EMPLOYMENT TRIBUNAL

Claimant: **Gray Lappin**

Respondent: **Royal Academy of Dance**

Heard at **LONDON SOUTH**
In person

On: **16-17 September 2025**

Before
Chairman: EMPLOYMENT JUDGE N COX
Tribunal Member: Julian Hutchings
Tribunal Member: Kieron Murphy
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Appearances:

For the Claimant: **In person**
For the Respondent: **Ms Mankau (Counsel)**

RESERVED JUDGMENT

The unanimous judgment of the tribunal is :-

1. The complaints of direct sex and sexual orientation discrimination are not well-founded and are dismissed.
2. The complaints of harassment on the grounds of sex and sexual orientation are not well-founded and are dismissed.

Approved by:
Employment Judge N Cox
Date: **14 February 2026**

Judgment sent to the parties and entered in the Register on:
25 February 2026

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for the Tribunal Office

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions
Judgments 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.

RESERVED REASONS

These reasons are the unanimous reasons of the tribunal.

Claims and Issues

1. The Claimant was employed by the Respondent as an Information and Class Assistant from 1 April (the respondent says 25 April) 2022 until 16 November 2023 when he was dismissed.

2. The claimant brings the following complaints:

    2.1. Direct sex and direct sexual orientation discrimination (Equality Act 2010 sections 11, 12 and 13) ("EQA");

    1.2. Harassment related to sex and harassment related to sexual orientation (EQA section 26).

2. The respondent denies all claims.

3. Early conciliation started on 2 December 2023 and ended on 4 December 2023. The claim form was presented on 6 December 2023.

4. The issues were discussed and agreed as set out below.

<u>The Hearing</u>

5. The hearing took place over 2 days. The start of the hearing was delayed by one day due to judicial unavailability and so was in effect heard over two days rather than the three days for which it had been listed. The tribunal indicated at the end of the hearing that that in light of the truncated timeframe it would take time to consider its decision and deliver a reserved judgment with reserved reasons.

6. The tribunal apologises to the parties that it has taken longer than anticipated to deliver our judgment and reasons. This was due to professional clashes and some bouts of indifferent health on the part of the chairman which resulted in difficulty in co-ordinating the availability of individual members for meeting to complete our deliberations and settle our final judgment and reasons.

7. It was agreed at the start of the hearing that issues of remedy, if necessary would be determined at a subsequent hearing, In light of our conclusions no remedy hearing is necessary.

8. The issues were discussed at the outset. They were set out in a Case

Management Order of Employment Judge Burge dated 10 December 2024. Although there had been correspondence about what claims were and what claims were not being advanced, by the time of the hearing case management directions had been given which reinstated the issues as they were set out in EJ Burge's Order. The tribunal discussed the nature of his claims with the claimant at the start of the hearing and heard representations from the parties. The List of Issues to be determined was agreed to be as set out by EJ Burge (adopting the numbering from the Case Management Order):

1 Direct sexual orientation discrimination and Direct sex discrimination (Equality Act 2010 section 13)

1.1 The Claimant compares himself to heterosexual women.

1.2 Did the Respondent do the following things:

1.2.1 Suspend him on 20 October 2023;

1.2.1(a) Question him about his behaviour in a meeting on [7] November 2023;

1.2.2 Dismiss him on 16 November 2023

1.3 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than

someone else was treated. There must be no material difference between their circumstances and the Claimant's. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The Claimant has not named anyone in particular who they say was treated better than they were.

1.4 If so, was it because of sexual orientation or sex?

2. Harassment related to sexual orientation and harassment related to sex (Equality Act 2010 section 26)

2.1 Did the Respondent do the following things:

2.1.1 Suspend him on 20 October 2023;

2.1.2 Question him about his behaviour in a meeting on [7] November

2023;

2.1.3 Dismiss him on 16 November 2023.

2.2 If so, was that unwanted conduct?

2.3 Did it relate to sexual orientation? Did it relate to sex?

2.4 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?

2.5 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.

9. We took some time to explain to the claimant how the issues could be used as a structure for his questioning and submissions to assist the tribunal to understand his case better. Although acting in person and against counsel to his considerable credit the claimant conducted his case and cross-examined witnesses in a focussed, polite and measured manner, and with no little skill.

10. We had a hearing bundle of 439 pages and a supplementary bundle of 70 pages.

11. The respondent provided us with a chronology and a cast list (neither had been agreed) and a key documents list. The claimant provided his own written chronology.

12. We had witness statements and heard oral evidence from:

    12.2. The claimant on his own behalf;

    12.3. For the respondent:-

        12.3.1. Mr Tim Arthur who was the former Chief Executive Officer of the respondent. He was party to the decision to suspend and made the decision to terminate the claimant's engagement. He left his employment with the respondent in December 2024;

        12.3.2. Ms Katherine Hikmet who was the safeguarding manager at the respondent and made the decision to suspend the claimant and investigated the safeguarding allegations made against him. Ms Hikmet left her employment at the respondent in April 2024.

13. The claimant provided written submissions and the respondent addressed us with oral closing submissions. The claimant suddenly fainted towards the end of the hearing. Tribunal staff assisted him, he was given some time and happily was able to recover. The respondent had almost completed closing submissions and we allowed those to be completed. When the claimant had recovered sufficiently. The claimant did not wish to make oral submissions and the tribunal reassured him that we had received his written submissions and would take those fully into account, which we have done in reaching our decision. We have taken both parties' submissions fully into account whether specifically referred to below or not.

14. Concerns were expressed to the respondent about the claimant by the parents of a particular child who attended classes at the Dance School. The child was not identified in the documents or bundles before us, and neither party referred to that child's name. The identity of the child or their parents was not relevant to any of the issues in the case. For convenience we refer to the child as "Child A" in these reasons.

Findings of Fact

15. We make the following findings of fact on the balance of probabilities and in light of the totality of the witness evidence we read and heard and the documents to which we were referred. We reference only those matters which we have considered necessary for our conclusions.

16. The respondent is prestigious membership-based dance-related organisation. It trains leaders, examiners and teachers of dance and accredits them. It holds competitions and events. It operates internationally and through outreach to schools. It teaches approximately 1000 students of all ages and employs approximately 180 staff across the UK including teachers, HQ staff and others. As part of its business operation it operates a Dance School in Wandsworth London Borough.

17. The respondent operated a Safeguarding and Child Protection Policy, and Safeguarding Procedures which applied to all staff working at the Dance School [Bundle 212-214].The Safeguarding and Child Protection Policy provided relevantly:

    17.2. That all staff and assistants were required make themselves aware of the Safeguarding and Child Protection policy, procedures and responsible staff;

    17.3. In relation to inappropriate comments and actions it provided that: "*The Academy aims to give guidance on avoiding situations where a worker's/leaders actions may be misunderstood (this last point is concerned with protecting both*

children and workers from false allegations)."

17.4. It also referrenced a code of conduct, but no such code was in evidence.

18. The respondent maintained an Employee Handbook [228-234] which was given to the claimant and which included a Disciplinary Policy. The policy was intended '*to promote orderly working relationships and to act reasonably, with fairness and consistency in the treatment of all its employees."*. It provided for the commonly-adopted approach of informal and formal escalatory steps. It further provided:

5. Investigation

5.1 It may be necessary for an investigation to be carried out into any case of misconduct. An employee's Line Manager / Director or the Head of HR will investigate any matter which is reasonably suspected or believed to contravene any of the RAD's policies or rules or any other action which may constitute a disciplinary offence.

5.2 The Academy will carry out investigations as promptly as possible and an employee will ordinarily be advised that an investigation is taking place. It is the Academy's aim to complete investigations within as short a period as possible but there may be instances where, because of the complexity of the matter in hand results in a prolonged investigation.

5.3Where an investigation is conducted, at the conclusion of that investigation, the Line Manager / Director or Head of HR will decide whether or not having regard to the results of the investigation it is appropriate to instigate disciplinary action against the employee. As soon as possible after the end of the investigation, the employee will be given full written details of the allegations against him / her, and the conclusions of the investigations and, where appropriate, invited to a Disciplinary Meeting.

Suspension

6.1 There may be instances when it is necessary for the Academy to suspend an employee on full pay pending an investigation into any matters dealt with under this disciplinary procedure. An employee believed to have committed an act of gross misconduct will generally be suspended pending the disciplinary hearing. Suspension does not represent a disciplinary sanction.

6.2 The decision to suspend may only be taken by the Chief Executive or a Director and will happen where … the circumstances of the events giving rise to an investigation are such that suspension is deemed appropriate. A suspension will also happen in the case of alleged gross

misconduct or if there is a potential risk to the business, its employees or third parties if the employee remains at work.

6.3 An employee will be given the reason for the suspension in writing. The period of suspension will only be for as long as is reasonably required to carry out the investigation and/or arrange the disciplinary meeting(s). Suspension does not imply guilt or indicate that the Academy has made a decision.

6.4 Suspended employees may be required to attend interviews or meetings as part of establishing the facts of an investigation. Employees invited to such meetings, will be advised that they are being invited to an investigatory and not a formal disciplinary meeting. Employees do not have the statutory right to be accompanied to investigatory interviews or meetings.

10 Gross Misconduct

11.1 Gross misconduct is a single act of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Academy and warrants the immediate dismissal of the employee.

11.2 If it is confirmed through investigation and via disciplinary proceedings that an employee has committed an act of gross misconduct, the normal consequence will be summary dismissal without notice or payment in lieu of notice.

