EMPLOYMENT TRIBUNALS

Claimant: Ms J Alecho

Respondent: Oasis Community Learning

Heard at: Watford Employment Tribunal (In Public; Hybrid)

On: **10 to 13 September 2024**

Before: Employment Judge Quill; Mr Bean; (in hearing room)
Ms Hancock (by video)

Appearances

For the Claimant: In Person (by video)

For the Respondent: Ms A Johns, counsel (by video)

WRITTEN REASONS

Introduction

1. An oral judgment with reasons was given to the parties on 13 September 2024. The written judgment was produced that day, and was sent to parties on 16 November 2024.

2. The Claimant made a request for written reasons on 18 November 2024, which was inside the applicable time limits. This request was drawn to EJ Quill's attention for the first time on 20 December 2024. On EJ Quill's instructions, a letter was sent to the parties the same day, 20 December 2024 to explain why, in those circumstances, there would be a delay before the reasons could be produced and sent to the parties. EJ Quill repeats the apology, as per that letter, for this delay.

3. This document contains the written reasons for the pane's decisions, which were all unanimous.

The Hearing and the Evidence

4. This was a 4 day final hearing in public. The claim was brought by a former employee of the Respondent. The Claimant worked as a teacher and the Respondent operates a school.

5. Two of the panel members (EJ Quill and Mr Bean) were present in the physical hearing room throughout the hearing. The remaining participants all attended by video. There were no significant connection problems.

6. We had a hearing bundle of about 465 pages. Where [Bundle XXX} appears below, that is a reference to page XXX in that bundle.

7. The bundle contained various redactions, several of which the panel considered were inappropriate, as we discussed with the parties on Day 1. We received three additional items which were the unredacted versions of the corresponding items from within the bundle.

8. The Claimant was the only witness on her side, and the Respondent called three witnesses. Each witness had prepared a written statement, and gave evidence on oath, answering questions from the other side and from the panel. The Respondent's witnesses were:

   8.1 James Singleton (a teacher, and Head of the PE department in which the Claimant worked)

   8.2 Olivera Djurdjevac (a teacher who worked in the PE department)

   8.3 Zoe Thompson (the Head Teacher)

The Claim and the Issues

9. There had been several preliminary hearings. The hearing on 8 November 2023 [Bundle 81] led to the production of the list of issues set out below.

   9.1 At the start of this hearing, both sides confirmed that they still believed that this list was up to date and accurate.

   9.2 We have used it as the basis for our decision-making, cross-referencing, where necessary, the further information supplied by the Claimant (in particular, that on [Bundle 120]) about her allegations.

   9.3 We have also taken into account that the legitimate aims relied on by the Respondent are set out in the amended Grounds of Resistance at [Bundle 91].

   9.4 It was agreed by both parties that the disability relied upon is Lupus, and Lupus only. The Respondent accepts that that was a disability at all relevant times,

but denies knowledge any time prior to 28 March 2022. In other words, all issues about "knowledge" (prior to then) were issues that were in dispute between the parties, and were for this panel to resolve.

10. Paragraph 14 of the case management summary specifies that the Claimant did have permission to bring all the complaints identified in paragraph 13.

11. Subject to those clarifications, the list of issues was as follows. We have retained the original paragraph numbering for ease of reference, and the parts in italics are where we have included the text from other documents for clarity.

(12) … claims for disability discrimination are based on the following matters:

a. Being reprimanded for wearing her own jacket outdoors rather than the inappropriate school uniform she was given and /or being given uniform to wear outdoors that was inappropriate for her condition.

b. Time keeping, i.e. being reprimanded for arriving late.

c. Her probation period being extended unreasonably on the grounds she didn't arrive for work on time.

(13) … the Claimant [is bringing] the following claims:

Discrimination Arising from Disability – s.15 Equality Act 2010.

The less favourable treatment relied upon is the matters set out at a, b & c above, which treatment the Claimant says was because of something arising in consequence of her disability.

The something arising in each case is said to be:

a. The Claimant's vulnerability to cold weather

b. The Claimant being unable to get to work on time in cold weather due to severe joint pain and nosebleeds.

c. The Claimant being unable to get to work on time in cold weather due to severe joint pain and nosebleeds, which had led to reprimands for being late.

If the Claimant shows that she was treated unfavourably because of something arising in consequence of her disability it is open to the Respondent to argue the treatment was a proportionate means of achieving a legitimate aim.

Alleged legitimate aim*: the correct functioning of the school day and lessons, ensuring that all parties are complying with the policies and standards required of staff and students and the harmonisation of the school community (paragraph 18 of amended Grounds of Resistance, within the context set out in paragraphs 16 to 20 of that document).*

Failure to Make Reasonable Adjustments – ss. 20 & 21 Equality Act 2010

The Claimant says the Respondent applied practices of:

- Requiring her to wear school uniform outdoors; and
- Requiring her to attend work on time.

She says these practices put her at a substantial disadvantage in comparison to people who don't suffer from lupus because she was

reprimanded for wearing her own jacket outdoors,

reprimanded for arriving at work late, and that

her probation was extended because of being late for work.

She says a reasonable adjustment would have been for:

- The Respondent to provide her with suitable clothing to wear during the winter months or allowing her to wear her own coat.
- To allow her flexibility as regards her lateness.

Direct Race Discrimination – s. 13 Equality Act 2010

The Claimant relies on the following allegations of less favourable treatment:

1) The Claimant wanted to be called "Miss Jackie", which was approved by HR and known to her line manager and colleagues. However, her line manager James Singleton and colleague Olivera:

(i) refused to call her Miss Jackie, but used her surname, and

(ii) mispronounced her surname as "a-leck-o". This was in front of both staff and students, but there was an increase in these "errors" by James Singleton when he was in a bad mood. This occurred throughout employment.

Comparator(s): (i) Ashley Simpson (White British), (ii) Bez (Turkish / White European), (iii) alternatively, a hypothetical comparator.

2) The Claimant was excluded from a conversation about a cinema trip on 24 June 2022 as set out at paragraph 10(b) of her F&BPs.

On Friday 24th June 2022 which was an inset day. I was present in the staff team meeting, a staff member named Oliveira was in the process of planning a cinema trip with the PE team in my presence to which I was not invited. I didn't take issue with the fact I was not invited and opted to ignore the conversation. However, the staff would exaggerate the emphasis on the conversation to ensure I heard what had been discussed and make it clear I was being ostracized. It was poor practice to show [such] exuberance for the meeting in my presence. I would have expected that it would have been planned in my absence and not at a team meeting while I

had been sitting listening in as an outsider. As it made me feel extremely uncomfortable.

Comparator(s): (i) Ashley Simpson (White British), (ii) Bez (Turkish / White European), (iii) alternatively, a hypothetical comparator.

3) Between March – June 2022 the Claimant was not helped with matters she did not understand, e.g. where certain equipment was kept, or how to interpret James Singleton's "spider map" of who was teaching which classes - c.f. other colleagues who were given direct help (e.g. "you're teaching tennis").

Comparator(s): (i) Olivera, (ii) Bez (Turkish / White European), (iii) alternatively, a hypothetical comparator.

4) James Singleton was angry with the Claimant in front of students on 28 June 2022 as set out in paragraph 10(d) of her F&BPs.

On Tuesday 28th June 2022 in the morning while I was registering the students, I was called one of the students and informed that my line manager, James, had wanted to speak to me. So I left the students in the changing room area. I met with James at the entrance to the Changing room. I was unaware that he was angry that I was late to work. It only became apparent when he disrupted me doing my job to express his anger at the fact that he had to open the changing room for the students instead of me doing this task. He further expressed dissatisfaction ay the fact that this caused disruption to him and Oliveira. I attempted to explain why I was unable to open the changing room for the students and I was rudely interrupted and informed that to avoid being late I should leave earlier. Responded by trying to express that I am trying to be late on purpose to which he stated words to the effect "I have never met anyone as late as you and it would be better if you said sorry". The conversation quickly became heated and escalated to the point that my line manager, James, became aggressive. On previous occasions when there has been an issue, I noticed that unless you back down and apologise James would not be prepared to consider your position or resolve the matter. In some instances, it came across as bullying.

Comparator(s): (i) Olivera, (ii) Bez (Turkish / White European), (iii) Ashley Simpson (White British); (iv) alternatively, a hypothetical comparator.

5) The Claimant met with Zoe Thompson on 28 June 2022 following a complaint she had made with HR. Zoe Thompson

(i) made comments to the effect of some people in this life are victims, others are leaders, and

(ii) initially said she would not do anything about the complaints, and

(iii) only offered the Claimant mediation when her employment was terminated.

Comparator: hypothetical comparator.

In each case it will be for the Tribunal to consider whether the factual allegation happened as alleged, if so whether it amounted to less favourable treatment and, if so, whether that less favourable treatment was because of the Claimant's race.

The Findings of Fact

12. The Respondent to this claim is called Oasis Community Learning. It is a Multi Academy Trust which operates around 50 separate academies located throughout England.

13. One of these is Oasis Academy Hadley ("the school"). The school is based in Ponders End, North London.

14. Zoe Thompson became the Head Teacher at the school in 2018. At all relevant times, James Singleton was the Head of the PE department at the school. At the time the Claimant began working at the school, Olivera Djurdjevac was a trainee teacher working in the PE department.

15. The Claimant first came to work for the Respondent at the school in the autumn term of 2021, via an agency.

16. The school had a vacancy, at that time, for a fixed term contract employee to be maternity cover as a PE teacher.

17. Mr Singleton was impressed by the Claimant during her time as an agency worker and he encouraged her to apply for the vacancy and he spoke to the head teacher about wanting the Claimant to apply.

18. She applied. The head teacher, and Mr Singleton interviewed the Claimant.

19. One of the essential requirements for the role, as per the Person Specification [Bundle 135] was "Qualified Teacher Status". The Claimant did not meet that requirement. However because of Mr Singleton's recommendation about the suitability of the Claimant, Ms Thompson, on behalf of the Respondent, agreed to waive that requirement. The Claimant was issued with a fixed term contract.

20. The offer letter [Bundle 166] was sent on 25 November 2021. The letter included each of the following extracts:

    20.1 "*This will be on a fixed term basis for maternity cover and will end when the staff member returns*"

    20.2 "*On commencement of your role, a probation period of six months applies. During this probationary period, should your performance be unsatisfactory, you*

will be given one month's notice to terminate your contract without recourse to the disciplinary procedure"

21. We do not find there to be any inconsistency between those two different parts of the letter. The first extract was very open-ended, and the maternity cover might turn out to be a fairly short period of time, or potentially much longer. The second extract does not imply that the period of employment will be at least 6 months, even if the permanent employee returns from maternity leave. It simply means that, even if the permanent employee has not returned from maternity leave, the Claimant's employment contract might be terminated within the first 6 months in the circumstances set out in the extract.

22. The contract [Bundle 210], specified that the Claimant was employed as maternity cover, and it also specified that the probation period would be six months.

23. The contract commenced at approximately 4 January 2022 so the probation period would have run until around 3 July 2022.

24. In due course - on 20 May 2022 - the Claimant was notified that the staff member for whom she was covering would be returning from maternity leave on 1 July 2022, and that therefore her contract would terminate with effect from 30 June 2022.

25. The Claimant completed various forms after receipt of the conditional offer of employment, and before she started working under the employment contract. She mentioned Lupus on the Employee Personal Details form dated 9 December 2021. On other forms, she stated that she had no disability that required adjustments.

26. The Respondent concedes that the Claimant's Lupus meets the definition of disability in section 6 EQA at all relevant times, but denies that it had knowledge that the condition met that definition until it received the OH report dated 28 March 2022, which is at [Bundle 387].

27. Adopting the phrase on [Bundle 255], that OH report dated 28 March 2022 was the Claimant's "new starter OH assessment".

28. We have not been provided with evidence to satisfy us that this referral, and therefore report, could not have been completed in late December 2021 (after the Claimant returned the completed questionnaire) or early January 2022 (soon after the Claimant started work under the contract of employment). On balance of probabilities, it could have been done then, and the reason the employer did not have this report until 28 March 2022 is that it failed to ensure that the referral, the appointment, and the report were all done promptly. Our finding is that if the Respondent had chased matters up, then all the information from the 28 March 2022 would have been available to it in January 2022 at the latest.

