THE EMPLOYMENT TRIBUNAL

SITTING: at London South

BEFORE: Employment Judge Tueje

BETWEEN: **MISS SANDRA MARGUERITE MOODY**

Claimant

-and-

LONDON BOROUGH OF SOUTHWARK

Respondent

ON: 18th, 19th, 20th, 21st February 2025 and 7th May 2025

Appearances:

For the claimant: Mr Moody (brother)
For the respondent: Ms Anderson (counsel)

RESERVED JUDGMENT

JUDGMENT

1. The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.

2. The complaint of direct race discrimination is well-founded and succeeds.

3. The complaint of harassment related to race is well-founded and succeeds

4. The complaint of victimisation is not well-founded and is dismissed.

5. The respondent shall pay the claimant an amount to be determined at the remedy hearing, to be held on a date to be notified to the parties in due course.

REASONS

Introduction

6. Unless otherwise stated, page references relate to the main hearing bundle comprising 1260 pages (see paragraph 18.2 below).

7. This is my reserved judgment following the hearing on 18th, 19th, 20th, 21st February 2025 and 7th May 2025. I would like to thank the parties for their patience in waiting for this judgment to be issued.

8. The matter relates to the claimant's employment by the respondent from 9th November 2013 as a teaching assistant. She was promoted to a higher-level teaching assistant in September 2019, and held that post until her dismissal on 16th February 2023.

9. The claimant originally brought the following claims:
   - 9.1 Unfair dismissal contrary to section 98 of the Employment Rights Act 1996;
   - 9.2 Direct race discrimination contrary to section 13 of Equality Act 2010;
   - 9.3 Indirect race discrimination contrary to section 19 of Equality Act 2010 (subsequently withdrawn);
   - 9.4 Harassment related to race contrary to section 26 of the Equality Act 2010; and
   - 9.5 Victimisation contrary to section 27 of the Equality Act 2010.

10. Early conciliation started on 10th March 2023 and ended on 21st April 2023. The claim and accompanying particulars of claim were presented to the Tribunal on 20th May 2023. Originally, there were four respondents, Dog Kennel Hill School, Ms Amein-Cloete (the school's executive head teacher), Ms Ghezzi (deputy head teacher), and Ms Melehi (head teacher).

11. The respondent submitted grounds of resistance with its ET3 response form, which are dated 9th August 2023.

12. There is a detailed procedural history to this claim, which in the interests of proportionality, is only summarised here.

13. There was a preliminary hearing for case management on 5th March 2024 when the following matters were dealt with:

    - 13.1 The original 4-day listing for the final hearing was extended to 5 days, to be heard on 18th to 21st February 2025, and 24th February 2025.

    - 13.2 The matter was listed for an open preliminary hearing to deal firstly with time limits in relation to victimisation, harassment and direct and indirect discrimination claims. Secondly, to deal with whether the victimisation, harassment and direct and indirect discrimination claims should be struck out or made subject to a deposit order.

13.3 The claims against the second, third and fourth respondents was dismissed.

14. The open preliminary hearing was held on 9th October 2024. In addition to dealing with strike out and deposit orders, the Tribunal dealt with the claimant's application to amend the claim. Employment Judge Wilson gave permission for some, but not all, of the claimant's proposed amendments, and refused the respondent's strike out application. No deposit order was made.

15. On 15th November 2024 Employment Judge Wilson gave revised case management orders as follows:

15.1 The respondent was to send an agreed list of issues to the Tribunal within 21 days;

15.2 Amended grounds of resistance were to be sent by 29th November 2024;

15.3 The schedule of loss was to be sent by 29th November 2024, with the counter schedule of loss sent by 13th December 2024;

15.4 The parties were to send each other their list of documents by 4th December 2024, a request for copies to be made by 11th December 2024, and the copy provided by 18th December 2024;

15.5 The parties were to agree the contents of the hearing bundle by 20th December 2024;

15.6 The respondent was to send a copy of the bundle to the claimant by 6th January 2025; and

15.7 The parties were to exchange witness statements by 20th January 2025.

16. On 21st January 2025 the claimant applied for the response to be struck out. By an order dated 6th February 2025, Employment Judge Aspinall directed the claimant's strike out application is to be heard at the start of the final hearing.

17. Shortly before the final hearing, the extension of the final hearing to 5 days was reversed, therefore reinstating the original 4-day hearing, being from 18th to 21st February 2025.

Documents for the Final Hearing

18. The following documents were submitted to the Tribunal
    18.1 367-page pleadings bundle;
    18.2 1260-page hearing bundle;
    18.3 The claimant's strike out application (2 pages);
    18.4 The claimant's 96-page strike out bundle;
    18.5 The claimant's 581-page additional bundle (provided electronically);
    18.6 The claimant's chronology;
    18.7 A chronology (9 pages); and
    18.8 A cast list (4 pages).

19. As to evidence, the claimant relied on her witness statement dated 27th January 2025 (23 pages).

20. The respondent's witness statements comprised the following:
    20.1 Witness statement of Ms Amien-Cloete, the executive head teacher, dated 31st January 2025 (23 pages);
    20.2 Witness statement of Mr Finn, school governor, and chair of the disciplinary panel, dated 3rd February 2025 (13 pages); and
    20.3 Witness statement of Dr Henley, chair of governors, dated 3rd February 2025 (11 pages).

21. The following written closing submissions were provided:
    21.1 The respondents revised closing submissions dated 6th May 2025 (29 pages);
    21.2 The claimant's amended closing submissions dated 6th May 2026 (111 pages); and
    21.3 The respondent's further closing submissions dated 21st May 2025 (11 pages).

22. On the final day of hearing, 21st February 2025, there was insufficient time to deal with closing submissions. In consultation with the parties, directions for providing written submissions were made as follows:

    22.1 By 14th March 2025, the respondent shall send its written closing submissions by e-mail to the claimant and the Tribunal.

    22.2 By 11th April 2025 the claimant shall send her written closing submissions by e-mail to the respondent and the Tribunal.

23. A further ½ day hearing was listed on 7th May 2025 to deal with any matters arising from the parties closing written submissions.

24. Initially, the respondent's written submissions comprised 39 pages, and the claimant's 144 pages. This volume of submissions, combined with the written and oral evidence was disproportionate. Having taken into account the issues in the case, and that the claimant is a litigant in person, I issued further directions dated 28th April 2025 for the closing submissions as follows:

    24.1 The Respondent must re-submit its closing written submissions, limited to 15,000 words, by emailing them to the Claimant and the Tribunal no later than 1.00pm on 6th May 2025.

    24.2 The Claimant must deal with her closing submissions in one of the following ways:

        (i) By providing closing written submissions limited to 20,000 words by emailing them to the Respondent and the Tribunal no later than 5:00 pm on 6th May 2025;

(ii) By bringing two hard copies of her written submissions limited to 20,000 words to the Tribunal no later than 9:30 am on 7th May 2025; or

(iii) By presenting her oral submissions at the hearing on 7th May 2025 which must last no more than 1½ hours.

25. There was a discussion during the main hearing about actual and hypothetical characters.

26. The agreed list of issues sent to the Tribunal dealt with direct race discrimination at paragraph 4 and in the following sub-paragraphs.

27. Paragraphs 4.2 to 4.2.17 set out the allegedly discriminatory conduct that the claimant relied on, most of which named an actual comparator or comparators, except that paragraph 4.2.14 stated the claimant relied on a hypothetical comparator.

28. Paragraph 4.3 of the list of issues reads:

Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The claimant says they were treated worse than:

Miss Natalie Currier, Miss Christine Waldron, Miss Sue Nind, Miss Laura Fudge, Miss Chelsey Howell, Miss Anna Larkin, Miss Barbara Ghezzi, Miss Jean Parker, Mr Thomas Newman, Miss Helen Mardling,

Where there is no direct comparator, the claimant relies on a hypothetical comparator.

29. During the main hearing I asked Ms Anderson to address the issue of hypothetical characters in her closing submissions. As her written closing submissions did not deal with this, at the hearing on 7th May 2025, I gave further directions for the respondent to deal with this.

30. By 21st May 2025 to send written submissions addressing the following issues:

30.1 Whether it is open to the Tribunal to construct hypothetical comparators where no actual comparator or no hypothetical comparator has been referred to by the Claimant; and/or

30.2 Any submissions regarding hypothetical comparators in respect of any or all of the matters raised in the list of issues.

31. The respondent's supplemental closing submissions dated 21st May 2025 include the following:

21. However, it is not clear that the claimant has intentionally confined her case on statutory comparators to her actual, named comparators. Bearing [in] mind that she is not legally represented, her case appears to be, in summary, that the reason for the treatment she complains of was her race, and she seeks to rely on her named comparators as evidential comparators as well as statutory comparatives.

22. Therefore, the ET should not approach its decision-making as though the claimant has confined her case to a consideration of her named comparators as statutory comparators.

32. I consider the respondent's position reflects the list of issues, meaning that although most allegations have a named comparator, it is envisaged hypothetical comparators were also in the parties' minds. Accordingly, irrespective of whether an actual comparator is referred to, where appropriate, I have consider a hypothetical comparator.

Procedural Matters at the Final Hearing

33. The claimant's application to strike out the response was dealt with at the outset. The application expressly referred to rules 2 and 37 of the (2013) Rules. Broadly speaking, the grounds of the strike out application were the respondent's repeated non-compliance with Employment Judge Wilson's November 2024 case management order. For instance, the claimant complained of the respondent's late provision of the list of issues, and late submission of the hearing bundle, which when sent by the respondent, omitted documents the claimant wished to rely on. This lateness jeopardised her ability to prepare for the final hearing. She relied on *Emuemukoro v Croma Vigilant (Scotland) Ltd [2022] I.C.R 327* to argue that the non-compliance in this case justified striking out the response.

34. The claimant also complained that the respondent initially indicated it would call six witnesses to give evidence, but later decided to only call three. The claimant considered the witnesses no longer giving evidence on behalf of the respondent would have provided evidence that was relevant to her claim, consequently their non-attendance was detrimental to her case.

35. In opposing the strike out, the respondent argued it was for it to decide which witnesses to call, a change in the witnesses called was not unusual. If individuals with potentially relevant evidence are not called, the Tribunal can take that into account when weighing the evidence.

36. As to compliance with the case management orders, the timetable was very ambitious and straddled the Christmas and New Year period. The respondent

did its best to comply with a challenging timescale, which should be taken into account. *Emuemukoro* was a case of persistent and deliberate failure, which is very different to the present case. Furthermore, in this case it was still possible to have a fair trial.

37. There would be no real prejudice to the claimant, who had only asked to inspect a few documents, and had prepared her own bundle of documents which the respondent was not objecting to the claimant's bundle despite only recently being provided with a copy.

38. I refused the claimant's request to strike out the response form for the oral reasons given at the hearing. Those reasons are summarised below.

    38.1 I have taken into account the Presidential Guidance – General Case Management, rules 3 and 38 of the 2024 procedure rules, the case of *Emuemukoro* which the claimant relied on. I also considered the parties' submissions.

    38.2 The Presidential Guidance emphasises the importance of complying with case management directions, and rule 38 empowers the Tribunal to strike out a case where there has been a failure to do so. This power is discretionary.

    38.3 The respondent does not dispute non-compliance. Therefore, I need to consider whether in all the circumstances, the respondent's non-compliance justifies striking out the response.

    38.4 I accept that there were multiple incidents of non-compliance, including in sending the claimant a copy of the list of issues. I also acknowledge that the parties' disclosure and witness statements are usually guided by the list of issues, so a delay in sending the list of issues can impact on compliance with other case management orders.

    38.5 I have also taken into account that the claimant is a litigant in person, and she complains that the delay has jeopardised her preparation for the final hearing.

    38.6 Nonetheless, having balanced the claimant's submissions against the respondent's reasons why there has been non-compliance, and taking into account whether a fair trial is still possible, I conclude striking out the response would be disproportionate. It is one of the most severe measures available to the Tribunal, and the circumstances do not justify such a sanction.

    38.7 Firstly as to the reason why the respondent did not comply, I agree that the case management orders imposed ambitious timescales, which was compounded by the festive period, plus the need to redact numerous documents. Therefore, I consider this situation is materially different to the *Emuemukoro* case.

38.8 While the respondent was late sending a copy of the bundle, I do not consider this would impact the claimant's trial preparation to the extent that a fair trial is no longer possible. The bundle was sent to her around 4 weeks before the final hearing. I consider even with managing other commitments, that should be sufficient time to familiarise herself with the bundle.

38.9 Her complaint about documents she wants to rely on being omitted from the bundle is rectified by the bundle that she has prepared being admitted as part of the documentary evidence in the case.

38.10 These are my reasons for refusing the claimant's application to strike out the response.

FINDINGS OF FACT

39. The following findings of fact were reached on the balance of probabilities, having considered the witnesses' evidence, including documents referred to in that evidence, and considering my assessment of the evidence.

40. Only findings of fact relevant to the issues, and those necessary to determine the issues, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. I have not referred to every document that I read and/or was taken to in the findings below, but that does not mean it was not considered if it was referred to in the evidence and was relevant to an issue.

41. Unless otherwise stated, the facts below are agreed or unchallenged.

Events in 2015 and 2016

42. The claimant began employment as the respondent's teaching assistant on 9th December 2013.

43. On 19th September 2015, an incident occurred involving the claimant and Ms Walker, a former teacher. The details are unclear, but Ms Walker subsequently complained about the claimant's conduct in connection with the incident. During a meeting on 9th October 2015, Ms Melehi, the former deputy head teacher, spoke to the claimant about the complaint, and instructed her to remain professional at all times. The claimant pointed out she had not yet given Ms Melehi her account of events on 19th September 2015. Ms Melehi ended that meeting by telling the claimant to return to class with a better attitude. The claimant states Ms Melehi's comment to remain professional indicates she accepted Ms Walker's version of events, and did so before hearing the claimant's account.

44. The meeting between Ms Melehi and the claimant was scheduled to continue on 12th October 2015.

45. The claimant states that from 9th October 2015 onwards she kept a contemporaneous note of events at the school, and these notes were

reproduced in her own hearing bundle. Ms Anderson cross examined the claimant as to whether the notes were made contemporaneously, querying if the heading on the first page refers to meetings (plural) with Ms Melehi, how did the claimant know there would be further meetings. The claimant explained that was because on 9th October 2015 she knew there would be another meeting.

46. As the meeting was scheduled to resume on 12th October 2015, I accept the claimant's explanation that she was aware on 9th October 2015 that there would be multiple meetings, and I also accept that the notes were made contemporaneously: the claimant's explanation of how she tended to compile the notes, mostly recorded contemporaneously by keeping a single running record, but occasionally making notes elsewhere and adding these to the running record, is credible.

47. In the absence of any evidence to the contrary, I prefer the claimant's evidence that the notes in her bundle which she states were contemporaneous, were prepared in the way she has described. There is no evidence to support the respondent's implication that the claimant prepared the notes retrospectively, but dishonestly presents them as a contemporaneous record.

48. Returning to the meeting itself on 9th October 2015, the respondent's witnesses did not address this meeting. Ms Amien-Cloete confirmed she had no direct knowledge of the meeting. In the absence of contrary evidence, I accept the claimant's account that at the meeting on 9th October 2015 Ms Melehi instructed the claimant to remain professional. However, even on the claimant's evidence I do not find that is a sufficient basis to conclude Ms Melehi accepted Ms Walker's version of events on 19th September 2015 before hearing the claimant's account. I find instructing the claimant to remain professional at all times is a neutral instruction. As to telling her to return to class with a better attitude, the way the claimant's evidence is presented, I consider it is more likely that Ms Melehi is referring to the exchange between Ms Melehi and the claimant, not Ms Melehi preferring Ms Walker's account of 19th September 2015.

49. On 25th January 2016, Ms Melehi held a pre-guidance meeting with the claimant, Ms Melehi stated that Ms Walker and others reported the claimant's behaviour was unprofessional, including her body language and tone. Ms Melehi, warned the claimant that continuing such behaviour would lead to a guidance meeting with HR. The claimant states Ms Melehi failed to identify the issues relating to the claimant's allegedly unprofessional behaviour.

50. The respondent's witnesses did not address this allegation regarding Ms Melehi. Ms Amien-Cloete again stated she has no direct knowledge of these events. Absent any contrary evidence, I accept the claimant's evidence that she was not provided with examples of the unprofessional behaviour referred to.

Events in 2018

51. On 19th June 2018 Ms Brett, a teacher, reported that she heard the claimant raise her voice to a child in the playground during the morning break, shout at a child for being noisy during the afternoon break, and the previous week, speak harshly to a group of children.

52. On 22nd June 2018, the claimant gave her account of events on 19th June 2018 to Mr Black, the former head teacher, who accused the claimant of shouting. She explained to him that she projected her voice on 19th June 2018 during the morning break to ensure a child who had climbed high on the climbing frame in the playground, and who she was asking to climb down, could hear her over the noise of 300 children at break time. She denied speaking negatively or shouting at any children. There appears to be no written record of this meeting, and the respondent's witnesses do not challenge the claimant's account of her meeting with Mr Black.

53. Therefore, I accept the claimant's unchallenged evidence that on 22nd June 2018 Mr Black accused her of shouting. The claimant states that despite her denial, Mr Black explained the contents of the allegations meant the matter had to be referred to HR.

54. In a letter dated 5th July 2018, Ms Melehi invited the claimant to a guidance meeting on 12th July 2018. Her letter states that as they were having a meeting, she would use that opportunity to discuss an incident that occurred on a school trip on 2nd July 2018.

55. At the meeting with Ms Melehi on 12th July 2018, the claimant was accompanied by her union representative Mr Taz Taper.

56. At the guidance meeting with Ms Melehi on 12th July 2018 the playground incident on 19th June 2028 was discussed. Also discussed was the school trip on 2nd July 2018. During the trip, the claimant left a group of children in the care of a parent helper while retrieving a bag that a child had forgotten. At the time, the claimant did not inform Ms Brett, the class teacher, because she didn't have Ms Brett's mobile number. She later discussed this with Ms Brett, and they agreed to share their mobile numbers for future trips. Mr Taper questioned the need to discuss this at the meeting considering the claimant and Ms Brett had resolved this between themselves.

57. The outcome of the meeting was confirmed in a letter from Ms Melehi to the claimant dated 17th July 2018, which also stated the respondent would review the claimant's performance in six weeks.

58. On 20th July 2018 Ms Melehi wrote to the claimant about a meeting they had that day regarding an incident involving Ms Ghezzi. Ms Melehi's letter states:

I would like to document our conversation following on from our meeting this morning.

It was brought to my attention by a member of staff that when you were requested by her to carry out a reasonable duty you did not respond to this

request. When the staff member then repeated that request you responded in an inappropriate manner.

During the meeting I reminded you that I had recently met with you to discuss a similar incident. I reminded you of the importance of being a professional whilst engaging with your colleagues. It was very evident that your response was not of a professional nature.

59. The letter contains no other information from the respondent regarding how the claimant responded to the allegation during the meeting.

60. The claimant denies the allegation that she was hostile, but says when she tried to explain this during the meeting, Ms Melehi did not allow her to do so.

61. Without any further information from the respondent regarding the discussion between the claimant and Ms Ghezzi, I accept the claimant's account of their exchange. That is because Ms Melehi's letter makes no mention of whether the claimant said anything during their meeting, and is if so what. It seems to me more likely than not that the claimant would have tried to say something during the meeting, particularly as she denies the allegation of being hostile, which encompasses the inappropriate behaviour referred to in the letter. Consequently, as Ms Melehi's letter doesn't record what the claimant said, it tends to support the claimant's account that she tried, but was denied an opportunity, of providing her account. I therefore also accept the claimant's evidence on that point.

62. On 25th July 2018 Mr Taper, who accompanied the claimant to the meetings on 12th and 20th July 2018, e-mailed Ms Amien-Cloete criticising the way Ms Melehi treated the claimant during both meetings. His e-mail concludes:

This pattern of behaviour above by Ms Melehi towards Sandra is of great concern, hence I write to you.

63. I do not see any document in the hearing bundles showing Ms Amien-Cloete responding to, or addressing, Mr Taper's concerns.

64. The claimant's six-week guidance review meeting was conducted on 16th October 2018 by Ms Melehi, with Ms Sleat (HR Business Partner) also present, and the claimant was accompanied by Mr Taper. The claimant's witness statement states that due to an allegation made by Mr Holloway, the teacher the claimant was then working with, Ms Melehi proposed extending the guidance review process. Mr Taper objected to extending the guidance review process because the claimant had met the original targets set. He states he therefore suggested mediation, between the claimant and Mr Holloway instead, which is how the issues between the claimant and Mr Holloway was resolved.

65. In a letter dated 2nd November 2018, Ms Melehi summarised the 16th October 2018 meeting. Her letter does not expressly state there was initially a discussion about extending the guidance review process. However, Mr Taper's e-mail regarding that meeting, sent to Ms Amien-Cloete on 8th

November 2018, states Ms Melehi initially intended to extend the guidance review meeting process.

66. Mr Taper's 8th November 2018 e-mail is detailed, it runs to five A4 pages, and deals with the 16th October 2018 guidance review meeting.

67. His e-mail includes the following:

I mentioned also that I was gravely concerned as to the three unusual comments made by Natalie [Ms Melehi] as I would describe it, that such views I had not heard before in process meetings. I could not remember them exactly without my notes and felt that to have explored them in detail would have escalated the situation for all. They are expressed later in this email.[1]

These I considered to be inappropriate, unfair, unprofessional and a worry in that it inferred stereotyping, leastways they needed challenging and I would suggest some explanation.

