EMPLOYMENT TRIBUNALS

Claimant: **Mrs Iwobi**
Respondent: **City of London Academies Trust**

HELD AT: London South (in person) **ON:** 24-28 November 2025

BEFORE: Employment Judge Hart, Ms Cook and Ms Mitchell

REPRESENTATION:
Claimant: Mrs Iwobi (Litigant in Person)
Respondent: Ms Quigley (Counsel)

JUDGMENT having been sent to the parties on 8 December 2025 and written reasons having been requested in accordance with Rule 60(3) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

INTRODUCTION

1. Mrs Iwobi (the claimant) was employed by the respondent (a secondary school) as a physical education (PE) teacher. Her claim is about whistleblowing detriment, automatic dismissal (whistleblowing), direct race and age discrimination, harassment related to race / age and victimisation. All complaints were dismissed.

THE HEARING

2. The hearing took place over five days. Mrs Iwobi represented herself, the respondent was represented by counsel. At the outset of the hearing a timetable was agreed with the parties to ensure that the hearing was completed within the available time slot.

3. During the hearing we were provided with the following documents:

    3.1 An agreed hearing bundle of 756 pages, the references to page numbers in this judgment are to the pages in this bundle.

3.2 Mrs Iwobi's application to amend (pages 757-759).
3.3 HR emails of 5 pages (pages 760-764).
3.4 Further HR emails of 7 pages (pages 765-771).
3.5 Spreadsheet providing breakdown of teaching staff by age and ethnicity (pages 772-774).
3.6 Additional document (email dated 19 March 2024) provided by Mrs Iwobi (page 775).
3.7 HR case log of 16 pages (not referred to).
3.8 A bundle of unredacted documents (that was withdrawn at the start of the hearing; it being explained to Mrs Iwobi what was meant by the "without prejudice" rule).
3.9 CCTV of the 1 December 2023 incident and accompanying time line from the respondent.
3.10 A witness statement bundle (with paragraph 23.2 in Mrs Iwobi's statement redacted).
3.11 Outline submissions on behalf of the respondent.
3.12 Claimant's written closing submissions.
3.13 Respondent's chronology and cast list and amended list of issues[1].

4. Mrs Iwobi gave evidence on her own behalf. She admitted that her statement had been generated by AI. Her statement was admitted in relation to the factual content only. The Respondent called the following witnesses: Mr Baxter, Mrs Malonga (nee Webster), Ms Miller and Mr Brosnan. Mrs Iwobi was given guidance and assistance with cross-examination questions.

5. During the course of the hearing the respondent was ordered to disclose available data on staff profile by race and age and internal HR documentation on the decision to dismiss.

6. On completion of the evidence both parties provided written submissions supplemented by oral submissions. Oral judgment was given.

7. Mrs Iwobi requested written reasons on 8 December 2025.

APPLICATION TO AMEND

8. Mrs Iwobi included in her witness statement a number of allegations that had not been pleaded. At the outset of the hearing she made an application to amend, which was opposed by the respondent: **pg 757-759**. When considering this application we took into account the guidance in the leading case of **Selkent Bus Co Ltd v Moore** [1996] ICR 836 and more recently in **Vaugham v Modality Partnership** [2021] ICR 535. In particular that the balance of hardship and injustice to both parties is the paramount consideration and that a practical approach should be adopted and should underlie the balancing exercise.

[1] This has been adjusted to reflect what was agreed at the hearing.

9. Our decision in relation to this application was as follows:

9.1 Alleged racially motivated comment: Mrs Iwobi in her application had set out the details of what was said. The respondent confirmed that it was able to address this application. Mrs Iwobi was not seeking to add this as a separate allegation but was relying on it as background evidence from which an inference could be drawn. We did not consider that this required an application to amend, and permitted the comment to be referred to in Mrs Iwobi's evidence.

9.2 Additional protected disclosure raising health and safety concerns on 1, 6 and 19 December 2023: We agreed that this required an application to amend. We permitted Mrs Iwobi to add the disclosures made on the 1 and 6 December 2023 since the respondent confirmed that it was able to address these disclosures. We took into account that Mrs Iwobi was a litigant in person and these disclosures were closely connected to the pleaded case. We addressed any prejudice to the respondent by permitting them to adduce supplementary evidence on this issue. We did not permit Mrs Iwobi to add the alleged disclosure made on the 19 December 2023[2]. This was because the balance of hardship and prejudice in relation to this disclosure fell in the respondent's favour. The relevant documentation was not in the hearing bundle and the disclosure was made to Mr Boadu, Mr Pellin and Mr Nelson, none of whom had been called as witnesses in this case. Further Mrs Iwobi had not set out what had been disclosed in her witness statement or her application to amend and therefore if permitted the respondent would need further information and time in order to respond to this complaint. The impact on both the parties and a pressurised tribunal service of an adjournment and re-listing was a significant factor. On the other hand there was limited prejudice to Mrs Iwobi who could rely on her other disclosures. Mrs Iwobi confirmed that she was not relying on any additional detriments arising from these disclosures.

9.3 Additional acts of victimisation: In her witness statement at paragraph 8.4, Mrs Iwobi had alleged that the threat of a support plan was "*also influenced by my having raised concerns about discriminatory treatment".* This pre-dated the pleaded protected act on 5 January 2024. She was asked if she had done a previous protected act and she referred to a conversation with Mrs Tout-Hill. Mrs Iwobi was asked to put this conversation down in writing so that the tribunal could consider what was said, to whom and when. In making her application to amend Mrs Iwobi failed to provide this information, therefore the application was too vague for us to consider.

[2] The respondent was asked to conduct a search for this document during the hearing but was unable to locate it.

9.4 Additional acts of race discrimination: Two of these acts were already identified as issues 6.2.2 and 6.2.3 (excessive scrutiny and being subjected to a support plan) and therefore did not require an application to amend. The third act was an allegation that there was *a "pattern of teachers of colour leaving under the same management"*. This complaint was refused on the grounds that it was unparticularized and therefore not capable of being responded to. Further if accepted it would cause significant prejudice to the respondent since this was an assertion being made on the first day of the final hearing, the hearing bundle did not include this evidence and the respondent's witnesses were not able to address it in their evidence. Therefore permitting this amendment would require an adjournment, whereas the prejudice to Mrs Iwobi was limited in that this was a vague unsubstantiated allegation without any evidence to support it.

9.5 Additional acts of victimisation: Two of these acts were already identified as issues 8.2.3 and 8.2.4 (failure to investigation the grievance and dismissal) and therefore did not require an application to amend. The third act was an allegation that there had been a *"change in the allegations, denial of access to evidence (CCTV)"*. This was a reference to the informal meeting that took place on 5 December 2023. This complaint of victimisation was refused on the grounds that it pre-dated the pleaded protected act, and therefore there was no prejudice to Mrs Iwobi since the complaint had no reasonable prospect of success. Further the facts were already part of the complaint of direct race / age discrimination and would be considered in that context.

CLAIMS / ISSUES

10. The claims and issues set out in the Case Management Order dated 16 April 2025 (**pgs 58-62)** was discussed with the parties at the start of the hearing. The acts of harassment being relied upon by Mrs Iwobi as set out in her supplementary submission (**pg 65**) were clarified and agreed (issues 7.1.1-7.1.5). The successful amendments were added. The list of issues as amended is set out at appendix A**.**

FINDINGS OF FACTS

11. We have only made findings of fact in relation to those matters relevant to the issues to be determined. Where there were facts in dispute we have made findings on the balance of probabilities. We confirm that we have taken into account all the documentation and evidence that we were referred to and if something is not specifically mentioned that does not mean that we have not considered it as part of our deliberations.

About the claimant

12. Mrs Iwobi was an experienced physical education (PE) teacher, who defines herself as "black" and at the material time was 56 years old.

About the respondent

13. The City of London Academies Trust (the Trust) is a multi-academy Trust which operates 10 state sector academies within inner city London, of which the City of London Academy (CoLA) is one. CoLA has 1,600 students and 116 teachers, of which 46 were non-white and 48 were in their 20s, 31 were in their 30s, 23 were in their 40s and 14 were in 50 and over.

14. Mr Baxter was the Principal of CoLA. He reported to the Board of Governors of the City Of London Academies Trust. He was supported by three vice-Principals and Ms Counter was Director of Finance and Operations. Below them there were 6-7 Assistant Principals, 3 Associate Principals, 18 Heads of Departments and 7 Heads of Year. 45% of the staff were employed in a leadership position.

15. In the CoLA PE Department, where Mrs Iwobi worked, there were 8 PE teachers: Mrs Malonga (nee Webster) (Assistant Principal and Head of PE, white British in her 30s, reporting to Mr Brosnan (Vice-Principal and her line manager)); Mr Pelling (Assistant Principal, white British in his 30s); Mr Misiri (Assistant Principal, Turkish in his 30s); Mr Haque (Asian in his 20s); Ms Miller (white in her 20s); Ms Massie (Early Careers Teacher (ECT) in her second year, white British in her 20s) and Mr Vanlint (ECT in his first year, mixed race in his 20s).

Extracts from respondent's policies and procedures

Probation policy: **pgs 156 - 163**

16. Relevant clauses include:
    16.1 Clause 3.4*: "The purpose of a probationary period is to give the Trust the opportunity to assess a new employee's suitability as a potential member of staff. The employee should also have suitable, clear, work related development objectives during this period and should be provided with an induction and training and development support as appropriate to their needs."*
    16.2 Clause 7.4: *"Within the first two weeks of joining there should be an initial meeting with the purpose of setting out the probationary standards, expectations, and any training. Future meeting dates and mid-term review (at three months) and final review (before six months) dates should be agreed".*
    16.3 Clause 7.5: *"Throughout the probationary period, the line manager should ensure that regular supervisory meetings are undertaken in order to agree work requirements and monitor performance. These meetings should review the employee's early performance, conduct and attendance. Employees should leave these meetings with a clear understanding of what is required of them and the standards to be achieved".*
    16.4 Clause 9.4.3 (Under the heading "Unsuccessful Probationary Periods"): *"In the event that the employee's performance, attendance or conduct is unacceptable, despite efforts to improve it, action to terminate the employment at or before the end of the probationary period can be taken. The relevant line manager should write to the employee asking them to*

attend a formal probation hearing, at which they may be accompanied by a trade union representative or work colleague if they so wish. The letter must make it clear that non-confirmation of employment is a possible outcome of the meeting."

Disciplinary and capability policies: **pg 156-163**

17. These policies both stated that they only applied "*to all employees who have completed their probationary period…"* .

