



EMPLOYMENT TRIBUNALS

Claimant: Miss C Muswere

Respondent: Burnley College

Heard at: Manchester Employment Tribunal

On: 08, 09, 10, 11, 12 January 2024,
21 May 2024 (tribunal reading back in, no parties),
22, 23 May 2024
24 May 2024 and 30 July 2024 (in chambers for deliberations)

Before: Employment Judge M Butler
Ms C Bowman
Ms S Khan

Representation

Claimant: Self-representing
Respondent: Ms S Firth (of Counsel)

JUDGMENT

1. The allegations of direct sex discrimination are all dismissed on withdrawal.
2. The allegations of harassment related to sex are all dismissed on withdrawal.
3. The allegations of direct race discrimination all fail and are dismissed.
4. The allegations of harassment related to race all fail and are dismissed.
5. The allegations of victimisation all fail and are dismissed.

REASONS

INTRODUCTION

6. The tribunal apologises to the parties for the delay in releasing this decision. However, as the parties can see, reaching a decision necessitated finding an additional day to deliberate, which for various reasons could not take place until the end of July.
7. The claim was brought by way of a claim form presented on 23 May 2022. The claimant, in her claim form, brought complaints of race discrimination, sex discrimination and victimisation.
8. Following a case management hearing on 13 January 2023 before Employment Judge Dunlop and a second case management hearing on 13 April 2023 before Employment Judge Holmes, the issues to be determined by the tribunal were recorded and agreed. Employment Judge Holmes recorded these in an appendix to the back of the record of Case Management. The list of issues is extensive and run from pages 121 to 130 in the bundle. At the commencement of this hearing, the parties confirmed that the list of issues remained as recorded. Although some of these matters were withdrawn during the hearing (see section below entitled 'List of Issues').
9. The tribunal was assisted with a primary bundle in this case that ran to some 872 electronic pages. However, additional documents were added to the bundle during the course of the hearing. This included the claimant's teaching timetable, a synchronization report and emails/documents concerning the respondent's CCTV system, amongst other documents.
10. The claimant gave evidence on her behalf, and also called Mr K Muswere to give evidence. Mr Muswere is the claimant's father and was the recipient of a phone call from the claimant during the events following the claimant's dismissal.
11. The respondent called the following to give evidence:
 - a. Ms A Leak
 - b. Mr L O'Malley
 - c. Mr A Blakeley
 - d. Ms V Lees
 - e. Ms E Richardson
 - f. Ms B Dance
 - g. Ms S Condren
 - h. Ms K Buchanan
 - i. Mr P Glass
12. The tribunal also allowed supplemental evidence statements to be relied on by Ms E Richardson and Ms K Buchanan to address some matters that arose in the first part of the hearing (see below, as the hearing went part

heard).

13. The tribunal considered the witnesses of the respondent to be reliable witnesses of fact. Their evidence, for the most, was consistent with the documentary evidence where that existed. The tribunal considered Ms Dance to be a particularly impressive witness, in particular with her considered approach to the use of language. With respect the claimant, the tribunal considered her evidence to be less reliable. There were several occasions during the evidence where her evidence was not entirely consistent with documentary evidence or was a comment taken out of context to present a particular point of view. This was a factor that was taken into account when the tribunal was making its finding of fact, particularly where there was no contemporaneous documentary evidence available.
14. The final hearing was initially listed for 5 days. However, given the number of allegations brought, the amount of evidence to be heard and considered, it soon became clear that this was an unrealistic time estimate. Unfortunately, this meant that the case went part heard, and the evidence was not able to resume until some 4 months after it started. Neither Ms Richardson nor Ms Buchanan gave evidence during the first part of the hearing. An application by the respondent to adduce supplemental witness statements for both these witnesses, to address some matters that arose in the claimant's evidence was granted during the period the first part of the hearing concluding and when it reconvened (the claimant wrote in to tribunal to explain that she had no objections).
15. To assist the claimant the tribunal did the following:
 - a. Ensured that the claimant had knowledge of the order the respondent was calling witnesses. This was to help the claimant to prepare her cross-examination questions accordingly.
 - b. Explained to the claimant tribunal process where it considered it necessary.
 - c. Had adequate and sufficient breaks.
 - d. Put questions to respondent witnesses where it considered it appropriate to do so. However, the tribunal was conscious of not being seen to be representing the claimant.

LIST OF ISSUES

16. The final hearing proceeding on the basis of the list of issues attached to the back of this document. This was confirmed at the beginning of the hearing by both parties as being the list of issues that the tribunal was tasked with determining (subject to that outlined below). There were no allegations made in the claim form that was not recorded in the list of issues.
17. The list of issues refers to two allegations that the claimant applied to have added to her claim by way of amendment, but which were refused. These matters were not determined by the tribunal. The allegations being 2.1.22/3.1.6 and 2.1.24.

18. During the proceedings the claimant withdrew the following allegations:
- a. On day 3, the claimant withdrew all allegations of direct sex discrimination and harassment related to sex.
19. Those matters that were withdrawn during the hearing are not considered any further in this document.

LAW

20. The tribunal was grateful to Ms Firth for the detailed skeleton argument she produced, particularly with respect to the law. Although not all of the case law referred to by Ms Firth is repeated here, it has been considered in reaching this decision.

Harassment related to race

21. Protection against harassment related to disability is provided for at s.26 of the Equality Act 2010:

- (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.

22. In **Commissioner of Police of the Metropolis and anor v Osinaike** EAT 0373/09 the EAT overturned the ET's decision that C had been subjected

to race-related harassment. Although her situation had been ineptly handled by the employer, there was no evidence that matters would have been handled differently had the employee been white rather than black.

Direct race discrimination

23. Protection against direct discrimination is provided for at s.13 of the Equality Act 2010:

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

24. Lord Nicholls in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** gave guidance as to the approach an employment tribunal should consider when determining a direct discrimination complaint:

“7. ...In deciding a discrimination claim one of the matters employment tribunals have to consider is whether the statutory definition of discrimination has been satisfied. When the claim is based on direct discrimination or victimisation, in practice tribunals in their decisions normally consider, first, whether the claimant received less favourable treatment than the appropriate comparator (the 'less favourable treatment' issue) and then, secondly, whether the less favourable treatment was on the relevant proscribed ground (the 'reason why' issue). Tribunals proceed to consider the reason why issue only if the less favourable treatment issue is resolved in favour of the claimant. Thus the less favourable treatment issue is treated as a threshold which the claimant must cross before the tribunal is called upon to decide why the claimant was afforded the treatment of which she is complaining.

8. No doubt there are cases where it is convenient and helpful to adopt this two-step approach to what is essentially a single question: did the claimant, on the proscribed ground, receive less favourable treatment than others? But, especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined.

...

11. ...employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the

foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will be usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others.”

25. This is further explained by Mr Justice Underhill P (as he then was), in **Amnesty International v Ahmed [2009] IRLR 884**:

“32. The basic question in a direct discrimination case is what is or are the "ground" or "grounds" for the treatment complained of.^[3] That is the language of the definitions of direct discrimination in the main discrimination statutes and the various more recent employment equality regulations. It is also the terminology used in the underlying Directives: see, e.g., art. 2.2 (a) of Directive EU/2000/43 ("the Race Directive"). There is however no difference between that formulation and asking what was the "reason" that the act complained of was done, which is the language used in the victimisation provisions (e.g. s. 2 (1) of the 1976 Act): see *per* Lord Nicholls in **Nagarajan** at p. 512 D-E (also, to the same effect, Lord Steyn at p. 521 C-D).^[4]

33. In some cases the ground, or the reason, for the treatment complained of is inherent in the act itself. If an owner of premises puts up a sign saying "no blacks admitted", race is, necessarily, the ground on which (or the reason why) a black person is excluded. **James v Eastleigh** is a case of this kind. There is a superficial complication, in that the rule which was claimed to be unlawful – namely that pensioners were entitled to free entry to the Council's swimming-pools – was not explicitly discriminatory. But it nevertheless necessarily discriminated against men because men and women had different pensionable ages: the rule could entirely accurately have been stated as "free entry for women at 60 and men at 65". The Council was therefore applying a criterion which was of its nature discriminatory: it was, as Lord Goff put it (at p. 772 C-D), "gender based".^[5] In cases of this kind what was going on inside the head of the putative discriminator – whether described as his intention, his motive, his reason or his purpose – will be irrelevant. The "ground" of his action being inherent in the act itself, no further inquiry is needed. It follows that, as the majority in **James v Eastleigh** decided, a respondent who has treated a claimant less favourably on the grounds of his or her sex or race cannot escape liability because he had a benign motive.

34. But that is not the only kind of case. In other cases – of which **Nagarajan** is an example - the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, i.e. by the "mental processes" (whether conscious or

unconscious) which led the putative discriminator to do the act. Establishing what those processes were is not always an easy inquiry, but tribunals are trusted to be able to draw appropriate inferences from the conduct of the putative discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). Even in such a case, however, it is important to bear in mind that the subject of the inquiry is the ground of, or reason for, the putative discriminator's action, not his motive: just as much as in the kind of case considered in James v Eastleigh, a benign motive is irrelevant. This is the point being made in the second paragraph of the passage which we have quoted from the speech of Lord Nicholls in Nagarajan (see para. 29 above). The distinctions involved may seem subtle, but they are real, as the example given by Lord Nicholls at the end of that paragraph makes clear.

...

37. ...although (as Lord Goff points out) the test may be applied equally to both the "criterion" and the "mental processes" type of case, its real value is in the latter: if the discriminator would not have done the act complained of but for the claimant's sex (or race), it does not matter whether you describe the mental process involved as his intention, his motive, his reason, his purpose or anything else – all that matter is that the proscribed factor operated on his mind. This is therefore a useful gloss on the statutory test; but it was propounded in order to make a particular point, and we do not believe that Lord Goff intended for a moment that it should be used as an all-purpose substitute for the statutory language. Indeed if it were, there would plainly be cases in which it was misleading. The fact that a claimant's sex or race is a part of the circumstances in which the treatment complained of occurred, or of the sequence of events leading up to it, does not necessarily mean that it formed part of the ground, or reason, for that treatment.

Victimisation

26. Protection from victimisation is contained at s.27 of the Equality Act 2010. It provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

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

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with

proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

Drawing of inferences

27. In **Commissioner of Police of the Metropolis v Viridi** EAT 0598/07, Mr Justice Underhill explained that “*inferences are not drawn as a sanction for bad behaviour*”.

28. The EAT provided useful guidance in **Osinaike**:

“[31] “The first stage of the Tribunal's enquiry, before the burden shifted, was whether the Claimant had proved facts from which the Tribunal could properly conclude, in the absence of an adequate explanation and on all the evidence, that the Respondents committed an act of unlawful discrimination or harassment. She had to prove, on the balance of probabilities, (a) the Respondents treated her less favourably or harassed her and (b) on racial grounds (per Mummery LJ in *Madarassy* at paras 55 to 58). The Claimant had to prove the facts on which she placed reliance for the drawing of the inference of discrimination. Simply showing that conduct is unreasonable or unfair is not, by itself, enough to trigger the transfer of the burden of proof: see *Bahl v Law Society* [2003] IRLR 640, EAT per Elias J at para 100, approved by the Court of Appeal at [2004] IRLR 799 . If unreasonable conduct occurs alongside other indications that there is or might be discrimination on racial grounds the position is different, but the indications must relate to the prohibited treatment.”

29. The tribunal was reminded of the principle from **Medrysa v London Borough of Tower Hamlets** EAT 0208/20, that a failure to follow internal policies or procedures can be the result of poor organisation of incompetence.

30. Where there are discriminatory assumptions, this can give rise to inferences being drawn. In **Stockton on Tees Borough Council v Aylott** 2010 ICR 1278 (CA) Lord Justice Mummery issued the following words of caution at paragraphs 48-49:

“Direct discrimination can occur, for example, when assumptions are made that a claimant, as an individual, has characteristics associated with a group to which the claimant belongs, irrespective of whether the claimant or most members of the group have those characteristics [...] I would accept that an ET can err in law if they conclude that liability for direct discrimination has been established simply by relying on an unproven assertion of stereotyping persons with that particular disability. Direct discrimination claims must be decided in accordance with the evidence, not by making use,

without requiring evidence, of a verbal formula such as “institutional discrimination” or “stereotyping” on the basis of assumed characteristics. There must be evidence from which the ET could properly infer that wrong assumptions were being made about that person’s characteristics and that those assumptions were operative in the detrimental treatment, such as a decision to dismiss.”

31. Importantly, the tribunal should only draw a conclusion because of a stereotype where such allegations have been properly pleaded and put: see **Commerzbank AG v Rajput 2019 ICR 1613 (EAT)**, particularly para 85, where it is stated:

“where the complainant does not advance the case based on stereotypical assumptions, but the tribunal on the basis of its experience and knowledge or beliefs is considering that this may have been relevant to the conduct of the decision-maker, the position is akin to Hammington's case and Dugdale's case. In those circumstances, it must give notice of the point to the employer and its representatives; and the relevant witness(es) must be given the opportunity to respond to that suggestion. This requirement of notice must of course equally apply to a complainant who intends to rely on stereotype arguments in support of a claim of discrimination. Whilst I accept that this does not necessarily require the use of the phrase “stereotype assumptions”, and that what matters is the substance of the allegation that the decision-maker has acted on the basis of an identified assumption, the phrase is now so commonplace that it makes good sense to do so in the interests of clarity.”

Burden of proof under the Equality Act 2010

32. We reminded ourselves of the burden of proof in discrimination cases, with reference to section 136 of the Equality Act 2010:

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

33. Lord Justice Mummery (with which Laws and Maurice Kay LJJ agreed) in **Madarassy v Nomura International plc [2007] ICR 867**, at paragraphs 56-58, provided a summary of the principles that apply when considering the burden of proof in Equality Act Claims:

"56. The court in *Igen v Wong*... expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a

difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.