68. As to Ms Melehi's letter dated 2nd November 2018, Mr Taper writes:

further it does not represent the meeting that took place. It has many untruths shall we say. I really wish to avoid conflict but I cannot in all honesty allow this to stand.
…

There is as I have much documented in emails history that we perceive, perhaps inadvertently and unwittingly, of behaviour and a level of scrutiny towards Sandra by Natalie that could be construed as inappropriate, bullying, harassment and unfair and unreasonable.

69. Mr Taper's e-mail then criticises the guidance review in this case, stating he has never experienced someone being kept in the review process after meeting the targets set for them. I take Mr Taper to be referring to Ms Melehi's initial intention to extend the review.

70. Ms Amien-Cloete responded to Mr Taper on 15th November 2018 clarifying that Ms Sleat had suggested mediation, so the guidance review process had been brought to an end. Ms Amien-Cloete believed Mr Taper may have misunderstood that the guidance review had ended.

71. I find on the balance of probabilities that Ms Melehi initially intended to extend the guidance review process, but when Mr Taper objected to this, mediation was proposed as an alternative, and that was the course of action pursued. The parties disagree as to whether Ms Sleat or Mr Taper proposed the mediation. I consider it's more likely than not that Mr Taper, and not Ms Sleat suggested mediation. That's what he states in his e-mail, Ms Amien-Cloete states it was Ms Sleat, but Ms Amien-Cloete was not present, so I prefer Mr Taper's account. I also consider Mr Taper's e-mail shows no evidence that he

[1] Mr Taper doesn't seem to expressly deal with those comments anywhere in his e-mail

misunderstood the position, namely he understood that the guidance review process had been brought to an end.

72. As to the other matters raised by Mr Taper in his 8th November 2018 e-mail, Ms Amien-Cloete explained she had spoken to Ms Melehi and HR, who recalled no concerns during the meeting about how Ms Melehi treated the claimant. Ms Amien-Cloete does not appear to have spoken to the claimant about the meeting, nor taken any action regarding Mr Taper's allegation of "inappropriate, bullying, harassment and unfair and unreasonable" treatment towards the claimant.

Events in 2019

73. On 1st September 2019, the respondent underwent a restructuring exercise, after which the claimant was promoted to a Higher-Level Teaching Assistant post (HLTA), and issued with an updated contract of employment on 25th September 2019.

74. As part of her new role, the claimant enrolled on a one-year online Level 4 course, and emailed Ms Amien-Cloete and Ms Ghezzi requesting study time. Although granted some study time, it was limited and sporadic, and a request for regular study leave was refused on around 30th October 2019. Whereas the claimant notes that another teaching assistant, Ms Currier, received more study time, which was consistent. In her oral evidence, Ms Amien-Cloete explained this apparent disparity was because arranging cover for a TA like Ms Currier was easier than for a HLTA, and if there was no HLTA cover, the claimant could not be allowed study leave.

75. There is no basis to dispute Ms Amien-Cloete's explanation that due to their different roles, it was not practical to allow the claimant the same amount of study time as Ms Currier was given. I also consider it relevant that in her evidence, Ms Amien-Cloete explained Ms Currier's course was self-funded, and she later worked part time rather than relying on study leave. This further explains the respondent's position, as it was funding the claimant's study, thus a different approach to the claimant's study leave is justified.

Events in 2020 and 2021

76. On 10th January 2020, Mr Komeh, the respondent's former safeguarding and investigation officer, was dealing with Child J, who was displaying challenging and intimidating behaviour. Mr Komeh's account about this states:

Just after the bell went I asked Miss Moody if she could get Miss Sahin for me, to which Miss Moody informed me, that she couldn't with an angry tone as she was about to go on her lunch break. I then reiterated to Miss Moody that it was a matter of urgency, and that I needed her to get miss Sahin for me. Miss Moody then proceed to call Miss Mardling and ask if she could go and get Miss Sahin as she was going on her lunch break.

Miss Mardling agreed to it, however she didn't go to get Miss Sahin.

77. The claimant's account was that she initially agreed to get Ms Sahin, then remembered she was due to go on her lunch break which she explained to Mr Komeh, who repeated his request that the claimant gets Ms Sahin. The claimant called Ms Mardling who was nearby, and asked Ms Mardling to get Ms Sahin instead. Ms Mardling agreed to, but didn't do so.

78. The claimant subsequently explained that when Mr Komeh asked for her assistance, in her capacity as a first aider, she was also trying to find a child who had hit their head.

79. Ms Amien-Cloete deals with this in her witness statement as follows:

On 10 January 2020, I received a statement from Mr. James Komeh (Safeguarding & Intervention Officer) regarding the claimant. It is noted that Mister Comer is also an individual from a BAME background. Mr Komeh stated that the claimant had failed to assist him with an incident involving a child (Child J) with behavioural difficulties. The claimant had instead informed Mr coma that she was going on her lunch break and could not assist, asking Miss Mardling to go instead [187-188].

80. Ms Amien-Cloete's statement does not refer to the claimant's explanation that she was also trying to find out about a child with a possible head injury. Therefore, in light of the claimant's unchallenged account, I accept her explanation that she was trying to find this other child when Mr Komeh asked her to get Ms Sahin.

81. On 13 January 2020 while the claimant was assigned to work with a teacher, Ms Omoniyi. Ms Ghezzi walked past with her class, when she reported overhearing the claimant admonishing a child in a loud, confrontational tone. The claimant denied the allegation. She says the child was disobedient, and she denied being confrontational to him. She explained she uses the "sandwich" approach when dealing with such situations, so she when reproaching a child tries to end with something positive. Following this report, Ms Amien-Cloete initiated an investigation, stating an investigation was standard practice where there are safeguarding concerns. Ms Omoniyi was asked about the incident, she said she didn't recall the incident but described the claimant as supportive, effective and having a good sense of humour.

82. I prefer the claimant's account to Ms Ghezzi's, who acknowledges she overheard the incident, so is less likely to have been aware of the full context, for instance what the claimant was reproaching the child for. Ms Ghezzi may also have been unaware that the claimant ended this interaction with the child with something positive, which may have contextualised what Ms Ghezzi witnessed. Finally, Ms Omoniyi's account that she recalls nothing of incident happening, and her general description of the claimant, is at odds with the behaviour Ms Ghezzi describes.

83. On 21 January 2020, a parent complained that both her children said the claimant "always shouts," which she felt undermined their confidence. The claimant was unsure what this referred to. Another parent emailed on 22 January 2020, criticising the claimant's disciplinary style when the claimant

covered a class over a 3-day period. The claimant responded with a detailed statement outlining her behaviour management, including using rewards, such as marbles and golden tickets, alongside sanctions, in accordance with school policy.

84. Again, I prefer the claimant's account relating to the complaints made on 21st and 22nd January 2020. The earlier one that the claimant "always shouts" suggests some exaggeration, and contains no specific information regarding the allegations, for instance when and where the claimant is alleged to be shouting. This makes it difficult for the claimant to respond to in any greater detail than her general denial. Taking account of the likely exaggeration and vagueness of the allegations, I prefer the claimant's account.

85. Similarly, the 22nd January 2020 complaint provides no detail about what the claimant has done or not done. That is in contrast to the claimant's detailed account of how she used rewards and sanctions in accordance with the school's behaviour management policy. Absent any specific examples of the claimant's inappropriate disciplinary style, I prefer the claimant's evidence that she used appropriate behaviour management methods.

86. On 23 January 2020, the claimant reported that Ms Parker, a former teaching assistant, made an inappropriate comment about the length of the claimant's skirt. Ms Amien-Cloete assured the claimant she would investigate this and feedback to her. There is no documentation in the hearing bundle regarding any follow up, and Ms Amien-Cloete does not deal with it in her witness statement. However, it is common ground that Ms Amien-Cloete asked Ms Parker to provide a statement in response to the claimant's complaint (allowing her 3 days to do so), in which Ms Parker said her comment was intended to be a joke. It is also common ground that Ms Parker apologised to the claimant.

87. On 29 January 2020, another parent complained that her son, during an emotional meltdown, repeated the phrase "don't you dare disrespect me". The parent implies her son learnt this phrase from the claimant, who the parent has allegedly heard using the phrase. There is no reason to dispute the parent's account that she has heard the claimant using this phrase, which, on the face of it, seems to be a somewhat strict rebuke. However, without knowing the context of the claimant using the phrase, it's difficult to conclude that she did so inappropriately.

88. In a letter dated 31 January 2020, Ms Amien-Cloete invited the claimant to an investigatory meeting scheduled for 13 February 2020. The letter does not cite any specific policies which the claimant has breached, although in her witness statement for these proceedings Ms Amien-Cloete claims the respondent's safeguarding policy and code of conduct were relevant. However, the only document enclosed with the letter of 31st January 2020 was the respondent's disciplinary policy.

89. Paragraph 2.1 of the respondent's Disciplinary Procedure states:

2.1. When disciplinary matter arise the following procedure will apply:

The appropriate person under the scheme of delegation will inform the employee of the nature of the allegations in writing with as much detail as possible and at the earliest opportunity. However, where a strategy discussion is needed, or police or children's social sub scare services need to be involved, the employee should not be informed until those agencies have been consulted and have agreed what information can be disclosed.

90. Paragraph 2.1 of the Disciplinary Procedure continues:

The investigator will write to the employee and give the following information

Details of the allegations (as appropriate)
copies of available information
A copy of the disciplinary procedure Disciplinary procedure that reflects the School Staffing Regulations 2003
Time and date of investigation meeting
Right to representation at any meeting

91. A repeated criticism made by the claimant is that the respondent often failed to follow its policies and procedures, including its disciplinary procedure, by failing to provide contemporaneous notice of allegations made against her, and failing to provide sufficient detail regarding the incidents.

92. Ms Amien-Cloete and the claimant met, as planned, on 13th February 2020. Around 30 minutes after the meeting ended, Ms Amien-Cloete informed the claimant she was being suspended. The claimant states Ms Amien-Cloete suspended her from all duties 30 minutes after the latter spoke with Local Authority Designated Officer ("LADO"). Ms Amien-Cloete says she contacted LADO prior to the investigation meeting, and also denies the claimant was suspended from all her duties, stating she was suspended from play time and lunch time duties, and assigned alternative duties.

93. I find that the claimant was not suspended from all her duties, it was instead that some of her duties were removed or suspended, but she was not suspended from her job. I note there is no written record of the claimant being suspended from her job, nor is a suspension referred to at either of the July or September 2020 disciplinary hearings.

94. As to when Ms Amien-Cloete called LADO, I accept her evidence that she called them before the meeting with the claimant, and therefore did not suspend the claimant 30 minutes after calling LADO. That is because the claimant was not party to Ms Amien-Cloete's telephone call to LADO, so Ms Amien-Cloete is best placed to confirm when she called them. Furthermore, I see no reason to reject Ms Amien-Cloete's account that she spoke to LADO before the meeting, as she states.

95. In the interim, Ms Lucas, the respondent's office manager, took a report from a parent regarding a pupil referred to as Child O. The parent reported Child O returned from school distressed and crying because in the playground on 12th

February 2020 the claimant had shouted at him. It's said Child O used the words "Violent & Aggressive" to describe the claimant's behaviour.

96. The claimant's account of this incident is that Child O and another child were play fighting, she was concerned they might injure themselves, and she projected her voice to be heard over other children in the playground. The claimant says she told their class teacher Mr Longman, about what had happened, and she left it with him to deal with. She denies being violent or aggressive.

97. On balance, I prefer the claimant's account, which is direct evidence of what took place, whereas the respondent relies on an account based on multiple hearsay. The claimant accepts she projected her voice, but given her concerns they might be injured, and that she was projecting her voice, that does not seem inappropriate, and not the violent and aggressive behaviour described. Furthermore, as the claimant reported Child O's misbehaviour to his class teacher straightaway it lends credibility to her account that in the context of the risk of injury and a noisy playground, she behaved appropriately. Whereas if Child O was upset, Mr Longman would no doubt have seen this, or one would have expected the child to report it to him at the time.

98. The disciplinary meeting took place, as planned, on 13th February 2020. Ms Amien-Cloete conducted the meeting, and the claimant was accompanied by Mr Taper.

99. The record of the meeting shows Ms Amien-Cloete explained the allegations and gave the claimant an opportunity to respond to them. Ms Amien-Cloete asked: *"Do you understand why the school has concerns regarding these incidents?"*

100. The claimant responds (see page 245):

From my perspective I don't feel supported, I feel there is bias when it comes to me.

101. The claimant also suggested Ms Amien-Cloete speaks to colleagues regarding her work, including Ms Omoniyi, Mr Lachlan, Yolanta and Ms Roberts.

102. Ms Omoniyi e-mailed a statement to Ms Amien-Cloete on 1st April 2020, which stated (see page 276):

When S is with me in class she is very engaged and takes part in the music sessions. She seems to enjoy the sessions and I appreciate her support and involvement in the lesson. During the directed teaching she supports my behaviour management by sitting alongside children who need support, reinforcing instructions by modelling or repeating instructions quietly. During independent work she supports a group to stay focused and on task and I have never had an issue about the way she does this.

103. When addressing parents' and children's description of the claimant's behaviour management as being fearful, intimidating or scary, Ms Omoniyi's statement continues, that she's aware the claimant has an edge. She refers to one incident where she describes the claimant as "addressing a year 6 class in quite a sharp/firm and intense way."

104. However, my understanding of the respondent's position seems to be the latter incident would not necessarily be a disciplinary matter. For instance, when referring to a decision to deal with Ms Currier, a white teaching assistant, about whom no prior concerns had been raised (see page 930 paragraph 8.2.13):

Ms Amien-Cloete explained the decision behind this was that when issues were raised around Ms Moody's tone of voice, it is directed at one child. Ms Currier was deemed to have raised her voice at a group in the playground where she tried to get attention of a class to follow instruction.

105. Although noting no prior complaints had been made against Ms Currier, Ms Amien-Cloete's point is that it is the claimant's one-to-one interactions with children that the respondent considers problematic.

106. On 30th April 2020 Ms Amien-Cloete requested the claimant provide further information for the investigation by completing a questionnaire. One question (see page 285) asks in general terms why the claimant thinks some children describe her making them feel worried, scared and anxious. The claimant e-mailed the completed questionnaire on 7th May 2020, stating she could not respond to that allegation without specific information. Her covering e-mail to Ms Amien-Cloete also states:

I quite often feel that the investigations are biassed against me. I feel that it has grown out of control and there is a clear agenda to encourage me to leave or be fired from my employment. The lack of clarity of the alleged claims about my behaviour, the reports being believed before my opportunity to testify and the constantly shifting narratives of the former corroborates this. Personal attacks (which I place down to a particular facet of profiling, which Mr taper advises me, that this is always the case when people are being interviewed in isolation with direct, focused questions about someone and it comes down to personality or whether someone likes you or not. Furthermore, witnesses not understanding the consequences of what they say), judgments made about me and encouraged to enforce a mob culture that has been extremely oppressive, upsetting and unjust I feel that it has become a sustained campaign to ensure that my character and professional career is thoroughly desecrated. As previously stated, misunderstandings, complaints and so on happen from time to time, especially in an education setting. However, equal opportunities is not exercised across the board in terms of how reports are dealt with, investigated, conducted, and resolved.

I would like the oppressive regime to stop and fairness to take its place. I have gone above and beyond the call of duty for Dog Kennel Hill School and I have treated its values with respect and diligence. I want to continue my job in a

safe environment and put all this behind me. I've done nothing wrong and my intent is always for the best.

107. There is no record of the respondent addressing the concerns set out in the claimant's e-mail, nor providing the specific information she requested regarding the questionnaire.

108. The next correspondence is a letter from Ms Amien-Cloete dated 12th May 2020 informing the claimant that as a result of the investigation the respondent's disciplinary process will be followed. In reaching that decision, Ms Amien-Cloete states that she took into account that there have been similar allegations regarding the claimant from different sources since her employment began.

109. As part of the disciplinary process, an investigation report dated 17th June 2020 was prepared, and sent to the claimant. It detailed various allegations covering the period 21st June 2017 to 13th February 2020. As part of the investigation, the claimant was asked to provide her account of the more recent complaints from 10th January 2020 to 13th February 2020. However, the investigation report confirms that while earlier allegations on the claimant's file were reviewed (see page 293), she was not asked to address these as part of the investigation.

110. The disciplinary hearing was held on 13th July 2020 and 21st September 2020.

111. The matters considered by the disciplinary panel were as follows:

Allegation 1:
Complaints from multiple sources over time suggest the claimant's behaviour did not comply with school policies. Witnesses, parents, and children consistently described inappropriate conduct, making it unlikely these accounts were mistaken or dishonest.

Allegation 2:
On balance, the claimant appeared to behave unprofessionally with certain colleagues. Multiple sources, including new and long-standing staff, described conduct inconsistent with the school's code of conduct.

112. The outcome of the disciplinary hearing was notified to the claimant on 29th September 2020. Allegation 1 was upheld; the panel concluded that the weight of the allegations, particularly those made by or supported by teachers, established the misconduct alleged. Allegation 2 was dismissed. The claimant received a Stage 2 written warning effective for nine months.

113. The claimant appealed against the outcome of the disciplinary hearing.

114. The minutes of the disciplinary hearings show the claimant and Mr Taper raised some procedural issues. The issues they raised are dealt with by a questionnaire. The claimant completed the relevant sections of the questionnaire providing examples of incidents where no details had been

provided to her. These related to Child E and Child M. She also stated in the questionnaire that she requested two colleagues be interviewed for the disciplinary, but they were not. She cites ACAS documentation stating employees should be informed of the allegations and the evidence against them, complaining a number of statements from staff and children were not in the disciplinary bundle. The respondent addressed these criticisms (see pages 374 to 386), acknowledging that sometimes the claimant may not have been notified regarding complaints (see page 377), but other allegations would not have been notified to her until after investigations are completed, and the Panel was unaware of her proposing witnesses who had not been interviewed.

115. Following the disciplinary hearing, the claimant resumed HLTA duties and was reassigned from a Key Stage 1 to a Key Stage 2 COVID bubble. The claimant describes the latter as a group of children with more challenging behaviour. The respondent states that as older children, they were a more appropriate age group for the claimant to work with.

116. The claimant expressed concern about swapping her COVID bubble, citing increased COVID-19 risk as a BAME individual. Ms Amien-Cloete responded by stating an updated risk assessment was appropriate, and sought to provide reassurance that the claimant could propose further measures to safeguard her health.

117. In her oral and written evidence, Ms Amien-Cloete also explains that with fewer HLTA, all HLTAs were required to mix bubbles to maximise staff resources, and this influenced the decisions made, and that all appropriate COVID-19 measures were in place.

118. The claimant's 2020/2021 appraisal began in October 2020. Ms Amien-Cloete set the claimant's targets, one of which included to (see page 349 of the bundle):

    Display positive body language (relaxed shoulders, soft facial expressions and use of eyes, position your body facing the individual you are speaking to …

119. The 2020/2021 appraisal is periodically reviewed and updated during the school year.

120. In November 2020, the claimant appealed against the outcome of the September 2020 disciplinary hearing, alleging breaches of the Equalities Policy and failure to address discriminatory behaviour under the Respect at Work policy.

121. On 3rd December 2020 the claimant was covering a class when a child went missing from the class line. The claimant later saw the child in the school's reception area, and was informed by the school administrator that the child had been brought to the reception by Ms Currier. The claimant asked Ms Currier to let her know in future if she took a child away from the class. The claimant states Ms Currier reacted aggressively towards her. The claimant e-

mailed Ms Amien-Cloete about this incident, who consequently spoke to Ms Currier and to the assistant head teacher, Mr Newman about this. Ms Amien-Cloete accepted their account that Ms Currier had not taken the child away from the class line. Instead, Ms Amien-Cloete accepted Ms Currier's account that she found the child wandering, and took the child to the school office to try to find out where the child should be. Ms Amien-Cloete was aware that the claimant had not seen Ms Currier taking the child from the line, and as Ms Currier denied doing so, and Mr Newman supported that account, she accepted what they said.

122. Given that the claimant had not seen Ms Currier remove the child from the line, and Mr Newman supported Ms Currier's account that she had not done so, I find it was entirely open to Ms Amien-Cloete to accept Ms Currier's account. Therefore, I also find Ms Amien-Cloete correctly did not consider Ms Currier had breached safeguarding.

123. The claimant and Ms Currier had mediation following this incident.

124. The claimant refers to Ms Amien-Cloete's comment in her 2020/2021 appraisal regarding the 3rd December 2020 incident, which states: "I will advise SM continues to work on this area as there has been recent staff related issue that was addressed with both parties through mediation."

125. The claimant regards this comment as indicating Ms Amien-Cloete considered the claimant was at fault for the 3rd December 2020 incident. I find the comment to be somewhat vague. I do not find it contains any express criticism of the claimant's conduct on 3rd December 2020. Ms Amien-Cloete advises the claimant continues to work on this area, but does not say that the 3rd December 2020 incident reflects the claimant is failing to do so.

Events in 2021

126. On 8th January 2021 the claimant's unchallenged evidence is that Ms Melehi ordered her to provide 1:1 support to Child J, who is said to have behavioural difficulties, including being prone to violent outbursts. He was the child Mr Komeh had sought the claimant's assistance with on 10th January 2020 (see paragraph 76 above), which had resulted in the disciplinary, for which the claimant's appeal at that time, was still pending. When the claimant expressed concern about providing him with support, Ms Melehi suggested the claimant raise these concerns with Ms Amien-Cloete.