29. The Occupational Health [Bundle 387] refers amongst, other things, to the Claimant's Lupus being triggered by cold weather. It refers to joint pain and nosebleeds. It says that the effects of Lupus can combine with other conditions - for example, flu or a cold - and have the effect that those conditions would affect the Claimant more severely than they might affect somebody without Lupus.

30. For the agency worker period, Mr Singleton's oral evidence was that he recalls that there was one particular occasion when the Claimant was either late or absent, and had mentioned Lupus as the reason.

31. Our finding is that it is more likely to have been a lateness rather than an absence because absences were more likely to have been dealt with by the agency rather than by Mr Singleton. However, either way, on his own account, Mr Singleton was aware – during the period that the Claimant was an agency worker - that (at least according to the Claimant) (i) the Claimant had Lupus and (ii) that Lupus could potentially affect her ability to attend work and/or attend work on time.

32. During the period working for the school as an agency worker, the Claimant asked people to call her "Miss Jackie" and that is how she was generally referred to her by people including Mr Singleton during that period.

33. For the agency worker period, the paperwork which the school had was that which was supplied by the agency. The Respondent's human resources department was not involved at that time in any issues about what name would be used to address the Claimant.

34. After the conditional offer had been made to the Claimant, Alice Weeks of HR sent an email on 15 December 2021 [Bundle 421]. It was sent to various people, including the Head Teacher and Mr Singleton. It confirmed that the Claimant's start date would be 4 January 2022 and also to confirm that she would be like to be known at the school as "Miss Jackie". This was highlighted in Red. It did not state any particular reasons. It did not express any comment or disagreement. Our finding is that anyone reading the email would have realised that Ms Weeks was not suggesting that there was any problem – as far as HR were concerned - with the Claimant being referred to as "Miss Jackie". However, we also are satisfied that it would not have been regarded as an instruction from HR, just information about the Claimant's own preference.

35. Mr Singleton's witness statement refers to having checked with HR about whether it was in order for her to be called "Miss Jackie" once she became an employee. He wanted to know if carrying on the arrangement that had existed informally when she had been agency staff was appropriate once she became an employee of the Respondent.

36. We accept that, having checked with HR, Mr Singleton made a good faith attempt to refer to the Claimant as “Miss Jackie”, as per her preference.

37. We accept the Claimant's evidence that there were quite a few occasions when he used her surname rather than Jackie.

38. Taking the evidence as a whole and on the balance of probabilities, our finding is that, while she was agency worker, Mr Singleton was content to refer to the Claimant as Ms Jackie. However, in the January, once she was an employee, he started to refer to her by her surname. She asked him to call her “Miss Jackie”, and he agreed to check with HR, and he did so. After that, he called her “Miss Jackie” again. We accept that he had not taken the email of 15 December 2021 as being a formal instruction from HR that he had to call the Claimant, “Miss Jackie”. That email covered various matters, and, although in red “ink”, there was simply a passing reference, next to the Claimant’s name in the template, stating “Would like to be known as Miss Jackie” (that is, passing on the Claimant’s preference).

39. On the Claimant's own account, the issue was resolved in January 2022 and from then until April 2022, Mr Singleton did usually call her “Miss Jackie” (in the presence of pupils).

40. The Claimant’s account is that when Mr Singleton did use her surname, he mispronounced it. To the extent that the Claimant suggests that part of the reason for deciding to be called “Miss Jackie” was that Mr Singleton mispronounced her surname, that is not factually accurate . She always wanted to be called “Miss Jackie” from the outset.

41. The correct pronunciation of the Claimant’s name is that the “cho” sound is similar to that in the word “chosen”. The alleged mispronunciation is that Mr Singleton pronounced it to rhyme with “echo”

42. To the extent that Mr Singleton asserts that he never made this mistake, our finding is that that is not correct. Even allowing for the possibility that the Claimant might sometimes have misheard, our finding is that there was more than one occasion on which Mr Singleton mispronounced the Claimant’s surname.

43. In early January 2022, the Claimant and Mr Singleton were on good terms. As we have said, it was Mr Singleton who had recommended her for the vacancy, and he advocated for her appointment even though she did not have “Qualified Teacher Status”. We are entirely satisfied that he was not deliberately mispronouncing her name either to annoy her, or for any other reason whatsoever. We accept the Claimant’s account that he did mispronounce it (at least some of the time, and perhaps all of the time), but he did not do so on purpose. He was not, for example, trying to make a joke connected to her name.

44. On the balance of probabilities there were conversations about how Mr Singleton was addressing the Claimant. We are not persuaded that the Claimant repeatedly picked him up on the pronunciation, and that – despite that – he carried on mispronouncing. Based on the totality of the evidence, the point of the Claimant's correction was that he should call her "Miss Jackie". We are satisfied that she probably did remind him of the correct pronunciation of her surname too, when necessary, but that was not the main point that she was seeking to make and, from January, he did resume calling her "Miss Jackie".

45. We are not satisfied that Mr Singleton frequently mispronounced the Claimant's surname after that. In particular, he was not using her surname frequently after that. However, in addition, he was attempting to pronounce it correctly when he did use it. Our finding is that there were few times when the Claimant corrected him about the pronunciation, because there were few times when she needed to.

46. In her witness statement, the Claimant alleges that Mr Singleton used her surname in the probation meeting in April and also that he mispronounced her name then. Even if those things are true, it is not true that she corrected him on that occasion. In her oral evidence, the Claimant stated that, during the probation meeting, she remained silent and listened to what Mr Singleton had to say because she preferred to wait until she had received the written documents before commenting

47. We are satisfied that Mr Singleton attempted to pronounce the Claimant's name correctly during the probation meeting.

Absences

48. The Claimant was absent for 3 days in early January. She completed the form on [Bundle 225]. There was no express mention of Lupus in the form. It was described as cold/flu symptoms. We have noted above that the OH report (in March 2022) referred to the possibility of such symptoms being more severe for someone with Lupus, than without.

49. The Claimant was absent for two days in February 2022 because of a lump on her foot. It is possible that the lump was linked to Lupus, although the Claimant did not state that to the employer at the time.

50. On 3 March 2022, she arrived at around 11.20am. This was not connected to Lupus, but was due to an incident with a car that led the Claimant to go to A&E.

51. On 17 March 2022, the Claimant was absent. According to the return to work form on [Bundle 277-278], completed by Mr Singleton, she had said this was stomach upset. Within the form it was stated [Bundle 278] that the Claimant had said that other absences (not this one) may have been due to Lupus. Her own self-certificate [Bundle 279] implied that she was saying that this absence itself was, in part, caused by a "flare up of Lupus".

52. So, before 1 April 2022, there were 6.5 days absence. By then, our finding is that the Respondent could reasonably have been expected to know that at least some of those were (or might have been) connected to Lupus. [We infer that the 0.5 day is 3 March; and we are satisfied that was plainly not connected to Lupus, and the Respondent had no reason to think it was. All of the other 6 days might have been because of Lupus.] We say this because of what the Claimant stated on 18 March, and because of the OH report which mentioned that cold/flu might combine with Lupus to affect the Claimant severely.

Lateness

53. The staff in PE team were expected to be at work by 8.20am. There was a process to notify the school using a dedicated phone line if they were going to be late. Wherever possible, the lateness was supposed to be notified by that method by 7.20am. The staff in the office would then (a) record the lateness officially and also (b) arrange cover for the teacher's class until they arrived

54. The PE team (and probably other departments, we assume) also had informal arrangements to let colleagues know if you were going to be late. This was in addition to, not instead of, the official arrangements just mentioned. PE teachers were supposed to supervise their classes starting as soon as the pupils arrived in the changing room, and having a staff member undertake that supervision was important.

55. The Claimant knew about the arrangements, and, for avoidance of doubt they were not imposed on her only; these requirements applied to other people too.

56. One incident of the Claimant being late without having followed the correct procedure came to the head's attention. Ms Thompson was in the PE corridor one morning and formed the opinion that it was unusually noisy. She spoke to Ms Djurdjevac to ask about this, and about the fact that Ms Djurdjevac seemed to have too many pupils. Ms Djurdjevac explained that it was not just her own class, but the Claimant's too. Ms Thompson investigated to find out where the "cover team" was. By that time in the morning, if a teacher was late, someone from the cover team was supposed to have arrived to replace them. Ms Thompson discovered that the Claimant had not called the school office; this explained why nobody from the cover team had arrived.

57. As a result of this incident, Mr Singleton spoke to the Claimant. After that conversation, the Claimant accused Ms Djurdjevac of "snitching". Ms Djurdjevac was offended by this because there had been several previous occasions in which she had covered for the Claimant and because Ms Djurdjevac did not regard it as her fault that Ms Thompson and Mr Singleton had picked up on this particular occasion.

58. Another incident of the Claimant being late without having followed the correct procedure was on 28 June (which is discussed as a specific incident below).

59. Based on the evidence before us, we accept that the Claimant was late more often than shown in the official records. We accept that there were several occasions on which the Claimant was late, but did not follow the correct procedure. Because she did not phone the office, no formal cover by the "cover team" was arranged and she was not recorded as late. If she was running late, the Claimant usually phoned ahead to ask a colleague to cover, but did not always notify Mr Singleton, or the school's administration, that she had done this . [For the avoidance of doubt, in this paragraph were are not commenting on whether or not the Claimant thought that phoning a colleague directly to ask them to cover was a legitimate alternative to following the correct procedure. We are simply saying that (i) the Claimant did know the correct procedure and (ii) she was actually late more frequently than was "officially" recorded.]

60. There were also incidents of lateness that did come to Mr Singleton's attention at the time. We accept his recollection that, several times, the Claimant attributed the lateness caused by traffic, and specifically delays/diversions caused by specific construction work in the area which the Claimant and Mr Singleton were both aware of.

61. We also accept his evidence that the Claimant's being late without following the correct procedure created a health and safety issue. Once a PE class was out on the field, it was potentially less of an issue to have a colleague keep an eye on that class, as well as their own. (In other words, there should still have been a correct pupil:teacher ratio, but the risk was comparatively lower). However, at the start of the lesson the pupils were using the changing rooms, and it was very difficult for a single teacher to supervise two sets of pupils (two different classes) during that time, and so the health and safety risk was high, in Mr Singleton's opinion.

<u>Uniform</u>

62. Following a team meeting on 20 January 2022, and Mr Singleton sent an email to staff, including the Claimant [Bundle 424] with attachment [Bundle 425].

    62.1 That attachment should have been dated 2022, but incorrectly gave the date as "20.1.21".

    62.2 Under the heading professional responsibilities it included information to staff and that they were to wear the correct uniform when in the building and that the clothing was to include the school's branding.

63. The school's requirement for the teachers other than the PE teachers was that they would dress smartly in suitable business attire or formal attire.

64. It did not have precisely the same requirement for the PE teachers given the nature of the role. The expectation was as conveyed by this particular email. PE teachers were required, instead, to wear branded school clothing to identify them as members of staff, even though they were not dressed as formally as other staff.

65. In at least one case, the general rule for non-PE teachers was not imposed on another member of staff, namely Ashley Simpson. Ashley Simpson taught PE some of the time and some of the time he had other duties. In theory, at least, the requirement that he wear formal clothing should have been applied to him on the days when he was not teaching any PE. However, it seems that he was permitted - without being challenged – to wear informal clothing (such as a Tottenham Hotspur top) around the school building.

66. According to Mr Singleton, he did not have an issue with that, and he does not admit or assert that this was a breach of the dress code. Mr Singleton was not Ashley Simpson's line manager and we accept his account that it would have been the line manager's responsibility to speak to Mr Simpson about any alleged lack of compliance with the school dress code on days that he was not teaching PE.

67. On 26 January 2022, Mr Singleton had a conversation with HR after a conversation which he had had with the Claimant earlier the same day. Our finding is that what Mr Singleton said in the conversation was accurately summarised in an email sent at 15.32 the same day to him from HR [Bundle 236]. The email noted that Mr Singleton had referred to having concerns.

68. In the response sent the following day (27 January), Mr Singleton stated that he had given a winter jacket to the Claimant. His recollection when giving oral evidence in September 2024 (so much more than two years later), is that (i) he had offered the Claimant a winter jacket as part of the equipment that he had given to her at the start of her employment and (ii) he now believes that she had not actually taken it from him.

69. We are satisfied that the winter jacket was available to the Claimant, and she knew that it was available, but the Claimant made it clear to Mr Singleton, by no later than 26 January, that she preferred not to wear it.