57. "Could... conclude" in section 63A (2) must mean that "a reasonable tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory "absence of an adequate explanation" at this stage (which I shall discuss later), the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like as required by section 5(3) of the 1975 Act; and available evidence of the reasons for the differential treatment.

58. The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."

34. Mummery LJ also explained further how evidence adduced by the employer might be relevant, noting that it could even relate to the reason for any less favourable treatment (paras. 71-72):

"71. Section 63A (2) does not expressly or impliedly prevent the tribunal at the first stage from hearing, accepting or drawing inferences from evidence adduced by the respondent disputing and rebutting the complainant's evidence of discrimination. The respondent may adduce evidence at the first stage to show that the acts which are alleged to be discriminatory never happened; or that, if they did, they were not less favourable treatment of the complainant; or that the comparators chosen by the complainant or the situations with which comparisons are made are not truly like the complainant or the situation of the complainant; or that, even if

there has been less favourable treatment of the complainant, it was not on the ground of her sex or pregnancy.

72. Such evidence from the respondent could, if accepted by the tribunal, be relevant as showing that, contrary to the complainant's allegations of discrimination, there is nothing in the evidence from which the tribunal could properly infer a prima facie case of discrimination on the proscribed ground...."

35. Lord Justice Mummery also pointed out that it will often be appropriate for the tribunal to go straight to the second stage. An example is where the employer is asserting that whether the burden at the first stage has been discharged or not, he has a non-discriminatory explanation for the alleged discrimination. A claimant is not prejudiced by that approach since it is effectively assumed in his favour that the burden at the first stage has been discharged.

36. The tribunal was reminded of two important matters (amongst others) by the then House of Lords in **Nagarajan v London Regional Transport** [1999] IRLR 572:

- a. If the burden shifts, the tribunal should then focus on the employer's conscious or subconscious reason for treating the worker as they did, and
- b. The protected characteristic needs to "*significant[ly] influence*" the less favourable treatment so as to be causally relevant.

37. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant succeeds in doing this, then the onus will be on the respondent to prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment.

CLOSING SUBMISSIONS

38. The tribunal was assisted by having received written submissions on behalf of the respondent. And both parties made oral closing submissions at the hearing.

39. Although not repeated here, the tribunal has carefully considered the closing submissions presented on behalf of both parties in reaching its decision. Where we consider it necessary, there is reference to parts of the closing submissions in our conclusions.

FINDINGS OF FACT

We make the following findings of fact based on the balance of probability from the evidence we have read, seen, and heard. Findings with little or no explanation as to why the tribunal found the way it did are facts that were not in dispute between the parties. Where there is reference to certain aspects of the evidence that have assisted us in making our findings of fact this is not indicative that no other evidence has been considered. Our findings were based on all of the evidence, and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why we made the findings that we did.

We do not make findings in relation to all matters in dispute but only on matters that we consider relevant to deciding on the issues currently before us.

To try to assist the parties in reading and understanding this judgment, the tribunal has made use of sub-headings to separate out the various matters. However, the findings must still be read as a whole, as there may be findings that read across into other parts of the decision.

General findings of fact

40. The claimant commenced employment as a trainee lecturer with the respondent in August 2021. As part of and supplemental to this role, the claimant was required to study and successfully complete studies for a PGCE at Bolton University.
41. As part of the claimant's studies, she had support from the curriculum principles. The principles would undertake learning walks. These were observations undertaken by the principles that took place across the department, and not limited to specific individuals.
42. Ms Amy Leak was the claimant's subject specialist mentor.
43. The claimant completed an induction with the college when she started her employment. The induction schedule is as set out in the document at pp.229-230.
44. The claimant was subject to an obligation to act professionally, with this being defined in Bolton University's Programme Handbook at p.209. The claimant was aware that if she engaged in unprofessional behaviour then that could lead to a placement being withdrawn and to withdrawal from the course. The claimant had to comply with the university's Code of Professional Conduct.
45. The claimant was to be subjected to professional practice observations as part of her PGCE studies (see.212). Ms Leak, as subject mentor for Business Studies, would undertake these for the purposes of the PGCE programme.
46. In monitoring workplace performance, the respondent would undertake formal observations of staff. The claimant was subject to formal

observations by the respondent as part of her employment, and to assess whether the claimant would pass her probation. The PGCE course also required teaching observations to take place. These were in addition to the formal observations.

47. As part of the PGCE, the claimant was to have two mentor observations by Ms Leak (see part 10.3 on p.212, under Level 1 Partnerships). There would then be further observations and assessor observations. The claimant understood that she needed to pass the first two observations before she would progress to level 2.
48. The claimant understood that if there were two unsuccessful observations then her progress on the PGCE course could be halted (see p.218, under clause 11.2).
49. The claimant understood that as part of her employment contract (starts at p.271), she would be required to gain her teaching qualification within two years of her employment starting. This was a condition of her employment (see p.275, clause 10). And she understood that if her progress on the PGCE course was halted or brought to an end, resulting in her not gaining that qualification, then her employment with the respondent would be ended.
50. The claimant was subject to an initial probationary period of 12 months (see p.272, clause 6). As part of probation, the claimant expected to be monitored and reviewed. And she understood that at the end of the period, if performance was found to be less than satisfactory, the respondent could either extend the period or dismiss the claimant. And that this was at the discretion of the respondent.
51. The claimant understood that trainee teachers during a probation period would be subject to more observations than a qualified teacher.
52. Kyria was a qualified teacher. This was accepted by the claimant under cross-examination. She was not a suitable comparator for the claimant in this case.
53. Tia Macmillan was in a different position to the claimant in that she had not failed any observation. Again, this was accepted by the claimant. She was not a suitable comparator for the claimant in this case.
54. The claimant was subject to a learning walk on 23 September 2021. This was undertaken by Ms Dance and Ms Leak (notes at pp.366-368). The theme of the walk was 'high expectations' and was focussed on good classroom management. The claimant does not complain about this walk being discriminatory. In this walk, the reviewers identified a series of areas to develop. This included that: there were student behaviours that were not being corrected; that some materials lacked clarity; there were missed opportunities to stretch and challenge the students.
55. As a result of the learning walk of 23 September 2021, the Curriculum Principle put in place regular teaching and learning meetings to look at the claimant's lesson planning. The claimant accepted that this was a

supportive measure to assist the claimant.

56. A no point did Ms Zeb Butt attend any of the claimant's classes to undertake a PGCE assessment. This is despite the claimant having put this in her witness statement at p.12. The claimant accepted this under cross examination. And explained that she was referring to a presentation that she did in front of her PGCE colleagues in or around October/November 2021.
57. On 15 October 2021, the claimant was observed by Ms Dance. The claimant does not allege that this observation was part of any discriminatory act. This observation included some positive feedback and some negative feedback (see p.371). Like the feedback of 23 September 2021, this included a need to stretch and challenge students (para 7 on p.371) and a need to develop structure. The claimant as a supportive measure was asked to attend Ms Leak's class on 18 October 2021 to observe her teaching practices, with a view to developing techniques to stretch and challenge students.
58. The claimant did not attend Ms Leak's class on 18 October as planned. The claimant did not attend as this slipped her mind as she had not been sent a calendar request as a follow up. However, the claimant did attend one of Ms Leak's classes on 19 October 2021. The claimant took some notes of the lesson. These are at p.373-374 of the bundle. Although the document is dated 02 November 2021, the tribunal was satisfied that these were the notes from 19 October 2021 and the date was simply input incorrectly. The claimant when asked about this was equivocal and explained that she could not say for certain that these notes were from that lesson observation. Whereas Ms Leak was clear in her evidence that they were, and anchored her explanation to the class recorded as being observed and the profile of the learners. The explanation of Ms Leak led the tribunal to this finding.
59. The claimant noted from the lesson of 19 October 2021 several learning points for her to take away from that session, including:
- a. The approach adopted to asking further questions to reach the correct conclusions.
 - b. Testing of learner's knowledge developed in previous lessons.
 - c. Maintaining of control in the classroom.
 - d. The use of white-boards as part of engaging learners.
 - e. The depth of the questions asked.

General conclusions

60. Save for the PGCE teaching observation on 09 March 2022, the claimant did not challenge the witnesses of the respondent and put to them that she had been found to have failed her teaching observation because of, related to or for reasons motivated by her race. This failing meant that the tribunal accepted the respondent's evidence in respect those other observations, and found that the claimant's race had no influence or effect on decisions made.

First formal employment observation

61. The claimant was emailed on 15 October 2021 by Mr O'Malley with a view to arranging the claimant's first formal employment observation (see p.370), This gave the claimant a choice on the date to be observed, provided the claimant with a copy of the classroom observation booklet (this is the Changing People's Lives booklet at p.231) and invited the claimant to ask questions on the process if needed. This email was supportive in nature.
62. The claimant read the booklet and did not have any questions about the process for Mr O'Malley.
63. The claimant was subject to a first formal employment observation on 05 November 2021. This was undertaken by Mr Iain McGhie.
64. The claimant could access the notes from the observation on the respondent's Curriculum Observer.
65. The outcome of this observation was that the claimant did not meet expectations (the Observation Record is at pp.375-376). The feedback identified several consistent weaknesses. This included: the claimant was 15 minutes late, missed opportunities to question learners, engagement was low due to the layout of the room, there was a heavy focus of copying from the board, there was a lack of intent and progress for learners, lack of stretch and challenge and there were large periods where learners were not doing anything. There is also reference to the claimant not challenging low level disruption.
66. The claimant did not challenge the accuracy of this observation record at the time. Nor does she allege that this observation is part of discriminatory treatment.
67. The claimant completed a reflection document for Bolton University on 29 November 2021 (see p.378). The claimant was not meeting expectations at this stage.

Allegations 2.1.1-2.1.3: First PGCE observation

68. The claimant had her first formal PGCE observation by Ms Leak on 01 December 2021.
69. The claimant received the observation report through google documents on 02 December 2021 (see p.390).
70. The claimant attended a feedback session with Ms Leak on 02 December 2021, during which Ms Leak took the claimant through the observation report (the report is at pp.383-385). The claimant was assessed against ETF standards and was 'referred' in relation to most of the standards that were assessed, save for ETF standards 5, 12 and 14, which was

assessed as 'p' for passed. In short, referred meant that that particular standard was not being met.

71. Ms Leak did not enter any strengths in the strengths box of the form. And this was despite the claimant having attained the appropriate standard for ETF standards 5, 12 and 14.
72. Ms Leak identified two areas for development. The claimant agreed with the two areas for development being accurate, and that she needed to develop different activities to engage the learners with subject knowledge.
73. In the summary section, Ms Leak identified the following, which were common to the other observations: the lesson was focused on note making, the students were not engaged, there were classroom management issues and there didn't seem to be evidence of learning.
74. During the session the claimant allowed the students 'thinking time'. This was in essence the students being given a break from the session (see p.6 of claimant's witness statement). During this time, all but 3 students left the classroom. Some students returned with food and continued to eat that during the session when it resumed. And the three students that remained were observed by Ms Leak to be on their phones.
75. Ms Leak recorded on the observation form that thinking time came about which saw the learners leave the classroom for at least 10 minutes. The claimant considered that giving the students a break was conducive to learning.
76. In the feedback session, Ms Leak explained to the claimant that neither her nor Ms Dance gave the students breaks during sessions. Although the claimant gave evidence that Ms Leak told the claimant that no other staff gave students breaks, we accepted Ms Leaks evidence on this point. As it is plausible that Ms Leak restricted her views on the practices of lecturers that she had direct knowledge of, namely herself and Ms Dance.
77. Based on the observation, Ms Leak more likely than not did explain to the claimant that she had not witnessed any positives at all in the claimant's lesson.
78. During the feedback session, the claimant disagreed with the feedback being given by Ms Leak, this being the claimant's evidence under cross-examination. This discussion was the opportunity for the claimant to show reflective practice. The claimant did not evidence any evidence of reflection on the feedback being received, but rather disagreed with that which Ms Leak was presenting. This had the consequence that Ms Leak recorded on the observation form that there was no evidence of reflective practice.
79. Following the feedback session, the claimant emailed Ms Leak on 03 December 2021 (see p.389) to ask what 'R' meant in the form. The claimant also had other queries, including how she could show reflective practice in the lesson. Ms Leak replied (see p.389) to explain that R meant referred. Ms Leak explained that reflection was bad on our discussion

yesterday. The tribunal accepted Ms Leak's evidence that this was a typo and what she was explaining was that the comments about reflective practice was based on the feedback session that Ms Leak had with the claimant. Ms Leak invited the claimant to discuss the feedback further. Despite Ms Leak offering a further feedback session, the claimant did not arrange to go and see Ms Leak to discuss further (see p.388).

80. Between 01 December and 03 December 2021 (see emails on p.386), Ms Leak was supportive in her responses to the claimant when she was asking for help to understand 'Pecan Pie'. The claimant and Ms Leak's relationship continued in a supportive way at this point.