Observation policy: **pg 164-168**

18. This stated that observations *"are developmental, and separate from any performance management target":* **pg 165.** The policy of CoLA was to conduct 3-6 "learning walks" each half term period. A learning walk was a short passing observation, usually conducted by a more senior member of staff but junior staff were also encouraged to conduct learning walks on their seniors. Mrs Iwobi accepted that the risk of harm was more acute in gym lessons than ordinary lessons, due to the health and safety risk of students using heavy gym equipment, and that this justified a higher number of learning walks than other departments (see **pg 281**).

Chronology of events

19. On 23 May 2023 Mrs Iwobi was interviewed and selected by Mrs Malonga and Mr Misiri for the post of Second in Charge of PE at CoLA. This was a leadership role and she received additional remuneration in the form of a Teaching and Leadership Role supplement. Around the same time Mrs Malonga was promoted to Assistant Principal and therefore in practice Mrs Iwobi would be acting as head of department, with Mrs Malonga's support. It was unclear to us to what extent Mrs Iwobi appreciated this when she started employment with the respondent.

20. On 3 July 2023 Mrs Iwobi attended an induction day. Mrs Malonga sent her an email attaching induction materials including timetables, curriculum specifications and the resources needed to plan lessons: **pg 715.** What Mrs Iwobi did not have at this point was access to CoLA's data systems.

21. On 14 July 2023 the HR department forwarded to Mr Misiri and Mrs Malonga two references that it had received for Mrs Iwobi from previous employers: **pg 717.** One was satisfactory. The other had marked Mrs Iwobi's knowledge, skills and personal qualities as "satisfactory" or "good" and stated that they would reemploy Mrs Iwobi; however in response to the question: "*What is your overall recommendation for the applicant in this role?"* the referee had ticked the box "[*W]ith reservation*": **pg 720-722.** Upon receipt of this reference, HR had asked Mr Misiri and Mrs Malonga how they wished to proceed: **pg 717.** Mr Misiri forwarded the email to Mr Baxter on 15 July 2023 seeking his opinion stating: "*I feel that there is nothing we can do but to just be cautious and proceed with the appointment*": **pg 717**. Mr Baxter responded on the 17 July 2023 stating "*references are at least satisfactory so go for it*": **pg 718.**

22. On 1 September 2023 Mrs Iwobi commenced employment with CoLA. Her appointment was subject to a six month probationary period: **pg 78**.

23. On 5 September 2023 Mrs Iwobi asked Mrs Malonga for clarification on the A Level and GCSE PE content required for her course. Mrs Malonga was surprised by this request since this information had been provided to Mrs Iwobi in the induction email sent on the 3 July 2023; her expectation was that any competent teacher should be ready to teach their course in the first week of employment.

24. Having been alerted by the reference, from this point Mrs Malonga decided to keep a log of her concerns in relation to Mrs Iwobi: **pg 170**. We accept that this was a contemporaneous record and its accuracy was largely not disputed by Mrs Iwobi in cross examination.

25. On 6 September 2023 Mrs Malonga conducted the first of her weekly meetings with Mrs Iwobi: **pg 170**. A number of points were raised during these meetings, some were minor, such as not responding to an email, not completing the registers properly, or using her own teaching resources rather than those used by CoLA. We accept Mrs Iwobi's evidence that she was a new starter, that every school does things differently and that she got things wrong at first. However, this did not explain some of the more serious concerns raised with Mrs Iwobi at these meetings. At this first meeting Mrs Malonga adjusted the timetable to enable Mrs Iwobi to focus on A Level PE theory**.**

26. On 7 September 2023 Mrs Malonga conducted the first learning walk: **pgs 517-518 (issue 6.2.2 and 7.1.1).** Mrs Iwobi accepted that this was not unusual in the first week of new employment.

27. On 7 September 2023 Mr Misiri and Mr Haque informed Mrs Malonga that they had observed Mrs Iwobi using the rowing machine during a lesson in the fitness suite and appeared to be completing her own workout rather than supervising students: **pg 170.** Mrs Malonga raised this with Mr Brosnan who recommended monitoring Mrs Iwobi. This allegation was not raised with Mrs Iwobi at the time but Mrs Malonga does record on her log the words "to monitor". Mrs Iwobi accepted that the allegation raised a legitimate health and safety concern.

28. On 8 September 2023 Mr Brosnan conducted the second learning walk: **pgs 517-518**. Mrs Iwobi accepted that this was a reasonable response to the concern raised on 7 September 2023.

29. On 11 September 2023 Mrs Malonga conducted the third learning walk: **pgs 517-518**. Mrs Iwobi did not state in her evidence that this was unreasonable.

30. On 18 September 2023, Mrs Malonga raised with Mrs Iwobi a concern about positioning equipment for demonstrations in table tennis lesson and unclear teaching points: **pg 170**. In evidence Mrs Iwobi accepted that it was right for Mrs Malonga to raise this with her and once the correct positioning was demonstrated this error was not repeated. She stated that different schools had different ways about how to set up their equipment.

31. On 19 September 2023 Mrs Malonga conducted the fourth learning walk: **pgs 517-518**. Mrs Iwobi considered this to be excessive since the lesson observed was not a table tennis lesson and therefore not connected to the concern raised on 18 September 2023. We consider that in order to gain an overall view of Mrs Iwobi's performance it was reasonable for Mrs Malonga to observe all of Mrs Iwobi's lessons, not just those where particular concerns been raised. The same day Mr Misiri conducted the fifth learning work.

32. On 21 September 2023, Ms Massie conducted a sixth learning walk. She informed Mrs Malonga that Mrs Iwobi had used the benches outside to play bench ball during a netball lesson: **pg 170**. At the weekly meeting on 22 September 2023 Mrs Malonga raised this with Mrs Iwobi who agreed that this was a health and safety risk: **pg 170**.

33. On 22 September 2023 Mr Misiri conducted the seventh learning walk: **pgs 517-518**. Mrs Iwobi considered this to be excessive since it was a different lesson to that which had been criticised. We again consider Mr Misiri's actions to be reasonable.

34. On 26 September 2023 Mrs Iwobi failed to manage her time correctly, leading to students abandoning badminton rackets in the corridor, posing a potential risk: **pg 170.** The same day Mrs Malonga conducted the eighth learning walk: **pgs 517-518**. Mrs Iwobi accepted that this was connected to the earlier criticism.

35. On 27 September 2023 Mrs Iwobi attended the one month probation review meeting with Mrs Malonga. Three headline targets were identified:
    (a) to develop independence in the Second in Command PE role;
    (b) to follow the CoLA Learning flow and principles of effective teaching; and
    (c) to ensure health and safety was a key focus for practical lessons including to "*lead by example ensuring that there are no H&S [health and safety] concerns in your lesson"*: **pg 188.**

    At the end of the form, Mrs Malonga had ticked "*yes*" to the question "*Are there any initial concerns regarding the employee's performance, ability or conduct?".* In evidence Mrs Iwobi disputed that this was the version provided to her claiming that she was unaware at this point of any performance concerns. Despite being asked by the tribunal to adduce the version provided to her, she did not do so. During the hearing she was reminded of the continuing duty to disclose relevant documents and still did not adduce this document. We have concluded that the document in the hearing bundle was the document completed at the time.

36. On 29 September 2023 Ms Miller raised a concern with Mrs Malonga about one of Mrs Iwobi's lessons. This was that students were boxing with each other dangerously on the balcony and Mrs Iwobi was not checking in on them; that students were hitting each other with resistance bands; and that students were throwing items off the balcony into Ms Miller's class: **pg 170.**

37. On 3 October 2023, Mrs Malonga raised the 29 September 2023 incident with Mrs Iwobi. In evidence Mrs Iwobi accepted that this was raised with her and that she was told to make sure her class was safe. It is recorded that Mrs Iwobi "*became upset and said she was not aware of these issues in her lesson and that she does not feel that this happened*". The same day Mrs Malonga conducted the ninth learning walk: **pgs 517-518**. Mrs Iwobi considered this to be excessive since the class observed was a different class.

38. On 9 October 2023 a false allegation was made against Mrs Iwobi by a student. Mrs Iwobi asked the respondent to look at CCTV footage which confirmed that she had not done what was alleged. Mrs Iwobi did not receive any apology from CoLA. Mrs Iwobi stated that a white teacher would have received an apology but adduced no evidence of this. We find that there was nothing for the respondent to apologise for. It was not the author of the allegation. In order to address the breakdown in relations between the student and Mrs Iwoibi, CoLA arranged three restorative meetings between Mrs Iwobi and the student concerned, facilitated by the pastoral team and Mr Pellin. Mrs Iwobi was not happy with the student's response in these meetings and left, which was not good practice.

39. On 9 and 10 October 2023 Mrs Malonga conducted the tenth and eleventh learning walks: **pgs 517-518**.

40. On 11 October 2023 in her weekly meeting with Mrs Malonga, Mrs Iwobi raised concerns about the relationship with two of her colleagues (Ms Miller and Ms Massie) who she felt were starting to undermine her: **pg 170.** Mrs Iwobi agreed in evidence that Mrs Malonga offered to support her but that she had refused this support: *"I said no because I am big enough and professional enough to deal with myself*". In her witness statement Mrs Iwobi claimed that at this meeting she had raised concerns about being subjected to disproportionate number of learning walks and that Mrs Malonga had agreed to "look into it". This was denied by Mrs Malonga. There is no reference in the log or any other document to this being raised. We do not find that this issue was raised at this meeting.

41. On 13 October 2023 Mrs Iwobi spoke to Ms Hill-Tout (Assistant Principal) informing her that she was considering handing in her notice because she felt undermined by Ms Miller and Ms Massie. Mrs Iwobi confirmed in evidence that she did not complain about Mrs Malonga, who was doing what she could "*to support me in every way*".

42. On or around 16 October 2023 Mr Baxter received an anonymous complaint alleging excessive learning walks and profiling based on ethnicity: **pg 282.** On 19 October he asked HR to provide him with a breakdown of the ethnicity of the 'top 10'. The breakdown of the top four was: (1) Mixed/White & Black African (Mr Vanlint), (2) Chinese, (3) Black British/African (Mrs Owobi), (4) Black British/African, the next six were all White/British: **pgs 282-286**. Mr Baxter's evidence was that he looked into these figures and found no evidence of racial bias. This was because the learning walks could be explained by non-

discriminatory factors such as being new starters, being an ECT member of staff and performance concerns.

43. On 18 October 2023 Mrs Iwobi informed Mrs Malonga that she had thought about handing in her notice: **pg 171.** In fact Mrs Iwobi did apply for alternative jobs and had a job interview in November. She informed Mrs Malonga of this at the time.

44. On 19 October 2023 Mrs Iwobi attended a meeting with Ms Miller, Ms Massie, and Mrs Malonga, mediated by Ms Hill-Tout. Mrs Iwobi stated that this was not constructive and devolved into a personal attack on her teaching style; she felt ambushed and undermined. Ms Miller broke down in tears. Mrs Iwobi in evidence stated that she was frustrated with Ms Miller and that it was a toxic team dynamic.