70. It is clear from Mr Singleton's own email (written the following day), that on 26 January the Claimant had told him that the reason for not wearing the school's branded jacket was that she had an illness affecting her temperature regulation. We are satisfied that (i) the Claimant was referring to Lupus and (ii) that Mr Singleton knew that that is what she was referring to.

71. We find it is accurate that, on 26 January, Mr Singleton told the Claimant that he was going to speak to HR to find a solution.

72. We also find that it is accurate that he suggested to the Claimant that, in the meantime, she could carry on wearing her own jacket when working outside on the basis that that it would keep her warm. He told her that she should not wear it indoors. Our finding is that he did not tell her that she could not wear it outdoors.

73. The Claimant did, some of the time, wear the jacket indoors. Mr Singleton did speak to her about that.

73.1 In accepting that she was spoken to about wearing the jacket indoors, the Claimant's account is that she had not had time to take it off before Mr Singleton saw her. She mentions, in particular, that if she had her hands full on entering the building (carrying PE equipment from outdoors) she was not able to instantaneously remove her own personal jacket (whether to replace it with a school branded one, or at all).

73.2 We do accept the logic of that latter point. However, our finding is that it does not matter to the decisions that we have to make. Regardless of the accuracy of her explanation for why she was still wearing the jacket indoors, our finding is that Mr Singleton told her that she should not be wearing at the jacket inside the school building, and he did not state that she could not wear it outside during PE lessons. She was expressly told she could do so pending the outcome of discussions with HR.

73.3 We find the Claimant was not "told off" when she was coming and going. She was not criticised by Mr Singleton if (for example) she was going back and forth (at the start or end of the lesson) to take the equipment outside, or bring it back in. She was not criticised immediately after she had come inside (and before she had had the chance to get changed). She was reminded by Mr Singleton of the need for her to put on the school jacket (as all the other PE teachers had to do) inside the school buildings.

74. There was a meeting on 27 January [Bundle 434 to 435] between the Claimant and Mr Singleton. Although the document is incorrectly headed "Staff Meeting EOA", both sides agree it was a meeting with (just) the two of them.

74.1 The Claimant was told that she needed to wear the school's PE staff uniform and was not allowed to wear jackets that were not staff uniform within the building. The stated reason for this was: "*responsibility as role models*".

74.2 The Claimant was also told to ensure that she was on time. She was told that she was required to be on site at 8:20am. Mr Singleton suggested that she might need to leave home earlier than she had been doing in order to avoid traffic and other issues. The reason he said this was because there had been occasions when the Claimant had been late, and had mentioned traffic (amongst other things, on different occasions) as a cause.

74.3 As per [Bundle 433], the notes were emailed to the Claimants on 28 January. The date of the meeting is incorrect in the subject line of the email and in the name of the attachment.

75. A meeting also took place on 25 February. The notes are [Bundle 441 to 442]. The email sending them to the Claimant is [Bundle 440]. The requirement to wear the school jacket is referred to there.

76. The Claimant sent an email on 28 February at 18.23 [Bundle 453]. It was addressed to Mr Singleton and copied to HR.

76.1 Our finding is that it is correct, as stated in the email, that there had been several conversations about uniform (and not simply the conversations on 26 and 27 January and 25 February only).

76.2 In the email, the Claimant stated and we find that this is accurate, that she had made Mr Singleton and HR are aware of the fact that she had Lupus.

76.3 Within this email, she referred to some of the effects that that condition had on her. She made clear that there was a link between the condition, the weather, and the clothes that she had to wear because of the effects.

76.4 She said that what had been provided as branded material was not sufficient to keep her warm in the cold weather.

77. As we have said the Claimant was wearing a green jacket outside and we have found that (contrary to the implication in the email) there was no occasion, after the discussion on 26/27 January, when Mr Singleton approached her and told that she could not wear that jacket outside.

78. The written documents do not demonstrate that Mr Singleton was directly involved in the discussions that took place between his line manager Sarah Hamilton (Assistant Principal) and human resources. They do not demonstrate when, if ever, Mr Singleton chased up his 27 January email. We have mentioned the meeting notes (emailed to the Claimant) referring to the jacket requirement. However, the meeting notes do not show that Mr Singleton provided any update to the Claimant in relation to the enquiries he had made to HR in January; the notes do not minute any discussion about what steps he, Mr Singleton, had personally taken to chase up with HR as to how there could be a solution where the Claimant could wear both clothing that was warm enough and also comply with the requirement to wear the branded jacket. We find that those issues were not discussed in the meetings.

79. By around 1 March 2022, a decision had been made that the Respondent would provide the Claimant with an extra large academy coat at which she would be able to wear over her other clothing. At 10.05 on 1 March, Ms Hamilton informed Mr

Singleton to tell the Claimant how to collect that coat. [Bundle 258, and the unredacted version of the same email exchange which was supplied during the hearing.] It seems likely that it was the Claimant's 28 February email which prompted these specific steps, though it was Mr Singleton's understanding that Ms Hamilton and HR were working on the issue following his 27 January email.

80. With warmer weather approaching after 1 March 2022, the need for the extra warm clothing was potentially going to become less pressing (though we note the email exchange on [Bundle 452]). However, even if – hypothetically – the Claimant no longer required it, our finding is that the large overcoat was available from 1 March 2022 onwards, if she needed it, and she was told how to collect it.

81. Mr Singleton's account is that there is only a gap of 15 working days (from Wednesday 26 March 2022 when the Claimant raised the matter, to Tuesday 1 March 2022 when it was resolved) because half term occurred during this period. It is slightly more than that (assuming half-term was exactly one week). But, either way, there is no evidence of Mr Singleton, proactively chasing HR or updating the Claimant as to the state of affairs. The Claimant's 27 January email to HR [Bundle 236] was copied to Ms Hamilton. The contemporaneous documents in the hearing bundle do not show Ms Hamilton chasing up with HR at any time prior to the Claimant's 28 February 2022 email.

Timetable

82. The Claimant has not proven, on the balance of probabilities, that there were any occasions when (i) she asked Mr Singleton for more assistance with understanding the timetable or other arrangements, and (ii) he was dismissive or rude when he answered. At most, there was an occasion when he read some information from his phone, and she asked him to repeat it, and he told her how to get hold of the information (by referring her to a particular colleague).

83. On the Claimant's own account, she sometimes she spoke to colleagues and was given assistance with understanding the timetable (specifically with understanding what she was supposed to be doing).

84. The notes of the meetings on 27 January and 25 February show that she was given information about the expectations for lessons and there was some agreed action points and the documents in the bundle appear to show that (at least some) of those action points that were followed up.

85. The Claimant sent an email at 8.45am on 2 February [Bundle 437] seeking some assistance, and explaining why. 5 minutes later, Mr Singleton replied stating:

> Morning Jackie
>
> Thanks for your email

> Lets meet to discuss this today and look at ways of supporting you.
>
> Sidrah, can you be present in the lessons Week 1&2 Monday P3/Tues P5? I think the students would benefit greatly from your support.
>
> Thanks

86. On 25 February 2022, [Bundle 439], Mr Singleton supplied the Claimant with a lesson observation and offered to meet to discuss.

87. On 1 March, he emailed her with a short term plan HRF [Bundle 445]. This was one of the topics discussed at the 25 February 2022 "staff meeting" with the Claimant.

88. The notes from the staff meetings on 25 February and 27 January, show that a range of topics were discussed, and we are satisfied that the Claimant had the opportunity to ask for more information / clarification, and that, where she did so, Mr Singleton was willing to provide it.

Discussions about Probation

89. On 17 March [Bundle 454], Mr Singleton sent an email to Ms Thompson and Ms Hamilton recommending that the Claimant should not pass her probation.

> Morning Zoe and Sarah
>
> Since Jackie has been working in the department, she has been late or absent at least once a week.
>
> This has serious negative impact in the following aspects of the department:
>
> - Behaviour
> - Health and safety
> - Routines and consistency
> - The quality of the teaching students are receiving
> - [Morale] of other member of the PE department
>
> Despite return to work meetings/ regular department/ one to one meetings this is not improving.
>
> It is my recommendation that she does not pass her probation.
>
> ...
>
> Please advise next steps.

90. On 1 April 2022, Mr Singleton met the Claimant to conduct an "Interim Probationary Period Review". A partial and redacted version of the notes was [Bundle 286 to 291]. We were supplied with the full 7 page version, unredacted, during the hearing.

91. Under “Review of Performance”, there were seven categories. For each category, the reviewer could give the reviewee an outcome of: Excellent; Good; Fair; Unsatisfactory.

91.1 The Claimant was given “fair” for each of “team player” and “work rate/effort”.

91.2 She was given “unsatisfactory” for each of the other 5 categories, including timekeeping/punctuality; attendance; reliability.

92. Several comments were made alleging high levels of lateness and absence, and asserting that this was negatively affecting the students. It was also suggested that the Claimant was not following the policies in terms of what she allowed students to wear.

93. The overall outcome was to state that the Claimant’s probation period was to be extended by one month. There was to be a review in the week commencing 16 May 2022. The Claimant was told to review the plans for teaching in the summer terms, and to improve lateness and attendance.

94. During the meeting, the Claimant did not state that any of the criticisms that Mr Singleton was making were because of anything connected to Lupus. She did not mention her Lupus. She made no specific response at all during the meeting to dispute the factual accuracy of the points being made (for example, about being late submitting data).

95. After the 1 April meeting, and after the notes of it were sent to the Claimant on 2 April, there were some further occasions on which the Claimant was late and/or absent.

<u>24 June – Cinema discussion</u>

96. There was a discussion about a cinema trip on 24 June or thereabouts. The Claimant alleges she was excluded from the discussion. Ms Djurdjevac and Mr Singleton have also given evidence about it.

97. Based on the evidence that we have heard, we are not satisfied and that the Claimant was in any way left out of the discussion.

97.1 The conversation took place in her presence. Several people were in the room at the time. We are satisfied that the conversation was not directed, by any of the people in the room in a manner that excluded any of the other people present.

97.2 The Claimant (or anyone else) could potentially have joined in the discussion simply by speaking up and stating that they were potentially interested in going to the cinema.

97.3 The discussion went on for a few minutes without there being an agreement about which specific people were definitely going; possible dates were discussed, but there was no agreement about what the date would be.

97.4 The Claimant did not express, during the meeting, that she wanted to go. She did not ask that it be arranged for a date on which she could attend. She made no comment one way or the other. We accept her account that no-one specifically turned to ask her about what dates she could, or could not, do.

97.5 In actual fact, the cinema trip did not actually occur. In other words, after the conversation in the meeting ended (which was because Mr Singleton told the staff present to continue the discussion in their own time) no plans were made.

97.6 It is therefore entirely a matter of speculation as to whether the Claimant would have attended or not, or been expressly invited to attend, after a firm date had been set, and specific plans agreed. Her employment ended not long afterwards, but (i) plans for the trip were not finalised during her employment (ii) no cinema trip took place during her employment and (iii) no cinema trip took place, even after her employment had ended.

98. In any event we are satisfied and that Ms Djurdjevac, and others, had no deliberate intention to arrange the discussion in such a way that the Claimant would feel that she was not welcome to say that she would like come to the cinema if the trip did take place.

99. The factual allegation, as set out in paragraph 10(b) [Bundle 120] includes the argument that the trip should have been planned in her absence. However, in context, that suggestion is based on the proposition they wanted to have the trip without the Claimant. That proposition is not supported by any evidence, and is simply the Claimant's own opinion. On the contrary, we accept Ms Djurdjevac's evidence that:

> I understand the Claimant has alleged that I deliberately left her out on 24 June 2022 at an inset when discussing a cinema trip. This was really surprising to me. I recall a possible cinema trip was just being discussed generally as a nice idea. It was being discussed openly at our inset day with anyone and everyone invited. I would not have deliberately excluded Jackie. I had been hurt at the time when she had called me a snitch but I didn't bear any grudge or ill feeling towards her. It isn't in my nature to treat someone badly and I would not have excluded or been unkind to Jackie.
>
> … I think the cinema was probably just a result of chatting on the day, maybe a few people had shared an interest in the same movie and it was tabled as an idea as something to do. I think it was meant to be arranged and become a work outing but it never happened. Perhaps because Jackie left shortly after this inset day she assumed it had gone ahead. It didn't. it just fizzled out as an idea.

100. Since the discussion took place spontaneously during an Inset day with the entire team present, and potentially welcome to join in, there was no reason for any of the team members to have sought to have the conversation in the Claimant's absence.