Conclusions on allegations 2.1.1-2.1.3

81. The tribunal is satisfied that Ms Leak completing the observation form that had no strengths in, and explaining to the claimant in the feedback session that she had not witnessed any positives at all in the claimant's lesson was subjecting the claimant to a legal detriment. This is particularly when one considers that she did attain a pass in 3 of the ETF standards. Not including reference to any strengths in a form that was a tool for development and which included a pass in 3 areas reaches the standard of detriment in this judgment. However, even though this is a form of detrimental treatment, there is no evidence adduced that supports that this was in any way connected to the claimant's race. The claimant has simply brought no evidence that would lead the tribunal to that conclusion.
82. The inclusion of weaknesses and areas for development in the observation form were not subjecting the claimant to a detriment. This was accepted by the tribunal as an honest assessment of weaknesses in the claimant's teaching practices. This highlighted common themes in the claimant's practices that had been identified through other means, which the claimant had previously accepted as being some of her shortcomings in her teaching practices. And, in respect of the observation on 01 December 2021, the claimant agreed with that recorded in the areas for development.
83. The tribunal did not accept that Ms Leak had explained to the claimant that no other teacher gave students breaks. And therefore, this allegation is not made out on its facts. And even had this been brought in respect of Ms Leak explaining that neither herself nor Ms Dance gave students breaks, then this would not have been found to be subjecting the claimant to a detriment given that the tribunal accepts that this was the case. Recording this as a negative, where students left the classroom and returned with food, and did not use the time as 'thinking time', does not reach the level of being a detriment.
84. In respect of the comment about the claimant's reflective practice, the tribunal accepted that this was simply an error in typing, and Ms Leak intended to state based rather than bad. In those circumstances the tribunal does not accept that the claimant was subject to a detriment.
85. The claimant has adduced no evidence to support that she was subject to

any of the matters above because of her race. There is simply no evidence to support that such treatment was because of or related to the claimant's race.

86. In the circumstances outlined above, allegations 2.1.1-2.1.3 all fail and are dismissed.

Allegation 2.1.4: student marked absent incident

87. A student made an allegation to a member of staff that the claimant had marked them as absent in a class they had attended as punishment for their behaviour. This issue was passed to Mr O'Malley. This is unchallenged evidence of Mr O'Malley (see para 23 of his witness statement)

88. On 18 January 2022, Mr O'Malley asked the claimant whether she had marked a student as absent on the register as punishment for bad behaviour in her class.

89. The claimant denied that she had done this.

90. Mr O'Malley reassured the claimant that he had to follow it up and would have done so with any member of staff that such an allegation was raised against. And he accepted the claimant's response. No further action was taken.

91. Mr O'Malley would have asked the same question of any member of staff, irrespective of race. This was accepted by the claimant in her evidence under cross-examination.

Conclusion allegation 2.1.4

92. At no point did the claimant put to Mr O'Malley that his actions in respect this allegation was because of or motivated by the claimant's race. And therefore, the tribunal was bound to conclude that Mr O'Malley's evidence was accurate on this, and that his actions were not because of or motivated by the claimant's race. However, the tribunal also makes the following observations about the evidence generally.

93. The tribunal concludes that the claimant was not subject to a detriment in the circumstances outlined above. An allegation was made by a student. Mr O'Malley investigated the matter, which was appropriate for Mr O'Malley to do. Especially given that it would be a serious matter if the allegation turned out to be true. And the claimant's explanation was accepted, with no further action taken. It would be unreasonable for any person to view this as a detriment in those circumstances.

94. There is no evidence to support that this action was in any way motivated or connected to the claimant's race.

95. Allegation 2.1.4 therefore fails and is dismissed.

Allegation 2.1.5: feedback session on 25 January 2022 with uncompleted notes contrary to UCU recommendations

96. The respondent's approach to written feedback is that it is finalised after a feedback session has taken place. This ensures that the feedback is completed, having taken into account all relevant matters. And particularly as some of the sections, such as reflective practice, are based on evidence gathered at the feedback session itself. The claimant understood this from the outset of her employment, and this was reiterated to her on 25 January 2022 (see p.428).
97. The respondent is not bound by UCU recommendations.
98. UCU recommendations envisage discussions that take place in feedback sessions should be recorded on the observation form, and therefore cannot be finalised until after the feedback session has taken place.

Conclusions on allegation 2.1.5

99. Given the above, the tribunal was not satisfied that the claimant was subjected to a detriment as pleaded.
100. The claimant has not adduced any evidence to support that the approach adopted by the respondent was in any way because of or motivated by race.
101. Allegation 2.1.5 fails and is dismissed.

Allegation 2.1.6: claimant criticized for doing The Apprentice Style tasks

102. On 25 January 2022, the claimant had a meeting with Ms Leak and Mr Blakely. This concerned the 21 January 2022 PGCE re-observation. The claimant covertly recorded this meeting.
103. The claimant was not criticised for adopting an Apprentice Style element to her teaching, rather she was questioned about the execution of the task with respect her learners. Both Ms Leak and Mr Blakely gave consistent evidence on this matter, which is consistent with the transcript of that meeting (see pp.468-469). And this is supported particularly by the following comment in the meeting:

“...I'm only asking from like an overall, like a, coz it's, I like the idea, but I'm not sure it's got any meaning. So, what I mean by that, coz it isn't linked to the first part of the lesson. Creating a toothbrush, for A-level students like I know what you were trying to do, coz I watch the Apprentice, so I know what you were trying to do, you were trying to look at something that's current and some of it's in fashion... you can relate to, I love that bit, but it was just lacking the purpose of what exactly, what exactly were we getting out of that

task.”

104. Mr Blakely was giving advice in this meeting to the claimant as to how she could execute the task better (see p.469), and this was accepted by the claimant under cross-examination.
105. Mr Blakely explained to the claimant in this meeting that had he observed a similar approach adopted by Kyri or Tia then he would be having this conversation with them.

Conclusions on allegation 2.1.6

106. The allegation is not made out as pleaded. The claimant was not criticised for adopting the Apprentice style task, but rather questions were asked around its execution. This is constructive feedback of the session. This is not the subjecting of the claimant to a detriment.
107. Further, there is no evidence brought that supports that these questions were because of, motivated by or related to the claimant’s race.
108. Allegation 2.1.6 fails and is dismissed.

Allegation 2.1.7: the claimant raised grievances on 25 and 26 January 2022, and they were not taken seriously or investigated at all

109. The claimant explained under cross-examination that this related to a grievance that Mr O’Malley had fabricated the register incident (see allegation 2.1.4).
110. The claimant attended an observation feedback session on 25 January 2022. And a progress meeting on 26 January 2022.
111. The claimant at no point raised a grievance in relation to any matter on either 25 or 26 January 2022. However, she did raise the register incident on 26 January 2022 (see p.509). This matter was fully discussed. After it had been discussed between the claimant and Mr O’Malley, the claimant was asked whether it had been put to ‘bed now’ and whether it was over and done with. The claimant agreed that it had been. The claimant considered the issue at this point to be resolved.
112. The claimant during these meetings at no point alleged that Mr O’Malley had made the incident up. Nor that his conduct needed to be investigated.

Conclusion on allegation 2.1.7

113. There was no grievance raised by the clamant, and nothing raised that required further investigation beyond the discussions that took place on 25 and/or 26 January 2022. In those circumstances, the claimant has not been subjected to a detriment.

114. Further, no evidence has been adduced from which the tribunal could conclude that any such treatment was because of, motivated by or related to the claimant's race.

115. Allegation 2.1.7 fails and is dismissed.

Allegation 2.1.8: biased advice regarding teaching using PowerPoints

116. The claimant used PowerPoint slides that had been created by other lecturers, namely Ms Savva.

117. Ms Condren had not observed Ms Savva teaching using the PowerPoint slides in question.

118. During the meeting on 26 January 2022, Ms Condren made the following observation (see p.516, which is the transcript form the claimant's recording of that meeting):

"I would say from a, from a, and this is from my own experience, of of of , teaching ermmm, as in your first year of teaching, you have to understand that content inside and out, to be able to teach it, and the problem you have got, if you pick out from other people's resources, you aren't, you don't get the same understanding so, and it is more work in your first year. But, that's part of learning to teach in your first year, just thinking back about that conversation we had about progress, if you are just picking out from a library of things, you are not planning for your class, you are just taking from a shelf which is fine, as it's a starting point, but, but be very careful, about doing that because that might be helping you, it might be helping you, from a time perspective, but from err, from err you being able to plan for your students progress, it might actually be making it more challenging for you, because you're not, do you know what I said, in terms of creating activities that access, their learn do that because you're taking something of the shelf, which hasn't necessarily been designed for your group of students, maybe just thinking about that in terms of your planning."

119. This was Ms Condren giving the claimant constructive feedback on the use of resources, with a view to assisting the claimant to develop her practice.

Conclusion on allegation 2.1.8

120. The claimant failed to put this allegation to Ms Condren. And therefore Ms Condren's evidence was accepted to be accurate in respect this allegation.

121. Furthermore, the claimant accepted that she had used unmodified versions of PowerPoint resources that had been created by another lecturer. Ms Condren observed the claimant's lesson and had some

concerns that the claimant was using resources that were not designed to develop the progress of her students. And this matter was raised with the claimant to ensure that the claimant could develop her own resources that are suitable for her own students. The comments raised do not reach the level of being a detriment.

122. Further, no evidence has been adduced from which the tribunal could conclude that any such comments were because of, motivated by or related to the claimant's race.

123. Allegation 2.1.8 fails and is dismissed.

Allegation 2.1.9: key accusations missed out of biased notes from meeting on 26 January 2022

124. Ms Lees took a summary note of the meeting that took place on 26 January 2022 (see pp.565-566). This was not a verbatim account of everything said at that meeting. This records the specific allegations raised by the claimant in respect of Mr O'Malley (see bullet point 12 and 14 on p.565).

125. Ms Lees records the claimant's concerns about Mr O'Malley asking questions about her lessons. She does not record anything other than the claimant's version of these matters and her explanation.

126. There is nothing in this note that questions the veracity of any of the claimant's claims.

127. Ms Lees recorded that the claimant was 'offended' by the question she was asked by Mr O'Malley based on an honest assessment of the discussion with the claimant.

Conclusions on allegation 2.1.9

128. At no point did the claimant put to Ms Lees that her actions in respect this allegation was because of or motivated by the claimant's race. And therefore, the tribunal was bound to conclude that Ms Lees's evidence was accurate on this, and that her actions were not because of or motivated by the claimant's race. However, the tribunal also makes the following observations about the evidence generally.

129. This part of the claimant's case appears to rest on two matters: first, that Ms Lees did not fully record the allegation she raised about Mr O'Malley in relation to asking questions about her lessons behind her back, and; secondly, using the word offended rather than shocked (the claimant suggesting that the word offended would suggest that she had something to hide) when recording the incident concerning the register mark.

130. It is clear from the note, that Ms Lees is merely recording the claimant's concerns about Mr O'Malley asking questions about her

lessons. There is nothing to suggest that this has been downplayed in any way. Ms Lees does not include anything from Mr O'Malley that denies the allegation. The claimant at no point raises concerns about this recording of the detail at the time. It is unclear how the claimant says this is subjecting her to a detriment.

131. Considering the evidence, the tribunal has heard on the incident involving the student absence mark, that recorded appears to be an accurate summary of it. This note appears to be led by the explanations provided by the claimant.
132. Based on the above and given our findings on this matter, the claimant has not been subjected to a detriment as alleged. The key issues have been recorded, and for the most reflects the claimant's position accurately. And the use of the word 'offended' rather than shocked does not reach the level of being a detriment.
133. Further, no evidence has been adduced from which the tribunal could conclude that any such comments were because of, motivated by or related to the claimant's race.
134. Allegation 2.1.9 fails and is dismissed.

Allegation 2.1.10: Ms Lees asked 'is it worthwhile us talking about the different things?'

135. In the meeting on 26 January 2022, Mr O'Malley raised with the claimant that she had mentioned that he had taken something off her desk (see p.514).
136. The claimant replied with: 'Yeah, yeah, it was different things that started, like when different things have happened and then, the last thing kind of makes you like, just different things basically.'
137. Ms Lees replied with the following: 'Is it worthwhile us taking about these these different things? To get things ironed out I suppose, the ideal would be like you said, would be to leave here and everybody knows where, where everything is.'

Conclusion on allegation 2.1.10

138. At no point did the claimant put to Ms Lees that her actions in respect this allegation was because of or motivated by the claimant's race. And therefore, the tribunal was bound to conclude that Ms Lees's evidence was accurate on this, and that her actions were not because of or motivated by the claimant's race. However, the tribunal also makes the following observations about the evidence generally.
139. The allegation brought by the claimant is suggesting that the claimant wanted to raise an issue and that Ms Lees, to shut down that discussion, asks "is it worthwhile us talking about the different things?".

However, this takes the comment out of context. It is indeed Ms Lees that invited the discussion about the issues that the claimant has referred to as 'different things'. This is not subjecting the claimant to a detriment.

140. Further, no evidence has been adduced from which the tribunal could conclude that any such comments were because of, motivated by or related to the claimant's race.

141. Allegation 2.1.10 fails and is dismissed.

Allegation 2.1.11: starter activity criticised by Mr O'Malley

142. Mr O'Malley informally observed the claimant on 03 March 2022. The observation record is at p.588.

143. As part of the lesson, the claimant used a starter activity. Mr O'Malley had never observed either Ms McMillan or Ms Savva in their execution of this same starter activity.

144. Mr O'Malley during his observation of the claimant on 03 March 2022 made the following comments:

- a. When the claimant was going through the starter a lot of the students in the class were talking and there was low level disruption.
- b. Starter was quite brief and ran through quickly. Make the purpose of it known to the students. Perhaps think of ways to make the starter a little more substantial and challenging. This could have been through multiple questions, scenario based assessment etc. For example, give them a well known company and look at what factors could impact their cash flow in both good and bad ways.
- c. Some tasks and activities within the lesson to be assessed for how challenging they are for the learners e.g. starter activity.

145. Mr O'Malley in his observation did not criticise the claimant using the starter activity in question, but its execution of it. This is the unchallenged evidence of Mr O'Malley.

Conclusions on allegation 2.1.11

146. The claimant brings this allegation based on criticism for using the starter activity in question. However, the tribunal has found that this was not the case, and it was the execution of it that had been commented on. Mr O'Malley can be seen to be providing constructive feedback on how to improve the started activity and to make it more challenging for the learners. This is not subjecting the claimant to a detriment.