11.3 The following would amount to gross misconduct, although this is not an exhaustive list:…

> *11.3.12 Breach of the Academy's Safeguarding Policy and Procedures.*

19. The respondent also had a Dignity and Respect Policy and Procedures [p 215-227]. Although the claimant asserted that the conduct he relied upon on the part of the respondent amounted to breaches of clauses in that policy, we considered the clauses he identified and concluded that they added nothing to the analysis we were required to conduct concerning his discrimination and harassment claim. Accordingly they are not set out.

20. Local Authorities have a duty under section 47(1)(b) of the Children Act 1989 if they have reasonable cause to suspect a child is suffering or is likely to suffer significant harm to make such inquiries they consider necessary in order to decide if they should take action to safeguard the child or its welfare.

21. There is also Statutory Guidance for schools on "Keeping Children Safe in Education 2023" [108-109]. This statutory guidance imposes requirements on schools to, amongst other things, maintain safeguarding leads, recognise that the welfare of the child is paramount, inform the member of staff as soon as possible of the likely cause of action 'guided by the LADO and the police where necessary".

22. The London Child Protection Procedures in force at the time and to which the respondent's Dance School was subject, set out, in section 5, the role of the employer in responding to an allegation or concern. In summary the procedures provided that the employer should conduct a fact find with an open mind, and follow internal procedures, then decide if the issue should be dealt with as an allegation or merely as a concern. This decision was to be taken in consultation with the Local Authority Designated Officer (LADO) within Wandsworth's Children's Services. The employer's designated safeguarding lead is required to report the possible allegation within one working day and before any further investigation. Serious allegations should be immediately reported to the police. The initial discussion with the employer's relevant safeguarding lead and LADO is to ascertain if the circumstances were merely a concern or amounted to an allegation which required to be dealt with through the LADO/LCPP procedures.

23. The claimant's previous work experience included time as a dancer and performer amongst other work. He had previous experience of working with children in school and hospital contexts. In those roles he had received training and Level 1 and Level 2 certificates involving safeguarding children and young people. He also referred in his witness evidence to an interview he had had for other employment at a school in May 2023. During that interview he was asked what he would do if asked by a student who was self-harming not to tell anyone. He reported that he had said he didn't know and would hope he would be trained and that he had been told that he should never promise to keep a secret for a child and should always adhere to the company policy. He subsequently received more intensive training at that school in safeguarding.

24. The claimant was engaged by the respondent as an Information Assistant and Dance Class Assistant from April 2022. He worked approximately 12 hours per week.

25. The role of Dance Class Assistant required, amongst other things the claimant to chaperone and supervise students whilst moving around the building and to allocated studios for their classes and to the toilet, help students with their hair and appearance, as necessary, under the direction of the teacher and assist proactively with the supervision of students during their dance class. Dance Class Assistants did not enter into toilets or changing rooms.

26. The role of information assistant involved responding to general enquiries from students, parents and teachers in person and by email and a variety of other information and staff/student support activities.

27. The claimant's Terms and Conditions of Engagement provided amongst other terms:

8 Safeguarding Policy and Procedures

8.1 As a worker engaged by the RAD who either comes into contact or works closely with students under 18 you are obliged to:-

8.1.1. Read and comply with RAD's Safeguarding Policy and Procedures…

8.1.3 Attend mandatory safeguarding training and briefing sessions as required by the RAD online or in person;

8.1.4 Co-operate with the RAD and/or any relevant authorities in the event of there being a safeguarding investigation.

12 Termination

12.1 Either party may terminate this engagement by giving to the other party not less than three months' notice in writing….

12.3 The RAD may terminate this engagement immediately for serious or repeated breach of its terms.

28. The claimant had attended an unpaid induction training day on 31 March 2022. On 25 April 2022 the claimant attended his first shift at the respondent. His evidence was that a particular child (Child A) – whose parents later expressed concern that the claimant was taking a 'special interest' in – was the object of some excitement amongst his Dance School co-workers and that Child A received a great deal of physical and emotional affection from his co-workers. He said he was encouraged by Ms Hikmet to be more pro-actively welcoming. We find this is likely because the induction materials encouraged assistants to be proactive in discharging their roles.

29. Prior to the events in the case there were no complaints about or issues with the claimant or his conduct towards children with whom he interacted. Mr Arthur acknowledged that the claimant was regarded by some colleagues as a talented and committed Dance School Assistant who had fostered positive relationships with many of the young people he had worked with.

30. His engagement was renewed for the 2023/2024 academic year on 15 September 2023 pursuant to a contract of engagement of that date

(pages 254-263).

31. On 8 September 2023 ahead of the start of the new term and his renewed appointment the claimant voluntarily attended a further unpaid refresher induction day (pages 119 – 130).

32. The claimant was aware of the Safeguarding and Child Protection Policy and the safeguarding procedures. He was provided with copies of the policy at the 8 September 2023 training day. Copies of policies were held at reception, as was a copy of the 'Keeping Children Safe in Education" Guidelines. The claimant made himself aware of these materials.

33. A copy of the Respondent's induction training pack was in the bundle [119]. The Safeguarding Information at paragraph 5 of the pack referred to the Safeguarding Policy and Procedures. It set out key points from the policy which were pertinent to the role the claimant performed. These did not make specific reference to sweets, keeping secrets or guidance on activities which may be regarded (or misconstrued) as 'grooming'. Safeguarding training was provided by Ms Hikmet and a Ms Gia Gray who was the Associate Director and Head of Dance School and the claimant's line manager.

The claimant's claims in context

34. The claimant is male and stated, and we accept, that his sexual orientation is homosexual.

35. Mr Arthur accepted that the Dance School was by its nature predominantly staffed with females.

36. During the events in question the claimant was the only male external assistant at the respondent's Dance School.

37. The claimant's witness statement asserted in general terms that colleagues had used language towards him such as "too sensitive" – a comment by Ms Gray which he described as a "traditionally feminine trait" – "creepy" "weirdo" and "Magic Mike" and that he perceived a practice of excluding him from helping female students to prepare their hair buns for examinations. He also referred to the fact that he was tasked with standing outside the adult female changing rooms to let students in and out. These incidents were not the subject of specific complaints.

38. He was the sole male assistant present at the 8 September 2023 refresher training day. On that day the claimant described being constantly singled out and made a source of humour. He said that male

pronouns were used by staff when referring to potential predators. He said he was singled out as being one who always gets his own way and placing his bag in a mystery place. The changing room was described as 'Gray's Domain' when in reality it was a job that no-one else wanted to do. He said he voiced his discomfort about this at the time to Laura Denham Jones, the Dance School Officer. He also said that in the course of that day Gia Gray only referred to one child's name amongst all of the new starters – Child A – because Child A's parents were known to be likely to be late to collect Child A.

39. The claimant said that from this date he never felt comfortable at the respondent. He sensed a change to a less respectful and friendly atmosphere among students and parents towards him and he was laughed at when he reported parents snapping at him and causing scenes.

40. No evidence of any specific complaint about this day was before us, and the activities at the induction day were not the subject of any discrimination complaint. The respondent did not deal with the above allegations in detail for that reason. We accept the claimant's evidence that he felt a general sense of discomfort about the atmosphere at the respondent's Dance School but on the totality of the evidence we find that the claimant has not proven on the balance of probabilities that these events took place as decscribed.

41. The claimant having, with some hesitation, agreed to work additional hours on Tuesday evenings (a busy time with three toddler classes running and two classes ending at the same time) described in his witness evidence that on 19 September 2023 he found himself 'pushed back' by what he described as a 'wall' of heterosexual-acting female office administrator colleagues acting like 'XL bullies'. He said he stationed himself in a visible position by the changing room door waiting to be utilised but was rendered redundant. He said that Gia Gray noticed him and that he had told her that he 'might as well go home'. The parties differed as to whether he did so immediately or finished his shift. Reflecting later that evening he emailed the respondent that he was sick and later tendered his resignation – giving three months notice [p 83]. He received replies from Ms Ward the Dance School Principal who expressed sadness and said that students and parents held him in high regard [p 84] and an email from Gia Gray that referred him for mental health support. He responded with more detailed reasons for his decision to resign on 21 September 2023 [p85]. In that email he stated that he wanted to make clear that he was not a risk to himself or anyone else, and that his resignation arose 'purely from Tuesday's stunt which left me feeling disappointed, humiliated, deflated and hopeless". He exressed sadness at so many children being in tears. He added 'My request is please if there is anything to be said about my behaviour on

Tuesday could it be outside of shift hours. I sincerely apologise, I was in shock".

42. At one stage in his oral evidence the claimant asserted that this resignation letter supported his contention that at least one of the factors in his resignation was his concerns about safeguarding behaviour by colleagues at the Dance School. We do not accept that the letter conveys any such concerns. Where it refers to his not being a 'risk', when read in context, this is clearly a reference to mental health struggles the claimant appeared then to have been experiencing (the details of which were not before us). The claimant did not prove to the required standard that concerns about safeguarding were in any way related to his resignation. We think it is likely that his recollection in this regard had been coloured by subsequent events.

43. The events on 19 September 2023 were again not relied upon by the claimant as an incidence of discriminatory conduct, and the details were not explored in detail in the evidence or in cross-examination as a result. We record them for completeness but make no formal findings other than the claimant tendered his resignation in the aftermath and that the events the subject of the claims occurred against this factual background.

Events in Late October 2023

44. The claimant in his witness evidence said that he instantly felt unwelcome when he arrived for a short shift of work on 20 October 2023. He gave some examples: he felt individuals were ignoring him, not smiling as usual, taking over PCs that he was using and that he generally felt 'something was up'. We were not satisfied on the evidence that staff were acting in an unusually hostile or unfriendly manner. Although we accept that the claimant was truthfully reporting the impression that he recalled having, we considered that this impression was not a reliable recollection and was likely a retrospective impression coloured by subsequent events.

