EMPLOYMENT TRIBUNALS

Claimant: Chandrika Punshon

Respondent: The Royal Latin School

Heard at: Bury St Edmunds

On: 7, 8, 9, 10 October 2024 (in person)
11 October 2024 (hybrid)
8 January 2025 (by video)
9 and 10 January 2025 (in chambers)

Before: Employment Judge Graham

Members: Mrs Allen, Mr Hayes

Representation
Claimant: In person
Respondent: Ms Grennan, Counsel

RESERVED JUDGMENT

1. The complaints of direct race and direct sex discrimination fail and are dismissed.

2. The complaints of harassment related to race and harassment related to sex fail and are dismissed.

3. The Respondent's previous application for costs before Employment Judge Green succeeded and will proceed to a costs hearing.

REASONS

Introduction and procedural history

1. The Claimant issued her ET1 on 4 April 2023 in which she complained of race and sex discrimination. ACAS Early Conciliation took place between 2 March 2023 and 4 April 2023. The Claimant's ET1 contained little in the way of details and she was previously directed by Employment Judge

Tynan to provide additional information concerning her claim however she did not comply.

2. The Respondent filed an ET3 Response on 23 May 2023 and an updated Response on 3 November 2023 in which it denied the allegations.

Private preliminary hearing for case management – 1 November 2023

3. A preliminary hearing for case management took place on 1 November 2023 before Employment Judge Warren where the List of Issues was finalised, although the Claimant now tells us that she did not agree them, however she did not challenge them at that time.

4. Employment Judge Warren made case management orders for this claim to proceed to trial, and he also recorded that the Claimant had emailed a further ET1 on 8 May 2023 which had not been referred to a judge but in which she sought to add Philip Dart as a Respondent and she indicated she was claiming constructive dismissal, although Employment Judge Warren recorded that she did not have qualifying service to bring a claim of constructive unfair dismissal. It was also recorded that the Claimant had produced a document entitled "Statement of Claimant" which Employment Judge Warren found to be unhelpful as it did not not set out in clear and unambiguous terms the required further and better particulars of the allegations that she has made in her original claim form, despite what was required was clearly spelt out for her by Employment Judge Tynan.

5. Employment Judge Warren recorded in careful detail what the Claimant would need to do if she wished to apply for permission to amend her claim.

6. In this hearing we have been referred to a document dated 5 September 2023 in which the Claimant appears to apply for permission to amend her claim. We have also been provided with a letter of objection from the Respondent dated 20 October 2023. We have also been referred to a second document dated 29 February 2024 which appears to be an edited version of the 5 September 2023 document, some of the text is struck through, other parts have been added in different colours. Both documents are rather confusing and do not make it clear what the specific amendments being sought are or on what legal basis they are brought. The Claimant appeared to be seeking to bring complaints of defamation, negligent misstatement and fraud, none of which the Employment Tribunal has jurisdiction to consider.

List of Issues

The numbering below has been adopted from the Case Management Summary of Employment Judge Warren dated 1 November 2023.

Harassment Related to Race

6. Ms Punshon identifies her race as Indo / Canadian.

7. Did the Respondent engage in conduct as follows:-

7.1 The entire Drama Department, including individuals known as Amy and Ben, not responding to her offers to help with the Drama Department at the outset of her employment;

7.2 Failure of Amy and Ben of the Drama Department, the Head Teacher Mr David Hudson, the Head of Department AB, the Head of Sixth Form Jason Skyrm, the Head Statton House David Jenkins and Safeguarding Lead Martin Farrell on multiple occasions not replying to her emails;

7.3 Persistent mistakes in the spelling of her name by the Examination Department in the first half term of her period of employment with the Respondent;

7.4 Head Teacher David Hudson accusing her of poor communication skills and violating safeguarding procedures arising out of a mistake made by Jason Skyrm in misreading her word, "assessment" as, "assignment";

7.5 Head Teacher David Hudson suggesting that the foregoing amounted to poor communication skills and was a safeguarding issue, thereby putting in jeopardy Ms Punshon's completion of her Teacher Training;

7.6 Head Teacher David Hudson wrongly informing prospective employers during her period of notice that her communications were unprofessional, in particular informing Chalfont School and Levethal School [spelling supplied by Claimant];

7.7 Head Teacher David Hudson requiring Ms Punshon to provide written Reports through the Wellbeing Manager, arising out of the miscommunication allegation; and

7.8 Mr George West organiser of Enrichment Lessons for Period 5 on Wednesdays, declining to allocate Enrichment Lessons to Ms Punshon throughout her period of employment.

8. If so, was that conduct unwanted?

9. If so, did it relate to the protected characteristic of race?

10. If so, did the conduct have the purpose or, (taking into account Ms Punshon's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating Ms Punshon's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

Direct Race Discrimination

11. Ms Punshon relies upon the same allegations as appearing as allegations of harassment as in the alternative, insofar as they are not found to amount to harassment, as allegations of direct discrimination.

12. *Insofar as these allegations are upheld by the Tribunal, the question will be whether those events amounted to, "less favourable treatment"? In other words, did the Respondent treat Ms Punshon less favourably than it treated or would have treated others, ("comparators") in not materially different circumstances? In respect of the allegation regarding George West and Enrichment Lessons, Ms Punshon relies upon actual comparators Lyndsay Stayling and Lloyd Maquery. In the alternative and in respect of the other allegations, she relies upon hypothetical persons in such circumstances.*

13. *If Ms Punshon was treated less favourably, the Tribunal will then ask whether the reason for that difference in treatment was race.*

Harassment Related to Sex

14. *Did the Respondent engage in conduct as follows:-*

    14.1 AB flirting with Ms Punshon, (it is very clear that she is not alleging sexual harassment), for example suggesting that she should teach him the Salsa and on her sending a text message making clear that she rejected his advances, AB thereafter avoiding her;

    14.2 Head Teacher David Hudson wrongly informing prospective employers during her period of notice that her communications were unprofessional, in particular informing Chalfont School and Levethal School, and

    14.3 Head Teacher David Hudson requiring Ms Punshon to provide written Reports through the Wellbeing Manager, arising out of the miscommunication allegation.

15. *If so, was that conduct unwanted?*

16. *If so, did it relate to the protected characteristic of sex?*

17. *If so, did the conduct have the purpose or, (taking into account Ms Punshon's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating Ms Punshon's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?*

Direct Sex Discrimination

18. *Ms Punshon relies upon the above mentioned allegations of harassment related to sex, insofar as they are not upheld as harassment, as alternatively amounting to direct sex discrimination.*

19. *Insofar as these allegations are upheld by the Tribunal, the question will be whether those events amounted to, "less favourable treatment"? In other words, did the Respondent treat Ms Punshon less favourably than it treated or would have treated others, ("comparators") in not materially different circumstances? In respect of the allegation regarding George West and Enrichment Lessons, Ms Punshon relies upon actual comparators Lyndsay Stayling and Lloyd Maquery. In the alternative and*

in respect of the other allegations, she relies upon a hypothetical comparator in such circumstances.

20. If Ms Punshon was treated less favourably, the Tribunal will then ask whether the reason for that difference in treatment was that she was a woman?

Public preliminary hearing - 9 April 2024

7. A further preliminary hearing took place on 9 April 2024 before Employment Judge Green to consider various applications from the parties. The Respondent applied for an Unless Order for the Claimant to cease contacting the Respondent's witnesses direct as she was causing them stress and anxiety. The Respondent applied for a strike out of the claim on the basis of unreasonable conduct of proceedings by the Claimant, and it also applied for an order for costs in response to what was described as the Claimant's vexatious, abusive, and disruptive communications.

8. The preliminary hearing judgment ("the April 2024 judgment") is publicly available, it is 64 pages long and its contents are therefore not repeated here save to note a number of key findings by Employment Judge Green about the Claimant's conduct up to that point. It is necessary to do so as much of that conduct was unfortunately repeated before us in this hearing despite a warning from Judge Green and repeated unheeded warnings I had given to the Claimant.

9. Judge Green recorded that the Claimant's conduct had met the threshold for a strike out on the basis of her scandalous and unreasonable conduct, but declined to strike out the claim on the basis that a fair hearing was still possible although the prospects of that were hanging by a thread. The Respondent's application for a costs order was granted on the basis of the Claimant's scandalous, vexatious and unreasonable conduct of proceedings. The amount of that costs order has been left to this Tribunal to decide on another date. The Unless Order was not granted but the Claimant was issued with what can be described as robust case management with explicit guidance on how she should behave for the remainder of the claim.

10. Judge Green referred to the Claimant's correspondence (including direct contact) with the Respondent's employees, officers and agents, including their witnesses and their solicitors (VWV), as well as correspondence she sent to the Tribunal, professional bodies, and regulators about those individuals. Some of the correspondence included allegations of fraud, conspiracy to defraud, and misappropriation of public funds. These allegations were directed at Mr Hudson, Mr Dart and AB. It was recorded that the Claimant had provided a misleading account of her correspondence with the Department for Education about her line manager (hereafter referred to as "AB"), and that she had made defamatory remarks.

11. It was specifically recorded by Judge Green that the Claimant had used the police as a weapon to intimidate AB by making an unsubstantiated allegation of an online threat of physical violence by him to the police. It was recorded that the Claimant failed to make a statement to the police or attend an interview. Judge Green found that this was scandalous and

unreasonable and was done to threaten and intimidate AB and to cause him stress. Likewise Judge Green found that the Claimant had made unfounded allegations of fraud against AB designed to cause as much stress and anxiety as possible, and that it was threatening, bullying and intimidating behaviour.

12. It was also recorded that the Claimant did not or would not understand the Respondent's professional indemnity, employer's liability and directors' and officers' insurance policies cover legal expenses but not fines imposed on them.

13. The judgment and separate case management summary set out clear expectations for the Claimant's conduct of proceedings going forward and this included (but was not limited to) ensuring that communications are relevant to the case, do not exaggerate or misrepresent facts, and to concentrate on the legal issues. The Claimant was advised that all parties are expected to behave professionally in all interactions with the Tribunal, the opposing parties and witnesses, and should use respectful language, honesty, integrity and being truthful, and that the purpose of questioning witnesses should be to clarify their testimony or to challenge evidence not to intimidate or to harass. The Claimant was warned that she must be under no illusion or misapprehension that if she failed to conduct herself as ordered by the Tribunal, she faced a very real risk of her claim being struck out in future.

14. Having found that the Claimant's behaviour had caused distress to Mr Hudson, Mr Dart and AB with a view to deterring them from giving evidence, Employment Judge Green decided that those witnesses should be given the opportunity to give their evidence remotely so they are not physically present with the Claimant.

15. The Claimant's application for an Unless Order and her application to amend her claim to add further Respondents was refused. Much of the Claimant's application was recorded as an abuse of process. The Claimant was also informed that the Tribunal did not have jurisdiction to consider her complaints of defamation, misuse of private information, negligent misstatement, fraud and conspiracy fraud, data subject access and freedom of information requests and an injunction.

16. It was also recorded that the Claimant's disclosure of evidence had been selective and she had not complied with the Tribunal's order, and this was also found to be an abuse of process. It was recorded that the Claimant had continued to argue, without justification, that the Respondent had not included documents in the hearing bundle even though she acknowledged that the documents were in there.

17. Having read the contents of the April 2024 judgment, the warning to the Claimant by Judge Green about her conduct could not have been more clear. The Claimant could not have been in any doubt about how she should conduct herself going forward. As indicated above, the Claimant repeated that behaviour throughout this hearing. Accordingly we find it necessary to provide a summary of the conduct of the hearing not least because we have observed for ourselves the Claimant's clear propensity to provide a

misleading account of matters. This inevitably increased the length of this judgment and the amount of time taken to produce it.

Hearing day one – 7 October 2023

18. At the start of the final hearing we were provided with an unagreed bundle of documents of 1137 pages from the Respondent, together with 16 witness statements, 14 of which were for the Respondent, and 2 for the Claimant. We were also provided with an electronic copy of a bundle of documents of 245 pages from the Claimant which she had sent to the Tribunal via Dropbox which is not a link which we use. The Respondent assisted us by downloading the bundle and then forwarding it on to us. I then printed that myself for the Claimant to use at public expense.

19. I asked the parties to confirm that the List of Issues remained as it had been identified by Employment Judge Warren. The Respondent confirmed that it was, the Claimant said that it was not. When asked in what way the list was inaccurate, the Claimant appeared to suggest that she wished to amend her claim at the start of the hearing. I attempted to explore with the Claimant what the amendment was, however after spending some time discussing this with her the Claimant appeared to be saying that there were amendment applications which had not been dealt with and she told me that Employment Judge Green had not given her the opportunity to speak at the previous hearing. Having checked the summary of that hearing that did not appear to be the case. I therefore gave the Claimant the opportunity to send the Tribunal her outstanding application(s) by 12:30pm that day and the Respondent would have until 1pm to provide a response. The hearing was adjourned before midday for the Tribunal to commence reading in.

20. We were provided with witness statements from the Claimant and Ann-Kathrin Latter. Ann-Kathrin Latter did not attend as a witness to give evidence and the Claimant told us that they were not in contact. We explained that we may place little or no weight on a statement if the author does not attend the hearing to be questioned which the Claimant noted. Having read the statement it was of very little relevance to the issues in this case dealing only with alleged possible flirtation but not in the context of Issue 14.1 where flirtation by AB is alleged, and the Claimant made no reference at all to the statement in evidence or her cross examination of the Respondent's witnesses. We have therefore decided to place no weight on the statement.

21. At the start of the hearing the Claimant sought permission to amend her statement to include an addendum which already appeared in the hearing bundle. The Respondent objected to this amendment pointing out that the addendum related to the matters which Employment Judge Green had dealt with in his judgment and Case Management Summary of 9 April 2024. The contents appeared to be part of the reason why the Claimant had been issued with a costs order (yet to be quantified). In short the addendum had no relevance to the claim which were dealing with and we therefore rejected the Claimant's application.

22. We were provided with witness statements for the Respondent from Amy Jones (Head of Drama and PSHE), Ben Coleman (Teacher of Drama), Carly Flanagan (Deputy Head of Sixth Form and Designated Safeguarding

Lead and Teacher of Modern Languages), David Hudson (Headteacher – retired), George West (former Head of Year, and also Biology Teacher), Jason Skyrme (Head of Sixth Form, Associate Headteacher and Designated Safe Guarding Lead), Jeanette Jones (School Finance Administrator and Payroll Officer), AB (Head of Computing and Claimant's former line manager), Dr Marcella McCarthy (Deputy Headteacher and Designated Safeguarding Lead), Martin Farrell (Associate Assistant Headteacher and Designated Safeguarding Lead), Mary Biltcliffe (Exams Manager), Michelle Taylor (Assistant Headteacher), Philip Dart (Chair of Governors), and Sally Kay (Assistant Headteacher).

23. During this hearing the Respondent made an application to permanently anonymise the name of the Claimant's former line manager. The basis of the application was that public disclosure of unfounded allegations made by the Claimant against him has caused, and continues to risk serious harm to his reputation, career, and well-being. The Respondent argues that this harm engaged his right to privacy under Article 8 of the European Convention on Human Rights ("ECHR") and that this risk outweighs the public interest in disclosure.

24. The application related to the April 2024 judgment which had already appeared on the Tribunal website for a short period of time. I notified the parties that I would need to pass it to Judge Green to deal with and I indicated that if the Claimant wished to object she should write to the Tribunal. The Claimant did not object and Employment Judge Green considered the application and granted it on 16 October 2024 and provided the parties with written reasons why he had done so. These are not duplicated here.

Hearing day two – 8 October 2023

25. The Claimant failed to send us her outstanding applications to amend. The Claimant simply forwarded on the Respondent's letter of objections of 20 October 2023. This is not what the Claimant was asked to do. At the start of day two I asked the Claimant why she had not complied and she implied that the Tribunal waiting room was too noisy. In order to assist, the Respondent sent us the Claimant's applications of 5 September 2023 and 29 February 2024 which the panel reviewed.

26. At the start of the hearing on Tuesday 8 October 2024 we dealt with the Claimant's applications to amend. It was not clear if these were in reality outstanding as Employment Judge Green had dealt with an application to amend (to add two Respondents) on 9 April 2024 which he refused.

27. Nevertheless, and in order to satisfy ourselves that the Claimant's applications had been considered, we checked that these were the applications which the Claimant wished to make, and we confirmed that the Respondent's objections of 20 October 2023 still stood. We then considered the Claimant's applications and provided her with full oral reasons at the start of the hearing, setting out why the applications had been refused.

28. For the sake of completeness, we have set out the reasons for refusing those applications at Annex 1 to this judgment. We make it clear that there

were grounds to conclude that the Claimant had not actively pursued those amendment applications as she could have raised all of them with Employment Judge Green on 9 April 2024. Nevertheless, we gave the Claimant the opportunity for those amendment applications to be considered fully by this Tribunal.

29. Throughout the hearing the Claimant made repeated complaints that the Respondent had failed to deal with her subject access request. The Claimant had already been made aware by Employment Judge Warren the difference between a subject access request and disclosure in the Employment Tribunal and the Judge recorded how the Claimant should go about obtaining missing documents, with the ultimate option of making an application for specific disclosure. The Claimant did not do so and we were satisfied that the Respondent had complied with its disclosure obligations. We note that Employment Judge Green also made the Claimant aware that we do not have jurisdiction over subject access requests, it is clearly set out in his judgment of 9 April 2024.

30. The Claimant made repeated allegations that the bundle had not been agreed, although having heard from both parties it was clear to us that the Respondent had tried repeatedly to agree it with the Claimant and ultimately had to finalise it without her agreement. We accepted the Claimant's 245 page bundle which she referred to as the "missing items" bundle but it transpired throughout the course of the hearing that many of the documents already appeared in the hearing bundle prepared by the Respondent and the Claimant had simply not looked for them. None of the other documents in the Claimant's "missing items" bundle had any relevance to the issues in the claim and it appeared that it had been appropriate for the Respondent not to have included them.

31. Throughout the hearing the Claimant appeared averse to using the hearing bundle (referring to it on one occasion as "Miss Grennan's bible") and instead relied upon her own "missing items" bundle, and the Claimant routinely failed or refused to give witnesses page numbers of documents she was questioning them on if they appeared in the bundle prepared by the Respondent. This meant that I or the Respondent (or the witnesses themselves) would have to find the page references so that witnesses could see what they were being questioned about. The Claimant also made a totally unsubstantiated allegation that the Respondent had interfered with or doctored her missing items bundle in some way – it was not explained why the Claimant believed that to be the case and in any event it was untrue.

32. The Claimant informed us that she had an additional bundle of documents for the hearing amounting to 1,000 pages. The Respondent objected to the provision of 1,000 pages more of documents. I explained to the Claimant that I would not have time in the hearing to read 1,000 pages but if she wished to review the bundle and to give us the documents she needed us to see which are not already in the hearing bundle we would consider them and their relevance. The Claimant complained in the hearing, and subsequently in writing, that I had told her to read a 1,000 page bundle of documents over lunch. That is not what I advised the Claimant to do and it is misleading to suggest that I did. I advised the Claimant that if she wanted us to see something then it would be for her to source it and to provide it to us and that it falls to her to do so.

33. The Claimant also complained that the Respondent had provided its witness statements to her late, on or around 20 September 2024 whereas they were due on 19 January 2024. The Respondent says that the delay was the fault of the Claimant as she refused to agree a bundle with them, and then she did not engage on the exchange of statements, it therefore unilaterally sent the Claimant the Respondent's statements.

34. Having listened to the parties and having read the judgment of Employment Judge Green, we were satisfied that the Respondent had complied with Tribunal directions as regards the exchange of witness statements and that it was the Claimant who had failed to engage and who had caused delays.

35. The Respondent had already obtained permission for one of its witnesses to give evidence remotely. The parties were not made aware until late on Friday 4 October 2024 that the hearing venue had been changed from Cambridge to Bury St Edmunds which was a considerable distance from where the school is based in Buckingham. The Respondent applied for ten of its witnesses to give evidence remotely due to the distance and the impact upon the school. The Claimant consented to the application and we therefore granted it.

36. We asked the Claimant if she wished to give evidence remotely due to the distance. The Claimant indicated that she wished to come in to the venue in person so we proceeded on that basis with the Claimant in person together with some of the Respondent's witnesses and lawyers.

37. The Claimant told us at the start of the hearing that she has shoulder pain, and suffers from stress and nervousness. We therefore agreed that we would make adjustments for the Claimant. We provided the Claimant with breaks throughout the hearing, and as the Claimant said her hearing bundles were too heavy to bring to the hearing she wished to use the E-bundle on her laptop, we also arranged for an extra table to be placed next to the Claimant where the hard copy bundles could be spread out if that made it easier for the Claimant. We also provided the Claimant with a spare set of the hearing bundles which the Respondent had produced at its own expense.

38. The Claimant then appeared to suggest that the bundles were too hard to open, and Ms Grennan agreed to go over and open the bundles for the Claimant. We also allowed the Claimant to use her laptop whilst giving evidence so that she could type notes and also use the E-bundle. It was brought to our attention that the Claimant had gone beyond this permission and was looking up extra documents on her laptop during her oral evidence and she was politely asked not to do so. The Claimant was able to type on her laptop very proficiently during her evidence and throughout the hearing, and we noted that she produced a long typed statement which she read on Friday 11 October for 90 minutes, and again she was able to produce written submissions of 29 pages on 9 January 2025.