147. Further, no evidence has been adduced from which the tribunal could conclude that any such comments were because of, motivated by or related to the claimant's race.
148. Allegation 2.1.11 fails and is dismissed.

Allegation 2.1.12: failed teaching observation on 09 March 2022, no strength, full of weaknesses, and some feedback was unrelated to her teaching

149. 09 March 2022 was the first formal observations of the claimant undertaken by Ms Dance or Ms Richardson.
150. The claimant's teaching on this occasion was poor, and continued to demonstrate similar themes that were recorded as negatives in previous observations. During this lesson Ms Dance and Ms Richardson recorded areas for development which were accurate recording of issues observed during the session, this included:
- a. Giving the students a break during the session and finishing early. Although the claimant denies that she allowed the students to finish early, given that the claimant accepts she has done this previously, namely on 19 January 2022 (see p.421, and the claimant accepted under cross examination that she had been told not to let students finish early following this observation), the tribunal finds that on balance she likely did allow the students to leave early and this was duly recorded.
 - b. Sitting to the side of the room facing away from the students, until students expressed a lack of clarity. The claimant appeared to accept that this did happen during the lesson, although explained that this was due to all front facing desks being occupied. So on balance the tribunal accepted this was an accurate record.
 - c. Keeping her coat on. The claimant again accepted that she did keep her coat on. This was raised as teachers are expected to exhibit behaviours one would expect from students (see p.600).
 - d. Failing to challenge low-level disruption. This is a common recurring theme from previous observations, so the tribunal accepts that this is an accurate recording from the observation.
 - e. Failing to answer a student's question. The claimant accepted on numerous occasions under cross-examination that she was asked a question by a student, and the claimant's response was that the student should know.

Conclusions on Allegation 2.1.12

151. The tribunal has accepted that the inclusion of the areas for development were accurate reflections based on what had been observed. And the claimant did not appear to challenge that these things had taken place. Rather, she questioned their relevancy to her teaching practice.
152. The claimant at no point identified strengths from this lesson that

she says should have been recorded but were not for reasons related to her race.

153. Given our findings above, the tribunal was satisfied that the lesson observation record was an accurate reflection of what was observed by Ms Dance and Ms Richardson. Both of whom had not previously observed the claimant, and yet identified some issues that were common to other observations. This consistency in feedback, where the observer was somebody different and observing the claimant for the first time, further supports this conclusion.

154. Further, the claimant has adduced no evidence to support that any of the allegation she is bringing was because of her race or motivated by her race.

155. Allegation 2.1.12 therefore fails and is dismissed.

Allegation 2.1.13: teaching observation on 09 March 2022 and feedback session

156. This is similar to allegation 2.1.5, and the same findings apply here.

157. At the meeting on 10 March 2022, Ms Richardson agreed to show the claimant the notes from the observation on her iPad. This was to allay the claimant's worries about significant amendments being made to the observation form after the feedback session. This was not usual procedure but adjusted so as to put the claimant's mind at ease.

158. When trying to view the feedback the claimant stood up, was acting aggressively and attempted to forcibly take the iPad from Ms Dance. In reaching this conclusion the tribunal considered the evidence of Ms Richardson, Ms Dance, the claimant, Mr O'Malley and the notes at pp.620-621. The notes are the record of the event from Ms Dance and Ms Richardson created the day after the feedback meeting. The claimant accepted the accuracy of most of what was included in the notes, save for making a comment that Ms Dance 'did not have that much memory loss' and that she forcibly tried to grab the iPad (although she did accept standing up and putting her hand out to get the iPad). Mr O'Malley gave evidence of the claimant acting aggressively in a meeting on 25 January 2022, which was unchallenged and therefore accepted by the tribunal as being accurate (see O'Malley witness statement paragraph 28). All of this, along with the claimant's actions on the day of her dismissal led the tribunal to find on balance that he claimant acted aggressively in this meeting with Ms Dance and Ms Richardson, and forcibly tried to grab the iPad from Ms Dance, and that the notes at pp.620-621 are an accurate account of the claimant's actions on that day.

Conclusions on allegation 2.1.13

159. The tribunal's conclusion on this allegation mirrors that above in respect of allegation 2.1.5. The standard and reasonable practice of the

respondent was that observation notes were not completed until after the feedback session. So that the notes could take account of any discussions that took place at that stage. Not having completed the observation notes in advance in advance of the feedback session is not a detriment, as it is simply not possible.

160. Furthermore, the parties do not dispute that the claimant was invited to look at the notes on Ms Richardson's iPad. And therefore, that part of the allegation is not made out.
161. Further, no evidence has been adduced from which the tribunal could conclude that any such actions were because of, motivated by or related to the claimant's race.
162. Allegation 2.1.13 fails and is dismissed.

Allegations 2.1.14, 3.1.1 and 4.2.1 (dismissal without notice and unfounded allegations of being violent and a danger to children) and allegations 2.1.15, 3.1.2 and 4.2.2 (manager constructed dismissal with others)

163. Mr O'Malley dismissed the claimant on 11 March 2022. This was a decision made by Mr O'Malley alone. The dismissal documents all support that this was a decision made by Mr O'Malley. Mr O'Malley was clear and unambiguous in his evidence on this point. And there is no evidence to the contrary.
164. The reason that Mr O'Malley dismissed the claimant was for a combination of performance issues and conduct, namely the claimant's conduct during her observation feedback with Ms Dance and Mr Richardson on 10 March 2022 and her conduct in the office on 11 March 2022, which was observed by Ms Richardson, Ms Leak and Ms Wilkinson (these incidents are recorded in the notes at pp.620-622).
165. In reaching this conclusion, Mr O Malley considered the evidence presented to him by Ms Dance, Mr Richardson, Ms Leak and Ms Wilkinson. Although he considered that her conduct alone constituted gross misconduct due to the unprofessionalism and loss of control she had demonstrated, he also considered that her performance fell well below the expected standard, and as this was a third observation failed, he considered that the claimant would not be able to continue on the PGCE programme. Mr O'Malley dismissed for the combination of these two reasons. The tribunal considered the Mr O'Malley's evidence to be consistent on this point, and supported by the documents the tribunal has seen. And the claimant did not when cross-examining Mr O'Malley put to him that dismissal was for any other reason, including being because of or motivated by race, or on the grounds of a protected act.
166. At no point did Mr O'Malley accuse the claimant of being violent and a danger to the children. Mr O'Malley's evidence is that the details on p.661 made up the content of what he said to the claimant when dismissing her. The claimant accepted when it was put to her under cross

examination that large parts of the italicised part of p.661 were said to her, including specific phrases such as not having trust in her lessons and allegations of tampering and unacceptable conduct, amongst others. The tribunal therefore accepted on balance, that the italicised part of the document was likely the precise content used by Mr O'Malley at that meeting. Given that finding, the tribunal accepted that Mr O'Malley likely referred to safeguarding, and an obligation to consider looking into a person's conduct where there is behaviour that may indicate that they may not be suitable to work for children, rather than referring to the claimant as being violent and a danger to children. It is more likely that the claimant jumped to the conclusion that he was suggesting she was violent and a danger to children based on those words used and then used this phrase herself when talking to the police (as recorded by Mr O'Malley at p.662, and which the claimant does not dispute using). Although the tribunal was split in terms of the purpose of the words used (the minority considering that Mr O'Malley intended to link the claimant's 'unacceptable' conduct and safeguarding together to suggest a potential danger to children) the tribunal unanimously agreed that those specific words were not used nor were such allegations ever made by Mr O'Malley.

Conclusions on allegations 2.1.14, 3.1.1 and 4.2.1 and 2.1.15, 3.1.2 and 4.2.2

167. Given our findings above, particularly that Mr O'Malley was the decision maker, that he made that decision alone and based on evidence before him and that he did not refer to the claimant or make an allegation that she was violent and a danger to children, allegations 2.1.14 and 2.1.15 must fail and are dismissed.

Allegation 2.1.16: Mr O'Malley refused to speak to the police post-dismissal

168. In the aftermath of the claimant's dismissal, the claimant was told by Mr O'Malley that she would be escorted off-site. This was normal practice of the respondent when somebody had been dismissed.

169. The claimant did not leave the respondent's premises, and Mr O'Malley requested assistance from security.

170. During this, the claimant called the police. And she told Mr O'Malley that he would need to speak to the police given he was accusing of her of being a danger to the students.

171. Mr O'Malley did not speak to the police, and he did not as he did not consider that a criminal offence had been committed and it was therefore not a police matter. Rather, Mr O'Malley had doubt about the claimant from a safeguarding perspective based on reports received by him from others. This is not a police matter.

Conclusions on allegation 2.1.16

172. It is difficult to envisage in what way Mr O'Malley not discussing matters with the police when the claimant called them is a detriment. There was no criminal offence committed by the claimant and therefore there was no reason for him to speak to the police. In those circumstances, Mr O'Malley not talking to the police during the events is not subjecting the claimant to any detriment.
173. Further, no evidence has been adduced from which the tribunal could conclude that any such actions were because of, motivated by or related to the claimant's race.
174. Allegation 2.1.16 fails and is dismissed.

Allegations 2.1.17, 3.1.3 and 4.2.3: The Claimant states, in relation to her dismissal on 11 March 2022, that there was "no evidence, no investigations, no warnings, and no disciplinary, nothing"

175. The tribunal's findings in respect of Allegations 2.1.14 and 2.1.15 equally apply here.
176. Mr O'Malley was aware at the point of dismissal that the claimant had failed to pass multiple observations at the time of dismissal, including 3 PGCE observations (although Mr O'Malley at the time thought it was 4, which he corrected under cross examination). The claimant was aware at the point of dismissal that she had failed to pass multiple observations and was aware of the consequences that this would have for her continued employment.
177. In the claimant's probation meeting on 16 December 2021 the claimant was made aware that her teaching practices had not met expectation, that there were concerns about some of her actions and that there was a need for improvement. The claimant knew at this stage that if there was no improvement then she was unlikely to pass probation (see pp.396-398).
178. On 26 January 2022, in a meeting between the claimant (the transcript starts at p.497), Ms Lees, Ms Condren and Mr O'Malley, the claimant was told by Ms Lees, when discussing the claimant's performance to date, that '...if things don't improve, we need to have a different conversation...' (see p.520).
179. On 11 March 2022, the claimant asked Ms Richardson what the next stage was given that she had failed a further PGCE observation. This was because the claimant understood that further failed PGCE observation could have an impact on her continued employment by the respondent.
180. On 11 March 2022, having failed to pass her third PGCE observation, the claimant emailed Mr O'Malley to inform him that Ms Richardson is speaking to Bolton University, and that she had emailed Ms Lang to put her learning coach meetings on hold (see p.616).

181. When an individual is still in their probation period, the respondent applies different procedures under their disciplinary policy (starts at p.860). It is made clear that when the respondent is assessing suitability for or capability in a role where a person is probationary staff, the respondent is not necessarily obliged to progress through every stage of the disciplinary process (see p.866).
182. Mr O'Malley genuinely believed that it was within his remit to apply a truncated disciplinary/dismissal process and that he did not have to follow the full formal process contained within the respondent's policies. He considered that he had the power to terminate the contract of a staff on probation if he considered that that was the right approach to adopt. And he could make this decision on his own.
183. Mr O'Malley considered that he had the power to dismiss in the way he did by virtue of clause 6.1 of the claimant's contract (see p.272) and the relevant provision in the disciplinary policy (see p.866). And this was a genuinely held belief of Mr O'Malley. The tribunal accepted Mr O'Malley's evidence on this. He was clear and precise in explaining what powers he considered himself to have, and explained that this was something he has had to do previously, and that he used his power in a similar way or a white British probationary member of staff.

Conclusions on allegation 2.1.17, 3.1.3 and 4.2.3

184. Mr O'Malley clearly had evidence before him when deciding to dismiss the claimant on 11 March 2022. Not only did Mr O'Malley have knowledge of and an understanding of the claimant's performances to date in respect of teaching practices and failing of teaching observations, and that the claimant had failed a further PGCE observation on 10 March 2022, he also had documented accounts of the claimant's behaviour from that same day from four separate individuals.
185. The claimant had had previous warnings in relation to her performance through feedback and her probation meeting, and she understood that if she did not improve then she was likely to fail her probation.
186. Although the claimant was not made aware that the meeting of 11 March 2022 was to consider dismissal, that allegations were not put to the claimant and Mr O'Malley had made a decision in advance of the meeting, it was Mr O'Malley's understanding that his decision to dismiss in this meeting for the grounds of capability and conduct was within his discretion. And that his approach was compliant with the respondent's procedures when an individual was still within their probation period.
187. Mr O'Malley followed a procedure that he considered was open to him, given that the claimant was still in her probation period. And he considered that a truncated process would be sufficient in the circumstances, given the evidence he had in respect of the claimant's

performance and behaviour.

188. The facts on which these allegations are not made out and therefore must fail.

189. And further, there is no evidence adduced that supports any connection to the actions of Mr O'Malley on 11 March 2022 as being because of, related to or motivated by the claimant's race. Nor is there evidence to support that any actions taken that day was in some way caused by the claimant having done a protected act.

Allegation 2.1.18, 3.1.4 and 4.2.4: claimant was escorted around the college by security officers and joined by Ms Condren. Mr O'Malley was asking students to move out of the way as if the claimant was a criminal. Ms Condren and Mr O'Malley were smiling and laughing.

And allegation 2.1.31 and 3.1.8: Ms Dance followed/escorted the claimant around the ALZ whilst in the process of leaving. And prevented the claimant from talking to Lauren Terry

190. The claimant after she was dismissed was informed by Mr O'Malley that he was going to escort her off site and that if the claimant did not leave the premises then security would have to be involved (see p.661).