101. We have also noted Mr Singleton's comment about another event, and about the Claimant being invited to attend: [Bundle 458]. Given that that was about an event during a break within the working day, we do not think that it was sufficiently similar to provide us with much assistance. However, in any event, for the reasons we have stated, the Claimant has failed to prove this factual allegation.

28 June – Mr Singleton's and the Claimant's interactions

102. In her witness statement for the tribunal, at paragraph 44, the Claimant refers to an email she sent to Ms Thomphson on 28 June 2022 (which is discussed in more detail below). Within that document, she says:

> I also mentioned Mr. Singelton shouting at me [in front] of students on the 28th of June 2022.

103. Effectively her argument is that there should be some give and take, and one colleague expecting another to sometimes open the changing room for them was not unreasonable, and the colleague could return the "favour" another time.

104. As quoted in the list of issues, in the document at [Bundle 120], at paragraph 10(d), she states:

> On Tuesday 28th June 2022 in the morning while I was registering the students, I was called one of the students and informed that my line manager, James, had wanted to speak to me. So I left the students in the changing room area. I met with James at the entrance to the Changing room. I was unaware that he was angry that I was late to work. It only became apparent when he disrupted me doing my job to express his anger at the fact that he had to open the changing room for the students instead of me doing this task. He further expressed dissatisfaction ay the fact that this caused disruption to him and Oliveira. I attempted to explain why I was unable to open the changing room for the students and I was rudely interrupted and informed that to avoid being late I should leave earlier. Responded by trying to express that I am trying to be late on purpose to which he stated words to the effect "I have never met anyone as late as you and it would be better if you said sorry". The conversation quickly became heated and escalated to the point that my line manager, James, became aggressive. On previous occasions when there has been an issue, I noticed that unless you back down and apologise James would not be prepared to consider your position or resolve the matter. In some instances, it came across as bullying

105. This was not an incident which was specifically addressed directly in Mr Singleton's written statement (though it contained some generalised denials of the Claimant's allegation). During cross-examination of the Claimant, it was put to her that

paragraph 29.4 of amended Grounds of Resistance was correct. That read (under a heading which made clear that it was addressing this particular allegation):

> i. The Respondent asserts that this incident took place at the Claimant's changing room door. Mr Singleton pointed out that the Claimant was 10 minutes late (which she had not acknowledged). The Claimant stated that she had not tried to be late but did not give a reason why she had arrived late.
>
> ii. Mr Singleton asked her to be aware of the impact that her lateness has on achieving a safe/smooth start to lessons. He suggested that acknowledging her lateness/apologising was considerate. Mr Singleton advised the Claimant to notify the school in advance when lateness occurred in the future.
>
> iii. It is not accepted that Mr Singleton was angry with the Claimant. He had to address as serious matter in the appropriate tone.

106. The Claimant did not accept that that version of the incident was correct. She stated that Mr Singleton did not give her a chance to explain why she had been late and that he just kept saying that she needed to apologise, and that he was shouting and angry. She accepted that the incident took place when Mr Singleton came to the changing room door.

107. During the Claimant's cross-examination of Mr Singleton, she put it to him that comments in his witness statement (paragraphs 6 and 14 in particular) showed that he had been angry about her lateness. He denied that. He stood by the words used in those paragraphs that he found it frustrating, but did not accept that he had demonstrated anger towards the Claimant on any occasion.

108. Our finding is that there was a discussion about lateness on this day, 28 June. In cross-examination Mr Singleton suggested it might have been in May. However, the Grounds of Resistance accepted it was in June, and the Claimant's email to the head later the same day was written while events were fresh in the Claimant's mind.

109. Taking the evidence as a whole, on the balance of probabilities, Mr Singleton was annoyed. Part of the reason that he wanted to speak to the Claimant was that he was annoyed that she had not told him that she was late or given a reason for it.

110. Neither Mr Singleton nor the Claimant have given specific evidence about how far away the pupils were at the time. However, our finding is that the conversation took place at the door of the changing room while the pupils were inside the changing room. The conversation did not take place while they were surrounded by pupils.

<u>Termination and communication with the Head</u>

111. By email (from Ms Weeks) and attachment (letter from Ms Thompson) dated 20 May 2022 [Bundle 300-301], the Claimant was informed that her employment

would terminate on 30 June 2022. The reason stated in the letter was truthful and accurate. It was that the fixed-term contract was coming to an end because the employee for whom the Claimant was providing maternity cover had notified an intention to return to work on 1 July 2022.

112. On around 10 June, the Claimant commenced a period of sickness absence. She was signed off by her GP until 22 June due to Lupus [Bundle 311].

113. On Friday 10 June, the Claimant sent an email to HR [Bundle 317]. The email spoke about feeling stress and anxiety. It did not refer to race or disability. On Monday 13 June, Ms Weeks replied suggesting that she could arrange a meeting with Ms Thompson following the Claimant's return from sick leave, or, alternatively, that the Claimant and Ms Weeks could have a video call before the Claimant returned to make plans for her return.

114. Following the Claimant's return from sickness, she met the head.

115. The Claimant's account and Ms Thompson's account of that conversation are fairly similar. Ms Weeks was also in attendance, but has not given evidence. In the meeting on 23 June the Claimant did not suggest there had been race discrimination or disability discrimination. She did talk about her health (suggesting that it had deteriorated in the time she had worked as an employee at the school) and said there were some things that made her feel uncomfortable. Ms Thompson formed the view that what the Claimant described to her were the typical sort of disagreements, and differences of perspective, that sometime arise between employer and employee, or employee and line manager. She did not think that anything she heard required any further investigation, or meetings with the Claimant, but did not close the door to that. She offered some comments from her own perspective during the meeting.

116. Ms Thompson's written statement specifically denies use of the word "victim". During oral evidence (during panel questions to Ms Thompson, the Claimant asked for the opportunity to have Ms Thompson specifically confirm or deny use of the word "victim"), the head accepted that it is possible that she used it.

117. In any event, on Ms Thompson's own account, she thought that the Claimant was being negative during the meeting, and she suggested to the Claimant that the Claimant should not interpret every interaction as been negative. We find, on the balance of probabilities, that the word "victim" was used. The head did not expressly say that the Claimant was acting like a "victim". Rather, she used words similar to those quoted by the Claimant in the Claimant's 28 June 2022 email. She was intending to communicate that (i) it was better to act as a "leader" and (ii) that the Claimant should act as a "leader". We accept that the implication – though not the express words – were to the effect that the Claimant was potentially acting as "a victim" and that she should change from "victim" to "leader".

118. The meeting between the Claimant, Ms Weeks and Ms Thompson started around 8.30am. Later the same morning, at around 9am, Ms Weeks also attended the Claimant's return to work meeting, conducted by Mr Singleton [Bundle 326]. Following the meeting, Ms Weeks sent the notes of that meeting to the Claimant. Her email, which was copied to Ms Thompson, included:

> As discussed in this meeting, please do keep us updated with any further medical advice you may receive and, of course, please do speak with myself or the Principal in the first instance should you feel anxious or uncomfortable at any time.
>
> We want to support a comfortable return to work for you and we hope that your last week here at Oasis Hadley is enjoyable!

119. Our finding is that the reference to "this meeting" was to the return to work meeting specifically. The email was not copied to Mr Singleton, and the mention of feeling anxious or uncomfortable showed a willingness to be contacted further about the matters mentioned in the Claimant's 10 June email and/or in the meeting with the head on 23 June.

120. At 22:17 on 28 June 2022, the Claimant sent an email to Ms Thompson, copied to HR and to Ms Hamilton. This was late on Tuesday. The Claimant had two more days of employment left, the Wednesday and the Thursday, 29 and 30 June.

121. The email commenced (our emphasis):

> I hope this email reaches you well.
>
> I want to begin by thanking you or the opportunity to experience Oasis as an unqualified teacher. I have really enjoyed interacting with such a diverse student background. I have been able to fulfil some of the important things to me which is to inspire and lead young people with care, relatability and bring my experience to bring a different style to the students. I have enjoyed connecting with the students, from primary to secondary and I hope some of them will take my advices, understanding and problem solving techniques with them throughout their school and life.
>
> I would also like to address some points I was able to retrieve from my notes plus some more that have come up in my recent last days. And upon deeper reflection on conversations and my time here. **I understand that there will be nothing done or said from this point** as I finish on the 31st June.

122. The email touched on many points. It included, amongst others, the following quotes:

122.1 *On Friday 24th inset day. I was present when Oliveira was planning a cinema trip with the PE team and made to feel like I am an outcast. Not asked if I want to attend but counting the of the rest of the PE and drama team on the plans. I do not have an issue with not being welcome to the teams plans. But I would have expected that it be planned while I am not sitting there listening in as an outsider. As it made me feel unwanted and extremely uncomfortable*.

122.2 *I have told my name on multiple times to Oliveira and Jimmy and many times after have still proceeded to pronounce my name as Ale-ko which is incorrect or call me what they would like to call me instead of the name I had given them. This is Micro aggression*.

122.3 *… I make this point because after conversation with Jimmy* [Mr Singleton] *and Oliveira* [Ms Djurdjevac], *them venting their frustrations with my asking of somebody to open the changing room, these are the issues that I understand they have with helping do for me when i had a conversation with them both Tuesday 28th June Morning*.

122.4 *I came into this school as an agency cover, I was informed by Oliveira that the position was open for maternity cover and Jimmy asked me to apply, kindly. I had not applied, because I wanted to stay as an agency worker but as they asked me a few times*.

122.5 *Exactly how, I feel now. That maybe I have received this type of treatment because of my race*.

122.6 *In winter season - I was confronted more than once a week for wearing my Jacket. At this point I wasn't given a Oasis Jacket, that I was given as the weather warmed up slightly. … The moment I came inside, it was suggested to remove my coat, while engaging with conversation, holding equipment, making sure bibs are not being dropped on the floor, its primary to remember to take my coat of from extreme weather conditions as soon as I enter the building? Is there no care at all for my health and wellbeing/ using discretion in this case is paramount. especially as I explained multiple times why I need to wear my coat*.

122.7 *One of which was life day.* [Mr Singleton] *was reading from his phone the teams, I missed some of the names to the colours and asked him which colour should I do. He told me he doesn't know and directed me to Bez In a very nonchalant tone*.

122.8 *In the past I have expressed sorry, I am still every occasion met with the same animosity. On more than one occasion have I said sorry and it has never been received with. No worries, I understand, Or any type of understanding just continue of his frustration for what I have done or haven't done. Hence why I felt like I was being attacked and didn't feel the need to say sorry at that point. I have sped on the roads very dangerous, physically ran to my class, mid register I am confronted. Under pressure. To be told I have never said sorry is absurd. I have apologised for things I don't believe I should but I have and also for mistakes or lateness and absence. Today is the first time I can categorically say I didn't. But it didn't mean I wasn't apologetic for being late, I was dealing with students at the time I was met with Jimmy. I didn't expect for him to return 3 minutes later with an ask for me to apologise. I would have suggested that*

conversation would have happened at the end of the lesson but that is just a suggestion.

122.9 *I feel like because it's what I feel rather than being able to place my frustration into legislation I was able to be gaslit. Further our conversation you mentioned there are two approaches. "one is to be victim and maybe some things we feel are not meant in the way we took it and under pressure environments like teaching may bring out some attitudes that may not be meant in a bad way" although you mentioned I can speak to you anytime. That alone made me feel extremely uncomfortable. I am a very patient person, I don't like fuss, I don't confront situations until it is out of hand, and feel very uncomfortable to the point of being sick. I am a very spiritual person, as religion is important, my spirituality to me is important and I sense a lot of indirect undertones of discrimination. Something each employee is covered under the Equality act 2010. Of direct or indirect discrimination from their place of work*.

123. We have taken all of the Claimant's comments in this email of 28 June 2022 (not just those quoted) into account when making the findings of fact about the specific matters set out earlier in our fact finding, and also in our analysis below.

124. The final extract quoted is a reference to the meeting between the Claimant and the head a few days earlier, on Thursday 23 June 2022, which was discussed above.

125. Ms Thompson saw the email for the first time on 29 June. It was a lengthy email, and she did not have the opportunity to send a reply to it until the next day. She sent it at 19:52 on 30 June. In other words, the reply was sent after the Claimant had finished work on her last day of employment.

126. The Claimant had sent a reminder at 14:59. She did not ask to meet Ms Thompson, but rather asked for the reply to be sent to her personal email address, because she would no longer have access to the email address provided for her by the Respondent.

