation that Mr Tallentire falsely stated in the investigation report that the claimant and said in an abrupt manner that a named individual had infringed her human rights,

150. Mr Tallentire gave very frank evidence that he had no specific recollection of this. He believes it may have come verbally from Mrs Liddell. In any event, the tribunal finds a matter of fact that this simply an error on the part of Mrs Liddell and there is nothing more to it than that. There is also no link to the claimant's disability.

Complaint 6 a (f) this complaint relates to an allegation that Mr Tallentire delayed in taking statements five weeks.

151. The tribunal has already found as a matter of fact, that Mr Tallentire acted with expedition and all appropriate diligence. Given the need to contact LADO, the impediment of half term, the involvement of the claimant's own trade union officer and the need to take statements from multiple witnesses in connection with a safeguarding issue, the investigation was carried out professionally and as quickly as time allowed.

152. In the circumstances, none of the claimant's complaints in **6 a (a) to (f)** amount to unwanted conduct related to the claimant's disability. The claims for disability harassment under **6 a** must therefore all fail.

Complaint 6 b: This complaint is to the effect that the claimant considered that her managers in the form of Mr Stuart, Mr Tallentire and Ms Liddell considered her to be a pest.

153. The tribunal accepted the respondent's submission that this is not an allegation capable falling within section 26 Equality Act 2010. The complaint is not about anything done by the employer. The complaint is how the claimant perceives that she was considered by the respondent. The Equality Act is concerned with management action or inaction not perception.

154. In any event, the tribunal finds a matter of fact that none of the claimants managers, including those mentioned in this complaint, considered the claimant to be a pest. Mrs Liddell in particular was plainly concerned about the claimant and showed not the slightest sign of ill will or resentment towards her even after learning of the unpleasant allegations that the claimant has made against her in these proceedings.

155. All of the claimant's complaints in the management phase of this dispute were taken seriously and looked into. Steps were taken to try to resolve them. As was clear from Mr Stuart's evidence, the effect of the claimant's conduct resonated not just with her immediate colleagues, but also with senior management at the school and latterly the executive management at the Academy Trust. The claimant was given access to the highest levels of management at the school and the Trust made patient and genuine attempts to resolve the matters that arose.

Complaint 7: This complaint is that the respondent placed the claimant with a pupil with ADHD from September 2021 in order to deliberately make her mental health worse.

156. This complaint was withdrawn by the claimant as a result of her concession that none of the respondent's managers acted deliberately to exacerbate her mental health condition.

157. The claimant originally contended that the respondent had put the claimant with a pupil with ADHD for the purposes of damaging the claimant's mental health. The claimant frankly conceded at the end of the hearing that Mrs Liddell had not been assigned the claimant to this pupil for that reason.

158. Indeed, it would have been very difficult to sustain a allegation that Mrs Liddell was prepared to put her professional integrity on one side, abandon any *in loco parentis* considerations regarding the pupil as well as jeopardising her own position as Head Teacher just in order to inflict gratuitous harm on the claimant.

159. At no stage did the claimant disclose any reason why Mrs Liddell would even begin to countenance behaving in that way. In reality, this was all along a baseless and unpleasant allegation which in the tribunal's view reflected poorly on the claimant's own motivation for bringing these proceedings. Mrs Liddell was understandably upset by this allegation when giving her evidence. The tribunal found Mrs Liddell to be a caring and compassionate individual in the way she gave her evidence and had this allegation not been withdrawn by the claimant, the tribunal would have firmly rejected it.

160. In respect of all of the claims for breach of the Equality Act 2010, the claimant failed to prove any facts sufficient to establish an initial case to shift the burden of proof.

Complaint 8: This is a complaint that the claimant has been unfairly constructively dismissed.

161. The tribunal has not been able to identify any breach of any express or implied term of the claimant's contract of employment in any of the matters to which its attention was drawn. That includes the complaints of disability related harassment which all fail.

162. The tribunal could find no truth at all to the contention that anyone at the school had made up allegations that the claimant had caused emotional harm to a child during the forest school incident. As the claimant accepted in cross examination, the respondent had no alternative other than to investigate what amounted to a safeguarding concern. It is plain that by making that concession the claimant is effectively also accepting that the respondent had no alternative other than to take the steps they did.

163. The truth of the matter is that the claimant resigned before any management action (if any) could be taken against her. To the extent necessary, the tribunal finds that the respondent had reasonable and proper cause for carrying out the investigation that it did and had reasonable and proper cause to believe that there was a genuine allegation of potential safeguarding concerns that the school needed to address. Hence the involvement of LADO and the Academy Trust.

164. The tribunal concluded the claimant resigned and was not dismissed. Accordingly, the tribunal has no jurisdiction to consider any claim for unfair dismissal.

Time Limits

165. The tribunal does not have to consider any issue of time limitation. The tribunal has not identified any act of discrimination at all and therefore none falling within the period of three months (adjusted for the period of conciliation) prior to the claim form being presented. There is accordingly no conduct capable of forming part of a course of conduct and there is no act of discrimination in respect of which the tribunal might need to consider exercising its discretion to extend time.

166. That concludes the judgement of the tribunal.

Employment Judge Loy
10 July 2024

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