127. Ms Amien-Cloete and the claimant exchanged e-mails about the claimant providing 1:1 support to Child J. In an e-mail sent by Ms Amien-Cloete on 9th January 2021 she explained that she was asking the claimant to provide 1:1 support to Child J because the claimant had expressed concerns about the COVID related risk of working in a class with more than two adults and children. Providing 1:1 support would Child J meant the claimant would not be working in such an environment. Ms Amien-Cloete's view regarding the claimant's outstanding disciplinary appeal was that it did not directly involve Child J: the disciplinary matter related to Mr Komeh's request for help with Child J.

128. During this exchange, Ms Amien-Cloete made it clear to the claimant that she was not ordering her to work with Child J, but was making, what she considered to be a reasonable request. Therefore, I consider Ms Amien-Cloete did not state she would consider it insubordination if the claimant refused to support Child J as requested.

129. The claimant's appeal against the disciplinary panel's decision was on 15th January 2021, and by a decision letter dated 21st January 2021, the disciplinary panel's decision was upheld.

130. On 1st February 2021 Child J injured the claimant. The claimant completed the relevant section of an accident at work form on 2nd February 2021. Ms Amien-Cloete completed part 2 of the same accident at work form, and sent it off without first speaking with the claimant. Subsequently, on 4th February 2021, the claimant and Ms Amien-Cloete were in a meeting. The claimant was experiencing foot pain resulting from the injury Child J had inflicted. To try to ease the pain, the claimant was tapping her foot, and seemingly not making eye contact, which displeased Ms Amien-Cloete who told the claimant she was being rude. The claimant states her reaction to the pain in her foot was included in her appraisal as a target to work on. Ms Amien-Cloete says she does not recall whether that was the case, and states the claimant's targets were general and regarding communicating sensitively with children.

131. The targets referred to were those set in the review meeting held on 14th July 2021, dealt with at paragraphs 138 to 140 below.

132. On March 16, 2021, the respondent received an email from a parent raising concerns regarding the claimant, which stated:

> *And the other matter is Ms Moody. Twice in six days XX has come home quite upset by how she's treated other members of the class. From what he has told me it sounds like she is sarcastic with the children, telling them where the door is if they don't like her class, not listening to them when they ask legitimate questions and belittling them in front of their classmates. This really isn't how a member of staff should ever be acting, but especially not when the well-being of the children is uppermost in everyone's minds. I feel she could show quite a bit more empathy for the children and an ambition to make learning fun thanks comment was that "the bad thing is she comes in for all the fun stuff when Ms Sketchley's on PPA time, and it is no fun at all."*

133. In light of the above complaint, the respondent conducted interviews with 18 pupils in Ms Sketchley's class. They were asked how they felt about the claimant. Their responses about the claimant range from her "being fun" and "nice to have as a teacher for a bit" to other pupils who report feeling either "A little scared" or "very scared". The majority of responses fall into the latter category, some of those responses recognise that she is strict, although at least one pupil described this as "harsh". Most of the negative comments refer to contexts where a child has misbehaved, although some say the claimant becomes angry for minor transgressions. For instance, when asked what the claimant does when a child misbehaves, they stated: "She normally gets very

mad. If someone does a little thing like have blue tack, she gets very mad and angry."

134. In March 2021 Child J's parent reported their child being upset by comments the claimant made in class directed at other children. For instance, telling them where the door was if they didn't like her class, or belittling them.

135. In light of the responses from Ms Sketchley's class, and Child J's complaints, the respondent initiated a fact-finding, which was notified to the claimant by a letter dated 26th April 2021. Because the claimant had expressed concerns about Ms Amien-Cloete's impartiality, the fact-find was conducted by Ms Williams, a head teacher from another school. In her witness statement Ms Amien-Cloete states (paragraph 86): "I had no prior relationship with Miss Williams and note she is also of BAME origin."

136. The claimant maintains that Ms Amien-Cloete and Miss Williams were friends, however, I prefer Ms Amien-Cloete's evidence on this issue. She is best placed to provide evidence on whether Miss Williams is her friend, and I see no grounds to disbelieve her evidence that they are not friends.

137. As a further consequence of the responses from Ms Sketchley's class, Ms Amien-Cloete also enrolled the claimant on a 5-week behaviour management course to support her.

138. Ms Amien-Cloete conducted a guidance review meeting with the claimant on 21st June 2021, and an end of year review on 14th July 2021. In a letter dated 16th July 2021 Ms Amien-Cloete dealt with various matters, including both of the above meetings.

139. Firstly, Ms Amien-Cloete discussed the claimant's demeanour in the meeting on 4th February 2021 following her being injured by Child J (see paragraph 130 above).

140. Ms Amien-Cloete writes (see page 456):

I explained that in the meeting regarding the one: one child incident, I was trying to ascertain the events in order to provide support. Miss Melehi and I shared the plan and as I recall in that meeting I was trying to give you feedback as you provided no eye contact to me and I felt you were not engaging with the meeting with me. I reiterated that I wish to have a good working relationship with you and support your improvements but I needed you to engage in the meetings with me.

141. I find Ms Amien-Cloete's comments related to the claimant's communication style generally, because the claimant allegedly not making eye contact is a matter that Ms Amien-Cloete has raised on other occasions. Therefore, while the example Ms Amien-Cloete referred to on that particular occasion was when the claimant was in pain, I don't consider she was commenting on the claimant's reaction to the pain she was in.

142. In the 16th July 2021 letter, Ms Amien-Cloete also dealt with various aspects of the claimant's 2020/2021 appraisal. The claimant had updated the 2020/2021 Appraisal Action Plan with the following comments (see page 361):

In October 2020's meeting for this appraisal, I was told that the targets set were "opinions based on the disciplinary hearing" that were held in September 2020. With that, I do not agree with these discriminatory stereotypical views of me as a black woman of it size, painting me as the "aggressive, intimidating, angry black woman" trope... For example, I allegedly need to be more mindful of not "towering over children" (I'm 5'3 and there are members of staff a lot taller than me, yet I alone, it seems, allegedly "towering over children") I do not know who made the allegation and my side of the story was never asked.

143. The claimant evidently objected to this target in the appraisal form, and was unwilling to sign it. Referring to the claimant's position on this, Ms Amien-Cloete writes:

"This is the target that Sandra has been declining to engaging as she had felt that it was unfair."

144. Ms Amien-Cloete's letter continues:

You also mentioned that you disagreed with your appraisal targets and interpreted the wording as unhelpful. You stated that the targets were very close to being seen as scrutiny of your body. You mentioned you are much taller than children, yet are being asked to get down on their level, or that you should have a soft shoulder and soft face. I explained that although appraisal targets are not part of this meeting, they did come about as a recommendation from the governors who heard your disciplinary hearing. I clarified that the wording was not about your body, but about the body language used when communicating with children in general and what will be helpful. It is advised that teachers get down to the level of the children when they communicate with children and I also suggested you be mindful of your body language as this could create an impression you may not want to portray.

145. Ms Amien-Cloete's response suggests she views the claimant's response as a failure to engage because the claimant feels the target was "unfair" and that the comments were "unhelpful". Ms Amien-Cloete does not seem to recognise the claimant's response is as a complaint about discrimination, despite the claimant using terms such as *"discriminatory stereotypical" and ""angry black woman" trope*". Ms Amien-Cloete repeatedly refers to the references to the claimant's body type and body language, but does not refer to the complaints about discrimination. Ms Amien-Cloete also doesn't appear to see a connection between advising the claimant to display a soft facial expression, implying the claimant "towers" over children, and the claimant's complaint of being stereotyped as aggressive and intimidating.

146. Ms Amien-Cloete's letter also refers to the claimant's complaint that during the July 2020 disciplinary process the respondent did not comply with ACAS disciplinary guidance by failing to provide particulars of the allegations. Ms Amien-Cloete disputed the ACAS guidance had been breached. In my

judgment, the claimant is correct on this point, because prior to the disciplinary hearing she was provided with details of allegations covering 10th January 2020 to 13th February 2020. However, the investigation report includes earlier allegations from 21st June 2017 to 22nd November 2019, which the claimant was not given an opportunity to address during the investigation meeting, yet these were included in the investigation report that was relied on to recommend disciplinary action. I find that is a breach of the ACAS Code of Practice.

147. On 10 September 2021, while covering Ms Campbell's class, the claimant reproached Child K for not following instructions. When Ms Campbell returned to the class, the claimant informed her of the incident, and Ms Campbell asked Child K to apologise to the claimant. Later, Child K told Ms Amien-Cloete the reprimand reminded her of being bullied in Year 3. Teaching assistant Sam Soobhee, who witnessed the exchange, reported witnessing no shouting from the claimant, nor any safeguarding concerns.

148. I accept Mr Soobhee's account of the claimant's behaviour. There is no reason to believe he would be inaccurate or untruthful about what he witnessed, particularly because there is an obligation to report safeguarding concerns if he had witnessed any.

149. In her witness statement the claimant describes the following incident on 15th October 2021:

I was emailed by Miss Melehi that the start time for Team Teach Training day was 9:30am for the training. Miss Currier, Miss Howell and Miss Melehi were already present at the session, with the time starting at 9:00am, thus I arrived late due to Miss Melehi not informing me of the time change.

150. Ms Amien-Cloete disputes this, stating Ms Howell and Ms Currier simply arrived early, before the claimant, it was not that the start time for the training had changed.

151. I prefer Ms Amien-Cloete's explanation to the claimant's. I appreciate that Ms Amien-Cloete's account is based on hearsay, but I find it the more likely explanation. I also take into account that the claimant does not expressly state that the training had begun when she arrived. Therefore, I conclude it was more likely that the others simply arrived before her.

152. On 16th December 2021, the claimant was dealing with a pupil, Child D, who repeatedly failed to follow her instructions. During this incident, she removed a tangerine that Child D was holding. When she did this, Child D responded by pushing her with both his hands, causing him to lose his balance and fall to the floor, with Child D saying he hated the claimant. When Mr Newman arrived on the scene, the child stated the claimant had pushed him, which the claimant denies.

153. Although he did not see what had happened before Child D ended up on the floor, Mr Newman was critical of how the claimant dealt with the situation. In particular, he said he would not have tried to remove the tangerine from the

child's hand. He took into account the claimant's explanation, that she had received training that she should remove anything from a child that could be used as a weapon. But in his opinion, that advice was not applicable where the item in question is a tangerine.

154. I find it is unlikely the claimant pushed the child. Despite the various complaints made against her, there is no suggestion that she would physically assault a child. I find it's more likely than not that the child was annoyed that the claimant would not allow him to get his own way, and so falsely accused the claimant of pushing him. I would add, the respondent does not appear to be claiming that the claimant pushed Child D.

155. On 21 January 2022, Year 5 pupils Child S and Child T said they were scared of the claimant due to her past shouting. When told about this, the claimant did not understand what the children were talking about, so she suggested having a meeting with them. The meeting was arranged as a restorative justice meeting on 28 January 2022, mediated by Mr Newman. He commented that both pupils had been diagnosed with autistic spectrum condition and were sensitive to noise. Mr Newman noted that during the meeting the claimant was initially defensive but became more understanding of the children's point of view as the meeting progressed. However, Ms Amien-Cloete was disappointed at what she regarded as a failure by the claimant to reflect on the feedback both children had given, she was disappointed when both pupils subsequently reported no change in the claimant's behaviour.

156. It was put to the claimant during cross examination that she failed to reflect on the feedback she was periodically given. The claimant disagreed. She said that's why she called for meetings, to understand what was said to have happened so that she can reflect. She said there is always room to grow and improve and she don't shirk from feedback on how to do better

Events in 2022

157. A guidance review meeting was held on 25 January 2022 so that the claimant and Ms Amien-Cloete could discuss the recent complaints. Ms Amien-Cloete's letter following that meeting acknowledged the claimant had complained of being discriminated against, but Ms Amien-Cloete said she did not understand the basis of the allegations.

158. On around 28th January 2022 the claimant was covering a class in which the children had repeatedly complained of being called to lunch last so had a shorter lunch break, also meaning there were fewer food choices, leaving them sometimes hungry. The claimant said the children could write about how they were feeling if they wanted to, and some chose to do so.

159. On two consecutive days, 31st January and 1st February 2022, Child M in year 1 returned home from school wet, explaining to her parent that she had been too scared in class to ask the claimant to go to the toilet. When this was raised

with the claimant during the investigation meeting, she clarified that she was not teaching Child M's class on 31st January 2022. It's not known whether the claimant taught Child M's class on 1st February 2022 because the respondent's records are unclear. The claimant says she has never refused a child permission to use the toilet.

160. I find it more likely than not that the Child M was either generally scared about asking to go to the toilet, or possibly simply had a toileting accident as children sometimes do. My reasons are that the claimant was not covering Child M's class on 31st January 2022, so it would not have been fear of asking the claimant that stopped Child M going to the toilet. In which case, even if the claimant was covering Child M's class on 1st February 2022, which is unclear, any fear she had about asking for the toilet does not appear to be specific to the claimant.

161. On 25th February 2022, Ms Larkin, the respondent's administrator, e-mailed Ms Ghezzi with information provided by a parent regarding their son Child O, who is a year 3 pupil with special educational needs. The parent reported Child O had previously stated he was petrified of the claimant. It is unclear who used the term "petrified". That is the term used in Ms Larkin's e-mail to Ms Ghezzi, but it's unclear whether Child O and/or the parent used that term. The parent continued that Child O had feigned an asthma attack while at school on Wednesday 23rd and Thursday 24th February 2022, so the parent questioned whether the claimant had taught him. Child O explained the claimant had not taught him, the reason he didn't want to be at school on 24th February was because he was struggling with being taught to tell the time. He does not appear to explain why he feigned an asthma attack on 23rd February 2025.

162. On 25th February 2022 Ms Ghezzi spoke with Child O asking whether he had *"… any worries or concerns regarding adults in the school."* He said he didn't.

163. When Ms Ghezzi probed him further, explaining his mother said he was scared of an adult in the school, his recorded response is: *"No, not scared of any adults at school."*

164. On 28th February 2022, the respondent informed the claimant no further action would be taken regarding this matter because the child had not provided any information to support his mother's account.

165. On 4th March 2022, Ms Kellie-Roberts, Child O's teacher, emailed Ms Ghezzi reporting that the previous day Child O said he didn't like it when the claimant taught him. Ms Kellie-Roberts relayed this to Ms Ghezzi. Later that day (i.e. on 4th March 2022) Ms Ghezzi asked Child O about this conversation he had with his teacher that morning, he initially denied the conversation but later said he had spoken with Ms Kellie-Roberts about being *"a bit scared"* of the claimant, describing her as strict and saying *"she shouts all the time."*

166. I find Child O's 25th February 2022 account given to Ms Ghezzi conflicts with the account he gives her on 4th March 2022. On 25th February 2022 he said that he had no worries about any adults, yet on 4th March 2022 he says he is

a bit scared of the claimant because she shouts all the time. I do not find his explanation for this inconsistency to be convincing. He said he did not mention being scared on 25th February because he thought Ms Ghezzi was referring to teaching staff. However, Ms Ghezzi's questions on 25th February 2022 didn't refer to teachers, nor did Child O's answer, which was that he had no concerns about *"any adults".* Ms Ghezzi used the same phrase when questioning him on both occasions she referred to "adults teaching in the class".

167. It is unclear why the same phrase on one occasion did not prompt him to think of the claimant, but on another occasion made him think of her.

168. There may be any number of reasons why Child O only thought about teachers when Ms Ghezzi first questioned him on 25th February 2022, but that is not consistent with his later response. Child O was in year 3 at that time, and has S.E.N.D or special educational needs and disabilities, which may or may not affect his recall. However, in the light of these unexplained inconsistencies in Child O's different accounts, and that on the dates he feigned an asthma attack the claimant did not teach him, plus the reason he gave for doing so was that he found the lesson difficult, I am not satisfied about Child O's feigned asthma attacks were in order to avoid being in the claimant's class.

169. Later on 4th March 2022, Ms Ghezzi asked the claimant to reflect on her interaction with Child O that day. There was an exchange between Ms Ghezzi and the claimant, and the claimant wrote a statement, as requested. She e-mailed the statement to Ms Amien-Cloete, it's titled *"Statement Regarding Friday 4th March 2022 with Child O (Beech Class*)". In it the claimant stated Child O had shown no fear in class, he had interacted with happily with her, and she described their conversation.

170. On 5th March 2022 the claimant e-mailed Ms Amien-Cloete regarding the exchange she had with Ms Ghezzi the day before. The claimant's e-mail includes the following:

I responded that this treatment that I receive is racist. The reason being that when it is white members of staff having allegations or when there are reports made of what has been witnessed, the matters are brushed under the carpet and not addressed in any significant manner, if at all, in comparison to myself as a black member of staff where there is a rigour and enthusiasm to allegations towards myself to paint me as this "aggressive, scary, intimidating" black stereotype tropes

171. It seems to be part of the claimant's case that on 7th March 2022, Ms Amien-Cloete informed her that the matter would be escalated. Whereas Ms Amien-Cloete's evidence is that she informed the claimant on the 7th March 2022 that the fact finding was still in progress, and she would update the claimant in due course. Ms Amien-Cloete's evidence is supported by her e-mail to the claimant on 7th March 2022 (at page 671). Ms Amien-Cloete's e-mail also explains that some of Beech class had been interviewed, the remainder would be interviewed the following day, and that Ms Amien-Cloete had contacted HR

and LADO, and was waiting for a response from the latter. In the circumstances, I accept Ms Amien-Cloete's evidence that the claimant was not informed on 7th March 2022 that the matter would be escalated.

172. On 7th March 2022 Anastasia Brown, a supply teaching assistant, was asked to give her account of what happened in the class between the claimant and Child O. Her account is that the claimant is clear in setting boundaries with the children and letting them know what she expects. She added nothing of note occurred during the class. However, she does not specify whether the information she provided relates to 3rd or 4th March 2022.

173. On 7th and 8th March 2022 Ms Nichols, the respondent's deputy designated safeguarding lead, surveyed the pupils in Beech class, being O's class, to find out what they think about the claimant. The respondent's explanation for surveying the whole class is, it's claimed the claimant had previously suggested the respondent interview all children, not just the children raising a complaint. This seems to relate to the 2020 disciplinary proceedings (see page 244). The claimant is informed a teacher believes some shy children may find the claimant's strict approach intimidating; she's asked if she knows why. The claimant's reply is that the respondent should ask them. That comment two years previously in relation to a group of children, cannot sensibly be viewed as a request for the respondent to conduct a class wide survey as a result of Child O's allegations.

174. Once Ms Nichols completed the survey, she e-mailed a summary of the results to Ms Amien-Cloete, stating 6 out of 30 children felt happy in the claimant's class, 7 unhappy, and 6 felt her class was average.

175. The class survey results are at pages 699 to 701 of the bundle. The children's comments ranged from some reporting feeling "a bit scared", "scared", "bored" to "quite sad because Ms Moody is rude teacher".

176. It should be noted that some children gave baseless reasons for their negative feelings about the claimant. For instance, one child said they found the claimant scary "Because her name is Moody". One response was that "She [Ms Moody] is black and black people are quite strict", which indicates racial stereotyping may have influenced this response.

177. Some of the other responses reported feeling positive, for instance saying the claimant's class was "good", made then feel "calm", "happy", or "so happy because I really like her", and that she "teaches in a fun way". There were other responses which were neutral, such as "fine", "ok, fine, chill". Other responses were difficult to categorise. For instance, one pupil's response was "no nothing", some pupils responded the claimant's class made them feel "tired, because its hard" or "bored" or feel "exhausted" which appears to be more about the lesson content rather than a negative comment regarding the claimant's interaction with pupils.

178. I disagree with Ms Nichols' summary of the results: I calculate that 11 children responded positively (child 1, 2, 3, 8, 14, 16, 19, 26, 28, 30 and 31), 8 children responded neutrally (child 4, 5, 10, 11, 15, 18, 20 and 25), 7 responded negatively (child 6, 7, 12, 13, 17, 27 and 29), this included two responses

which were either baseless or indicated stereotyping (see paragraph 176 above). The remainder were difficult to categorise (child 9, 22, 23 and 24).

179. However one analyses the results, and whatever the reasons for the responses, the fact remains that almost a quarter of Beech class reported feeling sad or scared when the claimant taught them, which is a sizeable minority, that in my judgment warranted the investigation carried out by the respondent.

180. In a letter dated 10th March 2022, the claimant was informed that she was placed on alternative duties: she was to remain in one class under a teacher's supervision, and was temporarily removed from the play time and lunch time duty roster.

181. On 11th March 2022 the claimant e-mailed Mr Vanson, Ms Amien-Cloete, Ms Sleat (HR Business Partner), and Dr Henley. Her e-mail began:

I wish to make a complaint on the racial bias undertones, the discrimination and the oppression aimed at me, that I have received by the management of the school, in particular with Mrs Cloete (Executive Head of River Hill Federation) and Miss Ghezzi (Head of School of Dog Kennel Hill Primary School).

182. The e-mail continues by dealing with a number of the allegations made against the claimant, and she states:

… I am being harassed and bullied to get me to leave my employment or to be fired. In addition, according to the Equality Act, what is being done to me is breaking the law.

183. On 13th March 2022 Dr Henley wrote to the claimant informing her that the respondent was initiating a formal disciplinary investigation, and providing her with general details regarding the allegations. A copy of that communication is not in the bundle.