127. Ms Thompson's reply included:

> Following your employment, you disclosed that you suffered had Lupus and Angina and resulting nosebleeds.

128. The first three words are accurate to the extent that the Claimant ticked "no" to disability on the Equal Opportunities Form [Bundle 143] and the Health Questionnaire [Bundle 195]. However, they are incorrect to the extent that the Claimant did supply information about her Lupus on the "Employee Personal Details" form dated 9 June 2021.

129. In any event, as we have stated above, we are satisfied that the Claimant referred to her Lupus in discussion with Mr Singleton while she was still an agency worker. However, we accept that Ms Thompson was unaware of that discussion at the time she sent the email.

130. Ms Thompson's 30 June 2022 email also included:

> I was so sorry to read that you felt you had not been well supported by Jimmy and you believe that Olivera was also not being a supportive colleague either. Ordinarily in instances such as these, we would first try to resolve this these concerns locally though mediation. Its really important that people can understand the way they have made you feel and apologise, even if it may have been unintentional so that these behaviours are not repeated.
>
> I am aware that you have come to the end of your contract with us, however I would like (with your permission) the opportunity to arrange this with Jimmy and yourself and then subsequently with Olivera and yourself. I understand that you may not wish to do this, and I appreciate this is your decision.
>
> However you choose to proceed, I would like to thank you for all the work you have done at Hadley developing our children and I wish you the very best in your next endeavour.
>
> You have clearly come a long way. I am keen to continue to support your career development and so if there is anything you feel I may be able to support you with, I would be happy to consider this.

131. The Claimant replied on 4 July 2022 [Bundle 344]. She wrote:

> Good Evening Zoe
>
> Unfortunately on the last day. None of the team wished me good luck, or even as little as a good bye! Which would lead me to believe the consistent treatment wasn't by mistake but actually intentional. So, on that note my stance hasn't changed, from my previous email. I wouldn't wish to mediate, As I had expressed my upset before I left, and now my temporary contract has come to an end.
>
> Thank you for getting back to me! I am very appreciative of your time taken to read my email and respond!
>
> Kind regards

The Law

Equality Act 2010 ("EQA")

132. The burden of proof provisions are codified in s136 EQA and s136 is applicable to all of the contraventions of the Equality Act which are alleged in these proceedings.

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

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

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

133. It is a two stage approach.

133.1 At the first stage, the Tribunal considers whether the Tribunal has found facts - having assessed the totality of the evidence presented by either side and drawn any appropriate factual inferences from that evidence - from which the Tribunal could potentially conclude - in the absence of an adequate explanation - that a contravention has occurred.

At this first stage it is not sufficient for the Claimant to simply prove that the alleged treatment did occur. There has to be some evidential basis from which the Tribunal could reasonably infer that there was a contravention of the act. The Tribunal can and should look at all the relevant facts and circumstances when considering this part of the burden of proof test.

133.2 If the Claimant succeeds at the first stage then that means the burden of proof is shifted to the Respondent and the claim is to be upheld unless the Respondent proves the contravention did not occur.

134. In Efobi v Royal Mail: [2021] UKSC 33, the Supreme Court made clear that the changes to the wording of the burden of proof provision in EQA compared to the wording in earlier legislation do not represent a change in the law. Thus when assessing the evidence in a case and considering the burden of proof provisions, the Tribunal can have regard to the guidance given by the Court of Appeal in, for example, Igen v Wong: [2005] EWCA Civ 142 and Madarassy v Nomura International: [2007] EWCA Civ 33.

135. As per paragraph 57 of Madarassy, “could decide” in section 136(2) EQA is equivalent to: a reasonable tribunal could properly decide from all the evidence before it.

136. The burden of proof does not shift simply because, for example, the Claimant proves that there was a difference in treatment in comparison to someone whose relevant protected characteristics were different. Those things only indicate the possibility of discrimination. They are not sufficient in themselves to shift the burden of proof; something more is needed.

137. It does not necessarily have to be a great deal more: Deman v Commission for Equality and Human Rights 2010 EWCA Civ 1279. For example - depending on the facts of the case - a non-response from a respondent, or an evasive or untruthful answer from a respondent or an important witness, could be the

"something more" that is required. In some circumstances, it may simply be the context of the act itself. In SRA v Mitchell, the EAT upheld a tribunal's decision that the burden of proof shifted based on a finding that the employer had given a false explanation of the less favourable treatment. That being said, it is important for us to remind ourselves that the mere fact alone that a Tribunal rejects the employer's explanation for some particular act or omission does not mean that the burden of proof necessarily shifts, see for example Raj v Capita Business Services.

138. Recent EAT cases have re-emphasised the importance of actually adhering to the two stage approach set out in section 136. We have taken note of the comments in Field v Steve Pye and Co (KL) Limited and ors [2022] EAT 68 and of the fact that several subsequent EAT decisions have cited those comments with approval.

139. As per Essex County Council v Jarrett [2015] UKEAT 0045/15/0411, where there are multiple allegations, the Tribunal has to consider each allegation separately when determining whether the burden of proof has shifted in relation to each one.

139.1 That does not mean that we must ignore the rest of the evidence when considering one particular allegation.

139.2 The opposite is true. When there are multiple allegations, and/or a lot of facts found as part of the background information, a Tribunal has to stand back and consider all of the evidence in the round to consider whether any inference of discrimination/victimisation should be drawn: see Qureshi v Victoria University of Manchester. There must be no failure to consider 'the bigger picture', as it was described in Humby v Barts Health NHS Trust [2024] EAT 17.

139.3 It just means that we assess separately, for each allegation, whether the burden of proof shifts or not, taking into account all of the facts which we have found.

Time Limits for EQA complaints

140. In EQA, time limits are covered in s123, which states (in part):

> (1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or
>
> (b) such other period as the employment tribunal thinks just and equitable.
>
> (3) For the purposes of this section—
>
> (a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it

141. In applying Section 123(3)(a) of EA 2010, the tribunal must have regard to the guidance in Commissioner of Police of the Metropolis v Hendricks ([2002] EWCA Civ 1686; [2003] ICR 530); Lyfar v Brighton and Hove University Hospitals Trust [2006] EWCA Civ 1548. Applying that guidance, the Court of Appeal has noted that in considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents: Aziz v FDA 2010 EWCA Civ 304. The tribunal must consider all relevant circumstances and decide whether there was an act extending over a period or else there was a succession of unconnected or isolated specific acts. If it is the latter, time runs from the date when each specific act was committed.

142. A crucial distinction is between – on the one hand – an invariable rule which will inevitably result in a discriminatory outcome each time and – on the other hand – a discretionary decision made under a policy, in which the discretionary decision may sometimes result in an employee getting the desired outcome, and sometimes not. In the latter case, the discretionary decision causes the time to run (for a complaint based on that decision), regardless of arguments about whether the policy itself is discriminatory.

143. In considering whether it is just and equitable to extend time the Tribunal should have regard to the fact that the time limits are relatively short. That being said, time limits are there for a reason and the default position is to enforce them unless there is a good reason to extend. That does not meant that the lack of a good reason for presenting the claim in time is fatal. On the contrary, the lack of a good reason for presenting the claim in time is just one of the factors which a tribunal can take into account, and it might possibly be outweighed by other factors.

144. The Tribunal has a broad discretion to extend time when there is a good reason for so doing. Parliament has chosen to give the Employment Tribunal the widest possible discretion. Unlike, say, the Limitation Act 1980, s123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it is wrong to interpret it as if it contains such a list. A tribunal can consider the list of factors specified in s 33(3) of the Limitation Act 1980, but if it does so, should only treat those as a guide, and not as something which restricts its discretion.

145. The factors that may helpfully be considered include, but are not limited to:

    145.1 the length of, and the reasons for, the delay on the part of the Claimant;

    145.2 the extent to which, because of the delay, the evidence is likely to be less cogent than if the action had been brought within the time limit specified in Section 123;

    145.3 the conduct of the Respondent after the cause of action arose, including the extent (if any) to which it responded to requests for information or documents

146. In particular, it will usually be important for the Tribunal to pay attention to (and, where necessary, make specific findings about) "whether the delay has prejudiced the Respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)": Abertawe Bro Morgannwg University Local Health Board v Morgan Neutral Citation Number: [2018] EWCA Civ 640.

Direct Discrimination

147. Direct discrimination is defined in s.13 EQA.

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

148. There are two questions: whether the Respondent has treated the Claimant less favourably than it treated others ("the less favourable treatment question") and whether the Respondent has done so because of the protected characteristic ("the reason why question").

149. For the less favourable treatment question, the comparison between the treatment of the Claimant and the treatment of others can potentially require decisions to be made about whether another person is an actual comparator and/or the circumstances and attributes of a hypothetical comparator.

150. However, the less favourable treatment question and the reason why question are closely intertwined.

151. When considering the "reason why question" for the treatment we have found to have occurred, we must analyse both the conscious and sub-conscious mental processes and motivations of the decision makers which led to the Respondent's various acts, omissions and decisions.

Discrimination arising from disability

152. Discrimination arising from disability is defined in s.15 of the Act.

> 15 Discrimination arising from disability

> (1) A person (A) discriminates against a disabled person (B) if—
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

153. The elements that must be made out in order for the Claimant to succeed are that: there must be unfavourable treatment; there must be something that arises in consequence of the Claimant's disability; the unfavourable treatment must be because of, in other words caused by, the something that arises in consequence of the disability. Furthermore, the alleged discriminator must also be unable to show either that the unfavourable treatment was a proportionate means of achieving a legitimate aim or, alternatively, that it did not know and could not reasonably have been expected to know that the Claimant had the disability.

154. The word "unfavourably" in s.15 is not separately defined in the legislation but should be interpreted consistently with case law and the EHRC Code of Practice.

155. In Risby v London Borough of Waltham Forest EAT 0318/15, the EAT made clear that an indirect connection between the Claimant's unfavourable treatment and the "something" that arises in consequence of the disability can be sufficient. The EAT decided that the employment tribunal had been wrong to reject the section 15 claim on the basis that an incident in which the employee lost his temper was unrelated to his disability. On the facts, an effective cause of the loss of temper had been the employer's decision to hold an event at a venue that was inaccessible to him because of his disability, that loss of temper led to his dismissal, and there was therefore a sufficient connection between the unfavourable treatment (his dismissal) and his disability for the purposes of section 15

156. When considering what the Respondent knew or could have reasonably been expected to know, the relevant time is the time at which the alleged unfavourable treatment occurred. Thus, where there are different allegations, then the Respondent's knowledge has to be assessed at the time of each alleged act or omission.

157. The EHRC employment code includes paragraphs 5.1.4 and 5.1.5 followed by an example.

> 5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a 'disabled person'.

> 5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

158. In A Ltd v Z [2020] ICR 199, UKEAT/0273/18, the EAT said at paragraph 23 in determining whether the employer had the requisite knowledge for section 15(2) purposes, approved the following principles (which had been agreed between the parties in that case).

> (1) There need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its consequent effects which led to the unfavourable treatment, see *York City Council v Grosset* [2018] ICR 1492 CA at paragraph 39.
>
> (2) The Respondent need not have constructive knowledge of the complainant's diagnosis to satisfy the requirements of section 15(2); it is, however, for the employer to show that it was unreasonable for it to be expected to know that a person (a) suffered an impediment to his physical or mental health, or (b) that that impairment had a substantial and (c) long- term effect, see *Donelien v Liberata UK Ltd* UKEAT/0297/14 at paragraph 5, per Langstaff P, and also see *Pnaiser v NHS England* [2016] IRLR 170 EAT at paragraph 69 per Simler J.
>
> (3) The question of reasonableness is one of fact and evaluation, see *Donelien v Liberata UK Ltd* [2018] IRLR 535 CA at paragraph 27; nonetheless, such assessments must be adequately and coherently reasoned and must take into account all relevant factors and not take into account those that are irrelevant.
>
> (4) When assessing the question of constructive knowledge, an employee's representations as to the cause of absence or disability related symptoms can be of importance: (i) because, in asking whether the employee has suffered substantial adverse effect, a reaction to life events may fall short of the definition of disability for EqA purposes (see *Herry v Dudley Metropolitan Council* [2017] ICR 610, per His Honour Judge Richardson, citing *J v DLA Piper UK LLP* [2010] ICR 1052), and (ii) because, without knowing the likely cause of a given impairment, "it becomes much more difficult to know whether it may well last for more than 12 months, if it is not [already done so]", per Langstaff P in Donelien EAT at paragraph 31.
>
> (5) The approach adopted to answering the question thus posed by section 15(2) is to be informed by the Code, which (relevantly) provides as follows:
>
> *[citations of 5.14 and 5.15 omitted as they are set out above]*
>
> (6) It is not incumbent upon an employer to make every enquiry where there is little or no basis for doing so (*Ridout v TC Group* [1998] IRLR 628; *SoS for Work and Pensions v Alam* [2010] ICR 665).
>
> (7) Reasonableness, for the purposes of section 15(2), must entail a balance between the strictures of making enquiries, the likelihood of such enquiries yielding results and the dignity and privacy of the employee, as recognised by the Code.