45. On 3 and 7 November 2023 Mrs Malonga conducted the twelfth and thirteenth learning walks: **pgs 517-518**.

46. On 8 November 2023 Mrs Malonga conducted the fourteenth learning walk. Mrs Malonga observed students being unsupervised and using equipment (weights and tread mill machines) whilst Mrs Iwobi was in an adjoining room setting up the rowers: **pg 171.** The same day, at the weekly meeting with Mrs Iwobi, Mrs Malonga recorded that she would *"continue to learning walk and feedback"*. Mrs Iwobi accepted in cross-examination that the reason for these learning walks was not her age or race, but due to observed health and safety risks. At the same meeting Mrs Malonga assessed Mrs Iwobi against her probation targets and in relation to her second in command role asked her to be "more proactive". She recorded that progress was being made in relation to the second target (to follow the CoLA Learning flow and principles of effective teaching) and that more learning walks were to be conducted to help with this target: **pg 198**. She also recorded progress in relation to the third target (to lead by example and ensure no health and safety concerns).

47. On 9 November 2023 Mr Misiri and Ms Massie conducted the fifteenth learning walk: **pg 517-518**. Mrs Iwobi accepted that this was reasonable due to the 8 November 2023 incident.

48. On 14 November 2023 Mrs Malonga conducted the sixteenth learning walk: **pg 517-518**.

49. On 15 November 2023, during the weekly meeting, Mrs Iwobi alleged that Mrs Malonga made a "racially motivated" comment. The alleged exchange was as follows: Mrs Malonga said "[you] *talk to people*", Mrs Iwobi said *"what do you mean by that*", Mrs Malonga paused and said "*you talk to a lot of people you are very friendly*", Mrs Iwobi responded "*why make a comment like that*", Mrs Malonga did not reply. Mrs Malonga does not recall this exchange, however this is not surprising given that on its face it appears to be an innocuous exchange made two years ago. We do not consider that Mrs Iwobi has completely fabricated this exchange, but are cautious as to the accuracy both in terms of what was said and the context, and the very real possibility of a

construction being placed on the exchange in the context of a discrimination claim, that she did not place at the time. Mrs Iwobi made no contemporaneous record of the exchange; it was not part of her internal grievance, her claim or identified in the list of issues. The first time it was alluded to was in her witness statement and she only provided details in response to my questions at the start of this hearing. She has interpreted Mrs Malonga commenting that she talked to a lot of people, as a comment about her talking to her black colleagues in CoLA. However, if made at all, that may not have been what Mrs Malonga was referring to. Further, there is no evidence that Mrs Iwobi considered this exchange to be offensive at the time. She had a good relationship with Mrs Malonga and the relationship did not change after this exchange. We therefore do not find that this comment, if made at all, was racially motivated.

50. On 27 and 28 November 2023 Mrs Malonga conducted the seventeenth and eighteenth learning walks: **pgs 517-518**. Following the 28 November 2023 learning walk Mrs Malonga noted that "[*n]ot enough progress was made in regards to independent practice/student accountability":* **pg 271***.*

51. On 29 November 2023 Mrs Iwobi attended the three month review probation meeting with Mrs Malonga. Mrs Iwobi's performance was assess as "*progress unsatisfactory*": **pg 201-202.** In particular:

    51.1. In response to the question whether the quality and accuracy of the work produced was of an acceptable standard, Mrs Malonga ticked "no" due to inconsistencies in health and safety and the second in command role:

    51.2. In response to the question whether the member of staff was able to work flexibly as part of a team and, if required, on their own initiative, Mrs Malonga ticked "no" in relation to the second in command role, and that further initiative and proactiveness was required.

    51.3. In response to a health and safety question, it was recorded that some health and safety issues had been identified via learning walks and that "these have been addressed".

    The previous day, Mrs Malonga had informed Mr Baxter that Mrs Iwobi was not performing at the expected level and he authorised putting in place a support plan: **pg 171**. Mrs Malonga informed Mrs Iwobi that a support plan was to be put in place, to be overseen by Mr Misiri and starting on 27 November or 4 December 2023: **pgs 201–203 (issue 6.2.3).**

52. On 30 November 2023, Mr Baxter emailed Ms Zamulinskyj (Director of HR) and Mr Fischer (HR Business Partner) stating *"I need a convo about probation":* **pg 760***.*

53. The same day Mrs Malonga received an email from Ms Miller raising concerns over the structure of Mrs Iwobi's netball lesson, students not wearing appropriate PE uniform/ dress and behaviour management with half the class being unsupervised for 5 minutes: **pg 209.** Ms Miller stated that she had spoken to Mrs Iwobi about it in the changing room and that Mrs Iwobi had informed her

that she had an incident that she needed to contact "on-call" for but no-one came. In the email Ms Miller accused Mrs Iwobi of lying stating: *"this is a well behaved class…. From what I observed this was untrue".* Shortly after Ms Miller sent a correction confirming that Mrs Iwobi did on call someone but then stated: "*but still no excuse for half her class disappearing and not going to get them back*": **pg 211.** Mrs Malonga forwarded the email to Mr Brosnan and Mr Misiri asking for guidance. Mr Misiri responded stating:

"Although there Is evidence of poor practice here and low standards, nothing that warrants a meeting 1:1 in my opinion. …. [Ms Massie] had an incident on Tuesday in her class as well where students went missing. Id like to know if Larissa [Ms Miller] was watching her own lesson much": **pg 211.**

54. On 1 December 2023 Ms Miller wrote to Mrs Malonga stating: *"When I went into the gym, Liz [Mrs Iwobi] was doing her own workout on the squat rack with her back to the students and not supervising them at all, even though some were using weights. This is a major health and safety concern and I do not feel comfortable with her doing fitness for options lessons. From what Jay told me a few weeks ago, I gather she does this every time she is up there."* **pg 212 (issue 7.1.2).**

55. During the hearing we viewed the CCTV footage of Mrs Iwobi's lesson on the 1 December 2023. We noted the following:

    55.1. Mrs Iwobi did not appear to have control of the class. There are various points on the recording where she had her back to the class, looking out of the window whilst on an exercise machine and / or was not paying attention to what the students were doing. This is a health and safety concern since students were using weights and weight machines.

    55.2. Whilst viewing the CCTV during her evidence, Mrs Iwobi admitted, with reference to one of the students: "*this boy is playing with a ball which he should not be admittedly*".

    55.3. Whilst there are examples of Mrs Iwobi demonstrating to one or more students how to use a piece of gym equipment, at other times she is exercising on her own not demonstrating or discussing what she is doing, whilst the students are seen doing their own exercises in other parts of the room.

    55.4. There is a 20 second period where a student is using the bench weight without a spotter (second student watching which is a requirement when using that piece of equipment). Mrs Iwobi did not notice.

    55.5. There was no evidence to support Mrs Iwobi's claim that the reason she was using the gym equipment was because this was a circuit with the students following her lead.

56. Mrs Iwobi criticised Ms Miller for leaving her own class unattended in order to observe her. This was disputed by Ms Miller who stated that Ms Massie was

present and remained in the class. Mrs Iwobi cannot know whether or not Ms Miller had left her class unattended since she was not there. Therefore we do not find that Ms Miller left her classroom unattended. We do however consider that Ms Miller was being disingenuous when she said that she was only away from her class for one minute, since this contradicted the evidence that she gave that she observed Mrs Iwobi for long enough to form a view that she was doing her own exercises rather than demonstrating how to use the equipment to the students. Further we find that Ms Miller deliberately went past Mrs Iwobi's classroom: she had left her classroom in order to find her students that were using the water fountain, however that was downstairs on the same level as her own classroom and there was no need for her to go upstairs via Mrs Iwobi's classroom.

57. Upon receipt of Ms Miller's email, Mrs Malonga viewed the CCTV footage and referred the matter to Mr Brosnan who advised her to speak with Mrs Iwobi: **pg 172.**

58. The same day (1 December 2023) Mrs Malonga escalated to Mr Warwick (Assistant Principal whose remit included timetabling) a concern that Mrs Iwobi had raised with her about a large Year 9 class with SEND students: **pg 215 (issue 3.1.1.1).** She wrote "*EIW [Mrs Iwobi] has a large boys class (40 students) for a year 9 PE lesson which is becoming more and more challenging due to the high level of need and behavioural issues in the class. EIW has now raised this as a health and safety issue which we need to support her with".* Mr Warwick agreed that Mr Misiri and Mr Pellin (both Assistant Principals) be allocated to assist Mrs Iwobi. Mrs Iwobi in her evidence to us agreed that Mrs Malonga had found a solution and agreed that this is what a good line manager should do. Mr Brosnan confirmed that he was aware of Mrs Iwobi's concern, that it had been discussed with him, and that as far as he was concerned it had been satisfactorily resolved.

59. On 5 December 2023 Mr Brosnan conducted an informal meeting with Mrs Iwobi regarding her "*not supervising students effectively*" in the gym on 1 December 2023: **pg 219**. It is recorded that Mrs Iwobi claimed she only exercised to demonstrate or to motivate students and that she did not leave the students unsupervised at any point. This reflected her evidence before us. Mrs Iwobi's case was that the allegation against her changed during the meeting and that Ms Miller and / or Mr Brosnan had originally accused her of leaving her class unsupervised, when in fact she was inside helping students with personalised fitness programmes **(issue 7.1.3)**. Mrs Iwobi appears to have misinterpreted or misunderstood Ms Miller's complaint, which had not alleged that she had left the classroom; nor was this the basis upon which the informal meeting was conducted. Therefore we do not find that there was a change of allegation during this meeting or at all. Mr Brosnan informed Ms Counter and Mr Baxter of the 1 December 2023 concern: **pg 172.**

60. On 6 December 2023 Mrs Iwobi signed the probation form adding the following comments: **pg 202.**

"I feel that your judgement to put me on a support plan based on your LW [learning walk] for 6th Form independent task on 28th Nov is unfair. There was sufficient evidence of students execution of an independent task, with clear explanation in line with the school leaning flow model. My previous LW feedback commented on my independent task being of strength so I am a little confused with the consistency of the feedback given".

61. On 6 December 2023 Mrs Iwobi submitted an incident report following a fight between two students in Year 9 during break time: **pg 220 (issue 3.1.1.2).** She had been rostered with another member of staff, who was absent due to being on jury duty. She complained that she had been left on her own without a radio or support. She had emailed on-call and Mrs Malonga had responded and taken one of the students. Mrs Iwobi submitted the report to the head of year 9 and Mr Pelling in his role as Assistant Principal of Behaviour. Mr Baxter accepted that this was a serious incident. He was aware of the fight, and one of the students was subsequently suspended. He was unaware that Mrs Iwobi had been left on her own to deal with it. Mr Baxter's evidence to us was that CoLA suspended 250-300 students per year, whilst he would ultimately make the decision to suspend he would not get involved in the investigation nor would he go through the paperwork. He relied on his senior management colleagues for this. His decision would be based on a discussion with Mr Pelling and other appropriate persons. On this basis we accepted his evidence that he did not see the incident report and was unaware that Mrs Iwobi had been left on her own.