39. The Claimant offered to provide us with medical evidence which we said was unnecessary as we would accept what she told us about her shoulder pain, her stress and her nervousness as we had no reason to doubt her. Nevertheless, the Claimant insisted that she provide them to us, therefore

we accepted them. The Claimant subsequently applied for a written transcript of the hearing paid for at public expense and I refused that application on 10 December 2024. The reasons for refusing that application were provided to the Claimant in writing and are not repeated here save to note that I determined that a transcript at the public expense was not necessary in the interests of justice to ensure the effective participation of a vulnerable party or witness or by way of reasonable adjustments for a person with a disability. I was not satisfied that the Claimant is a vulnerable party, nor that she would likely meet the legal definition of disabled based upon the material before me, and I did not consider that a transcript at the public expenses is required to ensure her effective participation in proceedings.

40. The Tribunal was very troubled with some of the statements made by the Claimant. On one occasion the Claimant informed us that she had further documents which she had chosen not to disclose because they would impact a police investigation. These were apparently messages she claimed to have received on social media from "sock puppet" accounts which we asked the Claimant to confirm meant accounts with fake names.

41. When it was put to the Claimant by Ms Grennan that the bundle contained a letter from the police which said that there was no investigation as the Claimant had not engaged, the Claimant sought to tell us that there was an ongoing investigation. When pressed why the Claimant had not provided disclosure of these relevant documents, the Claimant told us that they were not relevant. The Tribunal was left baffled as to why the Claimant had mentioned them in the first place.

42. The Claimant also told us that she was worried whether the Respondent would still survive after all the defamation there would be of the school coming out of the issues in this case and in her appeal. It appeared to the Tribunal that this was some form of threat towards the Respondent, and it suggested to us a possibility that these proceedings were being used as a means to attack the Respondent for reasons beyond the subject matter of her claim. This also fitted in with much of the Claimant's answers in her oral evidence where she said that the Respondent's witnesses were kind or beyond reproach and that she was not accusing them of racism or sexism – notwithstanding that she had accused these individuals of direct race and sex discrimination, and also harassment.

43. We had sought to clarify with the Claimant at the start of the hearing what was the status of her appeal against the judgment of Employment Judge Green of 9 April 2024. The Respondent told us that it was concluded, the Claimant disagreed and said that it was active. Having reviewed the permission decision of His Honour Judge Barklem of 9 August 2024, it was clear that permission to appeal had been refused. The Claimant then told us that she was awaiting written reasons, however we noted that the permission refusal decision already included reasons. We further noted that the Claimant's appeal had been marked as totally without merit and as such she was not entitled to a Rule 3(10) oral hearing. We therefore satisfied ourselves that this hearing could and should proceed before us.

44. The Claimant started to give her evidence at 11:27am on day two of the hearing.

45. During her evidence the Claimant gave exceptionally long narrative answers which seemed to avoid answering many of the questions and often entering into a dialogue about the Respondent generally. Much of the Claimant's oral evidence did not relate to the legal issues to be decided, and did not relate to the matters which the Claimant had unsuccessfully sought to include as an amendment of her claim. The Claimant was repeatedly asked by Ms Grennan, and by me, to confine her answers to the questions which had been asked so that valuable time was not wasted. Eventually it became necessary for me to warn the Claimant that her long answers (many of which did not answer the questions) would impact the amount of time she might have to spend with the Respondent's 14 witnesses and that it was being said solely to help her so that she would have sufficient time available for her cross examination. The Claimant's response was that she was content as she would be concise with her questions and did not have many for the witnesses.

Hearing day three – 8 October 2023

46. At the start of day three we considered the Claimant's further application to amend her claim to include the following allegations which were alleged to be victimisation and harassment:

    46.1 Failure to rectify NQT training documents;

    46.2 Failure to provide a statutory right to an assessment review within 20 days;

    46.3 Failure to provide an accurate reference informed by NQT assessment;

    46.4 Ongoing victimisation comprising rejection from 342 job applications, having attended 63 interviews, the Claimant says the Respondent must be providing some kind of verbal or written word that none of the prospective employers are willing to share with the Claimant; the Respondent refused to provide an assessment review commissioned by Michelle Taylor completed on 19 April 2023, but when provided it contained irregularities; and other matters contained within the Claimant's long narrative which could not be understood;

    46.5 Failure to prevent sexual misconduct; and

    46.6 Failure to address sexual misconduct

47. After hearing submissions from both parties we determined that the Respondent would suffer the greater hardship and injustice if the application were granted, and accordingly we refused the Claimant's application. The reasons for doing so are set out at Annex 2 to this judgment.

48. Following the refusal of the Claimant's amendment application at 12:10pm the Claimant became annoyed and accused Ms Grennan of having "stared daggers" at her the day before. This was untrue and the Claimant was warned by me that this was an outrageous allegation to make.

49. The Claimant then alleged that Ms Grennan had made a vexatious complaint about her to LADO. We understand that this may have something to do with the Claimant allegedly having retained some data from the school. Ms Grennan denied making any referral to the Local Authority Designated Officer ("LADO") about the Claimant. The Claimant was again warned by me about her conduct. It transpired later in the hearing that the Claimant accepted that Ms Grennan had not made any referrals to anyone about the Claimant but that it had been someone else who had done so.

50. The Claimant then complained that she only had the Respondent's witness statements since 20 September 2024. The Claimant was asked if she had applied to postpone this hearing, the Claimant replied that she had not and I directed her to continue with her oral evidence.

51. The Claimant then complained that her amendments had been refused and asked what remedies I would give her. I explained that we were here to hear the claim she had brought comprising of the issues she had agreed before Employment Judge Warren previously. The Claimant indicated that she would not be able to obtain the remedy she was seeking and asked what was the point of carrying on. It transpired that what the Claimant was seeking was the amendment of her training records. The Claimant made reference to whistleblowing and it was explained to her that she did not have a whistleblowing complaint and I also explained the difference between the Employment Rights Act 1996 and the Equality Act 2010. The Claimant told me that she did not understand the difference between them.

52. It became clear that the Claimant was under the impression that the Tribunal had the power to order to rectification of her training records. This was an error on the part of the Claimant as we have no such power. The most which the Tribunal could have done if a relevant discrimination complaint succeeded (beyond an award of compensation and making a finding of discrimination), would be to issue a recommendation to the Respondent, we do not have the power to issue an Order rectifying the records. Moreover, we have no power to make recommendations in connection with whistleblowing complaints in any event. The Claimant had more than ample time and numerous opportunities to bring a claim for whistleblowing detriment or to amend her claim to included one but she had not done so.

53. The Claimant was repeatedly asked what she wished to do and she instead insisted that I tell her what her options were. As the Claimant refused to tell me if she intended to proceed with her claim I informed her that if she did not proceed with her claim then it would be dismissed with consideration of an application for costs. I then asked the Claimant if she wished to proceed to which she replied *"I guess so."* I asked the Claimant again and received the same response. The Claimant then informed me that she needed more time to prepare and I asked her to confirm if she was seeking an adjournment, to which the Claimant indicated she was and the Respondent indicated that it would oppose the application as we were on day three, the case was brought eighteen months earlier and it needed resolution especially for AB given the stress he was under caused by the Claimant's conduct of proceedings as recorded by Judge Green.

54. The panel then adjourned briefly to consider the adjournment request and upon our return informed the parties that it had been refused. This was on the basis that the claim had been listed for some time, it was ready for hearing, and we needed to get on and hear it. I then warned the Claimant about her behaviour which we had found to be disruptive.

55. The Respondent then raised its own concerns. Ms Grennan referred to the Claimant's amendment application which included the reference to alleged sexual misconduct by AB, and she reminded us of Employment Judge Green's judgment where he had found the Claimant's purpose in making that allegation had been to harass AB. Ms Grennan asked me to warn the Claimant to stick to the list of issues and that she must not do anything to intimidate witnesses and that if she does so Miss Grennan would apply for a strike out of the claim.

56. I issued the Claimant with that warning as it was clearly set out within Employment Judge Green's judgment that the purpose of the allegations about criminal acts by AB had been to intimidate him, and Judge Green had issued the Claimant with a clear warning about her future behaviour. I directed the Claimant to comply with the previous order from Judge Green about her future behaviour.

57. I also told the Claimant that her comments the day before that the school would be defamed in these proceedings, had been a threat on her part and that she must not make any further threats to the Respondent or its witnesses for the remainder of the hearing, failing which the Tribunal would consider a strike out of its own volition.

58. I informed the Claimant that I was placing on record that her behaviour this week had already met the threshold for consideration of a second costs order for unreasonable conduct of proceedings and I asked the Respondent to send to the Claimant the extract from Judge Green's judgment which Ms Grennan relied upon.

59. After lunch the Claimant said that she had not received the extract therefore did not know what criminal complaints were being referred to. I asked her to look at the judgment which was on Ms Grennan's screen which showed the extracts which I have summarised below which she should avoid raising again:

    59.1 Allegations that AB used a sock puppet account to contact her or made threats of physical violence or that there was or is any police report/investigation into the same; or

    59.2 Any reference to AB having engaged in "sexual misconduct" when she has been very clear that she is not alleging sexual harassment.

60. We could not start the Claimant's oral evidence until 2:14pm as we had spent the first part of the day dealing with the Claimant's applications and addressing her behaviour.

Hearing day four – 10 October 2024

61. Overnight the Claimant sent correspondence to the Regional Employment Judge and the Employment Appeal Tribunal about this matter. In one of her emails the Claimant alleged:

"Also, Barrister for the Respondents sent correspondence to Judge Graham without copying Claimant, and Barrister for the Respondents was offered the direct email for the Bury St Edmunds Employment Tribunal whilst both Respondents and Judge Graham complained of the delay in getting Complainants emails."

62. The Claimant's email was discussed with her at the start of the hearing. Ms Grennan pointed out that the Claimant had been copied in on correspondence and that the Claimant had replied to it. The Claimant said that she had been mistaken. The Respondent and its counsel were not offered an email address which was not shared with the Claimant. This was another misrepresentation by the Claimant and I again warned her about making allegations which she knows to be untrue.

63. The Claimant's oral evidence then continued at 10:42am. We then heard the oral evidence of AB by video whom we allowed to be accompanied by Michelle Taylor to sit with him during his evidence as a support due to the distress he was under. Ms Taylor took no part in AB's evidence which was completed that day. The Claimant repeatedly asked questions which did not relate to the legal issues to be decided in the case and I had to remind her on numerous occasions to focus on the issues we were here to decide, to keep her questions relevant, and to make good use of her time. The Claimant did not follow that guidance and the questions asked of AB had very little relevance.

Hearing day five – 11 October 2024

64. We were due to continue with the Respondent's witness evidence on the start of 11 October 2024 however the Claimant asked to have a private preliminary hearing for case management. The purpose of the Claimant's request was unclear and the Claimant then read out a personal statement for up to an hour and a quarter which she had typed the night before. This personal statement of the Claimant had no relevance at all to the issues we were here to decide, and in any event the Claimant's witness evidence had already completed and we were due to continue with the Respondent's evidence. Within her personal statement the Claimant suggested she had started to suffer from early symptoms of a migraine the day before but she said it had not developed into a migraine. The Claimant said she was not long term disabled, but she wanted a closed judgment or a private judgment, that could be used elsewhere in other court proceedings, which found her either to be disabled or vulnerable. The Claimant asked for a transcript from the 9 April 2024 hearing at the public expense, although this had already been refused by Employment Judge Green.

65. I encouraged the Claimant on numerous occasions to resume the questioning of the Respondent however she maintained that she wished to complete her statement. During the remainder of this the Claimant conceded she had been wrong to accuse Ms Grennan of referring her to LADO and she also accepted that it was possible that Jeanette Jones did answer emails and she was someone who could be relied upon.

66. We resumed the Respondent's evidence shortly after 10:53am where we heard from Mr Dart, followed by Mary Biltcliffe, Sally Kay, Jason Skyrme, Jeanette Jones, and Ben Coleman. The Respondent had attempted to call David Hudson and Carly Flanagan however the Claimant objected to hearing them in that order, and whereas it was a matter for the Respondent who it calls and when, the Respondent was able to move witnesses around at short notice in order to help progress the witness evidence.

67. As we ran out of time to complete the Respondent's witness evidence we listed this for one further hearing date to take place on 8 January 2025 at 9:30am by video in order to give the Claimant sufficient time to question the Respondent and to minimise disruption to the Respondent school having so many staff have to travel the 86 miles to the hearing venue which would take in the region of two hours each way. The Claimant agreed this in the hearing on 11 October 2024.

Hearing day six – 8 January 2025

68. On 20 December 2024 the Claimant wrote to the Tribunal and changed her position as she had been refused a transcript at public expense and would need to make her own notes or have a note taker, she complained of delays with the Respondent's witnesses and suggested there was some connection issue with the video. The Claimant asked for the hearing to take place in person again, to which the Respondent objected as the arrangements had already been made at the school and it would be disruptive to the students' education to change it now, this had been agreed previously with the Claimant, and there was no reason why this would not be effective, and the Claimant had raised her objections very late for no good reason.

69. We refused the Claimant's application but offered to make the hearing hybrid so that the Claimant and her note taker could attend the hearing in person if she was concerned about their connection issues. The Claimant did not respond to that offer, and the hearing took place by video on 8 January 2025 as previously agreed. The Claimant arrived over 20 minutes late for the hearing and said she did not know it was due to start at 9:30am even though this had been done for her benefit and previously agreed with her. After the hearing the Claimant wrote to complain that the hearing had been by video, however we had made the offer of a hybrid hearing which she had not accepted. The Claimant no reference to that offer in her correspondence. The Claimant has also written to allege that her observers or notetakers were not allowed to join the hearing however that is untrue and she did not raise that during the hearing.

70. At the start of the hearing at 9:53am the Claimant sought to rely on additional documents which she had not sent to the Respondent or the Tribunal. When asked why these had not been disclosed before the Claimant blamed the Employment Tribunal for not sending her a DUC upload link. The Claimant was repeatedly asked why these had not been disclosed during the entire life of the claim to which she again blamed the Tribunal for not sending her an upload link before changing her position to say that she was unable to do so as they related to a criminal investigation by the Police which she did not wish to prejudice.

71. The documents were eventually sent to us and comprised of two attachments of 47 pages each. I asked the Claimant which specific legal issue they related to. The Claimant could not tell me other than harassment generally, and she referred to the alleged threat to her on social media and her explanation for the late disclosure was that she did not wish to prejudice a criminal trial and she did not know until after the October hearing that the Police did not intend to investigate further.

72. The Respondent objected to their admission on the basis that they were incredibly late for no good explanation for their late disclosure, some of the documents appeared innocuous and they were all documents in the Claimant's possession, many of which were already in the hearing bundle, and the remainder were not relevant and some of which were messages sent to AB post termination of the Claimant's employment and the Respondent did not propose to seek to recall AB to give evidence again. The Respondent said it was not understood why the Claimant continued to press these matters as they were not relevant to the issues and that time continued to be wasted and inconvenience was being caused to the Respondent school.

73. The Tribunal considered the documents and noted that many of them were already in the hearing bundle, there was no legal issue to determine about an alleged threat to the Claimant on social media and therefore the remaining documents were not relevant, and moreover they had been disclosed far too late with no good reason as these documents were already in the Claimant's possession and she did not say she had been advised by the Police to withhold them. We also noted that Judge Green had already found the allegation about an online threat of violence was unsubstantiated, and had been raised in order to use the police as a weapon against AB and to threaten, harass, intimidate and bully him. We therefore refused to allow the documents to be admitted.

74. The oral evidence then recommenced at 11 am by which time one hour and a half hours of Tribunal time had been spent waiting for the Claimant to join the hearing and in dealing with her application. I then had to impose a timetable for the rest of the Respondent's witnesses as I had twice directed the parties to agree a timetable between themselves in advance of the hearing. The Respondent had complied with that direction and sought to engage with the Claimant who had failed to engage with the Respondent.

75. I allocated 75 minutes for Mr Hudson as his evidence was larger (and more central to the case) and then thirty minutes each for Martin Farrell, Amy Jones, Dr Marcella McCarthy, Carly Flanagan, and George West on the basis that their evidence was much shorter. I allocated one hour with Michelle Taylor from 4pm until 5pm as her evidence was slightly longer. The parties agreed with this timetable. The Claimant had full use of this time as the Respondent did not ask any re-examination. I suggested we have a half hour lunch rather than an hour in order to give the Claimant more time with the witnesses to which she agreed, and I allocated two breaks of up to fifteen minutes. The video connection worked well with no interruptions although we briefly logged out due to a minor delay on the feed.

76. The Claimant's questioning of the Respondent's witnesses remained unsatisfactory as she continually asked irrelevant questions of them (including how many male and female staff members have PhDs at the school), and repeatedly asking about AB's working pattern and when his hours of work changed. This was clearly an attempt to reopen earlier unsubstantiated allegations of fraud against AB which Judge Green had already been found to have been raised to bully, threaten and intimidate him, and I disallowed the questions. The Claimant also avoided using the hearing bundle and failed to provide witnesses with the page numbers of documents, and when asked to do so the Claimant declined and said that they could look it up later if they wished. The Tribunal found this to be unreasonable and obstructive and I issued the Claimant with a warning that I would disallow any questions about documents if she failed to give witnesses page numbers in the bundle as it was unfair on them to be questioned on historic documents without seeing them.

77. The Claimant also sought to mislead witnesses during her questioning by informing one witness (Dr McCarthy) that Mr Skyrme had admitted that he had applied an illegal policy at the school, and informing another witness that the Tribunal had already found the Respondent's other witnesses to be unreliable. Both of these statements were untrue, and I reminded the Claimant not to mislead witnesses in future. The Claimant's frequent misrepresentation of matters we had observed for ourselves did damage her credibility for us as we had seen first hand the Claimant's propensity to argue things which she knew were not true. This also did cause us to question how the Claimant may have presented at the material times during the course of her employment. Nevertheless we were mindful that the Claimant is a litigant in person, a tribunal hearing can be stressful and daunting, and it was not the Claimant's normal environment therefore her stress might be heightened.

78. The hearing ended shortly after 5pm and the Respondent was directed to provide written submissions by 12pm the following day, and we gave the Claimant until 2pm to provide hers. The Claimant complained that this was too short and that she would be saving some of her submissions for her appeal.

Findings of Fact

79. From the information and evidence before the Tribunal it made the following findings of fact. We made our findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. We do not set out in this judgment all the evidence which we heard but only our principal findings of fact, those necessary to enable us to reach conclusions on the issues to be decided.

80. Where it was necessary to resolve conflicting factual accounts, we have done so by making a judgment about the credibility or otherwise of the witnesses we have heard based upon their overall consistency and the consistency of accounts given on different occasions when set against any contemporaneous documents. We have not referred to every document we read or were directed or taken to in the findings below, but that does not mean they were not considered.

81. The Respondent is a school which provides secondary and sixth form education to pupils aged between 11 and 18. The Claimant identifies as being of Indo-Canadian origins. The Headteacher at that time was David Hudson who has since retired. The Chair of Governors was Philip Dart.

82. At the material time the Claimant was a newly qualified teacher ("NQT") and she applied for the role of teacher of computing with the Respondent in January 2022 but was unsuccessful. On 28 March 2022 the Respondent identified that there were concerns with the Claimants' pre-employment safeguarding checks. The Claimant's DBS check recorded incidents in September 2016, April 2018 and May 2018 and whereas she was interviewed by the Police no police action was taken. The DBS check also recorded that the Claimant had been dismissed for gross misconduct in January 2017, and she had been investigated by the Teacher Regulation Agency who had closed their investigation with no action taken against her.

83. The Claimant made a second application on 30 March 2022 for which she was successful and she commenced her employment as teacher of computing on 1 September 2022. We heard that the Respondent, particularly the Headteacher Mr Hudson and Assistant Headteacher Mrs Kay, were keen to give the Claimant a chance.

84. The Claimant attended INSET days on 2 and 5 September 2022 where she undertook safeguarding training.

85. As an NQT the Claimant was required to complete an induction assessment confirming that she was meeting the required standards set by the Department for Education which covers both teaching and also personal and professional conduct. Both elements are accredited by what is known as an appropriate body which we understand to be an organisation that quality assures statutory teacher induction. The Respondent in this case works with Astra teaching school hub as the appropriate body.

86. The expectation once an NQT starts their role and is within the Early Career Teacher ("ECT") period, is that they will focus on gaining teaching experience. It was clear from the evidence of the Respondent's witnesses, and the contemporaneous documents in the hearing bundle, that the Respondent considered the Claimant's knowledge of her subject matter to be excellent and that her teaching was very good, however as she had limited teaching experience she was encouraged to focus on her teaching first. It was the Respondent and Mr Hudson's practice that NQTs needed to focus on their teaching skills and experience upon joining the school.

Spelling of the Claimant's surname

87. On 5 September 2023 AB (the Claimant's line manager) emailed the Respondent's Exams Mailbox to ask them to set the Claimant up on the OCR System so that she could access the Exam Builder software. Mary Biltcliffe (Exams Manager) actioned this promptly and notified AB that it had been done on 7 September.