191. The claimant refused to leave the premises at this point. The claimant accepted this under cross examination.

192. Mr O'Malley, contacted the respondent's security team, which led to Mr Ziyarab and Mr Wilcock attending to the incident. This was for the purpose of escorting the claimant off the premises in circumstances where she was refusing to leave.

193. Instead of leaving the premises, the claimant entered both the Student Learning Zone and the SMT corridor. During this time the claimant was being aggressive and shouting. In making this finding the tribunal has taken into account the report submitted by Mr Ziyarab at p.619, the note of Ms Condren at p.624 and of Mr O'Malley at p.662. This is consistent with the evidence that the tribunal heard from both Mr O'Malley and Ms Condren. Particularly compelling evidence came from Ms Condren who explained that she was in a meeting at the time and left this meeting due to hearing the commotion along the corridors. Much of Ms Condren's evidence at p.624 where she recorded this incident was accepted by the claimant as being accurate, which supported the tribunal's conclusion that Ms Condren's account was an accurate reflection of what she had witnessed. This included reference to the claimant 'enjoying her VIP treatment', her description of the route, the discussion around the letter, amongst other things. All of which the claimant accepted had happened.

194. Ms Dance did not follow the claimant around the respondent's premises during this period. Rather, she arrived at the ALZ at the point where the claimant was collecting her things from her locker to leave.

195. Whilst in the ALZ, the claimant approached Lauren Terry and talked to her. And suggested to the student to come with her.
196. Ms Dance told the student to sit down and to not go with the claimant.
197. The claimant responded to this by saying “what do you think I am going to do? I would have done it already?”.
198. Ms Dance’s evidence in relation to her involvement in the ALZ at paragraphs 30-32 of her witness statement are accepted as accurate by the tribunal. Especially given the tribunal’s views on Ms Dance’s evidence noted above. Furthermore, the claimant when cross-examined gives evidence that closely reflects that given by Ms Dance. Namely, Ms Dance was in the ALZ. The claimant approached the student, and Ms Dance told the student to sit down. And the claimant refers to talking to the student and asking her a question. And the claimant also refers to her saying “If I was going to do something I would have by now.”
199. During this period those individuals present, including Mr O’Malley, the two security officers, Ms Condren and Ms Dance were trying to persuade the claimant to leave the respondent’s premises.
200. Neither Mr O’Malley or Ms Condren smiled or laughed during this incident. Given the seriousness of the events and given the focus was to persuade the claimant to leave the respondent’s premises, the tribunal does not accept that either of the two named individuals smiled and/or laughed.
201. Mr O’Malley did not ask students to move out of the way of the claimant, as if she was a danger to them. Mr O’Malley’s evidence in his witness statement only refers to passing one student on the stairs, and there is no suggestion that he moved her out of the way. The claimant did not challenge this evidence, nor did she put to Mr O’Malley that he was moving students out of the way. Furthermore, when the claimant was cross-examined on this, her answer was ambiguous. The claimant responded to say ‘...if he did move students out the way...’ Given all of this, the tribunal concluded that this did not happen.

Conclusion on allegation 2.1.18, 3.1.4 and 4.2.4

202. Given our findings above, these allegations fail and are dismissed.
203. The claimant has not satisfied the tribunal with evidence to support findings of facts on which these allegations are brought.
204. And further, the claimant has not adduced any evidence that supports that any of this allegation was because of, related to or motivated by either her race or a protected act.
205. In terms of escorting of the claimant around the premises. The tribunal was satisfied that any escorting of the claimant was solely

because of her refusal to leave the respondent's premises after she had been dismissed.

Conclusion on allegations 2.1.31 and 3.1.8

206. The claimant has not established the facts on which these allegations are brought. The tribunal finds that Ms Dance did not follow or escort the claimant around the premises. Nor does it find that Ms Dance prevented the claimant from speaking to the named student. The claimant has failed to establish the facts on which these allegations are brought. The claim must fail and is dismissed.
207. The claimant has also produced no evidence that supports any link to the alleged conduct of Ms Dance on this day to her race in any way. There is no evidence brought that supports that any of this allegation was because of, related to or motivated by the claimant's race.
208. Allegations 2.1.31 and 3.1.8 do not succeed and are dismissed.

Allegation 2.1.19 and Allegation 4.2.5: the claimant's request on 10 March 2022 for a grievance meeting was completely ignored

Allegation 2.1.21 and Allegation 4.2.6: Following the claimant's dismissal, Ms Buchanan refused to see the claimant despite her requesting three times as she was too busy. Stated Mr O'Malley dealing with it. And Ms Buchanan's email on 11 March 2022 was only sent to try to look innocent

209. Shortly after the claimant had completed her feedback session with Ms Richardson and Ms Dance on 10 March 2022, the claimant emailed Ms Buchanan (that being at 5.28pm (p.610)). The email was to request a meeting with Ms Buchanan to discuss the claimant's progress. This references that there a few issues to discuss. However, the claimant provides no further information. The email reads:

"Dear Karen,

I hope that you are well.

I am emailing to ask, could I please have a meeting regarding my progress at Burnley College so far.

I have quite a few issues to discuss about.

I am very flexible, so whenever is good for, is good for me.

Thank you,

Chido"

210. Ms Buchanan at the time was busy involved with a funding bid, with a deadline to be met on 11 March 2022. This meant that Ms Buchanan

was not reading her emails or responding to them at this time, with her focus solely on meeting the bid deadline. This was Ms Buchanan's evidence and is consistent with that explained to the claimant at the time (see p.613). The claimant did not challenge this.

211. Following the claimant's dismissal, and during the period when the claimant was refusing to leave the respondent's premises, the claimant approached reception and asked whether Ms Buchanan was in her office.
212. The claimant was told not to enter the corridor of the Senior Management Team. However, she entered the corridor anyways when a staff member opened the door to come out the other way.
213. The claimant entered Ms Buchanan's office, despite not having a meeting arranged. And Ms Buchanan told the claimant that she did not have time to meet with the claimant at moment in time, as she was going into a meeting, followed by another meeting with Liam. This meeting was with Liam Hurley rather than Mr Liam O'Malley.
214. Ms Buchanan informed the claimant that Mr O'Malley was dealing with things and that she should listen to him. At which point the claimant left Ms Buchannan's office (this is consistent with the note created by Mr O'Malley recording the incident at the time, see p.662).
215. Ms Buchanan did not read the claimant's email until the afternoon of 11 March 2022, that being after the claimant had entered her office earlier that day, and she replied to the claimant that same day (see p.613). This was Ms Buchanan's clear evidence under oath, and it is consistent with the time of her reply to the claimant. In reply, Ms Buchanan wrote:

"Good afternoon Chido

Thank you for your email and for calling into the office on the off chance that I was free this afternoon

The closing date for our £3.4m T Level Capital bid was today and as our Finance Director was unexpectedly off work it has taken the Senior Management Team all day to meet the deadline and pick up Stuarts other commitments.

I am sorry that you have a few issues to discuss. The best route is always through your line manager and I know Liam is very supportive. However if, after speaking to Liam, you still have concerns or issues then please could you speak to our HR Manager – Vikki Lees and she will direct you to the best process to follow.

As Principal of the College my role is to hear any possible appeals and whilst I'm sure your issues wouldn't get that far I do need to keep myself "clean" from listening to issues just in case

I hope you understand the position

Kind regards

Karen”

216. The tribunal accepts that the reference to keeping herself clean was simply Ms Buchanan’s wording to indicate that she could not interfere with any issues the claimant was having so as to keep herself impartial as she would be the likely chair of any appeal, if matters got to that stage. There was no reason for the tribunal to find otherwise, and this was plausible given Ms Buchanan’s senior role with the respondent.

217. At the time of replying to the claimant, Ms Buchanan was not aware that the claimant had been dismissed. This is Ms Buchanan’s evidence in this case, this was unchallenged by the claimant and there is nothing in Ms Buchanan’s response to suggest that she was aware of the claimant’s dismissal at this point.

218. Mr O’Malley emailed Ms Buchanan and Ms Lees on 11 March 2022 at 10.55am (see p.620) informing her of the events on 10 and 11 March 2022. This was not read by Ms Buchanan until Monday 14 March 2022.

219. On 10 March 2022 at 6.12 pm, the claimant emailed Ms Lees (see p. 612). In this email the claimant writes:

“I am emailing to ask, can you definitely make sure that a member of the union comes to the meeting I have requested with Karen and the Governors please. Can I bring anybody else or is it one person like last time?”

Conclusions on Allegation 2.1.19, Allegation 4.25, Allegation 2.1.21 and Allegation 4.26

220. The claimant in her email to Ms Buchanan did not raise a grievance. The email is vague and ambiguous and only refers to a meeting concerning her progress. Further, Ms Buchanan did not ignore that email. Indeed, she replied to at the point when she read it. Allegations 2.1.19 and 4.2.5 are therefore not made out on the facts.

221. Turning to allegations 2.1.20 and 4.2.6. The claimant has not evidenced that on three occasions on 11 March 2022 she asked to see Ms Buchanan, but she responded to say that she was too busy. Rather, the claimant made no request at all for a meeting on that day and instead entered Ms Buchanan’s office uninvited, and this was despite being told not to enter the SMT corridor.

222. Further, the email sent by Ms Buchanan to the claimant on 11 March 2022, as found above, was a response to the claimant’s email without any knowledge of her dismissal. And the use of the word clean was not for any other reason other than in reference to remaining impartial for any appeal matters, should events go in that direction.

223. Allegations 2.1.20 and 4.2.6 are not made out on the facts.

224. Further, there is no evidence to support that any of the allegations 2.1.19, 4.2.5, 2.1.20 or 4.2.6 were any way because of, related to, or motivated by the claimant's race.

225. Allegations 2.1.19, 4.2.5, 2.1.20 and 4.2.6 all fail and re dismissed.

Allegation 2.1.20, 3.1.5 and 4.2.6: Locked out of respondent's IT system immediately after dismissal and blocking of claimant's personal email addresses

226. The respondent operates a policy whereby an employee as their access to the IT systems suspended/removed when they leave its employ. This is for security reasons. The tribunal accepted the evidence of Mr Glass on this matter, the claimant did not challenge this suggested policy, and this is consistent with standard employment practices (see para 5 of Mr Glass witness statement).

227. The claimant met with Mr O'Malley on 11 March 2022. There was no change to the claimant's IT access at 3.01pm (see p.805). At this point the claimant had retained access to the IT system.

228. Ms Condren discussed the claimant's leaving with Mr James Stott of IT, in particular raising concerns about the claimant having not returned her work laptop (the email at p.887 sent on 11 March 2022 at 15.58 from Mr Stott to Ms Condren supports this finding).

229. The claimant had her IT access suspended from 08.01am on 12 March 2022 (see p.890).

230. Ms Lees was informed of the claimant's dismissal and the events that followed by Mr O'Malley on 11 March 2022.

231. The claimant tried to send an email to Mr O'Malley from a private email address on 12 March 2022 at 3.06pm. However, the claimant sent this email to Liam.OMalley@burnley.ac.uk, which is not the correct email address for Mr O'Malley. Rather, the correct email address is L.OMalley@burnley.ac.uk. The claimant received an autoreply to indicate that her message to Mr O'Malley was blocked. The reason why it was blocked was because the 'Recipient address [was] rejected'. This was because the claimant (see p.639).

232. The claimant continued to use the incorrect email address for Mr O'Malley from this point forward, including on 22 March 2022 (see p.668).

233. The claimant sent a WhatsApp message to colleagues on 13 March 2022, in which the claimant presented her account of what happened on 11 March 2022. This included allegations that this tribunal has rejected, including that Mr O'Malley made accusations including that the claimant was a danger to the children (see p.645).

234. Ms Dance was aware of the 13 March 2022 WhatsApp message

from the claimant, and forwarded it on to Ms Lees on 14 March 2022 at 10.22am.

235. Ms Lees requested that a block be put on the claimant's personal email address on 14 March at 11.52 am (see p.657). This was because of concerns she had for staff, managers and student colleagues. And this was standard practice by the respondent where an employee has left the employ of the respondent and has given the respondent reason to question their conduct and/or intent. The tribunal accepted MS Lees evidence on this matter (see para 32 of Ms Lees Witness Statement).

Conclusion on Allegation 2.1.20, 3.1.5 and 4.2.6

236. The respondent operates a policy whereby access to IT systems are only available to those that are employed by it, with any such access suspended/revoked once that employment relationship has ended. In these circumstances the tribunal concludes that the claimant was not treated to any such treatment because of her race, nor was it unwanted conduct related to her race, nor was it action she was subjected to on the grounds of any alleged protected act.

237. Given our findings above, the claimant was not removed from the respondent's IT systems immediately on dismissal. With this not taking place until the following morning. Further, the discussion between Ms Condren and Mr Stott of the IT department did not take place until after the decision to dismiss the claimant. In both respects, the facts on which this particular allegation are not made out.

238. The allegation insofar as it relates to the detriment relating to being 'locked' off the respondent's IT system immediately must therefore fail and is dismissed.

239. In respect of the blocking of the claimant's personal email addresses, this was treatment the claimant was subjected to. However, this was not treatment she was subject to either because of her race, or unwanted conduct related to race or on grounds of having made a protected act. This was standard practice by the respondent where an individual has left the employ of the respondent and has acted in a manner that gives rise to concerns. Ms Lees had such concerns, having had her WhatsApp message of 13 March 2022 raised with her, and decided that blocking her personal email address was the correct cause of action in those circumstances.

240. This allegation insofar as it relates to a detriment of blocking her personal email address must also fail.

Allegation 2.1.22, Allegation 2.1.24 and Allegation 3.1.6

241. These allegations were part of an application to amend the claim. These specific allegations were not permitted by way of amendment.