184. The respondent appointed Ms Iwobi as the (external) investigating officer. Ms Iwobi introduced herself by sending a letter to the claimant on 23rd March 2022, inviting her to attend an investigation meeting on 19th April 2022. The letter set out the allegations against the claimant at that time which were the subject of the investigation. The allegations were as follows:

- *Allegation 1: safety/ well-being of children*

Breaches of appropriate conduct relating to the safety and well-being of children which could constitute emotional harm.

- *Allegation 2: safeguarding*

Failure to follow safeguarding policies and procedures.

- *Allegation 3: breakdown in trust and confidence*

There is a breakdown in trust and confidence between you and the school due to the ongoing pattern of behaviour in relation to how you relate to children. The school feels that despite the support put in place you have not changed your behaviour towards children which is evidenced by the ongoing concerns raised by them and all their parents. Your failure to acknowledge how your behaviour is affecting the children.

Further to this, the school is concerned that you do not accept the safeguarding procedures as outlined in policies and procedures and continues to seek to change and adapt them for your own purposes which could result in children being at risk.

185. The letter further stated Ms Iwobi would also be investigating the complaint/grievance sent by the claimant on 11th March 2022.

186. Ms Iwobi conducted the first investigation meeting on 19th April 2022 dealing with the generalised allegations as set out in her letter to the claimant dated 23rd March 2022. They also discussed the respondent's policy documents, with the claimant confirming she had access to these. Other topics discussed were the claimant's job description, pay, performance management, working relationships, training, and appraisals. The final topic discussed is the claimant's complaint, the minutes of this are at pages 712 to 715. Mr Vanson, the claimant's union representative, was present throughout.

187. Further to the general allegations Dr Henley had sent the claimant on 13th March 2022, on 4th May 2022 she sent particulars of the allegations to the claimant. These were set out in a spreadsheet titled safeguarding chronology of concerns (the "safeguarding chronology"). It contains 25 allegations covering the period from 21st June 2017 to 28th February 2022. The spreadsheet specifies which allegation (1, 2 or 3) each incident relates to.

188. Ms Iwobi held a second investigation meeting with the claimant on 21st June 2022. The claimant was again accompanied by Mr Vanson. The second meeting was after the claimant had received the safeguarding chronology, so they discussed the specific allegations within that document. Ms Iwobi also asked the claimant whether she considered her relationship with the school had irretrievably broken down; the claimant responded that she wanted to be treated fairly and in accordance with the respondent's policies. Mr Vanson contributed to this discussion, stating the union considered the relationship was retrievable, and suggested mediation between the parties as an option. The claimant is recorded to be nodding to this.

189. As part of the investigation, Ms Iwobi also interviewed the following:

    189.1 Ms Amien-Cloete, executive head teacher;
    189.2 Ms Ghezzi, head of school;
    189.3 Mr Newman; assistant head teacher;
    189.4 Ms Omolaiye, teaching assistant;
    189.5 Ms Currier, teaching assistant; and

189.6 Ms Nichols, safeguarding intervention officer and deputy designated safeguarding lead.

190. In October 2022 Ms Iwobi produced her investigation report recommending the matter is referred for disciplinary proceedings. The investigation report is in two parts. There is a 90-page report titled Disciplinary Investigation Findings, and a 24-page report titled *Extracted Conclusions & Recommendations.*

191. The claimant was informed that the matter would progress to a disciplinary hearing by a letter from Dr Henley dated 14th October 2022, which also informed the claimant that she was suspended from her post for 4 days. She was informed the suspension was not a disciplinary sanction and she would continue to receive her full pay for those days. The claimant says that she was told by Ms Ghezzi in the hallway that she was suspended, and this was done in front of children and staff. In her witness statement Dr Henley states she understands it was not the case that the claimant was suspended in front of others, but she does not state the basis for her understanding. I therefore prefer the claimant's evidence on this point over Dr Henley's evidence. Ms Anderson says that the claimant has not adduced any evidence that she was suspended in front of others, but I find the claimant's witness statement is evidence, which I accept in the absence of any direct evidence to the contrary.

192. Subsequently, on 20th October 2022, Dr Henley wrote to the claimant to notify her that she was suspended pending the disciplinary hearing.

193. In the investigation report, Ms Iwobi's descriptions of the allegations, particularly regarding allegations 2 and 3 are more detailed than in her letter dated 23rd March 2022. The allegations, as described in the investigation report, are in bold text where each allegation is dealt with below.

The Disciplinary Hearing

194. At the start of the disciplinary hearing all 4 allegations were read out; the claimant is recorded as not admitting to any of the allegations, including allegation 4.

195. During the disciplinary hearing Dr Henly presented the respondent's case, Ms Iwobi presented the investigation report, and Ms Amien-Cloete gave evidence on behalf of the respondent.

196. The claimant attended with her union representative Mr Robinson. She answered questions put to her, and Mr Robinson made representations on her behalf.

197. Most of the evidence the disciplinary panel heard regarding the individual complaints about the claimant's interaction with Child O was when Ms Iwobi presented the investigation report. Although the panel asked Ms Amien-Cloete some questions about Child O. The panel did not ask the claimant questions about the individual complaints.

198. As part of Ms Amien-Cloete's evidence to the disciplinary hearing, she stated the claimant only communicated with the senior leadership team via e-mail, which was unsustainable. Ms Amien-Cloete also states the claimant failed to engage with the appraisal process, and "challenged the vocabulary used about her." Ms Amien-Cloete continued, that her advice to the claimant regarding her facial expression and body language was based on a direction from the 2020 disciplinary panel.

Allegation 1.1

On 23 and 24 February 2022, Child O, who is asthmatic and has special needs/ vulnerabilities/ SEND, feigned breathing difficulties to avoid being in SM's class. On 3 March 2022 Child O disclosed this was because he was fearful of SM, due to her behaviour management, e.g. shouting, being strict etc. This is not in line with our positive behaviour strategies and has led to emotional harm of a child. Dereliction of duty in providing a safe, emotional environment to support Child O in their well- being and education, to the extent that feels distressed when he knows the HLTA a will be covering the class.

199. When the claimant was informed of the dates Child O had feigned an asthma attack, she clarified that she was not working with Child O's class on either of those dates, and stated she would cover his class on the second Friday of each month.

200. Ms Iwobi's findings were as follows (see paragraph 7.2.5 at page 895):

On balance, the nub of the disciplinary allegation relating to Ms Moody was not dependent on the whether she had covered Child O's class on the specific dates Child O feigned illness. The evidence showed Child O was well aware Ms Moody would cover his class on a (2nd) Friday. It is possible that Child O intended to feign illness to cover a period when he had assumed (correctly or incorrectly) that Ms Moody would be covering his class.

201. Ms Iwobi's conclusion is that this allegation has substance. I find the investigation was deficient because it failed to appreciate serious flaws in Child O's account, or if the flaws were recognised, Child O's account was nonetheless relied on. The investigation was also procedurally irregular. In relation to this allegation, my reasons are at paragraphs 204 to 211 below, and in relation to the wider investigation, my reasons are at paragraphs 217 to 220, 228 to 235, 262 to 264 and 274 to 277 below. These deficiencies and irregularities were not cured by the disciplinary panel, because it made no meaningful enquiry into the allegations. In particular, the claimant was not asked questions about this allegation. Instead, the disciplinary panel to a large extent relied on the (flawed) investigation report.

202. The disciplinary panel found this allegation was proven. *"This was concluded given the child's complaint, the report from the parent and the Teacher's discussion with the child."* (see page 1059).

203. However, in light of these deficiencies and irregularities in the investigation report, and the inconsistencies in Child O's complaint, his parent's complaint,

and Ms Ghezzi's discussion with him, I find a reasonable employer in the disciplinary panel's position would not have found this allegation was proven.

204. My reasons are firstly, the allegation was that Child O feigned an asthma attack to avoid being taught by the claimant. However, Child O does not give the claimant covering his class as the reason for feigning an asthma attack. Ms Iwobi finds that Child O knew the claimant covered his class on the second Friday of each month, but he feigned his asthma attacks on Wednesday 23rd and Thursday 24th February 2022. Therefore, there is no evidential basis to conclude that he had feigned an asthma attack to avoid being in her class.

205. Furthermore, the mother's account provides no reason for Child O feigning illness on Wednesday 23rd February 2022. The reason Child O gave his mother for feigning illness on Thursday 24th February 2022 was because he was struggling with the lesson; he told his mother the claimant did not teach him on that day. There is no evidence of him feigning illness on any Fridays.

206. This allegation is further undermined by Ms Ghezzi's discussion with Child O on 25th February 2022, in particular, the unexplained inconsistencies in Child O's accounts given on 25th February 2022 compared to 4th March 2022 (see paragraphs 162 to 166 above).

207. Ms Iwobi's investigation report states that part of allegation 1.1 relates to another incident involving Child O. That is Child O telling Ms Kellie-Roberts on 3rd March 2022 that he doesn't like it when the claimant teaches his class; Ms Kellie-Roberts e-mailed Ms Ghezzi about this on 4th March 2022. Ms Ghezzi spoke to Child O on 4th March 2022 and asked him about his interaction with the claimant on that day. Child O is not asked about his interaction with the claimant on 3rd March 2022, being the date he complained. In any event, there is no March 2022 incident on the safeguarding chronology: as stated, that document contains incidents from 21st June 2017 to 28th February 2022. The safeguarding chronology was supposed to be the specific allegations made against the claimant. However, by investigating and making findings regarding 3rd March 2022, Ms Iwobi inappropriately went beyond the scope of the allegations she was tasked to investigate.

208. During her 5th July 2022 interview Ms Iwobi asks the claimant about 4th March 2022 (see page 758 to 759), but they do not discuss 3rd March 2022, which is the date Child O complained to Ms Kellie-Roberts about. So, Ms Iwobi has found that the allegation relating to 3rd March 2022 has substance even though neither Child O nor the claimant had given an account of what happened on that date, and instead both were asked, and gave an account of, what happened on 4th March 2022.

209. Ms Iwobi considers that Child O's account of being scared of the claimant resonates with the survey results from his class, in which some pupils described the claimant as "strict", "angry" and "scary". It is correct that there is consistency between Child O's complaints and some survey responses. But it is also noteworthy that being "scary" and "angry" are also known stereotypes. There are also unexplained striking disparities in the responses even though they are from children in the same class about the same

individual. There is no consideration that some responses indicate unconscious racial bias, for instance when a child responds *"She [Ms Moody] is black and black people are quite strict".*

210. The scope of an employer's enquiries are discretionary, but enquiries must be within a band of reasonable responses. What is reasonable depends on the circumstances, including the severity of the allegation, and the allegations against the claimant are serious, as Ms Iwobi acknowledges at paragraph 7.2.14 of the investigation report. In fact Ms Amien-Cloete stated during her investigation meeting and to the disciplinary panel that she did not consider it was safe for the claimant to work in any school (see page 1029). That was a potentially career ending statement. Although, in the event, the disciplinary panel did not uphold that finding, it nonetheless demonstrates the seriousness of the allegations.

211. The discrepancies in Child O's accounts illustrate the potential difficulties relying on the uncorroborated evidence of a child, particularly when these are relied on in relation to safeguarding allegations, where such allegations are (rightly) treated as serious. Therefore, I find a reasonable employer would not rely on Child O's account without resolving the discrepancies, nor would they rely on an investigation that had the other deficiencies referred to at paragraphs 217 to 220, 228 to 235, 262 to 264 and 274 to 277 below.

Allegation 1.2

On 11 March 2022, SM, a qualified first aider failed to follow the school's first aid procedure when child (U), sustained an injury to her lip while SM was covering the class. SM didn't follow health and safety procedure and as a result the school did not comply with its duty of care towards the child and parent in relation to health and safety and reporting guidance and responsibility

212. Ms Iwobi recommended that this allegation should not be pursued to a disciplinary hearing, and the respondent accepted that recommendation.

Allegation 2

SM has displayed a historical and ongoing pattern of behaviour towards children, which particularly impact adversely on vulnerable children. SM's behaviour doesn't comply with the school's policies and procedures, despite receiving guidance, training and support over time.

Despite the standards being clarified there continues to be a failure on SM's part to follow the school's policies and procedures, including the safeguarding policy, the behaviour management policy, the code of conduct as well as the requirements set out in Keeping Children Safe in Education.

The failure to comply with this has led to SM not providing a safe and emotional environment to safeguard children and LADO confirmed that due to this being an ongoing pattern of behaviour it is likely to meet the threshold for emotional harm, as set out in Keeping Children Safe in Education.

213. The safeguarding chronology contains numerous complaints spanning several years made by pupils or sometimes their parents regarding the claimant's conduct towards children, covering the period June 2017 to 28th February 2022. It contains approximately 25 allegations. Around 15 of those cases relate to children who have special educational needs or who are vulnerable for some other reason, which is disproportionately high as only around 10% of pupils at the school fall into that category.

214. As to the respondent's response to the complaints, it with them using a variety of methods, and did not always invoke the disciplinary procedure. For instance, on a number of occasions the respondent held guidance meetings, advice and/or referred the claimant for training when dealing with these complaints.

215. The respondent's concern is that despite the advice, training, guidance meetings and reviews, and the previous disciplinary, the safeguarding chronology indicates a continuing pattern of similar complaints. The respondent's position is that the complaints show a failure by the claimant to follow the school's policies, in particular the safeguarding policy, the behaviour management policy, the code of conduct and Keeping Children Safe in Education.

216. During her investigation meeting with Ms Iwobi, Ms Amien-Cloete stated staff have access to the following policies:
    216.1 Code of Conduct;
    216.2 Safeguarding and Child Protection Policy;
    216.3 Positive Behaviour Anti-Bullying Policy;
    216.4 Whistleblowing Policy; and
    216.5 Keeping Children Safe in Education (KCSiE).

217. The investigation report also lists the provisions in the relevant polices at pages 956 to 958, in the section of the report dealing with key supplementary evidence. However, there is no meaningful discussion with the claimant about the policies during the investigation meeting. During the claimant's first investigation meeting, Ms Iwobi simply confirmed that the claimant had access to the policies (see page 704).

218. Nor do the various letters sent to the claimant following guidance meetings and reviews refer to any specific policy that she needs to comply with. The policies are also not referred to in any of the claimant's appraisals in the hearing bundle. Therefore, while this issue was relied on during the disciplinary process, the claimant had not previously been informed of any specific policy or policies, nor the provisions within those policies, which it's claimed she had contravened.

219. Where a reference is made to policies, it's usually the claimant alleging the respondent has failed to follow it's equality and/or disciplinary policies (e.g. see page 763), or when the claimant explains how she has complied with Team Teach training (page 913 paragraph 7.14.8 and page 1192 regarding

an incident on 20th November 2019), and where she states she followed the respondent's behaviour ladder (see pages 324 and 330).

220. The respondent repeatedly alleges that in addition to breaching policies, the claimant sought to change these where she disagreed with them. However, this issue was not expressly put to in any of her meetings, reviews or appraisals, nor discussed with her during the investigation meeting. However, this allegation was dealt with during the disciplinary hearing.

221. From the disciplinary hearing, it seems this allegation relates to two issues. Firstly, it relates to the claimant's refusal to sign the 2020/2021 appraisal. The claimant explains she did not sign it because she did not agree with Ms Amien-Cloete's comments advising she displays soft facial features and doesn't tower over children. The relevant section of the form requires the appraisee to sign confirming the agree with the comments. The claimant did not agree with the comments, and so did not sign it.

222. It was put to the claimant during cross examination that she was seeking to change the respondent's policies. She denied this, stating that what she requested was that the respondent follows its policies.

223. I do not consider the claimant's conduct, as described, is her seeking to change the respondent's procedures. Instead, she is confirming she does not agree with comments contained in that section of the appraisal. She is nonetheless reported to have achieved all targets set in the appraisal, participated in mid-year appraisals and subsequent appraisals. Which further supports my conclusion that she was not seeking to change this system, it is that she disagreed with a comment that was included in one part of the appraisal.

224. Secondly, the allegation that the claimant sought to change policies and procedures relates to the claimant's request to meet with or speak directly with LADO when she learned the respondent's reason for instigating the disciplinary procedure was on LADO's advice. However, the claimant's usual approach was to suggest meeting directly with parents or children where they had complained, which is how the restorative justice meeting with Child S and Child T in March 2022 came to be arranged. Against that background, if the respondent's assertion is that the claimant sought to change policies and procedures is partly based on her suggesting a LADO meeting, in my judgment, that assertion is not justified. It is nothing more than her suggesting a way to try to resolve a complaint.

225. As to complaints against the claimant continuing despite the support she has been offered, this is dealt with at paragraph 261 herein.

226. Finally, as to LADO's assessment that in light of the pattern on the claimant's behaviour, there is likely to be a risk of emotional harm, the disciplinary panel did not uphold that finding, as expressly stated when dealing with allegation 3.

Allegation 3

There is a historical, ongoing pattern of SM's behaviour towards children which have adversely impacted on SM's relationship with the school community and has resulted in a breakdown in trust and confidence. The school cannot trust that she will comply with the policies and procedures.

Despite all the support in place, the employee has failed to acknowledge her own behaviour or the impact of her behaviours on children. For this reason, the employee continues to behave outside of the school's policies and procedures and there continues to be a detrimental impact on the children's emotional well-being.

The school has little or no confidence that the employee will change her behaviour, because of her unwillingness to acknowledge and recognise her own behaviours and its impact on others, despite the support in place. The employee has demonstrated that she is unwilling/ unable to follow reasonable management instructions and seeks to change or alter established policies and procedures when she does not accept them. She fails to acknowledge the reasons for why following these policies or procedures are important and that they are in place to safeguard all parties. This will therefore continue to place children at risk of harm.

227. It is evident that there is a consistent theme to the allegations made against the claimant regarding her interaction with children, which some children report makes them feel scared or even vary scared, that she's angry and always shouting. There was one incident of a child being found to have lied or at least exaggerated when complaining about the claimant following an investigation by Mr Newman. However, aside from Ms Ghezzi's questioning of Child O, there is limited evidence that the children's accounts were probed or tested when they complained about feeling scared. In fact, Ms Nichols acknowledged she did not do so, and that she accepted the complaints at face value.

228. The respondent seems to accept what a child reported was true and/or accurate. Even on occasions when a child complained about the claimant, and she demonstrated she had not taught the child on the date specified, the respondent tended to nonetheless accept the child's account of the claimant's behaviour.

229. Where specific allegations are made, the respondent finds these allegations are proven, even where the evidence is unsatisfactory, ambiguous or incomplete, or the allegations are relied on without any sufficient regard to the claimant's explanation.

230. Below are a some of the specific incidents relied on by the respondent, which it has found proven where there has been a failure to take into account the claimant's explanation, or there are deficiencies in the evidence.

    230.1 Regarding 10th January 2020, the claimant's account that she was trying to find a child with a head injury, or that she had asked Ms

Mardling to assist Mr Komeh, which Ms Mardling agreed to but then failed to do does not appear to have been considered.

230.2 Ms Ghezzi's account of 13th January 2020 when she walks past the claimant reproaching a child, is accepted, without taking into account Ms Ghezzi witnessed a snapshot of the exchange, the claimant's explanation that she used the sandwich method, or Ms Omoniyi's description of the claimant's demeanour in the lesson.

230.3 The claimant's explanation of the interaction with Child O on 12th February 2020, who was play fighting, at risk of potential injury and that the claimant reported the incident to the class teacher at the time.

230.4 The claimant's interaction with Child K on 10th September 2021, witnessed by a teaching assistant who saw nothing problematic about the claimant's conduct.

230.5 Child M alleging that on 31st January and 1st February 2022 she was too scared to ask the claimant to use the toilet, even though the claimant did not cover her class on 31st January and it's unclear whether the claimant covered her class on 1st February.

230.6 The inconsistencies in Child O's account relating to events on 23rd February, 24th February and 3rd March 2022, which are dealt with above.

231. The respondent's view, which I accept, is that a number of complaints over many years, with a broadly consistent theme were being made against the claimant by different stakeholders. However, it is still necessary to give proper consideration to whether the evidence relied on for specific complaints is sufficient, and I don't consider the respondent has done so.

232. As to the more general complaints regarding the claimant, the respondent relied on the results of the Beech class March 2022 survey, even though some of the criticisms of the claimant were prima facie baseless (see paragraph 176 above).

233. Another difficulty with the survey is that the allegations against the claimant are general, none refer to a specific incident when the claimant is said to have made them sad or scared. The general nature of complaints is also relevant when considering the complaints made on or relating to 21st January 2020, 22nd January 2020, 29th January 2020, and 16th March 2021. Relying on general complaints makes it difficult for the claimant to provide her account of a complaint where no specific incident is identified.

234. One theme of complaints made is that the claimant is said to be angry. Whether the claimant is angry is only something she would know, and she denies interacting angrily with the children. Whether a child believes the claimant is angry, is likely to be based on that child's perception, which may or may not be accurate. For instance, where a teacher is strict, as it is

accepted the claimant is, a child may interpret even her mild reproach as anger.

235. Ms Amien-Cloete was asked about this during her oral evidence, and she stated that from a safeguarding perspective, it was the views of the child that were taken into account. However, as stated above, aside from Ms Ghezzi's questioning of Child O, and Mr Newmans enquiries regarding another child's complaints, there appears to have been little or no probing of the truthfulness or accuracy of the children's complaints.