88. The Claimant found she was unable to log in and engaged with Mrs Biltcliffe who replied to advise on 7 September that her username was *cpunshan*. This was an incorrect spelling of the Claimant's surname but the Claimant

appeared not to have noticed it as she continued to try and access the system.

89. The Claimant emailed Mrs Biltcliffe on 3 October who then asked for a new activation email for the Claimant on 4 October however the Claimant did not receive the notification. The Claimant still could not gain access so she emailed Mrs Biltcliffe on 10 October. Mrs Biltcliffe was initially unable to identify the problem so she passed the Claimant the number to call OCR direct, however five minutes later she realised that there was a spelling mistake which she then corrected and apologised to the Claimant. Ms Biltcliffe explained to us that the previous time she had completed the task was a year before, she had been busy at the time, and it was a typing error rather than a deliberate misspelling of the Claimant's name.

90. On 4 November 2023 the Claimant emailed Ms Biltcliffe to say that her line manager keeps asking about her login for exam builder but she still has not received an email from them and asked for it to be reset. Ms Biltcliffe replied that she could not understand why the Claimant had not received it and offered to look at it with the Claimant to which the Claimant replied:

"Thank you Mary, I see you've caught a spelling mistake and sorted this out for me :)"

91. It therefore appeared that the Claimant had not noticed until then that Ms Biltcliffe had fixed the issue the month before.

92. Ms Biltcliffe had not met the Claimant before and did not have direct knowledge of her race. During her oral evidence the Respondent questioned the Claimant about her surname and it was established that this was her married name and the origins are English not Indian. The Claimant had not volunteered this information to us until she was asked about it however she added that the letter "a" had been added which was an over generalisation of Hindi words such as Himalayas.

93. We noted that the Claimant did not deal with this allegation in her witness statement and in her oral evidence she informed us that she did not accuse anyone in the School personally of being sexist or racist, rather it was the School as a whole. The Claimant's cross examination of Ms Biltcliffe, like her closing submissions, concerned why the School did not have a policy of copying and pasting names when setting up accounts so that names, particularly those from minorities, are not misspelled. This was a different complaint than the one the Claimant had brought. The Claimant appeared to accept in her closing submissions that this was simply a typing error.

94. Whereas the Claimant alleges that there was persistent misspelling of her name only one incident was brought to our attention which was the misspelling on 7 September which was corrected on 10 October 2023.

95. Having listened to the account of Ms Biltcliffe we are satisfied that this was simply a typing error which she identified and corrected. We find that the error was an unintentional mistake rather than a conscious decision.

96. Similarly the Claimant made repeated misspellings of other people's names. In an email dated 20 February 2023 the Claimant repeatedly misspelled the

surname of Jason Skyrme even though she had met him and knew who he was. In her oral evidence the Claimant told us that she wrote KF instead of Carly Flanagan in one document as she didn't know how to spell her name.

Interest in PSHE and Chicago performance

97. On 6 September 2022 the Claimant emailed Amy Jones, Head of Drama and Personal, Social and Health Education ("PSHE") and said the following:

"Hello Amy,

I wanted to get in touch to let you know I am interested if you need staff in teaching or developing sex education.

I know many teachers don't like to teach this. I am qualified in terms of having a degree in Human Physiology, and it's not easy to embarass me.

Additionally, I know the big production is Chicago this year and I'm really looking forward to seeing that. I may like to find time to help with this as I love dancing; all kinds of partner dancing, jazz funk, etc. I literally have about 10 different pairs of dance shoes.

Thank you,"

98. The email had been sent at the start of term by which time Ms Jones informed us that all schemes of working lessons had already been written for the year ahead and PSHE teachers had already been assigned their timetable lessons. Ms Jones said this is something she assumed the Claimant would have known that she would not need to teach PSHE at that time.

99. Ms Jones said in her evidence, and we accept that unchallenged evidence, that she read the Claimant's email and registered her interest in undertaking this type of work in the future which could be discussed when the next school timetable was being coordinated in the summer of 2023.

100. As regards the Claimant's comment that she may like to find time to help with Chicago, Ms Jones said she made the assumption that the Claimant would be in touch with her again to discuss how she might be able to help. Neither contacted each other again and we noted that the Claimant's email did not ask for any type of response.

101. On or around 20 or 21 October 2022 the Claimant spoke to Ben Coleman, Drama Teacher, and the director of the production of Chicago, and she expressed her interest in helping with the choreography for the production. Mr Coleman informed the Claimant that there were only a few weeks to go before the opening night on 24 November 2022 and that the choreography had been completed by a sixth form (or Year 13) choreographer with Mr Coleman, other students, and Ms Jones, but he would welcome support with polishing the show's numbers and she was free to attend rehearsals which were twice a week after school. The Claimant did not attend these.

102. Mr Coleman explained how busy things had been and the Claimant said that she knew how busy he was and would drop him and email to remind him of the conversation. Mr Coleman relayed his conversation to Ms Jones on 21 October so she was aware that the Claimant might be in touch. The Claimant did so on 21 October 2022 and said the following in her email:

"Hello Ben

I thought it might be easier for me to find you.

As we discussed, please let me know if the student that's doing the choreo for Chicago needs assistance with anything.

Thank you,"

103. This was the last day before half term. Mr Coleman did not reply. Mr Coleman's evidence was that he did not consider that the Claimant was expecting a response unless the students needed help, and that her email had been sent as a reminder of their conversation. Mr Coleman also told us that the production team consisted of individuals from diverse backgrounds and that the student who led the choreography is black.

Electives / Enrichment lessons

104. The Claimant was interviewed on 8 April 2022 by Mr Hudson and Mrs Kay. The evidence of Mr Hudson, which we accept, is that when interviewing candidates there will often be some discussion about their interest beyond their subject area and when that occurs he may mention it to George West (an Assistant Headteacher) who lead on the school's electives programme.

105. Mr Hudson said that nothing came up during the Claimant's interview and rather the discussion was about her teaching, her subject area, and also the issues with her DBS check. Mr Hudson says that even if the Claimant had indicated other areas of interest he would unlikely have raised it with Mr West as the Claimant was an NQT and his approach, as we have found, is that NQTs need to focus their team on developing their teaching. We also accepted that evidence, it was entirely plausible and was not challenged to any degree by the Claimant.

106. On or before 5 October 2022 the Claimant spoke to Mr West and indicated that she was interested in running an elective and asked how she could get involved. Mr West informed the Claimant that she could email him with any suggestions. On 5 October 2022 the Claimant emailed Mr West and said that she would be interested in running karate and self defence electives for Year 7 or Year 11 students.

107. The unchallenged evidence of Mr West was that the electives programme provides an opportunity for students to undertake learning experiences beyond the core curriculum with each activity delivered over one term. These electives are rotated through a carousel of fixed activities with more flexibility for those in years 8 to 10 which are delivered in mixed age groups. The electives are run by a mixture of teaching and support staff and also governors and external providers. Electives are introduced where

a staff member has capacity on their timetable and if there is sufficient interest from students in such a case the elective is then run at the start of the next rotation.

108. On 10 October 2022 Mr West informed the Claimant that the elective cycle for years 7 and 11 had been fixed but they could start considering changes for the next academic year and that they could introduce new electives for years 8 and 10 midyear and he could see whether there was sufficient interest in karate and self-defence for the school to offer this. On 10 October the Claimant provided further details and raised queries about insurance, resources and timing. Mr West replied the following day on 11 October indicating the proposed elective could start just before Christmas and could run for 13 weeks but there would have to be consideration of an appropriate venue due to the school's large spaces already being in use, and he advised the Claimant to speak to Rebecca Wilson about the insurance. The Claimant did not reply.

109. On 21 October Mr West contacted the Claimant again to advise that a local sensei had contacted the school about the prospect of running karate. Mr West asked the Claimant if she had found out about the insurance requirements as per his previous email.

110. On 21 October the Claimant replied in relation to her own insurance and providing more detail about what she could offer but she did not address whether she had discussed insurance with Miss Wilson but instead she copied her into the exchange. The Claimant asked about offering karate to year 11 students even though Mr West had already told her it could not be introduced for year 11 midway through the academic year. The Claimant did not pursue this further and we find that Mr West had responded positively to the Claimant's suggestion.

111. On 9 November 2022 the Claimant emailed Mr West regarding a potential STEM computing elective for year 11 students even though he had already advised the Claimant that any new elective could not be introduced for them partway through the academic year

112. Mr West confirmed that the proposed elective could be potentially offered to Year 9 and 10 students and that it could be potentially started in rotation two before Christmas. There were further exchanges of emails between Mr West and the Claimant during November. Whereas Mr West indicated that he would email all Year 9 and 10 students if AB was content, on 28 November AB asked Mr West to hold off and to obtain further details about the proposed course from the Claimant. The Claimant provided this the same day and on 1 December Mr West thanked the Claimant and acknowledged receipt. No further steps were taken in connection with the course due to the Claimant's resignation on 24 November 2022. The Claimant complains that it should have been run even after she left on the basis of the work she had already done, however we note that she would not have been there to teach it and moreover the students had not even been asked by this stage if they were interested in the course.

113. The Claimant has identified two comparators for this complaint. The first is Dr Lindsey Staley who joined the same time as the Claimant. Dr Staley was not an NQT therefore she was not in a directly comparable situation to

that of the Claimant. In June 2022 prior to Dr Staley's arrival, Mr Hudson informed Mr West that Dr Staley speaks Japanese and suggested contacting her to see if she would be interested in running this as an elective. There was an exchange of emails on this issue in June 2022. The situation is different to that of the Claimant in that this was raised and discussed months before term had started. Dr Staley had also offered to run an elective on anthropology or archaeology for year 12 student students to which Mr West replied it was more likely something they could look at offering in 2023/2024.

114. We did not find that Dr Staley was a true comparator given that she was not an NQT and moreover her circumstances were different in that she had been approached before the start of term to discuss an elective whereas it was the Claimant who raised hers after the term had commenced.

115. The second comparator relied upon by the Claimant was Lloyd Maskery who was a new teacher in the History department. In May 2022 the Head of Politics decided not to reintroduce the Politics taster elective and this left a gap as the Respondent had already allocated a number of hours for this elective. The head of History, Lucy Breene, was asked to speak to Mr Maskery to see if he wished to reintroduce the elective or if there was something else he could offer. There was a discussion between Mr Maskery and Mr West in mid June 2022 where it was agreed that he would undertake an elective in Muay-Thai boxing and this was offered as an elective from the start of the new academic year from September 2022. The Claimant spent part of her cross examination time talking about why karate / self defence would have been preferable to Muay-Thai however that was not one of the issues we needed to decide, and in any event we noted that Mr Maskery was asked about this in June 2022 before the academic year started and this was due to a gap which had been created. We also understand that Mr Maskery, unlike the Claimant, was not an NQT.

116. We do not find that Mr Maskery could have been a true comparator given that he was not an NQT and because the discussions between him and the Respondent took place before the start of the academic year. We understand both Mr Maskery and Dr Staley to both be white.

117. On 1 November the Claimant volunteered to take part in the Driver Awareness course for sixth form pupils which Mr West agreed and the Claimant took part on 16 November 2022.

Flirtation

118. The Claimant has accused AB of direct sex discrimination and harassment related to sex. The alleged treatment is said to be flirtation and asking her to teach him salsa. The Claimant has failed to tell us what else this flirtation was alleged to be. It does not appear in the ET1 claim form, the list of issues, the Claimant's witness statement, nor in her closing submissions. It was not put to AB in the Claimant's cross examination of him either.

119. When asked about this by Ms Grennan the Claimant made vague reference to having observed a lesson with AB on 29 March 2022 prior to starting her role, and some point (on an unspecified date) he said that she

would be welcome to attend a school trip which the Claimant said would have involved staying away overnight which she said was inappropriate as she said she did not yet have her DBS check and he would have seen her bed hair. This was not something which the Claimant advanced or put to AB in his evidence and it was clearly therefore not the alleged flirtation relied upon by the Claimant. It was never established before us what this alleged flirtation was.

120. Before commencing her role the Claimant started to send AB a succession of unsolicited messages to his personal mobile phone which he says were inappropriate and caused him to feel uncomfortable. These included a message on 13 May 2022 where the Claimant asked him *"Couldn't it be that your mum had a myopic mailman?"* followed by *"Was that ill-considered? I'm so sorry."*

121. In a further message dated 12 July 2022 the Claimant messaged *"I know you've just had 20 days straight work. How about some fun and easy team building over drinks Friday?"* AB sent a polite reply the following day declining the invite.

122. On Sunday 17 July 2022 the Claimant messaged *"I could arrange for you to join the incumbent pub quiz team defending the title Wednesday night if that's the kind of thing you'd enjoy."* AB replied on 19 July 2022 and stated *"Sorry I am unavailable. No exciting plans at present. I hope you enjoy the quiz."*

123. On 12 August 2022 the Claimant message saying *"Please* [AB], *I'm looking for busy work that doesn't need thought. My grandmother's passed away."*

124. All of the above messages were sent before the Claimant had even started work for the Respondent.

125. Upon joining the Respondent the Claimant sought to spend a great deal of time with AB. Whereas they were due to have fortnightly diarised meetings, AB gave evidence (which we accept) that the Claimant sought to meet much more regularly and for longer periods of time, both in and out of school hours, and that these meetings did not reduce as they normally would when an NQT settles in. As this started to impact on AB's personal time he advised the Claimant that he would be happier to meet before school (rather than after school) and that Mrs Kay, Assistant Headteacher, was also available to speak to her.

126. The Claimant continued to message AB in his own time once she started her role. At 5:12pm on Friday 16 September 2022 the Claimant messaged *"is it a good time to talk. This is a negative option question. I'm calling if you don't say not to."*

127. Later that evening the Claimant messaged to AB "*Okay, can you please call me in the next few hours? I will be unavailable from about 9."*

128. On 19 September 2022 the claimant messaged AB and asked about the spelling of his name when he was a child.

129. The Claimant also sent AB a message on the same date asking if he liked sushi. The Claimant asked the same question of AB during his oral evidence before us even though it had absolutely no relevance to the claim whatsoever.

130. The evidence of AB was that he became increasingly concerned about the amount of time the Claimant required and the volume of her email correspondence including copying him in unnecessarily, as well as the things she spoke to him about including talking about other members of staff. AB raised this with Mrs Kay, Assistant Headteacher, who advised him to tell the Claimant only to message him during the school day, and only to message his personal phone in the case of emergency and where possible only meet her in the presence of another member of staff.

131. Despite at some point in mid September advising the Claimant only to message his personal number in an emergency, the Claimant continued to message AB. On 27 September 2022 the Claimant messaged "*Okay I class this as an emergency. I'm missing the tanzanite ring I worse this morning, probably left in the ladies staff toilets near N16. It was my mother's birthstone."*

132. On 29 September the Claimant messaged "*Also an emergency to me; I'm driving to work with my window down because its stuck. I will need to sort it today."*

133. On 21 October 2022 the Claimant emailed AB at the start of the half term break and said *"Can we talk later today about some things I don't want to put in writing?"* AB forwarded the email to Mrs Kay and it transpired this concerned an issue the Claimant had with the room being locked over lunchtime.

134. On 21 October 2022 the Claimant text messaged AB *"So about your dance lesson*." AB did not reply.

135. Again on 21 October 2022 the Claimant messaged *"are we not going to be friends then? You can say so. Many people find me delightful - you don't have to be one of them."* AB did not reply. The Claimant says that this message was her rejecting the advances of AB. Clearly this is nothing of the sort. The Claimant was not rejecting anything at all and was continuing to try and engage with AB who clearly did not wish to do so. AB also forwarded these messages on to Mrs Kay and told her he was not entirely sure what to make of them.

136. Whereas the Claimant has alleged that AB flirted with her by suggesting that she should teach him salsa, AB has denied this and says that the Claimant was passionate about dance and was hoping to set up a staff dance club, and whereas he was positive and encouraging about it as he wanted the Claimant to settle in at the school, he did not show any specific interest in being taught by the Claimant. We accept that evidence from AB. We do not find the AB ever asked the Claimant to teach him to dance salsa as he denies it and we have found AB to have been honest and candid throughout his evidence. We have found and have observed ourselves that the Claimant has a clear propensity for misrepresenting things said and

done, and we prefer the evidence of AB over the Claimant and we note the content, the tone, and the volume of the messages going from the Claimant to AB, very few of which were responded to by AB and he did not ask to be taught salsa in any of those messages.

137. Whereas the Claimant has argued that AB sought to avoid her after her message of 21 October 2022 which she says was her rejection of him, we do not find as a fact that is what happened. As we have already indicated, AB sought to minimise unnecessary contact with the Claimant from early on in her employment and asked her to cease messaging him on his personal number unless it was an emergency. The Claimant continued to message AB after the event portraying irrelevant and unnecessary communications as emergencies to her when they were not.

138. On 23 November 2022 AB informed Mrs Kay by email that the Claimant had criticised him for not giving her compliments, she brought up old topics that he thought had been resolved, and that when he made a point during a lesson observation that she had used junk or fill words, she had said that she uses colloquial language on purpose and had been awarded many trophies for her speaking. AB advised Mrs Kay that he did not think that he could work with the Claimant much longer, and the evidence of Mrs Kay was that this caused her to worry about his wellbeing.

139. On 2 February 2023 the Claimant informed Mr Hudson that AB had been cross with her and had told her that he could not get any work done as she had been staring at him whereas the Claimant's explanation was that she had been patiently waiting for a chance to speak to him.

140. Having considered those messages, having read the witness statements of AB and of the Claimant and also having heard their oral evidence, and having noted that the Claimant did not even put this allegation to AB in his oral evidence, we find that at no point did AB ever flirt with the Claimant as alleged. We further record that the allegation was untrue and that the Claimant has deliberately pursued this allegation knowing that it was untrue.

Safeguarding issues

141. At the material time the Respondent had five designated safeguarding leads ("DSL") at the school. These are teaching staff with special responsibility for dealing with safeguarding issues.

142. The Respondent operates a system whereby safeguarding concerns must be entered onto the school's database known as Wellbeing Manager. Once an entry is made it is assessed by one of the DSLs. The logging of safeguarding concerns is mandatory not optional, and it is essential that entries are recorded as soon as possible so that there can be an assessment of the risk and so that support can be channeled or action taken in order to minimise risk to the student. The Respondent's approach to safeguarding is based upon the principles of the 2022 version of Keeping Children Safe In Education ("KCSIE") which is a Government publication which sets out the legal duties to be followed to safeguard and to promote the welfare of children and young people under the age of 18 in schools and colleges.

143. The Claimant attended induction training on 12 July 2022 where the attendees were advised "If you notice something that concerns you: Put the information into Wellbeing Manager." This was contained in the slides distributed to attendees. The Claimant also attended INSET training on 2 and 5 September 2022 at the commencement of the academic year where this requirement was explained to her.

144. As part of the training the teacher is required to complete a Keeping Children Safe In Education ("KCSIE") quiz. On 28 September 2022 Dr Marcella McCarthy, Deputy Headteacher and DSL, emailed the Claimant to inform her that the quiz organiser had sent her records of the training but the Claimant was not recorded as having completed it and Dr McCarthy asked her to do so as soon as possible if she had not already. The Claimant responded to say she had already done it but had just redone it and scored 16 out of a possible 25 which she said she was not very pleased about but was happy to do it again.

145. On 24 October 2022 Dr McCarthy was formally notified by the quiz company that the Claimant's score was 64% which Dr McCarthy says was the lowest at the School and that the average score was 88%. Dr McCarthy was in receipt of the Claimant's answers and her evidence to us that she was concerned by some of the Claimant's wrong answers, in particular her answer with respect to information sharing.

146. One of the questions asked was *"When a child makes a disclosure, which of the following is NOT true?"* The Claimant had replied *"Only involve those who need to be involved, for example Designated Safeguarding Lead."* The suggested or expected answer was *"Promise a child that you will not tell anyone."* Dr McCarthy's evidence was that staff must never promise a child that they will not tell anyone about a safeguarding disclosure they have received, and that this indicated to her that the Claimant may not properly understand the requirements under KCSIE and the school's policies about information sharing.

147. Dr McCarthy provided the Claimant with a copy of the safeguarding quiz report on 23 November 2022 and asked her to review the areas where her answers were not in line with the suggested answers and for her to note the explanations provided. The Claimant was asked to undertake an IHASCO course on safeguarding under KCSIE 2022.

148. A few days earlier on 30 October 2022 the School was contacted by the mother of a pupil ("Student X") to advise that the student's grandfather had passed away and their parents had travelled abroad as an emergency and that Student X would be staying with her uncle and aunt for the next two weeks. Student X's mother informed the School that she may be upset or struggle with timekeeping or miss something as a result of the bereavement. On 8 November 2022 it was noted that Student X's behaviour had been uncharacteristic and she was spoken to by Jason Skyrme the Sixth Form and Associate Assistant Headteacher.