The First Allegation

45. On the evening of Friday 20 October 2023 at about 17:00-17:30 the claimant was the subject of a complaint made by the parents of Child A. The complaint was made in a phone call to Ms Hikmet.

46. Child A was an 11 year-old male child.

47. At the time she received the phone call Ms Hikmet was discussing safeguarding matters with Mr Arthur in his office.

48. The allegations made by the parents in the call were later detailed in an email on 23 October 2023 [p 98]. The following summary of the

allegations made is informed by that email.

49. The parents of Child A reported as follows:-

49.2. On 17 October 2023 they were collecting Child A from a jazz dance class at about 7pm. 'A tall friendly chap' and another (female) assistant were present.

49.3. The Child A excitedly told his parents that he (it seems the parents understood this was a reference to the claimant) had been a storm trooper in Star Wars. Moments later Child A asked his parents if he could tell them a secret and turned to the claimant as if asking for permission. The claimant replied "Oh he's bursting to tell you !" Child A asked "Can I?" and the claimant said "maybe wait till you get home". The claimant then walked away and Child A said to his parents: "Did you know James Bond was in Star Wars?".

49.4. The parents reported that Child A (from later behaviour exhibited by him) treated this information as a secret, that they made a point within their home of not having secrets and that they were concerned about how the 'secret' was presented to Child A because they worried that it could be a relatively risk free way of seeing how Child A would react to being told something was secret and whether he would tell his parents.

49.5. They described this issue of keeping secrets as their 'main' concern.

50. The parents' email dated 23 October 2023 referred to other prior incidents which they described as innocuous and which were not reported at the time:

50.2. An undated incident when the claimant told the parents that Child A had seen him eating a sweet and had asked the parents – because this was required by safeguarding – if he could give a sweet to Child A. The parent had consented at that time and the claimant had caught up with Child A and passed him a sweet.

50.3. Child A had referred to the claimant as his 'friend' on multiple occasions;

50.4. Child A had reported facts (the selling price of flats above the dance floor) to his parents which the claimant had told him;

50.5. The claimant had encouraged Child A in making up his own 'fictitious elaborations' about events in his week. The

claimant had observed about Child A to the parents that "He does love making up stories".

50.6. In the email the parents described an uncomfortable level of "engagement and relationship building" and themselves as 'highly uncomfortable' with the person they were concerned about being around Child A.

51. We find that the gist of these concerns were communicated to Ms Hikmet in the call on the evening of 20 October 2023.

52. In addition to the above, we find that in the call the parents also alleged that the claimant had been alone with Child A in a room washing drinking bottles. This allegation was not repeated in their confirmatory email. The claimant told us, and we accept, that the washing of bottles took place at a sink in the reception area - a public space, not a private room.

Decision to Suspend

53. When she received the call Ms Hikmet immediately discussed the call with Mr Arthur, who was also her line manager as well as the CEO, as raising a safeguarding concern. We find that:

53.2. The discussion lasted about 20 minutes;

53.3. Ms Hikmet assumed the complaint was about the claimant because it was about a male assistant. Mr Arthur did not know the claimant particularly, or that he was the only male Dance School/Information Assistant. He relied on Ms Hikmet's assumption;

53.4. Ms Hikmet and Mr Arthur discussed the appropriate response;

53.5. In doing so both relied upon and sought to apply their understanding of the processes and their obligations under the Safeguarding Policy and the statutory guidance and Local Authority reporting procedures;

53.6. Both assessed that the behaviour disclosed in the parents' call raised the possibility that there had been grooming behaviour;

53.7. Both agreed that the role of Dance Assistant involved front line work directly with children and that therefore there was a heightened safeguarding risk to children and a reputational risk to the respondent if no action were to be taken. We find that their assessment of the risks was broadly accurately encapsulated in a Risk Assessment Form which Ms Hikmet completed retrospectively on the following Monday – 23 October 2023.

53.8. Both agreed that their assessment engaged their obligation to make a pre-investigation report to the LADO. But it would be too late to make a call that evening to the LADO;

53.9. They agreed that the first step was for Ms Hikmet to go down to the Dance School to check the duty register for that evening – 20 October 2023 - and she found that the claimant was on duty on that evening. She confirmed this to Mr Arthur;

53.10. Both agreed that notwithstanding that it was late on Friday evening and that the following week was half-term, the way that the parents had described the behaviours involving Child A merited immediate steps to safeguard children pending investigation;

53.11. Both jointly decided that the appropriate action was immediate suspension. Mr Arthur was not aware that the claimant had already given in his notice.

53.12. Neither assumed at this point that the claimant was in fact guilty of inappropriate behaviour or was in fact grooming Child A. Both kept an open mind on the allegations. Both were primarily focussed on the mitigation of risk primarily to children, but also, we find, the reputational risk to the respondent and to themselves if they failed to take prompt action in light of the allegations made;

53.13. They regarded the act of suspension as neutral and precautionary and not indicative of guilt;

53.14. Ms Hikmet and Mr Arthur both gave evidence that they gave consideration during the discussion to alternatives to suspension. We accept that evidence but consider that at that time their focus was likely on the safeguarding and reputational risk of not suspending and that any consideration of alternatives was likely perfunctory. We think it is likely that that the more structured consideration of options was included retrospectively when the Risk Assessment Form was completed on Monday 23 October 2023 by Ms Hikmet.

53.15. There was some discussion between them about the impact of the allegations on the claimant. We find this was likely limited to managing the mechanics of finding the claimant and informing him of his suspension. There was a subsequent discussion between them about the impact of the suspension on the claimant's mental health in light of his obvious distress after being informed of his suspension;

53.16. They agreed that Ms Hikmet would find the claimant in the

Dance School, and bring him to a private office and Mr Arthur would inform him formally of the complaint and the decision to suspend him.

54. Ms Hikmet and Mr Arthur left the room and found an empty office. The office was in the Dance School area. At that time there were still other staff and students present in the Dance School area.

55. The claimant asserted that there were many offices on the other side of the Dance School which would have been empty and private at that time on a Friday afternoon. We accept that evidence. Neither Ms Hikmet not Mr Arthur were able to give a particular reason why the office in question was chosen. We find that they simply picked a convenient office in the administrative area which was empty with no particular thought being given to its location.

56. Having found the office Ms Hikmet located the claimant performing his duties in the corridor. She smiled and asked the claimant if she could have a word with him. He followed her to the office where Mr Arthur was waiting. Mr Arthur told him to sit down and informed him that he would have to be suspended because a complaint had been made that he had been involved in inappropriate behaviour. He asked but was told he could not be informed of the name of the child. Nor was he given details of the allegations made. We find that this refusal was because Mr Arthur and Ms Hikmet believed that best safeguarding practice required them to preserve confidentiality at this stage.

57. When informed we find that the claimant was severely and visibly shaken.

58. According to Ms Hikmet the claimant ran out of the room and accepted he may have been seen doing so. She proffered a list of Mental Health First Aiders, but the claimant refused these because he had not felt supported by them in the past. She engaged him in conversation which he ended and that he eventually let himself out of the building. The claimant told us that he handed his lanyard in as he was required to do and left as quickly and quietly as possible. We find that he was told to hand over his lanyard and did so, and left the meeting peremptorily in visible distress. This led to a difficulty in his being able to exit the building. We find he was escorted by Ms Hikmet, but Ms Hikmet's lanyard did not open the doors and so she had to enlist a colleague to use her lanyard so the claimant could leave. We find it likely he remained visibly distressed at this time and that parts of his exit were likely witnessed by others.

59. His witness statement, which we accept in this regard, described his experiencing significant turmoil and distress that evening. He was unable to continue to provide care for his mother until the matter was

over. He later told Ms Gray in an email that he felt he was being accused of paedophilia.

60. After these events Mr Arthur spoke again with Ms Hikmet in his office for about 30 minutes. In that meeting they reviewed the Safeguarding Policy and Disciplinary Policy documents for guidance. Both agreed that the nature of the allegations warranted an immediate investigation. Mr Arthur directed Ms Hikmet to initiate a formal investigation process. He also contacted Ms Debbie Whitcombe, the respondent's Head of People (HR) to implement relevant HR procedures, in particular by providing formal written notice of his suspension to the claimant.

61. Both Mr Arthur and Ms Hikmet had been troubled, although not surprised, by the claimant's reaction to his being suspended and had concerns about the impact on his mental health. Although these emails were not in evidence we accept Mr Arthur's evidence that when he spoke to HR he also asked them to ensure that the claimant received information about Mental Health support services.

Second Allegation

62. On the following Monday 23 October 2023 Ms Hikmet went down to the Dance School to try to locate the 'other assistant' who was female and who had been mentioned by the parents of Child A as being present on 17 October 2023 to ask her if she had witnessed the events. Ms Hikmet found that person. In her evidence she could not recall the assistant's name. She was a female dance assistant aged 21. The respondent did not produce any records of this interview. Ms Hikmet said she had made a note at the time but the respondent was unable to produce this. However, based on Ms Hikmet's evidence, which was reflected in her Risk Assessment form and her report of the same date to the LADO we find that:

    62.2. The assistant did not recall seeing anything of the matters referred to by Child A's parents as having occurred on 17 January 2023;

    62.3. She did, however, report two further matters:

        62.3.1. She told Ms Hikmet that sometime earlier (the evidence about when was unclear but Ms Hikmet's report to the LADO mentions "Wednesday last week" which we infer was 18 October 2023) that she had witnessed the claimant giving a gift of a dance magazine to a 5-year-old female child in the presence of the child's mother;

        62.3.2. She told Ms Hikmet that17 October 2023 she had been working with the claimant who was showing her how

to fold clothing left in lost property when he had commented that: “you fold a hoodie like a foreskin”.