242. As these are not issues to be determined by the tribunal in this case no more is said on these allegations in this decision.

Allegation 2.1.23: When responding to a Subject Access Request on 24 March 2022, the respondent refused access to CCTV footage and destroyed it

243. On 24 March 2022, the claimant's union representative sent an email to Mr Glass, as the College's Data Protection Officer, seeking access to CCTV footage from 11 March 2022 (see pp.693-694).

244. Mr Glass responded on 25 March 2022 to explain that he had spoken with the security team and that footage was only stored for 12 days, and therefore the footage of 11 March 2022 was no longer available (see p.695).

245. The respondent's CCTV systems only retained 12 days of footage due to recording capacity, from around August 2021 (see CCTV manual at p.911).

246. The respondent's Data Protection Policy incorrectly read that footage would be retained for 30 days. However, this was updated in July 2022, after having discovered this error in the policy following the claimant's dismissal (see p.781).

Conclusion on 2.1.23

247. Based on our findings above, the tribunal was not satisfied that the respondent had destroyed the CCTV footage of events on 11 March 2022 in order to escape an obligation to release it to the claimant. Rather, it was lost due to the recording and retention capacity of the respondent's CCTV system.

248. Due to the number of CCTV cameras it had, the respondent was only able to retain CCTV footage for a period of 12 days. The tribunal accepts that Mr Glass did what he could to investigate whether the footage was available but discovered that the footage had been recorded over. That being the case as more than 12 days had passed between the date in question and the request being made.

249. The tribunal is not satisfied that this was less favourable treatment because of the claimant's race. This allegation fails and is dismissed.

Allegation 2.1.25 and Allegation 3.1.7: non-involvement of claimant with interviews for new Business teacher

250. Interviews for a new Business teacher took place on Wednesday 09 March 2022 (see p.621, which is consistent with the oral evidence of Ms Lees).

251. Ms Dance needed some assistance with the mini teach part of the interview. Ms Dance considered that having the entire team present could be intimidating for the interviewee, and so asked two members of staff to take part, namely Ms Savva (a business specialist) and Ms McMillan (an economics specialist).
252. Ms Dance did not approach either the claimant or Ms Leak to assist with the mini teach session.

Conclusions on allegation 2.1.25 and 3.1.7

253. At no point did the claimant put to Ms Dance that her actions in respect this allegation was because of or motivated by the claimant's race. And therefore, the tribunal was bound to conclude that Ms Dance's evidence was accurate on this, and that her actions were not because of or motivated by the claimant's race. However, the tribunal also makes the following observations about the evidence generally.
254. The claimant has failed to adduce any evidence that the conduct she is complaining about in allegation 2.1.25 and 3.1.7 was because of, related to or motivated by her race. The fact that a white member of staff in Ms Leak was not invited to be included in the interview process also supports the tribunal's conclusion that this decision not to include the claimant was not motivated by race.
255. These allegations must fail and are dismissed.

Allegation 2.1.26: Respondent took advantage of no checklist in teaching; told lesson observations are subjective; lesson observations used to police the claimant and single her out, and; Mr O'Malley conspired on failing the claimant on her lesson observations

Allegation 2.1.27: the claimant was subject to 10 lesson observations, with Tia McMillan having fewer and passing with flying colours

256. The claimant was subject to 12 different observations during her employment with the respondent. These were part of the claimant's probation, part of learning walks, part of the claimant's PGCE studies and informal observations put in place to support the claimant's development. These extended to more than 10 observations in total.
257. There are common themes across the lesson observations, that were identified as failings by the claimant in her teaching practices. This included:
- a. Failure to correct student behaviour in the classroom.
 - b. Missing opportunities to stretch and challenge students.
 - c. Failing to engage students.
258. The claimant was subject to the following observations, which the claimant did not bring as part of allegations of discrimination in this case:

- a. The Learning Walk by Ms Dance and Ms Leak on 23 September 2021.
 - b. The learning walk with MS Dance on 15 October 2021.
 - c. The first formal observation with Mr McGhee and Mr O'Malley on 05 November 2021.
 - d. The informal observation by Mr O'Malley on 03 February 2022.
259. The observations that took place involved 6 different individuals: Ms Leek, Mr O'Malley, Mr Blakely, Mr McGhee, Ms Richardson and Ms Dance.
260. The observations accurately reflected the teaching practices observed in those lessons.
261. On 16 December 2021, the claimant attended a 4-month probation review with Mr O'Malley (see pp.396-398). At this meeting the claimant acknowledged a need to improve her classroom management. That she is failing on the practical side of the PGCE. That she is feeling on standardization. And acknowledged the support she was getting, including through observations prior to the observation window and PGCE observations. The claimant also explained that there was a robust suite of support on offer to her. This was a supportive meeting between Mr O'Malley and the claimant.
262. On 17 January 2022, the claimant has an informal observation by Mr O'Malley. The feedback session took place on the next day. As part of this feedback session, the claimant and Mr O'Malley discussed an action plan to help prepare the claimant for her formal observation on 24 January 2022.
263. Mr O'Malley tried to assist the claimant in developing her teaching plan for the observation on 24 January 2022 by email and gave the claimant advice on how to improve her lesson after she had sent to him details of what she was covering (see emails of 21 January 2022 on pp.408-409). He explained that *"anything that you want to ping over though I'd be more than happy to look at 😊"*.
264. Mr O'Malley in a feedback meeting with the claimant on 25 January 2022 (this meeting was covertly recorded by the claimant, with the transcript starting at p.431), was involved in an exchange with the claimant about how observations are assessed, this taking place following a formal observation undertaken by Mr O'Malley on 24 January 2022:
- a. Mr O'Malley explained that the observation did not meet expectations.
 - b. The claimant enquired about the metrics used, and suggested that the metrics were subjective rather than objective.
 - c. Mr O'Malley replied to explain that the breakdown of things that they are looking for are contained in the booklet, and included things such as progress, sequence in the lesson, questioning and feedback.
 - d. The claimant responded to suggest that that could be subjective.

Suggesting 'progress' could be interpreted differently by two different people.

- e. Mr O'Malley replied to say potentially yes.
- f. Mr O'Malley refers to training undertaken by assessors. And that the booklet gives a lot of detail to guide assessors. Before stating '...you're right lesson observation is subjective...'
- g. Mr O'Malley continues to explain that there is a standard process of training. (this conversation is recorded at pp.434-435).

265. Mr O'Malley remained supportive in this meeting and explained that *"I am still 100% here to support [...] if you want to send me stuff still and want me to check through stuff, if you want me to bob in to a lesson, or, or whatever, I want that to still continue, I don't want us to be kind of stopping anything that we were going to do anyway in terms of support and anything else going forward. Ermm, I don't want you to feel like you are not supported either, so if there is anything we can be doing, obviously let me know"*.

266. At a meeting between the claimant, Mr O'Malley, Ms Condren and Ms Lees on 26 January 2022, it was agreed that further support would be put in place for the claimant. This included that the claimant would have more informal observations; that the claimant could observe other people's teaching (Mr O'Malley offered for C to watch him, see p.519); Mr O'Malley would check the claimant's work (see p.519); the claimant would be provided with a learning coach (see p.519); and the claimant would attend Mr McGhie's support sessions (see p.520).

Conclusions on allegation 2.1.26 and 2.1.27

267. Although the phrases of "there is no checklist in teaching" and that "lesson observations are subjective" were used in meetings with the claimant, these are taken out of context. The claimant was using these specific comments to support the idea that she was being subject to subjective assessments, which were negative for reasons connected to her race. Whereas, the reality was that the claimant was not meeting the required standards and was falling below expectations, something which she acknowledged and accepted herself.

268. There is no evidence of any conspiracy amongst the 6 observers that undertook observations of the claimant's teachings. And the common themes that are present in the feedback from those observations, which the claimant did not challenge in respect earlier observations, in itself support the contention that the observations were based on an objective assessment of the claimant's teaching lessons, especially in circumstances where there is no evidence of a concerted conspiracy. In short, the lesson observations were an accurate assessment of the claimant's teachings against the desired standards. There is no evidence to support that the assessments were because of our motivated in some way by the claimant's race.

269. Further, the feedback received from those observations, and the level of support being put in place, further led the tribunal to conclude that

the observations were not part of some conspiracy to see the claimant fail in her role.

270. The claimant was subject to some 10 observations. However, this was a mix between those observations that the respondent subjected everybody to (the learning walks), those observations that formed part of the claimant's probation agreement (formal observations), those that formed part of the claimant's studies (PGCE observations), those that took place following a failed observation and those informal observations put in place to try to help the claimant develop her teaching practices.

271. Subjecting the claimant to the observations that she was does not reach the level of being a detriment. The observations the claimant was subjected to that went beyond those that formed part of her probation agreement and/or PGCE studies fell into either a re-sitting of a failed observation or were supportive in nature.

272. And further there is no evidence to support that these were because of the claimant's race.

273. Allegations 2.1.26 and 2.1.27 therefore fail and are dismissed.

Allegation 2.1.28: on 25 January 2022, Mr Blakely and Ms Leak refused the claimant an extension for a mini teach

274. The mini teach in question was part of the PGCE programme. This was not part of assessing the claimant for probation purposes.

275. Neither Mr Blakeley or Ms Ms Leak, not being teacher's on the PGCE programme, were able to grant such an extension (see paragraph 38 of Ms Leak's witness statement).

276. Ms Butt was the claimant's PGCE teacher.

277. Ms Leak explained to the claimant that as the mini teach was taking place in Ms Butt's lesson that it was for her to decide, and that she could ask Ms Butt. The claimant asked Ms Butt for an extension, which was granted (this was evidence accepted by the claimant under cross-examination).

Conclusions on Allegation 2.1.28

278. Given our findings above, neither Mr Blakely or Ms Leak refused the claimant an extension to her deadline for a mini teach. Rather, they explained the action the claimant should take should she require such an extension. The claimant followed that suggested action and an extension was given to the claimant.

279. The claimant has not been subject to the treatment as alleged, and this allegation must fail and is dismissed.

Allegation 2.1.29 and Allegation 2.1.30 allegations concerning trade union representative attendance at meetings on 26 January 2022 and around 10 March 2022.

280. On 25 January 2022, at 10.42am, the claimant emailed Ms Lees. This referred to a progress meeting the claimant had had with Mr O'Malley on 25 January 2022. And also referred to a further meeting that the claimant was having with Ms Lees.

281. Ms Lees replied to the claimant on that same day at 5.26pm. This suggested a meeting to take place on 26 January 2022 at 3pm. Ms Lees asked the claimant whether this was in relation to observations (and if it was whether the claimant would like Ms Condren present) or whether it was to discuss something wider. Ms Lees also stated the following, 'Although you don't need to, you are welcome to bring a trade union representative or colleague with you for support, if you think it will be beneficial' (see p.424).

282. The claimant first replied to Ms Lees by email on 25 January 2022, at 8.51pm. In this email the claimant explained that Ms Condren could attend if she wanted to, as it is about development, before then referring to discussing something wider. The claimant also explained that she was part of a trade union and if they could attend that would be great. However, in a later email sent by the claimant, this time at 8.56pm, the claimant asked whether somebody who was not a colleague could attend as her representative (see p.423).

283. Ms Lees replied to the claimant by email on 25 January 2022 at 9.17pm to explain that only a trade union representative or a colleague could accompany her.

284. The claimant attended the meeting on 26 January 2022. There was no trade union representative present. The claimant did not request the meeting to be postponed. The claimant accepted that under cross-examination.

285. On 10 March 2022, the claimant emailed Ms Lees in respect of a meeting that she had requested with Ms Buchanan and the Governors. In this email she writes, 'can you definitely make sure that a member of the union comes to the meeting I have requested with Karen and the Governors please' (see p.612).

286. Ms Lees replies to the claimant on 11 March 2022, in which she explains that 'If any meeting is arranged however and you wish for a Trade Union representative to be present, that is something you would arrange rather than me' (see p.611).

Conclusions on Allegation 2.1.29 and Allegation 2.1.30

287. At no point did the claimant put to Ms Lees that her actions in respect allegation 2.1.30 was because of or motivated by the claimant's

race. And therefore, the tribunal was bound to conclude that Ms Lees's evidence was accurate on this, and that her actions were not because of or motivated by the claimant's race. However, the tribunal also makes the following observations about the evidence generally.

288. The tribunal concludes that responsibility rested with the claimant to arrange for a trade union representative to be present in either or both meetings referred to in this allegation. This was not something that was the responsibility of the respondent. This is clear in the communications between the claimant and Ms Lees.

289. Ms Lees in the email at 5.26 pm on 25 January 2022 uses the words '...you are welcome to bring...' There is no suggestion that if the claimant wanted to be accompanied that the respondent would then invite such a person to be present. And in any event, that would not have been possible given that the claimant had merely explained that she was part of a trade union, without explaining which trade union she was a member of or who she wanted to accompany her.

290. And this is made even more explicit in the email from Ms Lees on 11 March 2022.

291. The respondent not inviting a trade union member to be present at a meeting on 26 January 2022, in circumstances where it was the claimant's responsibility, is not subjecting the claimant to any form of detriment. Not postponing the meeting on 26 January 2022 when the claimant was content for the meeting to go ahead and where she did not ask for postponement when no trade union representative was present, is not subjecting the claimant to any form of legal detriment.

292. Ms Lees replying to the claimant on 11 March 2022 to explain to her that it would be for her to arrange for a trade union representative to present if she wanted that, in circumstances where that is accurate, is not subjecting the claimant to any form of detrimental treatment.

293. Further, there is no evidence that supports that any of these decisions or actions noted above was in any way because of or motivated by the claimant's race.