149. On 21 November 2022 Student X informed Mr Skyrme that the Claimant had given her a sanction by asking her to write 500 words on why she was doing computing and the Claimant had asked her father to sign it. Mr Skyrme said that Student X was distressed as she felt that it was unfair. Mr

Skyrme felt that this was ill judged given Student X's circumstances and emailed the Claimant to inform her of Student X's personal issues and he asked her to consider rescinding the sanction. The Claimant was asked to let Mr Skyrme know her thoughts.

150. The Claimant replied the same day to advise *"you may see this as a sanction, but I'm not at all cross with her. I want her to refocus on her goals and the reason she chose computing. I want her to remember why she likes it and what she wants to deal with it."* The Claimant took issue at the time and in these proceedings with Mr Skyrme's interpretation of the reason for the 500 words as she says that he misread her use of the word "assessment" as "assignment". The Claimant has become preoccupied with this issue however we noted that at no point did Mr Skyrme use the word assignment, and that his expressed concern was that the allocation of this task (irrespective of how it was labeled or described) was inappropriate given Student X's circumstances at the time.

151. At 12:24pm the Claimant emailed Mr Skyrme to say she had tried to find him at break time to discuss Student X further and she asked if he was available after school and that it was a bit urgent. Not unreasonably in our view, Mr Skyrme assumed that it related to the 500 word matter. Mr Skyrme replied at 1:40pm to say that he had been in pre-arranged meetings and would be at a Senior Leadership Team ("SLT") meeting after school but would be available the following morning. The Claimant's reply at 2:59pm was a little terse and she said *"I'm sorry that you don't see this as urgent and are unable to spare 10 minutes today; it is a safeguarding concern."* In her evidence to us Mrs Kay has described this email as rude and antagonistic and not what she would expect from an NQT/ECT/qualified teacher.

152. Mr Skyrme attempted to find the Claimant after his meeting but she had already left for the day. Ms Flanagan emailed the Claimant at 3:19pm and advised her that if she had a safeguarding concern she should immediately upload it to Wellbeing Manager so that one of the DSLs could pick it up and deal with it.

153. The Claimant replied to Ms Flanagan and stated she was in a quandary about what KCSIE would have to say about her email exchange with Mr Skyrme and that she wanted to meet him in person. Ms Flanagan emailed the Claimant to advise that Wellbeing Manager was the place to log any concern she might have and if in doubt the concern should be reported. The Claimant was advised that the DSL team read all reports and decide on the appropriate action. The Claimant replied to say she had been warned about putting things in emails as parents could ask to see anything that mentions their child and that KCSIE had a specific exclusion about not disclosing information that would put a child in an adverse position with a parent.

154. At 4:41pm Mr Skyrme emailed the Claimant again and asked to meet the following morning in person and reminded her that all safeguarding concerns should be recorded on Wellbeing Manager and that it was secure and that if she was unhappy doing this she should contact one of the DSL team or Martin Farrell the DSL directly for a telephone conversation.

155. As the Claimant had not immediately uploaded the concern about Student X, AB did this instead. We have been provided with a copy of the entry which records that Student X had missed a lesson on 18 November and left site to buy paracetamol for a headache and this coincided with another unnamed student who gave the same reason for going off site, and that the Claimant had heard from another student that they had gone off to have sex. It was recoded that the Claimant said she did not wish to add this to Wellbeing Manager as Student X was 17 and could decide for herself and that KCSIE says about not informing parents on consensual matters. The rest of the entry summaries further discussions with Student X about missing lessons and her responses to questions, the passing of her grandparent, the 500 word task and that the Claimant felt undermined over that issue and had been told by Mrs Kay to respect Mr Skyrme's decision.

156. Mr Skyrme and Ms Flanagan met with the Claimant the following morning where she was asked why she had not updated Wellbeing Manager to which she advised that she had been within her rights to withhold the information if she felt that the student would come to harm by the disclosure and that she lacked confidence in the School's ability to deal with concerns in line with KCSIE procedures. The Claimant was reminded that it was her responsibility to upload her concerns relating to pupils on WellBeing Manager however she continued to dispute this and said she was not required to report or safeguarding information.

157. The evidence of Mr Skyrme was that a delay in reporting information like this could impact a student receiving the help that they need for example signposting them to a sexual health advisor and providing supporting dealing with STI or unwanted pregnancies which is time limited and the failure to do so could put a student at risk, and this caused him deep concern with the Claimant's reticence to do so.

158. The evidence of Ms Flanagan was that the Claimant regularly referred to her ethical obligations towards pupils which she said superseded the School's processes, and she became defensive and sought to make things personal by saying that Mr Skyrme did not trust her professional judgement. The evidence of Ms Flanagan was that the Claimant sought a debate, that she interrupted and was argumentative.

159. Mr Skyrme's evidence was that the Claimant displayed a maverick approach to student welfare and displayed an "I know best" attitude. Having read all of the relevant documents and having heard the oral evidence of the Claimant, Mr Skyrme and Ms Flanagan, we are satisfied that is how the Claimant presented at the time and that she was argumentative, would not accept what she was being asked to do, and that her expressed opinion about what she could withhold was contrary to the Respondent's policy and caused the Respondent concerns about her approach.

160. There was then a discussion about the Respondent's policy on providing painkillers on site which would avoid the need for a student to leave the premises to buy medication. The Claimant repeatedly referred to this issue in the hearing however it was not one of the issues for us to decide. The Claimant continually argued that the Respondent had an illegal policy whereby she said that Mr Skyrme had contacted local pharmacies and told them not to supply painkillers to the students, whereas it was it was the

Respondent's evidence that Mr Skyrme had asked the local pharmacies to keep an eye on how much was being purchased. During the Claimant's questions to the Respondents' witnesses on 8 January 2025 she told that Mr Skyrme had admitted to having an illegal policy. This was untrue and misleading as he gave no such evidence to us. This was not one of the matters for us to decide, notwithstanding that the Claimant kept persistently returning to the issue, and we make no findings of fact about it.

161. Given the concerns about the Claimant's approach to this matter Mr Skyrme emailed Mr Farrell and Dr McCarthy on 23 November to provide a summary of the discussion and he considered that the Claimant required some retraining. In his email Mr Skyrme said that the Claimant had not uploaded her safeguarding concerns to Wellbeing Manager, she said that she was within her rights to withhold her concerns and lacked confidence in the Schools' ability to deal with safeguarding concerns in line with KCSIE, the information would have helped the student receive support, withholding the information may have put the student at risk, the Claimant only disclosed the information once she disagreed with his decision, the Claimant was still not listening to the instruction to report all safeguarding issues, and she appeared frustrated and cross at AB for reporting the concerns on Wellbeing Manager.

162. A similar email was sent by Ms Flanagan raising concerns about the Claimant's approach to the matter including that the Claimant believed that her ethical obligation superseded the School's processes and recording of safeguarding concerns.

163. Mr Hudson and Dr McCarthy met the Claimant the following day on 24 November to discuss the matter and her KCSIE quiz score, and she was informed that these had raised concerns and that she must in future log her concerns on the Wellbeing Manager which the Claimant agreed she would do but that she had been told to show compassion to Student X. The Claimant expressed concern about the parents being informed of the matter and she appeared angry with Mr Skyrme. Dr McCarthy told the Claimant that she needed to use a polite tone in correspondence and to pause and think before sending an email when irate. The Claimant was asked to undertake an IHASCO training module on safeguarding which she later completed and scored 90%.

164. During the meeting the Claimant explained that relations with her line manager AB were not good and it was agreed that there would be a meeting with Mrs Kay to review and clarify expectations.

165. The Claimant's NQT accreditation was discussed and Dr Hudson raised his concerns that further evidence would be needed to accredit her with respect to her safeguarding and her relations with colleagues and that she would need to supply further evidence.

166. Later that day on 24 November the Claimant uploaded an entry to Wellbeing Manager however it was very general and lacked any detail about the matters which the Claimant said she had witnessed and heard. The most which the Claimant said was that she overheard part of a conversation and that she had constructed a lot of meaning from the exchange that was

not explicit Claimant did not say what it was that she had heard. The Claimant's entry was of no value as it provided no detail.

167. Mr Skyrme's evidence was that he remains of the view that the Claimant had misunderstood KCSIE and he provided us with a detailed summary of the provisions which are not repeated here however we noted that KCSIE provides that DPA and UK GDPR do not prevent the sharing of information for the purposes of keeping children safe and promoting their welfare; and when in doubt staff should speak to the DSL; and fears about sharing information must not be allowed to stand in the way of the need to safeguard and promote the welfare of children.

168. KCSIE also provides that all concerns, discussions and decisions made, and the reasons for those decisions, should be recorded in writing, and that information sharing is vital in identifying and tackling all forms of abuse and neglect, and in promoting children's welfare. KCSIE also provides a relevant summary of the data protection principles which allow for data to be shared and withheld where the serious harm test under the legislation is met. It appeared to the Tribunal that the Claimant may have misunderstood this latter provision as entitling her to withhold making an entry on Wellbeing Manager, however we find that belief was incorrect. The clear message from KCSIE is that concerns must be recorded and that personal data may be withheld from **subsequent** disclosure where the serious harm test is met. This does not entitle a teacher to refrain from recording the concern in the first place These are two different things and it appeared to us that the Claimant misunderstood the relevant provision under KCSIE.

Claimant's resignation and grievance

169. Following the Claimant's meeting with Mr Hudson and Dr McCarthy on 24 November she sent an email in which she said she was giving the Respondent tentative two months' notice. Mr Hudson accepted that notice by email the following day and arranged to meet with the Claimant to discuss it.

170. On 26 November 2023 a Mathematics teacher at the School, Mrs Gnanachandran, emailed Mr Hudson and Dr McCarthy to raise concerns about comments the Claimant had made to students about an alleged lack of diversity in the School's workforce.

171. On 30 November 2022 Mr Hudson met with the Claimant to discuss her resignation. When asked why she had resigned the Claimant said she felt that the School and she were pulling in different directions, she disagreed with the KCSIE 2022 and information sharing with parents, and she felt undermined by Mr Skyrme. The Claimant nevertheless asked to extend her notice as she wanted to complete some work with Year 7. It was agreed to extend the Claimant's notice until the end of the February 2023 half term. Mr Hudson discussed the Claimant's NQT status with her and said that whereas there was solid evidence of her teaching further evidence would be needed with respect to her wider professional abilities.

172. A draft NQT Induction Assessment was produced by AB as the Claimant's line manager on or around 8 December 2022. The Assessment recorded that the Claimant was meeting expectations in respect to her

teaching, and it was further recorded that she had superb subject knowledge however it also recorded that there were occasions where her behaviour towards other members of staff could have been more appropriate and further there had been safeguarding concerns where the Claimant had not followed safeguarding procedures.

173. The evidence of Mr Hudson is that he agreed with the assessment and he relied upon the Claimant's handling of the Student X safeguarding issues and also the concern raised by Mrs Gnanachandran on 26 November 2022. The Claimant provided her comments on the assessment and recorded that certain of her communications may look unprofessional and that she recognised that the school required further evidence of professionalism from her. Mr Hudson did not sign off the assessment due to the outstanding concerns identified.

174. In these proceedings the Claimant alleges that Mr Hudson accused her of poor communication skills and violating safeguarding procedures arising out of a mistake made by Mr Skyrme misreading the word assessment as assignment. This issue kept being raised by the Claimant throughout the hearing, however it was not one of the issues for us to decide, and moreover it was not established before us that Mr Skyrme ever formed a view on whether the 500 word task was an assessment or an assignment. This is something which continues to preoccupy the Claimant but it was of no relevance whatsoever to the claim.

175. The evidence of Mr Hudson is that he never accused the Claimant of having poor communication skills, and his evidence was that he had concerns over her professional communications and he points out in his evidence that he had recorded within the assessment that there were occasions when the Claimant's behaviour towards other members of staff could have been more appropriate. Mr Hudson says he asked the Claimant to be aware of the tone of her communications and to focus on positive response to constructive criticism.

176. On 9 December 2022 the Claimant sent an e-mail to Mr Hudson indicating she was interested in withdrawing her notice of termination of employment. Mr Hudson replied on 6 January 2023 declining to accept that withdrawal and he noted that he had made steps towards finding a replacement and he also highlighted that the Claimant continued to reflect her concerns about the schools ethos and policies. The expressed intention of Mr Hudson was that he hoped to be able to support the Claimant's successful completion of her NQT assessment before she left.

177. We have been referred to a long list of issues which the Respondent says caused it concern for the remainder of the Claimant's employment. These concerns include the Claimant using her personal email to discuss school matters on one occasion, the Claimant discussing School recruitment with the students and giving her opinion on the suitability of an applicant, inappropriate communication to and about AB, including making a comment to the students on 18 January that *"I'm not sure why they let him be a grown-up."* One student reported to the School that the Claimant been discussing inappropriate matters with them including her resignation and request to withdraw her notice, a recent Ofsted inspection and that she

commented that Mr Hudson was angry with her and his reaction to the OFSTED inspection, and comments that AB was a yes man.

178. The Claimant was also alleged to have conducted a remote court hearing in the School languages office despite being permitted to do so from home and a private space available at the School for her to have used. Within the hearing the Claimant did not deny these matters and she confirmed that she had some of these discussions with students.

179. On 18 January 2023 the Claimant sent AB an email in which set out a large number of complaints and stated "*This follows on the heels of saying no to birthday cake. And you can say no, but you don't have to tell me what I can do with my cake, thanks."*

180. The Claimant and her union representative attended a meeting with Mr Hudson and Mrs Kay on 19 January 2023 to discuss the remainder of her employment and concerns about her professional communications. The Claimant was told that some of her emails to AB had not been professional and that further evidence was still required for the School to sign off her NQT induction assessment in respect of professional behaviours.

181. During a further such meeting on 31 January Mr Hudson informed the Claimant that Astra (the accreditation body for NQTs) required her to work a further term and therefore Respondent could not sign off her NQT Induction Assessment, and that whilst he remained happy with her teaching he still had concerns about her professional standards and he discussed the concerns to which we have already referred above. Mrs Kay raised the issue of the Claimant discussing AB with students, in particular the comment about *"I'm not sure why they let him be a grown up"* to which the Claimant said was a joke, and Mr Hudson told her that was ill advised.

182. In January 2023 Mrs Kay started to log relevant communications from the Claimant given that the Respondent needed to consider the Claimant's NQT/ECT induction assessment and whether she could be signed off as satisfying the standards in relation to professional conduct, including professional communication. The mere fact of keeping a log like this was indicative to the Tribunal that the Respondent had concerns at that time about the way in which the Claimant was conducting herself in communications and her dealings with her colleagues and students. This log contains a number of the matters to which we have already referred above where the Claimant made comments to students or her colleagues.

183. On 31 January the Claimant contacted Mr Dart the Chair of Governors following her meeting with Mr Hudson and she asked to speak to him about professionalism at the School and about Mr Hudson specifically. The Claimant mentioned a safeguarding issue which she said may amount to a whistleblowing situation. Upon receipt of the Claimant's email the clerk to the governors, Ms Giles, wrote to the Claimant providing guidance on the steps to follow if she wished to report a safeguarding issue or to make a complaint.

184. The Claimant continued to send correspondence to AB which the Respondent deemed to be inappropriate, including an email of 1 February 2023 in which she said *"And this is how it ends up being emails: you either*

talk and won't let me talk, or you leave or hide. I'm not happy to be scapegoated for other peoples unprofessional behaviour and I've contacted chair of governors about this." In a further email on 7 February the Claimant emailed AB and asked *"will I see you before I go or are you trying to not even see me??"*

185. On 2 February the Claimant emailed Mr Hudson about AB and said:

"Yesterday period 5 [AB] *was again cross and left the room saying "I can't get work done with you staring at me" I thought I was patiently waiting for a chance to talk about agreeing to some reference points. I guess this discussion will have to be with you?"*

186. The Claimant filed a formal grievance against Mr Hudson on 2 February which related to the completion of her teacher training, the safeguarding issue and questions relating to professionalism of her communication. The Claimant said she had not received responses to emails and had a delayed response from Mr Hudson and she made reference to problematic school policies. The Claimant did not mention discrimination or harassment anywhere within her grievance.

187. A formal grievance meeting with Mr Dart took place on 7 February during which the Claimant confirmed her complaints were that her teacher training had not been signed off because the standards for communication and safeguarding has not been met, and that Mr Hudson presided over a culture that did not encourage constructive challenge in a dialogue of school policies and approaches. The Claimant said the outcomes she was seeking was the signing off of her teacher training and an agreed reference.

188. It was agreed that the Claimant would meet Mr Hudson with Mr Dart as mediator. As the Claimant disputed that she had not complied with the school safeguarding procedures Mr Dart suggested that Dr McCarthy be asked to review the safeguarding incident. The Claimant subsequently aske that Mrs Taylor undertake this instead as Dr McCarthy had already been involved. The Claimant widened the outcomes she was seeking to include reinstatement to her role and also a number of other matters.

189. The mediation meeting took place on 10 February which was also the Claimant's last day of working at the School. Mr Hudson informed the Claimant that he had signed off part one of the teaching standards including the standards relating to safe-guarding, that further evidence of progress with her professional communications was still required, and therefore he could not sign off part two of the teaching standards yet. Mr Hudson said that he would seek confirmation from Astra whether the Claimant would need to be signed off on part one of the teaching standards again, and he said he would agree a suitable reference wording with the Claimant making clear the progress she had made on part one of the teaching standards, but that she needed to work further on professional communication.

190. It was agreed that Dr McCarthy would review the relevant email correspondence between the Claimant and Mr Skyrme so that the Respondent could better understand and learn from examples provided by the Claimant. It was also agreed that Michelle Taylor, Assistant Headteacher, would review the handling of the safeguarding incident in

November 2022 so that the school could also learn from the particular circumstances of that case.

191. On 12 February the Claimant emailed Mr Dart and Mr Hudson and sought to widen her desired outcomes including sign off of her teacher training, reinstatement of her as a teacher, an award of an additional job title as key stage co-ordinator, an apology from Mr Skyrme, enactment of a whole school policy on responsiveness to parents, students and staff, financial compensation, and implementation of other matters she said that she had previously raised. This was a significant widening of her earlier desired outcomes before the mediation meeting.

192. On 13 February Mr Hudson emailed the Claimant draft wording for her reference which he sought to agree with her, and she was notified that Astra had confirmed that her next school would need to report on all of the teaching standards in the NQT induction assessment.

193. A copy of the reference prepared by Mr Hudson appeared in the hearing bundle. We have found it to be a detailed and a positive reference which confirms that she had completed all safeguarding training, not been the subject of any allegations or concerns or disciplinary procedures relating to the welfare of young people. The reference confirms the Claimant had made good progress towards her final assessment, she sets high expectations, her students are clear about what they are learning, she promotes good outcomes, lessons are appropriately sequenced, she has worked to make lessons accessible and provides good support to help their motivation. As we have indicated earlier, the reference states that the Claimant has excellent subject knowledge, as well as other positive comments about her handling of student behaviour and that she had developed good a relationship with the students. There is also reference to the Claimant's contribution beyond the curriculum.

194. The reference also includes the following:

"We have been very happy to confirm that Chandrika has ample evidence to meet TS1-TS8 for Part One of the Teaching Standards. In order to complete her final assessment, she now needs to provide consistent evidence to support Part Two (Personal and Professional Conduct) with a focus on regard for the ethos, policies and practices of the school, particularly with a view to effective and appropriate communication. I would recommend that this takes place across the period of half a term."

195. The Claimant did not reply to Mr Hudson's email.

196. On 20 February Mr Hudson advised the Claimant that he had received a reference request from Leventhorpe Academy and that he wanted to respond to the request promptly and he asked the Claimant if she had any comments on the draft reference he had previously provided to her. The Claimant replied the same day and confirmed she had no comments on the draft reference. Mr Hudson therefore, reasonably in our view, understood that the reference was agreed and sent a copy to Leventhorpe Academy on 21 February. The reference was also sent to Chalfont Community College upon their request on 27 February 2023. The Claimant now complains

about the contents of that reference with respect to her professional communications. The specific section in the reference is as follows:

"In order to complete her final assessment, she now needs to provide consistent evidence to support Part Two (Personal and Professional Conduct) with a focus on regard for the ethos, policies and practices of the school, particularly with a view to effective and appropriate communication."

197. Mr Hudson says it was a true, fair and accurate account based on his assessment of the Claimant and having taken into account those concerns about her communications which we have already referenced in this judgment.

198. The Claimant has complained that the reference is the reason why she has not been able to obtain new employment since leaving the Respondent, however Mr Hudson disagrees and says that the reference is on balance positive and that it had been agreed in advance with her and that she had the opportunity to comment on it and confirm that she did not have any comments.

199. Mr Hudson tells us he received 12 requests for references for the Claimant, of which two request were subsequently retracted, and he therefore provided 10 references for her and Mr Hudson says that in his view references are not generally used as part of shortlisting but are only requested once a decision has been made to invite to candidate to interview.

200. Mr Hudson says that as well as obtaining references, schools are required to undertake an enhanced DBS check and in the Claimant's case it would reveal information to which we have already referred. Mr Hudson also tells us that schools are required to undertake online checks prior to appointment and Google and Bing searches of the Claimant record that she had previously brought Employment Tribunal proceedings against the National Education Union and the published judgment includes a paragraph which states:

"it has to be said, the claimant displayed a largely hostile tone, accusing respondent of amongst other things, unprofessionalism and dishonesty."