62.4. The assistant said had not reported these events to Ms Hikmet or the respondent because she did not want to get the claimant into trouble, she was not sure how to go about it and she did not think they gave rise to a safeguarding concern anyway.

62.5. She described the claimant as very chatty and a person who gets on well with everyone. He would sit cross-legged in the entrance reading stories to siblings in front of parents and that he did like to help people.

Next Steps

63. Thereafter, on 23 October 2023 Ms Hikmet phoned the LADO to report these concerns and also the concerns of the parents of Child A and the fact that the respondent had decided to suspend the claimant pending investigation. Although there were no records of this call we accept Ms Hikmet’s evidence that the LADO was supportive of the action of suspension.

64. On the same day Ms Hikmet prepared:

64.2. A risk assessment form [p 86] reflecting discussions she had had with Mr Arthur on Friday evening.

64.3. A draft Agency Reporting Form for Allegations Against Staff and Volunteers working the London Borough of Wandsworth (MASH). The contents of the form were approved by Mr Arthur before being emailed to the LADO. We find that she prepared and submitted the form because she understood this was a requirement of the Safeguarding Policy and applicable Guidelines and Rules.

65. The Risk Assessment Form recorded:

65.2. The nature of the allegation was ‘Possible grooming – Parent is concerned that their child has received special attention form the claimant: giving Child A sweets, asking him to keep secrets, being in a room on his own washing bottles and telling stories”;

65.3. There was potentially a risk to safety or welfare if the allegation is correct because ‘there maybe other students in the same position’;

65.4. There was a potential risk to the investigation because there was potential for the claimant to persuade others to keep

secrets which could hinder an investigation.

65.5. There is a risk to reputation if the claimant was allowed to work because the respondent would have been considered not to have acted immediately on safeguarding allegations.

65.6. Alternatives to suspension: "The role of Dance School Assistant works directly with students. Home working is not an option and he doesn't have an admin role. Transferring to another area of the Academy isn't an option as there are students everywhere and due to the nature of the allegation."

65.7. The overall assessment was that: "the risks to other students are too great until this situation is investigated thoroughly and there aren't any alternative roles for [the claimant] to undertake".

66. The LADO/MASH Report form prepared and submitted by Ms Hikmet (before she had received Child A's parents' email of 23 October 2023); recorded relevantly:

66.2. Category of abuse alleged: four tick boxes were provided: Physical, Emotional, Sexual, Neglect. Instead of ticking a box Ms Hikmet inserted the word 'Grooming' under the 'Sexual' category. She did this because she wanted to make clear that this was not a case involving sexual abuse but grooming behaviour.

66.3. The steps taken to report to LADO and the decision to suspend pending an investigation;

66.4. The details of the allegations (as summarised above) based on what had been said to Ms Hikmet by the parents and by the other assistant.

67. Ms Hikmet's later Safeguarding Investigation Report referred to a welfare check having been made with the claimant on 23 October but the phone was put down.

68. On 27 October 2023 Ms Whitcombe of HR wrote to the claimant inviting him to an "Investigation Meeting into Safeguarding Complaint" to be held on 2 November 2023. [p101]]. The letter described the purpose of the meeting as being an opportunity to understand the facts of the case and that if a decision were to be taken to proceed with the disciplinary procedure as a result of the investigation, he would be given adequate notice of that and provided with any relevant information or evidence".

69. After his suspension the claimant stayed away from his mother's home for some days [p 104]. On 2 November 2023 the claimant's mother for

whom the claimant was a carer contacted the respondent to say she had not seen the claimant for 8 days.

70. The claimant did not attend the investigation hearing originally scheduled for 2 November 2023. Ms Whitcombe emailed him on 2 November 2023 to reschedule the meeting to 7 November 2023 [p107]. The claimant replied "I slept through it . I AM VERY SICK AND TOO WEAK ATM ! I RECEIVED ZERO SAFEGUARDING TRAINING . BULLIES . RACISTS. SEXIST. HOMOPHOBIC". We accept that he was ill around the 2 November 2023 as well as continuing to experience distress.

71. In the interim the claimant had obtained some assistance from his local Citizens Advice Bureau. The advice he had received suggested that he was entitled to be accompanied to the investigation meeting. In fact the respondent's Disciplinary Policy at clause 6.4 made clear that there was no right to be accompanied to investigation meetings.

72. Concerned about his mental health Ms Gray called him on 3 November 2023. She reported the conversation to Ms Hikmet. He was crying. He said this was his worst nightmare. He had missed the first appointment because he was ill and slept through. He felt that he was being accused of paedophilia, and people would not look at him as he was escorted from the building. She reported that his level of distress was concerning.

73. There must have been an exchange between Ms Hikmet and Ms Gray about what safeguarding training the claimant had received because later in the morning Ms Gray emailed Ms Hikmet to say "In addition to the training I give verbally, there are other safeguarding related documents we hand out at induction. All assistants were sent the safe touch policy on 8 September 2023 with the weekly memo and the RAD safeguarding policy is in the assistants' folder." She sent a follow up email [115] which said "I am also attaching my speaking notes but as discussed in addition to the script, I emphasise safeguarding multiple times ad lib throughout the induction training. You will see section 5 has the safeguarding talking points that I make" She attached a copy of her speaking Notes for the purposes of the 8 September 2023 induction training day [119]. These notes did not expressly show that specific examples of giving sweets or encouraging of 'secrets' were articulated by Ms Gray. Ms Hikmet gave evidence that when she (Ms Hikmet) gave safeguarding training she talked about giving sweets and keeping secrets, saying that she gave examples and tried to model what to say. It was not proven on the evidence that the claimant was ever expressly given such examples.

74. Ms Whitcome from HR wrote to the claimant on 3 November 2023 [108] clarifying that the meeting was an investigatory meeting to consider

safeguarding concerns to which he would have the opportunity to respond. She informed the claimant (correctly in accordance with the respondent's disciplinary policy) that he was not entitled to be accompanied. The claimant confirmed that he would attend. Ms Gray was also notified by Ms Hikmet of the investigation meeting [116].

Investigation Meeting - 7 November 2023

75. Ms Hikmet and Ms Whitcome attended the investigation meeting on 7 November 2023. Ms Whitcome was present in person. Ms Hikmet attended remotely by Zoom. The claimant attended in person.

76. The respondent made a handwritten record [p149]. The notes are not a full or complete record of what was said, but they broadly reflect the gist of the exchanges. The meeting appeared quite short but it was not timed.

76.2. Ms Hikmet told the claimant that this was an investigation meeting and the claimant had an opportunity to explain his side.

76.3. The claimant said he had no idea why he had been suspended and Ms Hikmet said there had been an allegation by Child A's parents;

76.4. The claimant said that 'it makes sense to me now'. He observed that Child A's father had been acting 'strange' and giving him a 'strange look' on previous occasions. He went on to explain that Child A had asked him for a sweet and he had given one to Child A after asking the father's permission. He also explained that he had told Child A that he had work as a stormtrooper in Star Wars because Child A was a Star Wars fan and Child A's parents worked in the film industry. He also explained the detail of the 'making up stories' allegation. He said Child A was imaginative and had invented a story of a hamster and a pigeon coming to live in his garage when he was having a bad day. Child A's mother was angry when the claimant had mentioned this story to her.

76.5. Ms Hikmet explained that the issue was the keeping of secrets . The note records the claimant said "Not a big thing. OK. I get it. It was a secret to tell his parents. I realise"

76.6. Ms Hikmet said giving sweets is not appropriate. The claimant responded that other (named) staff members gave out sweets, in broad daylight and in Child A's class without complaint by the parents.

76.7. Ms Hikmet said it wasn't appropriate in the parents' eyes and the claimant responded: "I understand why you say that".

76.8. He denied talking about the value of flats.

76.9. In relation to washing bottles he explained that he spoke to Child A for longer because the parents drop him off at the wrong times and Child A gets bored and wanted to re-order the bottles. The activity occurred at the sink in the public Reception area.

76.10. He admitted giving a magazine to a 5yr old girl. He explained he had bought it for the stickers inside which he needed to give to dance class teachers, and did not want to simply throw it away. But he said: "I understand this isn't right".

76.11. He denied making the comment about folding the hoodie to the other assistant. He said on the contrary that he had to listen to her talking about her own sex life for 20 minutes.

76.12. Ms Hikmet also asked the claimant about his comment to Ms Gray from the previous month about staff being 'XL bullies' . The claimant said he had been sidelined and the account was twisted (we interpose to observe that this question did not appear to us to be relevant to any safeguarding issue).

76.13. Ms Hikmet then explained that she had had to report the matter to the LADO and wanted to wrap up her investigation ASAP. The claimant asked if this was so even though he was leaving and Ms Hikmet said: 'Yes' because it was a safeguarding issue. The claimant responded by saying "I haven't received adequate safeguarding training". Ms Hikmet responded: "So you don't feel you have received safeguarding training?" and the claimant responded "No".

76.14. Ms Hikmet in her evidence then said that there was an exchange about widespread safeguarding issues that were ignored at the Dance School. This does not appear in the handwritten note of the meeting. But there is then a recorded exchange in which Ms Hikmet said that no-one had told her about that and asked whether the claimant had said anything and the claimant said he had spoken to an (unnamed) line manager, but he was unable to answer any more questions and asked if he could leave and left.