159. At paragraph 39 the EAT said:

> As to what a Respondent could reasonably have been expected to know, that is a question for the ET to determine. The burden of proof is on the Respondent but the expectation is to be assessed in terms of what was reasonable; that, in turn, will depend on all the circumstances of the case.

160. In paragraph 43, the EAT in overturning the Tribunal's decision said that the Tribunal had failed to apply the correct test. It had only asked itself what more might have been required of the Respondent in terms of process. Instead, it should have been asking what the Respondent might then have reasonably been expected to know (had it taken further steps).

161. There will not be discrimination within the definition in section 15 EQA if the Respondent is able to show that the unfavourable treatment was a proportionate means of achieving a legitimate aim. The aim relied upon should be legal, should not be discriminatory in itself, and must represent a real objective consideration. Business needs and economic efficiency may be legitimate aims, but simply demonstrating that one course of action was less costly than another is not likely to be sufficient.

162. In relation to proportionality, the Respondent is not obliged to go as far as proving that the discriminatory course of action was the only possible way of achieving the legitimate aim. However, if there are less discriminatory measures which could have been taken to achieve the same objective then that might imply that the treatment was not proportionate.

163. It is necessary for there to be a balancing exercise which takes into account the importance of the Respondent achieving its legitimate aim in comparison weighed against to the discriminatory effect of the treatment. Regardless of whether the Respondent carried out that balancing exercise at the time (and it is not necessary for the Respondent to prove that it did), the tribunal carries out its own balancing exercise - based on the evidence presented at the hearing – in order to decide if the section 15(1)(b) defence succeeds.

164. If a Respondent has failed to make reasonable adjustments which could have prevented or minimised the unfavourable treatment, then it is going to be very difficult for the Respondent to show that the treatment was a proportionate means of achieving a legitimate aim.

165. Section136 EQA applies to alleged contraventions of section 15 EQA.

<u>Reasonable adjustments</u>

166. Section.20 defines the duty. S.21 and schedule 8 also apply.

> **20 Duty to make adjustments**

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

(2) The duty comprises the following three requirements.

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

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

21 Failure to comply with duty

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

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

Schedule 8, Part 3, paragraph 20: Lack of knowledge of disability, etc.

(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(b) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

167. The expression “provision, criterion or practice” [usually shortened to “PCP”] is not expressly defined in the legislation. We have regard to the guidance given by EHRC to the effect that the expression should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, pre-requisites, qualifications or provisions.

168. An expectation that employees ought to behave in a certain way, and that doing otherwise would be frowned upon, can potentially be sufficient to show there is a PCP, even if the employer did not enforce the expectation by any formal sanction.

169. It is also important to distinguish between the application of a PCP and any adjustment that may be in place to ameliorate the effect of it on the Claimant. If adjustments have been made for the Claimant, that does not, in itself, prove that there was no PCP.

170. The Claimant must clearly identify the alleged PCPs to which the adjustments should have been made. The tribunal must only consider those PCPs as identified. See Secretary of State for Justice v Prospere [2015] UKEAT 0412/14/3004.

171. When considering whether there has been a breach of s.21 we must precisely identify the nature and extent of each disadvantage to which the Claimant was allegedly subjected. Furthermore, we must consider whether there is a substantial disadvantage when the relevant alleged PCP is applied to the Claimant in comparison to when the same PCP is applied to persons who are not disabled.

172. The Claimant has the burden of establishing a prima facie case that the duty to make reasonable adjustments has arisen and that there are facts from which it could reasonably be inferred that the duty may have been breached. If she does then we need to identify the step or steps (if any) which the Respondent could have taken to prevent the Claimant suffering the disadvantage in question, or to reduce that disadvantage. If there appear to be such steps, then the burden is on the Respondent to show that the disadvantage could not have been eliminated or reduced by such potential adjustments or, alternatively, that the adjustment was not a reasonable one for it to have had to make.

173. There is no breach of s.21 if the employer did not know and could not reasonably have been expected to know, that the Claimant had the disability.

174. Furthermore, in relation to a particular disadvantage, there is no breach of s.21 if the employer did not know and could not reasonably have been expected to know, that the PCP would place the Claimant at that disadvantage.

175. In terms of time limits, the clock does not start running simply from the date on which the duty to make the adjustment first arose, or even from the date on which a particular step could have been taken. It will start to run either when the Respondent decides it will not take a particular step, or else when the Respondent

does something that would be considered inconsistent with any plan to take that particular step, or else at from the end of the period in which the Respondent might reasonably have been expected to take the step, if it was going to take it at all.

Analysis and conclusions

176. Our decision is that the Respondent was on notice that the Claimant did have Lupus. This was because the Claimant mentioned it to Mr Singleton while she was an agency worker and he was the head of the department in which she worked. She mentioned it to him in the context of stating that it was a medical condition which affected her to the extent that (on the specific occasion that they were discussing at the time, at least) it could make her late for work. Since getting up in the morning (on time), getting ready to leave the house to go to work, and travelling to work are day to day activities, Mr Singleton had been informed that the Claimant had a medical condition that (to some extent, and at least on some occasions) affected her day to day activities.

177. Prior to the start of, and immediately following the start of, the Claimant's contract of employment, the Respondent had the opportunity to make further enquiries. We find that it did not do so. In part, that was because the Claimant completed some pre-employment forms without mentioning Lupus. However, she did mention it in one of the forms and - as mentioned in the previous paragraph - Mr Singleton had been told about it orally.

178. The Claimant discussed her Lupus with Mr Singleton in January. At the very latest by 26/27 January the Claimant had informed Mr Singleton that the cold weather affected her because of her Lupus. On 18 March at the latest, he was also aware that the Claimant was stating that Lupus could cause absence from work.

179. Mr Singleton wrote to HR, as mentioned in the findings of fact. In his evidence, he asserted that he had been making a adjustment for the Claimant by trying to source an alternative clothing that would meet her requirements and the school's requirements and also that he allowed her to wear her own coat (outside) in the interim. Regardless of whether he did those things or not, on his own account, he had been made aware that the Claimant was asserting that the School Dress policy was placing her at a disadvantage because of her Lupus.

180. At the very least that the Respondent was on reasonable notice that the Claimant might have a disability. However, in actual fact, our analysis is that the Respondent did, in fact, know that the Claimant had a disability (being a physical impairment that affected her day-to-day activities) by around 26 or 27 January 2022, at latest. Furthermore, it also knew that the Claimant was asserting that complying with the school's punctuality requirements and dress requirements were more difficult for her than for someone without her disability.

181. Even to the extent that the Respondent was not actually aware that the Claimant had a disability by January (as we have found it was), the Respondent concedes that it was aware from 28 March 2022 onwards.

182. As per the list of issues, the "something arising" are alleged as:

a. The Claimant's vulnerability to cold weather

b. The Claimant being unable to get to work on time in cold weather due to severe joint pain and nosebleeds.

c. The Claimant being unable to get to work on time in cold weather due to severe joint pain and nosebleeds, which had led to reprimands for being late.

183. The Claimant has given various accounts about

183.1 when the lupus symptoms began, and

183.2 when she was first diagnosed

184. The occupational health report refers to a date of 2009.

184.1 The impact statement [Bundle 401] refers to diagnosis in 2020 and with start date of 2017

184.2 Whereas at [Bundle 400], the impact statement states: "*I suffer from Lupus and have done so since a very young age*."

184.3 Paragraph 40 of the witness statement (signed 3 September 2024) states that the Claimant is "*someone who has been living with this sickness for over 10 years diagnosed*". So ten years back would be around 2014; the Claimant was around mid-20s then.

185. For the entire period of the Claimant's employment, we accept that item (a) is correct. We accept that the Claimant was vulnerable to cold weather and that this was something arising in consequence of Lupus.

186. In terms of lateness due to Lupus, based on the dates given by the Claimant to occupational health on 20 March 2022, there were two days between 4 January and 28 March, in which nosebleeds were a problem. We infer that she told HR that these were each days of lateness, not absence.

187. Other than the occasions (two at most) mentioned in the previous paragraph, we are not satisfied that there were other occasions on which the Claimant was late because of Lupus symptoms. So we accept that the nosebleeds caused her to be late (or absent), but not that she was late (or absent) because, for example of a joint pain.

187.1 Had it been true, that, at the time the Claimant's opinion was that a particular day of lateness (or absence) was because of Lupus, she would have said so at the time.

187.2 She was not concealing information about her Lupus, and she mentioned it to Mr Singleton as a reason for lateness during her time as agency worker.

187.3 She was not withholding information about Lupus in December 2021 (when there were two forms which did not mention it, but she did mention it on another).

187.4 She discussed her Lupus with him towards end of January when she referred to the coldness affecting her (a point, she repeated in her 28 February email).

187.5 Had the Claimant believed at the time that she was late at for medical reasons, there would have been every reason for her to mention this either by phoning the official telephone line or, at the very least, by mentioning it to Mr Singleton.

187.6 However, our findings are that she was frequently late without following proper procedures. Instead she followed an informal procedure only (asking a colleague to cover for her) without giving any particular reason to Mr Singleton for the lateness.

187.7 When she did, give reasons to Mr Singleton, she supplied a variety of different explanations; more often than not, she said there were problems with traffic.

187.8 While we take into account that some employees might not wish to refer to their medical condition as the reason for lateness (either because of a desire to avoid discussing something personal/embarrassing, or because they do not want the employer to be motivated to get rid of them on health grounds), we do not find that that was the case here. Our decision is that, at the time of particular examples of lateness the Claimant believed that the reason for the lateness was not medical (related to Lupus or otherwise) and that is why, on those occasions, she gave particular explanations to Mr Singleton, such as traffic.

188. For the vast majority of the examples of lateness (and/or absence) that occurred (i) by 1 April 2022 (probation meeting) or (ii) 20 May 2022 (termination of employment letter), the Claimant has failed to prove that the lateness (or the absence) was caused by her disability.

189. In June, she did have some absence (around 10 June to 22 June) that was because of Lupus. She has not proved that, between 20 May and 28 June she had particular instances of lateness due to Lupus.

190. Thus, for "something arising" item (b), the Claimant has proved that there was a small number of examples of lateness that were "something arising in consequence of" the Claimant's disability (namely Lupus).

191. However, for item (c), she has not proved that "reprimands" were caused by something arising in consequence of her Lupus. The criticism that she received was because she failed to follow the correct procedure. In particular:

191.1 when she was spoken to by Mr Singleton after the Head discovered that Ms Djurdjevac had been left with two classes (and investigated how that had arisen), the issue was that the cover team had not been notified that there was an absence to cover. (Although by no means decisive for the conclusion just mentioned, we also comment that we are satisfied that the Claimant did know that that was why she was being criticised on that occasion; that is why she accused Ms Djurdjevac of "snitching".)

191.2 when she was spoken to on 28 June, it was the failure to follow the correct procedure which caused Mr Singleton to speak to her

192. We do accept that, for the probation meeting on 1 April 2022, the references were to the number of latenesses (and absences) rather than to following the correct procedure.

193. As per the list of issues, the alleged examples of the Claimant being treated "unfavourably", for the purposes of the complaints based on section15 EQA are:

> *a. Being reprimanded for wearing her own jacket outdoors rather than the inappropriate school uniform she was given and/or being given uniform to wear outdoors that was inappropriate for her condition.*
>
> *b. Time keeping, i.e. being reprimanded for arriving late.*
>
> *c. Her probation period being extended unreasonably on the grounds she didn't arrive for work on time.*

Treatment: Item (a)

194. In terms of item (a),

194.1 It is correct that she was issued with "uniform" (that is, the school's branded clothing) which she was told she was supposed to wear. However, the reason for that was not something arising in consequence of her disability.

194.2 It is also correct that the clothing that she was given was inappropriate for her condition. However, the reason that she was given this clothing was not something arising in consequence of her disability.