201. We understand that to be a finding by Employment Judge Connolly in the judgment dated 3 March 2023. Mr Hudson says in his opinion these matters were more likely to have impacted on the Claimant's chances of gaining new employment rather than the positive reference, he says he provided. This is not a matter which we need to make a finding on as it is not one of the Issues which we need to resolve in this case.

202. On 13 February 2023, after already having undertaken her last day of work at the Respondent, the Claimant sent further correspondence to Mr Dart and referred to a tragedy in the news at that time about a 16 year old transgender pupil who had been stabbed to death, and the Claimant wrote *"Can we respect the zeitgeist and prioritise pupil outcomes?"*

Grievance outcome

203. On 16 February Mr Dart issued the Claimant with the grievance outcome and findings. The complaint about the Claimant's teacher training not being signed off with respect to her communications was not upheld, and the Claimant was informed that there was ample evidence the Claimant was meeting part one of the teaching standards (essentially this was the Claimant's teaching), however consistent evidence would still be needed to demonstrate that she was meeting part two of the standards which relates to personal and professional conduct. In particular Mr Dart informs us that this related to effective and appropriate communication.

204. It appeared that by this time the Claimant's approach to safeguarding was no longer of concern to the Respondent, and we of course note that the Claimant had achieved 90% in her IHASCO quiz a few weeks earlier.

205. Whereas the Claimant disputed in her grievance that she had not complied with procedures with respect to the November 2022 safeguarding incident, this was rejected by Mr Dart who recommended a review should be undertaken by Mrs Taylor to allow the Respondent to learn from the incident.

206. Mr Dart did not uphold the Claimant's complaint that she had not received responses from staff, that her views had been dismissed out of hand, and that Mr Hudson provided over a culture that does not encourage constructive challenge. Mr Dart recorded that the Claimant had said in the grievance process that no allegation was made against any other member of staff other than Mr Hudson, therefore reasonably in our view Mr Dart confined his consideration accordingly. Given that the Claimant had not provided evidence of Mr Hudson not responding to her, nor evidence of her views being dismissed, nor evidence that constructive challenge or dialogue was not encouraged, these allegations were also rejected.

207. We noted that Mr Dart was keen to learn from the issues the Claimant had raised as he also advised that he would arrange for the emails between the Claimant and Mr Skyrme to be reviewed so that the Respondent could better understand the situation and learn from them.

208. Given that the Claimant's grievance was not upheld Mr Dart also rejected the Claimant's desired outcomes of signing off the teacher training as complete, reinstatement, financial compensation, and an apology from Mr Skyrme. We noted that Mr Dart indicated that the Respondent would look into whether it would be helpful to formally set expectations on responsiveness to communications received. Mr Dart also agreed to consider the Claimant's views on Equalities and Diversity in his additional role as link governor for that area. The Claimant had already sent Mr Dart her views on 8 February which he had acknowledged already.

209. The Claimant continued to correspond with Mr Dart on various issues following the outcome of her grievance. On 24 February Mr Dart reiterated to the Claimant that his decision was as set out in his letter of 16 February and advised her to discuss any outstanding issues about signing her induction Assessment Form with Mrs Taylor. The Claimant continued to remonstrate and on 24 February she emailed to say it was not fair or reasonable to require her to do another term of NQT training to which Mr

Dart informed her on 26 February that he had provided her with the grievance response and that he considered the formal process to be closed.

210. On 27 February the Claimant wrote to say that the Respondent should consider an earlier email from her of 20 February as her appeal against the grievance outcome. On 1 March 2023 Ms Giles wrote to the Claimant to advise that the issues the Claimant had raised had been examined during the grievance process, a way forward had been agreed with her, and that the process was now closed. The Claimant's employment had already terminated on 19 February and the Claimant had not appealed the grievance outcome within five working days as set out in the Respondent's grievance policy.

211. The Claimant continued to email the Respondent after this time and we note that she continued to argue that Mr Skyrme had made a mistake about the 500 word task and confused an assignment with an assessment, and she said *"to be fair, one page might seem like an essay to a geography teacher."* In her correspondence the Claimant described Mr Skyrme as bellicose and Mr Hudson as petty.

212. We understand that Mrs Taylor conducted the review into the handling of the safeguarding incident of November 2022 relating to Student X. After clarifying the Claimant's account of the matter Mrs Taylor spoke to Mr Skyrme, Mr Farrell, Mrs Kay and Mr Hudson as well as reviewing the email messages and the Respondent's Child Protection and Safeguarding Policy. It was recorded that the Claimant had not logged the safeguarding concern on Wellbeing Manager as she should have done and as she had been asked to do. Mrs Taylor said she could understand why Mr Skyrme had instructed Student X not to complete the 500 word task however she considered that he could have had a face to face conversation with the Claimant about the matter. There was also consideration of the Claimant's view that it was not appropriate for staff at nearby supermarkets to limit the amount of painkillers they sell to the Respondent's students, however it was recorded that Mr Skyrme had simply asked them to keep an eye on the amount as a precautionary measure for their safety. In conclusion the report found that the Claimant had not followed the correct safeguarding procedure whereas Mr Skyrme had dealt with it in the correct manner. Mr Dart requested some clarification of the report in April 2023 which was duly provided by Mrs Taylor.

213. The Claimant was provided with a copy of the report on 27 November 2023 during these proceedings. The Claimant previously argued that the report she was sent was not that of Mrs Taylor, she has been provided with a copy from Mrs Taylor and the only difference between the two relates to the redaction of personal information.

Replies to the Claimant's emails

214. The Claimant provided a list of emails she says were not responded to during her employment by the Respondent's staff. The Claimant alleges that this was direct race discrimination and also harassment related to race. During the hearing the Claimant did not advance her pleaded claim and instead told us that she was not accusing anyone individual of being racist or sexist, and she also told us that Jeanette Jones, Senior Finance

Administrator / Payroll Officer was above reproach and that she did reply to emails. The Claimant's complaint appeared to develop into one about the failure of the Respondent to have a communications policy which mandates a reply within a set period of time, such as 24 hours which the Claimant now appears to advance.

215. Nevertheless, we are able to make findings on the emails the Claimant says were not responded to. The Claimant has said that she sent correspondence to a Dr Tyre which was not responded to however the Respondent says that it has no member of staff with that name. The Claimant did not pursue this in the hearing.

216. On 7 December 2022 the Claimant emailed Mr Hudson and he sent a reply on 12 December. On 9 December the Claimant sent an email about withdrawing her notice and Mr Hudson replied on 6 January 2023. On 5 January 2023 the Claimant emailed Mr Hudson about school matters form her home email address to which he responded and asked her to send it via her work address. The Claimant emailed Mr Hudson on 7 January and he replied on 9 January 2023. On 9 May 2023 the Claimant emailed Mr Hudson about her role at the school and her job search, and Mr Hudson instructed the Respondent's solicitors to reply.

217. The Claimant alleges that she sent an email to the Respondent's Data Protection mailbox on 29 April 2023 however having carried out a search it has not been able to locate a copy, and the Claimant has not provided us with one either. We have found Mr Hudson to be an honest and truthful witness throughout his evidence, whereas we have found the Claimant to be unreliable and prone to misleading in her questions to witnesses. We therefore prefer the evidence of Mr Hudson, we find that the Respondent did not receive an email from the Claimant of 29 April 2023 as alleged. We also find that Mr Hudson replied to the Claimant's emails.

218. The Claimant emailed Mr Dart on 8 February and he responded the same day. The Claimant emailed Mr Dart again on 20 February and he replied on 24 February. The Claimant emailed Mr Dart on 24 February and he replied on 26 February. The Claimant copied Mr Dart in to an email she sent to Kirsten Giles at 6:13pm on 1 March 2023, and Mr Hudson sent a reply from the Respondent's Data Protection Mailbox on 16 March 2023. The Claimant sent an email to the Respondent's Data Protection Inbox on 28 April 2023 and Mr Dart replied to her on the same date. We have also found Mr Dart to be an honest and truthful witness in his evidence, and we prefer his evidence over that of the Claimant. In any event we have already found that the Respondent did not receive an email from the Claimant on 29 April 2023. We find that Mr Dart replied to the Claimant's emails.

219. There was a considerable amount of correspondence from the Claimant to AB particularly towards the start of her employment, including on 16, 19, 27 and 29 September, and 21 October which did not relate to work, which was unsolicited and unnecessary and did not require a response from AB. This included questions about what he was called as a child, whether he liked sushi, her missing ring, her car window, a dance lesson, and whether they should be friends. AB did not respond to these emails.

220. The Claimant says she emailed AB on 1 January 2023 however he denies receipt and having conducted a search has been unable to find the email. We have not been provided with a copy. We have found AB to have been an honest and truthful witness, and he has spoken candidly throughout his evidence, notwithstanding that much of it was uncomfortable for him and clearly had caused him and continued to cause him much distress. We prefer AB's evidence to that of the Claimant, and we find that he did not receive an email from her on 1 January 2023.

221. The Claimant sent Mrs Taylor an email on 18 January 2023 in which she said that AB was cross again and she did not really want to be there and asked about an appointment with someone called Amanda. Mrs Taylor replied the same date. AB says in his witness statement that he was copied in on this exchange but did not reply as there was nothing in there which indicated that a response from AB would be needed as well. Having reviewed that exchange we do not see that AB was copied in on the emails, although it is possible that he was blind copied in and it does not appear on the version we have been provided with. In any event we find that there was nothing within the Claimant's email which indicated or necessitated a response from AB.

222. The Claimant sent an email to Mrs Kay and AB on 23 January to which Mrs Kay responded on 25 January. The Claimant emailed AB twice more on 23 January 12:08pm and 12:29pm. The first email concerned two students who had problems with their tests and she asked AB not to consider their results as representative. There was no indication that a response was desired or required.

223. As regards the email of 12:29pm, the Claimant asked if AB had created a ClickSchool account for a pupil. This related to an earlier email sent to her on 20 January from the Lead Cover Supervisor. AB's evidence was that he had already actioned this on 22 January and so he did not reply. We accept that evidence from AB as it was not challenged by the Claimant.

224. On 30 January 2023 an email was sent to staff from an Assistant Headteacher about the entry of grades data. The Claimant emailed AB on 31 January 2023 at 10:05am to state she had completed hers. This was not a reply to anything AB had sent, it appeared to be for information only, there was no indication within the email of a response was needed, and AB did not reply.

225. The Claimant sent a second email to AB on 31 January in which she said *"Hello* [AB] *Can you find 10 minutes today to catch up at 3:30 please. You've had 40 minutes of our mentor time to yourself today so I would appreciate a quiet word. Thank you."* The evidence of AB was that there had been a brief mentor meeting however the Claimant had not been in a receptive mood and that he chose not to respond to her email as he needed time to process the views she had shared about the staff (including himself) with the students and that this had created a sense of discomfort and made him reluctant to engage with her on email, and moreover he could not meet at 3.30pm and felt it more appropriate to address the matter in person once she had reflected on her meeting with Mr Hudson and Mrs Kay that day.

226. The Claimant emailed AB and Mrs Kay on 1 February 2023 at 3:16pm. The email subject is "Reference questions" and within the email the Claimant said:

"*Hello* [AB]

And this is how it ends up being emails: you either talk and won't let me talk, or you leave and hide.

I'm not happy to be scapegoated for other people's unprofessional behaviour and I've contacted the chair of governor's about this…"

227. The Claimant went on to refer to other staff not responding to her offers of help. The Claimant's email did not contain any questions or indication that a response was required. AB's evidence was that in his view the content and tone of the Claimant's email was unprofessional, aggressive and not conducive to a productive response, therefore he says he chose not to reply.

228. The Claimant emailed AB three times on 2 February at 8:49am, 9:53am, and 11:59am. The emails concerned parents' evening, Exam Builder, and a list of other matters. AB sent a response on email at 1:24pm and his evidence was that he also spoke to the Claimant in person.

229. The Claimant emailed AB on 7 February 2023 at 3:38pm and stated *"Will I see you before I go or are you trying to not even see me?"* followed by a list of her contributions in which she said "*My contributions, whether you keep them or not."* AB did not respond to the Claimant's email on the basis that he interpreted the first part of the email as a personal question and he did not wish to provide an answer to it. As regards the list of contributions, the evidence of AB was that he did not consider that a response was required as the email did not include any questions in relation to her work but included a number of curriculum suggestions.

230. On 10 February 2023 the Claimant emailed AB and said *"I know how you hate emails so thank you for everything. Please don't give up on ClickSchool its clever and only needs a bit of attention. Feel free to ask me for my overbearing opinion."* The Claimant listed four other matters including that her headphones were missing and she asked AB for the name of his game on Clickschool and if he could forward on an app someone had written. AB did not reply to the email and told us that he generally does not like communicating by email and prefers communicating in person, and that he spoke to her about the email later that same day. We accept that evidence as it was not challenged by the Claimant.

231. The Claimant says that she sent a second email on 10 February to AB. We have not been provided with a copy of it, AB does not agree that one was sent and says he has searched for it but not found a second email. We have already indicated that we prefer the evidence of AB over that of the Claimant. The Claimant did not put this matter to AB during his oral evidence. We find that a second email was not received by AB on 10 February.

232. The Claimant sent two emails on 12 February 2023 to AB, the first at 12:23 pm and the second one at 12:26 pm and these were sent on a Sunday at the start of the school half term break. In the first email the Claimant said she did not expect him to pick this up on term break but someone was going to send her the brand of the henna they use and she asked AB to send it to her personal address. In the second email the Claimant told AB that this person had taken photos of her hands but she had left these on the Respondent's laptop she had returned, and she asked AB to obtain the photos from this person again. These emails were not work related, they were of a personal nature. AB did not reply to either of them. By the time AB returned to work it was 20 February by which time the Claimant's employment had ended the day before on 19 February and she had lost access to her work email then. AB told us that he did not consider that it would have been appropriate to respond to these emails anyway.

233. We make a finding of fact that AB replied to the Claimant's emails that were work related and which necessitated a response from him, however where they were personal in nature, or where they were work related but did not require a response from AB, he did not do so.

234. On Monday 16 January 2023 the Claimant emailed Jeanette Jones, Senior Finance Administrator/Payroll Officer. This was a reply to an email Ms Jones had sent her on 23 November 2022. Ms Jones does not work on Mondays therefore she could not reply to the email straight away however she did so on Thursday 19 January. The Claimant has informed us during the hearing that Ms Jones was beyond reproach and did reply to her emails. We therefore make a finding that Ms Jones did not fail to reply to emails from the Claimant.

235. The Claimant alleges she sent Mr Farrell an email on 1 January 2023. Mr Farrell has searched but not found a copy. The Claimant has not provided us with a copy. We have found Mr Farrell to be honest and reliable witness and we prefer his evidence over that of the Claimant for the reasons we have already given. Accordingly, we find that the email of 1 January 2023 was not received by the Respondent.

236. The Claimant emailed Mr Farrell on Saturday 7 January and the subject was "Cultural aspects of transgender" and the contents related to wellbeing and KCSIE. The email did not request a response. Within the email the Claimant said *"I very much appreciate that you asked me to do this even if it doesn't go anywhere. This is very much the way to handle me, just that little bit of voice"* and *"Thank you for listening and thank you for asking."* It was clear to the Tribunal that the Claimant did not expect a reply from Mr Farrell, and that the most she expected was that he would read her email. In any event Mr Farrell says in his witness statement that he acknowledged the email in person the following week commencing 9 February 2023 and we accept that evidence. We make a finding with Mr Farrell did not fail to reply to emails from the Claimant.

237. On 16 November 2022 the Claimant emailed Mr Skyrme with feedback the "Safe Drive Stay Alive" trip to which he provided a response on 18 November 2022. We make a finding with Mr Skyrme did not fail to reply to emails from the Claimant.

238. The Claimant says that she sent Mrs Biltcliffe an email on 5 September 2022. As part of her role Mrs Biltcliffe monitors the Exam Mailbox and she says she has conducted a search to establish if the Claimant sent her or the Exams Mailbox an email on that date but none has been identified although she says they exchanged a number of emails between 7 September and 4 November 2022 and these appeared in the hearing bundle which we have seen. We do not find that the Respondent received an email from the Claimant on 5 September. We make a finding that Mrs Biltcliffe did not fail to reply to emails from the Claimant.

Law

Direct discrimination

239. Section 13(1) Equality Act 2010, together with sections 9 and 11 of that Act, provide that direct discrimination takes place where an employer treats an employee less favourably because of race or sex than it treats (or would treat) others. Race includes national and ethnic origins. Under s. 23(1), when a comparison is made there must be no material difference between the circumstances relating to each case. A comparison may be made with an actual comparator, or with how a hypothetical comparator would have been treated.

240. Given that a tribunal may take into account a wide range of factors including circumstantial evidence, there may be cases where there is someone who, whilst materially different to a claimant, may be of assistance as an evidential comparator. They may, depending upon the circumstances and in conjunction with other material, justify a tribunal drawing an inference that a claimant was treated less favourably than he or she would have been treated.

241. Section 39 of that Act provides that an employer must not discriminate against its employee by dismissing them or subjecting them to any other detriment.

242. It is often appropriate to first consider whether a claimant has in fact received less favourable treatment than an appropriate comparator, and then consider whether this less favourable treatment was because of the protected characteristic, in this case that is race. In some cases, particularly if there is only a hypothetical comparator relied upon, it may be appropriate to first consider the reason why the claimant was treated as they were – ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** **[2003] IRLR 285** (paragraph 8).

243. The reason for decisions or treatment can often be for more than one reason. Provided that the protected characteristic (here race and sex), had a significant influence on the outcome, then discrimination will be made out – per Lord Nicholls in ***Nagarajan v London Regional Transport*** **[1999] IRLR 572**. The Tribunal may need to consider the mental processes of the alleged discriminator, and whereas this is often referred to as motivation, it is not to be confused with motive as this is not a relevant consideration. It is possible for an employer to discriminate unlawfully even with a benign motive – ***Amnesty International v Ahmed*** **UKEAT/0447/08**.

244. Very little discrimination today is overt or deliberate, and those accused of discrimination are usually unlikely to accept that they have done so, and possibly will be unlikely to recognise it in themselves. In cases of direct discrimination (or victimisation), an examination of the "reason why" someone was treated as they were should not be reduced to a simple "but for" question. It is therefore not appropriate to ask but for the protected characteristic (here it is race and sex) would the Claimant have been treated better? Rather we must conduct a more rigorous inquiry into the mental processes of the Respondent to establish the underlying core reason for the treatment. This might be easier in cases where there is an overt or obvious reason for the treatment, however in other cases are more detailed analysis of the facts will be necessary. As per Sedley LJ in ***Anya v University of Oxford and another*** **[2001] ICR 847**:

"Very little direct discrimination is today overt or even deliberate. What King and Qureshi tell tribunals and courts to look for, in order to give effect to the legislation, are indicators from a time before or after the particular decision which may demonstrate that an ostensibly fair−minded decision was, or equally was not, affected by racial bias." (paragraph 11).

245. In ***Earl Shilton Town Council v Miller*** **[2023] IRLR 532** the court provided guidance on the approach to the reason why analysis in discrimination claims. Here HHJ Tayler noted that when considering whether treatment was due to a protected characteristic the tribunal spends much of its time considering the mental processes of the alleged discriminator in order to ascertain the reason why someone was treated as they were. However, the court held that there are at least two types of cases where it is unnecessary to consider the mental processes of the alleged discriminator, the first is where the reason was obvious, and the second is where a criterion is used which corresponds exactly with the protected characteristic. The court also concluded that a "good" motive will not prevent discrimination from having occurred, and this is of course consistent in ***Ahmed*** to which we have already referred.

246. In ***Chattopadhyay v Headmaster of Holloway School*** **[1981] IRLR 487** the court noted the special nature of discrimination proceedings and that the person complaining of discrimination may face great difficulties when it comes to proof. The court held that where it may be appropriate to take into account evidence of hostility before and after the event (or act complained of) where it is logically probative of a relevant fact.

247. The term "detriment" should be given its broad ordinary meaning, and a detriment will exist if a 'a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment – per Brightman LJ in ***Ministry of Defence v Jeremiah*** **[1980] QB 87**.

Harassment

248. Section 40 provides that an employer must not harass an employee. Section 26 provides that a person (A) harasses another (B) if it engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for

B. In deciding whether conduct has the effect referred to into account must be taken of the perception of B; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect. This analysis is not required where the conduct had the purpose of violating B's dignity or creating the proscribed environment.

249. In ***Weeks v Newham College of Further Education*** **UKEAT/0630/11** it was held that a tribunal must be sensitive to all the circumstances; the fact that unwanted conduct was not itself directed at the Claimant is a relevant consideration but it does not prevent that conduct being harassment.

250. As to whether the conduct had the requisite effect, there are both subjective considerations – the Claimant's perception of the impact on him – but also objective considerations including whether it was reasonable for it to have the effect on the particular claimant, the purpose of the remark, and all the surrounding context - ***Richmond Pharmacology Ltd v Dhaliwal*** **[2009] ICR 724**. Conduct which is trivial or transitory is unlikely to be sufficient.