62. On 7 December 2023 Mr Misiri met Mrs Iwobi to discuss the support plan: **pg 172.** We have been provided with no evidence as to what was discussed or what was agreed going forward. The same day Mrs Iwobi went off sick with stress: **pg 221.**

63. On 8 December 2023 a formal disciplinary investigation invite letter was drafted in relation to the 1 December 2023 gym complaint, but this was not sent to Mrs Iwobi: **pg 223.** The allegation was:

"Inadequate supervision of students during a practical PE session in breach of Department Guidelines and Staff Code of Conduct section 5 Health and Safety and section 7 Child Protection".

The conduct, if proven, was classified as "misconduct" that may lead to a formal warning. Mr Brosnan stated in evidence that this letter was not sent following a discussion with HR and Mr Baxter because a decision was made to deal with the incident through the "probation process". This provided the respondent with the option of dismissal under clause 9.4.3, which the respondent referred to as "short term dismissal".

64. On 14 December 2023 Mr Baxter sent an email to Ms Zamulinskyj stating: *"….. I'm keen to discuss a staffing issue with you sometime if I can? It relates to someone who we've discussed before":* **pg 762.**

Mr Baxter explained that this was to start a discussion with the Trust about options including terminating the contract in accordance with the probation policy.

65. On 15 December 2023 Mrs Iwobi returned to work.

66. On 19 December 2023 Ms Zamulinskyj responded to Mr Baxter apologising for not responding earlier and stating *"do you still need to chat?*": **pg 749**. Mr Baxter responded *"no problem at all. Have a good break*": **pg 761.**

67. On 20 December 2023 at her weekly meeting with Mrs Malonga, Mrs Iwobi raised that she did not feel that Mrs Malonga's expectations were clear enough and that she felt she was being held to a different standard to other members of the team: **pg 172**. Mrs Iwobi gave as an example being asked to clear chairs from the sports hall before practical lessons. Mrs Malonga explained her expectation of Mrs Iwobi as a "leader in the department" and that *"we have a responsibility… 'actions' being louder than words in regards to the 2iC [second in command] role".*

68. On 5 January 2024 Mrs Iwobi emailed Mr Baxter attaching a formal grievance in relation to *"unresolved issues from last term, which contributed to the stressful working conditions and impacted considerably on my health*": **pg 226, 227-228 (issue 3.1.1.3 and 8.1)**. The grievance complained of:

    68.1. "Learning walks and development" stating that these had been disproportionate in comparison to other new teachers.
    68.2. "Undermining behaviour by HoD and colleagues" stating that her role was undermined by Mrs Malonga and two junior colleagues' refusal to cooperate with her.
    68.3. "Unfair treatment and lack of support" with reference to the false student allegation against her and the lack of apology from CoLA.
    68.4. "Discrimination after health related absence" stating that: *"there has been a noticeable change in attitude and increased scrutiny following my disclosure of a health related absence, and my wish to attend interview".*
    68.5. "Unjust scrutiny and contradictory feedback": stating that she had been *"singled out for actions that do not constitute policy violations within the department*".
    68.6. "Unfounded accusations and unsafe work conditions" stating that she had been investigated for a false allegation against her [a reference to the 1 December 2023 complaint] and then stated that her *"refusal to teach an unsafe number of students in a confined space had been disregarded*".
    68.7. "Inappropriate behaviour and lack of support during duties" which included "[*I]nstances of being left alone during break duties with an overwhelming number of students, compromising safety, have been observed".*

    There was no reference to race or age discrimination. Mrs Iwobi accepted that she did not provide details of her complaints in her grievance. In evidence she stated that this was because she thought that all she was required to do was

provide bullet points and that her grievance would be explored at a grievance meeting.

69. The same day Mr Baxter responded copying in Mr Brosnan and Ms Counter. He informed Mrs Iwobi that the matter would be investigated by Mr Brosnan under stage 1 of the grievance policy (informal stage), and that Mr Brosnan would contact her "*by the end of next week"*: **pg 229.** Mrs Malonga was not informed of the grievance at the time and only knew of it on 2 September 2024 (around the time she was informed that Mrs Iwobi had submitted an employment claim). We accept that Mr Baxter had no further involvement in the grievance process, since as Principal he had to ensure that he maintained impartiality in case he had to determine any appeal.

70. On 8 January 2024 Mrs Malonga again raised with Mrs Iwobi that chairs had been left in the sports hall by the basketball coaches. This was a potential health and safety hazard. She asked Mrs Iwobi to lead by example to clear them up and encourage others to do so.

71. On 17 January 2024 Mr Baxter emailed Ms Counter as to whether Mr Brosnan should continue with the grievance meeting arranged for the next day. Ms Counter recommended carrying on *"as per plans until we have made a decision"*: **pgs 763-764.** We find that this was a reference to the decision to dismiss Mrs Iwobi.

72. On 18 January 2024 Ms Miller sent a message on the group WhatsApp to Mrs Iwobi asking her to disconnect her mobile phone from a speaker since the "bleep test" sounds could be heard in Ms Miller's classroom (the bleep test is an exercise of running between two distances with the bleep getting quicker): **pg 232**. Mrs Iwobi accepted in evidence that this was an appropriate message to send her. Ms Miller then sent a further WhatsApp message stating "*you were doing a bleep test in a basketball lesson".* In evidence Mrs Iwobi accepted that the bleep test was not part of the basketball curriculum, but stated that the reason she was doing it was due to her concerns about the fitness of the class and that this test was being used as part of the warmup. However, she accepted that someone may query it if they were not aware of her rationale.

73. Following the lesson Ms Miller approached Mrs Iwobi in a public space in front of Ms Massie and another teacher and asked her why she was doing a bleep test in a basketball lesson. Mrs Iwobi says this was harassment by Ms Miller because Ms Miller should have raised it with her in private rather than in a public space in front of other staff. Ms Miller accepted that she should have raised the matter with Mrs Iwobi in private and that she had behaved unprofessionally. Mrs Iwobi objected to Ms Miller questioning her judgment and said to Ms Miller "*Why do you have a problem with that? Go and tell Mrs Malonga, it's what you do, Go and tell Mrs Malonga*". Mrs Iwobi denied that she was being aggressive but accepted that she said this and that she was in effect accusing Ms Miller of being a "snitch" and telling her to *"back off and leave me alone"*. Whilst Mrs Iwobi may not have used an aggressive tone of voice, we consider that her response was a put down to a junior member of staff who was challenging her judgment. As the senior member of staff this was unprofessional, but an

indication of her frustration with Ms Miller and the poor relationship between them. Ms Miller did raise the use of the bleep test with Mrs Malonga, who informed Ms Counter who informed Mr Baxter: **pg 173.** Mr Baxter considered this to be further evidence that Mrs Iwobi was not complying with the curriculum.

74. On 18 January 2024 Mr Brosnan met Mrs Iwobi to discuss her grievance: **pg 233.** Mrs Iwobi accepted that the notes was an accurate reflection of what was discussed and that she did not make any assertion that her treatment was because of her race or age nor did she allege any detriment as a result of raising health and safety concerns. In terms of health and safety her complaint was that there was a lack of consistency, in that she was being picked up on some aspects of health and safety but at the same time she was being asked to supervise 37 students. She accepted that she had been provided with additional support. Her main complaint was being put on a support plan. The notes recorded that Mr Brosnan informed Mrs Iwobi that he would look into her concerns and get back to her about next steps once he had done this.

75. On 19 January 2024 a draft dismissal letter was discussed by Mr Baxter and Mr Fischer (HR Business Partner): **pg 768-770.**

76. On 22 January 2024 Mrs Iwobi attended a meeting with Mr Baxter. Mr Baxter gave Mrs Iwobi no warning of the purpose of this meeting and refused to allow her to be represented. Mrs Iwobi was dismissed with immediate effect due to sustained underperformance, health and safety breaches, and curriculum deviations. Her dismissal letter stated: "*As you are being dismissed on the grounds of short service dismissal with full notice pay, you do not have the right of appeal you may have had under other formal dismissal processes."* Mrs Iwobi was escorted off the premises which she found humiliating. Both Mrs Malonga and Ms Miller were not involved in decision to dismiss and not consulted. The first Mrs Malonga heard was on the morning of the dismissal and Ms Miller found out the next day.

77. Early conciliation started on 27 February and ended on 4 April 2024. The claim form was presented on 24 April 2024.

78. On 24 April 2024 Mrs Iwobi emailed Mr Baxter to appeal her dismissal. Mr Baxter offered a meeting to resolve concerns, which Mrs Iwobi declined: **pg**s **240–241.**

79. On 29 April 2024 Ms Zamulinskyj asked Mr Smyth (Governor) to conduct a modified grievance process.

80. On 27 August 2024 the grievance report was issued: **pg 256–269. Th**e grievance was upheld in part in relation to the need to clarify the HR processes. However, Mrs Iwobi's grievance that there was no evidence to support her performance being below par was dismissed. He made a number of recommendations including that:

80.1 the respondent's dismissal processes include an explanation of which policy is being applied and, where appropriate, how other policies are redundant under a short service dismissal;

80.2 any future short service dismissal be managed in such a way that the ex-employee may feel they were treated with professional respect. For example, after a short service dismissal a plan be implemented to support the employee in understanding the evidence used in the decision, which policies where applied, what their appeal options are, checking the internal paper trail, etc. In summary, the types of matters and processes that are considered and applied in many other forms of dismissal; and

80.3 the respondent review its short service dismissal letters and consider providing a more comprehensive summary of an employee's appeal rights.

THE LAW

81. The respondent provided detailed written submissions on the legal principles to be applied. These are adopted and only a brief summary is provided below.

Whistleblowing (public interest disclosure)

82. In order to be a protected disclosure under Part IVA of the Employment Relations Act 1996 (ERA 1996) a disclosure must satisfy two conditions:
(1) it must be a qualifying disclosure made in accordance with section 43B(1) of the ERA 1996; and
(2) it must be made in accordance with one of the six specified methods in section 43C-H of the ERA 1996.

83. Section 43B(1) of the ERA 1996 defines a qualifying disclosure as:
"…. any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
….
(d) that the health or safety of any individual has been, is being or is likely to be endangered…."

Thus in order for a disclosure to be a qualifying disclosure:
(1) there must be disclosure of information;
(2) the claimant must reasonably believe that the information tends to show one or more of the specified wrongdoings (Mrs Iwobi relies on endangering health and safety of any individual); and
(3) the claimant must reasonably believe that the disclosure is made in the public interest.