194.3 The reason this particular clothing was not suitable for her was something arising in consequence of her disability; however, she was given this clothing because it was the clothing given to all PE teachers employed at the school.

195. Furthermore, while the Claimant was given the uniform and - initially - was told that she needed to wear it outdoors, when she raised an issue with Mr Singleton about it (around 26/27 January), he agreed that he would look into it and that in the meantime she could carry on wearing her own clothing outdoors (as she had been doing already).

195.1 We have rejected the Claimant's assertion that she was specifically told to remove her own green jacket when she was outdoors. Even prior to 27 January, she had the option of wearing any clothes of her own under the school branded jacket, so long as she did wear the school jacket on top.

195.2 From 27 January to around 1 March 2022, she was not reprimanded for not wearing the school jacket, because Mr Singleton had accepted her account that it was not big enough for her to fit (underneath it) sufficient clothing of her own, and not warm enough to wear without such additional layers.

195.3 From 1 March 2022 onwards, she had been provided with a large school branded coat which could be worn over her jacket if she wished.

196. Thus the complaint fails on the basis that the Claimant has not shown that "b*eing reprimanded for wearing her own jacket outdoors rather than the inappropriate school uniform"* occurred and has not shown that "*being given uniform to wear outdoors that was inappropriate for her condition"* was because of something arising in consequence of disability.

197. However, for completeness, we address the potential defence based on section 15(1)(b) EQA.

198. We accept that the Respondent did have the aims identified in paragraph 16 to 20 of amended Grounds of Resistance.

199. We accept that the Respondent did want staff to comply with the dress code because this was seen as an important means of seeking to persuade the pupils of the requirement to comply with the behaviour and school uniform policies. The fact that we have been given one example (that of Mr Simpson) in which – from what we were told – he wore sportswear on days when he was not teaching PE does not change our assessment, that the Respondent did have this aim. We accept the evidence we have heard from Mr Singleton and Ms Thompson, that, in general, all teachers were expected to comply with the policy (which differed between PE teachers and teachers of other subjects).

200. We accept that the Respondent did in fact have the aims mentioned in paragraph 18 of amended Grounds of Resistance. It aimed to have pupils and staff follow the relevant policies, including the dress code, as a means of seeking to ensure the correct functioning of the school day and lessons, ensuring that all parties are

complying with the standards required of staff and students and the harmonisation of the school community.

201. That was a legitimate aim.

201.1 We accept that the expectation that the PE staff, while outdoors would wear the branded clothing was in pursuit of that legitimate aim. (To repeat, this was not a requirement that they do not wear their own clothing, so long as the school branded clothing was the top layer).

201.2 We accept that the expectation that the PE staff, while indoors would wear the branded clothing (whenever not dressed in the clothing required for other teachers) was in pursuit of that legitimate aim

202. When the Claimant was informed, prior to 27 January 2022, that she needed to wear the school jacket outdoors, as we will mention below, that complaint is out of time, and she was not told this after that date.

203. When the Claimant was informed that she needed to wear a school jacket indoors that was a proportionate means of seeking to achieve the legitimate aim. The Claimant had been permitted to wear her own jacket outside (without the school jacket on top) and the fact is that the Claimant had been told that this concession did not extend to when she was indoors. She was required to get changed promptly as soon as she came in from the outside.

<u>Treatment (b) and (c)</u>

204. We have already analysed above, the extent to which “reprimands” were, or were not, because of lateness which was caused specifically by Lupus.

205. For the Claimant to be able to succeed in these particular allegations, it would not require us to decide that the main cause of the reprimands / extension of probation was the “something arising”; we would only have to decide that part of the cause for the reprimands / extension of probation was the “something arising”.

206. For both items (b) and (c), the decision-maker was the same person, Mr Singleton, and so it is his thought process for the treatment which is relevant.

207. In terms of his motives for speaking to the Claimant following the specific occasion when Ms Thompson found Ms Djurdjevac attempting to manage two classes, we are satisfied that no other examples of lateness were relevant to what Mr Singleton did / said in response to that.

207.1 The Claimant had failed to follow protocol on that day, and the Head found out, and that is the reason her line manager had to speak to her.

207.2 We are satisfied that that this had nothing whatsoever to do with the Claimant's disability or anything arising from it.

207.3 Even assuming (which we have not found as a fact) that the lateness on this date was caused by the Claimant's Lupus, we are satisfied that her failure to follow the correct procedure was not caused by anything arising in consequence of her Lupus. The chain of causation is broken. Had the Claimant notified the office properly – in accordance with what she knew to be the correct procedure – she would not have been reprimanded on that occasion.

208. The extension of probation document (from the 1 April 2022 meeting) referred extensively to the Claimant's lateness (as well as absence) as opposed to failing to follow lateness reporting procedures. There are facts from which we could conclude that this treatment was caused by something arising in consequence of the Claimant's disability.

209. For the 28 June 2022 conversation with Mr Singleton, it does fall within the broad meaning of "reprimand". The specific point raised by Mr Singleton was that the Claimant had failed to follow the correct procedure, and had failed to apologise. However, that was against a background of many other latenesses, at least some of which were because of Lupus (albeit, most of them were not, based on our the findings of fact). Mr Singleton might have found it less necessary to challenge the Claimant about her conduct on 28 June 2022 (especially as she was leaving on 30 June) if her lateness prior to 28 June had been less frequent. There are facts from which we could conclude that this treatment was caused by something arising in consequence of the Claimant's disability.

210. The Claimant was told, for example, on 27 January and 25 February, that her timekeeping and needed to improve. Again, on the facts, we were satisfied that most of the latenesses were for reasons other than Lupus (based on what the Claimant said at the time). We are not persuaded that what was said about timekeeping on those occasions was because of something arising in consequence of disability. The remarks about setting off earlier were specific responses to the fact that the Claimant frequently blamed traffic for lateness. Telling her to set off earlier would not have been an appropriate response to assertions by the Claimant that she had suffered (for example) a nosebleed while getting ready to set off; but Mr Singleton's comments were not caused by any such remark from the Claimant.

211. However, in any event, for all of the alleged "reprimands" (treatment item (b), the Respondent did have a legitimate aim of ensuring that the staff were there on time and this included the need for pupils to be supervised at the start of lessons, which is a health and safety issue, and because of the disruption caused to other classes if a teacher had to cover two classes at once.

212. Our decision is that what was actually said and done to the Claimant (within what she refers to as "reprimand") was a proportionate means of seeking to achieve that aim. She was only given reminders of the requirement without being formally disciplined for it.

213. For item (c), it is true that at the Claimant probation period was extended. Instead of it running for six months expiring in early July. It was extended by a month and so would not have been completed prior to August.

214. We do accept that it is unfavourable treatment.

214.1 It is a disadvantage to somebody to have their probation period extended for any reason whatsoever. Being in a probation period means that the employer can dismiss them more quickly and more easily than if they have "passed" probation.

214.2 In addition, and in any event, an employee being told that their performance / punctuality / attendance is substandard is also unfavourable treatment.

215. It is true that, as things worked out, the decision on 1 April 2022 to extend probation made no difference to the duration of the Claimant's employment.

215.1 Her contract would have ended on 30 June 2022 in any event, even if probation had not been extended.

215.2 She would still have been in her probation period on 30 June 2022, even if probation had not been extended.

215.3 However, that does not change the fact that, the events of 1 April 2022 amounted to treating the Claimant unfavourably.

216. However, we accept that the treatment was in pursuit of the Respondent's legitimate aims (which are the same as those mentioned above when discussing "reprimands").

217. Conducting the balancing exercise, the extension of probation was proportionate. The aims were highly important to the Respondent. The discriminatory effect on the Claimant was not that her employment was terminated on 1 April 2022. Rather she was told (again) what the required standards were, and given the further opportunity to demonstrate that she could adhere to them.

218. To the extent that there were medical reasons for the lateness, the Claimant would have had the opportunity during the extended probation period to prove that that was the case.

219. It is also relevant that she would not have been deemed to "pass" the probation on 1 April 2022 in any event, even in the absence of the issues about lateness. She

was approximately half way through the six month period, and alerting her to what she needed to accomplish in the second half of the probation period (even if not extended) was appropriate.

220. For those reasons, all of the claims of discrimination within the definition in section 15 EQA fail and are dismissed.

Failure to make reasonable adjustments

221. The alleged PCPs are:

- *Requiring her to wear school uniform outdoors; and*
- *Requiring her to attend work on time.*

222. The first bullet point is not a PCP, which the Respondent actually applied to the Claimant, at least not from 26/27 January onwards.

222.1 Prior to 27 January, she was expected to wear the school branded clothing while outdoors, but did not actually do so.

222.2 From 27 January onwards, she was allowed to wear her own jacket, without wearing the school jacket on top.

222.3 From 1 March onwards, to the extent that the PCP was applied at all, it did not disadvantage the Claimant, because she was supplied with a coat large enough to wear over her own jacket.

223. The Claimant suggested in closing submissions that the PCP should be that she was treated differently in relation to the requirement to wear school uniform outdoors; she alleged that this was not a general requirement for all staff. That argument would fail on the facts in any event, because our finding of fact was that the requirement to wear school branded clothing was applied to all staff. Additionally:

223.1 If the Claimant was the only person required to wear the school branding, then an instruction to the Claimant to wear school branding would not be a PCP.

223.2 Whereas if the Claimant was the only person who had to wear their own jacket outside, then “wearing own jacket while working outdoors” would not be a PCP.

223.3 To be a PCP, it has to be of more general application.

224. For completeness, the Respondent’s requirement that PE staff wear branded clothing did place the Claimant at a disadvantage. It did not do so in isolation, but it did so in combination with the fact that the kit which was originally supplied to the Claimant was not large enough and/or was not warm enough.

224.1 It was large enough to allow her to wear some clothing underneath. But not as much was needed.

224.2 It was not warm enough to keep her sufficiently warm, given that she could wear some items underneath, but not the type of thick items she needed to wear to keep warm because of Lupus.

225. However, the Respondent made adjustments. From around 26/27 January 2022 onwards, the requirement for her outer layer to be school branded was waived, pending further measures. From 1 March 2022 onwards, she had a jacket that was large enough to wear her own outdoor clothing underneath.

226. The Claimant's suggested adjustments, as per the list of issues, were: "*The Respondent to provide her with suitable clothing to wear during the winter months or allowing her to wear her own coat*". It actually did do both those things (albeit there was a delay until 1 March 2022 for the first of those.

227. All complaints of failure to make reasonable adjustments based on the first alleged PCP fail.

228. In relation to the second alleged PCP, the Respondent did have a PCP of requiring its employees, including the Claimant to attend work on time. The Respondent accepts it did have this PCP.

229. Because, as discussed in OH report, the Claimant might sometimes have a morning nose bleed which delayed her while getting ready for work, this PCP placed the Claimant at a "substantial" (that is, more than trivial) disadvantage in comparison with persons who are not disabled. There were some occasions when, because of her disability she was, not able to get to work at 820am. The Respondent's requirement for what the Claimant was obliged to do in on those occasions is the same requirement that other people had.

230. The Claimant (and other employees) were supposed to telephone the office to inform them that as she was going to be late. The Claimant was not disadvantaged by the requirement to notify the school administration if she was going to be late.

231. The fact that the Claimant was delayed in getting ready for work on a small number of occasions means that the PCP placed the Claimant at a slight disadvantage.

232. To the extent that the Claimant was disadvantaged by the PCP, our decision is that there was no other step that it would have been reasonable for the Respondent to have had to take that would have reduced the disadvantage.

232.1 The Respondent already had arrangements in place for what somebody was supposed to do if they were going to be late. Those arrangements, if followed,

would have meant that someone else covered the Claimant's class until she got there.

232.2 For any instance of lateness, the Claimant had the opportunity to explain that her lateness was for a medical reason. She had mentioned Lupus as a reason for a lateness while she was an agency worker. It had not prevented her being appointed as an employee on fixed-term contract.

232.3 Had the Claimant mentioned that many of her latenesses were because of Lupus, then it might have been a reasonable step for the Respondent to treat those latenesses differently. However, the Claimant did not do that. As mentioned, for many of the latenesses that did come to Mr Singleton's attention, she blamed traffic. For others, the Claimant did not bring the lateness to his attention and informally asked a colleague to cover the start of her class.