294. Allegations 2.1.29 and 2.1.30 must fail and are dismissed.

Allegation 2.1.32, 3.1.9 and 4.2.8: Removing claimant from WhatsApp groups by Kyriagoulla Savva, Helen Roache and Jemima Jones at the instruction of Liam O'Malley and Sarah Condren

295. Mr O'Malley did not instruct anybody to remove the claimant from any WhatsApp groups. Mr O'Malley denies this in his evidence, and the claimant has brought no evidence to rebut this. The tribunal accepted Mr O'Malley's evidence on this matter given the consistency in his evidence.

296. The claimant, whilst employed by the respondent, was part of a WhatsApp group entitled PGCE people. This contained staff of the

respondent who were all undertaking their PGCE studies at the same time.

297. Ms Condren asked for the claimant to be removed from PGCE WhatsApp group. Ms Condren accepts this to be the case (see para 28 of Ms Condren witness statement). The reason for this was in light of the message the claimant posted in the group (noted above, see pp.645-646) and due to the claimant no longer being a staff member on the programme.

298. On 14 March 2022, Ms Roache removed the claimant from the PGCE People WhatsApp group.

299. Ms Condren was not involved in the removal of the claimant from the WhatsApp groups entitled 'Eastbourne' (see p.630) or 'Shower facern'ts' (see p.650). The tribunal accepted Ms Condren's evidence on this given that she was accepting in respect of the occasion she did request the claimant to be removed from a group. It would make little sense to accept her involvement in removing the claimant from one group to then deny in relation to the other two groups. And the claimant has brought no evidence from which the tribunal could conclude otherwise.

Conclusions on Allegation 2.1.32, 3.1.9 and 4.2.8

300. The tribunal accepted that Mr O'Malley had no involvement in the removal of the claimant from any of the three WhatsApp groups in question. And that Ms Condren was only involved in the removal of the claimant from the PGCE People WhatsApp group.

301. Given the facts identified above, the tribunal concludes that in those circumstances it would not be reasonable to perceive the instruction by Ms Condren in respect of the PGCE People group as detrimental treatment.

302. There is no evidence adduced that supports findings that the action of Ms Condren in respect the PGCE people WhatsApp group was because of the claimant's race, was conduct related to the claimant's race nor action motivated in any way by the claimant's race. And even had the burden shifted, the tribunal was satisfied that the reason why Ms Condren took the action she did was due to the claimant no longer being employed by the respondent and in response to the message the claimant had posted in that group on 13 March 2022, which contained the claimant's perception of events surrounding her dismissal.

303. In those circumstances this allegation, brought as both direct race discrimination and harassment related to race, fails and is dismissed.

304. There is no evidence that links this in any way to any of the alleged protected acts, and so the claim of victimisation also fails and is dismissed.

Allegation 2.1.33 and 3.1.10: Liam O'Malley calling the claimant a thief for

leaving with her work laptop when she was dismissed

305. The claimant as part of commencing her employment with the respondent was provided with a laptop. And she agreed to return her laptop on her last day of employment with the respondent and understood that a failure to do so would incur a £650 deduction from her final wage (see p.361).
306. The claimant told Mr O'Malley that she would not return her work laptop until she had a letter explaining her dismissal. The claimant accepted that she said this under cross-examination.
307. The claimant was told by Mr O'Malley following her dismissal that she would have to leave her work laptop, as taking it would be considered theft. The tribunal accepts Mr O'Malley's evidence on this matter. The tribunal considered this to be more plausible in the circumstances, rather than Mr O'Malley directly calling the claimant a thief. Especially in circumstances where the claimant had not yet left the respondent's premises with the work laptop. This version of events is also consistent with the evidence given by Ms Condren (see para 21 of Ms Condren's witness statement) and the statement that was produced by Ms Condren at the time (see p.624).

Conclusion on Allegation 2.1.33

308. Given the tribunal's findings above, and its findings that the facts on which these allegations are brought have not been established, these allegations must fail and are dismissed.

Allegation 2.1.34: The respondent has lied in its Grounds of Resistance

309. This allegation must fail due to lack of any particulars. The claimant has failed to properly particularise this part of her claim. She has not identified which parts of the grounds of resistance she says are lies. At no point did the claimant put this allegation to any witness. And further, she has failed to establish that any errors in the grounds of resistance had a causal connection to her race. Allegation 2.1.34 therefore fails and is dismissed.

Victimisation claim: Protected Acts

310. The claimant relies on the email at p.610, sent at 5.28pm as being the protected act referred to at paragraphs 4.1.1 and 4.1.2 of the list of issues. This is set out in full below.
311. The email was sent to Ms Buchanan, Ms Lees and Mr O'Malley on 10 March 2022, and reads:

"Dear Karen,

I hope that you are well.

I am emailing to ask, could I please have a meeting regarding my progress at Burnley College so far.

I have quite a few issues to discuss about.

I am very flexible, so whenever is good for, is good for me.

Thank you,
Chido”

312. The claimant at no point made a complaint or allegation of discrimination following this email.
313. This email does not include any information from which any of the recipients could have known that the claimant was intending on raising any allegations of discriminatory treatment.
314. The email relied on is not a protected act pursuant to s.27 of the Equality Act 2010, and all allegations of victimisation therefore fail and are dismissed (this covers allegations 4.3.1-4.3.9).

Procedural matters

315. The tribunal asked a series of questions in respect of potential procedural shortcomings of the respondent in respect of the treatment of the claimant.
316. The tribunal did this for two reasons: first, the claimant’s witness statement has some focus on procedural matters that she perceived as being unfair to her. The tribunal, applying the overriding objective, considered it necessary to ask some questions in respect procedural matters on the claimant’s behalf, given her status as a litigant in person. Secondly, the tribunal was testing the evidence to see whether the respondent’s approach to procedure gave rise to facts from which discrimination could be inferred or was the ‘something more’ that would reverse the burden of proof to the respondent.
317. The tribunal asked questions around the process of dismissal, around safeguarding and around performance management. The tribunal’s views on these matters are unimportant. As it was satisfied that the respondent adopted a consistent approach in respect of the processes adopted. And that the claimant’s race did not influence choices made in respect of process.
318. Although there appeared to be some gaps in the procedures adopted by the respondent, the tribunal was satisfied that none of these matters gave rise to an inference of discrimination, nor was there anything sufficient to reverse the burden of proof. The tribunal has been careful not to stray beyond the matters that were live in this case and takes this discussion no further in this judgment.

CONCLUSION

319. The tribunal has unanimously found that all allegations brought in this case fail and are dismissed for the reasons outlined above.

Employment Judge **Mark Butler**

Date: 03 September 2024

JUDGMENT SENT TO THE PARTIES ON
6 September 2024

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FOR THE TRIBUNAL OFFICE

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

FINAL LIST OF ISSUES

1. TIME LIMITS

1.1 Was any claim made to the Tribunal, whether by the original claim form, or by way of amendment, made within three months (allowing for any early conciliation extension) of the act to which the complaint relates?

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

1.1.3 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

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

(a) Why were the complaints not made to the Tribunal in time?

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

2. DIRECT DISCRIMINATION ON GROUNDS OF RACE AND/OR SEX (EQUALITY ACT 2010 SECTION 13)

2. What are the facts in relation to the following allegations:

2.1.1 The Claimant states that on 1 December 2021 she "had an observation by Ami Leak which had no strengths in the strengths box and rather the weaknesses and areas of development was full". The Claimant states that an example of the negative comments recorded by Ami Leak on her feedback form was regarding giving students breaks, which Ms Leak told the Claimant that no other teacher did

2.1.2 The Claimant states that she "arranged for a feedback session to discuss more of the comments from my observation which occurred a day later on 2nd December 2021. In the meeting with Ami Leak she confirmed that there were no positives at all in my lesson."

2.1.3 The Claimant states that after her mentor observation with Ami Leak on 1 December 2021 and feedback session on 2 December 2021, Ms Leak told the Claimant that her reflective practice was bad because she had not agreed with some of the feedback.

2.1.4 The Claimant states that she was asked by Liam O'Malley on 18 January 2022 about an allegation by a student that the Claimant had marked the student as absent on the register despite their being present, as punishment for misbehaviour. The Claimant has stated her belief that "Liam O'Malley made up this incident along with the student in attempts to get me sacked".

2.1.5 The Claimant states that on 25 January 2022, Adam Blakeley and Ami Leak gave her "a feedback session with uncompleted notes contrary to UCU recommendations".

2.1.6 The Claimant states that during her feedback session with Adam Blakeley and Ami Leak on the same date, she was criticized for doing "The Apprentice Style"

tasks which the whole department was doing, yet nothing was said to her colleagues Tia McMillan and Kyriagoulla Savva.

2.1.7 The Claimant states, in relation to grievances which she says she raised on 25 and 26 January 2022, that her "grievances were not taken seriously and not investigated at all" and suggests this may have been "to protect Liam O'Malley because Vikki Lees and Sarah Condren knew he had been lying about his stories regarding me." This is in reference to the Claimant's allegation that Liam O'Malley fabricated the incident which he discussed with her on 18 January 2022 concerning a student alleging that the Claimant had marked them as absent on the register as punishment.

2.1.8 The Claimant states that during the meeting on 26 January 2022, which she refers to as her grievance meeting, she received "biased advice" regarding her teaching PowerPoints. The Claimant states that Sarah Condren said "you have to be able to understand the content inside out in order to teach it well and if you use other's work, you don't get the same level of understanding. Also, when you choose contents from other's work, it has not been designed with your learners in mind". The Claimant states that the PowerPoints in question were previously used by Kyriagoulla Savva and alleges that for this reason she being criticised for actions that were acceptable for Kyriagoulla Savva, who the Claimant says has white skin, but not for the Claimant.

2.1.9 The Claimant states, in relation to the meeting on 26 January 2022, that she "experienced biased note taking in the Grievance meeting with Vikki Lees, notes that were inaccurate and missed out key accusations I made about Liam O'Malley". The Claimant also states her belief that her "grievance notes were worded in a manner that called into question the veracity of my claims".

2.1.10 The Claimant states that she felt the meeting on 26 January 2022, which she refers to as a "grievance meeting" "was biased as when I went to speak about more issues Vikki Lees asked me, "is it worthwhile us talking about the different things?""

2.1.11 The Claimant states that after her informal observation with Liam O'Malley on 3 March 2022, and after receiving the feedback, she was surprised that her starter activity was being criticised because she knew that her colleagues Tia McMillan and Kyriagoulla Savva, who the Claimant says are both white, were using the same starter or had used the same starter and were not getting any criticism.

2.1.12 The Claimant states that following a teaching observation by Emma Richardson and Bethan Dance on 9 March 2022, she received "another feedback form from an observation which had failed" and which had "no strengths in the strengths box for my lesson and rather full of weaknesses or areas of development". The Claimant states that some of the feedback was unrelated to her teaching and was more concerned with her clothing, in relation to which she states, "I did not understand how this affected my teaching". The Claimant states she did not feel this feedback was a true reflection of her work. The Claimant also refers to feedback regarding low level disruption, as well as the fact that she was sitting with her back to the students and her failing to answer a student's question.

2.1.13 The Claimant states that following the teaching observation on 9 March 2022, Emma Richardson would not give her the observation notes in her feedback

session on 10 March 2022, which the Claimant says is contrary to UCU policy on lesson observation feedback sessions. The Claimant also states that both Emma Richardson and Bethan Dance were giving her a feedback session with unfinished notes and not giving her the notes to look at, which she states "again is against policy".

2.1.14 The Claimant states that on 11 March 2022 her manager, Liam O'Malley, dismissed her without notice for alleged gross misconduct. The Claimant states Mr O'Malley made unfounded allegations against her of being violent and a danger to the children in a long tirade.

2.1.15 The Claimant has also stated "my manager constructed my dismissal with other members of staff helping him" and has stated that Vikki Lees and Sarah Condren helped Liam O'Malley with his "arranged discriminatory dismissal".

2.1.16 The Claimant states that on the date of her dismissal, she called the police for Liam O'Malley to speak to them as she "was so shocked by the accusations". This is a reference to the Claimant's belief that she was being accused of "being violent and a danger to the children". The Claimant states that Mr O'Malley refused to speak to the police, which she states is "contrary to college's Policy".

2.1.17 The Claimant states, in relation to her dismissal on 11 March 2022, that there was "no evidence, no investigations, no warnings, and no disciplinary, nothing".

2.1.18 The Claimant states that following her dismissal, she was "escorted around the college during the College Day with students around and watching by Liam O'Malley, two security men including one called Mohammed and later on Sarah Condren joined in, which amounted to harassment in creating an intimidating, hostile, degrading, humiliating and offensive environment for me like I was a criminal when all allegations were unfounded. On the way around College, Liam O'Malley was even asking students to move as if I was a danger to them". The Claimant also states that "Sarah Condren and Liam O'Malley were smiling and laughing at each other as they came with security to escort me off campus. To show that they were only wanting to harass and victimize me, they were apparently escorting me off campus because I was a "danger to the children" affirming the unfounded allegations Liam accused me of in my dismissal."

2.1.19 The Claimant states that the grievance which she says she raised via an email to Karen Buchanan on 10 March 2022 "to ask for a grievance meeting" was completely ignored.

2.1.20 The Claimant states that following her dismissal on 11 March 2022, she was locked off the Respondent's IT system immediately, as she was unable to log on or send an email to Liam O'Malley after this. The Claimant states her belief that this means the Respondent had planned this action with IT beforehand. The Claimant states that she also tried to email Vikki Lees, Karen Buchanan and Sarah Condren to pass the message on but never got a reply or an acknowledgement. The Claimant states that by 22 March 2022, "all my emails from my personal email addresses (more than one) were blocked by the whole Burnley College email system" and that "this shows that my dismissal was well coordinated with different departments working together".