251. In ***HM Land Registry v Grant*** **[2011] EWCA Civ 769** it was held:

"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment." (paragraph 47)

252. Section 212 of the Act provides that a detriment does not include harassment. Accordingly it is not possible for impugned treatment to amount to both direct discrimination (or victimisation) and harassment at the same time.

Liability for discrimination

253. Section 109 of the Act provides that anything done by a person (A) in the course of A's employment must be treated as also done by the employer. In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment, it is a defence for B to show that B took all reasonable steps to prevent A from doing that thing, or from doing anything of that description.

Burden of proof

254. Section 136 of the Equality Act 2010 provides that 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. However this does not apply if A shows that A did not contravene the provision.

255. The burden of proof provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another - ***Hewage v Grampian Health Board*** **[2012] IRLR 870**.

256. Guidance on the application of the burden of proof in discrimination complaints was provided in ***Igen Ltd v Wong*** **[2005] IRLR 258**:

"*(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of* [the protected characteristic], *since no discrimination whatsoever is compatible with the Burden of Proof Directive.*

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] *was not a ground for the treatment in question.*

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof...."

257. This judgment refers to the law under the previous Sex Discrimination Act 1975 prior to the Equality Act 2010, however the decision of the Court of Appeal in ***Efobi v Royal Mail Group Ltd*** **[2019] ICR 750** confirms this guidance also applies under the Equality Act 2010.

258. It is not sufficient for a claimant to merely to prove facts from which the tribunal could conclude that the Respondent "could have" committed an unlawful act of discrimination. Rather a claimant must establish a prima facie case of discrimination. As was held in ***Madarassy v Nomura International Plc*** **[2007] ICR 867**:

259. *"The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."* (paragraph 56)

260. The court in ***Madarassy*** indicated that at the first stage the tribunal would need to consider all the evidence relevant to the discrimination complaint such as evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like; and available evidence of the reasons for the differential treatment. The absence of an adequate explanation for differential treatment of the complainant is not relevant to whether there is a prima facie case of discrimination by the Respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant.

261. At the first stage the tribunal should take into account all of the relevant evidence from both sides and usually disregard any explanation provided the Respondent. The consideration of the tribunal then moves to the second stage whereby the burden is on the Respondent to prove that it has not committed an act of unlawful discrimination. The Respondent may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If it does not, the tribunal must uphold the discrimination claim.

262. As regards the "something more" needed to shift the burden of proof onto a Respondent, this will depend upon the facts of each case but it may include evidence of stereotyping, statistical evidence, lack of transparency or inadequate disclosure, or inconsistent explanations. However, mere unreasonable treatment by an employer "casts no light whatsoever" as to the question of whether an employee has been treated unfavourably - ***Strathclyde Regional Council v Zafar*** **[1998] IRLR 36**. This has also been followed by the Employment Appeal Tribunal in ***Law Society and others v Bahl*** **[2003] IRLR 640** where it was held that mere unreasonableness is not enough as it tells us nothing about the grounds for acting in that way.

263. In ***Laing v Manchester City Council and others*** **[2006] IRLR 748** the EAT provided helpful guidance on the application of the burden of proof, and in particular the potential for a tribunal to move direct to the second stage where the evidence suggests that the employer had discriminated against the claimant:

"75. The focus of the tribunal's analysis must at all times be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a tribunal to say, in effect, "there is a nice question as to whether or not the burden has shifted, but we are satisfied here that, even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race".

76. Whilst, as we have emphasised, it will usually be desirable for a tribunal to go through the two stages suggested in Igen, it is not necessarily an error of law to fail to do so. There is no purpose in compelling tribunals in every case to go through each stage. They are not answering an examination question, and nor should the purpose of the law be to set hurdles designed to trip them up. The reason for the two-stage approach is that there may be circumstances where it would be to the detriment of the employee if there were a prima facie case and no burden was placed on the employer, because they may be imposing a burden on the employee which he cannot fairly be expected to have discharged and which should evidentially have shifted to the employer. But where the tribunal has effectively acted at least on the assumption that the burden may have shifted, and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever.

77. Indeed, it is important to emphasise that it is not the employee who will be disadvantaged if the tribunal focuses only on the second stage. Rather the risk is to an employer who may be found not to have discharged a burden which the tribunal ought not to have placed on him in the first place. That is something which tribunals will have to bear in mind if they miss out the first stage. Moreover, if the employer's evidence strongly suggests that he was in fact discriminating on grounds of race, that evidence could surely be relied on by the tribunal to reach a finding of discrimination even if the prima facie case had not been established. The tribunal cannot ignore damning evidence from the employer as to the explanation for his conduct

simply because the employee has not raised a sufficiently strong case at the first stage. That would be to let form rule over substance."

Time limits

264. Section 123 Equality Act 2010 provides that proceedings on a complaint 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. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period.

265. The normal time limit must be adjusted to take into account the early conciliation process and any extensions provided for in section 140B.

266. In ***Hendricks v Metropolitan Police Commissioner*** **[2002] EWCA Civ 1686**, the Court of Appeal stated that the test to determine whether a complaint was part of an act extending over a period was whether there was an ongoing situation or a continuing state of affairs in which the claimant was treated less favourably. In ***Hale v Brighton and Sussex University Hospitals NHS Trust*** **UKEAT/0342/17** it was found that the respondent's decision to instigate disciplinary proceedings against the claimant created a state of affairs that continued until the conclusion of the disciplinary process.

267. When determining if there was a continuing state of affairs the tribunal will consider what the acts were, the context and who was involved. A tribunal may decide that some acts form part of a continuing act, while others remain unconnected - ***Lyfar v Brighton and Sussex University Hospitals Trust*** **[2006] EWCA Civ 1548**.

268. It is for the claimant to show that it would be just and equitable to extend time - ***Bexley Community Centre (t/a Leisure Link) v Robertson*** **[2003] EWCA Civ 576**.

269. The court in ***British Coal Corporation v Keeble*** **[1997] IRLR 36** provided guidance to tribunals when considering whether to exercise its discretion to extend time on this just and equitable basis. This will include consideration of the length of and reasons for the delay, but might include the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued had co-operated with any requests for information; the promptness with which the claimant acted once they knew of the possibility of taking action; and the steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

270. The court in ***Adedeji v University Hospitals Birmingham NHS Foundation Trust*** **[2021] EWCA Civ 23** has confirmed that the correct approach is for the tribunal to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time. The court advised against using a mechanistic approach and using the examples in ***Keeble*** as some sort of checklist.

271. In ***Jones v The Secretary of State for Health and Social Care*** **[2024] IRLR 275** the Employment Appeal Tribunal reiterated the long established principle that time limits in an employment law context are relatively short and should be complied with, however the tribunal has a wide discretion to extend time on just and equitable grounds.

Submissions

272. The Respondent provided written submissions of 17 pages which in summary urge us to treat the Claimant's evidence with caution, it says that the Claimant has a propensity to make serious and potentially damaging allegations against individuals without any credible evidence, and despite my repeated guidance she failed to put her allegations to the Respondent's witnesses, and she was unable or unwilling to provide any rational basis for her assertions that the alleged treatment was in any way linked to her race or sex.

273. The Respondent says that its witnesses gave evidence in a fair, reasonable and moderate manner with high levels of professionalism and it asks us to contrast this with the manner in which the Claimant conducted herself during these proceedings which it says is stark and the Respondent invites us to reflect upon how these differences in approach and attitude were likely to have shown themselves within the workplace.

274. The Respondent describes the Claimant's evidence as unreliable and self-serving and on occasions wholly incredible, by way of example the interpretation of the text messages between herself and AB. The Respondent reminds us that within the Claimant's evidence she said she had never experienced any person associated with the school making any overtly racist or even questionable comment regarding her or anyone else's race and that she had not experienced any of her colleagues been treated in a way that caused her concern. The Respondent argues that there is no background evidence from which any adverse inferences might conceivably be drawn and that the Claimant made it clear at the outset of her cross examination that she was not alleging that her former colleagues individually held views or acted in a way that was racist or sexist despite the fact that her allegations relate directly to their actions.

275. As regards Issue 7.1 the Respondent says that Mr Coleman did respond to the Claimant's offers of help when they had a discussion, there was no need to reply to her email, and likewise there was no need for Amy Jones to reply either. The Respondent says the Claimant knew what she had to do if she wished to become involved and as such the allegation fails at the first hurdle, and there is no evidence that her race was a material influence for the direct discrimination claim, nor was the conduct related to race for the harassment claim. The Respondent says that the burden of proof has not shifted.

276. As regards Issue 7.2, the Respondent says that the Claimant's emails were in fact responded to either by email or followed up with a verbal discussion and an other occasions it can be seen that no response was requested or required and that the number of emails not responded to was in fact very small. The Respondent says for those non replies a good and rational and non-discriminatory reason has been put forward. The

Respondent says that the Claimant had a good relationship with Mrs Biltcliffe who was a colleague in a non-teaching role and who tried to assist and support the Claimant. Likewise the Respondent says Jeanette Jones who worked in payroll was described by the Claimant as beyond reproach therefore it is extraordinary that the Claimant should choose to accuse them of discrimination. The Respondent says there is zero evidence that there was any link between the alleged treatment and the Claimant's race, noting that the Claimant never put to any of the witnesses that it was her race which was a causal factor, and further Mrs Biltcliffe had never met the Claimant and did not know her Indo-Canadian background. The Respondent says that the burden of proof has not shifted.

277. As regards Issue 7.3, the Respondent says there was one misspelling of the Claimant's name, it was not persistent, and the misspelling was of an English name the Claimant adopted by marriage. The Respondent points out the change in the Claimant's approach to this issue where she said the Respondent should have a policy of cutting and pasting names rather than typing them, and it says it does not give rise to a claim for direct discrimination or harassment, and the complaint is fatally flawed. The Respondent reminds us that it was the Claimant who had consistently misspelled Mr Skyrme's surname.

278. As regards Issues 7.4 and 7.5, the Respondent says that there was a safeguarding concern which arose out of the Claimant not inputting a concern onto Wellbeing Manager, it was a key safeguarding issue that troubled Mr Hudson and was wholly supported by contemporaneous evidence. As regards the communication concerns, the Respondent says that Mr Hudson's evidence on this was clear, it was unchallenged, and that it was clear that the Claimant's communications were on any analysis concerning and the Claimant even recorded in the ECT form that she recognised that from the outside her communications with certain staff looked unprofessional. The Respondent says that the assessments of the Claimant were otherwise positive and these were learning and development points for her.

279. The Respondent says that whereas the safeguarding concern was resolved, the concern about some of the Claimant's communications remained and it asks us to consider the Claimant's communication style demonstrated during the tribunal process. The Respondent reminds us that the Claimant never put to the witnesses that this was due to her race, the true position was absolutely clear from the documents and witness evidence and the claim is doomed to fail.

280. As regards Issues 7.6 and 14.2 the Respondent says that the Claimant had requested an agreed reference, one was produced, it was sent to the Claimant but she did not reply, when a request came in and she was again asked for comment to which she said she did not have any comments and the only interpretation is that she agreed it and as such there was no less favourable treatment and the wording was accurate, it was positive overall with just one development point.

281. As regards Issues 7.7 and 14.3 the Respondent says that all staff were required to log safeguarding concerns, and there was nothing particular to the Claimant and it is difficult to see how this could possibly amount to an

allegation of discrimination where she is asked to comply with school procedures based upon KCSIE principles for the safety and welfare of children and it had nothing to do with the Claimant's race.

282. As regards Issue 7.8 the Respondent says that Mr West did not decline to offer the Claimant lessons but simply had not been signposted to speak to her prior to her employment and as such the complaint ought to have been withdrawn. The Respondent refers to Mr Hudson's evidence that the Claimant was recruited with an unenviable DBS certificate, he wished her to be focused on her teaching and did not which her to be distracted by other responsibilities and this is his approach to all new NQTs, and further the circumstances of the two comparators relied upon were very different. The Respondent says that Mr Hudson's evidence on this was unchallenged by the Claimant, she did not suggest his action in not highlighting for enrichment lessons was tainted by discrimination, his account is entirely rational, and the Respondent was liaising with her about delivering such activities in the second term which did not take place due to her resignation.

283. With respect to Issue 14.1 the Respondent says that the allegation of flirtation is wholly unsubstantiated and without merit, it says it is clear from the documents that it was the Claimant who was making all the advances with respect to meeting and socialising with AB who politely declined or did not respond, and asked her not to use his personal number save in emergencies but she continued to do so. The Respondent says that the content and tone of the Claimant's communications were troubling and caused AB to become increasingly anxious in turn causing Mrs Kay to be concerned for his mental state. The Respondent says that the Claimant could not point to any communication alleged to be flirtation, and that her alleged rejection of the advances was nothing of the sort and as such there can be no question of AB having taken avoidance action against her.

284. We received written submissions from the Claimant of 29 pages. Much of the Claimant's submissions either contain new evidence from the Claimant or relate to issues which were not part of the claim we heard. Moreover, the Claimant continued to refer to some matters which Employment Judge Green had found to be threats, harassment and intimidation by the Claimant towards the Respondent, its witnesses and also its lawyers. We are not going to deal with those matters. Our focus will be on the claims which the Claimant has brought. It is regrettable that the Claimant has, despite the clarity of Judge Green's judgment and the reminders from me, continued to repeat such matters one further time in her closing submissions.

285. The Claimant also alleges throughout her submissions that the Respondent's witnesses have lied under oath and perverted the course of justice, and that documents have been withheld, altered and fabricated. We also noted that the Claimant said that *"Phil Dart was only one of two witnesses that didn't lie to the Tribunal, but has admitted law breaking."* We make it clear that there was no such admission by Mr Dart about breaking the law during his evidence and this was another misrepresentation on the part of the Claimant.

286. In her closing submissions the Claimant tells us that with respect to Issue 7.1 Amy Jones confirmed that she did not find it necessary to respond to

the Claimant, she disputes ever having attended a rehearsal or that she agreed to email Mr Coleman, rather she suggests he was to email her.

287. With respect to Issue 7.2 the Claimant disputes that she received in person replies to her emails and she accuses the Respondent's witnesses of giving unreliable testimony and having reasons to be loyal to Mr Hudson. The Claimant continued to assert that the Respondent should have a communications policy which mandates a reply to correspondence within 24 hours.

288. With respect to issue 7.3 the Claimant stated "*I don't have a problem with people making mistakes spelling my name, this isn't about superficial "problems" that should have been better managed. I have a problem when that misspelling affects how I do my job, particularly for 6 weeks. I didn't even have the name of the person that examinations email, and struggled to find a mistake."* The Claimant said that her Anglicised Norman French surname does not follow the phonetics of modern English, and the spelling of her surname with an "A" was an over generalisation of Hindi words such as Himalayas.

289. The Claimant said this was still a management issue as Mr Hudson *"hired a woman that genuinely doesn't understand copy and paste, but rather fail to set a communication policy that mandates copying and pasting email specifically, updating names such as Interchange which has changed to Exam Builder, and using precise words such as email login rather than username. This is particularly necessary for a school that has 50% ethnic minorities."*

290. As to Issue 7.4 the Claimant said that Mr Skyrme didn't just make a reading comprehension mistake, he took her to task for his mistake enough to make her quit her job and *"We have no evidence that Jason Skyrme is racist, just a mistake, but David Hudson attributing the failure in communication to Claimant is unfair and probably racist."* The Claimant continued to make reference to why she had not updated Wellbeing Manager at the time which she said was due to trying to work out why Student X left the School for an hour, and she said it was unfair to regard this as a safeguarding issue. The majority of the Claimant's submissions on this did not address the legal issue to be decided and instead sought to again go over her narrative of the events but without reference to the legal issue for us to decide. The thrust of the Claimant's submission was that the treatment of her was unfair or unreasonable, rather than discriminatory.

291. Regarding Issue 7.5 the Claimant said she had made 337 applications, attended 65 interviews, travelled 2557.4 miles and only had "two confirmations of dates back" indicates that Mr Hudson is either sharing some of a *"false record, or just providing an otherwise bad reference verbally or written."*

292. With respect to Issue 7.8 the Claimant said that she believed Mr West's testimony and that the exclusion of her from enrichment lessons was by the hand of Mr Hudson, and/or AB, and/or Mrs Kay. The Claimant provided us with submissions on the differences between karate and Thai boxing and argued that karate should have been offered due to what she said were the benefits of it and that the decision had been to support Mr Maskery who was

white and male. The Claimant said *"I remind the Tribunal that I'm not stating everyone that excluded me was racist and sexist; I am claiming that one racist person failing to regulate or correct his own bias, other's bias, is enough to create an atmosphere of racist oppression."*

293. With respect to Issue 14.1 and the allegation of flirtation, the Claimant alleged that AB had been non-responsive and failed to train the Claimant, and other such matters. The Claimant still did not direct us to how this alleged flirtation manifested itself. We noted that in her submissions rather than summarising what the alleged flirtation from AB is said to be, the Claimant instead sought to justify her own actions as *"attempting to share my friends group with him and diffuse his attentions among other people."*

294. The Claimant then went on to suggest that Mrs Kay had put the Claimant alongside AB and sought to justify *"her decision to facilitate (initiate? Agree to?) the meet cute between Claimant and my line manager by initiating or agreeing to us sharing classrooms, unlike the rest of the school, and sharing a form group. It was like living together and having 30 children, and desperately needing a divorce."*

295. As to Issue 14.2 the Claimant suggested that allegations she had been unprofessional were out of time, weak and non-compliant with Safer Recruitment within KCSIE and was not evidenced so should not be shared with prospective employers and not on her training forms.

296. As to Issue 14.3 the Claimant said she had been following instructions from Mrs Kay and that not putting concerns about Mr Skyrme in writing was correct and that there was not a way of registering concern for multiple students on Wellbeing Manager. The Claimant referred us to KCSIE and said that her actions even as described by the Respondent's witnesses did not meet the harm threshold.

297. The Claimant also told us that the burden of proof had shifted as she said that the Respondent had submitted an affirmative defence and had attempted to provide alternative explanations of mostly in person responses. The Claimant says that the Respondent had fully refused a Subject Access Data Request and had refused equalities monitoring data under Freedom of Information requests, and whereas it is not expressed explicitly she appears to suggest that we ought to draw some form of negative inference from this.

Conclusions and analysis

298. We will deal with each of the Issues in turn.

Issue 7.1 The entire Drama Department, including individuals known as Amy and Ben, not responding to her offers to help with the Drama Department at the outset of her employment;

299. Ms Jones did not send a reply to the Claimant's email of 6 September 2022. We accepted Ms Jones' evidence that she did not consider that a response was required with respect to sex education given that it was the start of term, the lessons had already been assigned some time earlier, and

she assumed that the Claimant was talking about the future. This was an entirely plausible assumption from Ms Jones and we believed her evidence.

300. As regards the offer of helping with the production of Chicago, again this was written in such general terms with the Claimant explaining that she was looking forward to seeing the show, she may like to find time to help with it, and that she loves dancing. Ms Jones explained to us that she assumed that the Claimant would be in touch again with how she might be able to help. We of course took into consideration that Ms Jones could have sent a reply to acknowledge the Claimant's email, however we were also mindful that the Claimant's email did not request a reply nor did it suggest that a reply was expected.

301. We also took into consideration that some weeks later on 21 October Mr Coleman informed Ms Jones about his conversation with the Claimant so she was under the impression that the Claimant would be in touch or attend a rehearsal. We accepted Ms Jones' evidence which we found to be honest and reliable and consistent.

302. With respect to the allegations against Ms Jones, the Claimant has not established facts from which we could conclude that discrimination had taken place. A *prima facie* case of discrimination has not been established and following the guidance in ***Hewage*** and in ***Laing***, we are able to make a positive finding that the reason for the treated complained of was not discriminatory. We have therefore not found it necessary to apply the burden of proof. However if we are wrong on that, and even if the burden of proof has shifted, we were satisfied with the non-discriminatory explanation from Ms Jones for reasons in not responding to the Claimant on those occasions.

303. With respect to Mr Coleman, the Claimant had already engaged with him in person and he had already explained to her how she could get involved and he assumed that the email was sent as a summary of the conversation and that she would be in touch in future. This was also sent on the last day before half term at 4:15pm which was outside of school hours and with only three weeks left before the production of Chicago.

304. With respect to the allegations against Mr Coleman, the Claimant has again not established facts from which we could conclude that discrimination had taken place, and a *prima facie* case of discrimination has not been established. We have therefore not found it necessary to apply the burden of proof to this Issue. However if we are wrong on that, and the burden has shifted to the Respondent to provide a non-discriminatory explanation, we find that it has done so. Mr Coleman reasonably assumed that the Claimant would be in touch with him and she had been invited to attend the rehearsals. We found that this was an entirely plausible explanation for not responding to the Claimant.

305. We make it clear for the avoidance of any doubt that we find that the Claimant's race played no part whatsoever in the way in which Ms Jones and Mr Coleman behaved and there was no less favourable treatment of the Claimant. For these reasons the complaint of direct discrimination fails and is dismissed.