84. A disclosure of information is required to be more than an allegation in that it must have sufficient factual content and specificity such as is capable of tending to show a specified wrongdoing: **Cavendish Monroe Professional Risk Management v Geduld** [2010] IRLR 38; **Kilraine v London Borough of**

Wandsworth [2018] ICR 1850 (CA). This is a matter for the evaluative judgment of the tribunal in the light of all the facts of the case.

85. In assessing whether the claimant had a reasonable belief of one or more of the specified wrongdoings, the tribunal must assess (a) whether the claimant subjectively believed that the information tended to show that wrongdoing and (b) whether objectively that belief was reasonable. A belief may be reasonable even if it is wrong: **Babula v Waltham Forest College** [2007] ICR 1026 (CA).

86. Whether a disclosure has been made in the public interest will depend on the circumstances of the case: **Chesterton Global Ltd v Nurmohamed** [2018] ICR 731 (CA). The essential point is that the disclosure has to serve a wider interest than the private or personal interest of the whistleblower. The Court of Appeal provided guidance as to the factors to be considered which included: the numbers in the affected group, the nature of the interests affected and the extent to which they were affected, the nature of the wrongdoing and the identity of the alleged wrongdoer.

87. In order to be a protected disclosure a qualifying disclosure must be made to a specified person, such as an employer (s 43(C)(1)). This is not in dispute in Mrs Iwobi's case.

Detriment

88. Under section 47B ERA 1996 a worker has the right not to be subject to any detriment by "any act, or any deliberate failure to act" by an employer done on the grounds that he had made a protected disclosure.

89. The burden of proof is on the claimant to prove both a protected disclosure and detriment. The burden then shifts on the respondent to prove that the claimant was not subject to a detriment on the grounds that she had made a protected disclosure (section 48(2) ERA 1996). Section 47B is infringed if the protected disclosure materially (i.e. more than trivially) influences the employer's treatment of the whistleblower: **Fecitt and Ors v NHS Manchester (Public Concern at Work intervening)** [2012] ICR 372 (CA).

Automatic unfair dismissal

90. Under section 103A ERA 1996 an employee has the right not to be unfair dismissed "*if the reason (or, if more than one, the principal reason) for the dismissal is that the employe made a protected disclosure".*

91. Where the claimant lacks the required qualifying period (2 years) in order to succeed in a complaint of unfair dismissal the burden is on them to prove the reason for dismissal, since this is a jurisdictional issue: **Maund v Penwith District Council** [1984] ICR 143 (CA). The burden of proof is higher than for detriment in that the protected disclosure must be the principal reason (i.e. more than a material influence) for the dismissal: **Fecitt and Ors v NHS Manchester (Public Concern at Work intervening)** [2012] ICR 372 (CA). When considering the reason for dismissal the tribunal should identify the real reason

for the dismissal and whether this is separate from or closely connected to the protected disclosure: **Kong v Gulf International Bank (UK) Ltd** [2022] ICR 1513.

Direct race and age discrimination

92. Section 13 of the Equality Act 2010 (EA 2010) defines direct discrimination as where:

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

In this case the relevant protected characteristic is race and age.

93. The concept of less favourable treatment presumes an actual or hypothetical comparator. The relevant circumstances of the comparator must be *"the same, or not materially different*": Section 23 EA 2010.

Harassment

94. Section 26 of the EA 2010 defines harassment as where:

"(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."*

95. "Unwanted" means essentially the same as "unwelcome" or "uninvited". It is well established that a single act, if sufficiently serious, may constitute harassment.

96. The violation of dignity and creation of intimidating etc. environment are strong words. It is a high bar, requiring intention and effects that are serious and marked and not those which are, though real, truly of lesser consequence: **Grant v HM Land Registry** [2011] ECWA Civ 769.

97. "Purpose" and "effect" are alternatives and should be considered separately. Purpose requires intention, whereas effect is unintentional. Effect requires consideration of a subjective question, whether the claimant perceives themselves to have suffered the effect in question and an objective question

as to whether it was reasonable for the claimant to consider that the treatment had that effect: **Pemberton v Inwood** [2018] CR 1292**; Richmond Pharmacology v Dhaliwal** [2009] IRLR 336.

98. "Related to" is a broad term that does not require a direct causal link but only a connection or association: **R (EOC) v Secretary of Trade and Industry** [2007] ICR 1234. This requires a more intense focus on the context of the offending words or behaviour: **Bakkali v Greater Managers Bus (South) t/a Stagecoach Slade** [2018] ICR 1481.

Victimisation

99. Section 27 of the EA 2010 defines victimisation as:

"(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—
…..
(c) making an allegation (whether or not express) that A or another person has contravened this Act."

100. Detriment means some form of disadvantage, to be assessed from the view point of the claimant: **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 (HL). However an unjustified sense of grievance cannot amount to a detriment.

Reason why

101. Discrimination may be, and often is, unconscious and unintended, therefore the Tribunal's decision will often depend on what inference it is proper to draw from all the relevant surrounding circumstances: see **Anya v University of Oxford** [2001] EWCA Civ 405.

102. It is well established that it is not necessary for the prohibitive characteristic (in this case age or race) or protected act, to be the sole reason for the treatment, if it has significantly influenced the reason for the treatment, discrimination or victimisation is made out: **Nagarajan v London Regional Transport** [1999] IRLR 572 (HL).

Burden of proof

103. Section 136 of the EA 2010 provides that:

"(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."

104. Thus the burden of proof is initially on the claimant to establish primary facts from which the tribunal could decide in the absence of any other explanation that discrimination took place (stage 1). The burden then shifts to the respondent to prove that the discrimination did not occur (stage 2). Guidelines on the application of the burden of proof provisions is set out in **Igen v Wong** [2005] EWCA Civ 142.

105. In order for the burden to shift to the respondent, it is not sufficient for the claimant merely to prove a difference in protected characteristic and a difference in treatment, something more is required: **Madarassy v Normura International Plc** [2007] EWCA Civ 33 (CA). Moreover, unfair and unreasonable treatment on its own not is enough to shift the burden of proof: **Glasgow City Council v Zafar** [1998] IRLR 26 (HL); **London Borough of Islington v Ladele** [2009] IRLR 154.

DISCUSSION AND CONCLUSION

The claimant's evidence

106. We had two concerns about the reliability of some of Mrs Iwobi's evidence:

106.1. Use of AI: We understand that a litigant in person may wish to use AI to provide a professionally looking witness statement, however what we are interested in is the facts, what was actually done / said by whom and when. In evidence it was clear that Mrs Iwobi's use of AI to draft her statement undermined her case rather than assisted her. It resulted in generic descriptions rather than facts, unsubstantiated allegations and at times false allegations.

106.2. New or changing allegations: In Mrs Iwobi's written and oral evidence there were a number of occasions where further allegations were made which were not part of her claim or the list of issues. For example Mrs Iwobi alleged that the respondent would not have left a white member of staff on their own during break time (6 December 2023 incident). Mrs Iwobi did not dispute that the reason she was left alone was because the person who had been rostered with her was on jury service. On being challenged in cross examination that mistakes happen Mrs Iwobi responded "absolutely" and denied saying that she considered that it was race discrimination.

The respondent's evidence

107. Mrs Malonga and Mr Baxter came across as straight forward and honest witnesses and their evidence was supported by contemporaneous documentary evidence. Ms Miller came across (at times) as being rehearsed (but she was obviously nervous). In particular we consider that she downplayed her motivation in repeatedly reporting concerns about Mrs Iwobi

to Mrs Malonga. Indeed we noted that Mr Misiri picked up on this in his email response to the 30 November 2023 incident. It was clear that the relationship between Ms Miller and Ms Iwobi had broken down.

WHISTLEBLOWING

Protected disclosures (issue 3)

Was there a disclosure on 1 December 2023? (**issue 3.1.1.1**)

108. The respondent did not dispute that Mrs Iwobi had raised a health and safety concern with Mrs Malonga orally on this date. This was recorded in Mrs Malonga's email of 1 December 2023. We consider that this email reflected what Mrs Iwobi said to Mrs Malonga.

109. We find that it was a qualifying disclosure in that:

    109.1. It disclosed specific information, regarding the size of a particular class that was causing concern, and therefore was not a mere allegation.

    109.2. We consider that the disclosure tended to show that the health or safety of an individual had been, was being or was likely to be endangered since it referred to the health and safety of Mrs Iwobi and her students. That belief was reasonable, Mrs Iwobi was complaining about the size of her class and this carried a risk not just to her but the other students in the class.

    109.3. We also find that Mrs Iwobi believed the disclosure was made in the public interest. She was not just raising a concern about her own health and safety, but the need to have more than one member of staff to support her with health and safety in the classroom as well as behaviour management. In other words she was also concerned about the health and safety of students in a state school. We consider Mrs Iwobi's belief was reasonable in that the disclosure raised concerns about large classes and behavioral issues. The respondent's witnesses accepted that Mrs Iwobi had raised a serious concern and acted on it, which suggested that they considered her concern to be reasonable.

Was there a disclosure on 6 December 2023? (**issue 3.1.1.2**)

110. The respondent did not dispute that Mrs Iwobi raised a health and safety concern in writing.

111. We find that it was a qualifying disclosure in that:
    111.1 It disclosed information of a student fight and the failure by CoLA to provide two persons to monitor the break. We did not consider the lack of a radio in itself to be a concern since Mrs Iwobi could and did use email to contact the on-call team.
    111.2 We accept that Mrs Iwobi believed it tended to show that the health or safety of any individual had been, was being or was likely to be

endangered and that belief was reasonable since it involved a fight between students.

111.3 We also accept that Mrs Iwobi believed that the disclosure was in the public interest, and consider that belief to be reasonable since it concerned the safety of students in a state school.

Was there a disclosure on 5 January 2024? (**issue 3.1.1.3**)

112. The respondent did not dispute that Mrs Iwobi raised a health and safety concern in writing.

113. We did not consider that it was a qualifying disclosure in that:

113.1 It was an allegation and not disclosure of information in that it did not provide sufficient specificity to meet the test of disclosure of information. Whilst it referred to health and safety breaches it did not provide details of those breaches. We consider whether cumulatively with the previous disclosures this disclosure could be read as a qualifying disclosure. However, the grievance did not expressly refer to any previous disclosure, nor did it attach copies of those disclosures. There was no evidence that Mr Baxter was aware of the previous health and safety disclosures at all and Mr Brosnan was only aware of the first one which as far as he was concerned had been resolved.

113.2 In any event, the disclosures were no longer in the public interest since both had been dealt with. Upon receipt of the 1 December 2023 disclosure, Mrs Malonga acted appropriately by escalated the concern the same day and putting in place steps to support Mrs Iwobi. In relation to the 6 December 2023 incident, Mrs Malonga had acted appropriately by attending on receipt of the on-call request and removing one of the students. Following an investigation one of the students was suspended.