2.1.21 The Claimant states that, following her dismissal on 11 March 2022, the

Respondent's Principal, Karen Buchanan, refused to see her after being asked three times, as she was too busy to speak to the Claimant. The Claimant states that Ms Buchanan told her that Liam O'Malley was dealing with it. The Claimant states her belief that the email which Ms Buchanan sent to her at 5.25 on 11 March 2022 was her way of trying to make herself look innocent and that she was not part of the Claimant's dismissal. The Claimant states that Ms Buchanan knew she had been dismissed and had no access to her emails anymore. The Claimant states that Ms Buchanan "wanted to keep herself "clean" when she knew she was "dirty" all along".

2.1.22 The Claimant states that following her dismissal, she received a letter from the Respondent on 23 March 2022 from Emma Richardson which suggested that her employment was terminated because she had had "two or more unsuccessful observations, this constitutes a failure on the programme and will be presented as such to the Examination Board in due course". The Claimant states that the letter included a line which said "if you require any further assistance, please don't hesitate to contact" along with an email address. The Claimant states "Bearing in mind, I was blocked by the whole email system at Burnley College from my own personal email addresses. I tried to email the address that was written and that was also blocked."

2.1.23 The Claimant states that the Respondent refused, when responding to a subject access request dated 24 March 2022 the following day, to provide her with CCTV footage, and states her belief that the Respondent has 'destroyed' this footage.

2.1.24 The Claimant states that the Respondent made it very difficult to obtain emails and other records that she states she is entitled to by law, which she states was another tactic which the Respondent tried to use to destroy all evidence. The Claimant states that following a subject access request on 24 March 2022 for emails, records and CCTV, she only received the first email with data 4 months later on 1 July 2022.

2.1.25 The Claimant states that in late February or early March 2022, the Respondent held an interview or interviews for a new Business teacher a few weeks before she was dismissed. The Claimant states that everyone in her department knew about it in advance and was invited, including Tia McMillan who was in the same position as the Claimant "except, she has white skin". The Claimant states that she did not know about the interview(s) and was not invited until her colleague Kyriagoulla Savva came into one of her classes to invite the Claimant's students to attend if they wanted to. The Claimant states that this suggests she would have been available to go if she had been invited. The Claimant states that she was the only person who was not invited.

2.1.26 The Claimant states her belief that all of her observations failed because the Respondent "took advantage that "there is no checklist in teaching" as the metric used to assess teachers". The Claimant states that, in her opinion, her learners seemed shocked and upset about her dismissal, which she states suggests that they were enjoying their experience in her lessons, but that her assessors thought differently. The Claimant states this is backed up by the fact that in a feedback session on 25 January 2022 with Liam O'Malley, he told the Claimant that "lesson observations are subjective" when, in the Claimant's opinion, lesson observations are meant to be objective. The Claimant states that she felt lesson observations were used to 'police' her performances and single her out. The Claimant also states that Mr O'Malley "conspired on failing me on my lesson observations".

2.1.27 The Claimant states that she had over 10 lessons observations which failed whilst her colleague Tia McMillan, who the Claimant states is white, had fewer observations than her, numbering only around 2, and passed these "with flying colours".

2.1.28 The Claimant states that on 25 January 2022, Adam Blakeley and Ami Leak refused to grant the Claimant an extension for a mini teach which she had to present in a PGCE lesson immediately after a feedback session with them, and that this was subsequently granted by Zeb Butt.

2.1.29 The Claimant states that for the meeting which she states was her "grievance meeting" on 26 January 2022, Vikki Lees asked her if she wanted a trade union representative to be present so that she could send the invite out. The Claimant states that Ms Lees failed to tell the Claimant that she needed to invite a union representative to the meeting on that date herself, only later doing so on 11 March 2022. The Claimant states that she had asked for a trade union representative to be present but they never turned up. The Claimant states that Ms Lees failed to postpone the meeting when the Claimant did not have a union representative.

2.1.30 The Claimant states that on 10 March 2022, after emailing Karen Buchanan and the governors for "another grievance meeting", she also emailed Vikki Lees to ask if a member of the trade union could be at "the grievance meeting with Karen and the governors". The Claimant states that Ms Lees told her that if any meeting were to be arranged, and the Claimant wished for a union representative to be present, that is something that the Claimant would need to arrange rather than Ms Lees.

2.1.31 The Claimant states that on 11 March 2022 Bethan Dance followed/ escorted the Claimant around the ALZ (resource/ study area) as the Claimant was in the process of leaving following her dismissal. The Claimant also states that Ms Dance prevented the Claimant from talking to the student Lauren Terry and in doing so was "perpetuating the unfounded claims that Liam O'Malley accused me of that I was violent and a danger to the children through this behaviour in public".

2.1.32 The Claimant states that on 11 and 14 March 2022, she was removed from three Whatsapp groups by Kyriagoulla Savva, Helen Roache and Jemima Jones at the instruction of Liam O'Malley and Sarah Condren.

2.1.33 The Claimant states that Liam O'Malley called her a thief for leaving with her work laptop when she was dismissed.

2.1.34 The Claimant states that the Respondent has lied in its Grounds of Resistance.

2.2 Did the Claimant reasonably see the treatment in each instance as a detriment?

2.3 If so, has the Claimant proven facts from which the Tribunal could conclude that in any of those respects the Claimant was treated less favourably than someone in the same material circumstances who was male and/or of a different ethnicity? The Claimant says she was treated worse than her colleagues Tia McMillan and Kryiagoulla Savva, who she says are both white. The Claimant also

seeks to rely on a hypothetical comparator of a white British person and/or a white person.

2.4 If so, has the Claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of her race and/or sex?

2.5 If so, has the Respondent shown that there was no less favourable treatment because of race and/or sex?

3. HARASSMENT RELATED TO RACE AND/OR SEX (EQUALITY ACT 2010 SECTION 26)

3.1 Did the Respondent do the following alleged things:

3.1.1 The Claimant states that on 11 March 2022 her manager, Liam O'Malley, dismissed her without notice for alleged gross misconduct. The Claimant states Mr O'Malley made unfounded allegations against her of being violent and a danger to the children in a long tirade.

3.1.2 The Claimant has also stated "my manager constructed my dismissal with other members of staff helping him" and has stated that Vikki Lees and Sarah Condren helped Liam O'Malley with his "arranged discriminatory dismissal".

3.1.3 The Claimant states, in relation to her dismissal on 11 March 2022, that there was "no evidence, no investigations, no warnings, and no disciplinary, nothing".

3.1.4 The Claimant states that following her dismissal, she was "escorted around the college during the College Day with students around and watching by Liam O'Malley, two security men including one called Mohammed and later on Sarah Condren joined in, which amounted to harassment in creating an intimidating, hostile, degrading, humiliating and offensive environment for me like I was a criminal when all allegations were unfounded. On the way around College, Liam O'Malley was even asking students to move as if I was a danger to them". The Claimant also states that "Sarah Condren and Liam O'Malley were smiling and laughing at each other as they came with security to escort me off campus. To show that they were only wanting to harass and victimize me, they were apparently escorting me off campus because I was a "danger to the children" affirming the unfounded allegations Liam accused me of in my dismissal."

3.1.5 The Claimant states that following her dismissal on 11 March 2022, she was locked off the Respondent's IT system immediately, as she was unable to log on or send an email to Liam O'Malley after this. The Claimant states her belief that this means the Respondent had planned this action with IT beforehand. The Claimant states that she also tried to email Vikki Lees, Karen Buchanan and Sarah Condren to pass the message on but never got a reply or an acknowledgement. The Claimant states that by 22 March 2022, "all my emails from my personal email addresses (more than one) were blocked by the whole Burnley College email system" and that "this shows that my dismissal was well coordinated with different departments working together".

3.1.6 The Claimant states that following her dismissal, she received a letter from the Respondent on 23 March 2022 from Emma Richardson which suggested that

her employment was terminated because she had had "two or more unsuccessful observations, this constitutes a failure on the programme and will be presented as such to the Examination Board in due course". The Claimant states that the letter included a line which said "if you require any further assistance, please don't hesitate to contact" along with an email address. The Claimant states "Bearing in mind, I was blocked by the whole email system at Burnley College from my own personal email addresses. I tried to email the address that was written and that was also blocked."

3.1.7 The Claimant states that in late February or early March 2022, the Respondent held an interview or interviews for a new Business teacher a few weeks before she was dismissed. The Claimant states that everyone in her department knew about it in advance and was invited, including Tia McMillan who was in the same position as the Claimant "except, she has white skin". The Claimant states that she did not know about the interview(s) and was not invited until her colleague Kyriagoulla Savva came into one of her classes to invite the Claimant's students to attend if they wanted to. The Claimant states that this suggests she would have been available to go if she had been invited. The Claimant states that she was the only person who was not invited.

3.1.8 The Claimant states that on 11 March 2022 Bethan Dance followed/ escorted the Claimant around the ALZ (resource/ study area) as the Claimant was in the process of leaving following her dismissal. The Claimant also states that Ms Dance prevented the Claimant from talking to the student Lauren Terry and in doing so was "perpetuating the unfounded claims that Liam O'Malley accused me of that I was violent and a danger to the children through this behaviour in public".

3.1.9 The Claimant states that on 11 and 14 March 2022, she was removed from three Whatsapp groups by Kyriagoulla Savva, Helen Roache and Jemima Jones at the instruction of Liam O'Malley and Sarah Condren.

3.1.10 The Claimant states that Liam O'Malley called her a thief for leaving with her work laptop when she was dismissed.

3.1.11 The Claimant states that the Respondent has lied in its Grounds of Resistance.

3.2 If so, was that unwanted conduct?

3.3 Was it related to race and/or sex?

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

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

4. VICTIMISATION (EQUALITY ACT 2010 SECTION 27)

4.1 Did the Claimant do a protected act as follows:

4.1.1 The Claimant states that she was going to expose what she describes as Liam O'Malley's "gross misconduct behaviour", "in the form of a story he made up" about the Claimant in January 2022 involving a student, in the meeting with Karen Buchanan and the Respondent's governors which she asked to arrange.

4.1.2 The Claimant states that on 10 March 2022 the Respondent, and Karen Buchanan in particular, thought and knew that the Claimant was going to do a protected act which was to make a claim or complaint of discrimination under the Equality Act to Karen Buchanan in relation to alleged discriminatory observations on 1 December 2021 and 9 March 2022.

4.3 Did the Respondent do the following acts:

4.3.1 The Claimant states that on 11 March 2022 her manager, Liam O'Malley, dismissed her without notice for alleged gross misconduct. The Claimant states Mr O'Malley made unfounded allegations against her of being violent and a danger to the children in a long tirade.

4.2.2 The Claimant has also stated "my manager constructed my dismissal with other members of staff helping him" and has stated that Vikki Lees and Sarah Condren helped Liam O'Malley with his "arranged discriminatory dismissal".

4.2.3 The Claimant states, in relation to her dismissal on 11 March 2022, that there was "no evidence, no investigations, no warnings, and no disciplinary, nothing".

4.2.4 The Claimant states that following her dismissal, she was "escorted around the college during the College Day with students around and watching by Liam O'Malley, two security men including one called Mohammed and later on Sarah Condren joined in, which amounted to harassment in creating an intimidating, hostile, degrading, humiliating and offensive environment for me like I was a criminal when all allegations were unfounded. On the way around College, Liam O'Malley was even asking students to move as if I was a danger to them". The Claimant also states that "Sarah Condren and Liam O'Malley were smiling and laughing at each other as they came with security to escort me off campus. To show that they were only wanting to harass and victimize me, they were apparently escorting me off campus because I was a "danger to the children" affirming the unfounded allegations Liam accused me of in my dismissal."

4.2.5 The Claimant states that the grievance which she says she raised via an email to Karen Buchanan on 10 March 2022 "to ask for a grievance meeting" was completely ignored.

4.2.6 The Claimant states that, following her dismissal on 11 March 2022, the Respondent's Principal, Karen Buchanan, refused to see her after being asked three times, as she was too busy to speak to the Claimant. The Claimant states that Ms Buchanan told her that Liam O'Malley was dealing with it. The Claimant states her belief that the email which Ms Buchanan sent to her at 5.25 on 11 March 2022 was her way of trying to make herself look innocent and that she was not part of the Claimant's dismissal. The Claimant states that Ms Buchanan knew she had been dismissed and had no access to her emails anymore. The Claimant states that Ms Buchanan "wanted to keep herself "clean" when she knew she was "dirty" all along".

4.2.7 The Claimant states that following her dismissal on 11 March 2022, she

was locked off the Respondent's IT system immediately, as she was unable to log on or send an email to Liam O'Malley after this. The Claimant states her belief that this means the Respondent had planned this action with IT beforehand. The Claimant states that she also tried to email Vikki Lees, Karen Buchanan and Sarah Condren to pass the message on but never got a reply or an acknowledgement. The Claimant states that by 22 March 2022, "all my emails from my personal email addresses (more than one) were blocked by the whole Burnley College email system" and that "this shows that my dismissal was well coordinated with different departments working together".

4.2.8 The Claimant states that on 11 and 14 March 2022, she was removed from three Whatsapp groups by Kyriagoulla Savva, Helen Roache and Jemima Jones at the instruction of Liam O'Malley and Sarah Condren.

4.2.9 The Claimant states that the Respondent has lied in its Grounds of Resistance.

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

4.4 If so, has the Claimant proven facts from which the Tribunal could conclude that it was because the Claimant did a protected act or because the Respondent believed the Claimant had done, or might do, a protected act?

4.5 If so, has the Respondent shown that there was no contravention of section 27?

5. REMEDY FOR DISCRIMINATION OR VICTIMISATION

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

5.2 What financial losses has the discrimination caused the Claimant?

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

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

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

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

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

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

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

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

5.11 By what proportion, up to 25%?

5.12 Should interest be awarded? How much?