236. Generally, I found Ms Amien-Cloete to have almost unshakeable confidence in the pupils. For instance, when she was cross examined as to whether some of the words used to describe the claimant were age appropriate, and appeared somewhat sophisticated for the child's age group, without a moment's hesitation, she responded that one should not underestimate children. In my judgment, that response lacks objectivity. One word attributed to Child O in quotation marks was that he felt "petrified". Other words children are claimed to have used to describe the claimant are that she is aggressive and intimidating, the latter word being the one Ms Amien-Cloete was specifically cross examined on. Comparing those words, to the words used by Beech class in Ms Nichols' March 2022 survey, where they describe the claimant as "angry" "always shouting" "scary" and "mad", there is a marked difference, which tends to undermine Ms Amien-Cloete's confidence in the children's vocabulary. It also suggests that where complaints are made by parents, the complaint reflects the parent's words, not the child's.

237. In her evidence Ms Amien-Cloete displayed a genuine concern for the pupil's wellbeing and safeguarding them from harm, which is entirely consistent with the respondent's legal obligation, and one that Ms Amien-Cloete was evidently deeply committed to. However, again I found her to lack objectivity in the application of this principle. For instance, she saw nothing wrong with her advice to the claimant during her 2020/2021 appraisal to display a "soft" facial expression. In particular, Ms Amien-Cloete failed to appreciate how such comments may be viewed from an equality perspective, particularly as regards race.

238. Ms Amien-Cloete written and oral evidence display a lack of insight around unconscious racial bias. When the claimant initially objects to the comments, Ms Amien-Cloete focuses only on the advice regarding the claimant's "body language". Nonetheless, I find the claimant was justified in perceiving these comments, particularly advising the claimant to have "soft facial" features as indicative of negative racial stereotyping, more specifically racial anger bias where one more readily misattributes anger to a black person compared to a white person. This comment seems to reflect the trope of the claimant as an "angry black woman" to use the claimant's words.

239. Ms Amien-Cloete stood by this comment during the investigation meeting (see paragraph 8.2.8 at page 930). In response to whether Ms Amien-Cloete had concerns with Ms Moody's facial expressions, Ms Amien-Cloete claimed that when communicating with her, Ms Moody has a very angry facial expression, never making eye contact, but appearing angry and tense. In response to Ms

Iwobi suggesting the above might be Ms Moody's (resting) face, Ms Amien-Cloete said she has seen Ms Moody smiling and quite relaxed at times and that is not the face Ms Amien-Cloete experiences.

240. Ms Amien-Cloete's response to Ms Iwobi does not answer the question the latter asked her. Ms Amien-Cloete answers by describing how the claimant's face is different when she's smiling. However, the claimant smiling is not her resting face. This comment tends to suggest that unless the claimant is smiling, Ms Amien-Cloete seems to think the claimant is tense or is angry. This indicates unconscious racial anger bias on Ms Amien-Cloete's part.

241. Ms Amien-Cloete also failed to appreciate the impact of this comment on the claimant, or how strongly the claimant objected to the comment, even though by refusing to sign the appraisal form containing this comment the claimant did not receive her annual pay increment. That should have caused Ms Amien-Cloete to pause for thought.

242. I also consider that when the claimant or her union representative sought to raise issues regarding discrimination, Ms Amien-Cloete was initially somewhat dismissive of these. In his e-mail to Ms Amien Cloete sent on 8th November 2018, Mr Taper reported he found the conduct of Ms Melehi, a member of the senior management team, towards the claimant to be inappropriate, bullying and harassment. In the same e-mail, Mr Taper referred to the claimant being stereotyped. I have seen no evidence that Ms Amien-Cloete ever asked the claimant about these comments.

243. Some time later, the claimant complained of bias during the disciplinary hearing on 13th February 2020, she also complained of bias and profiling on 30th April 2020, of discriminatory behaviour in her November 2020 appeal, on 16th July 2021 she complained Ms Amien-Cloete's comments in the 2020/2021 appraisal were discriminatory and stereotyping, and she complained of discrimination during her guidance review meeting on 25th January 2022. It is in response to the latter complaint, that Ms Amien-Cloete first expressly addresses the issue of discrimination. However, Ms Amien-Cloete's response is that she did not understand the basis of the allegations, but Ms Amien-Cloete displayed no particular interest in seeking to understand.

244. I also find that the respondent's view of race discrimination to be somewhat simplistic, and that it seemed to lose focus on equality at the expense of safeguarding, rather than achieving a balance between them.

245. Regarding the respondent's simplistic approach to race discrimination: during the investigation meeting and at the start of her oral evidence, the claimant was asked how she would describe the race or ethnicity of various individuals, even though a number of those individuals were not relied on as comparators. The respondent's written evidence repeatedly states that Ms Williams who conducted the external investigation (or fact find) in 2021, and Ms Iwobi, are black. This point was put to the claimant in cross examination. Thus, implying the investigations wouldn't be discriminatory because the investigators are black. This position tends to suggest they are immune from unconscious bias because they are black, which is not necessarily the case.

246. As to the failure to achieve a balance between equality and safeguarding, in all informal meetings, guidance reviews, appraisals and disciplinary processes in 2020 and 2022, the respondent did not consider the claimant's race to be a relevant consideration. That was despite her raising this prior to the 2020 disciplinary proceedings, and on various occasions prior to the 2022 disciplinary proceedings.

247. Another indicator that equality was not prioritised was in relation to the training governors received. Mr Finn had previously been chair of governors, and was chair of the 2022 disciplinary panel. During the hearing I asked him what training the respondent had provided to enable him to fulfil his role, he referred to training he had received on safeguarding and he received training in connected with his area of responsibility as a governor. Even after probing, he did not mention receiving any equality training. When I asked whether he had received any such training, he explained he had but not through the respondent, but had undertaken such training as part of his own professional development for his outside business. I find it surprising that the respondent has not ensured governors, particularly someone who had been chair of governors, receives such training.

248. Returning to the treatment of issues of race during the disciplinary process. Ms Iwobi also refers to Ms Nichols and Ms Omolaiye who are both black, but stated in their interviews they do not consider the respondent treats them unfairly or racially discriminates. However, unconscious bias may manifest itself in different ways even how it influences an individual's view of different people of the same race, depending on how closely that individual perceives someone may fit a stereotype.

249. I find these factors reflect the respondent's somewhat simplistic view of race discrimination, seemingly limiting it to overt discrimination, and also a lack of consideration for when it may be at play.

250. Ms Iwobi points out that Ms Omolaiye is black, yet she accepted Ms Amien-Cloete's feedback regarding adapting her communication style, but Ms Omolaiye did not consider she had been treated unfairly or discriminated against. According to Ms Amien-Cloete's oral evidence, the advice she has given relates to tone of voice and body language. But there is no indication that the feedback given to Ms Omolaiye suggested she had an angry face that required her to soften her features, that she intimidated children so should avoid "towering" over them, or that it reflected stereotyping, whereas the feedback to the claimant echoes a racial trope.

251. As with anger, dealt with above, whether someone is shouting, raising their voice, or their voice is at an ordinary volume may also be subjective. Members of staff distinguish between shouting and raising one's voice. For instance, Ms Amien-Cloete and Ms Ghezzi both state the school is a no shouting school. Yet Ms Ghezzi acknowledged occasionally adults may need to raise their voices, for instance in the playground (see paragraph 7.3.20 on page 899). Ms Ghezzi also acknowledges "… some children find it difficult to tell the difference between loud voices and shouting …" (see paragraph 7.3.20 on

page 899). Similarly, Ms Omolaiye comments that some children think someone is shouting unless they speak in a very low voice (see page 931 paragraph 8.2.15).

252. The definition used of a safeguarding concern also appears to be subjective. During cross-examination, Ms. Amien-Cloete defined a safeguarding issue to be where an observer witnesses an interaction with a child which makes the observer uncomfortable. There are likely to be incidents which would easily and universally be recognised as safeguarding issues, but there are also incidents where the assessment is likely to be highly subjective.

253. This subjectivity is further reinforced by Ms Amien-Cloete stating during the disciplinary hearing that: “Children with SEND are often more reliant on body language and facial expression to interpret what is being communicated.”

254. It means what a child with SEND interprets as the claimant being angry, may not be anger at all on her part. This may also explain why a high proportion of the complaints are from SEND children.

255. Subjectivity is relevant to many of the complaints, which relate to how the claimant is perceived or her alleged manner. For instance, Ms Amien-Cloete acknowledges Ms Kellie-Roberts and the claimant’s behaviour management is the same “but their manner for executing those strategies was different” (see paragraph 7.3.16 at page 898). She made a similar comment regarding Child M stating “Ms Moody’s manner … instils fear in the children, where they do not feel comfortable to ask to go to the toilet” (paragraph 7.12.9 at page 911). This example is telling because the claimant did not teach Child M on one of the days in question, and may not have taught her on the second day either.

256. Also, summarising Ms Williams’ fact find, Ms Iwobi writes: Ms Moody was using the behaviour strategies to good effect to get the children to comply, her manner made children feel anxious, causing the children to complain to their parents” (paragraph 7.12.20 page 913). There are similar examples at paragraphs 7.13.4 on page 913, paragraph 8.2.9 on page 930 and paragraph 9.16.11 on page 963.

257. Where the above references relate to specific incidents, they are not to the claimant shouting at or even raising her voice to children, otherwise one would have expected the person describing the incident to say that. Nor is it said that she’s used inappropriate language or been overly strict. As to the latter, the respondent acknowledges that the claimant’s behaviour management is similar to others, which is reflected in the results from the Beech class survey. As stated, it’s not the claimant’s behaviour management, but the manner in which she implements behaviour management. The vagueness of expressions such as “manner”, and “tone”, increase the likelihood of subjectiveness and unconscious racial bias influencing the responses.

258. The subjectiveness of any assessment of the claimant’s manner, or how she may be perceived, is also illustrated by the stark differences in the survey

responses from the pupils in Beech class, which points to a degree of subjectivity.

259. It is evident that several pupils in Beech class reported serious difficulties with the claimant, children in other classes have also done so either themselves or through their parents. Ms Iwobi correctly identified there was broad consistency across the various complaints received. However, there are other consistencies which Ms Iwobi has not taken into account when reaching her conclusions. In particular, that broadly speaking, when an adult is present when an allegation has been made, they have not witnessed any problematic behaviour from the claimant.

260. Ms Iwobi suggests that is because the claimant's problematic conduct happens when no adults are around. However, apart from the incidents on 13th January 2020 and 16th December 2021, it's unclear which other incident is said to have occurred without another adult present. Furthermore, the claimant told Ms Iwobi that when there is no other adult present, she leaves the class door open, which wasn't disputed. It means that if she was shouting at children, anyone in the hallway or possibly even another class would hear.

261. While acknowledging the respondent supported the claimant with training and guidance, these measures focused only on changes the claimant needed to make. It never occurred to the respondent to explore whether unconscious racial bias was the cause or contributed to the complaints being made or how the complaints have been or were being handled.

262. Ms Iwobi accepts Ms Nichols' opinion that the children have not colluded or been malicious in their survey responses about the claimant. However, Ms Nichols acknowledges that the children have spoken amongst themselves.

263. The respondent should view the evidence from all likely viewpoints, including whether unconscious racial bias may be at play, before reaching its conclusion. And based on the evidence available to the respondent, it should have considered whether there had been racial stereotyping in this case. The available information was, firstly, whether someone perceives another person as angry, scary, shouting, raising their voice or shouting, can be subjective. Secondly, how someone perceives another's tone and manner can also be subjective. Thirdly, some of the survey responses indicate that a few complaints were baseless based on the claimant's name or because she was black. Some complaints did not stand up to scrutiny, complaining about the claimant on days she did not teach them or when an adult present witnessed no problematic behaviour. The evidence of the children talking amongst themselves about the claimant, rumour and/or her reputation could also be a factor influencing the children's perspective. This was sufficient information for the respondent to at least explore whether racial bias may be at play, but it did not do so. As stated, it focused entirely on the claimant being the cause of the problem.

264. I consider the failure to explore or investigate unconscious racial bias, combined with the deficiencies in the evidence, particularly as it relates to

specific allegations seriously undermines the respondent's approach, meaning the conclusions it has reached are fundamentally flawed.

265. When considering the claimant's Equality Act 2010 complaints, and the degree to which unconscious racial bias may have influenced how complaints made against the claimant were perceived and dealt with, the way the claimant dealt with cross examination is relevant. She was cross examined very closely for almost one day. She gave her answers calmly, without any sign of anger or irritation, despite Ms Anderson's proper but robust challenge of her evidence. The only time the claimant's demeanour changed was when she became tearful while cross examined about Ms Amien-Cloete's comments that she should display soft facial features and she shouldn't tower over the children. I found the claimant's manner and tone during cross examination to be appropriate, and at odds with the general tenor of the complaints.

266. In my view the complaints made against the claimant reinforced Ms Amien-Cloete's own view of the claimant, which I find was based on negative racial stereotyping. She perceived the claimant to be angry, she failed to consider the claimant's supposedly "angry face" was simply her resting face, even when Ms Iwobi asked her directly. When the claimant repeatedly raised that her treatment was based on prejudice, stereotypes and profiling, Ms Amien-Cloete initially failed to address these points. She also did not address these points when they were raised by Mr Taper in his e-mail sent on 8th November 2018, when he complained that the claimant was being subjected to discrimination, including a heightened level of scrutiny.

267. Some of the respondent's allegations and the claimant's informal concerns are interlinked. The respondent regarded the claimant's refusal to accept its findings and recommendations that her interaction with pupils was sometimes inappropriate, while the claimant considered the respondent's view was based on discriminatory reasons.

268. Ms Iwobi concludes that the claimant's informal concerns do not stand up to scrutiny. As part of her additional observations, Ms Iwobi states:

It remains unclear why Ms Moody waited until March 2022 to raise/disclose formally her dated concerns, when she had opportunities to do so earlier. Consequently, it was not clear whether aspects of Ms Moody's more recent "informal concerns" against Ms Amien-Cloete and Ms Ghezzi were intentionally vexatious and/or malicious and whether some of Ms Moody's claims presented as attempts to cause reputational damage to senior leaders who had raised concerns about Ms Moody's practice.

269. Ms Iwobi's comment does not seem to take into account that before the claimant e-mailed Ms Amien-Cloete in March 2022, she had previously raised this issue, including in earlier e-mails to Ms Amien-Cloete about what she perceived to be biased and discriminatory treatment, as set out above.

270. In reality, the claimant had complained prior to her e-mail sent on 11th March 2022, her earlier complaints were either not addressed or were denied without

investigation. When she raised the complaint in March 2022, Ms Iwobi considered the timing of the complaint suggested it was vexatious or malicious, and consequently recommended that the claimant has caused the relationship between the claimant and the respondent to irretrievably breakdown. Ms Iwobi made that recommendation to the respondent as a fourth allegation, but it appears to be based on Ms Iwobi's mistaken belief that March 2022 was the first time the claimant had e-mailed Ms Amien-Cloete about concerns of this nature.

Allegation 4

The cumulative impact of your actions is such that the school has lost trust and confidence. During the investigation, it is clear that Sandra has also lost trust and confidence in the school and the school does not believe that this trust and confidence can be repaired.

The panel are asked to consider whether there has been an irretrievable relationship breakdown between the school and yourself, as the employee, such that the relationship is "at the point of no return", with "no reasonable prospect of reconciliation" or of a productive future working relationship between the school and the employee in question. If this is the case, the governors will need to consider dismissal on grounds of an irretrievable breakdown of the relationship.

271. Some of the wording of allegation 4 is framed as a statements or conclusion rather than an allegation. For instance, the opening sentence asserts that the school has lost trust and confidence in the claimant, which is stated before any evidence had been heard. The allegation continues that "the school does not believe that this trust and confidence can be repaired." It reads as if the respondent had already concluded at the start of the disciplinary hearing that the trust and confidence between the claimant and the respondent had been irretrievably lost.

272. This fourth allegation was not amongst the allegations notified to the claimant before the investigation meetings. The respondent states that she was asked about her relationship with the respondent during the second investigation meeting, which is correct: she was asked whether she considered the relationship between her and the school had broken down, which she said it had. When asked whether it had broken down irretrievably, her union representative, Mr Vanson stated the union considered the relationship was retrievable, to which the claimant is recorded as nodding. This discussion did not make clear that this was or would be treated as a disciplinary matter, nor was she informed this was a matter that could result in dismissal. Furthermore, the issue of trust and confidence was not specifically discussed, it was the more general issue of whether there had been a breakdown in the relationship.

273. The first time the claimant was informed that this was a fourth allegation was in the letter dated 15th November 2022 sent to her by Dr Henly which confirmed the outcome of the investigation was that the matter was proceeding to a disciplinary hearing, to be held on 6th December 2022.

274. By recommending an additional (fourth) allegation, I consider Ms Iwobi went beyond her role as an investigator, which undermines her impartiality. She was tasked with investigating 3 allegations, but after completing the investigation, she proposed a fourth allegation. This resulted in a number of procedural irregularities. The first was that the claimant was not informed prior to either of the investigation meetings that whether there was a loss of trust and confidence between the parties was part of the investigation. The respondent maintained this was not unfair because Ms Iwobi discussed whether the relationship had irretrievably broken down during the claimant's second investigation meeting. However, at that time, the claimant was unaware this was a disciplinary issue that could, and in fact did, lead to her dismissal.

275. I do not accept Ms Anderson's submission that Ms Iwobi's recommending a fourth allegation was in accordance with the scope of her instructions. Ms Anderson relies on paragraph 3.1.8 on page 888, which stated one purpose of the investigation was "To make recommendations regarding the way forward." I consider paragraph 3.1.8 refers to recommendations on the way forward in relation to the complaints, namely whether she recommended disciplinary action for some, all or none of the complaints. That is consistent with the ACAS guidance on investigations at work: section 6 refers to recommendations should be about whether formal action, informal action or no further action is recommended.

276. A further issue which tends to undermine Ms Iwobi's impartiality is that as part of the 2022 disciplinary proceedings, the claimant asked Ms Iwobi to interview Ms Brown as part of the investigation, but Ms Iwobi did not do so. The claimant says Ms Iwobi only interviewed the witnesses that the respondent requested. The respondent maintains the claimant had the opportunity to call Ms Brown as a witness for the disciplinary hearing, and that reference was made to her in the appendices. However, there were over 130 appendices to the 90-page investigation report, and as Mr Finn confirmed in cross examination, while the disciplinary panel were provided with a complete bundle, they had particular regard to the investigation report. In fact, from his oral evidence, it seems the disciplinary panel relied heavily on the investigation report, because Mr Finn referred to Ms Iwobi as an expert. He also stated the panel trusted Ms Iwobi would include everything relevant in her report, and that she would have interviewed Ms Brown if she considered it relevant. The extent of the panel's reliance on Ms Iwobi's report means that the disciplinary hearing did not cure the deficiencies and irregularities in the investigation.

277. Yet further, when the school was making enquiries before Ms Iwobi was appointed, Ms Brown made a statement on 7th March 2022. When that statement was read to Mr Finn during his oral evidence, he stated he did not recall being referred to the statement during the disciplinary hearing. And when asked whether, had he been referred to the statement whether it would have changed his decision, he acknowledged it may have done.

278. I find that a reasonable employer in the disciplinary panel's position, and having regard to the severity of the allegations being made against the

claimant, would have recognised the deficiencies and irregularities in the investigation report and would not consider it reasonable to place such reliance on its contents.

279. The disciplinary hearing considered whether mediation would resolve the relationship difficulties that had arisen between the claimant and the respondent, or whether the claimant could be redeployed to work at another school within the federation. Ms Amien-Cloete did not consider mediation or redeployment would address the situation. In her opinion, the claimant refused to follow the relevant policies, and instead sought to change them where she disagreed with them. So according to Ms Amien-Cloete, neither mediation nor redeployment would resolve these.

280. For the reasons already stated, I do not consider the claimant sought to change policies, I also consider this is an issue which has not been adequately raised with her prior to the disciplinary hearing. For instance, in the claimant's appraisals or guidance review meetings the respondent has not specified which specific policies she has refused to follow or sought to change, and which provisions within those policies, nor was it raised with her during the investigation meeting.

281. In a letter to the claimant dated 16th December 2022 the respondent notified her of the outcome of the disciplinary hearing, which was as follows:

282. Allegation 1: the panel considered on the balance of probabilities the Child O had feigned breathing difficulties to avoid being in the claimant's class. However, the panel did not consider the allegation constituted emotional harm. Accordingly, the allegation was partially upheld.

283. Regarding allegation 2: the panel determined that the allegation on balance was partially upheld due to the volume of data that demonstrated the number of safeguarding incidents and complaints involving pupils at the school. In addition, it considered a pattern had emerged that the children involved in exchanges with the claimant were vulnerable. There was no specific finding regarding the various allegations relied on to support allegation 2.

284. Allegation 3: the panel considered the claimant's actions demonstrated that she had not acknowledged the seriousness of the issues and displayed a lack of self- reflection meaning the pattern of behaviour was likely to continue. Therefore, the Panel concluded that trust and confidence had broken down because, based on her past performance, management believe the claimant is a risk to the children's emotional well- being.

285. The panel were unable to conclude that children were being placed at risk of harm in the future. Therefore, allegation 3 was partly upheld.

286. In relation to allegations 1, 2, and 3, the Panel issued a Final Written Warning to remain on the claimant's file for 9 months.