77. Ms Hikmet described the claimant as 'defensive', and exhibiting behaviour (laughing and giving sarcastic answers) which made her feel uncomfortable. We do not accept that recollection. It is not evident or capable of being inferred from the Note, and we would have expected such a concern to have been recorded if it was significant. We bear in mind also that the surrounding correspondence demonstrates clearly

that the claimant was struggling mentally to cope with the situation he found himself in at that time. Ms Hikmet was fully aware of that. We think that if anything about his demeanour struck Ms Hikmet as unsettling, that that is a plausible explanation which Ms Hikmet ought to have taken into account.

78. For his part the claimant alleged that Ms Hikmet was 'rude and agitated' in his opinion. He said that she didn't look him in the eye. Whilst that may have been the claimant's opinion, we do not accept that Ms Hikmet behaved in that way. It is more likely that the claimant's impressions and recollection were coloured by the stress of the situation he found himself in, and that Ms Hikmet's failure to make eye contact was most likely the result of having to conduct the meeting remotely and to look at a screen.

79. Following the investigation meeting Ms Hikmet says that she looked at CCTV footage of the claimant's shift, but that it did not show any images of Child A's father. It was not shown at any point to the claimant for him to comment upon. We were not shown the footage.

80. She appears not to have taken any other steps to investigate the allegations or the claimant's explanations further. She did not put the claimant's explanations to the parents for their comments. She did not undertake any further investigation to ascertain whether there was any truth in the claimant's observations about more widespread conduct, such as giving sweets to children, which appeared to contradict with safeguarding practices.

81. On 8 November 2023 the claimant sent a follow-up email to Ms Whitcome after the investigation meeting. He said: "Please understand that I do now understand how some of my behaviour was unacceptable but I am only human and I do make mistakes. For each mistake I have made I can think of a co-worker accidentally making the same mistake. Straight co-workers make jokes about inappropriate stuff all the time and nobody finds it odd". He described the sweet he gave as being a herbal tablet rather than a sweet and said he had only done that on that one occasion and regretted it immediately because he was expecting the father to say 'no'. He set out a long list of everyday things (sweets, pens, shopping bags etc) which are routinely given out by straight female staff members to 'customers' . He ended his email by saying : "I am not making excuses for my behaviour, I shall accept whatever the outcome. I just needed the opportunity to express the above".

82. On 10 November 2022 the claimant's mother wrote to complain about the public way he was treated when he was suspended and the failure to disclose the allegations made against him at that time, and at what she described a bullying investigation interview at which he was misled by being told that no judgment would be made and not given the required

time to respond. She complained that his mentioning private parts to another adult member of staff led the interviewers into make irrelevant and narrow-minded assumptions of perversion. She described his naturally approachable and friendly, kind and caring nature and that he had been given gifts by parents out of gratitude for his kindness.

83. Ms Hikmet, we find, decided that she had no choice but to dismiss the claimant. She took that decision and passed her decision on to Ms Whitcome to implement administratively.

84. On 15 November 2023 she produced a Safeguarding Investigation Report with appendices [p153].

85. Ms Hikmet's Safeguarding Investigation Report recorded that :

85.2. Allegation 1: not maintaining his position of trust by encouraging a child to keep a secret and that he gave the same child sweets, albeit in front of the parent. He also gave another student a magazine as a birthday present.

85.2.1. The claimant had confirmed that the events occurred.

85.2.2. He didn't see giving a sweet as an issue because it had happened at another school and another child had given Child A a sweet. He hadn't been told not to give sweets.

85.2.3. There wasn't an issue with Child A keeping a secret with a parent;

85.2.4. He had given a girl a magazine because he wanted keep some stickers from it for himself.

85.2.5. He then said he understood.

85.2.6. "He said he hadn't had safeguarding training. This was not true as he has attended all available training and has a good understanding of safeguarding.

85.3. Allegation 2: whilst folding lost property with another member of staff he referred to folding a hooded jumper like folding a foreskin.

85.3.1. The claimant denied this incident, but an email from his mother said that he had 'accidentally mentioned a part of his anatomy'.

85.4. The incident with the Staff/XL Bullies comment was

discussed. The claimant said he had previously raised safeguarding concerns with Dance School but not been listened to . He was given the opportunity to share his concerns but did not do so and left. There have not been any concerns raised by the claimant regarding safeguarding in the Dance School.

85.5. "[the claimant] GL has not applied his safeguarding training in practice and this is a worry. At the beginning of the investigation GL could not see how the incidences were not appropriate and either diminished the incident or blamed someone else for either doing something similar or not telling him not to do it.

GL doesn't appear to appreciate that he has a position of trust in his role. His perceptions of the incidences that have happened with Dance School staff differ.

GL's behaviours both towards children and during the investigation indicate that he may pose a risk of harm to children and may have behaved in a way that indicates that he may not be suitable to work with children.

This suggests that allegation one is substantiated. The evidence does not prove what GL's intentions were when the allegations took place.

The outcome of allegation two is unsubstantiated as there is insufficient evidence to either to prove or disprove the allegation. The term unsubstantiated, therefore, does not imply guilt or innocence.

85.6. She recommended (i) sending the report to the Wandsworth LADO, (ii) Sending an outcome letter to the claimant (iii) Referring the claimant ot eh DBS in line with the Keeping Children Safe in Education 2023 Guidelines and (iv) HT to implement the disciplinary policy alleged did happen. The evidence does not pro

86. She passed the report and a draft 'outcome' letter on to Ms Whitcome to complete the HR sections and to forward to the claimant [184]. Ms Whitcombe in her reply to Ms Hikmet added that 'We need to think about who will do the disciplinary".

87. On 16 November 2023 Ms Whitcome sent the completed 'outcome' letter to the claimant [188/9]. In summary that letter repeated the contents of the Investigation report . It found allegation one substantiated and allegation two unsubstantiated. Notwithstanding that bot Ms Hikmet and Ms Whitcombe had previously envisaged that there would then need to be a disciplinary process, the outcome letter stated: "Following the

outcome of this safeguarding investigation, the decision has been made to terminate your casual contract with immediate effect as per clause 12.3 in your Terms and Conditions of Engagement."

88. On 17 November 2023 the LADO asked Ms Hikmet about the progress of her investigation. On 21 November 2023 she sent a copy of her investigation report informed the LADO that the claimant had been dismissed.

89. On 22 November 2023 Ms Hikmet submitted a report to the DBS [193] . Amongst other information the report stated:

    89.2. "Risk of harm or harm suffered: Emotional/Psychological

    89.3. Details of the risk of harm or harm suffered: The risk is that [Child A] was being groomed by Mr Lappin. Mr Lappin's intentions are unclear. [Child A] was asked to keep secrets which is against what his parents have taught him.

90. During the hearing the claimant challenged Ms Hikmet about the change in language between her report to the LADO – where the conduct was stated as abuse/grooming rather than emotional, and the DBS form, where the risk was identified as emotional/psychological. Ms Hikmet explained that her assessment of the nature of the risk developed and changed in light of the further information and responses from the claimant, and that was why she completed the DBAS form as she did. We accept her evidence on this point.

91. On 27 November the claimant emailed Ms Whitcombe to say that he had been very ill. He said "Mortified by the level of lies, discrimination and twisted manipulation by you and your institution. You even took advantage of my vulnerable mother reminding me that this is truly a white man's world. I shall be legally challenging this." The claimant did not lodge any formal grievance, nor did he appeal the decision to terminate his engagement.

92. On 5 December 2023 the DBS informed the claimant that it had decided not to include his name in the barred list.

Applicable Law

Discrimination Claims : General

93. An employer must not discriminate against an employee in the terms of their employment, by dismissing the employee or by subjecting the employee to any other detriment: Equality Act 2010 s 39(1) ("the Act").

94. This prohibition gives rise to the right to bring a claim under Section 13

of the Act.

95. Section 212 of the Act provides that a detriment does not include conduct which amounts to harassment. Consequently, although direct discrimination and harassment claims may be pursued in the alternative, conduct will either amount to a detriment (for the purposes of a direct discrimination claim) or harassment but not both.

Burden of Proof

96. Section 136 applies to any proceedings relating to a contravention of the Act and provides:

"(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".

97. There is therefore a two-stage analytical process. Stage 1 concerns the primary facts and Stage 2 the employers explanation. Guidelines on the application of the burden of proof provisions were provided in the Court of Appeal in Igen v Wong [2005] EWCA 142 (a pre- Equality Act 2010 case) and subsequently restated and explained in Hewage v Grampian Health Board [2012] ICR 1054 (SC); Efobi v Royal Mail Group Ltd [2021] UKSC 33 and Field v Pye & Co [2022] EAT.

98. At the first stage the burden of proof lies with the claimant who must first prove on a balance of probabilities facts from which a Tribunal could conclude, in the absence of any other (non-discriminatory) explanation that the Respondent had discriminated against him. The outcome at this stage will usually depend on what inferences it is proper to draw from the primary facts found, and the tribunal assumes that there is no adequate explanation for the facts. Inferences may be informed by evasive answers or failures to adduce evidence from relevant witnesses. The tribunal may also draw inferences from a failure to comply with applicable codes of practice. It is not sufficient at this stage for the employee merely to prove a difference in protected characteristic and a difference in treatment. Something more is required: Madrassy v Nomura International [2007] ICR 867 (CA). It cannot be presumed or inferred only from the fact that an employer has acted unreasonably towards one employee that it would have acted reasonably if dealing with another: Zafar v Glasgow City Council [1998] IRLR 36. At this stage ultimately the tribunal must stand back from the detail and look at the cumulative picture.