306. With respect to harassment related to race, we did not find that there was any unwanted conduct on the part of Ms Jones or Mr Coleman. The Claimant's email to Ms Coleman simply expressed an interest and a desire to be kept in mind if she could help in future. The failure to reply to that general email by Ms Jones was not in our view unwanted conduct. Similarly with respect to Mr Coleman, the Claimant had a discussion with him in person, there was no need to respond to her email of 21 October, and the Claimant knew she was welcome to attend rehearsals and to take part in the limited time before the production. This was also not unwanted conduct, therefore the harassment complaint fails as Ms Grennan argues *"at the first hurdle."*

307. However, if we are wrong on that, and this failure to respond to the emails of 6 September and 21 October did amount to unwanted conduct, we have gone on to consider whether this was related to race. We find that it was not. There was no evidence presented to us which gave any indication whatsoever that not replying to those two emails was in some way related to the Claimant's race, not least because the Claimant had a very positive and receptive discussion with Mr Coleman on 20 or 21 October 2022.

308. We do not need to go on and to look at whether the conduct had the proscribed purpose or effect because we did not find any connection whatsoever to the Claimant's race. It appeared to the Tribunal that the Claimant was nursing a wholly unjustified sense of grievance.

309. In addition we record that the Claimant failed to put this complaint to either Ms Jones or Mr Coleman, she did not accuse them of direct race discrimination or harassment when they gave evidence, and her own witness statement is silent on this matter.

310. The complaints of direct discrimination and harassment related to race were totally without merit and we dismiss them.

Issue 7.2 Failure of Amy and Ben of the Drama Department, the Head Teacher Mr David Hudson, the Head of Department AB, the Head of Sixth Form Jason Skyrm, the Head Statton House David Jenkins and Safeguarding Lead Martin Farrell on multiple occasions not replying to her emails;

311. We have already addressed the response from Ms Jones and Mr Coleman with respect to Issue 7.1 which is not repeated here.

312. We have spent a considerable amount of time in this judgment going over each of the emails which the Claimant says were not responded to and we have found that the factual premise of the allegation has not been made out as many of the emails had as a fact been responded to, either by an email which already appeared in the hearing bundle, or she received a response in person, or the Claimant's alleged email had not been received by the Respondent.

313. There were a very small number of emails which were not responded to by AB and our focus will be on those emails.

314. With respect to the Claimant's email of 18 January 2023 to Mrs Taylor in which she said that AB was cross, there was nothing contained therein which indicated that a response from AB was expected or needed. Likewise the Claimant's email to AB of 23 January 2023 at 12:08pm was an update about student tests, and it did not ask for a reply nor would it appear that one was needed.

315. The Claimant's email to AB of Monday 23 January at 12:29pm asked him if he had created a ClickSchool account for a pupil. The Claimant's email was sent following an email she had received on Friday 20 October, and by the time the Claimant had sent her email on the Monday AB had already created the account over the weekend. Whereas AB could have replied to the Claimant confirming he had already created the account, it was clear the underlying request had already been resolved. It was clear to the Tribunal that this lack of response had nothing whatsoever to do with the Claimant's race.

316. AB did not respond to the Claimant's email of 31 January 2023 at 10:05am where she informed him she had completed her entry of the grades data. Nothing contained therein required a response from AB.

317. AB did not respond to the Claimant's second email of 31 January 2023 where she asked to meet at 3:30pm for ten minutes. The Claimant's email to AB was terse and in a disrespectful tone, and AB was feeling uncomfortable engaging with the Claimant due to the manner in which she was conducting herself, in particular because she had shared with the students her views on AB and other teaching colleagues. The Claimant's behaviour was deteriorating, and we accepted that AB would not wish to engage with her at that precise time for that reason and that he intended to engage with her once she had spoken to Mr Hudson and Mrs Kay later that day. It was again clear to the Tribunal that this lack of response had nothing whatsoever to do with the Claimant's race.

318. AB did not respond to the Claimant's email to him and Mrs Kay of 1 February 2023 and he says that it was because the email was unprofessional, aggressive and not conducive to a productive response. We accept that AB found that email to be as he has described and that was the reason he chose not to respond at that time. The Claimant was clearly agitated and angry in her email and we accept that AB did not wish to engage with her at that time. We again repeat that it was clear to the Tribunal that this lack of response had nothing whatsoever to do with the Claimant's race.

319. AB did not respond to the Claimant's email of 7 February asking whether she would see him before she left her role and setting out a list of her contributions. We accept that AB interpreted the first part of the email as a personal question and that he did not wish to provide an answer to it not least because of the manner in which the Claimant was conducting herself at that time. As regards the second part, we accept that AB interpreted this as a list of curriculum suggestions and did not consider that a response was required. We again record that it was clear to the Tribunal that this lack of response had nothing whatsoever to do with the Claimant's race.

320. As regards the Claimant's emails of Sunday 12 February 2023, these were sent during the half term break after the Claimant had finished her last day at work and they were personal in nature relating to henna and photographs of her hands. Within the first email the Claimant herself said she did not expect AB to pick up her email. By the time AB returned to work on 20 February the Claimant's employment had ended. We accept that AB did not wish to respond to the Claimant about her personal requests and further he considered she would not receive a reply even if he sent it upon his return to work as she would lose access to her work email.

321. The Claimant has not in our view established facts from which we could conclude that discrimination had taken place. Much of that correspondence did not require a response or was not work related. We do not consider that the Claimant has established a *prima facie* case of discrimination. As a result we have not deemed it necessary to apply the burden of proof to this complaint. That said, if we are wrong on that and if the burden has shifted to the Respondent, we find that the Respondent has discharged that burden and provided a non-discriminatory explanation for the treatment which we believed.

322. AB has provided an entirely plausible and non-discriminatory explanation for not responding to the Claimant's emails and we accept his explanations (identified above) as being the true reasons for not responding to the Claimant on those occasions identified. The Claimant's race had absolutely nothing whatsoever to do with how AB responded (or why he did not respond) to her emails, and further the Claimant did not even put to AB in his evidence that the reason for not responding was due to her race. We dismiss the direct discrimination complaint.

323. As regards harassment, we do not find that there was any unwanted conduct. Most of the unanswered emails were either non-work related or did not require a response. Whilst AB did not respond to all the Claimant's emails he spoke to her in person at work and sought to minimise his engagement with the Claimant given the manner in which she was behaving at that time, including discussing AB with students which was unprofessional of her. Minimising contact with the Claimant in such circumstances does not in our view amount to unwanted conduct.

324. If we are wrong on that, and the failure to respond to the Claimant's emails did amount to unwanted conduct, the harassment complaint would in any event fail as the failure to respond was not related to the Claimant's race in any way at all. The Claimant did not put to AB or any of the witnesses that her race was the reason for not responding, any in any event there are no grounds from which we could possibly draw an inference of that nature.

325. We therefore dismiss the complaint of harassment related to race.

Issue 7.3 Persistent mistakes in the spelling of her name by the Examination Department in the first half term of her period of employment with the Respondent;

326. The factual premise of this allegation has not been established. There were no persistent mistakes in spelling the Claimant's surname. There was

one incident whereby Mrs Biltcliffe made a typing error when creating an account for the Claimant. This took place on 7 September 2023.

327. We have not found it necessary to apply the statutory burden of proof as this was nothing more than a simple typing error, it had nothing whatsoever to do with the Claimant's race. The Claimant's surname is in any event an English name and not Indo-Canadian, therefore the misspelling of that name had nothing whatsoever to do with the Claimant's race.

328. We record that the Claimant did not even advance this as a complaint of direct discrimination or harassment related to race before us, instead seeking to argue that the Respondent ought to have a policy mandating copying and pasting of names. That is a different matter altogether, it is not the complaint which the Claimant brought to the Tribunal, and it was clear to us that even the Claimant did not consider that it was an act of direct discrimination or harassment.

329. The complaint was totally without any merit and we dismiss it.

Issue 7.4 Head Teacher David Hudson accusing her of poor communication skills and violating safeguarding procedures arising out of a mistake made by Jason Skyrme in misreading her word, "assessment" as, "assignment";

330. We start by making it clear that it was not established before us that Mr Skyrme had made a mistake or had misinterpreted an assessment as an assignment or vice versa. The Claimant had issued Student X with a 500 word task during a period where the school was on notice that she had recently suffered a family bereavement and her parents were away overseas for the funeral, and when this was brought to the attention of Mr Skyrme he asked the Claimant to consider withdrawing the task and when she declined Mr Skyrme told Student X that she did not need to complete it. There was nothing to support an assertion that Mr Skyrme had made any sort of mistake.

331. The Claimant had raised a safeguarding issue about Student X leaving school premises, under the School policy she was required to record this as a concern on Wellbeing Manager but she failed to do so, and when she was specifically asked to record it the Claimant initially failed to do so, and when the entry was eventually added it was so general as to be of no use at all.

332. The Claimant had failed to do what was asked of her and this caused concern to a number of senior members of staff within the school (including the safeguarding leads) and this was raised with the Claimant by Mr Hudson as part of her NQT assessment as he was bound to do. This had nothing whatsoever to do with the Claimant's race, it was due solely to the Claimant's intransigence in not recording a safeguarding concern on Wellbeing Manager. The matter was resolved when the Claimant passed the IHASCO safeguarding quiz and when she accepted that safeguarding concerns needed to be recorded. This remained on the Claimant's first assessment as it was a contemporaneous document but it did not appear on the final assessment as it was resolved by then.

333. As regards the Claimant's communications, we found that the Respondent had not accused her of having poor communication skills as

alleged. The concern was only about some of the Claimant's professional communications not her communications generally. These two things are not synonymous and the concern was about specific communications from the Claimant, not her overall communication skills.

334. The Respondent has drawn to our attention the communications which it says were of concern and the Claimant has not disputed before us that these things took place. These communications include things she had told students about the school making a mistake with respect to recruiting a particular candidate, discussing with the students Mr Hudson's reaction to an OFSTED inspection, telling students about AB *"I'm not sure why they let him be a grown up",* the comments about cake to AB, discussing her employment situation with the students as well as the other matters to which we have referred.

335. Given the factual premise of the complaint has not been made out, we find that the Claimant has not established facts from which we could conclude that discrimination has taken place. A *prima face* case of discrimination has therefore not been made out. It appeared clear to us from the contemporaneous documents before us that the concerns about safeguarding and specific communications had nothing whatsoever to do with the Claimant's race. We therefore did not consider it necessary to apply the burden of proof to this complaint.

336. However, if we are wrong on that and if the burden has shifted, we find that the Respondent has discharged that burden. We accepted the explanations from Mr Hudson as to why he raised these concerns with the Claimant. We noted that the Claimant had herself noted on the ECT form that she recognised why from the outside her communications with certain staff members look unprofessional.

337. The Respondent's explanations gave an entirely plausible and non-discriminatory explanation of why these matters were raised with the Claimant and this was borne out fully by the contemporaneous documents in the hearing bundle before us. We are satisfied that the Claimant's race played no part whatsoever in the way in which the concerns about safeguarding and communications were raised with the Claimant, and we dismiss the direct discrimination complaint.

338. As regards harassment, we do not find that the Claimant was subjected to unwanted conduct by virtue of the Respondent raising what we find to be entirely legitimate concerns about how the Claimant handled the safeguarding issue and the contents of some of her communications. However, if we are wrong on that, and by raising these concerns this did amount to unwanted conducted, the harassment complaint would still inevitably fail because this was not related in any way whatsoever to the Claimant's race. The second assessment produced by Mr Hudson was overall positive about the Claimant's teaching, the safeguarding concerns had been resolved, and the only outstanding issue was the manner in which the Claimant had carried out some of her professional communications. There was no connection at all with the Claimant's race. Accordingly, the harassment complaint also fails and is dismissed.

339. We also record for completeness that the Claimant failed to put these allegations to the Respondent's witnesses as allegations of race discrimination. The Claimant was at pains to tell us why these assessments of her were in her opinion unreasonable and unfair, but she continuously failed to advance the claim which she had brought which was for direct race discrimination and harassment related to race.

Issue 7.5 Head Teacher David Hudson suggesting that the foregoing amounted to poor communication skills and was a safeguarding issue, thereby putting in jeopardy Ms Punshon's completion of her Teacher Training;

340. This complaint is a duplication of Issue 7.4 above and we refer to the conclusions we have already reached about this complaint. Mr Hudson did not accuse the Claimant of having poor communication skills. The concerns raised were about some of the Claimant's professional communications. We dismiss both the direct race discrimination and the harassment related to race complaints for the reasons we have already given.

Issue 7.6 Head Teacher David Hudson wrongly informing prospective employers during her period of notice that her communications were unprofessional, in particular informing Chalfont School and Levethal School [spelling supplied by Claimant];

341. The factual premise of this allegation has not been made out. Mr Hudson did not inform those schools that the Claimant's communications were unprofessional. The reference presented to us in the bundle was generated as it was one of the Claimant's desired outcomes from her grievance. The reference was shown to the Claimant and she was asked for comment but she provided none. The Claimant was asked a second time once there had been a request for a reference to which the Claimant said she had no comments on the reference. It was reasonable for Mr Hudson to conclude, as he did, that the reference was agreed with the Claimant.

342. The reference was detailed and it was very positive about the Claimant. The reference did not state that the Claimant's communications were unprofessional, it stated that she needed to *"provide consistent evidence to support Part Two (Personal and Professional Conduct) with a focus on regard for the ethos, policies and practices of the school, particularly with a view to effective and appropriate communication."* There was no suggestion that the Claimant's communications were unprofessional, it simply identified a development area for the Claimant and in our view there was considerable contemporaneous written evidence to support the view held by Mr Hudson about this development need.

343. We accepted Mr Hudson's evidence that this is the reference he supplied and that he did not stray beyond it.

344. We did not need to apply the burden of proof with respect to this allegation as the factual premise of the allegation had not been made out, and in any event there was no connection whatsoever with the Claimant's race and the contents of the reference. The Claimant did not even advance this as an argument in her questions to Mr Hudson during his evidence.

345. We dismiss the complaint of direct discrimination for the above reasons. As regards harassment we find that there was no unwanted conduct as this was an agreed reference. In the event that we are wrong on that and the reference was not agreed and therefore amounted to unwanted conduct, we would in any event have dismissed the complaint as this treatment did not relate to the Claimant's race in any way whatsoever.

Issue 7.7 Head Teacher David Hudson requiring Ms Punshon to provide written Reports through the Wellbeing Manager, arising out of the miscommunication allegation; and

346. We have already found that there was not a miscommunication on the part of Mr Skyrme. The Claimant asked to discuss a safeguarding issue, the Claimant should have put it on WellBeing Manager but failed to do so, the Claimant was then instructed to do so but failed to do so at the time, and this was then discussed with her and it was explained to her why this was necessary.

347. The requirement to put safeguarding concerns onto WellBeing Manager applied to all staff, not specifically the Claimant. There were very good reasons for having such a requirement as it enables those tasked within the school for leading on safeguarding to make an informed decision as to what the actual concern is, what is the risk to the student, and what support might be offered, when, how and by whom. This requirement is based upon the KCSIE principles. The Respondent's witnesses gave very clear and compelling evidence that it takes safeguarding incredibly seriously and why it is essential that concerns are logged onto WellBeing Manager, and the potential risk to a student of failing to do so.

348. The requirement for all staff to use WellBeing Manager did not amount to less favourable treatment and this had nothing whatsoever to do with the Claimant's race, it is a requirement for all staff to use it. The Claimant has failed to establish facts from which we could conclude that discrimination had taken place and a *prima facie* claim has not been established. It is not necessary for us to apply the burden of proof provisions to this complaint and we therefore dismiss the allegation of direct discrimination.

349. As regards harassment, we do not find that the requirement to log a safeguarding concern could amount to unwanted conduct, but even if we are wrong on that it had nothing whatsoever to do with the Claimant's race and we dismiss the harassment complaint as well.

350. We further record that the Claimant did not put to Mr Hudson during his evidence this requirement was linked to her race. The complaint was not advanced by the Claimant in this way, rather the Claimant's complaint appeared to be that she disagreed strongly with the Respondent's policy, however that is a different matter and not the one which she brought to this Tribunal for us to decide.

Issue 7.8 Mr George West organiser of Enrichment Lessons for Period 5 on Wednesdays, declining to allocate Enrichment Lessons to Ms Punshon throughout her period of employment.

351. During the hearing and in her closing submissions the Claimant said that she believed Mr West and she accepted that he had not made this decision. The Claimant was asked if she was therefore withdrawing this complaint and she said that she was not, and she has since alleged that the decision must have been made by someone else, and she refers to Mr Hudson, and/or AB and/or Mrs Kay.

352. The factual premise of the complaint has not been established as the Respondent did not decline to offer the Claimant the opportunity to deliver enrichment lessons. The Claimant expressed an interest in providing karate lessons and she received a positive response from Mr West which she did not pursue. During November 2022 there was a discussion about the Claimant offering computing lessons in the second rotation and again the Claimant received a positive response from Mr West, however the Claimant's subsequent resignation meant that it did not take place.

353. Nevertheless we have looked to see if there was any less favourable treatment of the Claimant by considering the situation as regards the two comparators she has named. We have found that neither of these are true comparators. Whilst Dr Staley and Mr Maskery are both white, they were not in the same position as the Claimant as neither of these two people were NQTs, whereas they may have been new to the school they were not newly qualified. Dr Staley was asked to provide Japanese lessons, and Mr Maskery was permitted to provide Muay Thai boxing lessons after having been asked to fill a slot left available when the Politics elective ended.

354. We find that a true comparator would have been an NQT not of the Claimant's race who had been offered the opportunity to undertake enrichment lessons. We were not provided with one. There was no evidence from which we might infer that a hypothetical comparator would have been treated any differently than the Claimant.

355. The Claimant has not established facts before us from which we could conclude that discrimination had taken place. A *prima facie* case of less favourable treatment was not established. We did not consider it necessary to apply the burden of proof in these circumstances.

356. Nevertheless, we have considered that if we are wrong on that and the burden has shifted to the Respondent, we have accepted the explanation from Mr Hudson that the Claimant was treated consistently with the Respondent's custom and practice that NQTs would need to concentrate on their teaching upon their arrival.

357. This was an entirely plausible explanation from Mr Hudson and we believed him, he has been an honest and compelling witness throughout. We were satisfied that there was no detriment to the Claimant and in any event the way in which the Claimant was treated with respect to enrichment lessons had nothing whatsoever to do with her race. We dismiss the complaint of direct discrimination.

358. As regards harassment, we again find that there was no unwanted conduct. The Claimant raised the possibility of enrichment lessons, Mr West was receptive to this and arrangements were underway for the Claimant to deliver computing lessons in the second rotation. In such

circumstances there was no unwanted conduct. Nevertheless, if we are wrong on that, and this did amount to unwanted conduct the claim would still fail as this treatment did not relate to the Claimant's race in anyway. We dismiss the complaint of harassment related to race.

Issue 14. 1 AB flirting with Ms Punshon, (it is very clear that she is not alleging sexual harassment), for example suggesting that she should teach him the Salsa and on her sending a text message making clear that she rejected his advances, AB thereafter avoiding her;

359. We have found the Claimant's presentation of this complaint to be quite extraordinary not least because throughout the hearing the Claimant repeatedly failed to explain to us what the alleged flirtation by AB was said to be. The Claimant failed to put this to AB during his oral evidence and the Tribunal was left unclear what this alleged flirtation was save for the reference to salsa in the List of Issues which was not even advanced before us. The Claimant's witness statement and her written closing submissions provided no illumination as to the alleged flirtation, the Claimant instead seeking to tell us that AB had not provided her with training, and that she had offered him her friendship group to diffuse his attentions.

360. The allegations of direct sex discrimination and harassment related to sex, like all allegations of discrimination, are very serious allegations to make. There is potential for the allegation to be career ending for a teacher if proven to be true with all damaging consequences which might flow from that. We would expect if such a complaint is made and pursued then the complainant would tell us what the flirtation was. Unfortunately, the Claimant has failed to point to anything which might form the basis of such a complaint.

361. The List of Issues includes the allegation that AB asked the Claimant to teach him to dance salsa. We did not find that AB asked the Claimant to teach him to dance salsa. It was the Claimant who was offering to teach dance from the start of her employment. The Claimant had messaged AB on one occasion suggesting that she gives him a dance lesson, he did not respond.

362. In her oral evidence the Claimant made reference to AB inviting her to a school trip prior to starting work which she said was inappropriate as she did not have her DBS check by then and he would have seen her bed hair. This was not something which the Claimant had raised before, it had nothing to do with dance lessons or salsa, it did not appear in her claim form, nor her witness statement, she did not put it to AB in his evidence, and it was not mentioned in the Claimant's closing submissions. It was clear to us that this was not the allegation of flirtation that was being pursued. The allegation of flirtation remained undefined up until the conclusion of the hearing.

363. We have not found there to be any flirtation on the part of AB towards the Claimant and therefore both complaints fall at the first hurdle as the factual premise has not been made out. For the sake of completeness, we find that there was no less favourable treatment of the Claimant, and we dismiss the complaint of direct sex discrimination.

364. With respect to the harassment complaint, we have found no unwanted conduct on the part of AB as the flirtation was not established before us. We therefore dismiss the complaint of harassment related to sex.