287. As to allegation 4:

The panel upheld this allegation because the prospect of reconciliation and any productive future working relationship between both parties is not possible. You were asked by the panel whether or not you perceived that management were racist. You were unable to confirm your response. You indicated at the hearing that at the moment you still felt that race may have been an issue. You were not prepared to withdraw your allegation of discrimination until the end of this process. You maintained your view despite the school fully explaining the circumstances and demonstrating that they had applied procedures fairly and consistently. The panel's view is that this continued allegation of discrimination tests that the breakdown in relationships is irreconcilable.

288. When dealing with allegation 4, the disciplinary panel's decision, as outline in the letter, does not explain why mediation or deployment were not pursued.

289. The sanction imposed in respect of allegation 4 was that the claimant was dismissed with two months' notice on the grounds of some other substantive reason, namely that a productive future working relationship was not possible. The last day of her employment was 16th February 2023.

290. The letter also notified the claimant that she had until 13th January 2023 to submit any appeal.

291. Paragraph 6.1(e) of the respondent's disciplinary procedure states that where possible the appeal should be heard within 20 working days of the employee submitting their request for an appeal.

Events in 2023

292. The claimant submitted an appeal on 12th January 2023 relying on 4 grounds. Firstly, the respondent failed to follow its disciplinary procedure, for instance by failing to provide a comprehensive summary of the allegations. Secondly, the respondent disregarded various policies such as KCSiE and the ACAS Code to justify its prejudice when pursuing allegations against her, compared to the treatment other members of staff received. Thirdly, she was treated less favourably by being subjected to a harsher level of scrutiny compared to other members of staff. Fourthly, she wished to rely on new evidence, which she would submit in due course.

293. According to the respondent's disciplinary procedure, ordinarily the claimant's appeal should have been heard by around 9th February 2023, being 20 working days from her submitting her appeal request on 12th January 2023. The claimant states she received no response prior to 22nd February 2023. It is correct that she did not receive a substantive response until 22nd February 2023, but Dr Henley acknowledged receipt of the appeal on the date the claimant sent it, namely on 12th January 2023. That acknowledgement is in the bundle, so I accept Dr Henley's evidence that she responded to acknowledge receipt of the claimant's appeal.

294. Nonetheless, I find there was a significant delay in responding to the claimant regarding her appeal, because Dr Henley's acknowledgement is merely that, it does not substantively address the claimant's appeal request.

295. The claimant initially received no substantive response to her appeal, so e-mailed the respondent on 15th February 2023 seeking an update. On 22nd February 2023 Dr Henly wrote to the claimant requesting clarification regarding certain aspects of her appeal. The claimant addressed these queries in an e-mail sent on 25th February 2023.

296. By a letter dated 24th March 2023, the claimant was invited to attend an appeal hearing on 26th April 2023.

297. From 24th March 2023 to 26th April 2023 the claimant and Ms Muir, the respondent's head of governor services, exchanged a series of e-mails. In the event, the claimant did not attend the appeal hearing on 26th April 2023. Dr Henley acknowledges there was a delay in arranging the appeal hearing; in her written and oral evidence she explains there were difficulties finding a panel of governors, who are volunteers, and the school was also working towards achieving full academy status.

298. On 26th April 2023, Dr Henley responded to an e-mail the claimant sent to Ms Moussa stating she would respond substantively by 3rd May 2023, however, she did not respond until 26th June 2023.

299. Dr Henley denies the way the claimant's appeal was dealt with was due to her race.

300. Early conciliation with ACAS began on 10th March 2023, and ended on 21st April 2023. The claimant presented her claim form on 20th May 2023 accompanied by a 30-page particulars of claim. She later submitted amended particulars of claim. The respondent submitted its original grounds of resistance on 20th September 2023, followed by amended grounds of resistance on 24th September 2024, with re-amended grounds of resistance submitted on 29th November 2024.

THE LAW

Time Limits

301. Section 123 of the Equality Act 2010 states:

> *(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—*
>
> *(a) the period of 3 months starting with the date of the act to which the complaint relates, or*
>
> *(b) such other period as the employment tribunal thinks just and equitable.*

> *(2) Proceedings may not be brought in reliance on section 121(1) after the end of*
>
> *(a) …*
>
> *(b) such other period as the employment tribunal thinks just and equitable. the purposes of this section—*
>
> *(3) For the purposes of this section—*
>
> *(a) conduct extending over a period is to be treated as done at the end of the period;*

302. Section 123(1)(a) of the Equality Act 2010 provides that a claim must be brought within three months, starting with the date of the act to which the complaint relates.

303. The three-month time limit is paused during ACAS early conciliation: the period starting with the day after conciliation is initiated, and ending with the day of the ACAS certificate, does not count (section140B(3) the Equality Act). If the ordinary time limit would expire during the period beginning with the date on which the employee contacts ACAS, and ending one month after the day of the ACAS certificate, then the time limit is extended, so that it expires one month after the day of the ACAS certificate (section 140B(4) the Equality Act).

304. Section 123(3)(a) the Equality Act provides that conduct extending over a period is to be treated as done at the end of the period. In ***Hendricks v Commissioner of Police of the Metropolis*** [2003] ICR 530, the Court of Appeal held that Tribunals should not take too literal an approach: the focus should be on the substance of the complaint that the employer was responsible for an ongoing situation or a continuing state of affairs, in which an employee was treated in a discriminatory manner.

305. Section 123(1)(b) the Equality Act provides that the Tribunal may extend the three-month limitation period, where it considers it just and equitable to do so. That is a very broad discretion. In exercising it, the Tribunal should have regard to all the relevant circumstances, which may include factors such as: the reason for the delay; whether the Claimant was aware of his right to claim and/or of the time limits; whether he acted promptly when he became aware of his rights; the conduct of the employer; the length of the extension sought; the extent to which the cogency of the evidence has been affected by the delay; and the balance of prejudice (***Abertawe Bro Morgannwg University Local Health Board v Morgan*** [2018] ICR 1194).

Unfair Dismissal

306. Section 94 of the Employment Rights Act 1996 gives employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to an employment tribunal under section 111. The claimant must show that she was dismissed by the respondent under section 95.

307. So far as is relevant, section 98 of the Employment Rights Act 1996 states:

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show-

(a) the reason (or, if more than one, the principle reason) for the dismissal, and

(b) That it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it-

(a) …

(b) Relates to the conduct of the employee

308. Section 98(4) deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

309. In misconduct dismissals, there is well-established guidance on fairness within section 98(4) in the decisions in **Burchell 1978 IRLR 379** and **Post Office v Foley 2000 IRLR 827**. The Tribunal must decide whether the employer had a genuine belief in the employee's guilt. Then the Tribunal must decide whether the employer held such genuine belief on reasonable grounds and after carrying out a reasonable investigation. In all aspects of the case, including the investigation, the grounds for belief, the penalty imposed, and the procedure followed, the Tribunal must decide whether the employer acted within the band or range of reasonable responses open to an employer in the circumstances. It is immaterial how the Tribunal would have handled the events or what decision it would have made, and the Tribunal must not substitute its view for that of the reasonable employer (**Iceland Frozen Foods Limited v Jones 1982 IRLR 439**, **Sainsbury's Supermarkets Limited v Hitt 2003 IRLR 23**, and **London Ambulance Service NHS Trust v Small 2009 IRLR 563**).

The Equality Act

310. The Equality Act 2010 sets out the legislative provisions relevant to the complaints of discrimination and harassment in this case. An explanation of the Act's provisions are contained in the Employment statutory code of

practice published by the Equality and Human Rights Commission (the "Code"), which is a tool to assist tribunals when interpreting the law.

311. Section 4 of the Act lists the protected characteristics covered by its provisions, which includes race.

312. Race is defined at section 9(1) as including colour, nationality, ethnic or national origins.

Direct Discrimination

313. Section 13(1) of the Equality Act 2010 states:

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

314. Under section 13 (1) of the Equality Act 2010 direct discrimination takes place where a person treats the claimant less favourably because of race then that person treats or would treat others. Under section 23 (1), when a comparison is made, there must be no material difference between the circumstances relating to each case.

315. Ordinarily, it is appropriate for a tribunal to consider whether the claimant received less favourable treatment than the appropriate comparator, then consider whether the less favourable treatment was because of race. However, in some cases, for example where a hypothetical character is used, the reason why the claimant was treated as she was would be considered first (see *Shamoon v Chief Constable of Royal Ulster Constabulary [2003] IRLR 285).*

316. Decisions are frequently reached for more than one reason. Provided the protected characteristic or, in a victimisation claim, the protected act, had a significant influence on the outcome, discrimination is made out (see *Nagarajan v London Regional Transport [1999] IRLR 572).*

317. It is recognised that very little discrimination today is overt or even deliberate. Witnesses can even be unconsciously prejudice.

Harassment

318. Harassment is defined in section 26(1) of the Equality Act as:

> *(1) A person (A) harasses another (B) if-*
>
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
> *(b) the conduct has the purpose or effect of-*

(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

….

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account-
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect.

319. Paragraph 7.9 of the Code states:

Unwanted conduct "related to" a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic.

Victimisation

320. By section 26 of the Equality Act:

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

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

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

(3) …

(4) …

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

321. In summary, victimisation is where an employer subjects an employee to a detriment because the employee has done a 'protected act' or because the employer believes that the employee has done or might do a protected act in the future.

Burden of Proof

322. Section 136 of the Act deals with the burden of proof, and includes the following:

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

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

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

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

323. Therefore, to determine whether the burden of proof has been discharged requires a two-fold test.

324. Firstly, the claimant must establish, on the balance of probabilities, facts from which the inference could properly be drawn by the tribunal that, in the absence of any other explanation, an unlawful act was committed.

325. If so, the second stage is engaged, which shifts the burden of proof to the respondent who is required to prove on the balance of probabilities, that the treatment in question was in no sense whatsoever on the grounds of the claimant's protected characteristics.

326. Guidelines on the burden of proof were set out by the Court of Appeal in *Igen v Wong [2005] IRLR 258*. At stage one, the burden is on the claimant, who must show there are primary facts from which the Tribunal could decide, in the absence of any other explanation, that there has been unlawful conduct. All that is needed at this stage are facts from which an inference of prohibited conduct is possible. At this stage of the test, the employer's explanation is disregarded.

327. Once the claimant discharges the burden of proof it shifts to the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

328. The Court of Appeal in *Madarassy v Nomura International plc [2007] ICR 867*, a case brought under the then Sex Discrimination Act 1975, states:

The burden of proof does not shift to the employer simply on the claimant establishing a difference in status (EG sex) and a difference in treatment. Those bare facts 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.

CONCLUSIONS ON THE ISSUES

329. I have applied the above law to the findings of fact that I have made in order to answer the questions raised by the issues, and my conclusions on those issues are set out below. In doing so I have taken into account the parties' evidence, arguments and submissions.

Time Limits

Were the complaints made within the time limit in section 123 of the Equality Act 2010? Namely, within three months (plus early conciliation extension) of the act to which the complaint relates?

330. The complaints relied on cover the period from 9th October 2015 to 26th April 2023. The claim form was presented on 20th May 2023. The respondent maintains that any acts relied on prior to 11th December 2022 are outside the time limit, allowing for early conciliation. Therefore, on the respondent's case, any complaints between 9th October 2015 to 10th December 2022 are outside the time limit.

331. I accept that, allowing for the early conciliation extension, specific acts relating to the period prior to 11th December 2022 would be outside the statutory time limit at section 123(1)(a).

If not, was there conduct extending over a period?

332. Having regard to the substance of the complaints from 9th October 2015 to 26th April 2023, I consider the acts complained of amount to conduct extending over a period.

333. The respondent's case is that there is a continuing pattern throughout this period where allegations of a similar nature have been made against the claimant by children, parents and members of staff regarding the claimant's interaction and communication. Therefore, although the person making the various allegations may be different, the nature of the allegations is similar. The claimant's case is that throughout this period the respondent handled those complaints in a discriminatory manner compared to the way complaints regarding other colleagues are dealt with. She said this included subjecting her to a higher level of scrutiny, a more vigorous investigation of complaints made against her, preferring the account given by others over her account, such that she has been found to be guilty of the misconduct alleged, and taking action where less serious or no action was taken against colleagues against whom complaints were made.

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

334. The complaints in relation to the individual causes of action are as follows:

334.1 Direct race discrimination covers the period from 9th October 2015 to 16th December 2022.

334.2 Harassment covers the period 9th October 2015 to 26th April 2023.

334.3 Victimisation covers the period 8th January 2021 to 26th April 2023.

335. With each claim, the end of the period over which the conduct extends is after 11th December 2022, accordingly, I find the claims were brought within the time limit prescribed by section 123(3).

If not, were the claims made within a further period that the Tribunal thinks is just and equitable?

336. In case I am wrong about the claims relating to conduct that extended over a period of time, I will also consider whether it is just and equitable to extend the period.

337. In doing so, I have firstly considered the length of the delay, which is considerable. The claimant is seeking to go back to events which took place ten years ago, which tends to weigh against extending the time limit. The respondent also argues that due to the passage of time, the earlier events involve individuals who no longer work at the school, for instance Ms Walker and Ms Melehi.

338. Having regard to the fact that the 2015 and 2016 allegations are dated, which according to the respondent, will impact its ability to deal with them, I find it is not just and equitable to extend the time limit to cover the claimant's allegations relating to 9th October 2015 and 25th January 2016.

339. I consider it is just an equitable to extend the time limit to cover the events from 16th October 2018 onwards. That is because even though these are dated, and some of these events involve Ms Melehi who no longer works at the school, the respondent states the claimant's file contains information going back to 2017 (see page 293).

340. Furthermore, the allegations that the respondent relied on in the 2022 disciplinary proceedings against the claimant, which resulted in her dismissal, date back to 21st June 2017, a number of these involved Ms Melehi and Ms Ghezzi. Accordingly, the respondent had sufficient information about the earlier events to rely on those events during the 2022 disciplinary proceedings.

341. Therefore, as to whether the respondent will be prejudiced as a result of the time that has elapsed, in my judgment it will not because it has evidently kept historic records regarding employee conduct. In my judgment, as the respondent relied on historic events in relation to the most recent disciplinary process which led to the claimant's dismissal, that would support allowing the claimant to rely on allegations going back at least as far as 21st June

2017 (although the earliest of her claims after that date that has succeeded is 16th October 2018).

342. Another relevant factor is that the claimant contends that she has not always been informed at the time that certain allegations had been made against her, which the respondent's disciplinary panel accepted had sometimes been the case (see paragraph 47 of Mr Finn's witness statement). Therefore, the claimant was not fully aware of all the matters which she now relies on in support of her claims. The claimant became aware of the full extent of the allegations during the 2022 disciplinary proceedings, which culminated in her dismissal.

343. The complaints in relation to the individual causes of action are as follows:

343.1 The earliest finding of direct discrimination is 16th October 2018.

343.2 The earliest allegation of harassment is 16th October 2018; and

343.3 I have found the claimant was not victimised.

344. Therefore, in all the circumstances, I consider it is just and equitable to extend the period for which the claimant may claim to 16th October 2018.

UNFAIR DISMISSAL

Was the claimant dismissed?

345. It is common ground that the claimant was dismissed with effect from 16th February 2023.

What was the reason or principal reason for the dismissal? Was it a potentially fair reason?

346. The claimant states the reason for her dismissal was race, and that the disciplinary process was tainted by race discrimination.

347. The respondent states the reason for dismissal was some substantial other reason, namely breach of trust and confidence. This is a substantial reason which could potentially justify the dismissal as fair. Whether it did so, is considered below.

Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

348. The respondent states the reason or principal reason the claimant is dismissed was because the claimant's "continued allegation of

discrimination suggests that the breakdown in relationships is irreconcilable". In other words, it had lost trust and confidence in the claimant, which constituted some other substantial reason that justified her dismissal because she had alleged the respondent's management team was racist, and despite the respondent explaining to her that it had applied its procedures fairly and consistently, she was not prepared to withdraw the remark. And in some circumstances, dismissing an employee who makes a vexatious and malicious allegation of racism could lead to a loss of trust and confidence.

349. However, despite the investigation report suggesting the allegations may be malicious, the respondent's disciplinary panel makes no express finding that the claimant's complaint of racism is malicious or vexatious. Therefore, I conclude it is dismissing her because it considers she has made an ill-founded allegation which she is not prepared to withdraw. I find that a reasonable employer in the respondent's position would not find that justified dismissal. That is because the respondent's approach could discourage employees with justifiable grounds for claiming discrimination, from complaining, which would undermine their legal protection.

350. However, for the reasons stated at paragraphs 237 to 240, I have found that the respondent has subjected the claimant to race discrimination which reinforces the illegitimacy of the respondent's position. That is because, firstly, it is unlawful, and therefore inherently unreasonable, to discriminate against an employee. Secondly, for an employer to dismiss such an employee because they have complained about the employer's discrimination and refuse to withdraw their legitimate complaint, compounds the ill-treatment. Essentially, it would allow an employer to rely on its own unlawful conduct as grounds to dismiss an employee who complained about its unlawful conduct.

351. As to the alleged loss of trust and confidence, the claimant maintained that her relationship with the respondent had not broken down irretrievably, and her union representative had suggested mediation as one way forward. However, the respondent's view is that the relationship had broken down irretrievably. If, as I have found, the claimant's allegations were well-founded, and yet she still considered the relationship had not broken down irretrievably, I consider in those circumstances, a reasonable employer would not find trust and confidence was lost, where a justifiably aggrieved employee considered it had not been lost.

352. The respondent is a London borough council with considerable HR resources, which resources the decision makers have had access to at every stage. Despite these resources, there were numerous and serious deficiencies and procedural irregularities during the disciplinary process, and particularly during the investigation. These are dealt with at paragraphs 203 to 211, 217 to 220, 228 to 235, 262 to 264 and 274 to 277 above.

353. Taking all these factors into account, the decision to dismiss the claimant was unfair and contrary to equity and the substantial merits of the case.

The respondent states the reason for dismissal was the claimant's misconduct. The claimant states it was race and that the disciplinary process was tainted by race discrimination.

354. I find the reason or principal reason for dismissal was that the claimant had complained about race discrimination, refused to withdraw that complaint, and the respondent considered the complaint of race discrimination to be meritless, and thus it considered the claimant's refusal to withdraw the complaint to be misconduct.

355. I find that misconduct is a potentially fair reason.

If the reason was misconduct the tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

356. I have taken into account that over an extended period of time the respondent had received numerous allegations from multiple sources, that were broadly consistent in their nature, and which in accordance, with its statutory safeguarding duties, it needed to investigate. I therefore consider it was appropriate that it investigate the allegations, and I consider a reasonable employer would do so in these circumstances.

357. However, although the decision to conduct the investigation was reasonable, I consider a reasonable panel tasked with conducting the disciplinary hearing would have identified that the investigation was fundamentally flawed for the reasons stated at paragraphs 203 to 211, 217 to 220, 228 to 235, 262 to 264 and 274 to 277, and would not have relied on the investigation report to the extent the disciplinary panel did in this case.

Was the respondent's belief in the claimant's misconduct genuine?

358. Ms Iwobi carried out the investigation, following which she advised the respondent to add a fourth allegation: that there had been a loss of trust and confidence between the claimant and the respondent. Mr Finn confirmed during his oral evidence, that the disciplinary panel regarded Ms Iwobi as an expert. I consider that the panel trusted her findings, including her conclusion that the claimant's allegations of discrimination were unfounded. I also consider that the panel relied on her judgment in recommending the addition of the fourth allegation, believing there were sufficient grounds to do so. Therefore, I find that, in relying on Ms Iwobi's recommendation, and trusting her judgment, the disciplinary panel genuinely believed the claimant was guilty of misconduct.

Were there reasonable grounds for that belief

359. I consider there were reasonable grounds to investigate the allegations, but I consider that based on the information available at the disciplinary hearing, a reasonable disciplinary panel would have identified the following:

359.1 The earlier complaints by and on behalf of the claimant that she was being discriminated against (see paragraphs 67, 100, 106, 142, 170 and 181 above) had not been substantively addressed.

359.2 Ms Amien-Cloete's comments in the claimant's 2020/2021 appraisal suggested unconscious race bias.

359.3 The claimant's refusal to sign the part of her appraisal containing those comments was more likely to be that she found the comments discriminatory, rather than her seeking to change a process that she disagreed with.

359.4 This was the context in which she refused to withdraw her comment that she had been subjected to race discrimination until after the end of the disciplinary process.

359.5 If, notwithstanding a proper consideration of the above matters, it still considered the claimant's allegation of discrimination was unfounded, a reasonable disciplinary panel would not have concluded there were reasonable grounds to believe this amounted to misconduct, or that it was misconduct that justified dismissal for the reasons stated at paragraphs 349 to 351 above.

At the time the belief was formed, did the respondent carry out a reasonable investigation

360. I do not consider a reasonable investigation was carried out by the respondent. There were multiple and serious deficiencies and irregularities in the investigation process, these are dealt with in more detail above, for instance at paragraphs 203 to 211, 262 to 264 and 274 to 277. I consider a reasonable employer would have identified the inadequacies in the investigation report, but here the disciplinary panel failed to do so, and instead relied on the investigation report.

Did the respondent otherwise act in a procedurally fair manner

361. I have already referred to the procedural irregularities during the disciplinary process, some of the more serious irregularities relate to allegation 4, which was the reason the claimant was dismissed. In summary, the claimant was not informed that there was a fourth allegation during the investigatory stage. Although she was asked during the investigation meeting about whether she considered her relationship with the respondent had broken down (she was not specifically asked about the issue of trust and confidence), she was not informed it was an allegation being relied on against her, or that the allegation could lead to her dismissal. This issue is dealt with in more detail at paragraphs 272 to 275 above.