99. If the claimant proves such facts, establishing a prime facie case, the

burden shifts to the respondent employer to prove on the balance of probabilities that the dismissal or detrimental or less favourable treatment (as the case may be depending on the type of discrimination relied upon) was in no sense whatsoever on the grounds of the protected characteristic. The Respondent must disprove the allegation by showing there was a non-discriminatory reason for the difference in the way the claimant was treated compared to how another (actual or hypothetical) employee was or would be treated. Since the employer is normally in possession of the facts necessary to make out an explanation, a tribunal will normally require cogent evidence to discharge the burden of proof and will examine failures to comply with applicable codes of practice carefully. This stage will require consideration of the subjective reasons that caused the employer to act as it did. The respondent will have to show a non-discriminatory reason for any difference in treatment. But the employer only has to prove that the reason for the treatment was not the forbidden reason. The employer does not need to prove that they acted reasonably or fairly, but in such cases the tribunal will be astute to test explanations that the employer was only acting unfairly and not for the discriminatory reason: Komeng v Sandwell Metropolitan Borough Council UKEAT/0592/10/SM.

100. In a complaint of harassment, the claimant will need to establish on the balance of probabilities that they have been subjected to unwanted conduct which had the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. They will also need to adduce some evidence to suggest that the conduct could be related to a protected characteristic.

101. But the burden of proof provisions should not be applied in an overly mechanistic manner: see Khan v The Home Office [2008] EWCA Civ 578 (per Maurice Kay LJ at paragraph 12).

102. The approach laid down by section136 requires careful attention where there is room for doubt as to the facts necessary to establish discrimination, but where the Tribunal is able to make positive findings on the evidence one way or another, the two-stage test under section 136 does not come into the equation: see Hewage v Grampian Health Board [2012] ICR 1054 (per Lord Hope at paragraph 32) approving Martin v Devonshires Solicitors [2011] ICR 352 (per Underhill J at paragraph 39).

Direct Discrimination: section 13

103. Section 13 of the EQA 2010 provides :

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

104. An employee's sex and sexual orientation are both protected characteristics: Sections 11 and 12 of the Act.

105. Section 13 requires the claimant to identify a comparator who was or would have been treated differently. The circumstances of the comparator, who may be actual or hypothetical, must be not materially different to those of the claimant (EQA s 23: Hewage v Grampian Health Board [2012] UKSC 37). In this case the claimant identifies himself as a homosexual male and compares his treatment with hypothetical comparators who are heterosexual women.

106. Direct discrimination occurs where the employer treats or would treat the employee less favourably than another employee 'because of' a protected characteristic. The crucial question in every direct discrimination case is what is the reason why the claimant was treated as they were. Was it because of their protected characteristic or was it wholly for other reasons. The protected characteristic need not be the only reason for the less favourable treatment it may not even be the main reason provided the decision in question was significantly, that is more than trivially, influenced by the protected characteristic the treatment will be because of that characteristic.

107. In most cases the tribunal will have to look to the mental processes of the alleged discriminator to determine their motivation: Nagarajan v London Regional Transport [1999] IRLR 572. Motivation is not the same as motive and a well-meaning employer may still directly discriminate. Discrimination may also be subconscious. A respondent acting through it managers may genuinely believe that the reason why they acted as they did had nothing to do with the applicant's protected characteristic but a tribunal may decide that the proper inference to be drawn from the evidence is that whether they realised it at the time or not, the protected characteristic was the reason why they acted as they did.

108. When considering a direct discrimination claim under section 13 of the Act the individual decision-maker must be found to have actual or constructive knowledge of the protected characteristic.

Harassment: section 26

109. Section 26 of the EQA provides relevantly as follows:

(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 the conduct had the effect referred to in sub-section (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 that conduct to have that effect.

110. Whether conduct is "unwanted" is a question of fact which requires the Tribunal to decide whether the conduct was unwanted by the employee : Thomas Sanderson Blinds Ltd v Mr S English UKEAT/0316).

111. The language of the section 26 (1) b) is strong and looks for effects which are serious and marked. It is wrong to cheapen them. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment: Omooba v Michael Garret Associates [2024] IRLR 440 per Eady J at [103] citing Elias LJ in Grant v HM Land Registry [2011] EWCA Civ 769 (paragraph 47) and Langstaff P in Betsi Cadwaladr University v Hughes UKEAT/0179/13 (paragraph 12).

112. An environment is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the workplace, office or staff-room concerned. The frequency of use of such words is not irrelevant. A one-off act may violate an employee's dignity, but it would not be sufficient to create a degrading environment: Weeks v Newham College of Further Education UKEAT/0630/11/ZT per Langstaff J at [21]. An 'environment' may continue after employment ends.

113. In determining whether the conduct is "related to" the protected characteristic in issue, the tribunal applies a broad test (broader than the causation test of *'because of'* in section 13) requiring an evaluation of the evidence in the round. The tribunal must identify, distinctly and with clarity, what features of the factual matrix have led it to the conclusion that the conduct is related to that protected characteristic. The motivation of the individual concerned is neither necessary nor the only possible route to finding that the conduct related to the protected characteristic: Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor [2020] IRLR 495. The focus of the Tribunal must be on the specific

conduct complained of when assessing whether it is related to the protected characteristic: Worcestershire Health and Care NHS Trust v Allen [2024] EAT 40 at paragraph 9.

Analysis and Conclusions

114. In his written submissions, which we have considered in full, the claimant included a number of points which were not pleaded in his claim form or which were introduced for the first time (for example he alleged there were no facilities for trans students and no lock on the adult male changing room door and alleged data breaches about the content of the bundle and the DBS report). We have not taken those points into account. However, so far as appears to us relevant to the issues we have to decide, the claimant highlighted the following points in summary:

114.2. Mr Arthur admitted to 'equal treatment' of the claimant in relation to his suspension, but the claimant was the only male/gay male Dance School Assistant. Mr Arthur admitted to not considering if the claimant could be an easy target for 'gossip, myths…, stereotyping";

114.3. Ms Hikmet and Mr Arthur 'assumed' the parent was talking about the claimant purely from the use of 'gentleman' and 'child's friend' by the parents.

114.4. Mr Arthur did not normally get involved with day-to-day safeguarding issues directly but did in the claimant's case;

114.5. He decided on immediate suspension without attempting to collect more facts or checking the claimant's or Child A's files.

114.6. Mr Arthur was unaware that the claimant was leaving the Dance School due to safeguarding shortcomings.

115. The claimant relied upon there being incorrect information in the Risk assessment, the parent's complaint, the telephone call from Ms Gray, the dismissal letter, the Safeguarding Investigation report and the DBS report.

116. He also highlighted the following points:

116.2. The safeguarding training did not include advice regarding secrets and sweets or a 'code of conduct';

116.3. There were shortcomings with the investigation and dismissal process: he was not shown CCTV, the decision makers were not fully aware of the details of his role, and the parents' account was simply believed. He was not given details of the

allegations or given and a fair chance to explain himself. The procedures envisaged in the ACAS Code of Conduct were not followed and no account was taken of his character and work ethic or his willingness to learn and adapt .

117. For the respondent, Ms Mankau in summary submitted as follows:

The act of suspension:

118. The direct discrimination claim regarding the act of suspension fails because :

118.2. Ms Hikmet received a phone call from Child A's parents setting out a number of concerns. Given the nature of those concerns, which were potentially significant and showed potential grooming behaviour, the claimant was immediately suspended pending an investigation. It is clear this is the reason why the claimant was suspended.

118.3. The subsequent LADO report is consistent with this explanation of why the claimant was suspended;

118.4. There is no evidence to suggest any actual straight female comparator had been, or a hypothetical comparator in materially the same circumstances would have been treated any differently in the face of such concerns. Ms Hikmet and Mr Arthur were clear that it was the nature of the complaint that dictated the process, not the claimant's sex or sexual orientation. Mr Arthur's evidence was that he had no knowledge of the claimant's sexual orientation;

118.5. The claim regarding suspension fails at stage 1, or if it survives, Ms Hikmet's and Mr Arthur's evidence is sufficient to discharge the respondent's burden at stage 2.

119. The harassment claim relating to the act of suspension fails because:

119.2. Although suspension can amount to unwanted conduct, Ms Hikmet and Mr Arthur acted for the reasons above. Those reasons were a response to the safeguarding complaint. Nothing more. The suspension was not related to the claimant's protected characteristics.

119.3. Even if it was so related, it was not done intentionally for the proscribed purposes;

119.4. Even if it unintentionally created the proscribed environment/effect on the claimant, suspension was a neutral act

undertaken for the purpose of safeguarding children and/or the integrity and reputation of the respondent. It was therefore not reasonable for the claimant to experience the prescribed effect.

Questioning on 7 November 2023

120. The concerns received from Child A's parents clearly required investigation and that involved putting questions to the claimant;

121. That is a normal course of action for an employer in response to such concerns and the respondent would have been wrong not to ask questions;

122. The direct discrimination claim fails for causation;

122.2. There was no evidence from which to find that a hypothetical comparator would have been treated any differently;

123. The harassment claim fails because:

123.2. The evidence of Ms Hikmet and Mr Arthur were clear that the investigation would have been carried out in response to such concerns being expressed by a parent whoever was the target of such complaints;

123.3. In these circumstances it was not reasonable for the claimant to experience, if indeed he did, the proscribed effects.

Dismissal

124. The position regarding the action of dismissal is different from the above conduct because it depends on what was found by the investigation and said during the investigation meeting;

125. During the meeting the claimant did not deny that, as alleged by the parents of Child A, he had given Child A sweet and admitted that he had told a Child A a 'secret' – indeed in cross examination he had admitted that he told a group of students something was a secret. He also admitted giving a female student a magazine.