114. However, in case we are wrong and the information was sufficient to constitute a protected disclosure, we have gone on to consider whether the disclosure caused any of the alleged detriments.

Protected disclosure

115. It was not disputed that the disclosures had been made to Mrs Iwobi's employer, and therefore are protected disclosures.

Detriment (issue 4)

Did the respondent fail to investigate the claimant's grievance of 5 January 2024 at all? **(issue 4.1.1)**

116. On the facts that we have found there was no failure to investigate Mrs Iwobi's grievance. Mr Baxter acknowledged receipt of the grievance the same day and referred it to Mr Brosnan to investigate. Mrs Iwobi accepted in evidence that Mr Baxter was taking her grievance seriously and that his actions were appropriate. Mr Brosnan started the process in good time in that he invited Mrs Iwobi to attend an informal meeting to discuss her grievance and conducted a meeting with her on the 18 January 2024. Mrs Iwobi was informed at the end of that meeting that he would speak to her colleagues and get back to her about

next steps once he had done this. In her evidence Mrs Iwobi stated that he had failed to provide her with a timescale, however that was not her pleaded case. Her case is that there was a failure to investigate. On the facts as supported by documentary evidence, it is clear that Mr Brosnan had initiated an investigation and that the only reason this did not continue was due to Mrs Iwobi's dismissal on Monday 22 January 2024 (2 working days later). The respondent did subsequently conduct a modified grievance process which Mrs Iwobi has not challenged.

117. Therefore this detriment does not succeed on the facts.

<u>On 17 January 2024, did Ms Miller harass Mrs Iwobi, via WhatsApp group? **(issue 4.1.2)**</u>

118. In her evidence Mrs Iwobi accepted that Ms Miller's WhatsApp messages were not inappropriate, albeit she thought there was an undertone. Her complaint was Ms Miller's treatment following the WhatsApp exchange. Ms Miller accepted that her WhatsApp messages were unprofessional since she had posted the message on a group WhatsApp rather than privately.

119. We find that the WhatsApp message was a detriment in that it was unwanted and an exchange in public.

<u>On 22 January 2024, the manner of dismissal? (i**ssue 4.1.3**)</u>

120. In our view the manner of the dismissal was brutal. Mrs Iwobi was given no warning and refused the right to be accompanied. There was no discussion about the reasons for her dismissal, she was told she was to be dismissed and marched off the premises. We accepted that this treatment was unfair and a detriment. We consider it was this treatment, and the fact that she was not given an opportunity to respond, which caused her the greatest upset.

121. However, the fact that the manner in which Mrs Iwobi was dismissed was unfair does not in itself, provide her with any legal remedy. As the law currently stands, an employer is permitted to unfairly dismiss an employee with less than 2 years' service. In such circumstances an employer is under no obligation to conduct an investigation prior to dismissal. Mrs Iwobi in her evidence and submission has repeatedly referred to not being dealt with in accordance with the respondent's disciplinary and capability policies, however these policies expressly stated that they only applied to employees that have completed their probation, and therefore did not apply to her. On the other hand, we do find that the respondent did act contrary to its own probation policy. This required the employee to have notice, to be invited to a probation hearing and to be accompanied by a representative or work colleague. We also noted the grievance appeal recommendations that Mrs Iwobi's dismissal could have been better handled, with a clear explanation provided to her about the policy that was being applied to her and why. We therefore accept that the manner of Mrs Iwobi's dismissal was a detriment.

Did any protected disclosure cause any of the alleged detriments?

122. We accept that Mrs Malonga was aware of the first disclosure since it was sent to her. There is no evidence that Mrs Malonga subjected Mrs Iwobi to a detriment as a result of this disclosure.

123. There is no evidence that Mrs Malonga was aware of the second or third disclosures. In any event none of the detriments relied upon were detriments that concerned Mrs Malonga. Mrs Malonga was not involved in investigating Mrs Iwobi's grievance, the alleged harassment by Ms Miller on WhatsApp or deciding the manner in which Mrs Iwobi was dismissed.

On 17 January 2024, Ms Miller harassing Mrs Iwobi, via WhatsApp group

124. We find that Ms Miller was not aware of the first two disclosures and Mrs Iwobi has not suggested that Ms Miller would have been aware of these disclosures.

125. In relation to the third disclosure (grievance), we considered Mrs Iwobi's case that Ms Miller would have known about it due to gossip in the PE department. Ms Miller denied that she was aware of it and we find that she was not. Mrs Iwobi adduced no evidence that her grievance was known by her colleagues: it was only sent to Mr Baxter (not copied to Mrs Malonga) and Mr Baxter only referred it to Mr Brosnan to investigate. At the time of this incident, Mr Brosnan had not taken any steps to start interviewing Mrs Iwobi's colleagues in the PE department, since the preliminary meeting with Mrs Iwobi only took place on 18 January 2024. Therefore, there was no evidence whatsoever that Ms Miller's WhatsApp messages were because Mrs Iwobi had made this disclosure.

On 22 January 2024, the manner of dismissal.

126. Mr Brosnan was aware of the first and third disclosures, since the first was discussed with him and the third sent to him. There was no evidence that he was aware of the second disclosure, it was not sent to him nor was he involved in any action following this disclosure. Moreover there was no evidence that he was involved in deciding the manner of Mrs Iwobi's dismissal, he had drafted the disciplinary investigation invite but then the matter was taken out of his hands.

127. There was no evidence that Mr Baxter was aware of the first disclosure, it was not sent or discussed with him, he was clearly aware of the third disclosure (grievance). Whilst he was aware of the second disclosure, in that he authorised the suspension of one of the students, he was not aware of Mrs Iwobi's complaint or her concern that she had been left on her own. We accept his evidence that he relied on delegated responsibility.

128. Even if we had found that the third disclosure was a protected disclosure and / or that Mr Baxter was aware of the first and second disclosure, there is no evidence that the manner of Mrs Iwobi's dismissal was anything to do with these disclosures. The respondent reacted positively to the first two disclosures, took her health and safety concerns seriously and agreed that Mrs Iwobi was right to raise these concerns. This was not a case where the respondent can be accused of objecting to, ignoring or failing to address a concern raised. There

was no evidence to suggest that the manner in which Mrs Iwobi was dismissed was anything to do with any protected disclosure of health and safety concerns.

129. We find that the reason why Mr Baxter dismissed Mrs Iwobi in the way that he did was because he received HR advice that he could under the short service dismissal provisions of the probation policy. That he could do so without the need for any further investigation or hearing any explanation from Mrs Iwobi. He came across in evidence as only focusing on the impact on his students rather than Mrs Iwobi. He informed us and we accept that he was unaware of the probation procedure clause that the employee be given notice and the right to be accompanied.

Was the reason or principal reason for dismissal that the claimant made a protected disclosure? (issue 1.2)

130. This complaint was undermined by Mrs Iwobi's own evidence in that she accepted that her disclosure was not the sole or principal reason for her dismissal. In any event for the reasons set out below we have found that the dismissal was solely due to concerns regarding Mrs Iwobi's performance and not connected to any protected disclosure.

DIRECT RACE AND / OR AGE DISCRIMINATION

131. Mrs Iwobi defined herself as "black" and at the material time was aged 56 years. The claimant's age group was 50s and she compared her treatment with people in the age group 30s.

Comparators

132. Mrs Iwobi identified the following comparators:

132.1 Mr Coales (white), who was accused of serious misconduct and allowed to resign rather than be dismissed: We do not consider him to be an appropriate comparator. This is because he was employed by the Trust not CoLA. The respondent's witnesses were not involved in his disciplinary and were not able to comment on his case. In any event, even if he had been employed by CoLA, he would still not be an appropriate comparator since he was an established employee (therefore subject to a different procedure to an employee on probation).

132.2 Mrs Potten[3] (white), previous second in charge, who it was alleged had taught the wrong syllabus to year 12 BTEC students: The respondent denied that Mrs Potten had taught the wrong syllabus. Mrs Iwobi was not employed by CoLA at the time, and could provide no direct evidence to support her allegation. Therefore, we found that there was insufficient evidence to draw any comparison.

[3] Not Mrs Parker as Mrs Iwobi had alleged.

132.3 Ms Massie (white), an ECT year 2 teacher who had taught the wrong year 12 BTEC syllabus for several weeks in the autumn of 2023: This was not disputed by the respondent. Mrs Iwobi complained that Ms Massie was not put on a support plan. We did not consider her to be an appropriate comparator since she was a junior member of staff and an ECT and therefore not subject to the probation procedure. Mrs Iwobi in evidence accepted that ECTs should be given greater latitude since they are new to teaching, whereas Mrs Iwobi was not only an experienced teacher but in a more senior and leadership role. Further, whilst Ms Massie made a serious mistake, it was a one-off mistake and there was no evidence of any repeat failure on her part to justify being placed on a support plan.

132.4 Ms Miller who had been subjected to an initial meeting during her probation period in 2019: We did not consider her to be an appropriate comparator, this was 6 years ago, at the time Ms Miller was an ECT and Mrs Iwobi provided no details from which a comparison could be drawn.

133. In the absence of an actual comparator Mrs Iwobi relied on a hypothetical comparator. We consider that that comparator is a white teacher who is experienced, in a teaching and leadership role and second in command of a department, who is on probation where there were similar performance concerns.

Background evidence and inferences

134. Mrs Iwobi relied on the following evidence from which she stated an inference of discrimination should be made:

134.1. The failure to provide her with an apology for the false student allegation: Mrs Iwobi stated that a white teacher would have received an apology. When it was put to her that she had no evidence of this she stated she had evidence but withheld it because *"more related to me"*. Mrs Iwobi was informed by myself that she was required to disclose all relevant documents to the respondent. Mrs Iwobi did not provide this document. In the absence of any evidence as to context, we are not able to draw an adverse inference.

134.2. Mrs Malonga's comment on 15 November 2023: This was a comment that Mrs Iwobi referred to for the first time in her witness statement only providing details in response to my questions at the commencement of this hearing. We are not convinced that her account accurately reflected the conversation, given the fallibility of memory and the real possibility of reconstruction. However assuming that it was made, Mrs Iwobi claimed it was a racially motivated comment since *"it implied suspicion of Mrs Iwobi's communication with Black colleagues".* We do not draw this inference. There is no evidence that this was a comment made because Mrs Iwobi was communicating with black colleagues. We do not even know if Mrs Malonga was aware that Mrs Iwobi was communicating with black colleagues. At its face value it is an innocuous comment.

134.3. The anonymous complaint: Mrs Iwobi stated that she was not the author of this complaint and she was not challenged on this. We therefore noted that another black member of staff felt that they were being excessively watched and profiled due to their ethnicity.