Was dismissal within the range of reasonable responses.

362. The claimant was not dismissed because of the complaints made about her, instead she was dismissed because she would not withdraw her complaint against the respondent of race discrimination.

363. I have found some of the claimant's allegations of race discrimination are made out, therefore I do not consider it is within the range of reasonable responses to dismiss the claimant for making a legitimate complaint about discrimination.

364. Furthermore, the dismissal letter does not address the reasons why, notwithstanding the claimant's allegation of discrimination, why that situation could not be addressed by mediation or redeployment to another school within the federation.

365. In all the circumstances, I consider dismissal was outside the range of reasonable responses.

DIRECT DISCRIMINATION

366. I remind myself that it is insufficient for the claimant to establish that the respondent has done something which amounts to less favourable treatment, but that applying the relevant burden of proof, I also need to be satisfied that the unfavourable treatment was on the grounds of race.

On 9 October 2015, Miss Melehi judged the Claimant to be guilty based on Miss Walker's testimony of an incident that took place on 19th September 2015, before hearing the Claimants version of events.

367. In the absence of any evidence to the contrary, I have accepted the claimant's evidence that Ms Melehi accepted Ms Walker's account of events before speaking with the claimant about what happened.

Was that less favourable treatment on the grounds of race?

368. I find it is less favourable treatment to have believed Ms Walker's account before hearing from the claimant. However, no evidence has been provided to indicate that Ms Melehi subjected the claimant to this less favourable treatment on the grounds of race. Therefore, I conclude the claimant has failed to discharge the burden of proving there is evidence from which it could be inferred that the less favourable treatment was due to race.

On 25 January 2016, Miss Melehi called for a pre-guidance meeting with the Claimant. The Claimant alleges that "other people" including Miss Walker had issues with the Claimant's professional behaviour.

369. In the absence of any evidence to the contrary, I have accepted the claimant's evidence that Ms Melehi arrange a pre-guidance meeting because some individuals have issues with the claimant, without identifying for the claimant what the issues are.

Was that less favourable treatment on the grounds of race?

370. I find that calling a pre-guidance meeting without informing the claimant of what issues others had with her behaviour would amount to less favourable treatment. However, no evidence has been provided to indicate that Ms Melehi subjected the claimant to this less favourable treatment on the grounds of race. Therefore, I conclude the claimant has failed to discharge the burden of proving there is evidence from which it could be inferred that the less favourable treatment was due to race.

During a meeting with the claimant on 22 June 2018, did Mr Black accuse her of shouting based on Miss Rachel Brett's report? Did the respondent believe her over the claimant?

371. I have found the claimant was accused by Mr Black of shouting, and that he preferred Ms Brett's report over the claimant's denial of shouting.

Was that less favourable treatment on the grounds of race?

372. I find that Mr Black's accusation, and preferring Ms Brett's account, would amount to less favourable treatment.

373. However, no evidence has been provided to indicate that Mr Black subjected the claimant to this less favourable treatment on the grounds of race. Therefore, I conclude the claimant has failed to discharge the burden of proving there is evidence from which it could be inferred that the less favourable treatment was due to race.

At a Guidance Review meeting on 12th July 2018 was the Claimant told different allegations to those Mr Black had told her about on 22nd June 2018?

374. The allegations discussed at the meeting on 12th July 2018 are set out in Ms Melehi's letter dated 17th July 2018, which confirms that as well as discussing the playground incident on 19th June 2018, an additional matter relating to a school trip on 2nd July 2018 was also discussed. Therefore, to the extent that an additional matter was discussed, that additional allegation was different because it had not been discussed at the earlier meeting with Mr Black.

Was that less favourable treatment on the grounds of race?

375. I do not find this amounts to less favourable treatment. The 2nd July 2018 school trip post-dates the claimant's meeting with Mr Black on 22nd June 2018, which explains why it could not be discussed at the earlier meeting. In her letter dated 5th July 2018 Ms Melehi provided advance warning that this matter would be discussed. Although the claimant appears to have resolved this incident directly with Miss Brett, as it related to the protocol around school trips and parent-helpers, it was reasonable for this to be discussed at the guidance meeting that was already scheduled.

376. Therefore, I find the additional allegation discussed on 12th July 2018 in no way whatsoever was due to the claimant's race.

During a meeting with Miss Ghezzi and Miss Melehi on 20 July 2018, was the claimant accused of being hostile, and denied an opportunity of saying her side of the story?

377. I have already accepted the claimant's account of the meeting on 20th July 2018 (see paragraphs 58 to 61 above).

Was that less favourable treatment on the grounds of race?

378. I find this was less favourable treatment, because the claimant's account, which I accept, is that she was accused of behaving in a hostile manner, she denies this, but wasn't given an opportunity to provide her account. However, the claimant's account does not disclose any basis for finding the less favourable treatment was on the grounds of race. Therefore, I conclude the claimant has failed to discharge the burden of proving there is evidence from which it could be inferred that the less favourable treatment was due to race.

Did Miss Melehi wish to place the claimant on another 6 week Guidance based on a class teacher allegations during an end of 6 week Guidance Review meeting held on 16th October 2018 based on a class teacher's allegation.

379. I have already found that Ms Melehi had initially intended to extend the 6-week guidance review process for the reasons stated at paragraph 71 above, although the issue was later addressed via mediation.

Was that less favourable treatment on the grounds of race?

380. I also find the claimant has discharged the burden of proving that it could be inferred that the original intention to extend the review process was discriminatory. That is because in Mr Taper's 8th November 2018 e-mail regarding the guidance review meeting, he stated the claimant was being subjected to an inappropriate amount of scrutiny, and that he had never known anyone to be kept in the review process after meeting their targets. These indicate less favourable treatment.

381. It can also be inferred from Mr Taper's e-mail that the less favourable treatment was on the grounds of race, because his criticism of Ms Melehi's attitude towards the claimant during the meeting, includes the allegation that she was stereotyping the claimant, and that her attitude was bullying and harassing. Taken together, I find these discharge the claimant's burden of proving that there is evidence from which it could be inferred that Ms Melehi's proposal to extend the guidance review was less favourable treatment on the grounds of race.

382. Accordingly, the burden of proof shifts to the respondent. However, I find the respondent has failed to discharge the burden of proving that Ms Melehi would have proposed an extension of the review guidance process to a member of staff in the same circumstances as the claimant, but who was not black. I consider Ms Amien-Cloete did not sufficiently address the concerns that Mr Taper raised regarding the initial proposal to keep the claimant in the review guidance process, that according to him this was unheard of, that the

claimant was being subjected to a higher level of scrutiny, and that Ms Melehi's behaviour was bullying and made comments that were stereotyping. Absent an explanation from the respondent, I find it has failed to discharge the burden of proof.

Was the Claimant's requests for regular study time made to SLT denied on 30th October 2019

383. This assertion is not disputed because it is common ground that the claimant requested study leave, but the respondent did not allow her to take regular study leave.

Was that less favourable treatment on the grounds of race?

384. Ms Amien-Cloete explained that while Ms Currier was allowed study leave, her circumstances were different because her course was not funded by the respondent, and as a teaching assistant, arranging cover for Ms Currier was more straightforward. However, as the claimant was a HLTA, organising cover was more challenging, and where cover was unavailable, the respondent was unable to allow her study leave.

385. Therefore, while the claimant and Ms Currier were treated differently, I find their circumstances were not the same. I find Ms Amien-Cloete's explanation is cogent, and demonstrates the decision was based on the respondent's staffing needs.

386. To the extent that there was a different in treatment, I do not find it was less favourable treatment. Of if it was less favourable treatment, I consider the claimant has failed to discharge the burden of proving there is evidence from which it could be inferred that the less favourable treatment was due to race.

On 13 January 2020, was Miss Ghezzi believed over the Claimant in regards to an incident.

387. At the time of Ms Ghezzi's complaint, namely on 13th January 2020, there is no evidence that the respondent preferred Ms Ghezzi's account. Instead, Ms Amien-Cloete took statements from both Ms Ghezzi and the claimant as part of a broader fact find. Therefore, I conclude the claimant has failed to discharge the burden of proving there is evidence from which it could be inferred that there was less favourable treatment due to race.

On 20 January 2020, Mrs Amien-Cloete investigated Mrs Parker when she said a rude comment to the Claimant.

388. The claimant no longer pursues this allegation.

On 2 October 2020, was the Claimant told to mix bubbles during the height of the Covid 19 pandemic with Miss Mardling.

389. It is common ground that the claimant was told to mix COVID bubbles.

Was that less favourable treatment on the grounds of race?

390. The claimant was at higher risk of COVID due to her ethnicity, which meant swapping her COVID bubble potentially increased that risk yet further.

391. However, on resuming her HLTA duties, it is reasonable the respondent may wish to reassign her elsewhere given there were fewer HLTAs. Ms Amien-Cloete's evidence is that another reason she wanted the claimant and Ms Mardling to swap bubbles was to assign the claimant to older children which better suited her skills, and Ms Mardling was better suited to younger children, which is a legitimate management decision.

392. While the claimant was likely to be at greater risk from COVID because she is black, there is no evidence whatsoever to indicate that this decision was made because she is black. Furthermore, the school took all relevant precautions to try to mitigate the risk, and Ms Amien-Cloete was open to other safety measures the claimant might propose.

393. Therefore, I conclude the claimant has failed to discharge the burden of proving there is evidence from which it could be inferred that, if there was less favourable treatment, it was due to race.

On 14 October 2020, did the Claimant refuse to sign the HLTA appraisals due to discriminatory comments from Ms Amien-Cloete.

394. It is not disputed that the claimant refused to sign

Was that less favourable treatment on the grounds of race?

395. I find the claimant has discharged the burden of proving that it could be inferred that advising someone to soften their facial expression, implies they have a hard or possibly even a harsh facial expression, and it could be inferred that the comment reflects unconscious racial bias by reinforcing a stereotype that black people are rude, angry and/or aggressive, and in particular the stereotype of the "angry black woman".

396. Combined with the advice that the claimant should avoid towering over children, when the claimant is 5' 3" tall, reinforces her depiction of the claimant as someone whose demeanour and "resting face" is intimidating to children.

397. Accordingly, the burden of proof shifts to the respondent. Ms Amien-Cloete's explanation is that the comments were not discriminatory, but were to advise the claimant regarding her body language when interacting with children. In seeking to show her advice was not due to the claimant's race, Ms Amien-Cloete states that this is advice she would give to anyone irrespective of their race, and that she has done so by advising others regarding their body language and tone of voice. However, based on her own evidence, she has not advised others to change their facial expression. Combined with Ms Amien-Cloete's comments which I have found to indicate racial bias (see paragraphs 118, 142 to 145 and 237 to 240) above, which indicate she

regards the claimant's natural/resting face to be angry and tense, also leads me to conclude Ms Amien-Cloete's comments are evidence of racial anger bias. Therefore, I find the respondent has failed to prove that this less favourable treatment had nothing whatsoever to do with race.

On 3 December 2020, Miss Currier breached safeguarding policies but Ms Amien-Cloete regarded the Claimant to be at fault

398. The claimant no longer pursues this allegation.

On 8 January 2021, Miss Melehi ordered the Claimant to work with child J. He has behavioural difficulties and at times can be violent. No risk assessment was conducted.

399. The claimant no longer pursues this allegation.

On 4 February 2021, the Claimant's reactions to trauma of her injury by Child J, her reaction to the pain was placed on her appraisal as targets that need to be worked on.

400. I do not consider the claimant's reaction to the trauma arising from her injury was included in her appraisal as part of her targets. During the meeting on 4th February 2021, Ms Amien-Cloete mentioned the claimant was not making eye contact, and that is a point Ms Amien-Cloete had raised both before and after 4th February 2021. This supports Ms Amien-Cloete's account that it was general feedback rather than specific to the claimant's pain reaction during the 4th February 2021 meeting. Therefore, I conclude the claimant has failed to discharge the burden of proving there is evidence from which it could be inferred that there was less favourable treatment due to race.

On 15 October 2021, the Claimant was not updated in regards to the course start time by Miss Melehi but Miss Currier and Miss Howell were.

401. I have found that the course start time did not change, meaning there was no failure to update the claimant. Therefore, I conclude the claimant has failed to discharge the burden of proving there is evidence from which it could be inferred that there was less favourable treatment due to race.

On 9 March 2022, the Claimant was suspended from her duties based on an unethical investigation.

402. I have found that the claimant was suspended from her HLTA duties. As to whether the investigation was unethical, the criticisms I have made of Ms Iwobi's investigations do not apply here because that hadn't yet started.

403. As at 9th March 2022 the respondent had completed the Beech class survey, and I consider the respondent was wrong to interview the whole of Beech class as part of its investigation. That is because a fact find or investigation should be concerned with establishing whether there is sufficient evidence to make a recommendation regarding allegations that have been made. In the course of investigations, information may come out that support

additional allegations, but seeking such information should not be the purpose of the investigations. Therefore, any interviews conducted by the respondent should be of individuals who can provide information regarding existing allegations. However, by interviewing a class of 30 who have no direct information regarding Child O's allegations indicates a search for evidence in order to make additional allegations. In these circumstances, I consider it was unethical to survey the whole class.

404. I therefore find the way in which this aspect of the investigation was conducted was unethical in that sense it was wrong to interview the whole class. I also consider it amounted to less favourable treatment because it was not the respondent's standard practice.

Was that less favourable treatment on the grounds of race?

405. I consider there is evidence from which it can be inferred that this was related to race. The respondent had not interviewed an entire class before based on complaints that one or two children in the class had made, yet it decided to do so in this case based on Child O's allegations. Child O's allegations lacked credibility, which tends to further support the view that the respondent was seeking to obtain evidence of additional complaints to strengthen the case against the claimant. This could also be seen as subjecting the claimant to a higher level of scrutiny and being more robust when investigating complaints about her compared to investigating complaints about others. These are allegations the claimant has made when complaining about discriminatory treatment.

406. Accordingly, the burden shifts to the respondent. However, as stated above (see paragraph 173 above), I reject the respondent's explanation that the claimant had previously agreed that a class wide survey should be conducted during such investigations. Having provided no other reason for departing from its standard practice, it means the respondent has failed to discharge the burden of proving the less favourable treatment had nothing whatsoever to with race.

407. I find interviewing the whole class based on the allegations of one child would have the effect of creating a hostile environment for the claimant. Considered in the context of the claimant previously alleging that discrimination against her has included closer scrutiny and a more robust approach when complaints are made against her, interviewing Beech class lends support to the claimant's concerns.

On 16 December 2022, the Claimant was informed that her employment at DKH school was terminated.

408. It is common ground that the claimant was notified of her dismissal by a letter dated 16th December 2022.

Was that less favourable treatment on the grounds of race?

409. Being dismissed is evidently unfavourable treatment. When considering the reason the claimant was dismissed, I also consider it was less favourable treatment on the grounds of race. The claimant made a complaint that she was being discriminated against on the grounds of race. The respondent expressly states it dismissed the claimant because she had complained about race discrimination and she refused to withdraw the complaint. These circumstances show that the less favourable treatment was on the grounds of race.

HARASSMENT

On 9 October 2015, Miss Melehi judged the Claimant to be guilty based on Miss Walker's testimony of an incident that took place on 19th September 2015, before hearing the Claimants version of events.

410. I have found that this factual allegation is proved.

If so, was that unwanted conduct?

411. I consider this conduct would be unwelcome, and therefore unwanted.

Did it relate to race?

412. However, the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that the unwanted conduct was related to race.

On 25 January 2016, Miss Melehi called for a pre-guidance meeting with the Claimant. The Claimant alleges that "other people" including Miss Walker had issues with the Claimant's professional behaviour. The issues were not identified by Miss Melehi.

413. I have found that this factual allegation is proved.

If so, was that unwanted conduct?

414. I consider this conduct would be unwelcome, and therefore unwanted.

Did it relate to race?

415. However, the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that the unwanted conduct was related to race.

During a meeting with the claimant on 22 June 2018, did Mr Black accuse her of shouting based on Miss Rachel Brett's report? Did the respondent believe her over the claimant?

416. I have found the claimant was accused by Mr Black of shouting, and that he preferred Ms Brett's report that the claimant shouted, over the claimant's denial of shouting.

If so, was that unwanted conduct?

417. I also find that Mr Black's accusation was unwanted, as would be him preferring Ms Brett's account over the claimant's.

Did it relate to race?

418. As stated at paragraphs 372 to 373 above, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that the unwanted conduct was related to race.

At a Guidance Review meeting on 12th July 2018 was the Claimant told different allegations to those Mr Black had told her about on 22nd June 2018?

419. I have already found that the respondent discussed an additional allegations at the meeting on 12th July 2018, so to that extent, the discussion was different.

If so, was that unwanted conduct?

420. Nonetheless, to the extent that the allegations discussed on 12th July 2018 differed from the allegation discussed on 22nd June 2018, I have considered whether this was unwanted conduct. From the claimant's perspective it was, because an additional allegation that had not previously been discussed would be unwelcome, and therefore unwanted.

Did it relate to race?

421. I do not consider the difference between the allegations discussed on 22nd June and 12th July 2018 was related to the claimant's race. The claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that the unwanted conduct was related to race. I consider the difference in the discussion was because the additional allegation post-dated the claimant's earlier meeting with Mr Black, and it was a matter that it was reasonable to wish to discuss at a meeting that had already been scheduled.

422. Therefore, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that the unwanted conduct was related to race.

During a meeting with Miss Ghezzi and Miss Melehi on 20 July 2018, was the claimant accused of being hostile, and denied an opportunity of saying her side of the story?

423. As stated at paragraph 58 to 61 above, I accept the claimant's account that during the meeting on 20th July 2018 she was accused of being hostile and denied an opportunity of giving her account.

If so, was that unwanted conduct?

424. I have also accepted the claimant's evidence that the accusation was false, which I find is unwanted conduct, as would be denying her the opportunity of responding to the false allegation.

Did it relate to race?

425. However, even accepting the claimant's account, which I have done, she has provided no evidential basis on which it could be inferred that the unwanted conduct was related to her race.

Did Miss Melehi wish to place the claimant on another 6 week Guidance based on a class teacher's allegations during an end of 6 week Guidance Review meeting held on 16th October 2018 based on a class teacher's allegation.

426. I have found Ms Melehi did wish to extend the claimant's 6-week guidance review based on a teacher's allegations, although the issue was later addressed via mediation.

If so, was that unwanted conduct?

427. For the reasons stated at paragraph 71 above, I consider Ms Melehi's intended approach was unwanted conduct.

Did it relate to race?

428. I also find the claimant has discharged the burden of proving that it could be inferred that the original intention to extend the review process was discriminatory. That is because in Mr Taper's 8th November 2018 e-mail regarding the guidance review meeting, he stated the claimant was being subjected to an inappropriate amount of scrutiny, and that he had never known anyone to be kept in the review process after meeting their targets. These indicate less favourable treatment.

429. It can also be inferred from Mr Taper's e-mail that the less favourable treatment was on the grounds of race, because his criticism of Ms Melehi's attitude towards the claimant during the meeting, includes the allegation that she was stereotyping the claimant, and that her attitude was bullying and harassing. Taken together, these discharge the claimant's burden of proving that there is evidence from which it could be inferred that Ms Melehi's proposal to extend the guidance review was less favourable treatment on the grounds of race.

Did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

430. I consider Mr Taper's description of the meeting, which he attended, depicts an environment which was hostile towards the claimant. In particular, his depiction of Ms Melehi as bullying and harassing fits that description, as does Ms Melehi's stereotyping the claimant. I also consider it would be intimidating for the claimant to have a member of the senior management team treat her in such a way.

Was the Claimant's requests for regular study time made to SLT denied on 30th October 2019

431. As stated, this assertion is not disputed.

If so, was that unwanted conduct?

432. I accept the claimant would have found the refusal to grant her regular study leave to be unwelcome, and therefore, unwanted.

Did it relate to race?

433. For the reasons stated above, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that the unwanted conduct was related to race.

On 13 January 2020, was Miss Ghezzi believed over the Claimant in regards to an incident.

434. At the time of Ms Ghezzi's complaint, namely on 13th January 2020, there is no evidence that the respondent preferred Ms Ghezzi's account. Instead, Ms Amien-Cloete took statements from both Ms Ghezzi and the claimant as part of a broader fact find. Therefore, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that this was unwanted conduct related to race.

On 13 February 2020, the Claimant was suspended from her duties 30 minutes after Mrs Amien-Cloete spoke to LADO.

435. As stated at paragraph 93 above, I find the claimant was suspended from some of her duties, but was not suspended from her job, and also found this did not happen 30 minutes after Ms Amien-Cloete contacted LADO.

Did it relate to race?

436. I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that there was unwanted conduct related to race.

On 24 February 2020, the Claimant was suspended from her duties

437. This appears to have been included in the list of issues as an error, and is not dealt with by the parties in their closing submissions.

On 30 April 2020 did the respondent fail to give the Claimant full questions to enable her to answer accurately for the follow up investigation.

438. I find that the questionnaire e-mailed to the claimant on 30th April 2020 contained a general question, and that despite her request for specific information regarding that allegation, particulars were not provided.

If so, was that unwanted conduct?

439. I find that this was unwanted conduct in that the claimant legitimately requested clarification regarding certain allegations, so evidently wanted that information. To be met with no response was therefore unwanted.

Did it relate to race?