233. If all the lateness that the Claimant specifically attributed to Lupus by 1 April 2022 were discounted, the Respondent has shown that neither of

233.1 Completely ignoring all her lateness without saying anything about it (for example, on the occasion when the head found Ms Djurdjevac looking after two classes)

233.2 Not taking lateness into account when extending probation on 1 April 2022

were steps that it was reasonable for the Respondent to have to take to avoid/reduce the disadvantage. We are satisfied that the number of occasions when the Claimant's Lupus (or something arising from it) were the cause of the lateness was only a small proportion of the overall number of instances of lateness.

234. The Claimant suggested that a reasonable adjustment would be: *To allow her flexibility as regards her lateness*. This is vague. She had a lot of lateness and was not dismissed for it. She was told to improve, and that was not unreasonable in the circumstances where she had a lot of lateness attributed, by her, to issues such as traffic delays.

235. For those reasons, the reasonable adjustments claims fail, and we will address time limits below.

<u>Direct Race Discrimination</u>

<u>Item 1</u>

236. For item 1 are as per our findings of fact, it is not true that the Claimant's colleagues refused to call her "Miss Jackie". Our finding was that they did usually call her Miss Jackie.

237. There are no facts from which we could conclude that Mr Singleton or Ms Djurdjevac deliberately called her Miss Jackie. They deny it (subject to the point made in the findings of fact about Mr Singleton checking with HR) and we accept that evidence, given during the hearing.

238. On balance of probabilities, we accept that there were some occasions when they called her “Miss Alecho”. Calling a colleague Mr / Ms / Miss / Mrs followed by their surname was the usual practice. An exception was made in the Claimant’s case. There are no facts from which we could conclude that the reason they forgot occasionally was in any way connected (even unconsciously) to the Claimant’s race (which, for the purposes of the direct discrimination allegations, the Claimant described, as per paragraph 2 of the case management summary, [Bundle 81], as “Black African origin”).

239. As per the findings of fact, we have not accepted the Claimant's account that, after January, there were frequent occasions when her name was pronounced incorrectly by Mr Singleton, or by Ms Djurdjevac.

240. On balance of probabilities, there were some occasions when the Claimant’s name was pronounced to rhyme with “echo” rather than correctly. It is theoretically possible that some of the times that the Claimant thought there was mispronunciation, she actually misheard, but most of the times that the Claimant thought there had been mispronunciation, she was probably correct.

241. However, we are satisfied that Mr Singleton and Ms Djurdjevac did their best to pronounce the Claimant name correctly.

242. There are no facts from which we could conclude that the reason they occasionally pronounced the surname incorrectly was that, because of the Claimant’s race, they made less of an effort to pronounce her surname correctly than they did for the surname of a hypothetical comparator of a different race.

243. We do not think that any of the proposed comparators are actual comparators in relation to the first part of Item 1. There were material differences (see section 23 EQA). None of those people wished to be known as “Miss” or “Mr” followed by their first name (rather than “Miss” etc followed by their surname).

244. For the second allegation included within item 1, there are material differences between any one surname and any different surname. Each different surname is pronounced differently. There was only one correct way to pronounce the Claimant’s surname, and that was the way in which she told people to say it. However, it does not follow that it was just as easy for other people to use the correct pronunciation of the Claimant’s name, as for any other surname. Furthermore, and in any event, only one other specific surname (“Simpson”) has been offered as a suggested example.

Item 2

245. Item 2 fails on the facts.

246. As per the findings of fact, we decided that the Claimant had not been excluded from the conversation, which took place in her presence, about a cinema trip. There no facts from which we could conclude that the Claimant was treated less favourably because of race in relation to that conversation.

Item 3

247. In relation to item 3, we found that the Claimant had not proved that there were any particular matters about which she requested help where that help was not provided.

248. The suggested comparators are not actual comparators because on the Claimant's case, those were people who were able to understand the location of the equipment and the spider map and they were people who could potentially help the Claimant when she needed it. There is no evidence that Mr Singleton provided help to those people that he did not provide to the Claimants.

249. The only concrete example suggested is of one time when Mr Singleton read some information about team colours from his phone. The Claimant asked him to repeat, and he told her to ask one of her colleagues. There are no facts from which we could conclude a hypothetical comparator would have been treated differently on that occasion. The hypothetical comparator would be a person of a different race, who had also been present while the information was read from Mr Singleton's phone, and who also asked for some of the information to be repeated.

Item 4

250. In relation to item 4 we did find out that Mr Singleton was probably angry on 28 June 2022.

251. We do not consider the suggested comparators are actual comparators. This is because their circumstances were materially different; there is no evidence that those individuals had arrived late, without informing Mr Singleton and/or without following the correct process by reporting the matter to the school's administration. There is no evidence that the head had previously found out that they had asked a colleague to cover a class for them, and had Mr Singleton speak to them.

252. A hypothetical comparator would be someone of a different race, who had the same number of previous examples of lateness as the Claimant, and who had the same pattern of not always following the correct process as the Claimant. The relevant facts in terms of assessing how a hypothetical comparator would have been treated include:

252.1 We are satisfied that the conscious reason why he was angry was the Claimant failed to follow the correct procedure, and failed to seek him out to explain/apologise for being late.

252.2 Mr Singleton had supported the Claimant's appointment in the first place.

There are no facts from which we could conclude that a hypothetical comparator would have been treated differently by Mr Singleton and in this instance, even taking into account that he denies being angry, and we have found that he was angry. There are no facts from which we could conclude that his anger was motivated, even partially, and/or even unconsciously, by the Claimant's race. The burden of proof does not shift.

Standing back and looking at whole picture for items 1 to 4

253. In reaching our conclusions for each of Items 1 to 4, we have taken into account the evidence as a whole. We have considered whether the fact that there are 4 suggested examples of discrimination in which Mr Singleton and/or Ms Djurdjevac are involved means that when we consider the aggregate of what each of them did on different occasions means that the burden of proof should shift. We have also taken into account the facts that we have found in relation to the background information.

254. As stated, in each case, even taking into account the totality of their conduct, our decision is that the burden of proof does not shift.

Item 5: *The Claimant met with Zoe Thompson on 28 June 2022 following a complaint she had made with HR. Zoe Thompson*

(i) made comments to the effect of some people in this life are victims, others are leaders, and

(ii) initially said she would not do anything about the complaints, and

(iii) only offered the Claimant mediation when her employment was terminated.

255. For item 5(i), the comment in question was on 23 June 2022, not 28 June 2022. We discussed in detail - in the findings of fact - what we found was said.

256. In assessing whether the burden of proof shifts, we take into account our finding that the word "victim" was used by the head on that particular occasion, contrary to the denial in her written witness statement. We also take into account that our finding is consistent with her oral evidence.

257. There are no facts from which we could conclude that Ms Thompson would have interacted differently with somebody whose circumstances were otherwise the same as the Claimant's, other than race. The hypothetical comparator would be

someone who had been there six months and was making comments about the way that they believed had been treated during those six months.

258. We are satisfied that Ms Thompson was expressing her genuine beliefs, and that she would have done so to any hypothetical comparator on 23 June 2022.

259. For items 5(ii) and 5(iii), it is factually accurate that Ms Thompson was not proposing to take any action based on what the Claimant raised at the meeting on 23 June (or in the email to HR of 10 June which prompted the meeting).

260. However, we do accept that, as well as the meeting with Ms Thompson, on 23 June, Ms Weeks wrote to the Claimant to say that the Claimant was free to come back to HR or to Ms Thompson if she wanted to do so.

261. There are no facts from which we could conclude that, on 23 June, Ms Thompson would have said something different had the Claimant been a different race.

262. It is not factually accurate that the Claimant met Ms Thompson on 28 June. Rather, as per the findings of fact, on 28 June 2022 (late in the evening), the Claimant sent an email to Ms Thompson.

263. It is true that mediation was offered on 30 June, and this was after the end of the school day, and thus after the Claimant had left work for the final time. However, it is also true that the offer was less than 48 hours after the Claimant's 28 June email. That was a lengthy email, and it was not seen by Ms Thompson until 29 June; it is not suspicious that Ms Thompson did not send her reply until the following day, and not suspicious that the reply was sent (to the Claimant's personal email address) after pupils and staff (including the Claimant) had gone home on 30 June. There are no facts from which we could conclude that mediation would have been offered sooner to a hypothetical comparator of a different race.

264. Furthermore, even if the offer of mediation had been made on 29 or 30 June, it would not have been practicable for the mediation to actually happen before the end of the Claimant's employment. The Claimant rejected the offer of mediation. We are not satisfied that offering the Claimant mediation at 19:52 on 30 June (rather than on 29 June or on 30 June) was a detriment, because the Claimant did not wish to become involved in mediation.

265. Thus, for the reasons mentioned above, all of the race discrimination complaints fail.

Time Limits

266. Early conciliation commenced on 2 September 2022 and ended on 14 October 2022. The claim was presented on 7 November 2022.

267. Claims based on acts/omissions which occurred on 3 June 2022 or later were in time; that includes, as per section 123(3) EQA, where the conduct/failure commenced prior to 3 June 2022, but continued until at least then.

268. For any act/omission that was completed prior to 3 June 2022, for it to be in time, the Tribunal would have to apply section 123(1)(b) and grant an extension.

269. In relation to the complaints about clothing (discrimination arising from disability, and failure to make reasonable adjustments), these failed on the merits.

269.1 However, we are satisfied that the school branded jacket was supplied by around 1 March, and so the time to bring a complaint of failure to make reasonable adjustments expired no later than early June 2022, so around 3 months before this claim was presented.

269.2 There is no evidence of the date of any occasion on which the Claimant was told off for wearing her own outdoor jacket / failing to wear the school branded attire while indoors. We are satisfied that any such incidents must have been before early March, because the Claimant had access to the large coat from then. Further, because of the warmer weather, and the Claimant's sickness absence during June, we are entirely satisfied that there were none on 3 June or later.

270. The extension of probation was on 1 April 2022. Although the effects of the extension would have that the Claimant was on probation in July and early August, the extension of probation was not a continuing act. It was done on 1 April 2022 (and the meeting notes were supplied to the Claimant around 2 April 2022).

271. So any complaints about any of the matters mentioned in the previous two paragraphs would be out of time, subject to the jurisdiction to extend time.

272. The complaints about being reprimanded for lateness, about the cinema trip, about the interaction with the head are in time because the dates are clear. We also treat the complaints about what name was used and about pronunciation of surname as being in time, even though there is less clarity about the dates (because, on the Claimant's case, this continued up to end of employment).

273. For the acts/omissions that we found not to have occurred, there is no need for us to address time limits.

274. For the acts/omissions that are out of time, the Claimant has argued that she believed at the time of the relevant incidents that she had been discriminated against. She does not suggest that she only came to that realisation later on.

275. The Claimant has not demonstrated that she was unaware of her rights to bring a claim. She is an intelligent professional person, and has presented her arguments

clearly, and cross-examined well, during this hearing. Her correspondence to the school in February (while not alluding to the Equality Act 2010 specifically) made clear that she understood that employees have rights.

276. The Claimant would have had to contact ACAS to start early conciliation within 3 months (so by early June for the clothing issues, and by 30 June for probation) and then issue proceedings within the deadline calculated by reference to the early conciliation certificate. The Claimant was attending work (albeit with some absences) during that period, and her health did not affect her ability to present the claim in time.

277. For those reasons, there was no good reason for failing to bring the claims about the jacket, or the claims about the extension of probation, in time.

278. The test is whether it is just and equitable to extend time and the lack of a good reason for bringing the claim in time is not fatal to the Claimant. Rather, we have to weigh up the prejudice to either side against the Claimant of not reducing time against the Respondent.

279. There would be prejudice to the Respondent. As far as the clothing issue is concerned, while the Claimant did raise that – orally and in writing – as far as the Respondent was concerned, it was resolved by 1 March 2022, and there was no need to interview witnesses while events were fresh in their minds, soon after 1 March. As far as the extension of probation was concerned, the Claimant did not complain / seek to challenge it at the time, not even in the meeting itself, and so there was no need to interview witnesses promptly after 1 April.

280. The prejudice to the Claimant of not extending time is slight. These are complaints which, if successful, would have led to a declaration and injury to feelings awards only. In any event we found they failed on the merits.

281. The balance is not in favour of extending time, and we do not do so.

282. For the above reasons, all the complaints fail, and there is no entitlement to remedy.

Employment Judge Quill

Approved by date: 10 February 2025

REASONS SENT TO THE PARTIES ON
10 February 2025

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FOR EMPLOYMENT TRIBUNALS