126. He evidenced a lack of understanding and insight into the problems this created for an adult in a position of trust. He trivialised the conduct during the meeting and in his first email afterwards, describing it as an 'overreaction'.

127. The claimant accepted in cross-examination for the first time that he understood that his actions were not appropriate, but said he did not have the chance to explain or deal with the context before his dismissal;

128. The focus needs to be on what Ms Hikmet knew and her point of view: i.e he did not deny the actions and downplayed their significance and showed to her a lack of understanding and therefore a risk of continuing engagement between the claimant and students;

129. The reasons she set out in her outcome letter explains why she reached the conclusions she did. These were not because of the claimant's protected characteristics;

130. There was no evidence that a comparator would have been treated differently;

131. It should be borne in mind that the claimant had already resigned and only had one month remaining to work so why would the respondent dismiss him if it were not because of concerns about safeguarding risk;

132. The lack of a disciplinary process could be something from which an adverse inference could be drawn. But no such inference should be drawn in this case. The disciplinary policy applies only to full employees. The claimant was only a temporary worker and had less than 2 years continuous service. The respondent had no imperative to conduct a full disciplinary process and was entitled to exercise its contractual termination rights. The claim is not about procedural fairness but discrimination on grounds of sex or sexual orientation.

133. As regards Mr Arthur's admission that he did not consider whether the claimant was an easy target for complaints because of his sex and sexual orientation, the claims require that the claimant proves he was subjected to less favourable treatment: they do not require the respondent to afford him more favourable treatment because of his protected characteristics.

134. Taking account of the evidence as a whole, our factual findings and the parties' submissions, we conclude that the claimant's claims of direct sex and direct sexual orientation discrimination are not well founded and are dismissed. The claims of harassment related to sex or sexual orientation are also not well founded and are dismissed.

135. Our reasons are as follows:

136. It is convenient to set out the analysis by reference to the three separate acts of the respondent upon which the claimant relies, but in reaching our conclusion we have stepped back to consider whether the actions relied upon when viewed together in all the circumstances and applying the two-stage burden of proof as appropriate should lead us to a finding of liability on either of the claims. In the case of each claim our conclusion is that they do not.

137. In considering the application of the first stage of the two-stage burden of proof we took into account the wider evidence of the context which the claimant referenced. We have dealt with the principal elements of this evidence in the sections above entitled 'The claimant's claims in context' and 'Events in early October 2023'. We also took into account the suggestions he made during his investigation interview that there was widespread conduct on the part of other (female) colleagues of a similar nature to his own (giving sweets/gift etc). In both cases, the claimant on the evidence failed to discharge the burden of proving the facts he alleged.

138. The claimant proved that as a male dance assistant he was in a minority in a predominantly female environment. We accept that he was upset at what he perceived was a sleight on 19 September 2023 when he was left to feel redundant and unappreciated. Although those responsible were all, inevitably, female, he did not prove that the conduct directed towards him was related to his sex or sexual orientation.

139. The claimant therefore needed to discharge the stage one burden by reference to the evidence arising from the three events themselves which were the subject of specific complaints: his suspension, the investigation and his dismissal.

The action of suspension

140. In light of our findings of fact set out in the section entitled 'the decision to suspend' the reason why Ms Hikmet together with Mr Arthur made the decision to dismiss is clearly established.

141. Ms Hikmet had received a phone call from the parents of Child A on Friday evening. Ms Hikmet genuinely considered that the conduct referenced by the parents were consistent with potential grooming behaviour, although she made no assumptions about the reasons for the claimant's so acting at that stage. She discussed the appropriate response with Mr Arthur because he was present, and because she was concerned about the nature of the complaints and the possible impact on the reputation of the Dance School if no action had been taken in light of her concerns.

142. Although the fact that the giving of a sweet occurred with the parent's knowledge and in their presence, and might appear trivial, the language of keeping secrets and the concern expressed by the parents together with the giving of sweets and the other (not pursued) allegation of being alone with Child A was sufficient for us to be satisfied that Ms Hikmet's expressed concerns about the manifestation of a grooming risk were genuine and not confected and was based on a reasonable assessment of the facts as reported to her.

143. There was no evidence from which to infer that the decision to suspend which was made by Ms Hikmet together with Mr Arthur was even trivially connected with the claimant's sex or sexual orientation. Mr Arthur's evidence that he was not previously aware of the claimant's sexual orientation was on balance more persuasive from the CEO of the organisation than the inference which the claimant invited us to draw that he (and Ms Hikmet) would have known because of the contents of his CV or because it was a matter of common knowledge amongst colleagues. Ms Hikmet and Mr Arthur were clear and persuasive in their evidence that it was the nature of the complaint that dictated the suspension and investigation, not the claimant's sex or sexual orientation. We think the avoidance of risk for the respondent was a significant factor in their decision making.

144. The imperative to suspend pending investigation flowed from Ms Hikmet's conclusions about the apparent risks and the consequential actions which the statutory and regulatory framework outlined above required of the respondent and its safeguarding officer, and was envisaged in the respondent's policy documents.

145. Ms Hikmet's reasoning was set out in her subsequent LADO report her evidence before us was consistent with it.

146. There was no evidence before us that a straight female employee in materially the same circumstances had been treated more favourably. The claimant made reference to a female co-worker who had given a sweet to a student and not been suspended or sanctioned, but this was not documented and he accepted that he did not know if that person had been the subject of a specific parental complaint. There was an insufficient evidential basis to support an inference that a hypothetical comparator in materially the same circumstances would have been treated any differently in the face of such concerns.

147. We accept the proposition advanced by Ms Mankau in her submissions that the test in the context of the direct discrimination claim is whether the claimant was subjected to 'less favourable treatment' . It is not whether he was not afforded more favourable treatment because of his sex or sexual orientation even if it were the case (which was not established on the evidence) that as a homosexual male in a predominantly female-dominated workplace we would have been an easier 'target' for complaints.

148. The claim of direct discrimination so far as it concerns the decision to suspend fails at stage 1. Even if we are wrong, we are satisfied that Ms Hikmet's and Mr Arthur's evidence was sufficient to discharge the respondent's burden at stage 2.

149. As regards the harassment claim in connection with the decision

to suspend we accept that suspension amounted to unwanted conduct.

150. However, for the reasons set out above, the claimant has not discharged the burden of proving that the decision related to – in the wider sense in which we must interpret that phrase – the claimant's sex or sexual orientation. The suspension followed on from a rational assessment of a safeguarding risk by Ms Hikmet following an external complaint.

151. If we are wrong and the conduct was related to the claimant's protected characteristics, the conduct was not undertaken with the intention of creating the proscribed effects. Ms Hikmet and Mr Arthur regarded the suspension as a neutral act preliminary to an investigation.

152. Whilst we accept, as is clear from the evidence following the suspension, that the claimant was distressed and regarded the action as humiliating, offensive, degrading and hostile, we find that it was not reasonable for the claimant to perceive the conduct as having those effects:

152.2. the decision was made for the reasons given above and in line with prescribed safeguarding procedures;

152.3. Ms Hikmet reasonably assumed the claimant was the target of the complaint because the complaint had referred to a 'gentleman' assistant, but she went to verify her assumption with the duty register;

152.4. although the claimant was critical about the location of the office where he was informed and events surrounding his leaving the premises, the actions by the respondent were in all the circumstances reasonable steps in a difficult situation.

<u>The conduct of the investigation</u>

153. Our findings of fact regarding the conduct of the investigation are set out above.

154. We were satisfied that the steps taken by Ms Hikmet to identify the co-worker mentioned by Child A's parents and interview her were reasonable steps to take in light of her understanding of the matters complained of. Such steps would have been taken in relation to any complaint irrespective of the sex or sexual orientation of the subject of the complaint. The claimant accepted in cross examination that there was a need to investigate the complaints received. We are satisfied that the purpose of the meeting was explained to the claimant in advance and that his not being accompanied at an investigation meeting was in accordance with the respondent's disciplinary process.

155. The questions asked of the claimant and the language used were focussed (in the main) on the allegations which had been made by the parents and which had emerged from Ms Hikmet's investigations. Although it is clear that the claimant was upset and agitated during the meeting, there was nothing in the questioning or language used which supported, in our judgment an inference that the meeting itself would have been conducted any differently with someone in materially the same circumstances who did not share the claimant's protected characteristics.

156. Although the claimant complained that he was not given full details of the allegations beforehand, and he was unable to deal with them on the spot adequately because he felt overwhelmed, he was given information about the allegations during the meeting and did follow up the meeting with a more detailed email. External concerns which led Ms Hikmet to make a preliminary assessment of the conduct as representing a risk of grooming and potential harm to children would reasonably be expected to be investigated as soon as practicable.

157. Both parties made allegations about the conduct of the other during the investigation meeting. Neither party's evidence was sufficient to enable us to reach a conclusion about these conflicting accounts.

158. However, there were aspects of the investigation and the investigation meeting that were unsatisfactory:

158.2. Ms Hikmet said she watched CCTV footage and it did not capture any relevant events. This was not mentioned in the investigation meeting and the claimant was never shown it;

158.3. The claimant expressed some concerns about conduct, for which he was being criticised as a safeguarding risk, also being undertaken by other colleagues. Although these were not set out in detail before he left the meeting in distress, Ms Hikmet did not appear to have followed them up;

158.4. When the claimant said that he felt he had not received 'adequate' safeguarding training, Ms Hikmet treated him, then and in her concluding report, as having asserted that he had not received any safeguarding training;

158.5. When she followed up with Ms Gray about what training was given at induction days, none of the material produced by Ms Gray and no documents apparently available to her at the time showed that there had been specific warnings given to assistants about the dangers of keeping secrets or giving sweets or gifts;

158.6. Questions were asked about his earlier 'XL Bully'

comment. This appeared to have no connection to the safeguarding complaint;

158.7. There were no follow up questions put to the parents of Child A or to the parent of the girl who was given the magazine;

158.8. Overall the record keeping was poor considering the seriousness of the concerns and the potential consequences for the claimant.