440. Even on the claimant's account, which is not challenged, I see no evidential basis for concluding the respondent's failure to provide the requested information was related to race. It is good practice to provide sufficient detail, and it is a requirement of the respondent's disciplinary policy. However, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that the unwanted conduct was related to race.

On 13 July 2020, the Claimant highlighted that there had been an unethical investigation process (disciplinary part 1).

On 21 September 2020, the Claimant highlighted that there had been an unethical investigation process (disciplinary part 2).

441. This has been dealt with by the parties as an issue about whether or not the investigation process was unethical.

442. When dealing with the claimant's appeal against the Stage 2 Written Warning, the respondent acknowledged that sometimes the claimant may not have been notified regarding complaints (see page 377). The claimant's oral evidence is that it was this failure to notify her about allegations that made the investigation unethical.

If so, was that unwanted conduct?

443. The claimant refers to this as unethical, so evidently considers it unwanted.

Did it relate to race?

444. There is no evidence that the failure to notify the claimant of allegations at the time complaints were made was related to race. However, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that the failure to notify her of allegations was unwanted conduct related to race.

On 2 October 2020, was the Claimant told to mix bubbles during the height of Covid 19 pandemic with Miss Mardling.

445. I have already found that the claimant was told to mix bubbles.

If so, was that unwanted conduct?

446. I also accept that the claimant was at greater risk from COVID-19, and so would have regarded swapping bubbles as unwanted, as illustrated by her e-mail exchanges with Ms Amien-Cloete.

Did it relate to race?

447. I consider the reasons stated at paragraphs 391 to 392 apply equally here, which undermine any assertion that the decision was related to race. Therefore, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that this was unwanted conduct related to race.

On 7 October 2020, the Claimant sent a letter of appeal regarding breaches in employment and safeguarding policies.

448. This has been dealt with by the parties as an issue about breaches of employment and safeguarding policies, which the claimant raised in her letter of appeal.

449. It is common ground that the claimant submitted an appeal against the outcome of the disciplinary hearing which included allegations that the respondent had breached various policies.

450. I concluded at paragraph 114 above, that I found there were some breaches of employment policies, where the respondent failed to provide sufficient detail regarding some allegations.

If so, was this unwanted conduct?

451. The claimant repeatedly complained that the respondent breached employment policies by failing to provide her with sufficient detail about complaints against her. Therefore, I find the respondent's failure on this occasion would be unwelcome, and so unwanted.

Did it relate to race?

452. I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that the unwanted conduct related to race.

On 14 October 2020, the Claimant did not sign the HLTA appraisals due to discriminatory comments from Ms Amien-Cloete.

453. It is common ground that the claimant did not sign her 2020/2021 appraisal because it included a target to, amongst other things, display "soft facial expressions". The claimant says she found this comment to be discriminatory.

If so, was that unwanted conduct?

454. It is also not disputed that the claimant found the comments discriminatory, and therefore unwanted, which is why she refused to sign that part of her appraisal form.

Did it relate to race?

455. I note that the respondent's closing submissions maintain that Ms Amien-Cloete's comments were to provide advice to the claimant regarding her body language, but I find that these comments, reflect negative racial stereotyping, in particular racial anger bias and misattributing anger to the claimant. My reasons are set out at paragraphs 118, 142 to 145 and 237 to 240 above.

Did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

456. I have no reason to doubt Ms Amien-Cloete's evidence that her purpose in advising the claimant to display a soft facial expression was to advise her in how to interact with children.

457. However, it is evident from the claimant's e-mails to Ms Amien-Cloete that she found the comment offensive, and that she felt strongly about it, so much so that by refusing to sign her appraisal she did not receive her annual pay increment.

458. From an objective perspective, I consider the comment was offensive, and was capable of violating the claimant's dignity, notwithstanding the high threshold for such a finding. That is because misattributing anger to black people reinforces a stereotype of the "angry black woman" trope that the claimant referred to in at least one e-mail to Ms Amien-Cloete. It also reflects into a misconception that black people are aggressive and/or intimidating.

On 3 December 2020, Miss Currier took a child away from the class the Claimant was covering. However Mrs Amien-Cloete blamed the Claimant

459. I have found that Ms Currier did not remove the child from the line, accordingly the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that this was unwanted conduct related to race.

On 8 January 2021, Miss Meheli ordered the Claimant to work with child J. He has behavioural difficulties and at times can be violent. No risk assessment was conducted.

460. The above assertion is not challenged

If so, was that unwanted conduct?

461. It is evident from the e-mails the claimant and Ms Amien-Cloete exchanged about this that the claimant did not want or welcome this assignment.

Did it relate to race?

462. The reasons stated at paragraphs 126 to 128 above apply equally here. Therefore, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that this was unwanted conduct related to race.

On 15 January 2021, the appeal was upheld. The panel were aware of the Claimants evidence of prejudiced investigations and outcomes.

463. It is common ground that the claimant's appeal was brought on the grounds that she challenged the investigations and the outcomes.

464. The respondent acknowledged certain shortcomings with the investigation, namely that the claimant was not always informed of complaints as and when they were made. However, the respondent concluded the disciplinary panel's decision should be upheld on appeal.

If so, was that unwanted conduct?

465. This was an unwanted outcome, in that the claimant inevitably sought to have the original decision set-aside or altered on appeal.

Did it relate to race?

466. I consider the manner in which the respondent sought to clarify the specific matters the claimant was challenging on appeal, and its responses to those challenges were fair. As stated, it acknowledged certain shortcomings. Therefore, in all the circumstances, I consider the claimant has failed to adduce sufficient evidence to discharge the burden of proving it could be inferred that upholding the decision was unwanted conduct related to race.

On 3 February 2021, after the Claimant was injured by child J, Mrs Amien-Cloete completed and sent off the injury at work form, without speaking to the Claimant.

467. The claimant no longer pursues this allegation.

On 4 February 2021, the Claimant's reactions to trauma of her injury by Child J, her reaction to the pain was placed on her appraisal as targets that need to be worked on.

468. I do not consider the claimant's reaction to the trauma arising from her injury was included in her appraisal as part of her targets. During the meeting on 4th February 2021, Ms Amien-Cloete mentioned the claimant was not making eye contact, and that is a point Ms Amien-Cloete had raised both before and after 4th February 2021. This supports Ms Amien-Cloete's account that it was general feedback rather than specific to the claimant's reaction during the 4th February 2021 meeting. Therefore, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that this was unwanted conduct related to race.

On 14 July 2021, the Claimant did not sign the HLTA appraisals due to discriminatory comments from Ms Amien-Cloete.

469. It is common ground that the claimant's 2020/2021 appraisal included a target to, amongst other things, display "soft facial expressions"

If so, was that unwanted conduct?

470. It is also not disputed that the claimant found the comments unwelcome, and thus refused to sign that part of her appraisal form.

Did it relate to race?

471. I note that the respondent's closing submissions maintain that Ms Amien-Cloete's comments were to provide advice to the claimant regarding her body language, but I find that these comments, reflect negative racial stereotyping, in particular racial anger bias and misattributing anger to the claimant. My reasons are set out at paragraphs 118, 142 to 145 and 237 to 240 above.

Did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

472. As stated above, I do not consider Ms Amien-Cloete's purpose was to create an offensive work environment, but for the reasons stated at paragraph 456 to 458 above, I consider that the effect of her comments were to create a work place that was hostile and that violated the claimant's dignity.

On 15 October 2021, the Claimant was not updated in regards to the course start time by Miss Melehi but Miss Currier and Miss Howell were.

473. I have found that the course start time did not change, meaning there was no failure to update the claimant. Therefore, I consider the claimant has

failed to adduce any evidence to discharge the burden of proving it could be inferred that this was unwanted conduct related to race.

On 4 March 2022, the Claimant stated the breaches of the Equality Act 2010

474. The claimant no longer pursues this allegation.

On 7 March 2022, Mrs Amien-Cloete informed the Claimant, that the matter would be escalated

475. I have found that the e-mail Ms Amien-Cloete sent on 7th March 2022 did not inform the claimant that the matter was being escalated. Therefore, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that this was unwanted conduct related to race.

8 March 2022, Child O's class was interviewed and the results were sent to LADO, without informing the Claimant what the allegations were.

476. The respondent's closing submissions rely on Ms Amien-Cloete's e-mail to the claimant sent on 7th March 2022. However, while that e-mail explains Child O's class had been interviewed, and that Ms Amien-Cloete had contacted LADO, it does not inform the claimant that the results would be sent to LADO, nor does it inform the claimant what the allegations were. Therefore, I find the respondent failed to provide the information as alleged.

If so, was that unwanted conduct?

477. I consider the claimant would want to receive as much information as possible, including being notified of the allegations that were being sent to LADO. It follows, the respondent's failure to do that would be unwanted.

Did it relate to race?

478. There is no evidence that Ms Amien-Cloete's failure to update the claimant was related to race. Ms Amien-Cloete had e-mailed the claimant an update on 7th March 2022 which in my judgment kept the claimant sufficiently informed about what was happening. Therefore, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that Ms Amien-Cloete sending the results to LADO without first informing the claimant was related to race. I find it's more likely Ms Amien-Cloete simply considered a further update was not required.

On 9 March 2022, the Claimant was suspended from her duties based on an unethical investigation.

479. I find that the claimant was not suspended from her job, but instead her HLTA duties were suspended. As to whether the investigation was unethical, the

criticisms I have made of Ms Iwobi's investigations do not apply here because that hadn't yet started.

480. As at 9th March 2022 the respondent had completed the Beech class survey, and I consider the respondent was wrong to interview the whole of Beech class as part of its investigation. That is because a fact find or investigation should be concerned with establishing whether there is sufficient evidence to make a recommendation regarding allegations that have been made. In the course of investigations, information may come out that support allegations, but seeking such information should not be the purpose of the investigations. Therefore, any interviews conducted by the respondent should be of individuals who can provide information regarding existing allegations. However, by interviewing a class of 30 who have no direct information regarding Child O's allegations creates an impression of looking for evidence in order to make additional allegations. Therefore, I consider it was unethical to survey the whole class.

If so, was that unwanted conduct?

481. The claimant found the class survey unwelcome, and found it to be consistent with her repeated allegations that she was subjected to a higher level of scrutiny, and that there was greater rigour when it came to investigating complaints made against her, compared to when complaints were made about her colleagues.

Did it relate to race?

482. I consider there is evidence from which it can be inferred that this was related to race. The respondent had not interviewed an entire class before based on complaints that one or two children in the class had made, yet it decided to do so in this case based on Child O's allegations. Child O's allegations lacked credibility, which further supports the conclusion that the respondent was seeking to obtain evidence of additional complaints to strengthen the case against the claimant.

483. Accordingly, the burden shifts to the respondent. However, the respondent's explanation for taking this course is that the claimant suggested the class is interviewed, but I do not accept the claimant made that suggestion (see paragraph 173 above).

Did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

484. I find interviewing the whole class based on the allegations of one child would have the effect of creating a hostile environment for the claimant. Considered in the context of the claimant previously alleging that closer scrutiny and a more robust approach when complaints are made against her, interviewing Beech class lends support to the claimant's concerns.

On 4 May 2022, a table of concerns was sent by Mrs Henley. There were allegations dated from 2017 and ones the Claimant did not know about.

485. It is common ground that Dr Henley sent the safeguarding chronology to the claimant on 4th May 2022. The claimant has consistently maintained that she was not told about some complaints as and when they happened, and in December 2022 the disciplinary panel found on occasion that was the case, stating that for operational reasons it was not always practical to do so.

If so, was that unwanted conduct?

486. I do not find Dr Henley sending the safeguarding chronology to be unwanted, in fact the reverse is true, the claimant had persistently complained about the failure to notify her of complaints. By clearly setting out the complaints relied on, the chronology addressed this issue the claimant had complained of.

487. However, the claimant was displeased that some of the allegations dated back to 2017, and had been the subject of the earlier disciplinary or other actions such as guidance review meetings. She was also concerned that some matters were raised which she had not previously been informed about. Therefore, these aspects of the respondent's conduct were unwanted.

Did it relate to race?

488. I do not consider the unwanted conduct was related to race. The option of revisiting historic matters may be relevant when considering if there has been a pattern of misconduct, was part of the allegations notified to the claimant in the letter from Dr Henley dated 13th March 2022. Where safeguarding concerns have been raised, it is important that they are considered in the light of all available and relevant information, which is consistent with the KCSiE policy, indicating this approach was not related to race.

489. As to the failure to sometimes inform the claimant of complaints as they were reported, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that this was unwanted conduct related to race. There were evidently numerous occasions when the claimant was informed, these would be followed by guidance review meetings, or in 2020 by taking disciplinary action. This supports a conclusion that on the occasions the claimant was not informed, it was because, as the respondent maintains impractical to do so at that time.

On 14 October 2022, the Claimant was suspended from the school in front of children and staff.

490. It is common ground that on 14th October 2022 the claimant was suspended for four days, and I have found this was done in front of children and staff.

If so, was that unwanted conduct?

491. Being suspended in front of staff and children would have been unwanted and unwelcome.

Did it relate to race?

492. I find it was inappropriate to suspend the claimant in front of others, however, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that this was related to race. In the absence of any such evidence, I consider a lack of judgment is a more likely explanation.

On 20 October 2022, the Claimant was formally suspended and was instructed to make arrangements to clean out her locker and hand back her school pass.

493. It is common ground that the claimant was suspended on 20th October 2022.

If so, was that unwanted conduct?

494. While a suspension is not a sanction, and the claimant was informed of that, I consider that from her perspective this was unwelcome, and therefore unwanted.

Did it relate to race?

495. The allegations were numerous and cumulatively serious, so from a safeguarding perspective, it was appropriate to suspend the claimant until the allegations were determined at the disciplinary hearing. I consider that would be a likely course of action in any case where there was a similar number and type of allegations. Therefore, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that this was related to race.

On 15 November 2022, the Claimant was told that there would be a disciplinary hearing on 6 December 2022.

496. This is accepted by both parties.

If so, was that unwanted conduct?

497. The claimant considers that the matter being referred to a disciplinary hearing was unwelcome, and to that extent it is unwanted

498. Did it relate to race?

499. Again, the nature of the allegations meant it was reasonable to progress the matter to a disciplinary hearing. I also consider it's likely that due to the number and type of allegations, the respondent would make the same

decision in other cases, irrespective of the employee's race. Therefore, I consider the claimant has failed to adduce any evidence to discharge the burden of proving it could be inferred that the decision to progress this matter to disciplinary action was related to race.

On 16 December 2022, the Claimant was informed that her employment at DKH school was terminated.

500. This is not disputed, and is the basis of the claimant's claim for unfair dismissal.

If so, was that unwanted conduct?

501. The dismissal was unwelcome, and therefore amounts to unwanted conduct.

Did it relate to race?

502. I consider the claimant's dismissal was related to her race because the respondent expressly states it dismissed the claimant because she had complained about race discrimination and she refused to withdraw the complaint. In particular the claimant was subjected to negative stereotyping as a result of unconscious racial bias. When she complained about this racial discrimination, and refused to withdraw the allegation of racism, she was dismissed (see also paragraphs 359.1 to 359.5 above).

Did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

503. I consider dismissing someone for reasons related to that person's race would be offensive and create a hostile environment. I have seen no evidence to indicate that was the respondent's purpose, nonetheless, I find that would have been the effect of dismissing the claimant. This is dealt with at paragraphs 456 to 458 above.

On 12 January 2023, the Claimant emailed her appeal submission, stating that she did not want her job back and the reasons why.

504. Although this is not disputed that the claimant submitted her appeal submissions stating she did not want her job back and why, because it describes the claimant's conduct, not the respondent's, it cannot be conduct by the respondent that constitutes harassment.

On 22 February 2023, the school delayed significantly in response to the Claimant and her appeal.

505. I have found that there was a significant delay in responding substantively to the claimant regarding her appeal, and in fact she first received a substantive response after the date an appeal would ordinarily be heard.

If so, was that unwanted conduct?

506. I consider this was unwanted conduct, the claimant had consistently complained of the respondent's failure to comply with its policies and procedures, and this delay was outside the standard timescales for dealing with appeals.

Did it relate to race?

507. I have seen no evidence from which it could be inferred that the delay was due to the claimant's race, so I accept Dr Henley's explanation of the delay. In particular, I accept that the school working towards achieving full academy status at the same time, would have contributed to this delay.

On 26 April 2023, the Claimant emailed her concerns regarding the appeal, to Miss Moussa and Mrs Henley.

508. It is not disputed that the claimant e-mailed concerns to Ms Moussa and Dr Henley on 26th April 2023. However, because this describes the claimant's conduct, not the respondent's, it cannot be conduct by the respondent that constitutes harassment.

VICTIMISATION

Allege discrimination in two emails to Mary Henley on 7 November 2020 and 16 November 2020.

509. When e-mailing Dr Henley regarding her appeal in November 2020 the claimant stated biased judgments had been made against her, and that the disciplinary process did not reflect a commitment to tackling discrimination and applying equality principles to all.

510. Ms Anderson argues that the claimant doesn't make either an express or implied allegation of discrimination. However, the claimant does use the terms "bias" and "prejudice", which I consider are terms similar to discrimination. I also consider the claimant's allegations, particularly as they are raised as part of her appeal, they are doing something for the purposes of, or in connection with, the Equality Act and/or alleging the respondent has contravened the Act.

The claimant responded on 4 March 2022 that the treatment she received was racial discrimination based on the handling of child O investigation (paragraph 42 in the Scott Schedule).

511. According to Ms Anderson, this e-mail is not part of the documentary evidence, but she confirms the respondent accepts that sending the e-mail is a protected act.

The claimant submitted a complaint via email on 11 March 2022 outlining what took place in regard to racial discrimination victimisation bullying and harassment (Paragraph 47 in the Scott Schedule).

512. This e-mails at pages 688 to 691 of the bundle. The respondent accepts this is a protected act.

The claimant emailed Ms Amien Cloete on 5 March 2022 about the child O allegation and the email also stated that the treatment she received was racial discrimination (Paragraph 43 in the Scott Schedule).

513. This e-mail (see paragraph 170 above) is at pages 665 to 666 of the bundle. The respondent accepts this is a protected act.

On 22 February 2023 the claimant sent an email complaint outlining discrimination victimisation bullying and harassment (Paragraph 56 in the Scott Schedule).

514. No page reference is given for this e-mail in the chronology relating to an e-mail sent by the claimant on 22nd February 2023, it is not on the index, and I cannot find it in any of the bundles. In her closing submissions, when dealing with this issue, the claimant refers to her appeal request dated 12th January 2023, which I note refers to bullying and harassment. I therefore conclude that the claimant did not send an e-mail on 22nd February 2023, or if she did, without seeing the e-mail, I am not satisfied the claimant has discharged the burden of proving any e-mail sent amounted to a protected act.

8 January 2021 - Miss Melehi ordered the claimant to be child J's 1:1 with no risk assessment

515. I have already found that Ms Melehi did order the claimant to provide 1:1 support to Child J without a risk assessment being carried out.

By doing so, did it subject the claimant to detriment?

516. This did subject the claimant to detriment because on 1st February 2021 Child J injured the claimant.

If so, was it because the claimant did a protected act, the respondent believed the claimant had done, or might do, a protected act?

517. I do not consider the claimant has discharged the burden of proving that the detriment she was subjected to was because she did a protected act because no evidence has been provided indicating Ms Melehi ordering the claimant to provide 1:1 support was because she had done or the respondent believed she had done or might do a protected act.

On 9 January 2021 – Ms Amien Cloete stated via email that it would be considered insubordination if the claimant did not work with child J. The claimant was injured by child J on 1 February 2021 whereby the child repeatedly slammed a door on her arm.

518. I have found that Ms Amien-Cloete's e-mail did not state it would be considered insubordination if the claimant refused to support Child J. Nonetheless, I have found that the claimant was injured by Child J.

By doing so, did it subject the claimant to detriment?

519. I consider the claimant was subjected to detriment as a result of Child J injuring her on 1st February 2021.

If so, was it because the claimant did a protected act, the respondent believed the claimant had done, or might do, a protected act?

520. The detriment the claimant was subjected to was the injury inflicted by Child J, which I do not consider was inflicted because the claimant had done or the respondent believed the claimant had or might do a protected act. In any event, the respondent is not vicariously liable for Child J's actions.

On 5 March 2022 the claimant emailed Ms Amien Cloete raising concerns over what took place the previous day concerning child O allegation.

521. Because this describes the claimant's conduct, not the respondent's, it cannot be conduct by the respondent that constitutes victimisation.

On 8 March 2022 Mrs Amien Cloete sent the claimant an email that the information obtained from Beech Class year 3 on 7 and 8 March 2022 was sent to LADO

522. I have already found that Ms Amien-Cloete e-mailed the claimant in the terms outlined above.

By doing so, did it subject the claimant to detriment?

523. However, I find Ms Amien-Cloete was merely providing an update, and I do not consider that by updating the claimant, Ms Amien-Cloete was subjecting the claimant to detriment.

On 26 April 2023 the claimant emailed Miss Moussa (HR manager) raising concerns. Ms Henley emailed the claimant to say she would in touch on 3 May

2023, but the claimant received no response from Ms Henley until 26 June 2023

524. The claimant no longer pursues this allegation.

CONCLUSION

525. In light of my findings that the claims for unfair dismissal, direct race discrimination and harassment related to race succeed, there will be a remedy hearing in due course. Directions for that remedy hearing will be issued separately.

Approved by:
Employment Judge Tueje
21st August 2025

Sent to parties on:
3rd September 2025

FOR THE TRIBUNAL OFFICE