134.4. Ethnic breakdown of observations: As a result of the anonymous complaint Mr Baxter to his credit took this seriously and requested further information of the ethnic breakdown of observations. This showed that there were 4 BAME and 6 white teachers in the top 10 teachers with the most observations. This correlated with the ethnic breakdown in teaching staff employed by CoLA of 49% BAME staff / 51% white staff: **pg 774**. However the top 4 were all BAME. We accept the numbers are very small, there is no longitudinal evidence to put this into context and there may be a non-discriminatory reasons for these observations. We know that two of those teachers were new starters in the PE department Mrs Iwobi and Mr Valint. We have been informed that the reason for the others were performance concerns. Mr Baxter did not know whether there was any disproportionality by ethnicity in relation to performance concerns, which could then lead to greater number of observations. We consider that, although this data was weak and was to be treated with caution, this evidence was sufficient together with the anonymous complaint, to draw an inference.

135. There was no statistical or other evidence of age discrimination.

Between September and December 2023, did the respondent subject the claimant to heightened scrutiny and pressure from Mrs Malonga and was this direct race / age discrimination? (Issue 6.2.2);

136. It was not disputed that the respondent conducted 19 learning walks during the period that Mrs Iwobi was employed, 11 in the first half term (Autumn 1), 7 in the next half term (Autumn 2) and 1 in the following half term (Spring 1). We find that Mrs Iwobi was subjected to heightened scrutiny from Mrs Malonga, we have not heard much evidence on pressure, but accept that Mrs Iwobi felt under pressure as a result of that scrutiny.

137. For the reasons stated above (under inferences) we consider that there was sufficient (albeit weak) evidence from which we could conclude, in the absence of an explanation from the respondent, that the treatment was race discrimination. This was because another member of staff had complained of race discrimination in the conduction of learning walks and there was evidence of disproportionality. We emphasise that at this stage we were only considering whether we ”could” find discrimination. We consider that the evidence from which an inference could be drawn was sufficient to shift the burden of proof onto the respondent in relation to the ‘reason why’ question.

138. There was no evidence from which we could conclude that the reason for the treatment was because of Mrs Iwobi’s age, indeed the opposite. Mr Vanlint was

a younger member of staff, and was subjected to 24 learning walks in Autumn 1 and 2, more than Mrs Iwobi: **pg 281.**

Reason why?

139. We consider that the 'with reservations' reference set the tone for Mrs Iwobi's employment with the respondent and meant that from the start Mrs Iwobi was subjected to greater scrutiny. Mrs Malonga kept a log of concerns and minor mistakes were noted in a way that they may not have otherwise been. However Mrs Iwobi was also responsible for the way things then developed. Had she performed well that would have been the end of the matter, however on the first day there was a concern about Mrs Iwobi's lack of preparation for her class and within two days there was the first concern raised about Mrs Iwobi appearing to do her own exercises whilst taking gym classes. We consider that this rang alarm bells and meant that from this point Mrs Iwobi was subjected to greater scrutiny as a result.

140. We also consider that Mrs Iwobi was subjected to heightened scrutiny because she was second in command in a leadership role and the respondent were therefore entitled to hold her to a higher standard than her junior PE colleagues. Further she was a new member of staff, still in her probation period which entitled the respondent to subject her to heightened scrutiny. The probation policy required regular meetings and monitoring of performance (see clauses 7.4 and 7.5). Moreover Mrs Iwobi was employed in the PE department which included using gym equipment and a higher health and safety risk. There was evidence that other PE teaching staff were subject to more than the 3-6 learning walks per half term: **pg 281**.

141. Finally, it was clear that the real reason for Mrs Iwobi being subjected to so many learning walks was due to genuine performance concerns. The respondent has adduced evidence of those concerns: Mrs Malonga kept a log and discussed them with Mrs Iwobi at the time. Many of those concerns were observed not just by Mrs Malonga but other PE colleagues (Ms Massie, Ms Miller, Mr Misiri and Mr Haque). Further many of the concerns raised were repeated, such as health and safety in classrooms and not adhering to the curriculum. Mrs Iwobi in evidence accepted that it was right for Mrs Malonga to raise these concerns with her. Given these concerns it was appropriate for Mrs Iwobi to be subjected to heightened scrutiny.

In late November 2023, did the respondent subject the claimant to unsupportive support plan and was this direct race / age discrimination? (Issue 6.2.3)

142. Mrs Iwobi's evidence on this issue was confused. Her pleaded case was that she was subjected to a support plan, however on the evidence it became apparent that it was never put in place. There was an initial meeting with Mr Misiri on 6 December 2023 but then the process appeared to have been put on hold. In evidence Mrs Iwobi shifted her position and criticised the respondent for failing to put in place the support plan however that was not the complaint before us.

143. Whilst we accept the respondent's position that a support plan is supposed to support a teacher to achieve their probation targets, we can understand from Mrs Iwobi's point of view that it was seen as a performance management tool and a detriment to her. Given the potential connection with disproportionality in the conduction of learning walks, we consider that there was evidence from which we could conclude that the decision to put Mrs Iwobi on a support plan, in the absence of an explanation from the respondent, was race discrimination. Therefore the burden of proof shifted onto the respondent.

144. Mrs Iwobi had not adduce any evidence from which an inference could be drawn that the reason for the support plan was her age and this complaint is dismissed.

Reason why?

145. Mrs Iwobi submitted that the poor performance rating in her probation was just Mrs Malonga's subjective view and that there should have been a wider investigation of her performance before putting her on a support plan. We do not agree. Mrs Malonga's view was based on her observations of Mrs Iwobi's performance. Further it was not just Mrs Malonga's observations, over a three month period, a number of concerns had been raised by four of her colleagues: Mr Misiri, Ms Haque, Ms Miller and Ms Massie, and the first was within 2 days of her starting employment. Moreover we have viewed the CCTV footage of the 1 December 2023 gym lesson which confirmed the concerns raised by Mrs Iwobi's colleagues. We consider that a hypothetical comparator, of similar seniority with similar performance concerns during the probation period, would also have been placed on a support plan.

Did the respondent dismiss the claimant on 22 January 2024 and was this direct race / age discrimination? (Issue 6.2.1)

146. It was not disputed that the respondent dismissed Mrs Iwobi. Given the connection with the previous complaints, we consider that there was evidence from which we could conclude that the decision to dismiss Mrs Iwobi, in the absence of an explanation from the respondent, was race discrimination. Therefore the burden of proof shifted onto the respondent.

147. Mrs Iwobi had not adduce any evidence from which an inference could be drawn that the reason for the discrimination was her age and this complaint is dismissed.

Reason why?

148. We find that the reason for Mrs Iwobi's dismissal was that there was overwhelming evidence of her poor performance. This was supported by Mrs Malonga's log and the CCTV evidence. We noted that following the decision to put Mrs Iwobi on a support plan there were further examples of poor performance, in particular:
    148.1 The 30 November 2023 concern regarding Mrs Iwobi's control of her class and leaving students unsupervised;
    148.2 the 1 December 2023 gym lesson; and
    148.3 the 18 January 2024 bleep test.

149. Mrs Iwobi was a senior member of staff, second in command, with repeated concerns about her performance from the first week of commencing employment. We consider that a hypothetical comparator, of similar seniority with similar performance concerns during the probation period, would also have been dismissed. This is because the respondent could dismiss her under their probation policy, and do so even if it was procedurally unfair since Mrs Iwobi had less than 2 years' service.

HARASSMENT RELATED TO RACE / AGE

Did the respondent subject Mrs Iwobi to excessive learning walks (up to three times per week) and was this harassment related to race / age? (issue 7.1.1)

150. Whilst we have found that Mrs Iwobi was subjected to heightened scrutiny, we do not consider the number of learning walks to be excessive in the circumstances, given the performance concerns, her being on probation and a senior member of staff. Even if the number of learning walks was excessive there was no evidence that the observations related to her age or race for the same reasons as set out above. Whilst 'related to' is a looser test than 'because of' and required consideration of the context, the statistical evidence from which an inference could be drawn was not strong enough to draw this conclusion in the light of cogent and documented evidence provided by the respondent to support their non-discriminatory reasons for the learning walks.

On 1 December 2023, did Ms Miller leave her own class unattended to observe Mrs Iwobi's through the glass door and make a false allegation, and was this harassment related to race / age? (issue 7.1.2)

151. We have not found as a fact that Ms Miller left her own class unattended. In her questions Mrs Iwobi suggested that Ms Massie, an ECT 2 teacher, should not have been left on her own with the class. Ms Miller did not agree, but in any event this was not the allegation before us.

152. However, we are suspicious of Ms Miller's motives for going past Mrs Iwobi's classroom. The water fountains, where her students had gone, were downstairs. Relations between Mrs Iwobi and Ms Miller were poor and Ms Miller stated in her email that 'Jay' had told her that Mrs Iwobi did this. We consider that Ms Miller used the opportunity of looking for her students to check up on Mrs Iwobi.

153. Mrs Iwobi also claimed that Ms Miller had made a false allegation. Mrs Iwobi's evidence was that Ms Miller had accused her of not being in the room, however it is clear from Ms Miller's email that the allegation was that Mrs Iwobi was doing her own exercises rather than supervising students. Having seen the CCTV evidence we do not agree that the allegation was a false allegation.

154. We find that this was unwanted conduct, and amounted to harassment in that the effect of Ms Miller repeatedly observing Mrs Iwobi and reporting her to Mrs Malonga did create an intimidating etc. environment for her. However, there

was no evidence whatsoever that this was because of Mrs Iwobi's race or age. On the other hand there is cogent evidence that there was a personality clash and that relations between them was poor as early as October 2023. We noted that Mrs Iwobi had made Ms Miller cry in the mediation meeting and Mrs Iwobi admitted that following this meeting relations did not improve. We consider that this was the real reason for Ms Miller's actions.

On 5 December 2023, did Mr Brosnan conduct an informal meeting with Mrs Iwobi and was this harassment related to race / age? (issue 7.1.3)

155. We have found as a fact that this meeting took place. It was a fact finding meeting following the 1 December 2023 complaint. Mrs Iwobi criticised this meeting stating that a fuller investigation should have taken place with students interviewed, and that the CCTV footage should have been viewed in her presence so that she could explain. We consider her criticism was premature; that is what one may expect during a disciplinary investigation but at this point it was only an initial fact finding interview. Mr Brosnan's evidence was supported by the draft disciplinary invite letter dated 8 December 2023 which was intended to commence the formal disciplinary investigation process. We therefore consider that there was nothing inappropriate with the holding of this initial fact finding meeting, and therefore it was not reasonable to view this as unwanted conduct. Even if it was, this meeting did not meet the high threshold of the definition of harassment i.e. to have the purpose or effect of violating Mrs Iwobi's dignity or creating an intimidating etc. environment for her. Further and in any event there was no evidence that this conduct related to Mrs Iwobi's age or race. Indeed there is positive evidence that the reason for this meeting was concerns over Mrs Iwobi's conduct on 1 December 2023 which was supported by CCTV evidence.