365. We do find that this complaint was an abuse of the process of the Employment Tribunal. There was no evidence to substantiate such a complaint, and all the contemporaneous evidence before us indicated that it was the Claimant who sought to engage with AB before she started her role, once she had been appointed, and throughout her employment, even after she was asked to cease contacting AB on his private number unless it was an emergency. The Claimant then sought to characterise her communications to AB as emergencies even when they were nothing of the sort.

366. The Claimant continued to send personal or non-work related messages to AB right up to the conclusion of her employment, asking when she was going to see him, and asking him to find out about the henna someone had used, and to obtain photographs of her hands. Even as late as 10 February 2023 the Claimant wrote to AB to thank him. This was hardly the act of someone who felt that they had been subjected to direct sex discrimination and harassment related to sex.

367. The Respondent has described the Claimant's complaint against AB as troubling and we agree given the lack of anything to substantiate such serious complaints. The Claimant's closing submissions were particularly revealing as she described their relationship as "*It was like living together and having 30 children, and desperately needing a divorce."* The Respondent has argued that it was the Claimant who made all the advances with regard to meeting and socialising with AB and that he had politely declined or not responded. We agree with that description of what occurred in this case. It appeared to the Tribunal that these two allegations against AB were pursued in order to continue to harass him and that there was no other basis for bringing these two specific complaints. This was an abuse of the process of the Employment Tribunal as the complaints were pursued for an improper purpose. The Claimant's conduct caused a considerable amount of distress to AB so much so that he felt only able to appear on video to give evidence, and even then needed to be accompanied as he did so.

368. We dismiss the complaints of direct sex discrimination and harassment related to sex and record that they were totally without merit.

Issue 14. 2 Head Teacher David Hudson wrongly informing prospective employers during her period of notice that her communications were unprofessional, in particular informing Chalfont School and Levethal School,

369. We repeat our earlier conclusion under Issue 7.6. Mr Hudson did not inform either of those two schools that the Claimant's communications were unprofessional. Mr Hudson had recorded in the reference that the Claimant needed to *"provide consistent evidence to support Part Two (Personal and Professional Conduct) with a focus on regard for the ethos, policies and practices of the school, particularly with a view to effective and appropriate communication."* There was no suggestion that the Claimant's communications were unprofessional, it simply identified a development

area for the Claimant and as we have already indicated there was considerable contemporaneous written evidence to support the view held by Mr Hudson.

370. We also accepted Mr Hudson's evidence that this is the reference he supplied and that he did not stray beyond it.

371. We did not need to apply the statutory burden of proof as the Claimant has not established a *prima facie* case of discrimination as the factual premise of the complaint was not made out, and further we saw no evidence of less favourable treatment of the Claimant on grounds of her sex. Moreover, the Claimant did not even advance this as an argument in her questions to Mr Hudson during his evidence, preferring to argue instead that the reference was unfair and unreasonable. Our task is to consider whether this amounted to less favourable treatment on grounds of the Claimant's sex and we find that it did not. We dismiss the complaint of direct sex discrimination for these reasons.

372. As regards harassment related to sex, we find that there was no unwanted conduct as this was an agreed reference. In the event that we are wrong on that, and the reference was not agreed, and if the contents of the reference amounted to unwanted conduct, we would in any event have dismissed the complaint as it did not relate to the Claimant's sex.

Issue 14.3 Head Teacher David Hudson requiring Ms Punshon to provide written Reports through the Wellbeing Manager, arising out of the miscommunication allegation.

373. We repeat our earlier conclusion under Issue 7.7. There was no miscommunication.

374. The requirement to put safeguarding concerns onto WellBeing Manager applied to all staff, not specifically the Claimant. There were very good reasons for having such a requirement as it enables those tasked within the school for leading on safeguarding to make an informed decision as to what the actual concern is, what is the risk to the student, and what support might be offered, when, how and by whom. This requirement is based upon the KCSIE principles. The Respondent's witnesses gave very clear and compelling evidence on the approach it takes to safeguarding and why it is essential that concerns are logged on WellBeing Manager and the potential risk to a student of failing to do so.

375. The requirement for all staff to use WellBeing Manager did not amount to less favourable treatment and this had nothing whatsoever to do with the Claimant's sex, it is a requirement for all staff to use it. A *prima facie* case of discrimination has not been established and the burden of proof did not shift to the Respondent. We therefore dismiss the allegation of direct discrimination.

376. As regards harassment related to sex, it was clear to us that the Claimant disagreed strongly with this requirement, however we do not find that the requirement to log a safeguarding concern could amount to unwanted conduct, but even if we are wrong on that it had nothing whatsoever to do with the Claimant's sex. We again record that the

Claimant did not put to Mr Hudson during his evidence this requirement was linked to her sex.

377. We dismiss the complaint of harassment related to sex.

378. All of the Claimant's complaints fail and are dismissed.

Time

379. Given that none of the complaints have succeeded it was not necessary for us to deal with the time issue and we note that we were not addressed on the matter of time by either party before us.

Costs

380. Employment Judge Green has previously made a costs order in favour of the Respondent but has left the amount to be determined by this Tribunal. A costs hearing will be listed in due course.

_____

Approved by: Employment Judge **Graham**

_____

Date **3 February 2025**

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

27 February 2025

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FOR EMPLOYMENT TRIBUNALS

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

ANNEX 1

WRITTEN REASONS FOR REFUSING THE CLAIMANT'S AMENDMENT APPLICATIONS OF 5 SEPTEMBER 2023 AND 29 FEBRUARY 2024

1. The Claimant seeks permission to amend her claim to include the following:

   1.1 Failure to grant a statutory assessment review.

   1.2 A reference from David Hudson was inaccurate.

   1.3 Training documents had been delayed by David Hudson.

   1.4 Mr Hudson shared a reference which had not been agreed.

   1.5 To add two named Respondents, Mr Hudson and Mr Hart.

2. The Claimant appears to allege that these are allegations of direct discrimination and victimisation. The Claimant also makes reference to defamation, negligence, and fraud.

Law

3. In the case of ***Chandhok v Tirkey*** **[2015] ICR 527** the Court held that:

   "The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely on their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement, nor a document, but the claims made— meaning, under the Employment Tribunals Rules of Procedure 2013 (SI 2013/1237), the claim as set out in the ET1." [16]

4. The approach to be adopted when considering applications to amend has been recently considered in the matter of ***Vaughan v Modality Partnership Limited*** **[2020] UK EAT 0147/20**. Here it was noted that the Tribunal has a broad discretion when considering applications to amend.

5. The key test for considering amendments has its origin in the decision of ***Cocking v Sandhurst (Stationers) Ltd*** **[1974] ICR 650**:

   "In deciding whether or not to exercise their discretion to allow an amendment, the tribunal should in every case have regard to all the circumstances of the case. In particular they should consider any injustice or hardship which may be caused to any of the parties, including those proposed to be added, if the proposed amendment were allowed or, as the case may be, refused." [657BC]

6. In ***Selkent Bus Co Limited v Moore*** **[1996] ICR 836** it was said:

   "Whenever the discretion to grant an amendment is invoked, the tribunal should take into account all the circumstances and should balance the

injustice and hardship of allowing the amendment against the injustice and hardship of refusing it." [843D]

And:

"Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment." [844B]

7. In ***Selkent*** the court identified the relevant circumstances as:

i. the nature of the amendment

ii. the applicability of time limits

iii. the timing and manner of the application.

8. These are merely examples of factors which may be relevant to consider. Each application will be different and will require an assessment of the circumstances of each case. There may be a situation whereby a minor amendment if refused may cause great prejudice to a claimant who would not be able to pursue an important of their claim. Likewise, an amendment if granted may cause a respondent prejudice in having to defend a claim it would not otherwise have to, and one which may have been dismissed as out of time had it been brought as a new claim on a fresh ET1. Clearly some prejudice may be experienced if witnesses have left their roles or documents have been lost in the interim, as well was additional costs. Accordingly, it is clear to see that each application must be viewed in its own particular circumstances.

9. It is clear from the case law that the overriding principle is the balance of justice between the parties rather than any specific factor weighing more heavily than others. It is of course possible to balance the additional expense faced by a party by an award of costs against the applicant, although costs remain relatively rare in the Tribunal, and it would depend upon the paying party's means and ability to pay. Moreover, costs will not help where witnesses have gone away or documents have been lost.

10. In ***Transport and General Workers Union v Safeway Stores Ltd*** **UKEAT/0092/07** the court noted that that on a correct reading of ***Selkent*** the fact that an amendment would introduce a claim that was out of time was not decisive against allowing the amendment, but was a factor to be taken into account in the balancing exercise.

11. Underhill LJ in ***Abercrombie v Aga Rangemaster Limited*** **[2014] ICR 209 -** the list of factors espoused by Mummery J in ***Selkent*** as examples of factors that may be relevant to an application to amend ("the Selkent factors") should not be taken as a checklist to be ticked off to determine the application (per [47]), but are factors to take into account in conducting the fundamental exercise of balancing the injustice or hardship of allowing or refusing the amendment.

12. Further in ***Abercrombie*** Underhill LJ stated:

"Consistently with that way of putting it, the approach of both the Employment Appeal Tribunal and this court in considering applications to

amend which arguably raise new causes of action has been to focus not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of inquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted." [48]

13. As indicated in ***Vaughan*** it is necessary to focus upon the practical consequences of allowing an amendment when conducting the balancing exercise – what will be the effect if the application is approved or rejected?

Submissions

14. The Claimant told us that the Tribunal should not stick slavishly to the list of issues. The Claimant told us that there was a case on this but she could not remember the name. The Tribunal is familiar with the authorities on the matter and it appeared that the Claimant was likely referring to the judgment of the Court of Appeal in ***Parekh v The London Borough of Brent*** **[2012], EWCA Civ 1630** where it was held:

"As the ET that conducts the hearing is bound to ensure that the case is clearly and efficiently presented, it is not required to stick slavishly to the list of issues agreed where to do so would impair the discharge of its core duty to hear and determine the case in accordance with the law and the evidence." [31]

15. The Respondent repeated the objections as set out in its letter of 20 October 2023 in which it argued at the updated contact details were not an amendment, it opposed joining the Claimant's claim with that of Ann-Katrin Latter as there were no common or related issues of fact. As regards the remaining four issues the Respondent argued these were entirely new claims and causes of action lacking in clarity in detail and the Claimant had not provided that detail despite a request from the Respondent. The Respondent raised the issue of the timing of the application, the delay, the prejudice it would suffer if granted given the additional work which would need to be undertaken, and together with the cost.

16. As regards ticking box 10.1 on the ET1 (information to regulators in protected disclosure cases) the Respondent noted the box had already been ticked by the Claimant and in any event the claim form did not include a claim that she had made a protected disclosure under the Employment Rights Act 1996. The Respondent objected to the addition of additional Respondents and argued the Claimant had not notified ACAS during early conciliation that she intended to name either Mr Hudson or Mr Dart. The Respondent said that both were acting on behalf of the Respondent at all times and there were no issues between them and the Claimant which are not already capable of being determined in these proceedings and there are no pleaded acts of either for which the Respondent would not except vicarious liability.

Decision

17. We note that at the private preliminary hearing on 1 September 2023 Employment Judge Warren provided the Claimant with detailed guidance on the steps to follow if she wished to apply for permission to amend her claim. The Claimant did not comply.

18. The Claimant was directed at the start of this hearing on 7 October 2024 to send us the amendment application she wished to make by 12:30pm. The Claimant failed to do so and instead sent us the Respondent's previous objections as she said the Tribunal waiting room was too noisy. The Claimant made no effort to comply with the Tribunal direction even though it was her own application and in her own interests to comply.

19. The Respondent (helpfully in our view) took it upon themselves to look through all of the material the Claimant sent over the weekend to try and extract what it is the Claimant was seeking to add. They have identified an application from 5 September 2023. That application was particularly hard to understand and the Respondent asked for additional information on 20 October 2023. That information was not forthcoming. Having read that application much of it was not a true amendment application, and we have identified five potential amendments although each of them lacked detail.

20. On 29 February 2024 the Claimant wrote to the Tribunal about her amendments, however the Claimant's letter is very difficult to follow as it is in different colours which text struck through and contains references to matters for which the Tribunal does not have jurisdiction, such as defamation, fraud and negligence.

21. One request was to change her address which is not an amendment. Another was to join her claim with another person's claim which is not an amendment. The Claimant asked to the tick the box in the ET1 to inform regulators of her protected disclosures which is also not an amendment and she does not have a whistleblowing claim. The box was already ticked anyway.

22. We refuse the proposed amendments for the following reasons. The first attempt to amend the claim in September 2023 lacked any clarity and it could not be understood what the proposed amendments were intended to be. The Claimant failed to clarify the proposed amendments when asked to do so. The Claimant's subsequent correspondence to the Tribunal in February 2024 suffered from the same lack of detail as to what the proposed amendments were. Much of the amendments were not matters for which the Tribunal has jurisdiction for in any event. The Claimant has repeatedly failed to pursue her amendment application by setting out clearly what the proposed amendments are (including the factual allegation and cause of action), there was a preliminary hearing in April 2024 where this matter could have been raised and resolved, and whilst the Claimant says she was not given the opportunity to speak that is not borne out by the judgment and case management summary we have read.

23. As of today's date (8 October 2024), which is the second day of a five day final hearing, the proposed amendments still do not make a great deal of sense, and we lack the jurisdiction to consider complaints of defamation, negligence, and fraud. This was already explained to the Claimant by Employment Judge Green. Whereas it is possible to understand that the

Claimant also alleges that some of these were acts of direct sex and race discrimination (although this was not stated by the Claimant), their merits appear to be no more than arguable, and the Claimant fails to identify what protected act she relies upon for her victimisation amendment. The application suffers from a lack of clarity. We have taken into account the applicability of time limits however the Claimant has failed to tell us the dates of the acts complained of despite having had over 13 months in which to do so since her first application to amend in September 2023, and in any event it appeared from what we could understand of these proposed amendments that they would be out of time in any event.

24. We also note that Employment Judge Green had already refused the Claimant's application to amend to add additional Respondents during the preliminary hearing of 9 April 2024. We have no power to go behind that decision.

25. Were we to grant the application to amend it would involve new lines of enquiry and further evidence would need to be produced and witness statements would need to be amended, all at further cost to the Respondent and it would force this hearing to go part heard with judgment unlikely to be handed down to some point in 2025 based upon the amount of work involved and current listing estimates. We are mindful that at least one witness has since retired.

26. The prejudice to the Respondent would be considerable, whereas the Claimant would suffer less hardship and injustice in the alternative if we refuse it because she already has a comprehensive claim for direct race and sex discrimination and also harassment related to the same, and she will have the opportunity to seek compensation should any or all of those claims succeed. If we reject the application the Claimant will lose the opportunity to complain about some of the new matters, however for many of them we do not even have jurisdiction in any event. One of the issues which we will be considering is at 7.6 and 14.2 about Mr Hudson allegedly informing prospective employers that her communications were unprofessional, therefore the injustice and hardship to the Claimant in refusing the application is limited.

27. The Respondent would suffer the greater injustice and hardship if the application were allowed. The injustice and hardship to the Claimant would be minimal in refusing the application, and for these reasons we refuse the Claimant's application to amend.

ANNEX 2

WRITTEN REASONS FOR REFUSING THE CLAIMANT'S AMENDMENT APPLICATION OF 9 OCTOBER 2024

1. On day three of the final hearing (9 October 2024) the Claimant sought permission to amend her claim to include the matters listed below. This was a repeat or a clarification of her previous amendment applications. The proposed amendments were:

   1.1 Failure to rectify NQT training documents;

   1.2 Failure to provide a statutory right to an assessment review within 20 days;

   1.3 Failure to provide an accurate reference informed by NQT assessment;

   1.4 Ongoing victimisation comprising rejection from 342 job applications, having attended 63 interviews, the Claimant says the Respondent must be providing some kind of verbal or written word that none of the prospective employers are willing to share with the Claimant; the Respondent refused to provide an assessment review commissioned by Michelle Taylor completed on 19 April 2023, but when provided it contained irregularities; and other matters contained within the Claimant's long narrative which could not be understood;

   1.5 Failure to prevent sexual misconduct; and

   1.6 Failure to address sexual misconduct

2. The Claimant explained that the above was alleged to be victimisation and harassment.

Submissions

3. The Claimant was asked what was the protected act that she relies upon to which she said that she brought to the attention of the headteacher a safeguarding issue during a meeting with Jason Skyrme. The safeguarding issue related to a student having reported that she was suffering from a migraine and having been allegedly told to go offsite to buy paracetamol thus missing a lesson period.

4. The Claimant also referred to a text message from her to AB in which she said "guess we won't be friends then" sent at 7:15 pm on 21 October 2023. The Claimant explained she was not complaining of sexual harassment but that she was being punished at work and denied a trip to Berlin that she helped to prepare, and she said that she did not talk about race or sex discrimination or harassment during the course of her employment.

5. The Respondent objected to the Claimant's application arguing that it had been made too late, it was long out of time, it was now day three of a five day hearing and it would be a substantial amendment if allowed to proceed, and further Claimant's witness statement does not address these matters therefore it would not be possible to deal with them in the time available.

6. The Respondent also said that much of this subject matter was already contained within the existing this issues at 7.4, 7.5, 7.6, and 7.7 and there was no prejudice to the Claimant in refusing the application as the matters are already being considered, moreover the claims are weak in any event and the allegations of victimisation are not supported by protected act.

7. The Claimant told us that there was an inaccuracy in the NQT training documents which requires amendment. When asked what this inaccuracy was the Claimant told us that the first document records that there were safeguarding issues and problems with her communications, and that the second document states that the Claimant has problems with professional communications.

8. The Claimant says that she has an entitlement to a statutory assessment review within 20 days. We repeatedly asked the Claimant where this right existed but she could not tell us. The Respondent said that the Claimant is mistaken and has confused matters, and that there is a right to appeal against a decision of Astra (the training body) but there is no statutory right of appeal against the Respondent, and that the Claimant has confused this with the grievance process where the Respondent offered a review of the process to see if lessons could be learned.

9. With respect to the reference, the Claimant said that it was a refusal by Mr Hudson to complete a confirmation of employment document. The Respondent says that it attempted to agree a reference with the Claimant and one was produced which it shared with the Claimant.

10. As regards alleged sexual misconduct, the Respondent says that the Claimant's text message was not to reject rejection any advances, and there would be serious hardship to Respondent if the Claimant's amendment application is granted and it relies upon its previous arguments about the amount of time and costs and the work which would have to be undertaken if granted at this late stage part way through the final hearing.

Decision

11. As referenced yesterday, the key task for us (once the proposed amendment is properly understood) is to balance the injustice and hardship when considering any application to amend, and this is clear from the judgment of his His Honour Judge Tayler in ***Vaughan*** referenced above.

12. We have taken into account the factors identified in the case of ***Selkent Bus Company*** but not so as to operate as a checklist exercise, but these do include the nature of the amendment, the applicability of time limits, and the timing and the manner of the application to amend. We have taken into account all of the circumstances in this case, not merely the ***Selkent*** factors.

13. We note that the amendments are said to comprise complaints of victimisation, and following repeated attempts by me to identify a protected act the Claimant relies upon an alleged safeguarding issue and also her text message of 7.15pm on 21 October 2023. It appeared to the Tribunal that neither of these things are likely to amount to a protected act within the meaning of s. 27 Equality Act 2010, and in the absence of a protected act

(or a belief on the part of the Respondent that the Claimant had done a protected act) that would indicate that the victimisation complaint has little or no reasonable prospects of success. As regards the safeguarding issue there was in any event a lack of detail as to what it is the Claimant now says that she had said. As regards the text message, which we did have before us, we did not read that message as rejecting anything at all.

14. These proposed amendments have been made very late in proceedings, we are now on day three of a final hearing of case which was issued eighteen months earlier. We take on board that the Claimant suggests that some of this victimisation is ongoing however the acts themselves that she appears to be complaining about all appear to be already out of time with no good explanation for not having brought them sooner. It was clear that what was being raised was alleged an act or acts with continuing consequences as distinct from conduct extending over a period.

15. Proposed amendments 1 – 4 (victimisation) appear to have little or no reasonable prospects of success, the subject matter of each will already be considered under issues 7.4, 7.5, 7.6 and 7.7, the Claimant would suffer very little prejudice in refusing the amendments which are weak and appear to be out of time, whereas the Respondent would suffer greater prejudice if granted due to the work required to deal with them, time and legal costs and further delay.

16. Proposed amendments 5 – 6 also appear to have little or no reasonable prospects of success as complaints of harassment related to sex or indeed a sexual harassment for the reason the Claimant tells us repeatedly that she is not subjected to sexual harassment by AB, she made no mention at the material time, and it is a brand new and significantly out of time complaint with no good reason for it not having been raised sooner. The issue of alleged flirting by AB will already be considered under Issue 14.1 in any event. Again, the Claimant would suffer very little prejudice in refusing the amendments which are weak and appear to be out of time, whereas the Respondent would suffer greater prejudice if granted due to the work required to deal with them, time and legal costs and further delay.

17. The Respondent would suffer the greater injustice and hardship if the application were allowed. The injustice and hardship to the Claimant would be minimal in refusing the application, and for these reasons we refuse the Claimant's application to amend.