159. It is arguable that these matters could support an inference, absent an explanation by the respondent, that Ms Hikmet had a closed mindset at that stage or that these shortcomings were because of or related to the claimant's protected characteristics. However, weighing them in the balance we are satisfied that in all the circumstances these matters (separately or together and in the overall context of the facts found) do not support such an inference and that the direct discrimination claim relating to the investigation fails at stage 1. Relevant to this conclusion is the fact that there are no other contextual matters identified and proved by the claimant which support that inference. On the other hand there was strong evidence that the claimant had undertaken actions which Ms Hikmet believed were consistent with grooming behaviour and which therefore represented a safeguarding risk requiring investigation. Further, there is evidence that Ms Hikmet did maintain a detached approach to the material before her. For example, she rejected the 'hoodie' allegation as unsubstantiated. The most likely reason why Ms Hikmet did not follow up on the claimant's safeguarding criticisms were, in our view, that they were not expressed in detail and Ms Hikmet as the safeguarding officer might well have wanted to avoid personal criticism.

160. Even if this assessment is wrong, we are satisfied that the respondent has adduced evidence to show that it conducted the investigation because of the safeguarding risk as Ms Hikmet assessed it to be and as was mandated by the statutory and regulatory procedures. The investigation and its conduct, notwithstanding its shortcomings, was not in any way because of the claimant's protected characteristics. The claim therefore would fail in any event at stage 2.

161. As regards harassment, we accept that the investigation, and in particular the shortcomings identified above, amounted to unwanted conduct. We find also that the claimant felt humiliated and offended by the investigation and its conduct which he also perceived as hostile.

162. However, for the reasons and on the facts found above we find that the claimant has not succeeded in showing that the conduct of the investigation related to his protected characteristics.

163. In any event, Ms Hikmet did not have the purpose of creating the proscribed effects. In so far as the investigation amounted to the creation of an environment we are satisfied that it was not reasonable for the respondent's conduct of the investigation to have had the proscribed effects on the claimant.

Dismissal

164. The decision to dismiss was made by Ms Hikmet. The rationale and reasons for her decision were, we find, those set out in the Investigation Outcome Report and summarised in the outcome letter, which incorporates the substantive conclusions from her investigation informed by the claimant's comments during that meeting, and subsequent inquiries made with Ms Gray.

165. We are satisfied that these were the principal reasons for Ms Hikmet's decision to dismiss the claimant. She had concluded, in broad terms that the incidents of encouraging Child A to keep secrets and the giving of sweets/gifts to students had in fact occurred: the claimant had accepted as much. She took the view that he had minimised and failed to appreciate the importance of avoiding this sort of conduct and that he had had not applied his safeguarding training appropriately. She believed that he had taken an unsupportable stance by way of mitigation/defence by denying that he had had safeguarding training, when in fact, she believed, he had had such training from the respondent. In broad terms she concluded that this lack of appreciation and failure to apply appropriate safeguarding practices meant that he represented a risk to children and that she had 'no option' - in her words – but to dismiss the claimant.

166. We had concerns about Ms Hikmet's conclusions and the process adopted by Ms Hikmet and Ms Whitcome which resulted in the claimant's summary dismissal. In particular:-

166.2. She reached a conclusion that the claimant had incorrectly asserted that he had not received any safeguarding training, when on an objective reading of the claimant's position in the investigation meeting he had been saying he had not received 'adequate' safeguarding training – in particular about sweets and secrets. Her conclusion that he had received such training was reached notwithstanding that, at least on the documents as they appeared before us and, we infer, Ms Hikmet, there was no record of such examples having been given as conduct to avoid (although Ms Hikmet said she did give such examples when she conducted safeguarding training);

166.3. When he was invited to the investigation meeting, in the letter of 2 November 2023 it was stated that "If a decision is taken

> to proceed with the disciplinary procedure as a result of the investigation, you will be given adequate notice of this. You will also be provided with any relevant information or evidence should this be the case". This step never happened and he was not given any further evidence or information (for example the CCTV footage). He was dismissed without the opportunity to attend a meeting accompanied. Instead, his engagement was summarily terminated in reliance on clause 12.3 of the terms of his engagement.

167. We considered these shortcomings in the round, and together with those which we identified in connection with the investigation, for the purposes of considering whether they were matters from which the claimant might be found to have satisfied the burden of proving facts from which a tribunal might infer that discrimination had occurred. In reaching our conclusion we approached the question with a degree of scepticism having regard to the failure by Ms Hikmet and Ms Whitcome to follow the procedure which they had initially led the claimant to expect would be followed.

168. We nevertheless conclude that the claimant did not discharge the stage 1 burden of proof.

169. As we have said above there were no other contextual facts established by the claimant to support such an inference, and no evidence that a straight female comparator in materially the same position would have been treated differently.

170. Ms Mankau submitted that the respondent was contractually entitled to terminate the claimant's engagement summarily pursuant to Clause 12.1, and that it was not required to follow the full disciplinary process applied to employees because that policy applied to employees and not temporary workers such as the claimant. This submission was not explored further during the hearing. We have doubts whether it is legally sound, and it was evident from the documentation that the claimant was provided with an employee handbook when he began working for the respondent which contained the disciplinary policy.

171. However, Ms Mankau was correct to the extent that she submitted that this was not an unfair dismissal or breach of contract claim. The relevance of the process of dismissal/termination to our conclusions was whether the shortcomings were matters from which a tribunal could infer that there was a discriminatory reason for the dismissal, or on the basis of which we should conclude that the respondent's stated reasons were not genuine. We were not persuaded that this was the case on either basis. Whatever caused Ms Whitcome to change her understanding of the appropriate process to follow leading to dismissal, it is clear that

thought was given to the legal basis upon which the respondent could terminate the claimant's engagement. This is not a case in which there was no plausible explanation for any non-compliance.

172. Furthermore, the immediate context, known to Ms Hikmet, was that the claimant had already resigned and was serving out the last weeks of what was in effect a three-month notice period when the events took place. It is a reasonable inference that had she not in fact taken the view that the claimant's conduct as she had found it to be represented a safeguarding and reputational risk, it would have been open to the respondent simply to cancel the claimant's further shifts. The fact that she went through the formal process of investigation and dismissal tends to underline that her, and the respondent's concerns were genuine safeguarding concerns and not because of the claimant's protected characteristics.

173. As regards the claim of harassment, we find that the termination of the claimant's engagement, and the manner in which that was done was unwanted conduct. We find also that the claimant perceived that it violated his dignity, or had the effect of creating the proscribed environment.

174. However, for the reasons and in the circumstances outlined above we find that the conduct did not relate in any way to his protected characteristics.

175. We find that neither Ms Hikmet nor Ms Whitcome had the purpose of creating the proscribed effect or the proscribed environment. Had their conduct been related to the claimant's characteristics, it may have been challenging for the respondent to prove that the way in which the claimant's engagement was terminated did not create an environment proscribed by the Act. However, in light of our conclusions this issue does not arise for determination.

Concluding Remarks

176. The claimant strongly denied that he had any inappropriate intentions towards Child A. He denied that the incidents happened as the parents had described them. In a later letter (dated 7 December 2023 [p205]) to Mr Arthur complaining about what the respondent had reported to the DBS he summarised his account of the true position in relation to the First Allegation. In broad terms:

176.2. He emphasised that for almost 2 years he had worked almost every night, welcoming all ages from all walks of life, monitoring various groups and often working within an understaffed team

176.3. He said that the father had invited Child A to offer him a jammy dodger biscuit (but that he never ate sugary foods) and that incident would have been on CCTV;

176.4. He said that Child A had seen him give a sweet to another parent and had begged him for the throat sweet (which the claimant used to take for long COVID) in front of his parents and that that caused him discomfort which would have been captured on CCTV, and that he had felt obligated to offer a sweet to Child A and had asked the parents first;

176.5. He said that the 'secret' comment was made to the parent not to the child. It was a joke and the parent had laughed;

176.6. He asserted that the complaints had been made by homophobic parents although in re-examination before us at the hearing he said that he no longer felt that way.

177. We have referred above to the fact that other staff within the respondent praised his work and had noted his popularity amongst students, parents and staff. In relation to the giving of the magazine to the girl student, he told us that the child's parents had approved and said that it would mean the world to the child to be given the magazine by the claimant on her birthday.

178. It was plain that the claimant was very distressed by the allegations and what he perceived to be a suspicion that he was predatory. However, Ms Hikmet did not draw any such inference in her investigation and the DBS decided not to place the claimant on the barred list.

179. We wish to emphasise that the fact that the claimant's claims have been unsuccessful does not imply any adverse finding by us about his intentions. The focus and function of this tribunal is to reach conclusions about the conduct and mindset of the respondent and its managers as far as that conduct was directed towards the claimant and to determine if that conduct amounted to discrimination within the meaning of the Equality Act 2010 applying the relevant principles of law.

Approved by Employment Judge N Cox

Date: 14 February 2026

Judgment sent to the parties and entered in the Register on: : : .

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for the Tribunal Office

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