156. Mrs Iwobi also alleged that the allegations changed during the meeting, in that she says that the initial allegation was that she was not in the room. We consider that she had misheard or misunderstanding the allegation, since it was clear from the notes of the meeting that it was about her supervision of her class, not that she was absent.

On 8 January 2024 did Mrs Malonga assign blame to Mrs Iwobi for chairs being left in the sports hall by the basketball coaches, stating it was her responsibility to clear them. Then when Mrs Iwobi responded, ignore her, and was this harassment related to race / age? (issue 7.1.4)

157. We have found as a fact that Mrs Malonga did request Mrs Iwobi to clear the chairs left in the sport hall, we have not found that Mrs Malonga ignored Mrs Iwobi's response and Mrs Iwobi provided no evidence of this in her witness statement or oral evidence.

158. Whilst Mrs Malonga's request was unwanted by Mrs Iwobi, and she saw it as blaming her, we do not consider it reasonable for her to view it that way. She was employed in a leadership position and expected to set an example. Nor is this incident sufficiently serious to meet the high threshold of harassment i.e. to have the purpose or effect of violating her dignity or creating an intimidating etc.

environment for her. If it had that effect on Mrs Iwobi, we do not consider it reasonable for her to consider this request to be harassment. She was a senior member of staff being asked to lead by example. It is irrelevant whether or not the request was being made to more junior staff. It seems to us common sense that if there are hazards (such a chairs in a space used for PE) that they should be cleared up.

On 18 January 2024 did Ms Miller send Mrs Iwobi a message in the PE group WhatsApp asking her to lower the music volume and publicly question her lesson content, and was this harassment related to race / age? (issue 7.1.5)

159. In her evidence Mrs Iwobi accepted that Ms Miller's WhatsApp messages were not inappropriate. Her complaint was Ms Miller's treatment following the WhatsApp exchange. Whilst she referred to an undertone in the WhatsApp messages she accepted that this was not to do with her race or sex *"more to do with professionalism".*

160. We accept that Ms Miller did act unprofessionally in publicly questioning Mrs Iwobi's lesson content. Ms Miller admitted this in evidence. We find that this was unwanted conduct and whilst we did not consider that Ms Miller intended to harass Mrs Iwobi we find that it had that effect. We find that it was reasonable for Mrs Iwobi to consider that it had that effect since she was being challenged by a junior member of staff in front of other staff. However there was no evidence that the reason was related to Mrs Iwobi's race or age. On there other hand there was cogent evidence that there was a personality clash and that relations between them was poor as early on as October 2023, as set out above.

VICTIMISATION

Protected act

161. The respondent submitted that the grievance dated 5 January 2024 was not a protected act since it did not make any allegation of race and / or age discrimination. We note that under the heading of "discrimination" Mrs Iwobi referred to being discriminated against due to her health related absences and her attending an interview for another post, but not due to her race or age.

162. Mrs Iwobi's evidence was that she did not consider that she had to include everything in her grievance, and that she just provided the bullet points of what she wanted to discuss at a subsequent grievance meeting. The difficulty with Mrs Iwobi's position is that not only were race and age discrimination not mentioned in her grievance but she did not raise these issues with Mr Brosnan at the initial grievance meeting on 18 January 2024.

163. We noted that the statutory wording for a protected act is that a claimant "*does*" or the employer believes that the claimant *"has done, or may do, a protected act".* Mrs Iwobi argued that the respondent believed that she may do a protected act since it believed that she had made the anonymous complaint of race discrimination. There was no evidence that the any of the respondent

witnesses, other than Mr Baxter, knew of the anonymous complaint. Nor was there any evidence that Mr Baxter had associated Mrs Iwobi with the anonymous complaint. Mr Baxter's evidence was that it did not occur to him that Mrs Iwobi's grievance was alleging race or age discrimination. Further we agree with the respondent's submission that the mere fact that Mrs Iwobi was a black teacher does not mean that it should be assumed that she was alleging discrimination on these grounds. That itself would be a discriminatory assumption to make. We therefore find that the grievance was not a protected act. However, in case we are wrong we go on to consider whether the grievance caused the alleged detriments.

Detriments

Did the respondent refuse to investigate the grievance, and if so was this victimisation? **(issue 8.2.1);**

164. This detriment was not proven on the facts for the same reasons as above.

Did the respondent fail to provide the claimant with support after raising the grievance, and if so was this victimisation? (issue **8.2.2);**

165. Mrs Iwobi did not provide any evidence of this. In her evidence she accepted that Mr Baxter had responded to her grievance and informed her that Mr Brosnan would be in contact with her. Mr Brosnan then did contact her and had a meeting with her on 18 January 2024. She accepted that he informed her that he would look into her concerns, speak to her colleagues and get back to her with next steps once he had done this. What became apparent during evidence was that Mrs Iwobi's view was that she should not have been dismissed until her grievance was investigated, but that is a different issue.

Did the respondent dismiss the claimant, and if so was this victimisation? **(issue 8.2.3).**

166. It was not disputed that Mrs Iwobi was dismissed and that this was a detriment. As we have stated previously, the manner in which Mrs Iwobi was dismissed was brutal and unfair. There was no notice of the meeting, no opportunity for representation and no consideration of Mrs Iwobi's version of events. Mrs Iwobi's case rested on the timing that her dismissal being a mere 11 days after submitting her grievance, as evidence that her dismissal was because of her grievance.

167. Even if we accepted that the grievance was a protected act, the mere fact that Mrs Iwobi was dismissed after submitting a grievance does not mean that she was dismissed for that reason: there has to be a causal connection not merely a correlation. The proximity of the timing did mean that we subjected the decision to dismiss to greater scrutiny, to assess whether there was a connection. Ultimately we have concluded that there was no connection. Other than the timing there was no other evidence that the grievance formed any part of the decision to dismiss her. On the other hand there was overwhelming evidence of performance concerns over 4-5 months, supported by contemporaneous documentation and CCTV footage of the 1 December 2023 lesson.

168. Having heard from Mr Baxter and considered the internal correspondence between him and HR, it was clear that as early as December 2023 the possibility of dismissal was being contemplated. We find that the wheels were being put into motion from that date. This finding is supported by:

168.1 the internal correspondence between Mr Baxter and HR in December 2023;
168.2 the fact that the support plan was not implemented following the initial meeting on 7 December 2023; and
168.3 the decision around the 8 December 2023 to not send a formal disciplinary investigation invite letter and to go down the probation route instead which permitted a short service dismissal without the need to conduct an investigation.

We therefore find that dismissing Mrs Iwobi was already on the agenda before Mrs Iwobi submitted her grievance. The delay was caused by the Christmas break and the fact that it took a couple of weeks to obtain approval from the Trust's governing board. The final decision was made following a further instance of Mrs Iwobi not following the curriculum (the bleep test). There was no evidence that it had anything to do with the fact she had submitted a grievance.

CONCLUSION

169. We conclude that all Mrs Iwobi's complaints are unfounded and are dismissed.

This judgment has been approved by:

Employment Judge **HART**

Date: 6 January 2026

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Judgment and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

APPENDIX A

Amended List of Issues
(Amendments in italics; remedy issues removed)

1. Unfair Dismissal

1.1 Was the claimant dismissed?

1.2 Was the reason or principal reason for dismissal that the claimant made a protected disclosure? If so, the claimant will be regarded as unfairly dismissed.

…

3. Protected Disclosure

3.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

3.1.1 What did the claimant say or write? When? To whom? The claimant says they made disclosures on these occasions:
3.1.1.1 1st December 2023
3.1.1.2 6th December 2025
3.1.1.3 The claimant's grievance dated 5 January 2024

3.2 Did they disclose information?
(a) Did they believe the disclosure of information was made in the public interest?
(b) Was that belief reasonable?
(c) Did they believe it tended to show that the health or safety of any individual had been, was being or was likely to be endangered?
(d) Was that belief reasonable?

3.3 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

4. Detriment

4.1 Did the respondent do the following things:

4.1.1 Failure to investigate the claimant's grievance at all;

4.1.2 Harassment by junior colleague, Larissa Miller, via WhatsApp group as per the claimant's chronology 17 January 2024;

4.1.3 The manner of dismissal as per the claimant's chronology 22 January 2024.

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

4.3 If so, was it done on the ground that they made a protected disclosure?

….

6. Direct race, age discrimination (Equality Act 2010 section 13)

6.1 The Claimant is Black and aged 56. The claimant's age group is 50s and she compares her treatment with people in the age group 30s.

6.2 Did the respondent do the following things:

6.2.1 Dismiss the claimant on 22 January2024;

6.2.2 Between September 2023 – December 2023 subject the claimant to heightened scrutiny and pressure.

6.2.3 In November 2023 subject the claimant to unsupportive support plan.

6.3 Was that less favourable treatment?

The claimant states that they were treated worse than Larrissa Miller for the purposes of race discrimination. They rely on other actual comparators but said that they were not in position to name them for fear of reprisal.

With regard to age, the claimant has not named anyone in particular who they say were treated better than they were.

6.4 If so, was it because of race and/or age

6.5 With regard to age discrimination only, was the treatment a proportionate means of achieving a legitimate aim?

7. Harassment related to race and/or age (Equality Act 2010 section 26)

7.1 Did the respondent do the following things:

7.1.1 Subjecting Mrs Iwobi to excessive learning walks – up to three times per week

7.1.2 On 1 December 2023 Ms Miller leaving her own class unattended to observe Mrs Iwobi's and making a false allegation

7.1.3 On 5 December 2023 Mr Brosnan conducting an information meeting with Mrs Iwobi

7.1.4 On 8 January 2024 Mrs Malong assigning blame to Mrs Iwobi for chairs being left in the sports hall by basketball coaches, stating it was her responsibility to clear them. Then when Mrs Iwobi responded, ignoring her

7.1.5 On 18 January 2024, Ms Miller sending Mrs Iwobi a message in the PE Group WhatsApp asking her to lower music volume and publicly questioning her lesson content.

7.2 If so, was that unwanted conduct?

7.3 Did it relate to race and/or age?

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

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

8. Victimisation (Equality Act 2010 section 27)

8.1 Did the claimant do a protected act as follows:

8.1.1 The grievance of 5 January 2024.

8.2 Did the respondent do the following things:

8.2.1 Refuse to investigate the grievance;

8.2.2 Failure to provide the claimant with support after raising the grievance;

8.2.3 Dismiss the claimant.

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

8.4 If so, was it because the claimant did a protected act?

....